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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 409

TENNESSEE COAL, IRON & RAILROAD COMPANY, SLOSS-SHEFFIELD STEEL & IRON COMPANY AND REPUBLIC STEEL CORPORATION, PETITIONERS,

vs.

MUSCODA LOCAL No. 123, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 4, 1943.

CERTIORARI GRANTED NOVEMBER 15, 1943.

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TRANSCRIPT OF RECORD

UNITED STATES

CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT.

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No. 10278

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TENNESSEE COAL, IRON & RAILROAD COMPANY,
Appellant,
versus

MUSCODA LOCAL No. 123, ETC., ET AL.,
Appellees.

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
Appellant,
versus

SLOSS RED ORE LOCAL No. 109, ETC., ET AL.,
Appellees.

REPUBLIC STEEL CORPORATION,
Appellant,
versus

RAIMUND LOCAL No. 121, ETC., ET AL.,
Appellees.

Appeals from the District Court of the United States for
the Northern District of Alabama.

(ORIGINAL RECORD RECEIVED APR. 4/42.)

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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 409

TENNESSEE COAL, IRON & RAILROAD COMPANY, SLOSS-SHEFFIELD STEEL & IRON COMPANY AND REPUBLIC STEEL CORPORATION, PETITIONERS,

vs.

MUSCODA LOCAL No. 123, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 4, 1943.

CERTIORARI GRANTED NOVEMBER 15, 1943.

VOLUME I.

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TRANSCRIPT OF RECORD

UNITED STATES
CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT.

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Appellant,

versus

MUSCODA LOCAL No. 123, ETC., ET AL.,
Appellees.

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
Appellant,

versus

SLOSS RED ORE LOCAL No. 109, ETC., ET AL.,
Appellees.

REPUBLIC STEEL CORPORATION,
Appellant,

versus

RAIMUND LOCAL No. 121, ETC., ET AL.,
Appellees.

Appeals from the District Court of the United States for the Northern District of Alabama.

(ORIGINAL RECORD RECEIVED APR. 4 42.)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

TENNESSEE COAL, IRON & RAILROAD COMPANY,
a Corporation,
Appellant,
versus
MUSCODA LOCAL No. 123, et al.,
Appellees.

SLOSS-SHEFFIELD STEEL & IRON COMPANY, a
Corporation,
Appellant,
versus
SLOSS RED ORE LOCAL No. 109, et al.,
Appellees.

REPUBLIC STEEL CORPORATION, a Corporation,
Appellant,
versus
RAIMUND LOCAL No. 121, et al.,
Appellees.

APPELLANTS' REQUEST THAT ONLY DESIGNATED PORTIONS OF THE RECORD BE PRINTED.

(Filed April 6, 1942.)

Come the Appellants, considering that the whole of the record deposited in this Court on April 4th, 1942 (hereinafter referred to as "the record") is not necessary to be considered by the Court, and request that only the following designated portions thereof be printed:

1. Stipulation of the parties dated December 3, 1941 and filed in the District Court on December 8, 1941, which appears on page 1 of the record.

2. Petition of Tennessee Coal, Iron and Railroad Company, with exhibits thereto, filed in the District Court on April 4, 1941, which appears at pages 2 through 89, both inclusive, of record.

3. Petition of Sloss-Sheffield Steel & Iron Company, with exhibits thereto, filed in the District Court on April 4, 1941, which appears at pages 94 through 156, both inclusive, of the record.

4. Petition of Republic Steel Corporation, with exhibits thereto, filed in the District Court on April 4, 1941, which appears at pages 160 through 200, both inclusive, of the record.

5. Answer in Civil Action No. 5232, of defendants affiliated with American Federation of Labor, filed in the District Court on May 17, 1941, which appears at pages 209 through 214, both inclusive, of the record.

6. Motion to dismiss and answer, in Civil Action No. 5232, of defendants affiliated with International Union of Mine, Mill and Smelter Workers, filed in the District Court on May 17, 1941, which appear at pages 215 through 230, both inclusive, of the record.

7. Motion to dismiss and answer, in Civil Action No. 5233, of defendants affiliated with International Union of Mine, Mill and Smelter Workers, filed in the District Court on May 17, 1941, which appear at pages 231 through 244, both inclusive, of the record.

8. Motion to dismiss and answer, in Civil Action No. 5234, of defendants affiliated with International Union of Mine, Mill and Smelter Workers, filed in the District Court on May 17, 1941, which appear at pages 245 through 256, both inclusive, of the record.

9. Order on pre-trial hearing, filed in the District Court on May 22, 1941, which appears on pages 260 through 265, both inclusive, of the record.

10. Order setting case down for trial on the merits, and decrees on various motions, etc., filed in the District Court on May 26, 1941, which appear on pages 266 through 267, both inclusive, of the record.

11. Motion of Philip B. Fleming for leave to intervene in Civil Action No. 5232, filed in the District Court on May 24, 1941, which appears on pages 269 and 270, both inclusive, of the record.

12. Answer of Philip B. Fleming, in Civil Action No. 5232, filed in the District Court on May 24, 1941, which appears on pages 271 through 275, both inclusive, of the record.

13. Order granting motion of Philip B. Fleming for leave to intervene, filed in the District Court on June 11, 1941, which appears on page 286 of the record.

14. Interrogatories propounded by plaintiffs to Philip B. Fleming, filed in the District Court on June 16, 1941, which appear at pages 295 through 316, both inclusive, of the record.

15. Order continuing trial of case, filed in the District Court on June 18, 1941, which appears on page 323 of the record.

16. Motion to dismiss counterclaim of American Federation of Labor, filed in the District Court on June 19, 1941, which appears at pages 324 through 326, both inclusive, of the record.

17. Motion to dismiss counterclaim of International Union of Mine, Mill and Smelter Workers, filed in the District Court on June 19, 1941, which appears at pages 327 through 329, both inclusive, of the record.

18. Amendment to complaints, filed in the District Court on June 19, 1941, which appears at pages 330 through 335, both inclusive, of the record.

19. Objections of Philip B. Fleming to interrogatories propounded by plaintiffs, filed in the District Court on June 27, 1941, which appear at pages 348 through 353, both inclusive, of the record.

20. Intervener's answer to interrogatories, with exhibits attached thereto, filed in the District Court on July 1, 1941, which appear at pages 366 through 410, both inclusive, of the record.

21. Amended answer of Philip B. Fleming, filed in the District Court on July 5, 1941, which appears at pages 433 and 434 of the record.

22. Amendment to complaint, as amended, of petitioner-plaintiff Tennessee Coal, Iron and Railroad Company, filed in the District Court on July 7, 1941, which appears at pages 451 through 454, both inclusive, of the record.

23. Amendment to complaint, as amended, of petitioner-plaintiff Sloss-Sheffield Steel & Iron Company, filed in the District Court on July 7, 1941, which appears at pages 455 through 459, both inclusive, of the record.

24. Amendment to complaint, as amended, of petitioner-plaintiff Republic Steel Corporation, filed in the District Court on July 7, 1941, which appears at pages 460 through 463, both inclusive, of the record.

25. Order consolidating for trial, filed in the District Court on July 7, 1941, which appears at page 464 of the record.

26. Amendment to petition and complaint of petitioner-plaintiff Republic Steel Corporation, filed in the District Court on July 31, 1941, which appears at pages 469 and 470 of the record.

27. Order allowing amendment of petition and complaint of Republic Steel Corporation dated July 13, 1941, which appears at page 471 of the record.

28. Motion of petitioner-plaintiff Tennessee Coal, Iron and Railroad Company for judgment or decree in its favor, filed in the District Court on September 6, 1941, which appears at pages 485 through 499, both inclusive, of the record.

29. Motion of petitioner-plaintiff Sloss-Sheffield Steel & Iron Company for judgment or decree in its favor, filed in the District Court on September 6, 1941, which appears at pages 500 through 514, both inclusive, of the record.

30. Motion of petitioner-plaintiff Republic Steel Corporation for judgment or decree in its favor, filed in the District Court on September 6, 1941, which appears at pages 515 through 531, both inclusive, of the record.

31. Findings of fact filed in the District Court on September 10, 1941, which appear at pages 532 through 540, both inclusive, of the record.

32. Conclusions of law filed in the District Court on September 10, 1941, which appear at pages 541 through 543, both inclusive, of the record.

33. Decree and judgment filed in the District Court on September 10, 1941, which appear at pages 544 and 545 of the record.

34. Motion to amend judgment, filed in the District Court on September 19, 1941, which appears on pages 546 and 547 of the record.

35. Causes for and in support of motion of petitioner-plaintiff Tennessee Coal, Iron and Railroad Company to amend judgment, which appear at pages 548 through 555, both inclusive, of the record.

36. Plaintiff's objections to findings of fact and motion for amendment thereof, which appear at pages 556 through 604, both inclusive, of the record.

37. Objections to conclusions of law, which appear at pages 605 through 610, both inclusive, of the record.

38. Motion of petitioner-plaintiff Tennessee Coal, Iron and Railroad Company for a new trial, with exhibits thereto, which appears at pages 611 through 620, both inclusive, of the record.

39. Page 621 of the record.

40. Order overruling plaintiff's motion for a judgment or decree in its favor, which appears at page 622 of the record.

41. Judgment and decree of the Court overruling plaintiff's motions and objections, which appear at pages 623 and 624 of the record.

42. Order overruling motion for a new trial, which appears at page 625 of the record.

43. Notice of appeal appearing on pages 626 and 627 of the record.

44. Concise statement of the points on which appellants intend to rely on the appeal, which appears at pages 635 through 647, both inclusive, of the record.

45. Stipulation of counsel as to abridgement of record, which appears at pages 648 through 667, both inclusive, of the record.

46. That portion of the stenographic report of the proceedings on trial, beginning with the first statement by Mr. Burr on page 710 of the record, through and including the eighth line from the bottom of page 778 thereof.

47. That portion of the stenographic report beginning with the 5th line from the bottom of page 795 of the record, through and including the 5th line from the bottom of page 803 thereof.

48. That portion of the stenographic report which appears at pages 805 through 933, both inclusive, of the record.

49. That portion of the stenographic report which appears at pages 935 through 1092, both inclusive, of the record.

50. That portion of the stenographic report beginning with page 1099 of the record continuing through and including the 15th line from the bottom of page 1260 thereof.

51. That portion of the stenographic report which appears at pages 1264 through 1439, both inclusive, of the record.

52. That portion of the stenographic report beginning with the 10th line from the bottom of page 1441 continuing through and including page 1609 of the record.

53. That portion of the stenographic report beginning with the 3rd line from the top of page 1612 continuing through and including the 7th line from the top of page 1866 of the record.

54. That portion of the stenographic report beginning with the 13th line from the bottom of page 1869 through page 1906 of the record.

55. That portion of the stenographic report beginning with the 12th line from the bottom of page 1908 through page 1927 of the record.

56. That portion of the stenographic report beginning with page 1945 continuing through and including the 2nd line from the bottom on page 1952 of the record.

57. That portion of the stenographic report beginning with the 12th line from the top of page 2021 through and including page 2075 of the record.

58. That portion of the stenographic report which appears at page 2079 of the record.

59. That portion of the stenographic report beginning with the 9th line from the bottom of page 2083 continuing through and including the 1st line from the top on page 2154 of the record.

60. That portion of the stenographic report beginning with the 2nd line from the bottom of page 2157 and continuing through and including the 7th line from the bottom of page 2158 of the record.

61. That portion of the stenographic report beginning with the 8th line from the top of page 2166 through and including page 2287 of the record.

62. That portion of the stenographic report which appears at pages 2291 through 2502, both inclusive, of the record.

63. That portion of the stenographic report beginning with the 10th line from the top of page 2513 continuing through and including the 5th line from the top of page 2702 of the record.

64. That portion of the stenographic report beginning with page 2718 continuing through and including the 7th line from the top of page 3163 of the record.

65. That portion of the stenographic report beginning with the 3rd line from the top of page 3166 continuing through and including the 6th line from the bottom of page 3206 of the record, with the exception of pages 2509, 2510, 2540, 3176 and 3177 thereof, which appellants request not be printed.

66. That portion of the stenographic report beginning with the 6th line from the top of page 3213 continuing through and including the 6th line from the bottom of page 3323 of the record.

67. That portion of the stenographic report which appears on page 3328 of the record, down to and including the 12th line from the bottom thereof.

68. Page 3497 of the record.

69. T. C. I. Exhibits Y-21 and Y-22, which appear on page 3506 of the record.

70. T. C. I. Exhibits Y-25 and Y-26, which appear on page 3508 of the record.

71. T. C. I. Exhibit No. 1, which appears at page 3534 of the record.

72. T. C. I. Exhibit No. 2, which appears at page 3535 of the record.

73. T. C. I. Exhibit No. 3, which appears at page 3536 of the record.

74. T. C. I. Exhibit No. 4, which appears at page 3537 of the record.

75. T. C. I. Exhibit No. 5, which appears at pages 3538 through 3541, both inclusive, of the record.

76. T. C. I. Exhibit No. 6, which appears at pages 3541 through 3544, both inclusive, of the record.

77. T. C. I. Exhibit No. 7, which appears at pages 3545 through 3550, both inclusive, of the record.

78. T. C. I. Exhibit No. 8, which appears at pages 3551 through 3564, both inclusive, of the record.

79. T. C. I. Exhibit No. 9, which appears at pages 3565 and 3566 of the record.

80. T. C. I. Exhibit No. 9-A, which appears at pages 3567 through 3571 of the record.

81. T. C. I. Exhibit No. 9-B, which appears at page 3572 of the record.

82. T. C. I. Exhibit No. 10 and Republic Exhibit No. 7, which appear at pages 3573 and 3574 of the record.

83. T. C. I. Exhibit No. 10-A, which appears on pages 3575 through 3582, both inclusive, of the record.

84. T. C. I. Exhibit No. 11, which appears at page 3583 through 3590, both inclusive, of the record.

85. T. C. I. Exhibit No. 12, which appears at pages 3591 through 3616, both inclusive, of the record.

86. T. C. I. Exhibit No. 13, which appears at pages 3617 through 3619, both inclusive, of the record.

87. Page 3620 of the record.

88. T. C. I. Exhibit No. 15, which appears at pages 3621 through 3623, both inclusive, of the record.

89. T. C. I. Exhibit No. 16, which appears at pages 3624 through 3632, both inclusive, of the record.

90. T. C. I. Exhibit No. 17, which appears on page 3633 of the record.

91. T. C. I. Exhibit 17-A, which appears on pages 3634 through 3636, both inclusive, of the record.

92. T. C. I. Exhibit 17-B, which appears at pages 3637 and 3638 of the record.

93. T. C. I. Exhibit 17-C, which appears at pages 3639 through 3642, both inclusive, of the record.

94. T. C. I. Exhibit 17-E, which appears at pages 3644 and 3645, both inclusive, of the record.

95. T. C. I. Exhibit 18, which appears at pages 3646 through 3652, both inclusive, of the record.

96. T. C. I. Exhibit 19, which appears at pages 3653 through 3660, both inclusive, of the record.

97. T. C. I. Exhibit No. 20, which appears at pages 3661 through 3669, both inclusive, of the record.

98. T. C. I. Exhibit No. 21, which appears at pages numbered 3670 and 3671 of the record.

99. T. C. I. Exhibit No. 22, being a reprint of two articles from the September 1937 issue of the Engineering and Mining Journal, which appears at page 3672 of the record.

100. Sloss Exhibit No. 1, which appears at pages 3673 through 3676, both inclusive, of the record.

101. Sloss Exhibit No. 3, which appears at pages 3677 through 3681, both inclusive, of the record.

102. Sloss Exhibit No. 7, which appears at pages 3684 through 3694, both inclusive, of the record.

103. Sloss Exhibit No. 8, which appears at pages 3695 through 3703, both inclusive, of the record.

104. Sloss Exhibit No. 9, which appears at pages 3704 through 3710, both inclusive, of the record.

105. Sloss Exhibit No. 10, which appears at page 3711 of the record.

106. Sloss Exhibit No. 11, which appears at page 3712 of the record.

107. Sloss Exhibit No. 12, which appears at pages 3713, 3714 and 3715 of the record.

108. Sloss Exhibit No. 13, which appears at page 3716 of the record.

109. Sloss Exhibit No. 14, which appears at pages 3717 through 3723, both inclusive, of the record.

110. Sloss Exhibit No. 15, which appears at pages 3724 through 3733, both inclusive, of the record.

111. Sloss Exhibit No. 16, which appears at pages 3734 through 3740, both inclusive, of the record.

112. Sloss Exhibit No. 17, which appears at pages 3741 through 3753, both inclusive, of the record.

113. Page 3754 of the record.

114. Sloss Exhibit No. 19, which appears at pages 3755, 3756 and 3757 of the record.

115. Sloss Exhibit No. 20, which appears at page 3758 of the record.

116. Sloss Exhibit No. 21, which appears at page 3759 of the record.

117. Sloss Exhibits No. 22-8, No. 22-9, and No. 22-10, all of which appear at page 3762 of the record.

118. Sloss Exhibit No. 23, which appears on page 3780 of the record.

119. Sloss Exhibit No. 24, which appears at pages 3781 through 3784, both inclusive, of the record.

120. Sloss Exhibit No. 25, which appears at pages 3785 through 3788, both inclusive, of the record.

121. Sloss Exhibit No. 26, which appears at pages 3789 and 3790 of the record.

122. Sloss Exhibit No. 27, which appears at pages 3791 through 3798, both inclusive, of the record.

123. Sloss Exhibit No. 28, which appears at pages 3799, 3800 and 3801 of the record.

124. Sloss Exhibit No. 29, which appears at pages 3802 through 3805, both inclusive, of the record.

125. Sloss Exhibit No. 30, which appears at pages 3806 and 3807 of the record.

126. Sloss Exhibit No. 31, which appears at pages 3808, 3809 and 3810 of the record.

127. Sloss Exhibit No. 31-A, which appears at page 3811 of the record.

128. Sloss Exhibit No. 32, which appears at pages 3812 through 3822, both inclusive, of the record.

129. Sloss Exhibit No. 33, which appears at pages 3823 through 3834, both inclusive, of the record.

130. Sloss Exhibit No. 34, which appears at pages 3835 through 3847, both inclusive, of the record.

131. Sloss Exhibit No. 35, which appears at pages 3848 through 3852, both inclusive, of the record.

132. Sloss Exhibit No. 36, which appears at pages 3853 through 3865, both inclusive, of the record:

133. T. C. I. Exhibit No. 24, which appears at page 3867 of the record.

134. Republic Exhibit No. 1, which appears at page 3883 of the record.

135. Republic Exhibit No. 2, which appears at pages 3884 and 3885 of the record.

136. Republic Exhibit No. 3, which appears at pages 3886 and 3887 of the record.

137. Republic Exhibit No. 4, which appears at pages 3888 through 3892, both inclusive, of the record.

138. Republic Exhibit No. 5, which appears at pages 3893 through 3902, both inclusive, of the record.

139. Republic Exhibits No. 6, No. 7, No. 8, No. 9 and No. 10, all of which appear on pages 3903 through 3915, both inclusive, of the record.

140. Republic Exhibit No. 16, which appears at page 3935 of the record.

141. Plaintiff's Exhibit No. 7, which appears at page 3936 of the record.

142. Sloss Exhibit No. 2, which appears at pages 3937 through 3942, both inclusive, of the record.

143. Page 3943 of the record, being the title page of Plaintiff's Exhibit No. 35.

144. Beginning with the 6th line from the top of page 3951 continuing through and including page 4255 of the record, being a further portion of Plaintiff's Exhibit No. 35.

145. Pages 4327 through 4333, both inclusive, of the record, being a further portion of Plaintiff's Exhibit No. 35.

146. Plaintiff's Exhibit No. 36, which appears at pages 4334 through 4358, both inclusive, of the record.

147. Plaintiff's Exhibits 37 and 38, which respectively appear at page 4359 and 4360 of the record.

148. Plaintiff's Exhibit No. 8, which appears at page 4362 of the record.

149. Plaintiff's Exhibit No. 49, which appears at pages 4363 and 4364 of the record.

150. Defendant's Exhibits No. 1, No. 5, No. 6, No. 11, and No. 12, all of which are set out at pages 4376 through 4390, both inclusive, of the record.

151. T. C. I. Exhibits No. 30-A and No. 30-B, both of which are set out at pages 4394 through 4400, both inclusive, of the record.

152. Defendant's Exhibit No. 19, which appears at page 4421 of the record.

153. Intervener's Exhibits No. 1 through No. 43, both inclusive, all of which appear at pages 4422 through 4464, both inclusive, of the record.

154. Defendant's Exhibits No. 20 through No. 28, both inclusive, which appear at pages 4465 through 4485, both inclusive, of the record.

155. Defendant's Exhibits No. 13, No. 14, No. 16, No. 17, and No. 18, all of which are set out at pages 4486 through 4493, both inclusive, of the record.

156. Defendant's Exhibits No. 10 and No. 29, both of which appear at pages 4501 through 4509, both inclusive, of the record.

157. T. C. I. Exhibit No. 32, which appears at page 4510 of the record.

158. Defendant's Exhibits No. 30 through No. 35, both inclusive, all of which appear at pages 4511 through 4516, both inclusive, of the record.

159. T. C. I. Exhibits No. 33 through No. 39, both inclusive, all of which appear at pages 4517 through 4523, both inclusive, of the record.

160. Sloss Exhibits No. 43 through No. 50, both inclusive, all of which appear at pages 4524 through 4531, both inclusive, of the record.

161. Page 4532 of the record.

162. Plaintiff's Exhibits No. 51, and No. 16 through No. 21, both inclusive, all of which appear at pages 4534 through 4576, both inclusive, of the record.

163. Page 4577; the heading (being the first 5 lines) on page 4578; the last two lines on page 4588; pages 4589 and 4590; page 4591 down to and including the 15th line

from the bottom thereof; the last 16 lines on page 4593; the heading and the opening paragraph on page 4594; beginning with the third line on page 4598 continuing through and including page 4604: all being the relevant portion of Plaintiff's Exhibit No. 45.

164. Pages 4605 through 4625 of the record (being a number of exhibits identified and offered in evidence by plaintiffs but excluded upon objection of appellees).

165. Pages 4631 through 4699, and pages 4703 through 4776, of the record (being those remaining exhibits so excluded upon objection of appellees which are set out in the record, and omitting only those pages on which three exhibits through error were set out twice).

166. Pages 4777 through 4793 (being the designations of contents of record on appeal as filed in the District Court by the various parties).

167. The certificate of the Clerk of the District Court, which appears on page 4794 of the record.

E. L. ALL,
(E. L. All)
BORDEN BURR,
(Borden Burr)
Attorneys for Appellants.

State of Alabama,
Jefferson County.

Before me, Mabel Wheeler, a Notary Public in and for Jefferson County, Alabama, personally appeared B. A. Monaghan, who, being by me first duly sworn, deposes and says as follows:

I mailed, on April 4, 1942, a copy of the foregoing request to E. Crampton Harris, Esquire, Attorney of Record for appellees affiliated with the Congress of Industrial Organization; to Messrs. J. Q. Smith, Ralph Quinn and W. F. Spencer, Counsel of Record for appellees affiliated with the American Federation of Labor; and to Jerome Cooper, Esquire, of Counsel for the intervener, the Administrator of the Wage and Hour Division of the United States Department of Labor.

B. A. MONAGHAN.

Sworn to and subscribed before me this 4th day of April, 1942.

MABEL WHEELER,
Notary Public.

APPELLEES REQUEST THAT ALL THE RECORD DEPOSITED IN THIS COURT BE PRINTED.

Filed April 7, 1942.

United States Circuit Court of Appeals for Fifth Circuit.

Tennessee Coal, Iron & Railroad Company, a Corporation,
Appellant,
vs. Civil Action No. 5232.
Muscoda Local No. 123, and unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, et als, (Defendants), Appellees.

Sloss-Sheffield Steel & Iron Company, a Corporation,
Appellant,
vs. Civil Action No. 5233.
Sloss Red Ore Local No. 109, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, et als, (Defendants), Appellees.

Republic Steel Corporation, a Corporation, Appellant,
vs. Civil Action No. 5234.
Raimund Local No. 121, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, et als, (Defendants), Appellees.

Now come all the appellees in the above styled causes, by their several counsel, and request that the entire record deposited in this Court on April 4, 1942 be printed in the order and as prepared by the Clerk of the United States District Court for the Southern Division of the Northern District of Alabama, for the reason that the whole of said record is necesssary to be considered by the Court. In support of this request the appellees respectfully show unto this Honorable Court the following:

1. Counsel for appellees have worked diligently on the preparation of this record and have entered into various and sundry stipulations with counsel for appellants in order to abbreviate the same.

2. Any further extension of the process of abbreviation of the record would deprive this Court of a true picture of the trial in the District Court and would not serve the ends of justice in view of the importance of the case and the number of persons affected thereby.

CRAMPTON HARRIS,
.....................,
Attorneys for Muscoda Local No. 123, Sloss Red Ore Local, No. 109; Raimund Local No. 121, et als, Appellees.
J. Q. SMITH,
RALPH W. QUINN,
W. F. SPENCER,
Attorneys for Muscoda Local No. 21935, et al.
JEROME A. COOPER,
Atty. for the Intervener-Appellee, The Administrator o the Wage and Hour Divisio of the U. S. Department of Labor.

State of Louisiana,
Parish of Orleans.

Before Me, a Notary Public in and for said Parish in said State, personally appeared Crampton Harris, who being by me first duly sworn deposes and says as follows:

I have mailed on this 7th day of April, 1942, a copy of the foregoing request addressed to Mr. Borden Burr, Attorney at Law, Brown-Marx Building, Birmingham, Alabama as attorney for Tennessee Coal, Iron & Railroad Co. and another copy to Mr. Burr as attorney for the Republic Steel Corporation. I have also mailed a copy to Mr. Ernest L. All, Comer Building, Birmingham, Alabama, as counsel for the Sloss-Sheffield Steel & Iron Company.

CRAMPTON HARRIS.

Sworn to and subscribed before me this the 7th day of April, 1942.

NORTON L. WISDOM,
Notary Public.

(Seal)

My commission expires at death.

TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals, Fifth Circuit.

No. 10278.

Tennessee Coal, Iron & Railroad Company, a Corporation,
Appellant
vs.
Muscoda Local No. 123, Etc., et al., Appellees.

Sloss-Sheffield Steel & Iron Company, a Corporation,
Appellant
vs.
Sloss Red Ore Local No. 109, Etc., et al., Appellees.

Republic Steel Corporation, a Corporation, Appellant
vs.
Raimund Local No. 121, Etc., et al., Appellees.

Appeals from the District Court of the United States for the Southern Division of the Northern District of Alabama.

BENNERS, BURR, McKAMY &
FOREMAN,
Birmingham, Alabama.

BRADLEY, BALDWIN, ALL &
WHITE,
Attorneys for Appellant,
Birmingham, Alabama.

CRAMPTON HARRIS, Esquire,
Birmingham, Alabama.

J. A. LIPSCOMB, Esquire,
Bessemer, Alabama.

J. Q. SMITH, Esquire,
Birmingham, Alabama.

RAPLH W. QUINN, Esquire,
Birmingham, Alabama.
W. F. SPENCER, Esquire,
Birmingham, Alabama.
JEROME A. COOPER, Equire,
Birmingham, Alabama.
ABNER BRODIE, Esquire,
Attorneys for Appellee.
Washington, D. C.

In the District Court of the United States for the Northern District of Alabama, Southern Division.

Tennessee Coal, Iron and Railroad Company, a corporation,
Petitioner and Plaintiff,
vs. Civil Action No. 5232.
Muscoda Local No. 123, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, et al., Defendants.

Sloss-Sheffield Steel & Iron Company, a corporation,
Petitioner and Plaintiff,
vs. Civil Action No. 5233.
Sloss Red Ore Local No. 109, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, et al., Defendants.

Republic Steel Corporation, a Corporation, Petitioner and Plaintiff,
vs. Civil Action No. 5234.
Raimund Local No. 121, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, et al., Defendants.

The parties hereto, subject to the approval of the appropriate Court, stipulate as follows:

1. That the hearing of the appeals herein be transferred from Montgomery, Alabama to New Orleans, Louisiana.

2. That said appeals may be taken upon a consolidated record.

This 3rd day of Dec. 1941.

E. L. ALL,
BORDEN BURR,
Attorneys for Plaintiffs,
CRAMPTON HARRIS,
Attorneys for Defendants affiliated with C. I. O.,
J. Q. SMITH,
W. F. SPENCER,
RALPH W. QUINN,
Attorneys for Defendants affiliated with American Federation of Labor,
JEROME A. COOPER,
Attorneys for Defendant-Intervener.

Filed December 8, 1941. Chas. B. Crow, Clerk, U. S. Dist. Court.

Approved:

RUFUS E. FOSTER,
Judge, U. S. Circuit Court of Appeals.

Apl. 10 42.

PETITION OF TENNESSEE COAL, IRON AND RAILROAD COMPANY.

Civil Action File No. 5232.

I.

Allegtions of Jurisdiction.

(a) That petitioner and plaintiff (hereinafter referred to as "plaintiff") is a corporation organized under the laws of the State of Tennessee and a resident of said State, authorized to transact business in the State of Alabama, and having its principal place of business and its mining and manufacturing operations in Jefferson County, State of Alabama;

(b) All of the defendants are citizens and residents of Jefferson County, State of Alabama;

(c) The matters in controversy, exclusive of interest and costs, exceed the sum of $3,000;

(d) That jurisdiction is also founded on the existence of a federal question in that it is a suit arising under a law regulating commerce;

(e) Jurisdiction is also founded in that this action arises under the Constitution of the United States and the Fifth Amendment to the Constitution of the United States;

(f) Jurisdiction is also founded in that this action arises under the Constitution of the United States and that provision of Section 8 thereof reading as follows:

"To regulate commerce with foreign nations, and among the several States, and with the Indian Tribes;"

in that the Act hereinafterwards referred to, commonly called "Fair Labor Standards Act of 1938", relates to and is based upon said clause;

(g) Jurisdiction is also founded on the existence of a question arising on a particular statute in that the action arises under the Act of June 25, 1938, Public Act No. 718 of the 75th Congress, Chapter 676, Sections 1 to 19, 52 Stat. 1060, Title 29 U. S. C., Sections 201 to 219, as amended by the Act of August 9, 1939, Public Act No. 344 of the 76th Congress, commonly called the "Fair Labor Standards Act of 1938", as hereinafter more fully appears.

(h) This action is to secure a declaratory judgment and such incidental injunctive relief as may be proper under the provisions of the Federal Declaratory Judgment Act, Title 28, U. S. C. A. 400, the Judicial Code, Section 274(d); the Act of March 3, 1911, Chapter 231, Paragraph 274(d), as amended June 14, 1934, Chapter 512; 48 Stat. 955, as amended by the Act of August 30, 1935; C 829, 405; 47 Stat. 1027;

(i) This action is also to secure such other different and more general relief as may be proper under the allegations herein contained.

II.

The Plaintiff and Its Operations.

Plaintiff owns and operates in Jefferson County, Alabama, eight underground iron ore mines and one underground limestone mine, and at said mines employs 2650 workers whose duties require them to work underground (these underground employees are the employees of the plaintiff with whom the controversy, as hereinafter alleged, exists and who are hereinafter made parties defendant hereto); said underground employees representing seventy-eight percent of the total number of employees at said mines.

Access to the mine workings is by inclined slopes, varying from thirty degrees near the outcrop to six degrees at the bottom of the slopes, with an average vertical depth of cover over the present working places of 1200 feet. The workable seams of ore average ten feet more or less.

The method of mining is the modified room and pillar plan and a complete cycle averages three and a half months. In this cycle there are varying degrees of production due to restricted and unrestricted drilling conditions. In practice it has been found that approximately twelve shifts (double) encounter an average condition. Operating requirements for the year 1940 called for an average of 360,000 net tons of red ore and 21,300 tons of limestone per month. The wage rates are on an hourly basis as distinguished from a shift basis. These hourly rates have been established on a systematic basis, taking into consideration all factors which make up a proper occupational rate.

The plaintiff extracts from said mines iron ores and limestone, and said product is shipped to the Company's blast furnaces some three miles over its own railroad system and goes into the manufacture of pig iron. The pig iron (with the exception of a small unsubstantial amount) is manufactured into steel; the steel ingots, slabs and billets; and from these the plaintiff manufactures steel rails, tin plate, bars, structural plates, sheets, nail, iron fencing, bolts and other products, such products being sold in various markets in competition with manufacturers of like products.

The plaintiff obtains a portion of its supplies and equipment from outside of the State of Alabama, and it ships the greater portion of its manufactured products by common carrier to points outside of the State of Alabama, and in some instances to foreign countries.

The plaintiff operates four underground coal mines, and uses the coal and by-products thereof in the manufacture of its products. The operations in its coal mines, insofar as the questions involved here are related and concerned, is in substance the same as its operations in its ore mines and limestone mine.

The general custom and procedure in the ore mines and limestone mine of the plaintiff, insofar as its 2650 underground employees are concerned, is substantially as follows:

The mines of the plaintiff are in three divisions: Muscoda Division, operating two ore mines and the limestone mine; Ishkooda Division, operating two ore mines; and the Wenonah Division, operating four ore mines.

For the convenience of its employees, the plaintiff provides bathhouse facilities at each mining division for which no charge is made. The employees are not compelled to use the bathhouse facilities, and the plaintiff does not require the presence of the miners at the bathhouses at any particular time or in any defined groups. No check-in or check-out is had at the bathhouses. While the use of the bathhouses is not obligatory, they are used by substantially all of the plaintiff's employees.

The employee, after changing from street clothes to work clothes at the bath house, walks to the tipple or tipple house which is on the surface at the entrance to the mine and which is hereinafterwards referred to as the "portal". The distance from the bathhouses to the portal varies, the shortest distance being approximately 400 feet and the longest distance being approximately 2325 feet.

The employee provides his own mine lamp, and some two or three times per week has to secure carbide for his lamp. For the convenience of the employee, the plaintiff at a place near the portal sells carbide at cost. It is not obligatory upon the employee to buy his carbide from the plaintiff, but this provision is made for his convenience and practically all the employees take advantage of this convenience.

All underground men are lowered into the slopes in man skips to a central point called the "underground man loading station". From this point, the employees proceed on foot to their respective working places. For the purpose of transporting employees to the underground man loading stations, the plaintiff operates man skips. Three to six mantrips are required to lower the underground employees into the mine. The employees are not required to ride on any particular mantrip, but can follow their own wishes in determining which trip they shall ride. The first mantrip leaves the portal at approximately 6:07 A. M. All men are expected to be at their regular places of working at the starting time. Day turn operations begin at 6:45 A. M., and the night shift at 6:45 P. M. for all underground work. Day turn operations cease at 3:15 P. M. and the night operations at 3:15 A. M., the men being allowed on their own time thirty minutes lunch period.

After the day's work has been completed and the power in the working places has been cut off, the employees walk from their working places to the underground man loading station and are hoisted in the same manner as they are lowered into the mines. The average first mantrip out leaves at 3:14 P. M. or A. M. and the average last mantrip out reaches the surface at 3:45 P. M. or A. M. The men complete their work and leave their working places at approximately 3:00 P. M. or 3:00 A. M. The men's time is computed and paid on the basis of eight hours' work at the working places, the time running from 6:45 A. M. or P. M. to 3:15 P. M. or A. M. (the men are allowed during the work time thirty minutes for lunch period, which is on their own time and excluded from the eight-hour workday).

The time taken in transportation from the portal to the underground man loading station and from the man loading station to the portal and the time taken in walking from and to the man loading station to and from the usual working place varies, but may be conservatively estimated as not less than one hour and not more than two hours. The time taken by the employees from the moment they leave the bathhouse before the beginning of the day's work until the moment they enter the bathhouse at the end of the day's work (as contended by the International Union of Mine, Mill & Smelter Workers, as hereinafterwards set forth); or the time taken from the moment they enter the bathhouse before the beginning of the day's work to the moment they leave the bathhouse at the end of the day's work (as contended by the American Federation of Labor as hereinafterwards set forth) varies, but may be conservatively estimated as not less than two and one-half minutes and not more than twelve minutes.

In October, 1933, the plaintiff established in its ore and limestone mines an eight-hour day and a forty-hour week, and in December, 1936, established the payment of time and one-half for all time over eight hours in any one day and for all overtime in excess of forty hours in any one week, the eight-hour day meaning eight hours of work in and about the mines at the usual working place for all classes of labor, exclusive of the lunch period, whether the employees were paid by the day or paid on the tonnage basis.

All underground mine employees have been paid and accepted their wages on the basis of eight hours per day, from 6:45 A. M. or P. M. to 3:15 P. M. or A. M. The day's work begins at 6:45 A. M. and ends at 3:15 P. M. and the night turn begins at 6:45 P. M. and ends at 3:15 A. M. The plaintiff has never compensated its underground employees for any portion of their time spent in going to or from or in being transported to and from their actual workplace, and such employees have at all times understood and agreed that they should not receive any compensation therefor; and since June, 1934, by letters of understanding, and since May, 1937, by written contracts, such understanding has been specifically provided for by express agreements between the Company and the defendant unions, the average maximum wage paid the underground employee is sixty-eight cents and the minimum fifty-four and one-half cents per hour.

The allegations herein set forth as to operations at the present time are substantially and in all respects true as to operations since and prior to 1936.

III.

The Defendants.

(a) The defendants, Muscoda Local No. 123, Wenonah Local No. 157, and Ishkooda Local No. 153, affiliated with the International Union of Mine, Mill and Smelter Workers, are unincorporated associations, commonly known as "labor unions", each of whom has been selected by some of the plaintiff's employees as their representative for collective bargaining in all matters concerning wages, hours and conditions of employment, each of said unions representing some of the plaintiff's employees, the exact number being unknown to the plaintiff;

(b) The individual defendants, W. C. Gunnin, Pete Dulaney, R. H. Martin and John Thompson, are employees of the plaintiff, and officers and members of said Muscoda Local No. 123, who have selected said organization as their representative for collective bargaining;

(c) The individual defendants, C. J. McDaniel, W. B. Lemley, R. E. Lemley and Ward Jefferson, are employees of the plaintiff, and officers and members of said Wenonah Local No. 157, who have selected said organization as their representative for collective bargaining;

(d) The individual defendants, E. A. Sisemore, L. H. McBrayer, Elmore Mitchell and Dennis Hart, are employees of the plaintiff, and officers and members of said Ishkooda Local No. 153, who have selected said organization as their representative for collective bargaining;

(e) That the defendants, Muscoda Local No. 21935, Red Ore Miners Union, Wenonah Local No. 21936, Red

Ore Miners Union, and Ishkooda Local No. 21937, Red Ore Miners Union, affiliated with the American Federation of Labor, are unincorporated associations, commonly known as "labor unions", each of whom have been selected by some of the plaintiff's employees as their representative for collective bargaining in all matters concerning wages, hours and conditions of employment—each of said unions representing some of plaintiff's employees, the exact number being unknown to the plaintiff;

(f) The individual defendants, Fred Trammel, Joe P. Bell, W. R. Headrick and I. V. Robinson, are employees of the plaintiff, and officers and members of said Muscoda Local No. 21935, Red Ore Miners Union, who have selected said organization as their representative for collective bargaining;

(g) The individual defendants, W. W. Kendrick, G. L, Batson, Will McGhee and W. T. Maxwell, are employees of the plaintiff, and officers and members of said Wenonah Local No. 21936, Red Ore Miners Union, who have selected such organization as their representative for collective bargaining;

(h) The individual defendants, J. S. Pitts, James A. Bailey, Jr., A. E. Wesley, John White, James Knox, Nathan Smith and James Snow are employees of the plaintiff, and officers and members of said Ishkooda Local No. 21937, Red Ore Miners Union, who have selected said organization as their representative for collective bargaining;

(i) The individual defendants Van D. Jones, C. L. Pegues and Frank Allen are respectively the Executive Board Member, District No. 5, Secretary-Treasurer and Organizer of the International Union of Mine, Mill and Smelter Workers, an unincorporated national association, none of whom are employees of this plaintiff;

(j) That the individual defendants S. E. Roper and W. O. Hare are respectively the Organizer of the American Federation of Labor and Secretary-Treasurer of the Alabama Federation of Labor, affiliated with the American Federation of Labor, an unincorporated national association, none of whom are employees of this plaintiff;

(k) The defendants herein named are made parties defendant in their individual and representative capacities, as hereinabove set forth and described, under Rule 23 of Federal Rules of Civil Procedure as representatives of all of plaintiff's employees, as all of such employees represent a class that is so numerous as to make it impracticable to bring them all before the Court, and such individual defendants, representing as they do the employees and different groups thereof, so fairly represent all employees as to ensure adequate representation of all, and, are, therefore, sued because the right sought to be enforced by the plaintiff against all of the employees are several and there is a common question of law and fact affecting the several rights and common relief is sought against all.

Plaintiff has elected, in keeping with the statutes and rules of Court in such cases made and provided, and more especially Rule 23, Rules of Civil Procedure, to make and name as parties herein the above named and described defendants as being typical of the several classes of plaintiff's said underground mine employees whose rights would be affected by the decision to be rendered herein, and plaintiff avers that said employees, selected and named as defendants, properly and fairly represent all of said underground mine employees, and that said underground mine employees are all interested in and parties to the controversy hereinafterwards described.

The plaintiff invites the timely intervention in this action of any of its other underground mine employees who are not specifically or individually made defendants hereto to intervene or join herein as parties defendant, all to the end that the controversy herein set forth and shown may be fully and fairly determined by this Court in this proceeding.

The Administrator of the Wage and Hour Division, United States Department of Labor, as such Administrator, is interested in the construction (hereinafterwards prayed for) of Section 7 of the Act commonly called the "Fair Labor Standards Act of 1938", and the plaintiff invites the timely intervention in this action of such Administrator.

IV.

Statement of Controversy.

Plaintiff alleges that there is an actual and bona fide controversy existing as of the date of filing this petition between the plaintiff on the one hand and the defendants herein named on the other hand, said controversy growing out of the following facts and being as herein stated.

Said controversy relates to the judicial construction of Section 7 of the Act, said section reading as follows:

"Section 7(a) No employer shall, except as otherwise provided in this section, employ any of his employee who is engaged in commerce or in the production of goods for commerce— ,

—(a) for a workweek longer than forty-four hours during the first year from the effective date of this section;

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed".

The plaintiff asserts:

1. That in working its employees in and about their actual working places eight hours per day for five days per week it is not employing said employees for a "workweek" longer than forty hours.

2. That no part of the time (unless some actual service for the plaintiff is performed) spent by its underground employees in the bath house or in going from and to the bathhouse to or from the portal, or to and from the underground man loading station from or to the portal, or to or from the actual working places of the employees from or to the underground man loading station constitutes a part of the "workweek".

Otherwise stated, the plaintiff asserts that the Congress intended the word "workweek" to be construed as meaning the time actually spent by plaintiff's underground miners in or about their usual work places and did not intend to include as a part of the "workweek" the time spent by such underground employees in being transported or walking to and from the places where they actually work;

3. That the workday does not include the fixed lunch period of thirty minutes taken underground on the underground employees' time.

4. That if the Congress did intend that traveling time of plaintiff's underground employees to and from the places where they actually work or the lunch period should be considered as a part of the "workweek", such legislation is violative of the Fifth Amendment to the Constitution of the United States.

Some of the defendants (being members of the International Union of Mine, Mill and Smelter Workers, affiliated with the C. I. O.) assert:

1. That the Congress intended to include within the meaning of the word "workweek" all the time (including the lunch period) from the moment the underground employees leave the bathhouse before the beginning of the day's work until the moment they enter the bathhouse at the end of the day's work.

Otherwise stated, that the entire time (including the lunch period) from the moment the underground employees leave the bathhouse before the beginning of the day's work until the moment they enter the bathhouse at the end of the day's work should be considered as a part of the "workweek", and that the underground employees should be paid for all such time and should be paid overtime for such portion of the "workweek", as thus defined, which exceeds forty hours since October 24, 1940, and forty-two hours from October 24, 1939, to October 24, 1940, and forty-four hours from October 24, 1938, to October 24, 1939.

Others of the defendants (being members of the Red Ore Miners' Union, affiliated with the American Federation of Labor) assert:

1. That the Congress intended to include within the meaning of the word "workweek" all the time (including the lunch period) from the moment the underground employees enter the bathhouse before the beginning of the day's work until the moment they leave the bathhouse at the end of the day's work.

Otherwise stated, that the entire time (including the lunch period) from the moment the underground employees enter the bathhouse before the beginning of the day's work until the moment they leave the bathhouse at the end of the day's work should be considered as a part of the "workweek", and that the miners should be paid for all such time, and should be paid overtime for such portion of the week's work, as thus defined, which exceeds forty hours since October 24, 1940, and forty-two hours from October 24, 1939, to October 24, 1940, and forty-four hours from October 24, 1938, to October 24, 1939.

The controversy involves a large sum of money because, if the assertions and contentions of the plaintiff are correct and its construction of the Act legal, it has paid to its underground employees all the compensation due them under the provisions of the Act. However, if the assertions and contentions of the underground employees are correct and their construction of the Act legal, plaintiff will be due its underground employees a large sum of money for overtime at a rate not less than one and one-half times the regular rate at which the underground employee was employed, which accrued indebtedness, if the estimates of the underground employees as to the amount of overtime is correct, will amount to approximately one-half million dollars, and if the plaintiff continues in the performance of its understanding and contention that only time actually spent by an underground employee working at and around the usual work place constitutes the "workweek", the overtime and obligations of the plaintiff, therefore, will each day become increasingly larger.

Without a determination of this controversy, it is impossible for plaintiff to know and ascertain whether or not it is violating the Act.

V.

The Opinion of the Administrator.

On March 23, 1941, the Administrator of the Wage and Hour Division, United States Department of Labor, announced a "Modified Portal to Portal Wage-Hour Opinion" and report, a complete copy of said opinion and report is hereto attached, marked Exhibit "A", and made a part hereof,

Plaintiff avers that said report was made on March 15, 1941, for release on Sunday, March 23, 1941, and said opinion was made on March 17, 1941 for release on Sunday, March 23, 1941; that promptly upon receiving information as to said opinion and report, plaintiff, with other employers like situated, filed with the Administrator its application for a reconsideration of said opinion; that a hearing on such application for reconsideration was held on Friday, March 28, 1941, before such Administrator; and that the petition for a reconsideration was taken under advisement. Plaintiff avers that on April 1, 1941, the Administrator denied the petitions for reconsideration, but postponed the effective date from April 1, 1941, to May 1, 1941.

In said opinion the Administrator, in effect, expressed the opinion, and advises the plaintiff and other employers like situated, that the enforcement policy of the Division, effective May 1, 1941, will be that the workday in plaintiff's mines "starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the end of the shift".

Otherwise stated, it is the expressed opinion of the Administrator that the word "workweek" in said Act includes the entire portion of time spent by plaintff's underground miners in going from the entrance or portal of the mine to the places where they actually work, and in returning from such places to said portal.

Plaintiff has been advised by the counsel, and on such advice charges that the opinion expressed by the Administrator has no legal force; that the Administrator, under the provisions of the Act, has, and claims to have no authority to judicially determine the legal effect of said provision of the Act; and that the opinion as thus expressed by the Administrator is erroneous and illegal. Said opinion is by no means a determining factor in this proceeding, but illustrates and emphasizes the bona fides of the controversy as herein set forth and the necessity for having said controversy fully, fairly and promptly determined by this Court.

Said opinion serves as, and is claimed by defendants to be, the principal support for their asserted construction of Section 7 of the Act.

There appears in said report (Exhibit "A") the following footnote:

"While the Wage and Hour Division Bulletins are not binding on the Courts, it may be anticipated that Judges will accord them especial weight; see United States v. American Trucking Associations, Inc., 310 U. S. 534. The

Administrator has also from time to time issued statements concerning enforcement policy under which he proposes to proceed for reasons of administrative convenience." (Report, page 1, footnote 3.)

The institution and continuance in effect of the enforcement or threatened enforcement of said illegal and erroneous opinion of the Administrator subjects the plaintiff to the peril of the heavy penalties of the Act. Not only will plaintiff be subject to the peril of said penalties, but plaintiff has in existence at the present time contracts with the Ordnance Department of the War Department of the United States of America in large amounts for the manufacture of shell forging and other products essential for the national defense, and said contracts (as do other contracts of plaintiff) expressly provide that:

> "No person employed by the plaintiff in the manufacture or furnishing of the materials, supplies, articles or equipment used in the performance of the contract shall be permitted to work in excess of eight (8) hours in any one day or in excess of forty (40) hours in any one week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor",

and further provide that employees in the performance of the contract:

> "* * * may be employed in excess of eight (8) hours in any one day or in excess of forty (40) hours in any one week, provided such person shall be paid for any hours in excess of such limits the overtime rate of pay which has been set therefor by the Secretary of Labor",

and such contracts further provide that the plaintiff shall maintain prescribed records of employment which:

"shall be available for the inspection and transcription of the authorized representatives of the Secretary of Labor",

and designates as among the records so to be maintained:

"wage and hour records for each such employee, including the rate of wages and the amount paid each pay period, the hours worked each day and each week, and the period during which each such employee was engaged on a Government contract with the number of such contract".

Said contracts further provide that the plaintiff:

"shall post a copy of the above and other stipulations in a prominent and readily accessible place at the site of the contract work, and shall keep such employment records as are required in the regulations under the Act available for inspection by authorized representatives of the Secretary of Labor."

Said contracts further provide, on account of the breach or violation of any of the above or other stipulations or representations, for "liquidated damages in addition to damages for any other breach of the contract in the sum of Ten ($10.00) Dollars per day * * * and a sum equal to the amount of any reduction, rebates, refunds or underpayment of wages due to any employee engaged in the performance of the contracts; and in addition the agency of the United States entering into the contract shall have the right to cancel same and to make open market purchases or to enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor".

Therefore, so long as such illegal and erroneous opinion remains in enforcement effect by the Administrator, and until and unless it is in this declaratory judgment proceeding or by other proper legal proceedings judicially held illegal, plaintiff in the performance of its defense and other contracts will be called upon to either (a) comply (with irreparable loss and damage as hereinafterwards averred); or (b) undergo by not complying the peril of having its said contracts declared forfeited and of being subject to the heavy penalties in said contracts provided for in case of violation.

In view of the foregoing, plaintiff, therefore, deems it material and relevant to make the following averments, which it asserts show or tend to show the illegality and incorrectness of the Administrator's opinion, and the lack of weight which should be accorded said opinion by this Court in declaring the issue of law herein sought to be declared.

Plaintiff avers that such averments where stated as facts are true, and where not stated as facts, plaintiff has been informed thereof, believes such information, and on such information and belief avers that they are true.

1. Plaintiff on information and belief alleges that prior to July 23, 1940, the Wage and Hour Division of the United States Department of Labor issued to the press the following release:

"First Mining Company Enjoined.

"The Cornucopia Gold Mines, a corporation with principal offices in Seattle, Washington, has been restrained from violations of the Fair Labor Standards Act, according to an announcement of the Wage and Hour Division, U. S. Department of Labor. This is the first Wage and Hour case in which judgment has been entered against a mining company. The corporation, operating a mine and mill near Cornucopia, Oregon, is engaged in the mining and concentrating of ore containing gold and silver.

"A judgment entered in the United States District Court for the Western District of Washington, Northern Division, on May 3, provides for the payment of restitution. Approximately $18,000 in back wages for overtime worked is due some 283 employees.

"An important stipulation contained in the judgment is that time spent by employees in traveling from the 'portal', or entrance, of the mine to the 'face', or place where they work, and from the 'face' back to the 'portal' is to be deemed time worked. This means that hereafter the miners are assured of wages from the time they enter the mine until they leave it. Heretofore the miners were required to show only six hours of work on their time cards although they were actually in the mine for eight hours. The mining company previously had not paid for the two hours consumed by the men riding into the tunnel in the mine property and going up or down the shafts to their place of work for the day."

That said release was printed in newspapers over the United States, including the newspapers of Birmingham, Alabama; and that the publication of said release was one of, if not the sole, motivating cause of the making by the defendant unions of the claims against the plaintiff for compensation to the underground miners for the time spent in going to and from their actual working places, and that (presented in flagrant violation of their written contract) these claims were the first insisted upon claims on the part of any underground employees for payment for time in going to and from their working places since mining became an industry in the State of Alabama.

The facts stated in said release above quoted were incorrect or incomplete. The true facts in reference to the Cornucopia case referred to in such release were that the employer, previous to the enactment of the Act, had computed and paid wages on the "portal to portal" plan, and that following the enactment of the Act for the purpose of avoiding or coming within its terms, the employer began to compute and compensate its employees on the so-called "face-to-face" plan,* and charged as transportation time an arbitrarily set time for transportation against the working time of all employees without reference to the time actually spent by such employees in being transported to and from their working places, thereby not counting as a part of the "workweek" the time spent in transportation, although previously it had been the custom to include such time as a part of the "workweek". That under these circumstances the decree referred to in the above released statement was entered *by consent* of the parties.

Upon the publication in the various papers of the country of the release of the Administrator above referred to in reference to such decision, there followed the claim of defendants, in accordance with the information thus incorrectly set out in such release, that transportation time should be included in their "workweek" for which they should receive compensation.

Plaintiff avers that, as hereinbefore and hereinafterwards set out more in detail, the situation in its mines in reference to prior custom, prior contracts and the computation and payment of compensation was exactly the reverse from the facts that existed in the Cornucopia Gold Mine Company case.

2. Plaintiff alleges on information and belief that on or about Saturday, July 27, 1940, there was issued by

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* Plaintiff uses the term "face to face" because of the fact that these terms have been used generally in describing plaintiff's method of operation. However, a more proper designation would be "working place to working place".

the United States Department of Labor, Wage and Hour Division, for release morning paper, Saturday, July 27, 1940, R-928, said release stating in substance that "two mining determinations were announced, one dealing with the status of lessees in mines and the other with working time in bituminous coal mines". In reference to the "determination" dealing with working time in bituminous coal mines, the release stated:

> "Colonel Fleming announced that on the basis of an inquiry submitted by the bituminous coal mining industry, the Wage and Hour Division in carrying out its enforcement duties in that industry will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the particular industry and are supported by a long history of bona fide collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, Colonel Fleming announced that practice of computing working time on a 'face to face' basis in the bituminous coal mining industry would not be unreasonable. Colonel Fleming explained the term 'face to face' to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work and the time spent in returning from the working place to the portal in the evening. The Administrator added that the determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in the bituminous coal mining industry."

Plaintiff alleges on information and belief that the Wage and Hour Division, United States Department of

Labor, issued for release Wednesday, September 18, 1940, G-81, an address scheduled for delivery of Colonel Philip B. Fleming, Administrator, Wage and Hour Division, United States Department of Labor, before the American Mining Congress, Colorado Springs, Colorado, Wednesday, September 18, 1940, and that in said address the Administrator stated, among other things:

"1. Must the time spent by the underground worker in traveling from the portal to the face be counted as time worked?

"2. Must time spent at lunch underground be considered as time worked?"

In reference to the matter herein involved, the Administrator, among other things, said:

"The portal-to-portal matter also has been presented to us by the bituminous coal mining industry. In response to inquiry I said that the Wage and Hour Division, in carrying out its enforcement duties in that industry, will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the industry and are supported by a long history of *bona fide* collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, I announced that the practice of computing working time on a 'face-to-face' basis in bituminous coal mining would not be unreasonable. The term 'face-to-face' was explained to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work, and the time spent in returning from the working place to the portal at the end of the shift. This determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in bituminous coal mining. In the Cornucopia case, for example, custom and tradition had long recognized the portal-to-portal basis of reckoning time worked.

"We are not yet disposed to take any particular position as to whether the half hour spent eating lunch underground may be deducted from hours worked. The problem is a very difficult one because the employee is required to eat under very unfavorable conditions and is subject to many of the hazards of his job while eating. On the other hand, we recognize that the employee does have time off in order to have lunch and an argument can be made that such time need not be considered as hours worked. But as I say, the Division is not prepared at the present time to make any definitive determination on this question."

4. Plaintiff alleges that at various times from July, 1940, until the middle of October, 1940, during which time the Wage and Hour Division of the United States Department of Labor had under investigation with full cooperation of the plaintiff the claims as presented by the unions that the underground miners were entitled under Section 7 of the Act to be compensated for the time spent in going to and from their work places, plaintiff was on several occasions informed by the representatives of the Administrator conducting or taking part in such investigation that in reaching a conclusion as to the claims of the unions, the Department would accord great weight to the prevailing customs and practices as supported by the history of bona fide collective bargaining agreements.

5. Plaintiff alleges on information and belief that hearings were held in Salt Lake City, Utah, conducted

by Harold Stein as the representative of the Administrator, on December 11 and 12, 1940; that said hearings related substantially, if not altogether, to the non-ferrous mines of the West and had no proper relationship either to the iron ore mines of plaintiff and of other operations in the State of Alabama or to the iron ore mines as constituting a national industry; that hearings were held in the City of Birmingham, Alabama, conducted by the said Harold Stein, on January 14 and 15, 1941; that said hearings related solely to the limestone mine and iron ore mines of the plaintiff, of the Republic Steel Corporation, Sloss-Sheffield Steel & Iron Company and Woodward Iron Company as operated in Jefferson County, State of Alabama; that the evidence and information given at such hearing established without dispute the fact that since mining has been an industry in Alabama, down to and including the present time, it has been the universal and unvarying custom in all underground mines (coal, iron, limestone and all others) to compute and pay underground employees compensation on the basis of "working place to working place" and that there has never been computed or paid any compensation for the time spent in transportation or in going to and from the actual working places, and that all contracts, including those now in existence with organizations representing the employees expressly provide for the computation and payment of underground employees on the basis of "working place to working place".

6. Plaintiff alleges that neither in the hearings at Salt Lake City, Utah, or Birmingham, Alabama, so far as plaintiff has been able to acquire knowledge, was any evidence given or statements taken relating to any ore mines in any other portion of the United States other than the Birmingham District, although plaintiff, on information and belief, charges that the percentage of iron

ore produced in the Birmingham District is less than ten (10) percent of the total production in the United States of America, and of the total production there has never been, except in a few times, (not more than one and one-half (1½) percent of the total, in states controlled by local statutes) in custom and practice the so-called "portal-to-portal" plan as sought to be instituted by the Administrator as representing his construction of Section 7 of the Act.

7. The plaintiff alleges that the opinion (Exhibit "A") is based upon the report (Exhibit "A") hereinabove referred to, and that said report contains the following factual averments:

"(1) *Face to face.* The miners are paid only for working time at the face and excluding lunch. Except where the shift was measured only by the work performed, this is probably the oldest method of computing the shift, but the record indicates that only a small percentage of underground metal miners are still paid on this basis. The only important group of mines now operating on a face to face basis are those in Alabama.

"(2) *Collar to Collar.* Far more common than face to face in modern practice, and universal in the states of Utah and Arizona, where it is required by law, is the collar to collar basis. On this basis, the miner is paid for all time from the moment he descends from the surface to the moment he returns to the surface, except that in some mines the lunch period is not paid for. Characteristically, though not invariably, the collar to collar shift is eight hours. Ordinarily lunch is eaten on the company's time, but a fixed lunch period is normal nevertheless."

* * * * * * * *

"* * * The great majority of metal miners nowadays work in mines where they are paid for part or all of their underground travel time."

The above statements are incorrect. There is not in the State of Alabama any appreciable production of gold, silver, copper, lead and zinc (the metals for the most referred to and covered by said report). The only ferrous mines in Alabama referred to and included in said report are the iron ore mines (although the coal mines and other mines in Alabama have always followed the same method of computing and paying wages as the iron ore mines follow). The method of mining and production of iron ore has no real similarity to that of the metals above referred to, the mining of which, so far as said report is concerned, is located principally in the Western states. The ore mines of Alabama do not in any way come in competition with said metal mines; and there is no practical, logical or historical reason for considering the ore mines of Alabama in relation to or in connection with the metal mines above referred to.

The ore mining industry of the United States is one of tremendous size and importance. In the year 1940 there was produced in the United States a total of approximately 76 million tons of iron ore. Of this total amount, approximately 63 million tons or 84.2% were produced by the mines located in what is known as the Lake Superior ore mining territory, approximately 7 million tons or 9.5% were produced by the ore mine of Alabama, approximately 3 million tons or 4.7% were produced by the iron ore mines of New York, New Jersey and Pennsylvania, and 1½ million tons or 1.6% were produced by the iron ore mines of Utah and Wyoming. Of the small amount produced in the Western states of Utah and Wyoming, approximately 90% thereof is produced in the State of Utah, which is controlled by a state statute requiring computation and payment of compensation on the so-called "portal to portal" basis.

Instead of, as recited in said report, the "greater majority of metal miners nowadays working in mines being paid for part or all of their underground travel time" and the "only important group of mines now operating on the 'face to face' basis are those located in Alabama", substantially all of the iron ore mines in the United States have always been, and are at the present time, operated upon and the compensation of their employees computed and paid on the "working place to working place" plan. In approximately 100% of the mines of the United States producing iron ore, there is not now and has never been in operation the so-called "collar to collar" plan. Even in the non-ferrous mines, there has never been in existence, except in a negligible degree the "portal to portal" plan.

Plaintiff avers that the basis for the opinion as given in the report and the reason therein assigned for applying the measuring rod of "face to face" to the bituminous coal mines of the United States and the measuring rod of "portal to portal" or "collar to collar" to the iron ore mines of the United States is not supported by the facts; that no real distinction can be made between the bituminous coal mining industry and the iron ore mining industry; and that the correct construction of Section 7 of the Act as applied not only to these industries, but to all other industries, is that the word "workweek" was used by the Congress as meaning actual work at the usual working places, and it was not the intention of the Congress to include in the word "workweek" time spent by an employee in going to and from his place of work, during which time he is not in any way engaged in the performance of any physical labor or of actual service for the employer.

VI.

Necessity for the Relief of a Declaratory Judgment.

1. The act contains, among others, the following provisions:

Section 15:

"* * * it shall be unlawful for any person—

"(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of Section 6 (minimum wages*) and section 7 (maximum hours), or in violation of any regulation or order of the Administrator issued under Section 14 (relating to learners, apprentices, etc.) * * *;

"(2) to violate any of the provisions of Section 6 (minimum wages) and Section 7 (maximum hours), or any of the provisions of any regulation or order of the Administrator issued under Section 14 (relating to learners, apprentices, etc.);

"(3) to dicharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee;

"(4) to violate any of the provisions of Section 12 (prohibition against child labor);

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* Parenthesis and emphasis herein ours.

"(5) to violate any of the provisions of Section 11(c) (relating to reports, etc.), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report or record to be false in a material respect."

Section 16:

"(a) Any person who wilfully violates any of the provisions of Section 15 shall upon conviction thereof be subject to a fine of not more than $10,000 or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

"(b) Any employer who violates the provisions of Section 6 or Section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensations, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any Court or competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The Court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

As hereinbefore alleged, the plaintiff, under its assertion that "workweek" means time spent in the underground miners' usual working places, has, since October, 1933, employed, and now employs, its underground miners at their usual places of work forty hours per five-day week. It therefore follows that if the assertions and contentions of either the Administrator or of any class of plaintiff's underground mining employees are correct, that plaintiff will be subject, among other things, first, to the penalties set forth in section 16(a), second, to the unpaid overtime compensation and to an additional equal amount as liquidated damages and a reasonable fee to be paid to the attorneys of such underground employees who bring suits, together with the costs of the actions, third, to the costs, expenses and inconvenience of a multiplicity of actions, depending upon how many of said underground mining employees of the plaintiff institute such legal proceedings, and, fourth, to the peril incident to the performance of its Government defense and other contracts.

2. *Threatened litigation:*

Plaintiff is in immediate peril of threatened litigation because:

A. Defendants, Muscoda Local Number 123, Wenonah Local Number 157 and Ishkooda Local No. 153, affiliated with the International Union of Mine, Mill and Smelter Workers (C. I. O. organization) on or about October 5, 1940, presented to the plaintiff a written officially adopted resolution and statement asserting that the plaintiff had required its underground employees "to be on the premises on duty and in the performance of their work for the company ten hours per day, totaling fifty hours per "work-week" (the claim being based upon the alleged statement that two hours were spent on the premises of the plaintiff in time spent in the bathhouse or in transportation or walking to and from the working place and the thirty minute lunch period), and demanding payment by the plaintiff of "all back time since the effective date" of the Act. A copy of said resolution is hereto attached, marked Exhibit "B", and made a part hereof.

B. Defendants, Muscoda Local Number 123, Wenonah Local Number 157 and Ishkooda Local No. 153, affiliated with the International Union of Mine, Mill and Smelter Workers, by and through their duly constituted and authorized officers, and through their legal counsel, asserted and contended in the conferences held by the Wage and Hour Division of the United States Department of Labor in Birmingham, Alabama, on January 14 and 15, 1941, that under the provisions and terms of the Act they were entitled to have counted as part of the "workweek" of their members approximately two hours claimed to have been spent each workday from the moment they leave the bathhouse before the beginning of the day's work until the moment they enter the bathhouse at the end of the day's work and including the thirty minute lunch period.

C. Defendant officers and members and other members of said defendants, Muscoda Local Number 123, Wenonah Local Number 157 and Ishkooda Local No. 153, affiliated with the International Union of Mine, Mill and Smelter Workers, and defendants Jones, Pegues and Allen, have for several months past, and up to and including the time of the filing of this petition, made many and repeated statements and threats to institute and prosecute suits against the plaintiff under the provisions of the Act for the purpose of enforcing the payment by plaintiff of overtime (claimed as above set forth) at the rate of one and one-half times the regular rate at which plaintiff's underground miners were employed, together with attorneys' fees and costs.

D. Plaintiff has been informed, believes such information, and on such information and belief charges that said defendants, Muscoda Local Number 123, Wenonah Local Number 157 and Ishkooda Local No. 153, affiliated with the International Union of Mine, Mill and Smelter Workers have employed attorneys and authorized and directed them to proceed in the prompt bringing of such legal proceedings as may be necessary to enforce against the plaintiff their claims for such overtime payments, together with attorneys' fees and costs.

E. Said defendants, Muscoda Local Number 21935, Wenonah Local Number 21936 and Ishkooda Local Number 21937, Red Ore Miners Union, affiliated with the American Federation of Labor) by and through their duly constituted and authorized officers and through their legal counsel contended in conferences held by the Wage and Hour Division of the United States Department of Labor in Birmingham, Alabama, on January 14 and 15, 1941, that under the provisions and terms of the Act they were entitled to have counted as part of the "workweek" of their members approximately three hours claimed to have been spent each workday from the moment the underground employees of plaintiff entered the bathhouse before the beginning of the day's work to the moment they leave the bathhouse at the end of the day's work, including the lunch period of thirty minutes.

F. Defendant officers and members and other members of said Locals have for several months past and up to and including the date of the filing of this petition made many and repeated statements and threats to institute and prosecute suits against the plaintiff under the provisions of the Act for the purpose of enforcing the payment of the alleged overtime (claimed as above set forth) at the rate of one and one-half times the regular rate at which plaintiff's underground miners were employed, together with attorneys' fees and costs.

G. Plaintiff has been informed, believes such information, and on such information and belief charges that said defendants, Muscoda Local Number 21935, Wenonah Local Number 21936, Ishkooda Local Number 21937, Red Ore Miners Union have employed attorneys and authorized and directed them to proceed in the prompt bringing of such legal proceedings as may be necessary to enforce against the plaintiff their claims for such overtime payments, together with attorneys' fees and costs.

H. Plaintiff has been informed, believes such information, and on such information and belief charges that on Sunday, March 23, 1941, defendant Van D. Jones, Executive Board Member of District No. 5 of the International Union of Mine, Mill and Smelter Workers, and the principal administrative officer of the said Union in the State of Alabama, referring to the "portal to portal" opinion of the Administrator, publicly announced in the press that the red ore miners of the Birmingham District, members of his union, would at once seek to recover a million dollars in back wages claimed to be due from plaintiff and other operators of iron ore mines in Jefferson County, Alabama, and that approximately 6000 Alabama red ore miners would bring litigation for the purpose of enforcing the collection of the claimed amounts.

Wherefore, Plaintiff asserts that it is threatened with the immediate institution and prosecuton of a multiplcity of suits involving large sums of money, and unless the declaration herein prayed for is granted, the plaintiff will be faced with great, if not irreparable, injury.

VII.

Probability of Great, If Not Irreparable, Injury.

If the declaratory judgment herein prayed for is not granted, the plaintiff is in immediate peril of suffering great and irreparable injury because (among other things):

1. Of the vexation, cost and expense of a multiplicity of suits;

2. Of the delay in the settlement and determination of the controversy which will necessarily follow if the prompt remedy afforded by the Declaratory Judgment Act and Rule 57, Rules, District Court of the United States, is not applied and the final determination of the legal question involved is left to the adjudication of such threatened suits, the bringing of which is immediately imminent;

3. Of the fact that, under the provisions of the Act, the threatened suits for overtime payments may be brought in different jurisdictions, in Federal Courts or in State Courts, and will be encumbered with the costs and expenses of such litigation and the delays incident to final determination and the chances of different adjudications by different jurisdictions;

4. Of the probable loss or interference with the performance of Government contracts (and other existing contracts) for the production of products for the national defense;

5. Of the probability of cessation in work, and losses and damages and ill feelings by reason of labor disturbances, which will almost inevitably follow if the plaintiff fails to comply with the present illegal and erroneous opin-

ion of the Administrator; or if in attempting to comply it is forced to insist on a reduction of the compensation now being paid its underground employees;

6. Of the necessity of reaching or attempting to reach new collective bargaining contracts with the labor organizations, the provisions of existing contracts being abrogated, if the illegal and erroneous opinion of the Administrator or the assertions of the defendants are adhered to;

7. Of the great expense that the plaintiff will be put to in changing its operations from the "working place to working place" plan to the "portal to portal" plan, in the event by reason of the Administrator's opinion and the perils of not complying therewith it feels compelled to endeavor to comply therewith;

8. Of the claims of the different individual employees and the different classes of employees, being so different as to impose upon the plaintiff the perils and uncertainties incident to different contentions, and adjudications in reference to the legal issues herein sought to be declared.

VIII.

Perils of Decision.

Unless the plaintiff can obtain a prompt declaration on the issue of law here presented, it is confronted with unusual and immeasurable perils of making a decision because—

1. If it, under advice of counsel, decides to stand by its construction of the law, and the Court should ultimately decide that the assertions either of the Administrator or of

individual employees or any of the classes of plaintiff's employees are correct, plaintiff would be subjected:

A. To the costs, expenses and heavy penalties which would be imposed under Section 16(b) of the Act.

B. To the penalties of fine and imprisonment imposed by Section 16(a) of the Act.

C. To having the Administrator, under the warning given in his opinion of March 23, 1941 (Exhibit "A" hereto attached) proceed against it by injunction proceedings under Section 17 of the Act, and the prevention of the shipment in interstate commerce of its manufactured products.

D. To undergoing the perils incident to its defense and other contracts.

2. If, on account of the perils incident to standing on its conviction under advice of counsel, it feels impelled on account of the uncertainties and delays of litigation to accept and comply with the opinion either of the Administrator, or with the demands and assertions of defendants, plaintiff will probably, and in many respects certainly, be subject to or have imposed upon it (among other things):

A. The payment of large sums of money to its employees for overtime as contended for by them.

B. The planning and institution of new methods of operation which will result in great loss and damage to the plaintiff because—

(a) compliance will result in a large reduction in production if the "portal to portal" plan should be put in effect and the underground employees could not remain underground more than eight hours per working day, which would mean that the time spent in going to and from the working places or from the bathhouse would have to be subtracted from the time now spent in actual work at the actual working places, thereby reducing the actual day's work time from eight hours to five hours or six hours, depending upon the correctness of the contentions of the various classes of employees.

As an illustration, plaintiff has calculated what the effect of putting the opinion of the Administrator into effect at one time of its typical ore mines would be. Under such ruling, the time schedule would be as follows:

Starting time (report at the portal) 6:00 o'clock A. M.

Lunch period (excluded under the Administrator's opinion) 30 minutes.

Time that men must reach the portal at end of day's work 2:30 o'clock P. M.

Total Workday 8 hours.

Accurate tests show that it requires forty minutes to get all of the men out of the mine at the end of the day's work. Since all men must be checked out at the portal at 2:30 P. M., the plaintiff will have to start hoisting men at 1:45 P. M. and in order to reach the underground man loading station the men will have to leave the working places not later than 1:30 P. M. As a result of this operation, which will probably have to be put in if the Administrator's ruling is adhered to, the first 35 men (at this typical mine) going out would have a loss of working time at their working places of 23½ minutes; the second 35 a loss of 35½ minutes; the third 35 a loss of 47½ minutes; the fourth 35 a loss of one hour and one-half minute; and the fifth 35 a loss of one hour and 19½ minutes, and said loss continuing to increase as the number of mantrips increases.

The loss of working time would be much greater if the employees' contention that time spent in going to and from the bathhouse, the time spent in transportation from portal to portal and the thirty minutes lunch period are included as a part of the workday for which they should be compensated.

On the basis of loss of production as estimated by the plaintiff, the installations of the "portal to portal" system would mean a loss on an annual production of 4,320,309 net tons of iron ore and limestone (plaintiff's 1940 production) of 381,324 tons.

(b) There would be a large loss in wages paid to the employees: If the "portal to portal" system were put into effect it would mean the revaluation of the company's present hourly rates. Its present wage rates are based on a systematic evaluation of the job, taking into consideration the skill, physical effort, mental effort, fatigue, etc., involved. These rates are based on eight hours of work in and about the usual places of work, and, therefore, if the traveling time is deducted from the productive labor time, and added to the non-productive time, the wage rates would be substantially reduced. The amount of time worked by the producing crews, in which to get their base production under the incentive plan, which is now in operation, would be greatly lessened.

In 1936 the plaintiff, after careful consideration and several years studies and surveys, adopted and put into effect its incentive wage plan. Under this plan the miner is paid a guaranteed minimum wage, and in addition receives a bonus over and above the guaranteed minimum, depending upon the amount of production. In 1940, the plaintiff paid out to mining employees above the guaranteed wage the sum of $282,162.18, which represented the bonus paid under the incentive plan.

If the time of work at the usual working places is reduced from eight to six or less actual hours (this apparently will be necessary because increase in cost would become prohibitive if the present and contracted for eight hours per day work at the working place was changed to six hours compensated work with payment of time and one-half for the additional two hours of overtime spent in going to and from the working place), the earnings under the incentive plan will be greatly reduced, if not altogether eliminated.

The incentive plan is functioning with the approval and full cooperation of all the employees, and its terms were embraced in and formed the basis of the existing working contracts between the plaintiff and the two labor organizations.

(c) It would materially increase the cost of the plaintiff's manufactured products into which practically its entire iron ore production enters.

Based on the figures for the year 1940, this loss for that year would have been as follows:

Total ore mines, year 1940	4,320,000 tons
Loss at 8-1/3% in production if iron ore (the loss that would result from including transportation time as indicated by tests and surveys of plaintiff)	360,000 tons
Tons of iron ore required per ton of pig iron	2.6875 tons
Tons of pig iron manufactured from 360,000 net tons iron ore (360,000 -:- 2.6875)	133,950 tons
Tons ingots manufactured from this pig iron	155,750 tons
Tons finished product manufactured from above ingots	111,200 tons

The 111,200 tons of finished productions represent the actual loss in tonnage in manufacture of finished productions which would be caused by the loss of production in iron ore of the 360,000 tons.

(d) It would greatly increase plaintiff's cost per ton of ore produced.

(e) It would place the plaintiff at a serious disadvantage with its competitors and would deprive it of a substantial portion of its existing markets.

(f) It would void the existing written contracts between plaintiff and the Locals of the two labor organizations, thereby rendering necessary negotiations for new contracts and disturbing the harmonious relations that exist between plaintiff and its employees under the operation of the existing contracts;

(g) The plaintiff has placed itself subject to the call of national defense, and based upon the requirements of national defense, has already contracted for or indicated it will have to increase its annual production approximately twenty percent above the 1940 production figures. It would be difficult, if not impossible, to meet this requirement if the present "working place to working place" system were changed. Said defense contracts as to costs were based upon the existence and continuance under the existing contracts of the "working place to working place" plan.

(h) The plaintiff's cycle of operations, computation of wages, payment of wages, methods and forms of bookkeeping, rules and regulations governing employees, method and time of transportation, assembly and delivery of tools, powder and equipment, and activities of service and surface crews have all been by long and unvaried custom and written contracts with the labor organizations, related to and based upon the "working place to working place" plan, and to change this method would be difficult and costly.

IX.

Great Weight Should Be Accorded to Any Reasonable Standards Which Represent the Prevailing Custom and Practice in the Particular Industry, and Which Are Supported By a Long History of Bona Fide Collective Bargaining Agreements.

The reasonableness of plaintiff's contention is supported by the following, among other, facts:

1. It has been for more than fifty years the unvarying and continuous custom in plaintiff's ore mines, as well as in all other ore mines in Alabama, for the wages of underground ore miners to be computed and paid on the "face to face" basis.

2. It has been for more than fifty years the unvarying and continuous custom in plaintiff's ore mines, as well as in all other ore mines in Alabama, that underground ore miners should not have their wages computed or paid for the necessary time in going from and to the surface and to and from their underground working places.

3. The same unvarying and continuous custom, as set forth in 1 and 2 above, has for more than fifty years existed in all underground coal mining operations of the plaintiff and of all other coal operators in the State of Alabama.

Plaintiff alleges that there can be, under conditions existing in the State of Alabama, no logical or possible differentiation between underground ore mines and underground coal mines, so far as the question under consideration is concerned.

4. The plaintiff, both prior and subsequent to the passage of the Act, has negotiated and executed with the defendant's Mudcoda Local Number 123, Wenonah Local Number 157 and Ishkcoda Local Number 153, contracts governing wages, hours of service and other conditions of employment, and each of these contracts, signed by the duly authorized representatives of the respective locals, who were duly authorized to act for and in behalf of all of plaintiff's underground employees who were members of such locals, contained the following provision:

"There shall be established an eight-hour day and a forty-hour week; time and one-half shall be paid for all overtime in excess of eight hours in any one day, and for all overtime in excess of forty hours in any one week. The eight-hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

5. The plaintiff, both prior and subsequent to the passage of the Act, has negotiated and executed with the Muscoda Local Number 21935, Wenonah Local Number 21936, Ishkooda Local Number 21937, Red Ore Miners Union, or the labor organization which it succeeded or took over, contracts governing wages, hours of service and other conditions of employment, and that each of these contracts, signed by the duly authorized representatives of the respective locals, who were duly authorized to act for and in behalf of all of plaintiff's employees who were members of such locals, contained the following provision:

"There shall be established an eight-hour day and a forty-hour week; time and one-half shall be paid for all overtime in excess of forty hours in any one week. The eight hour day means eight hours of work in or about the mine at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

6. The written contracts containing the above-quoted provisions are now in full force and effect and have been since, to-wit, May 31, 1937.

7. Written contracts executed between the plaintiff and Locals of the United Mine Workers of America, containing an exactly similar definition of the workday as meaning "hours of work in or about the mines at the usual working places", have been in existence since, to-wit, May 2, 1934.

8. Written contracts executed between the plaintiff and Locals of the Red Ore Miners' Union, affiliated with the American Federation of Labor (or their predecessor unions), containing an exactly similar definition of the workday as meaning "hours of work in or about the mines at the usual working places", have been in existence since, to-wit, May 31, 1937, and are in existence at the present time.

9. The opinion (and enforcement thereunder) of the Administrator in reference to the bituminous coal mines is inconsistent with his opinion in reference to the iron ore mines.

10. The previous statement and interpretation of Section 7 of the Act by the Administrator are inconsistent with his present opinion in reference to the iron ore mines.

11. The laws of the State of Alabama during all of the period of time herein referred to have recognized in garnishment proceedings, wage suits, and other related matters, that the payment and computation of wages in underground mines should be on the "face to face" basis.

X.

Contractual Obligations.

Plaintiff, on or about the 31st day of May, 1937, negotiated and executed in good faith written contracts with the defendant locals of the International Union of Mine, Mill and Smelter Workers and the defendant locals of the Red Ore Miners Union. Said contracts are in full force and effect, and are fully functioning at the present time. Copies of said contracts are hereto attached, marked Exhibit "C", and made a part hereof.

In the negotiation and execution of said contracts, the "working place to working place" definition of the workday constituted a part of the consideration for the execution of said contracts on the part of the plaintiff. The members of the unions have, since the execution of the contracts, accepted and are continuing to accept the benefits accruing to them under said contracts, and have held and are continuing to hold the plaintiff obligated by their terms and provisions. Said contracts were executed by the unions with full knowledge of the enactment of the Act and with the knowledge and understanding that in consideration of benefits given them under said contracts they were waiving and surrendering the contention they are now making. Plaintiff asserts that so long as said contracts remain executory, the members of the labor organizations who executed them are bound by the terms thereof, including the agreement therein contained as to what constitutes the workday and "workweek". Said defendants are estopped from asserting or maintaining their present contention that, in conflict with their solemn written contracts, they be paid for time spent in going to and from their working place.

XI.

Petition and Prayer.

Wherefore, Plaintiff petitions and prays this Court to make and enter a decree and judgment declaring the rights of the respective parties hereto in the premises and more particularly plaintiff's rights as asserted in the following specific propositions:

A.

Has the plaintiff, in following the work schedule and procedure as hereinbefore in Section *II* hereof set out, complied with the provisions of Section 7 of the Act?

B.

Did the Congress in the enactment of Section 7 of the Act intend that the "workweek" should consist of the time actually spent by the underground employees of the plaintiff working at and around their usual working place?

C.

Did the Congress in the enactment of Section 7 of the Act intended that the "workweek" of plaintiff's underground employees should include any portion of their time spent in being transported or walking to and from their usual working places and while not engaged in any physical work or service for the plaintiff?

D.

Is the plaintiff indebted in any sums to its underground employees for the time spent by them at any time since the enactment of the Act and embracing (without any physical work or service for the plaintiff being done during such time)—

(a) Any time spent in the bathhouse;

(b) Any time spent in going from and to the bathhouse to and from the portal;

(c) Any time spent in being transported from and to the portal to and from the underground manloading station;

(d) Any time spent in walking to and from their usual working places from and to the underground manloading station;

(e) Any time during the thirty minute lunch period?

E.

What did the Congress intend insofar as the method of operation of plaintiff as hereinbefore in Section II hereof set forth are concerned by the use of the word "workweek"?

F.

Are the assertions of the plaintiff as herein set forth as to the intentions of the Congress in the use of the word "workweek" legal and correct?

Premises Considered, Plaintiff petitions and prays that the Court adjudge and answer, separately and severally, each of the questions specifically set forth in the above paragraphs numbered A to F, both inclusive, and determine and declare that the plaintiff is not indebted to the defendants and its underground mining employees as compensation for any time spent by them since the enactment of the Act in the bathhouse or in going from and to the bathhouse to or from the portal or to and from the underground man loading station from or to the portal or to and from the actual working places of the employees from or to the underground man loading station, or the thirty minute lunch period (during which time said employees performed no physical labor or service in connection with their actual work), and that said defendants and their agents, representatives and all underground employees of the plaintiff made parties defendant hereto as a class to restrained and enjoined from prosecuting any suit or claim of any nature whatsoever against plaintiff for any additional wages or compensation claimed to be due them under the terms and provisions of the said Act for any portion of their time spent as above set forth, and plaintiff prays for a general declaratory judgment with reference to the questions presented by this petition, and a judgment against the defendants for costs herein, and if the plaintiff be mistaken in the relief prayed for, plaintiff hereby prays for such other, further, more different or general relief as to the Court may seem meet, just and proper, the premises considered.

Plaintiff prays that in accordance with rule 57, District Courts of the United States, the Court order a speedy hearing of this action and advance it on the docket.

XII.

Alternative Prayer.

If for any reason this Court should decline to take jurisdiction hereof under the provisions of the Federal Declaratory Judgment Act (Section I(g) hereof), plaintiff in the alternative prays that this Court assume, take and exercise equity jurisdiction because of the existence of the facts herein alleged which confer upon said Court such equity jurisdiction in that it, separately and severally, appears therefrom that such jurisdiction should be exercised because:

(a) It is essential to the protection of the rights asserted by the plaintiff herein;

(b) It is essential to secure a determination of the question arising hereunder a law regulating commerce;

(c) It is essential to the protection of the plaintiff from the costs, expense, inconvenience and vexation of a multiplicity of suits;

(d) It is essential to protect the plaintiff against irreparable damage;

(e) It is essential to protect the plaintiff against the penalties of an Act of the Congress through an illegal and improper application of the provisions of such Act.

(f) It is essential to protect the rights of plaintiff on account of the inadequacy of any remedy at law;

(g) It is essential for the determination of plaintiff's assertion that defendants are estopped by the terms of their written contract and by their conduct from asserting their claims for compensation for time (including the lunch periods) in going to and from their places of work;

(h) It is essential to determine plaintiff's claim for and to grant plaintiff a specific performance of defendant's written contract;

Wherefore, Plaintiff prays that this Court will issue a temporary restraining order or preliminary injunction restraining and enjoining said defendants and their agents and representatives and all underground mine employees of the plaintiff made parties hereto as a class from instituting, maintaining or prosecuting any other action or proceeding to determine the rights of this plaintiff or of the defendants under the averments of this bill of complaint, and that each of said defendants be required to propound and assert their respective rights, if any they have, to this Honorable Court; and plaintiff further prays, separately and severally, that on final decree it be ordered, adjudged and decreed by the Court:

1. That plaintiff is not indebted to any of its underground mine employees in any sum under the provisions of the Fair Labor Standards Act of 1938;

2. That defendants are not entitled to recover from plaintiff any compensation under the provisions of the Fair Labor Standards Act of 1938;

3. That plaintiff is not indebted in any sums to any of its underground mine employees for the time spent by them at any time since the enactment of the Act and embracing (without any physical work or service for the plaintiff being done during such time)—

(a) Any time spent in the bathhouse;

(b) Any time spent in going from and to the bathhouse to and from the portal;

(c) Any time spent in being transported from and to the portal to and from the underground man loading station;

(d) Any time spent in walking to and from their usual working places from and to the underground man loading station;

(e) Any time during the thirty minute lunch period.

4. That defendants are estopped by their written contract and by their conduct from asserting any claim for or recovering any compensation for time spent in going to and from their places of work;

5. That plaintiff is entitled to the specific performance of the written contract between plaintiff and the defendants;

6. That plaintiff go hence with its reasonable costs herein incurred;

7. That the temporary injunction be made permanent.

Plaintiff submits itself to the jurisdiction of the Court and offers to do full equity.

BENNERS, BURR, McKAMY &
FORMAN,
By BORDEN BURR,
Attorneys for Plaintiff.

50 VERIFICATION.

State of Alabama,
Jefferson County.

This day personally appeared before me, a Notary Public in and for the above named State and County, C. E. Abbott, who, being first duly sworn, on oath deposes and says that he is the Vice-President in charge of Raw Materials of the Tennessee Coal, Iron & Railroad Company, a corporation, named as plaintiff in the foregoing petition; that as such officer he is authorized to make this affidavit; that he has read over the facts therein set forth; that he is familiar with the facts as therein stated, and that said facts as therein stated are true, except where stated on information and belief, and where so stated he verily believes the same to be true.

C. E. ABBOTT.

Sworn to and subscribed before me, on this the 3 day of April, 1941.

MARGARET KENNEDY,
(Notarial Seal) Notary Public.

Filed April 4, 1941.

51 EXHIBIT "A".

For Release Sunday
March 23, 1941

R-1315
(Revised)

U. S. Department of Labor
Wage and Hour Division.
Washington.

Modified Portal to Portal Wage-Hour Opinion Announced.

Following informal fact-finding conferences on metal mining practices held in Salt Lake City and Birmingham before Harold Stein, Assistant Director of the Hearings Branch, General Philip B. Fleming, Administrator of the Wage and Hour Division, U. S. Department of Labor, announced today a modified portal to portal Wage-Hour opinion.

A summary of this opinion, contained in a report by Mr. Stein follows:

"The workday in underground metal mining starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the end of the shift.

"The workday also includes the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out.

"The workday does not include any fixed lunch period of one-half hour or more during which the miner is relieved of all duties, even though the lunch period is spent underground."

The practices of the metal mining industry are so unusual that Administrator Fleming has frequently been asked to express his opinion as to the application of the general principles of determining "hours worked" to certain factual situations typical of underground metal mining. In order to base his answers to these requests on the fullest possible knowledge, an investigation was conducted including field surveys and questionnaires, reports by the Division's Regional Directors, and public conferences before Mr. Stein at Salt Lake City December 11-12, 1940, and Birmingham, January 14-15, 1941. Many supplemental statements and briefs were also filed by employers, their associations, and by unions. //

The present report, on which the modified portal to portal wage-hour opinion is based, was prepared from his full record. It consists of an application of the basic principles contained in Interpretative Bulletin No. 13 of the Wage and Hour Division to the typical situations in underground metal mining. The report was reviewed and approved by the Solicitor of Labor.

In describing the practices of the industry, Mr. Stein found that work time has been computed on four different bases in different mines and with many minor variances in other mines. Mr. Stein concluded that the continued acceptance of these inconsistencies would be directly contrary to the purposes of the Act. It would also make useless the establishment by Congress of a national 40 hour standard if the standard was to be applied on a different basis in each instance.

In announcing his acceptance and approval of the report, General Fleming stated that the enforcement of the wage and hour law in the underground metal mining industry will be based on the principles contained in the report, effective April 1, 1941. General Fleming announced, however, that because the Division had not heretofore taken a definite stand on the various problems involved, it would not seek to compel the payment of restitution from mine owners who have been operating on a face to face or other bases inconsistent with the principles outlined in the report. This enforcement policy of the Division cannot, however, interfere with the rights of employees or their representatives to sue under Section 16(b) of the Fair Labor Standards Act.

For Release Sunday
March 23, 1941 G-133

U. S. Department of Labor
Wage and Hour Division
Washington.

Report on "Hours Worked" in Underground Metal Mining.
March 15, 1941.

Introduction.

Section 6 of the Fair Labor Standards Act requires employers to pay those of their employees subject to the act at the rate of "not less than 30 cents an hour."[1]

Section 7 of the act requires that employers shall not "employ" such employees "for a workweek longer than forty hours" unless the overtime penalty is paid.[2]

Section 3(g) of the act defines "employ" as including "to suffer or permit to work".

The Administrator has no statutory authority to define the words quoted above. Nevertheless, in response to many inquiries, he has found it desirable to indicate publicly his own interpretation of these words (and other parts of the statute) and to explain to the public the legal principles he considers applicable. The statement of the Administrator's opinion on "hours worked" is to be found in Interpretative Bulletin No. 13 of the Wage and Hour Division. This bulletin is not a binding ruling, but it does serve to advise interested parties as to the

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[1] Since October 24, 1939.
[2] Since October 24, 1940.

Administrator's view of the requirements of the act, and to indicate how he will proceed in the execution of his statutory responsibilities.[3]

While the general principles outlined in Interpretative Bulletin No. 13 can usually be applied without further interpretation or explanation, the practices of the metal mining industry are so unusual that the Administrator has frequently been asked to express his opinion as to the application of these general principles to certain factual situations typical of underground metal mining. In order to base his answers to these requests on the fullest possible knowledge, an investigation has been conducted, including field surveys and questionnaires, reports by the Division's Regional Directors, and public conferences before the undersigned at Salt Lake City, December 11 and 12, 1940, and Birmingham, January 14 and 15, 1941. Many supplementary statements and briefs have also been filed by employers and their associations and by unions. The present report is based on this full record.

II.

The Miner's Day.

Although there are many minor local and personal variations, it is possible to describe in some detail the general pattern of the underground miner's day. The controversial questions arise primarily in connection with the determination of hours worked by employees engaged in extraction proper—drilling, blasting and mucking and related occupations. Their work includes the removal of the ore from the face and loading it on cars. In some mines these employees work one shift, in others two. There is seldom a third shift except for underground maintenance employees and other workers performing specialized tasks. Whether the miner works the day shift or the night shift, the general outline of his activities is much the same.

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[3] While the Wage and Hour Division Bulletins are not binding on the courts, it may be anticipated that judges will accord them especial weight; see United States v. American Trucking Associations, Inc., 310 U. S. 534. The Administrator has also from time to time issued statements concerning enforcement policy under which he proposes to proceed for reasons of administrative convenience.

The miner begins his day by arriving on company property either on foot or by his own chosen conveyance. Whatever the method, upon arrival the miner normally goes first to the change house[4] where he removes his street clothes and puts on working clothes. Practically all large mines and many small mines nowadays provide a change house. The use of the change house by the miner is optional[5] and with rare exceptions free.[6] The time spent in the change house is variable but ten or fifteen minutes would seem to be not uncommon. For their own personal convenience some miners may arrive considerably before their shift is to begin and wait in the change house until starting time. Some miners, of course, change at home and do not have occasion to stop at the change house at all.

After changing his clothes the miner ordinarily walks to the portal or collar[7] of the mine to check in, stopping in on the way at the tool house to pick up tools and other small supplies and at the lamp house to pick up his electric lamp or to buy carbide. In some mines all tools and in many mines all large tools are taken into the mine for the miner as a matter of safety. When carbide lamps are used the miner has the option of purchasing the carbide at the lamp house on mine property or elsewhere at his convenience.[8] When the mine supplies electric lamps the miner is required to obtain his lamp at the lamp house before descending into the mine.[9] Usually the lamp house and tool house are located close either to the change house or to the portal. Thus, the additional time consumed by the miner in obtaining tools or carbide or lamps is only two or three minutes on an average beyond what it would otherwise take him to go from the change house to the portal. Near the portal of the mine the miner checks in, although occasionally as a matter of convenience checking in may be performed near the change house. The check-in is a matter of safety rather than of time keeping. By the use of some device such as a board and metal discs the mine superintendent or his subordinates are able to tell at a glance what men are working below in the mine and also can tell what crews of men are incomplete and need substitutes when the day's work is about to start. The actual checking in normally takes only an instant per man, but it may take a few minutes for a whole group of men to check in.

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[4] The change house is variously called the dry, or wash house. Other similar variations in mining terminology are common. In this report no attempt is made to list all synonyms or similar terms.

[5] Only one exception to this is recorded: Affidavit of Henry M. Rives, p. 2.

[6] Some Alabama mines make a charge for the use of the change house: Memorandum Brief of Borden Burr, p. 23. The propriety of this charge under section 3(m) of the act is not discussed in this report.

[7] The opening into a mine which is entered by a level or inclined tunnel is called a portal and to a mine entered by a vertical shaft a collar.

The descent into a mine, if vertical, is by a cage. If the adit is inclined, the descent is made by a train or skip or on foot. Descent by conveyance is normal in large mines, and almost universal in deep mines. Descent on foot is common in small and shallow mines reached by an easy incline.

When the miner goes in on foot, there is usually no waiting time after he checks in at the portal. Otherwise there is normally some wait for the cage or mantrip depending on the number of men and the available transportation facilities. This wait may be only a minute or two or it may be as much as twenty or thirty minutes. The descent down to the unloading station in the mine seldom takes more than five or ten minutes. Upon arrival at the first unloading station some or all of the men descent from the conveyance. In many mines no further transportation is provided and all the underground miners walk from the loading station to their working places, some nearby and some a considerable distance away. In other mines further transportation is provided part or all the way into the mine. In any event the miners proceed without delay to their working places, stopping only to pick up tools and supplies where necessary. Most of the maintenance men and special workers such as hoist tenders, etc., usually start their physical work close to one of the stations on the underground transportation system and thus as a group are ready to begin these operations shortly after arrival underground. The time required to reach the working point for the actual miners varies with the distance from the station to the working face, the method of transportation and the difficulties of the terrain. In a large mine the distance may vary from a comparatively few yards for some working faces to over two miles for others. Furthermore, the men are generally assigned to the various working faces by the management. The actual elapsed time from arrival at the first station in the mine to arrival at the working face will thus vary in different mines and for different miners in the same mine from five minutes or less to an hour or more. An average travel time of twenty to thirty minutes is common.

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[8] The propriety of this charge under section 3(m) of the act is not discussed in this report.

[9] An electric lamp must be picked up each working day; carbide is obtained only two or three times a week.

After arrival at the working face miners begin work and continue until the lunch period. In a few mines there is no fixed lunch period and the men snatch a bite to eat from time to time during the day.[10] In most mines, however, it is customary to have a set lunch period, usually of half an hour, although occasionally of one hour. Except for those mines where the miners work fairly near the surface and are able to walk out of the mine easily, lunch is eaten underground. The miners ordinarily congregate at some convenient place not far from their working face. In a number of mines heated or dry places and lunch tables are provided. In general, however, the lunch is brief, at or near the workplace and without formalities or conveniences that would interfere with an instant return to work. Working arrangements are such in the great majority of the mines that the day's work ends with blasting. The men then proceed in the same way they came in to the station nearest the exit from the mine and are then hoisted to the surface, or walk out, if they walked in. At the surface they check out, return their lamps to the lamp house and proceed to the the change house. No stop is necessary at the lamp house for carbide and generally the miners leave their tools underground so that they do not have occasion to stop at the tool house; thus the required stops prior to going to the change house may not take more than a few seconds or at the most a minute or two. Time spent at the change house is approximately the same as before the day's work begins except that the washing usually takes a little longer.

The general movements thus described are thoroughly characteristic of underground metal mines throughout the country, except that in the smaller mines and in more easily accessible mines there may be far less formality about the above ground procedure. The miners may dress at home and walk direct to their working faces in the mine without checking in and without reliance on any form of transportation on the mine property. Furthermore, there are certain continuous shift operations underground. It is the custom in such instances for the workers to replace each other at the actual working place underground which is normally adjacent to one of the transportation stations. In this instance the relief worker descends in the cage or mantrip and the man he is relieving immediately ascends to the surface. Such workers usually have no certain lunch period even though there may be lunch periods for the others workers in the mine. There are also some workers such as carpenters who work partly on the surface and partly underground. Their hours are usually arranged like those of the other surface workers and they start their duties on the surface.

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[10] Most Alabama mines have no set lunch period: Memorandum Brief of Borden Burr, p. 42.

By and large the miner has what is called an eight-hour day.[11] According to the method of computing the shift, as will be explained below, this eight-hour day may include only the time at the working face exclusive of lunch or may include all underground time, or may have some intermediate base.

III.

Time Bases for Wage Payments.

Traditionally the metal miner has been paid on a shift basis. In the old days the shift was commonly measured by the completion of a certain round of work and in many mines there was no precise account kept of the time involved. Before the days of change houses and the safety check-in, and particularly in new and shallow mines, the miner's arrival on mine property would be practically coincidental with his commencement of physical labor. As mines extend farther underground, and as the pre-mining activities on the surface increase, the time interval between arrival on company property and the commencement of physical labor likewise increases. The desire for shorter hours and the necessity for a more precise measurement of the working day were slow historical developments. Unlike advances of unionization, varying state laws, differing management methods and rules, and differing personnel policies have led to a variety of methods of computing time for pay purposes in underground metal mining. These can be summarized as follows:

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[11] During the past two years, some mines have changed from six eight-hour shifts per week to six seven-hour shifts. In a few mines a shorter "face to face" shift has been fixed by collective bargaining, apparently as a rough equivalent of an eight-hour "collar to collar" shift.

(1) *Face to face.* The miners are paid only for working time at the face and excluding lunch. Except where the shift was measured only by the work performed, this is probably the oldest method of computing the shift, but the record indicates that only a small percentage of underground metal miners are still paid on this basis.[12] The only important group of mines now operating on a face to face basis are those in Alabama.

(2) *Collar to collar.* Far more common than face to face in modern practice, and universal in the states of Utah and Arizona, where it is required by law, is the

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[12] See Memorandum on Measurement of Working Time in Underground Non-ferrous Metal Mines, Research and Statistics Branch, Wage and Hour Division, December 7, 1940. Out of 115 reporting mines, with 22,301 employees, only four employing a total of 74 employees operated on a face to face basis. The 115 reporting mines are not a representative sample of all metal mines, or even of all non-ferrous metal mines. However, since the sample is overweighted with large mines having many employees, the sample is fairly accurate at least with respect to the number of miners. Furthermore, since underground travel time is normally not great in small mines the practical effect of using the different methods is comparatively unimportant in small mines except for lunch period.

collar to collar basis. On this basis, the miner is paid for all time from the moment he descends from the surface to the moment he returns to the surface, except that in some mines the lunch period is not paid for. Characteristically, though not invariably, the collar to collar shift is eight hours. Ordinarily lunch is eaten on the company's time, but a fixed lunch period is normal, nevertheless.

(3) and (4). In on Company Time, Out on Men's Time. Out on Company Time, In on Men's Time. #

In a very large number of mines the men are paid from the time they leave the surface until the end of the physical work at the face. They are not paid for the time spent in returning to the surface. In another large group of mines, pay time begins at the face and ends at the surface; this is required by state law in Nevada. Under both these ystems the lunch period is normally taken on the men's time, although occasionally it may be on company time.

(5) *The Anaconda System.* The system used by the Anaconda Copper Mining Company and many other mines, especially copper mines, is to pay the men from the time they leave the surface until they reach the underground loading station on their way out at the end of the day. Lunch period is not paid for nor are the miners paid for the time spent in waiting for the mantrip up and for the actual hoisting time.

6. *Lunch Period Variants.* As has been stated above, most miners have a fixed lunch period. The lunch period, when taken underground, is generally paid for on the collar to collar system, never on the face to face system, and sometimes, though usually not on the intermediate

systems. When lunch is eaten above ground, the men are paid for the time spent in going to and coming from the surface, but are not paid for the lunch period proper.

(7). *Other Variants.* Generally speaking underground miners are not paid for time on the surface, except that they are occasionally paid for the time they wait at the portal of the mine, after the shift has begun, before they find room in a descending mantrip. Similarly, men may be paid up to an official quitting time even though they reach the surface on a mantrip that arrives before the official end of a shift.[13]

(8) *Other State Laws.* As stated above, collar to collar payment and a maximum of eight hours (except in case of emergency and except for certain maintenance employees) is fixed by statute in Utah and Arizona. Eight hours excluding lunch but including the time spent in returning from the face to the surface is fixed in the Nevada statute. Alabama and Tennessee fix no limitation on hours. In Montana and Colorado the proper interpretation of the eight hour laws is disputed or in litigation. In other important metal mining states, the statutes either in terms or by judicial interpretation limit only the hours of physical work at the face.

From the foregoing summary it is apparent that there is no nation-wide practice concerning hours worked in underground metal mines. In a few localities, the practice is fairly uniform, but generally it varies greatly even within the boundaries of a single state. Furthermore, existing methods of payment have been arrived at in part by state laws, in part by collective bargaining and in part by unilateral employer action. The general tendency has been toward a shorter day, and toward an inclusion of more elements of the day within the period of time for which payment is made. The great majority of metal miners nowadays work in mines where they are paid for part or all of their underground travel time.

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[13] In one large mine paid time begins at a station more than two miles away from the actual portal of the mine and ends at the same place; men who live or drive to a station near the actual portal appear to be paid from the time the train leaves the outer station; Brief of Alaska Juneau Mining Company, pp. 3, 4. In one I. U. M. M. S. W. contract the men are paid "to the change house": Salt Lake City Conference, T. p. 133.

IV.

Opposing Contentions and General Considerations.

The International Union of Mine, Mill and Smelter Workers, affiliated to the C. I. O., contends that the miners should be paid from the moment they leave the bathhouse at the beginning of the shift until the moment they enter the bathhouse at the end of the shift. The Federal labor unions affiliated to the American Federation of Labor contend that the miners should be paid for all time consumed from the moment they enter the bathhouse at the beginning of the shift to the moment they leave the bathhouse at the end of the shift. The basic contention of most employer representatives is that the miners should be paid for the time spent in so-called productive work at the working face or alternatively that the miner should be paid in accordance with the local custom and tradition, i. e., the method of payment that is customary in a group of mines or in all mines within a single state or possibly in each individual mine. It will be more convenient to consider the employers' contentions first.

Generally speaking, the employers who contend that the miners should be paid only for time at the working face base their argument primarily on the theory that it is only this part of the day from which the employer derives any benefit. They also cite the terms and interpretations of numerous state 8-hour laws, with which certain exceptions have been construed as applying only to such time. They also state that it is impossible to shorten the time allotted to drilling, blasting, and mucking without seriously disrupting the operations of the mine, reducing profits, and generally interfering with the healthy development of the industry, including the welfare of the employees thereof. In support of their contention they cite the language of the Fair Labor Standards Act particularly to the definition of the word "produced" in section 3(j), asserting that this definition indicates that only productive work should be counted as "hours worked" under the act. They also cite what they consider both the dictionary and the ordinary application of the term "hours worked" as indicating that "hours worked" should apply only to the so-called production hours at the face. These arguments overlook the fact that the phrase "hours worked" does not appear in the act. The question is: when is the miner acting in the capacity of employee? The answer to this question must be found in the meaning of such words as "employ", "employee", and "produced" and the general objectives of the act. Indeed these arguments represent an attempt to construe section 6 and section 7 without any true reference to the policy expressed in section 2. They shift from the employer to the employee any loss in productive hours occasioned by the working conditions, in spite of the employee's total inability to alter any of the factors in the situation to his advantage.

It is not necessary to dwell on the general economic considerations. Obviously Congress realized in passing the law that compliance with its provisions would require certain adjustments. Further, the assertions made about loss in production occasioned by a collar to collar day are based on the assumption that all other factors affecting production will remain constant; however, it can be assumed that insofar as an adjustment may be necessary, all other factors will not remain constant as the mine operators allege. Indeed all other factors ordinarily do not remain constant when there is a change in one of the major factors involved in a total operation. An interesting and directly relevant illustration of this is to be found in the statement submitted by the Phelps-Dodge Corporation with reference to its United Verde Branch which operates a large mine in Arizona. The question asked in the questionnaire was the following:

> "Total time spent at working face and an estimate of the minimum time required for completing a round of work."

In reply the General Manager of the corporation submitted the following:

> "Average time spent at working face is 6 hours, 30 minutes. Minimum time required for completing round of work cannot be answered, as round of work are adjusted in accordance with the time available for performing them."

While the adjustment referred to will be more difficult in some cases than in others, it is the type of adjustment that normally and necessarily results from the enactment of any new piece of social legislation. Finally, it must be recalled that thousands of miners are employed by mine operators on the very basis which is described by other mine operators as prohibitive.

It is also not necessary to consider in detail the precedents established by state 8-hour laws and decisions thereunder. No single one of the state statutes is worded like the federal statute nor does any have precisely the same purpose and intention. Those laws limit the underground workday by a flat limitation; the Fair Labor Standards Act tends to limit the total workweek by an overtime penalty. The state laws reflect the general opinion that a limitation of underground time is desirable; but they cannot be accepted as controlling on the particular points at issue here.

The basic decision to be made is whether in the light of the policy of the Fair Labor Standards Act, working time for the purpose of section 6 and section 7 is to be construed as merely the time in which a particular set of activities are performed or whether it should also include the time which the employee gives to his employer and in which his activities are prescribed by his employer's rather than his own needs and desires. The statutory language is necessarily non-specific on this point since the act was designed to cover hundreds of thousands of different factual situations; but a liberal construction is mandatory, since this is a law of general social application: see, for example, the opinion of the Circuit Court of Appeals for the Eighth Circuit in the Hawkeye case:

> "The statute is remedial, with a humanitarian end in view. It is, therefore, entitled to a liberal construction."[13]

Thus the Administrator cannot accept the proposition that hours worked under section 6 and section 7 should include only the hours which the employer denotes as "productive." The general position of the Administrator is to the contrary. He has stated in Interpretative Bulletin No. 13 that "As a general rule, hours worked will include (1) all time during which an employee is required to be on duty or to be on the employer's premises or to be at a prescribed workplace, and (2) all time during which an employee is suffered or permitted to work whether or not he is required to do so." A passing comment may be made in respect to the use of the word "workplace" in the Bulletin. The use of this word is obviously to be attributed to the fact that the bulletin referred to employment both at an employer's premises and also at any designated point away from the employer's premises; thus "workplace" is wider in its application than "employer's premises." In the mining industry the word "workplace" has a special meaning. It refers to the spot underground where the miner is actually engaged in drilling, etc., but this special significance cannot, of course, be given to the term as it is used in the bulletin. Within the meaning of the bulletin, the whole mine, and for certain operations, as will be seen, part of the above ground mine premises may and should be considered as included within the "workplace." Finally, this conclusion about the scope of hours worked is reinforced by a statement in paragraph 4 of the same bulletin: "hours worked are not limited to the time spent in active labor, but include time given by the employee to the employer even though part of the time may be spent in idleness.

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[13] Fleming v. Hawkeye Pearl Button Co. et al. (C. C. A.-8th) 113 F. (2nd) 52.

From the foregoing it is evident that the basic interpretation of "hours worked" long since adopted by the Administrator is directly contrary to the contention urged by the mining operators who claim that hours worked should include only the so-called productive hours at the face.

The contention raised by many mine operators that the determination of hours worked should be controlled, if not on the face to face basis entirely, then by local custom and agreement, originated no doubt in various informal statements made by the Administrator largely in connection with the bituminous coal industry. Thus a press release[14] was issued by the Division on July 27, 1940, with the heading "Two Mining Determinations Announced." In this release the Administrator announced "that on the basis of an inquiry submitted by the bituminous coal mining industry, the Wage and Hour Division in carrying out its enforcement duties in that industry will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the particular industry and are supported by a long history of *bona fide* collective bargaining agreement. In view of the circumstances described by the industry in submitting its inquiry, Colonel Fleming announced that practice of computing working time on a 'face to face' basis in the bituminous coal mining industry would not be unreasonable . . . The administrator added that the determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in the bituminous coal mining industry."

Other public statements were issued dealing with this matter[15] and also with the consent decree in the *Cornucopia* case involving hours worked in a gold mine.[16] This decree contained a stipulation to the effect that underground travel time should be considered hours worked. These informal statements on the enforcement policy of the Division contained at least the implication that local custom and agreement would be given great weight in determining hours worked in underground metal mining.[17] This conclusion cannot be maintained.

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[14] R-928.

[15] See T-14, G-81.

[16] Fleming v. Cornucopia Gold Mines, a corporation, judgment entered May 3, 1940, U. S. District Court for the Western District of Washington, Northern Division.

Metal mining is characterized by the absence of any single prevailing practice with respect to the determination of "hours worked." In fact there are at least four major widespread different methods of computing hours worked. The mine operators urge that this condition should continue. It is unnecessary to consider their arguments in detail because the arguments against a universal national standard in determining "hours worked" in metal mining would apply with equal force to the national 30 cent and 40 hour standards established in the terms of the act itself. Clearly it would have been useless for Congress to have established the national 40 hour standard for all employees engaged in commerce or in the production of goods for commerce if compliance with that standard were to be determined in each instance by a different method of computing hours worked. Reasons of common fairness and competitive equality require that the same principle be used in establishing the base in all cases in which there may be a question about determining "hours worked" or thereby determining compliance with the 40 hour week and the 30 cent minimum wage. In the words of section 2(a) of the act, non-compliance with the standards "constitutes an unfair method of competition in commerce."

Finally, it should be noted that a consideration of the problem "hours worked" in the bituminous coal mining industry does not fall within the scope of this report. Yet assuming the correctness of the face to face method of computing hours worked in that industry, it should be instantly plain that the conditions on which the bituminous coal opinion were based are not to be found in metal mining. In bituminous coal the face to face method of computing hours worked has been in virtually universal existence throughout this country for many years. It is the fruit of collective bargaining not for particular mines or localities, but on a nationwide basis. On the other hand, as has been said above, in metal mining there is no single prevailing practice. Methods of determining hours worked vary from state to state and from mine to mine. In some mines the method used is the result of collective bargaining, in others it is not. Thus the opinion expressed about hours worked in the bituminous coal mining industry cannot serve as a precedent in the underground metal mining industry.

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[17] The confusion on this point has been increased by a misreading of the last sentence of paragraph 12 of Interpretative Bulletin No. 13, which deals with the situation where an employee reports to work or ends his work at some unusual location away from his usual place of employment. In that situation, of course, all relevant considerations, including local agreements should be considered in deciding whether the employee's travel to his home should be counted as hours worked.

V.

Hours Worked in Metal Mining.

In the preceding section there has been a discussion of the principal contentions advanced by the mine operators with reasons why their contentions cannot be accepted in whole or in part. It is also believed that the contentions of the unions cannot be accepted in certain respects. However, it will be more convenient to consider these contentions in relation to the particular period of the mining day involved.

Generally speaking, under the act the workday begins where a man is required to report to his employer or for duty. Thus in paragraph 12 of Interpretative Bulletin No. 13 it is stated: "If a crew of workers is required to report for work at a designated place at a specified hour and all the employees are then driven to the place where they are to perform work, the time spent in riding to such place should be considered hours worked. Similarly, the time spent returning from the place at the close of the day's work should be considered hours worked." The application of this principle to metal mining clearly requires that in all normal mining operations the workday should be considered as beginning at the collar of the mine which is the place where the employee reports ready for duty. Subsequent so-called travel time whether on foot or by cage or train is time devoted by the employee to the service of his employer; it is not subject to the employee's discretion or control and it is not for the employee's benefit. The contention that the inclusion of travel time as part of the workday or workweek logically requires the inclusions of travel time from the employee's home to the mine does not merit serious consideration. Generally speaking, the employee has choise as to where he lives and as to his method and time of reaching the mine. Once he reports at the collar, however, his destination and all his movements are controlled by his employer. In this connection it should not be forgotten that the employer customarily designates the particular working place in the mine for each employee and shifts employees from one place to another as he sees fit. It should also be noted that when employees must wait for a conveyance at the collar of the mine after they have reported for duty at the required time, such waiting time is, of course, time spent for the benefit of the employer and in no sense for the benefit of the employee. Under the act, the employer has the right to instruct certain of his employees to report later than others if the facilities for conveying the employees into the mine are inadequate to do so without a waiting period. In any event, this enforced idleness cannot be used "effectively in the employee's own interest."[18]

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[18] Interpretative Bulletin No. 13, para. 4.

This finding that the miner's day begins when he reports at the collar of the mine is contrary to the claims advanced by the two unions. From all the evidence it appears that the bathhouse is a convenience furnished by the employer, usually free, for the benefit of the employees. In many mines, furthermore, there is no bathhouse at all and in mines where there is a bathhouse its use is optional. In view of these facts there appears to be no justification for finding that the employer should pay for time spent in the bathhouse. Similarly the time spent in walking from the bathhouse to the mine portal is consequent upon the employee's beneficial use of the bathhouse itself. So far as the employer is concerned the employee could report directly to the mine portal and some employees ordinarily do so. Under these circumstances, it is not reasonable to accept the claim of the A. F. of L. that working time begins at the moment the miner enters the bathhouse; nor is it reasonable to accept the contention of the C. I. O. that the day begins when the miner leaves the bathhouse. In both instances reference has been made by the unions to the rules for good conduct in the bathhouse and elsewhere on the mine premises, imposed by the company, as implying employer control, but these appear to be merely necessary safety rules which still permit normal relaxation and normal freedom, so that the miner does not thereby come on duty.

As has been stated above, before the miner reports at the collar ready to descend into the mine he may pick up tools, carbide, or a lamp, and he may receive instructions from his superior as to the day's work. The contentions of both unions were partly based on these factors. There appears to be no doubt that the time spent in each of these activities should be construed as "hours worked." However, each of them normally is extremely minor and takes only a moment or two and the total seldom exceeds two or three to five minutes. Occasionally, for reasons of mutual convenience, the check-in may be made where the miner enters the bathhouse, rather than at the collar. Similarly, there is no universally prescribed order about picking up tools or lamps. However, because of the extremely minor nature of these operations it would appear unwarranted to state that the working day actually begins with the first such activity and includes all time thereafter. In the most obvious cases, for example, it would be unreasonable to hold that where a miner checks in and hour before he intends or is required to descend into the mine, the interval being spent in the bathhouse for his own convenience, the mine employer should pay him for all intervening time. The other situations are comparable. It would therefore appear proper to hold that the total time consumed in performing these operations should be considered within hours worked but that the total elapsed time from the first such operation should not normally be so considered. As a practical matter, a very minor allowance of time such as three to five minutes, after the official check-in and before the time that the men are actually required to report at the collar or portal will take care of this in all situations where it is more convenient to perform these minor operations prior to the check-in at the mine collar.

In view of the conclusions reached above that all travel time so-called, is part of the miner's workday after he once reports at the mine collar it is unnecessary to consider opposing contentions and conclusions in connection with the picking up of tools underground. At that point the miner is at the disposal of his employer, whether he spends all the time underground in reaching his assigned position or whether he spends part of it in picking up tools or supplies.

Both unions contend that the workday should include the lunch period. The mine operators contend in general that the lunch period should not be counted as part of the workday. In Interpretative Bulletin No. 13 this matter is left open:

> "No opinion can be expressed at this time as to certain cases—e. g., employees engaged in mining or in working under high pressure—where by custom or agreement time spent eating meals is paid for as hour worked."

It should be pointed out, first, that in many mines the lunch period is not paid for. It may also be noted that in some mines there is no lunch period. In support of their contention, the unions refer to the fact that on occasion a miner may be instructed to defer or advance his lunch period on instructions from his superior. They also point out that on some occasions the miners may use their lunch period for obtaining tools or on other occasions they may not eat during the whole of the period. These contentions do not go to the heart of the matter. The question to be determined is whether or not a full lunch period of not less than one-half hour[19] should be considered as "hours worked." Obviously, if in any particular factual situation the lunch period is used for the benefit of the employer, as in getting tools, there is no lunch period and there is no problem involved. More basic considerations urged by the union are that the miner is subject to the hazards of his occupation and to the disadvantages and inconveniences inherent in being underground during the lunch period as well as during the rest of his time underground. There is much weight in these contentions. Even where lunch rooms are provided underground the differences between such a lunch room and an ordinary restaurant on the surface are great indeed. Some of the hazards of underground employment continue and it is unquestionably less relaxation for a miner to eat underground than it would be to eat on the surface. His movements are necessarily limited and his opportunity for rest is constricted. However, these are matters of degree. In spite of these disadvantages there remains a sharp distinction on the one hand between the time when the miner is drilling, etc., or traveling to his place of work, and on the other hand, the lunch period. There is a considerable element of relaxation involved and except for safety restrictions the miner is free from supervision for the lunch period. Balancing these opposing considerations it is felt that the lunch period of one-half hour or more,[20] in general, to the extent that it is actually used as a period for lunch or relaxation, should not be counted as hours worked under the act.

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[19] The contention apparently advanced by some employer representatives that various brief periods of time taken out for a cigarette, etc., should be totalled and deducted from the workday is too frivolous to require comment.

In conclusion, it should be noted that the concept of the workday outlined herein (collar to collar, minus lunch, plus waiting time, etc., on the surface) is not exactly the same as any of the four major methods currently in use. This arises from the fact that all the major methods have one of two origins, or a combination thereof. Face to face represents a method of payment based on certain advantages to the employer; it excludes much time which clearly comes within "hours worked" under the Fair Labor Standards Act. Collar to collar, on the other hand, is not concerned primarily with a workday, as such, but with the time spent underground. The Fair Labor Standards Act is not concerned with underground time as such. Computation of time under the act, therefore, deviates from the collar to collar basis, by subtracting the lunch period and adding certain surface operations.

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[20] A half hour lunch period appears to be the shortest lunch period customary in the metal mining industry, wherever any fixed period is allowed. In general, the Administrator does not consider it proper to deduct time out for any rest period of twenty minutes or less; see Wage and Hour Division release, R-837.

VI.

Summary.

The workday in underground metal mining starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the end of the shift.

The workday also includes the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out.

The workday does not include any fixed lunch period of one-half hour or more during which the miner is relieved of all duties, even though the lunch period is spent underground.

HAROLD STEIN,
(Harold Stein)
Examiner.

Approved March 17, 1941.

PHILIP B. FLEMING,
Administrator.

Signed at Washington, D. C., March 15, 1941.

RUFUS G. POOLE,
(Rufus G. Poole)
Assistant Solicitor in Charge
of Opinions and Review.

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EXHIBIT B.

Bessemer, Alabama, October 12, 1940.

In Re: Muscoda Local No. 123 of the International Union of Mine, Mill and Smelter Workers, District No. Five, an Affiliate of The Bessemer Smelters Council.

Whereas, there now exists a controversy between this Local and the Tenn. Coal, Iron & Railroad Company, at its mines near Bessemer, Alabama, and this controversy is of long standing and deals with the travel pay of our members employed by the above mentioned Company at its iron ore mines in its production and maintenance departments; and these employees are required to report at the mouth or collar of the mines at 6 o'clock, A. M. in the morning for the purpose of being loaded into mantrips and other methods of entering the mines, they being under-ground workers; and at the mouth or collar of the mines are checked in at six o'clock and immediately given supplies, tools, equipment and instructions, and then they proceed to their working places, which is approximately 2 miles from the mouth or collar of the mines and down under the ground, which requires and consumes approximately one hour's time before they then arrive at their usual working places; all of this time being spent on the premises of the Company, and after the men are checked in and given supplies, equipment and instructions then they proceed to their working places to perform their usual tasks, after which they return to the mouth or collar of the mines arriving there about four o'clock in the afternoon, and are checked out, thus requiring the employees to be on the premises on duty and in the performance of their work for the Company ten (10) hours per day in the mines, totaling fifty hours per work week, and

Whereas, immediately after our Union was set up, and ever since that time, we have been protesting the travel pay of our members in this mine, and this controversy is based upon the time spent by our members on the premises of the Company each work week and being in excess of the hours required to work under the law, and as we understand it, in violation of the rules and law, and which time amounts to approximately 10 hours per work day, and employees affected by this condition numbering approximately 1015. And we further believe that in view of the fact that the Fair Labor Standards Act was passed primarily for the purpose of reducing excessive required hours on the premises of the employer during any given work week, and

Whereas, the Fair Labor Standards Act is recognized and being compiled with in many instances without any controversy on the part of the employers, but notwithstanding that fact and in the face of many rulings by the Wage and Hour Board supporting our position and conditions of work, we are still required by the said Company to be on the premises of the Company many hours in excess of the work week, and for which we receive no pay.

Therefore, be it resolved by this Local in regular meeting assembled that we authorize and request our Local and National officers to immediately bring about a correction of these conditions and require the Company to immediately comply with the Fair Labor Standards Act from now on, and also require the Company to pay all back time since the effective date of this law.

And we further authorize our officers to bring this Resolution to the attention of the Hon. Robert P. Amis, Regional Director of the Wage & Hour Division of the

Department of Labor in Birmingham, Alabama, and also with Col. Philip B. Fleming, Administrator of the Wage & Hour Division of the Department of Labor, Washington, D. C. And our officers both local and National are further authorized to take such steps as may be necessary and expedient, by negotiations or suit, in order to bring about a speedy conclusion of this controversy.

Be it further resolved that copies of this Resolution be immediately forwarded to all interested parties.

This is to certify that the above is a true and exact copy of a Resolution unanimously adopted by Local No. 123, in its regular meeting of October 12, 1940.

(Signed) W. C. GUNNIN,
As President of Local #123
of I. U. M. M. & S. W.

Attested by:
(Signed) ROBERT H. MARTIN,
As Recording Secretary.

......................,
Seal of Muscoda,
Local No. 123.

Copy

*A similar resolution mutatis mutandis was presented by Ishkooda Local No. 153 and Wenonah Local No. 157.

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EXHIBIT "C".

Agreement.

This Agreement, dated October 6, 1938, is between Tennessee Coal, Iron and Railroad Company (hereinafter referred to as the "Company") and the International Union of Mine, Mill & Smelter Workers (hereinafter referred to as the "Union") on behalf of its members employed by the Company in its ore and limestone mines located at Muscoda, Wenonah, and Ishkooda, Jefferson County, Alabama.

Section 1. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships between those employees who are members of the Union and the Company, and to set forth herein the basic Agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties hereto.

It is understood and agreed that this Agreement pertains only to the members of the Union employed in the ore and limestone mines of the Company located at Muscoda, Wenonah, and Ishkooda, Jefferson County, Alabama.

The term "employee", as used in this Agreement, shall not include Foremen, Assistant Foremen or Supervisors in charge of any classes of labor who do not perform any regular work, or Watchmen or Patrolmen.

Section 2—Recognition. The Company recognizes the Union as the collective bargaining agency for those employees of the Company who are members of the Union. The Company recognizes and will not interfere with the right of its employees to become members of the Union. There shall be no discrimination, interference, restraint or coercion by the Company or any of its agents against any member because of membership in the Union.

The Union agrees not to intimidate or coerce employees into membership and also not to solicit membership on Company time or plant property.

The obligation on the part of both such parties not to exercise any intimidation or coercion shall be deemed to prevent any application to another of such force, either physical, moral or mental, as to induce or constrain him to do against his will something he would not have otherwise done, and not to commit any act of making any person timid or fearful or of deterring such person from some act by threats.

Section 3—Wages: It is agreed that the rates of pay now in effect shall remain in effect unless changed in accordance with the procedure set forth under Section 15.

Section 4—Hours of Work. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.

The eight (8) hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis.

At the option of the Company (1) a day may be either a calendar day or any twenty-four (24) hour period, and (2) a week may be either a calendar week or any period of five (5) regular eight (8) hour turns on consecutive days, the last of said five (5) turns being followed by a forty-eight (48) hour rest period.

An employee who is a member of the Union shall not be paid both daily and weekly overtime for the same hours so worked.

Section 5—Irregular Work. When an employee absents himself from his work for a period of two days without the consent of the Company, other than because of proven sickness or a satisfactory explanation, he may be discharged. When any employees makes a habit of laying off for single days other than because of proven sickness and continues to do so after having been warned by the Company he shall be subject to discharge.

Section 6—Vacations. Each employee, who is a member of the Union, and who, prior to July 1, 1938, was continuously in the service of the Company five (5) years or more (continuity of service to be based on United States Steel and Carnegie Pension Fund Rules for Service Continuity) shall receive one week's vacation with pay, such vacation to be taken in a single period. Those who are granted vacations will be paid on their average rate of earnings per hour for the two day periods immediately preceding their vacation. The total hours of vacation pay will be the average hours they worked per week during that period, but not less than 40 hours nor more than 48 hours.

Vacations will, so far as possible, be granted at times most desired by employees, but the final right to allotment of vacation period is exclusively reserved to the Company in order to insure the orderly operation of the plants.

Section 7—Seniority. It is understood and agreed in all cases of promotion and increase or decrease of forces the following factors shall be considered, and where factors (b), (c), (d) and (e) are relatively equal, length of continuous service shall govern.

(a) Length of continuous service.

(b) Knowledge, training, ability, skill and efficiency.

(c) Physical fitness.

(d) Family status; number of dependents, etc.

(e) Place of employment.

Section 8—Adjustment of Grievances. Should differences arise between the Company and the Union or its members employed by the Company as to the meaning and application of the provisions of this Agreement, or should any local trouble of any kind arise in any mining division, there shall be no suspension of work on account of such differences but an earnest effort shall be made to settle such differences immediately in the following manner:

First, between the aggrieved employee, who is a member of the Union and the foreman involved;

Second, between a member or members of the Grievance Committee, designated by the Union, and the Foreman and Superintendent of the mining division.

Third, between a member or members of the Grievance Committee, designated by the Union, and the General Superintendent of the Mines;

Fourth, between the representatives of the Union and the representatives of the Executives of the Company; and

Fifth, by a board consisting of four members, two of whom shall be designated by the representatives signatory hereto, and two by the Company. Failing to agree, the matter shall then be appealed to an impartial umpire to be appointed by mutual agreement of the parties hereto. The decision of the umpire shall be final. The expenses and salary incident to the services of the umpire shall be paid jointly by the Company and the Union.

Pending the hearing of disputes, the employees represented by the parties signatory hereto shall not cease work because of any dispute; and a decision reached at any stage of the proceedings shall be binding on both parties thereto; and shall not be subject to reopening by any other party except by mutual agreement.

Specified periods shall be agreed upon between the Grievance Committee and the Superintendent of each Mining Division for the presentation of grievances hereunder. Provided, however, that matters pertaining to discharges or other matters that cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provisions.

The Grievance Committee for each Mining Division shall consist of not less than three employees of that Mining Division, and not more than six such employees, designated by the Union, who will be afforded such time off without pay, as may be required—

First, to attend regularly scheduled committee meetings,

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting, and

Third, any member of the Grievance Committee shall have the right to visit departments other than his own at all reasonable times for the purpose of transacting the legitimate business of the Grievance Committee, after notice to and permission from his Foreman or his designated representative.

The actual number of members of the Grievance Committee at each Mining Division shall be mutually agreed upon between the Superintendent of the Mining Division and the Union.

It is specifically understood that the provisions of this Section respecting appeal to an umpire shall not apply to matters which may arise under Section 13 nor to matters which may arise under Section 15.

Section 9—Illegal Suspension of Work. A strike or stoppage of work on the part of the employees represented by the parties signatory hereto shall be a violation of this Agreement, and there shall be no strike or cessation of work until and unless the matter of complaint shall have been submitted and determined by all the methods providing for in this Agreement for the adjustment of disputes.

Section 10—Management. The management of the mines and the direction of the working forces, including the right to hire, suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for purposes of discrimination against any member of the Union.

Section 11—Discharge Cases. In the event a member of the Union shall be discharged from his employment from and after the date hereof, and he believes he has been unjustly dealt with, such discharge shall constitute a case arising under the method of adjusting grievances herein provided. In the event it should be decided under the rules of this Agreement that an injustice has been dealt the employee with regard to the discharge, the Company shall reinstate such employee and pay full compensation at the employee's regular rate for the time lost. All such cases of discharge shall be taken up within five (5) days from the date of discharge and disposed of as promptly as possible.

Section 12—Safety and Health. The Company shall continue to make reasonable provisions for the safety and health of its employees at the mines during the hours of their employment. Protective devices, wearing apparel and other equipment necessary to properly protect employees from injury shall be provided by the Company in accordance with the practice now prevailing in each separate mine.

Section 13—Individual Wage Rates. Where alleged inequalities in wage rates prevail, the matter may be taken up for adjustment with Superintendent of Mining Division, and settlement made on a mutually satisfactory basis.

Section 14—Holidays: The following days shall be considered holidays, during which days there shall be no regular production work; however, it is understood that regular maintenance work will be carried on:

July 4th, Labor Day and Christmas.

If for any reason work other than regular maintenance work is performed on these days, it shall be paid for at the rate of time and one-half.

Section 15—Change or Termination. This Agreement shall continue until changed or terminated as follows:

(a) Either party may at any time and from time to time give ten (10) days written notice to the other party of the time for the commencement of a conference of the parties for the purpose of negotiating the terms and conditions of a change in this Agreement, which conference shall be at the office of the Company in Birmingham, Alabama, unless otherwise mutually agreed, and

(b) If, because of a failure to agree, this Agreement is not changed by written agreement entered into by the Company and the Union with twenty (20) days from the giving of said notice, then this Agreement and all of the provisions thereof shall terminate upon the expiration of twenty (20) days from the giving of said notice.

Both parties shall be obligated to attend the conference and negotiate in good faith and the neglect or refusal of the party to whom notice is given to so attend and to participate in the negotiations shall be the equivalent of a failure to agree and the refusal of either party to change any position which it may take as to changes proposed in the negotiations shall not be considered as a lack of good faith in the negotiations.

Section 16. Notice hereunder shall be given by registered mail to be completed by and at the time of mailing, and if by the Company be addressed to International Union of Mine, Mill and Smelter Workers, Van D. Jones, 233 Fairfax Avenue, Bessemer, Alabama, and if by the Union be addressed to the Company at Brown-Marx Building, Birmingham, Alabama. Either party may by like written notice change the address to which registered mail notice to it shall be given.

INTERNATIONAL UNION OF
MINE, MILL and SMELTER
WORKERS,
By REID ROBINSON,
By VAN D. JONES,
By C. J. McDANIEL,
By E. T. PATTERSON,
By J. M. LEMLEY,
By FRANK ALLEN.
TENNESSEE COAL, IRON and
RAILROAD COMPANY,
By E. M. BALL,
General Superintent, Ore
Mines.
By J. F. VANCE,
Manager Industrial Relations.

MOTION OF PETITIONER-PLAINTIFF TENNESSEE COAL, IRON AND RAILROAD COMPANY FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION.

90 (Civil Action No. 5232.)

Comes the plaintiff in the above entitled cause, and adopting the allegations of its bill of complaint as a part of this motion, moves the Court to issue herein a temporary restraining order or preliminary injunction restraining and enjoining said defendants and their agents, representatives, and all other underground employees of the plaintiff made parties defendant hereto as a class from prosecuting any suit or claim of any nature whatsoever against plaintiff for any additional wages or compensation claimed to be due them under the terms and provisions of the said Act for any portion of their time, including the lunch period, spent in being transported or going to and from their actual places of work, and that the terms of said injunction be as set forth in prayer of said bill of complaint.

BORDEN BURR and
BENNERS, BURR, McKAMY &
FORMAN,
Attorneys for Plaintiff.

Filed April 4, 1941.

ORDER SETTING MOTION OF PETITIONER-PLAINTIFF TENNESSEE COAL, IRON & RAILROAD COMPANY FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION FOR HEARING.

91 (Civil Action No. 5232.)

This matter coming on to be heard on the motion and prayer of the plaintiff for the issuance of a temporary restraining order or preliminary injunction, it is ordered by the Court that said motion be, and the same hereby is, set for hearing in open Court on the 17th day of April, 1941, at 10 o'clock A. M.

It is further ordered that service of a copy of the bill of complaint herein, of said motion and of this order be made upon the defendants in accordance with Rule 5 (b) of the Rules of Civil Procedure, and that such service be made not less than five (5) days before the time set for hearing.

This 4th day of April, 1941.

T. A. MURPHREE,
Judge.

Filed April 4, 1941.

Return of Service of Process on Petition of Tennessee Coal, Iron & Railroad Company, omitted from the printed record, pursuant to Rule 23 of this Court.

* * * * * * *

PETITION OF SLOSS-SHEFFIELD STEEL & IRON COMPANY.

(Civil Action No. 5233.)

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I.

Allegations of Jurisdiction.

(a) Petitioner and Plaintiff (hereinafter referred to as "plaintiff") is a corporation organized under the laws of the State of New Jersey, and having its principal place of business and its mining and manufacturing operations in Jefferson County, Alabama.

(b) All of the defendants are citizens and residents of Jefferson County, Alabama.

(c) The matters in controversy, exclusive of interest and costs, exceed the sum of $3,000.

(d) Jurisdiction is also founded on the existence of a federal question in that it is a suit arising under a law regulating commerce.

(e) Jurisdiction is also founded in that this action arises under the Constitution of the United States and the Fifth Amendment to the Constitution of the United States.

(f) Jurisdiction is also founded in that this action arises under the Constitution of the United States and under that provision of Section 8 thereof reading as follows: "To regulate commerce with foreign nations, and among the several states, and with the Indian tribes"; the Act hereinafter referred to commonly called "Fair Labor Standards Act of 1938" relates to and is constitutionally based upon said clause.

(g) Jurisdiction is also founded on the existence of a question arising on a particular statute in that the action arises under the Act of June 25, 1938, Public Act No. 718 of the 75th Congress, Chapter 676, Sections 1 to 19, 52 Stat. 1060, Title 29 U. S. C. Sections 201 to 219, as amended by the Act of August 9, 1939, Public Act No. 344 of the 7th Congress, commonly called the "Fair Labor Standards Act of 1938", as hereafter more fully appears.

(h) This action is to secure a declaratory judgment and such incidental injunctive relief as may be proper under the provisions of the Federal Declaratory Judgment Act, Title 28, U. S. C. A. 400, the Judicial Code, Section 274(d); the Act of March 3, 1911, Chapter 231, Paragraph 274(d), as amended June 14, 1934, Chapter 512, 48 Stat. 955; as amended by the Act of August 30, 1935; Chapter 829, Sec. 405, 49 Stat. 1027.

(i) This action is also to secure such other, different and more general relief as may be proper under the allegations herein contained.

II.

The Plaintiff and its Operations.

The plaintiff owns and operates in Jefferson County, Alabama, two underground iron ore mines, one known as the Sloss Red Ore Mine and the other known as the Ruffner Mine. A total of approximately 480 workers are employed at the said mines in duties which require them to work underground (these underground employees are the employees of the plaintiff with whom the controversy, as hereinafter alleged, exists and who are hereinafter made parties defendant thereto), said underground workers constitute approximately 85% of the total number of employees at said mines.

Access to the mine workings is by inclined slopes. The workable seam of ore in the Sloss Red Ore Mine averages approximately 8 feet, and in the Ruffner Ore Mine approximately four feet. The method of mining is the stope and pillar plan, and a complete cycle of operations averages two to four months. In this cycle there are varying amounts of production due to changing conditions. Normal operating requirements for a year call for 588,000 gross tons of ore from the Sloss Red Ore Mine and 158,000 from the Ruffner Mine. At the Sloss Red Ore Mine the men engaged in production work are paid upon the basis of a guaranteed base pay for a two-weeks period and receive additional compensation if they produce more than their quota in such period. At the Ruffner Mine the production men are paid on the basis of a flat day rate and receive additional compensation if they produce tonnage in excess of the fixed quota. These rates have been established systematically through collective bargaining with the defendants, taking into consideration the factors which make up a proper occupational rate.

The iron ore extracted from said mines is shipped to the company's blast furnaces several miles distant from the mine and all goes into the manufacture of pig iron. The company does not manufacture pig iron into steel and sells its pig iron in the open market in competition with other manufacturers of pig iron.

The plaintiff obtains a portion of its supplies and equipment from outside the State of Alabama and a large proportion of its manufactured pig iron is shipped by common carrier to points outside the State of Alabama.

In addition to its ore mines, the company operates two underground coal mines and uses a part of the coal and by-products thereof in the manufacture of its products. The operations in its coal mines, insofar as the questions involved here here are concerned and related, is in substance the same as its operations in its ore mines.

The general custom of procedure in the ore mines of the plaintiff, insofar as the underground employees are concerned, is substantially as follows: The use of the change or bath house provided by the plaintiff is entirely optional with the employees and they are not required to be at the bath house or change house at any particular time or in any particular groups. There is no check-in or check-out at the bath house. A substantial majority of the employees use the bath house or change house. The employee, after changing from his street clothes to work clothes at the change house, walks to the portal of the mine. The distance from the bath house to the portal at the Sloss Mine is approximately one-half mile, and the distance from the bath house to the portal at the Ruffner Mine is approximately 600 feet.

The Sloss Red Ore Mine employee provides his own lamp for use in the mine. Carbide lamps are used at that time and electric lamps are used at the Ruffner Mine. Where the carbide lamp is used, the company, for the convenience of the employees, sells the carbide to the miners at cost. It is not obligatory upon the employees to buy the carbide from the plaintiff, but practically all of the employees do so. It is necessary to secure carbide for the lamps two or three times each week. Where the electric lamp is used, the company furnishes the lamp and services the same for a small daily charge which is at cost to the company.

All men working underground are ordinarily lowered into the slopes in man skips to a landing place down in the mine. From this point they usually proceed on foot to their respective working places. At the Sloss Red Ore Mine there is a second slope down which mantrips are also operated and the men usually ride the mantrip on this second slope in going to and from their work; they have the choice as to whether they will ride or walk on the second slope. Employees are not required to ride on any particular mantrip either in going in or coming out of the mine, but can follow their own wishes in determining which trip they ride. The first mantrip leaves the portal at approximately 6:20 A. M. and the last at 6:50 A. M. at the Sloss Red Ore Mine and four trips are operated from the surface. The day shift begins at 7 o'clock, A. M. and the men are expected to be at their regular working places at the beginning of the shift. The day shift operations cease at 3:15 with a 15-minute lunch period taken at 11 o'clock, A. M. The night shift begins at 6 o'clock, P. M. and ends at 2:15 o'clock, A. M. with a 15-minute lunch period taken at 10 o'clock, P. M.

The practices on the day and night shifts are substantially the same.

At the Ruffner Mine the shift begins at 7 o'clock, A. M. and ends at 3:30 o'clock, P. M. with a 30-minute lunch period. At that mine the first mantrip leaves the surface at 6:30 o'clock A. M. and the second one at 6:45 o'clock, A. M. The men go to an unloading station down in the mine and then to their places of work by foot.

At the Sloss Red Ore Mine at the end of the day shift blasting begins at approximately 3:10 and the men begin leaving the mine. The first mantrip arrives at the surface at approximately 3:30 o'clock P. M. The last mantrip reaches the surface about 4:10 P. M.

At the end of the day shift at the Ruffner Mine work ends at 3:30 and the first mantrip leaves the bottom at 3:35 P. M. and the second at 3:50 P. M. The last man reaches the surface at approximately 3:55 P. M.

The men's time is computed and they are paid on the basis of eight hours work at the working place.

The time consumed by the men in getting from the portal to the working place in the Sloss Red Ore Mine varies between approximately 25 minutes and approximately 40 minutes, the average being approximately 32 minutes. At the Ruffner Mine the time required is somewhat shorter, the average being approximately 25 minutes. Time consumed in coming out of the mine is approximately the same.

In 1933 the plaintiff established at the Sloss Red Ore Mine an eight-hour day and forty-hour week. In 1937 the payment of time and one-half for all time over eight hours in any one day and for all overtime in excess of forty hours in any one week was begun, the eight-hour day meaning eight hours of work in and about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether the men were paid by the day or paid on the tonnage basis.

The Ruffner Ore Mine, after having been closed for twelve years, resumed operations in July 1940, and the eight-hour day and forty-hour week with time and one-half overtime was established in said mine, the eight-hour day meaning eight hours a day in and about the mine at the usual working place. All underground employees of the plaintiff have been paid and have accepted their wages on the basis of eight hours per day at the usual working place. The plaintiff has never compensated its underground employees for any portion of that time spent in going to or from or in being transported to and from their actual work place, and such employees have at all times understood and agreed that they should not receive any compensation therefor.

The allegations herein set forth as to operations at the present time are substantially true as to the operations since 1933.

III.

The Defendants.

(a) The defendants Sloss Red Ore Local No. 109 and Ruffner Miners Union No. 512, affiliated with the International Union of Mine, Mill & Smelter Workers, are unincorporated associations, commonly known as "labor unions", each of whom have been selected by a majority of plaintiff's employees as their representative for collective bargaining in all matters concerning wages, hours and conditions of employment, each of said unions representing a majority and probably all of the plaintiff's employees.

(b) The individual defendants, John Hill, Jesse Gaines and W. A. O'Neal, are employees of the plaintiff and are officers and members of said Sloss Red Ore Local No. 109, who have selected said organization as their representative for collective bargaining.

(c) The individual defendants, Frank Parker, Hosea Bickerstaff and George T. Drummon, are employees of the plaintiff and are officers and members of the said Ruffner Miners Union No. 512, who have selected said organization as their representative for collective bargaining.

(d) The individual defendants, Van D. Jones, C. L. Pegues and Frank Allen, are respectively the Executive Board Member District No. 5, Secretary-Treasurer, and Organizer, of the International Union of Mine, Mill & Smelter Workers, an unincorporated national association, none of whom are employees of this plaintiff.

(e) The defendants herein named are made parties defendant in their individual and representative capacities, as hereinabove set forth and described, under Rule 23 of the Federal Rules of Civil Procedure as representative of all of plaintiff's employees, as all of such employees represent a class that is so numerous as to make it impracticable to bring them all before the Court, and such individual defendants, representing as they do the employees and different groups thereof, so fairly represent all employees as to insure adequate representation of all, and are, therefore, sued because the right sought to be enforced by the plaintiff against all the employees are several and there is a common question of law and fact affecting the several rights and common relief is sought against all.

Plaintiff has elected, in keeping with the statutes and rules of Court in such cases made and provided and more especially Rule 23, Rules of Civil Procedure, to make and name as parties herein the above and described defendants as being typical of the several classes of plaintiff's said underground mine employees whose rights would be affected by the decision to be rendered herein, and plaintiff avers that said employees, selected and named as defendants, properly and fairly represent all of said underground mine employees, and that said underground mine employees are all interested in and parties to the controversy hereinafter described.

The plaintiff invites the timely intervention in this action of any of its other employees who are not specifically or individually made defendants hereto to intervene or join herein as parties defendant, all to the end that the controversy herein set forth and shown may be fully and fairly determined by this Court in this proceeding.

The Administrator of the Wage and Hour Division of the United States Department of Labor, as such administrator, is interested in the construction of the Act commonly called the "Fair Labor Standards Act of 1938", hereinafter referred to, and the plaintiff invites the timely intervention in this action of such administrator.

IV.

Statement of Controversy.

Plaintiff alleges that there is an actual and bona fide controversy existing as to the date of filing of this petition between the plaintiff on the one hand and the defendants herein named on the other hand, said controversy growing out of the following facts and being as herein stated.

Said controversy relates to the judicial construction of Section 7 of the Act, said section reading as follows:

"Section 7(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

The plaintiff asserts:

(1) That in following the wage and work schedule and procedure, as hereinbefore in Section II hereof set out, it has fully complied with the provisions of said Section 7, and that in working its employees in and about their actual working places eight hours per day for five days per week it is not employing said employees for a workweek longer than forty hours.

(2) That no part of the time spent by its underground employees in the bath house or in going from and to the bath house to or from the portal, or to and from the underground manloading station from or to the portal, or to or from the actual working places of the employees from or to the underground manloading station constitutes a part of the "workweek".

Otherwise stated, the plaintiff asserts that the Congress intended the word "workweek" to be construed as meaning the time actually spent by plaintiff's underground miners in or about their actual working places and did not intend to include as a part of the workweek the time spent by such underground employees in being transported or walking to and from the places where they actually work.

3. That if the Congress did intend that traveling time of plaintiff's underground employes to and from the places where they actually worked should be considered as a part of the workweek, such legislation is violative of the Fifth Amendment to the Constitution of the United States.

4. That the workday does not include the fixed lunch period taken underground on the underground employees' time.

The defendants (being member of the International Union of Mine, Mill & Smelter Workers, affiliated with C. I. O.) assert:

1. That the Congress intended to include within the meaning of the word "workweek" all the time from the moment the underground employees leave the bath house before the beginning of the day's work until the moment they enter the bath house at the end of the day's work.

Otherwise stated, that the entire time from the moment the underground employees leave the bath house before the beginning of the day's work until the moment they enter the bath house at the end of the day's work should be considered as a part of the "workweek", and that the underground employees should be paid for all such time and should be paid overtime for such portion of the "workweek", as thus defined, which exceeds forty hours since October 24, 1940, and forty-two hours from October 24, 1939, to October 24, 1940, and forty-four hours from October 24, 1938, to October 24, 1939.

The controversy involves a large sum of money because:

If the interpretation of the Fair Labor Standards Act for which plaintiff contends is the correct interpretation it has paid to its underground employees all compensation due them under the provisions of the Act. On the other hand, if the interpretation which defendants must rely upon to entitle them to compensation for travel time from portal to portal is the correct interpretation of said Act, and if the estimate of the underground employees as to the amount of time for which they are entitled to compensation is correct, the amount involved is thousands of dollars.

Without a determination of this controversy it is impossible for plaintiff to know and ascertain whether or not it is violating the Act.

V.

The Opinion of the Administrator.

On March 23, 1941, the Administrator of the Wage and Hour Division, United States Department of Labor, announced a "Modified Portal to Portal Wage-Hour Opinion and Report", a complete copy of said opinion and report is hereto attached, marked Exhibit A and made a part hereof. Plaintiff avers that said report was made on March 15, 1941, for release on Sunday, March 23, 1941, and said opinion was made on March 17, 1941, for release on Sunday, March 23, 1941; that promptly upon receiving information as to said opinion and report, plaintiff, with other concerns like situated, filed with the Administrator its application for a reconsideration of said opinion; that a hearing on such application for reconsideration was held on Friday, March 28, 1941, before such Administrator, and the petition for a reconsideration taken under advisement.

Plaintiffs avers that the Administrator on the 1st day of April, 1941, denied said petitions for reconsideration, but postponed the effective date of the opinion from April 1, 1941, to May 1, 1941. Plaintiff avers that the threats of suits as hereinafter set forth on the part of the defendants have continued and are based, so plaintiff is informed and believes and on such information and belief states, largely if not altogether upon the opinion and report of the Administrator.

In said opinion the Administrator, in effect, expresses the opinion, and advises the plaintiff and other employers like situated, that the enforcement policy of the Division effective May 1, 1941, will be that the workday in plaintiff's mines "starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the end of the shift."

Otherwise stated, it is the expressed opinion of the Administrator that the word "workweek' 'in said Act includes the entire portion of time spent by plaintiff's underground miners in going from the entrance or portal of the mine to the places where they actually work, and in returning from such places to said portal.

Plaintiff has been advised by counsel, and on such advice charges that the opinion expressed by the Administrator has no legal force; that the Administrator, under the provisions of the Act, has, and claims to have no authority to judicially determine the legal effect of said provision of the Act; and that the opinion as thus expressed by the Administrator is erroneous and wrong. Said opinion is by no means a determining factor in this proceeding, but illustrates and emphasizes the bona fides of the controversy as herein set forth and the necessity for having said controversy fully, fairly and promptly determined by this Court.

There appears in said report (Exhibit A) the following footnote:

"While the Wage and Hour Division Bulletins are not binding on the Courts, it may be anticipated that judges will accord them especial weight; see United States v. American Trucking Associations, Inc., 310 U. S. 534. The Administrator has also from time to time issued statements concerning enforcement policy under which he proposes to proceed for reasons of administrative convenience." (Report, page 1, footnote 3.)

The institution and continuance in effect of the enforcement or threatened enforcement of said illegal and erroneous opinion of the Administrator subjects the plaintiff to the peril of the heavy penalties of the Act.

Plaintiff has been informed and believes and on such information and belief states:

(a) That on or about July 27, 1940, the Administrator made the following announcement:

"That on the basis of an inquiry submitted by the bituminous coal mining industry, the Wage and Hour Division in carrying out its enforcement duties in that industry will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the particular industry and are supported by a long history of *bona fide* collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, Colonel Fleming announced that practice of computing working time on a 'face to face' basis in the bituminous coal mining industry would not be unreasonable. Colonel Fleming explained the term 'face to face' to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work and the time spent in returning from the working place to the portal in the evening. The administrator added that the determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in the bituminous coal mining industry."

(b) That on or about September 18, 1940, the Administrator made the following announcement:

"The portal-to-portal matter also has been presented to us by the bituminous coal mining industry. In response to inquiry I said that the Wage and Hour Division, in carrying out its enforcement duties in that industry, will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the industry and are supported by a long history of *bona fide* collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, I announced that the practice of computing working time on a 'face-to-face' basis in bituminous coal mining would not be unreasonable. The term 'face-to-fact' was explained to mean the productive work performed after the mine arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work, and the time spent in returning from the working place to the portal at the end of the shift. This determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in bituminous coal mining. In the Cornucopia case, for example, custom and tradition had long recognized the portal-to-portal basis of reckoning time worked.

"We are not yet disposed to take any particular position as to whether the half hour spent eating lunch underground may be deducted from hours worked. The problem is a very difficult one because the employee is required to eat under very unfavorable conditions and is subject to many of the hazards of his job while eating. On the other hand, we recognize that the employee does have time off in order to have lunch and an argument can be made that such time need not be considered as hours worked. But as I say, the Division is not prepared at the present time to make any definitive determination on this question."

(c) That previous to the announcements stated above, the Administrator had issued the following statement:

"The Cornucopia Gold Mines, a corporation, with principal offices in Seattle, Washington, has been restrained from violations of the Fair Labor Standards Act, according to an announcement of the Wage and Hour Division, U. S. Department of Labor. This is the first Wage and Hour case in which judgment has been entered against a mining company. The corporation, operating a mine and mill near Cornucopia, Oregon, is engaged in the mining and concentrating of ore containing gold and silver:

"A judgment entered in the United States District Court for the Western District of Washington, Northern Division, on May 3. provides for the payment of restitution. Approximately $18,000 in back wages for overtime worked is due some 283 employees.

"An important stipulation contained in the judgment is that time spent by employees in traveling from the 'portal'. or entrance. of the mine to the 'face', or place where they work. and from the 'face' back to the 'portal' is to be deemed time worked. This means that hereafter the miners are assured of wages from the time they enter the mine until they leave it. Heretofore the miners were required to show only six hours of work on their time cards although they were actually in the mine for eight hours. The mining company previously had not paid for the two hours consumed by the men riding into the tunnel in the mine property and going up or down the shafts to their place of work for the day.

"Another important stipulation contained in the judgment is that lessees and employees of lessees are all deemed to be employees of the Cornucopia Gold Mines. The company, entering into leasing agreements with individuals to mine a portion of the property owned by the company, furnishes all material and supplies, including air, tools, machinery and equipment. All mining ore is brought to the company's mill which is also a part of the mining property. The lessees each employ one or more persons to assist them in regular mining activities. In other words, the lessees themselves are actually engaged in mining. The lessees receive a share in the net profits resulting from the sale of the ore mined by them and pay their own employees directly."

That the true facts in reference to the *Cornucopia* case referred to in such release were that the employer previous to the enactment of the Act had computed and paid wages on the "portal to portal" plan, and that following the enactment of the Act, for the purpose of attempting either to avoid its terms or to come within its terms, began to operate its mines and compensate its employees on the so-called "face to face" plan, and arbitrarily charged as transportation time a set time for traveling against all the employees without reference to the time actually spent by such employees in being transported to and from their working places, and that under these circumstances the decree referred to in the above release was entered by the consent of the parties. Upon the publication in the various papers of the country of the release of the Administrator above referred to with reference to such decision, the claim of defendants that transportation time should be included in their compensation followed. Plaintiff avers that, as hereinbefore and hereinafter set out more in detail, the situation in its mines in reference to prior custom, prior contracts, and the computation and payment of compensation is exactly the reverse of the facts as existing in the Cornucopia Gold Mine.

(d) Plaintiff alleges on information and belief that hearings upon which the Administrator's opinion is based were held in Salt Lake City, Utah, conducted by Harold Stein as the representative of the Administrator, on December 11 and 12, 1940; that said hearings related substantially, if not altogether, to the non-ferrous mines of the West and had no proper relationship either to the iron ore mines of plaintiff and of other operators in the State of Alabama or to the iron ore mines as constituting a national industry; that hearings were held in the City of Birmingham, Alabama, conducted by the said Harold Stein, on January 14 and 15, 1941; that said hearings related solely to the limestone mine and iron ore mines of the plaintiff, Republic Steel Corporation, Tennessee Coal, Iron & Railroad Company and Woodward Iron Company as operated in Jefferson County, State of Alabama; that the evidence and information given at such hearing established without dispute the fact that since mining has been an industry in Alabama, down to and including the present time, it has been the universal and unvarying custom in all underground mines (coal, iron, limestone and all others) to compute and pay underground employees compensation on the basis of "working place to working place" and that there has never been computed or paid any compensation for the time spent in transportation or in going to and from the actual working places, and that all contracts, including those now in existence with organizations representing the employees expressly provide for the computation and payment of underground employees on the basis of "working place to working place".

(e) Plaintiff alleges that neither in the hearings at Salt Lake City, Utah, or Birmingham, Alabama, so far as plaintiff has been able to acquire knowledge, was any evidence given or statements taken relating to any iron ore mines in any other portion of the United States other than the Birmingham District, although plaintiff, on information and belief, charges that the percentage of iron ore produced in the Birmingham District is less than ten (10) per cent of the total production in the United States of America, and of the total production there has never been, except in a few mines, in custom and practice the so-called "portal to portal" plan as sought to be instituted by the Administrator as representing his construction of Section 7 of the Act.

(f) That the opinion (Exhibit A) is based upon the report (Exhibit A) hereinbefore referred to; that said report contains the following factual averments:

"(1) *Face to Face.* The miners are paid only for working time at the face and excluding lunch. Except where the shift was measured by the work performed, this is probably the oldest method of computing the shift, but the record indicates that only a small percentags of underground metal miners are still paid on this basis. 12 The only important group of mines now operating on a face to face basis are those in Alabama.

"(2) *Collar to collar.* Far more common than face to face in modern practice, and universal in the states of Utah and Arizona, where it is required by law, is the collar to collar basis. On this basis, the miner is paid for all time from the moment he descends from the surface to the moment he returns to the surface, except that in some mines the lunch period is not paid for. Characteristically, though not, invariably, the collar to collar shift is eight hours. Ordinarily lunch is eaten on the company's time, but a fixed lunch period is normal, nevertheless."

"The great majority of metal miners nowadays work in mines where they are paid for part or all of their underground travel time."

That the above statements are incorrect; that there is not in the Statement of Alabama any appreciable production of gold, silver, copper, lead and zinc which are the metals, for the most part, referred to and covered by said report; that the only ferrous metal mines in Alabama referred to and included in said report are the iron ore mines; that the method of mining and the production of iron ore has no real similarity to that of the metals above referred to, the mining of which is located principally in the Western states; that the ore mines in Alabama do not in any way come in competition with said metal mines, and that there is no practical or historical reason for considering the ore mines of Alabama in relation to or in connection with the metal mines above referred to; that the ore mining industry of the United States is one of tremendous size and importance; that in the year 1940 there was produced in the United States a total of approximately seventy-six million tons of iron ore, of which amount approximately sixty-three million tons or 84.2% were produced by the mines known as the "Lake Superior Ore Mining Territory," approximately seven million tons or 9.2% were produced by the ore mines in the State of Alabama, approximately three million tons or 4.7% of iron ore mines of New York, New Jersey and Pennsylvania, and one and one-half million tons or 1.6% by the mines of Utah and Wyoming; that of the small amount produced in the Western states of Utah and Wyoming, approximately 90% thereof is produced in the State of Utah, which is controlled by a state statute requiring computation and payment of compensation on the co-called "portal to portal" basis; that instead of the greater majority of the metal miners now working in said mines being paid for part or all of their underground travel time, and the only important group of mines now operated on a "face to face" basis being those located in Alabama, as recited in said report, substantially all of the iron ore mines in the United States have been always and at the present time are operated upon and the compensation of their employees computed and paid on the "face to face" plan. Plaintiff avers that in approximately 100% of the mines of the United States producing iron ore, there is not now and there has never been in operation the so-called collar to collar plan.

Plaintiff avers that the basis for the opinion as given in the report and the reason therein assigned for applying the measuring rod of "face to face" to the bituminous coal mines of the United States and the measuring rod of "portal to portal" or "collar to collar" to the iron ore mines of the United States is not supported by the facts; that no real distinction can be made between the bituminous coal mining industry and the iron ore mining industry; and that the correct construction of Section 7 of the Act as applied not only to these industries, but to all other industries, is that the word "workweek" was used by the Congress as meaning actual work at the usual working places, and it was not the intention of the Congress to include in the word "workweek" time spent by an employee in going to and from his place of work, during which time he is not in any way engaged in the performance of any physical labor or of actual service for the employer.

VI.

Necessity for the Relief of a Declaratory Judgment.

1. The Act contains, among others, the following provisions:

"Section 15:

"* * * it shall be unlawful for any person—

"(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 (minimum wages) and section 7 (maximum hours), or in violation of any regulation or order of the Administrator issued under Section 14 relating to learners, apprentices, etc. * * *;

"(2) to violate any of the provisions of Section 6 (minimum wages) and section 7 (maximum hours), or any of the provisions of any regulation or order of the Administrator issued under Section 14 (relating to learners, apprentices, etc.);

"(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on any industry committee;

"(4) to violate any of the provisions of Section 12 prohibition against child labor);

"(5) to violate any of the provisions of Section 11 (c) (relating to reports, etc.), or to make any statement, report or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

"Section 16:

"(a) Any person who wilfully violates any of the provisions of Section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under under this sub-section except for an offense committed after the conviction of such person for a prior offense under this subsection.

"(b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any Court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The Court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

As hereinbefore alleged, the plaintiff, under its assertion that "workweek" means time spent at the underground miners' usual working places has, since 1937, employed its underground miners at their usual places of work forty hours per fiveday week. It therefore follows that if the assertions and contentions of either the Administrator or any class of plaintiff's underground mining employees are correct, that plaintiff will be subject, among other things, first, to the penalties as set forth in section 16(b), and, second, to the unpaid overtime compensation and to an additional equal amount as liquidated damages, and a reasonable fee to be paid to the attorneys of such underground employees who bring suits, together with the costs of the actions, and third, to the costs, expenses, and inconvenience of a multiplicity of actions, depending upon how many of said underground mining employees of the plaintiff institute such legal proceedings.

2. *Threatened litigation:*

Plaintiff is in immediate peril of threatened litigation because:

A. Defendants, Sloss Red Ore Local No. 109 and Ruffner Miners Union No. 512, affiliated with the International Union of Mine, Mill & Smelter Workers, by and through their duly constituted and authorized officers and through their legal counsel, asserted and contended in a conference held by the Wage and Hour Division of the Labor Department in Birmingham, Alabama, on January 14 and 15, 1941, that under the provisions and terms of the Act they were entitled to have counted as part of the "workweek" of their members approximately two hours claimed to have been spent each workday from the moment the men leave the bath house before the beginning of the day's work until the moment they enter the bath house at the end of the day's work, and including the lunch period.

B. That officers and members of said defendant Locals Number 109 and 512, have for several months past and up to and including the time of the filing of this petition, made many and repeated statements and threats to institute and prosecute suits against the plaintiff under the provisions of the Act for the purpose of enforcing the payment by plaintiff of overtime (claimed as above set forth) at the rate of one and one-half times the regular rate at which plaintiff's underground miners were employed.

C. Plaintiff has been informed, believes such information, and on such information and belief charges that said defendants, Locals Number 109 and 512, affiliated with the International Union of Mine, Mill and Smelter Workers, have employed attorneys and authorized and directed them to proceed in the prompt bringing of such legal proceedings as may be necessary to enforce against the plaintiff their claims for such overtime payments.

D. Plaintiff has been informed and believes, and on such information and belief charges that on Sunday, March 23, 1941, defendant, Van D. Jones, Executive Board Member of District No. 5 of the International Union of Mine, Mill and Smelter Workers and the principal and head official of said union in the State of Alabama, publicly announced that the red ore miners of the Birmingham District, members of his union, would at once seek to recover a million dollars in back wages claimed to be due from plaintiff and other operators of iron ore mines in Jefferson County, Alabama, and that approximately six thousand Alabama red ore miners would bring litigation for the purpose of enforcing the collection of the claimed amounts.

Wherefore, plaintiff asserts that it is threatened with the immediate institution and prosecution of a multiplicity of suits involving large sums of money, and unless the declaration herein prayed for is granted, the plaintiff will be faced with great, if not irreparable, injury.

VII.

Probability of Great, if not Irreparable, Injury.

If the declaratory judgment herein prayed for is not granted, the plaintiff is in immediate peril of suffering great and irreparable injury because:

1. Of the vexation, cost and expense of a multiplicity of suits;

2. Of the delay in the settlement and determination of the controversy which will necessarily follow if the prompt remedy afforded by the Declaratory Judgment Act and Rule 57, Rules, District Courts of the United States, is not applied and the final determination of the legal question involved is left to the adjudication of such thereafter suits, the bringing of which is imminent;

3. Of the fact that, under the provisions of the Act, the threatened suits for overtime payments may be brought in different jurisdictions, in Federal Courts or in State Courts, and will be encumbered with the costs and expenses of such litigation and the delays incident to final determination and the chances of different adjudications by different jurisdictions.

4. The claims of the different individual employees and the different classes of employees are so different as to impose upon the plaintiff the perils and uncertainties incident to different contentions, and adjudications in reference to the legal issues herein sought to be declared.

5. Of the probability of cessation in work, and losses and damages and ill-feelings by reason of labor disburbances, which will almost inevitably follow if the plaintiff fails to comply with the present illegal and erroneous

opinion of the Administrator; or if in attempting to comply it is forced to insist on a reduction of the compensation now being paid its underground employees.

6. Of the necessity of reaching or attempting to reach new collective bargaining contracts with the labor organizations, the provisions of existing contracts being abrogated, if the illegal and erroneous opinion of the Administrator or the assertions of the defendants are adhered to.

7. Of the great expense that the plaintiff will be put to in changing its operations from the "working place to working place" plan to the "portal to portal" plan, in the event by reason of the Administrator's opinion and the perils of not complying therewith it feels compelled to endeavor to comply therewith.

VIII.

Perils of Decision.

Unless the plaintiff can obtain a prompt declaration on the issue of law here presented, it is confronted with unusual and immeasurable perils of making a decision because:

1. If it, under advice of counsel, decides to stand by its construction of the law, and the Court should ultimately decide that the assertions either of the Administrator or of individual employees or any of the classes of plaintiff's employees are correct, plaintiff would be subject:

A. To the costs, expenses and heavy penalties which would be imposed under Section 16(b) of the Act.

B. To the penalties of fine and imprisonment imposed by Section 16(a) of the Act.

C. To having the Administrator, under the warning given in his opinion of March 23, 1941 (Exhibit A hereto attached) proceed against it by injunction proceedings under Section 17 of the Act, and the prevention of the shipment in interstate commerce of its manufactured products.

2. If, on account of the perils incident to standing on its conviction under advice of counsel, it feels impelled on account of the uncertainties and delays of litigation to accept and comply with the opinion either of the Administrator, or with the demands and assertions of defendants, plaintiff will probably, and in many respects certainly, be subject to or have imposed upon it:

A. The payment of large sums of money to its employees for overtime as contended by them.

B. The planning and institution of new methods of operations which will result in great loss and damage to the plaintiff because —

(a) complainance will result in a large reduction in production if the "portal to portal" plan should be put in effect and the underground employees could not remain underground more than eight hours per working day, which would mean that the time spent in going to and from the working places or from the bath house would have to be subtracted from the time now spent in actual work at the actual working places, thereby reducing the actual day's work time from eight hours to six or six and one-half hours, depending upon the correctness of the contentions of the various classes of employees;

(b) the loss of working time would be much greater if the employees' contention that time spent in going to and from the bath house, the time spent in transportation from portal to portal and the lunch period are included as a part of the workday for which they should be compensated;

(c) on the basis of loss of production as estimated by the plaintiff, the installation of the portal to portal system would mean a loss of approximately 19% of the production of the Sloss Red Ore Mine and of 12½% of production of the Ruffner Mine. Normal operations of the company call for 588,000 tons of ore to be produced at the Sloss Red Ore Mine and 158,000 tons at the Ruffner Mine per year, and the blast furnaces of the plaintiff require this tonnage of ore for the normal year's operations from the aforesaid mines;

(d) there would be a large loss in wages paid to the employees: if the "portal to portal" system were put into effect it would mean the revaluation of the company's present hourly rates. Its present wage rates are based on a systematic evaluation of the job, taking into consideration and skill, physical effort, mental effort, fatigue, etc., involved. These rates are based on eight hours of work in and about the usual places of work, and, therefore, if the traveling time is deducted from the productive labor time, and added to the nonproductive time, the earnings of the employees would be substantially reduced. The amount of time worked by the producing crews by reason of the installation of the so-called "portal to portal" system would necessarily so reduce the amount of production by such crews as to largely eliminate earnings of such crews in excess of the base rates of pay, and would necessarily result in a large loss to the individual miners;

(e) it would materially increase the cost of the company's manufactured products into which its entire iron ore production enters. Based on the normal year's operations, the reduction of approximately 19% of the ore produced at the Sloss Red Ore Mine, which would result if the "portal to portal" system is put into effect, amounts to approximately 111,720 tons of ore, and the reduction of ore produced at the Ruffner Mine by reason of the installation of said system would amount to 19,760 tons. The loss for a normal year would result as follows:

Total ore mined, Sloss Red Ore Mine	588,000 tons
Less 19% in production of iron ore (the loss that would result from including transportation time)	111,720 tons
Total ore mined, Ruffner Mine	158,000 tons
Less 12½% in production of iron ore (the loss that would result from including transportation time)	19,760 tons
Total loss of production on "portal to portal" basis	131,400 tons
Tons of iron ore required per ton of pig iron	2.64 tons
Tons of pig iron manufactured from 131,400 tons of iron ore (131,400 -:- 2.64)	49,772

(f) it would greatly increase plaintiff's cost per ton of ore produced;

(g) it would place the plaintiff at a serious disadvantage with its competitors and would deprive it of a substantial portion of its existing markets;

(h) it would void the existing written contracts between plaintiff and the Locals of the said labor organization, thereby rendering necessary negotiations for new contracts and disturbing the harmonious relations that exist between plaintiff and its employees under the operation of the existing contracts;

(i) the plaintiff has placed itself subject to the Nation's call for National Defense. Increased production called for by the requirements of National Defense cannot be achieved if the portal to portal plan, which, in effect, will reduce production working at Sloss Mine approximately 25%, is put into effect;

(j) the plaintiff's cycle of operations; computation of wages, payment of wages, methods and forms of bookkeeping, rules and regulations governing employees, method and time of transportation, assembly and delivery of tools, powder and equipment, and activities of service and surface crews have all been by long and unvaried custom and written contracts with the said labor organizations, related to and based upon the "face to face" basis and to change this method would be difficult if not impossible.

IX.

Great Weight Should be Accorded to any Reasonable Standards which Represent the Prevailing Custom and Practice in the Particular Industry, and which are Supported by a Long History of Bona Fide Collective Bargaining Agreements.

The reasonableness of plaintiff's contention is supported by the following, among other, facts:

1. It has been for more than fifty years the unvarying and continuous custom in plaintiff's ore mines, as well as in all other ore mines in Alabama, for the wages of underground ore miners to be computed and paid on the "face to face" basis.

2. It has been for more than fifty years the unvarying and continuous custom in plaintiff's ore mines, as well

as in all other ore mines in Alabama, that underground ore miners would not have their wages computed or paid for the necessary time spent in going from and to the surface and to and from their underground working places.

3. The same unvarying and continuous custom, as set forth in 1 and 2 above, has for more than fifty years existed in all underground coal mining operations of the plaintiff and of all other coal operators in the State of Alabama.

Plaintiff alleges that there can be, under conditions existing in the State of Alabama, no logical or possible differentiation between underground ore mines and underground coal mines, so far as the question under consideration is concerned.

4. The plaintiff, both prior and subsequent to the passage of the Fair Labor Standards Act, has negotiated and executed with the defendant Local No. 109, and subsequent to the passage of said Act with Local No. 512, contracts govering wages, hours of service, and other conditions of employment, and that these contracts, signed by the duly authorized representatives of the respective Locals, who were duly authorized to act for and in behalf of all plaintiff's underground employees who were members of such Locals, contains the following provision:

"Eight hours work per day shall constitute a day's work, and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period."

The provision above quoted is contained in the contract which the plaintiff has with each of the aforesaid Locals at this time.

5. The written contract containing the above quoted provision between the plaintiff and Local No. 109 has been in force and effect since September 11, 1940, and the written contract containing said provision between the plaintiff and the said Local No. 512 has been in force and effect since March 17, 1941.

6. The laws of the State of Alabama during all of the period of time herein referred to have recognized in garnishment proceedings, wage suits, and other related matters, that the payment and computation of wages in underground mines should be on the "face to face" basis.

X.

Contractural Obligations.

1. The contracts above referred to between the plaintiff and Local No. 109 and Local No. 512 were negotiated and executed in good faith between the parties thereto. Copies of the said contracts are attached hereto, marked Exhibits B and C, and made a part hereof.

2. In the negotiation and execution of said contracts, the "face to face" definition of the workday constituted a part of the consideration for the execution of said contracts on the part of the plaintiff. The members of the unions have, since the execution of the contracts, accepted and are continuing to accept the benefits accruing to them under said contracts, and have held and are continuing to hold the plaintiff obligated by their terms and provisions. Plaintiff asserts that during the term of said contracts the members of the labor organizations who executed them are bound by the terms thereof, including the agreement therein contained as to what constitutes the workday and "workweek".

XI.

Petition and Prayer.

Wherefore, plaintiff petitions and prays this Court to make and enter a decree and judgment declaring the rights of the respective parties hereto in the premises and more particularly plaintiff's right as asserted in the following specific propositions:

A.

Has the plaintiff, in following the work schedule and procedure as hereinbefore in Section II hereof set out, fully complied with the provisions of Section 7 of the Act?

B.

Did the Congress, in the enactment of Section 7 of the Act, intend that the workweek should consist of the time actually spent by the underground employees of the plaintiff working at and around their usual working places?

C.

Did the Congress, in the enactment of Section 7 of the Act, intend that the workweek of plaintiff's underground employees should include any portion of their time spent in being transported or walking to and from their usual working places?

D.

Did the Congress, by the language employed in the Act, and particularly Section 7 thereof, evidence an intention that the workday of plaintiff's underground employees should include any time other than the time agreed upon between them and plaintiff, as shown by the long existing custom and usage and the history of the contracts between plaintiff and the Unions representing them in the negotiation and execution of contracts, including the present contract under which such employees are working?

E.

When does the workday of plaintiff's underground employees begin and end within the meaning of the Fair Labor Standards Act?

F.

Are the assertions of the plaintiff as herein set forth as to the intentions of the Congress in the use of the word "workweek" legal and correct?

Premises Considered, plaintiff petitions and prays that the Court adjudge and answer, separately and severally, each of the questions specifically set forth in the above paragraphs numbered A to F, both inclusive, and determine and declare:

(a) That the work time of plaintiff's underground employees should be computed and compensated for upon the basis of work done at their usual working places, excluding the travel time in going to and from such working places.

(b) That the work time of plaintiff's underground employees should be computed and compensated for upon the "face to face" basis.

(d) That the plaintiff is not indebted to its underground employees for time spent in traveling from the surface to their regular working places and in returning from such working places to the surface.

And plaintiff further prays that said defendants and their agents, representatives, and all underground employees of the plaintiff made parties defendant hereto as a class, be restrained and enjoined from prosecuting any suit or claim of any nature whatsoever against plaintiff for any additional wages or compensation claimed to be due them under the terms and provisions of the said Act, and plaintiff prays for a general declaratory judgment with reference to the questions presented by this petition, and a judgment against the defendants for costs herein, and if the plaintiff be mistaken in the relief prayed for, plaintiff hereby prays for such other, further, more different or general relief as to the Court may seem meet, just and proper, the premises considered.

Plaintiff prays that in accordance with Rule 57, District Court of the United States, the Court ordered a speedy hearing of this action and advance it on the docket.

ERNEST L. ALL,
S. M. BRONAUGH,
Attorneys for Plaintiff.

2100 Comer Building,
Birmingham, Alabama.

BRADLEY, BALDWIN, ALL & WHITE,
Of Counsel.

State of Alabama,
Jefferson County.

Before me, Mable R. Watt, a Notary Public in and for said county in said state, personally appeared Ben Davis, who being by me first duly sworn, deposes and says that he is the Vice President of Sloss-Sheffield Steel & Iron

Company, the plaintiff in the foregoing bill of complaint, and is a resident of Jefferson County, Alabama; that he has read the foregoing complaint, and that the facts averred therein as of fact are true and correct, and that as to the matters therein stated to be alleged on information and belief, he verily believes to be true and correct.

BEN DAVIS.

Sworn to and subscribed before me on this 4th day of April, 1941.

MABLE R. WATT,
Notary Public.

(Seal)

Filed April 4, 1941.

132 EXHIBIT A.

Exhibit A to the petition of Sloss-Sheffield Steel & Iron Company is a copy of the Opinion and Report of the Administrator of the Wage and Hour Division of the United States Department of Labor, marked "For Release Sunday, March 23, 1941," and is in all respects identical with Exhibit A to the petition of the Tennessee Coal, Iron & Railroad Company, heretofore set out on page 76 of this transcript.

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133 EXHIBIT "B".

Agreement.

This Agreement dated Sept. 11, 1940, and entered into by and between the Sloss-Sheffield Steel & Iron Company (hereinafter referred to as the "Company") and Sloss Ore Local No. 109 of the International Union of Mine, Mill and Smelter Workers, (hereinafter referred to as the "Union") on behalf of employees employed in the Production and Maintenance Departments of the Sloss Red Ore Mine, located at Bessemer, Alabama.

Section 1—Recognition.

(a) The Union shall be and is hereby recognized as the exclusive bargaining agency for the employees in the Production and Maintenance Departments for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) The term employee used in this Agreement does not include foremen, supervisors, technical and clerical employees.

(c) It is distinctly understood that the Management of the mine and the direction of the working force, and the right to hire and discharge are vested exclusively in the Company.

Section 2—Check Off.

The Company agrees upon individual written authorization by the employee to deduct Union dues in the amount not to exceed one dollar ($1.00) per month from such employee. Initiation and other fees (not to exceed two dollars ($2.00) for any one man, and in sums not to exceed one dollar ($1.00) per man in any one pay period), wherein individual written authorization has been made to the Company by the employee, shall be deducted by the Company. All such deductions shall be forwarded to the financial secretary of Local Union 109 on or before the tenth of the following month.

In case any employee shall enter suit or process against the Company for the amount deducted under this section pursuant to such check-off paid to its representatives, the Union will reimburse to the Company the amount of any loss sustained by the Company by reasons thereof, including costs and expense of the suit.

Section 3—Mine Committee.

The duties of the Mine Committee shall be confined to the adjustment of disputes arising from this Agreement with the employees represented by them that the mine management and employee, or employees, have failed to adjust. The Mine Committee shall have no other authority nor exercise any other control, nor in any way interfere with the operation of the mine. The Mine Committee has no authority to direct the working forces in or about the mine or any part thereof. For violation of these clauses or any of them the Committee or any member thereof shall be immediately removed from the Committee, and shall be ineligible to serve as a committeeman for six months thereafter.

Section 4—Hours of Work.

(a) Eight hours work per day shall constitute a day's work and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period.

The Company shall have the right during the life of this Agreement to operate the mine one, two or three eight-hour shifts by different crews of men within each twenty-four hour period.

(b) The eight hours per shift will not apply in case of accidents or breakdowns which may temporarily necessitate longer hours for those employees required on account thereof, and also excepting the number of men required to handle man trips, and those required to remain on duty while men are entering or leaving the mine.

(c) Time and one-half shall be paid for all work performed in excess of eight hours per day or forty hours per week excepting a few occupations where application of this rule is not practical.

Section 5—Holidays.

The following Holidays shall be observed by the Company—Independence Day, Labor Day, Thanksgiving Day and Christmas Day; except for necessary maintenance or repair work, and those employees whose occupations require continuous duty.

Section 6—Vacations.

(a) Each employee who, prior to June 1st, 1941, shall have been continuously in the service of the Company for a period of three (3) years shall receive a vacation with pay on the following basis:

Three (3) years and less than five (5) years—three (3) working days.

Five (5) years and less than ten (10) years—six (6) working days.

Ten (10) years and less than fifteen (15) years—eight (8) working days.

Fifteen (15) years and over—ten (10) working days.

(b) During the three-year period prior to June 1st, 1941, any employee who voluntarily left the service of the Company for one or more days will not be entitled to vacation pay.

(c) An employee must be in the active service of the Company at the time of allotment of vacation to be entitled to same and vacations will, so far as possible, be granted at times most desired by the employees, but the final right to allotment of vacation period is exclusively reserved to the Company in order to insure the orderly operation of the plant.

(d) Service will be considered continuous where employee has not been off payroll more than three months in the past year prior to June 1st, 1941, or a total of fifteen months in past five years prior to June 1st, 1941, through being laid off by the Company account of curtailed operations.

Section 7—Miscellaneous Provisions.

(a) It is agreed to observe during the life of this Contract the same practices and customs in regard to the promotion, or increases and decreases in the working forces, as have been practiced in the past.

(b) Any change in mining methods or installation of machinery that relieves or hinders the employee of any of the duties incidental to his regular work and/or increases or decreases his productive capacity shall be recognized and a new piecework rate shall be agreed to therefor, and same shall be properly related to the basic rates for such work.

(c) In the event of a shut-down and if the Company gives the employees credit to purchase provisions and supplies at the Company Commissary, on resumption of operations the employees' wages shall be cut in accordance with his ability to pay.

Section 8—Wages and Rates of Pay.

(a) The wage rates attached hereto will be the prevailing rates of pay for the duration of this Agreement.

(b) Whenever an employee has been directed by the foreman to proceed to his usual working place in the mine and is then subsequently ordered by the foreman to return to the surface without having been permitted to perform any work, he shall be entitled to two hours' pay, providing the work is not interrupted by labor dispute.

(c) When an employee working on piecework is required by mine officials to leave his work at the face and perform other work he shall be paid at the rate for a miner on Company work.

(d) When an employee has no work at the face, and is given other work, he shall be paid at the scale for such labor.

(e) It is agreed that in event general wage advances are granted or decreases made to red ore miners by a majority of the red ore producing companies in this district during the life of this Agreeement, it is understood that the question of considering wage adjustments for Sloss employees will then become a subject for collective bargaining under terms of this Agreement.

Section 9—General Clauses.

(a) This Agreement may be amended or revised in any of its provisions during its existence, provided such amendments or revisions are approved in writing, and subscribed to by the Union and the Company.

(b) This Contract shall not conflict with any present State or Federal Law, or laws that may be enacted during the life of said Agreement.

(c) It is understood and agreed that Section 11 (d) (Settlement of Grievances) shall not be effective in the arbitration of wage increases, wage reductions or wage adjustments.

Section 10—Discharge or Suspension.

If it shall be determined that an employee has been discharged or suspended without just cause, the Company shall immediately reinstate the employee and compensate him for time lost at his regular rate of pay.

Section 11—Settlement of Disputes.

If an employee, or employees, shall consider that he or they have any grievance against the Company, an earnest effort shall be made, subject to the terms and provisions of this Contract, to adjust same by the following successive steps:

(a) Between employee and his foreman.

(b) Between Mine Committee and Superintendent of the Mine.

(c) Between Mine Committee or Representatives of the Union and the General Superintendent of Ore Mines.

(d) If such grievance arising under the terms of this Contract is not adjusted and settled in the manner herein provided, then such grievance, that has not been settled by one of the modes aforesaid provided, shall be submitted to a Board of Arbitration, who shall be appointed to consider such unadjusted grievance, and shall be selected as follows: Two (2) to be chosen by the Company and two (2) to be chosen by the Union, and these four to choose a fifth member within ten (10) days. If these four fail to agree upon the fifth member, then within ten additional days he shall be chosen by the President of Sloss-Sheffield Steel & Iron Company and the Board Member of District 5 of the International Union of Mill, Mine and Smelter Workers. The decision of such Board of Arbitration shall be rendered without unreasonable delay, and the decision of a majority of said Board shall be final and binding on all parties involved in such grievance. Any expense incurred by the arbitrators shall be borne equally by the Company and the Union.

(e) There shall be no stoppage of work either by the Company or the Union, until full procedure of methods of settling grievances as outlined in this Agreement have been complied with.

Section 12—Effective Period and Termination.

This Agreement shall become effective on the 16th day of Sept., 1940, and shall be operative and remain in full force and effect for two (2) years from said ~~date~~ and from year to year thereafter, subject, however to the right of either party to terminate the agreement at the end of any yearly period after 16th day of Sept. 1942, by written notice given to the other party not more than thirty (30) days prior to nor less than fifteen (15) days prior to the end of any such year.

In Testimony Whereof, witness the signatures of the undersigned, this 11th day of Sept., 1940.

SLOSS RED ORE LOCAL #109,
I. U. of M. M. & S. W.,
(S.) By JOHN HILL,
President.
(S.) By JESSE GAINES,
Vice-President.
(S.) By W. A. O'NEAL,
Chairman Executive Board.
(S.) By VAN D. JONES,
Board Member District #5,
I. U. of M. M. & S. W.

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
(S.) By ROY RATLIFF,
General Manager.

Outside Rates.

Occupation	Hourly Rate	Amount Per Shift	Hours Per Shift
Truck Driver	$.540	$4.32	8
Teamster	.505	4.04	8
Engineers—Main Hoist	.770	7.70	10
Dumpers	.535	4.28	8
Tipplemen	.535	4.28	8
Conveyor Men	.535	4.28	8
Weighmen	.675	6.08	9
R. R. Car Loaders	.535	4.28	8
Crusher Men	.635	5.08	8
Machinist	.820	6.56	8
Machinist Helper—1st Class	.570	4.56	8
Machinist Helper—2nd Class	.540	4.32	8
Blacksmith	.845	6.76	8
Blacksmith Helper	.540	4.32	8
Carpenter	.650	5.20	8

Occupation	Hourly Rate	Amount Per Shift	Hours Per Shift
Carpenter Helpers	.505	4.04	8
Car Repairmen	.635	5.08	8
Car Repairmen Helpers	.580	4.64	8
Drill Sharpener	.740	5.92	8
Compressor Man	.695	6.26	9
Watchman	.515	4.12	8
Laborers	.450	3.60	8
Slate Pickers	.450	3.60	8
Ore Inspector	.580	4.64	8

Note: One and one-half times the above hourly rates will be paid for all time in excess of eight (8) hours per day or forty (40) hours per week, excepting supervisors, foremen and a few occupations where application of this rule is not practical.

Inside Rates.

Occupation	Hourly Rate	Amount Per Shift	Hours Per Shift
Company drillers	$.755	$6.04	8
Driller helpers	.675	5.40	8
Motormen	.685	5.48	8
Coupler	.600	4.80	8
Rockmen	.685	5.48	8
Rockmen Helpers	.596	4.76	8
Track Cleaners	.506	Ton ...	
Timbermen	.685	5.48	8
Timbermen helpers	.595	4.76	8
Pipemen	.635	5.08	8
Pipemen helpers	.595	4.76	8
Chainers-Contract—.022 per ton or	.625	5,00	8
Company chainers	.625	5.00	8
Company chainer helpers	.600	4.80	8

Occupation	Hourly Rate	Amount Per Shift	Hours Per Shift
Engineers—Main hoist	.755	6.42	8½
Engineers—Auxiliary hoist	.685	5.48	8
Stablemen	.635	5.08	8
Rock, Timber and Track Foremen	.755	6.04	8
Trackmen	.685	5.48	8
Trackmen helpers	.595	4.76	8
Roller Men	.605	4.84	8
Pumpers	.605	4.84	8
Electric Repairmen	.795	6.36	8
Machinist	.795	6.36	8
Miner on Company work*	.625	5.00	8

*See Section 8, (c) and (d) for application.

Note: One and one-half times the above hourly rates will be paid for all time in excess of eight (8) hours per day or forty (40) hours per week, excepting supervisors, foremen and a few occupations where application of this rule is not practical.

Hand Loaded Ore

Places 18 Feet or Less in Width

Basic Tonnage = 35 Tons Per Shift

5 Man Crew

Occupation	No. Men	Rate Per Ton
Drill Man	1	$ .153
Drill Man Helper	1	.138
Muckers	3	.417
Total	5	$ .708

Any additional tonnage produced will be paid for at the above rates.

When conditions develop beyond the control of a crew that prevents them from loading the basic tonnage and they are required to stay at the working place for the full 8-hour shift, wages equivalent to 90% of the basic tonnage earnings will be paid the crew on a pay period basis.

Hand Loaded Ore

Places Over 18 Feet in Width

Basic Tonnage = 43 Tons Per Shift

5 Man Crew

Occupation	No. Men	Rate Per Ton
Drill Man	1	$ .129
Drill Man*	..	.112*
Drill Man Helper	1	.116
Muckers	3	.351
Total	5	$ .708

*To credit of Head Drill Man for Explosive and Supplies.

Any additional tonnage produced will be paid for at the above rates.

When conditions develop beyond the control of a crew that prevents them from loading the basic tonnage and they are required to stay at the working place for the full 8-hour shift, wages equivalent to 90% of the basic tonnage earnings will be paid the crew on a pay period basis.

Drag Loaded Ore

Basic Tonnage = 100 Tons Per Shift

15 Man Crew

8 Men One Shift: 7 Men Opposite Shift

Occupation	No. Men	Rate Per Ton
Head Miner	1	$ .041
Head Miner	..	.110*
Drag Engineers	2	.062
Drill Men	4	.121
Drill Men Helpers	2	.053
Muckers	4	.106
Haulage Engineers	2	.046
Total	15	$ .539

*To credit of Head Miner for Explosives and Supplies.

Any additional tonnage produced will be paid for at the above rates:

When conditions develop beyond the control of a crew that prevents them from loading the basic tonnage and they are required to stay at the working place for the full 8-hour shift, wages equivalent to 80% of the basic tonnage earnings will be paid the crew on a pay period basis.

Drag Loaded Ore

Headings Only

Basic Tonnage = 75 Tone Per Shift

8 Man Crew

Occupation	No. Men	Rate Per Ton
Head Miner	1	$ .041
Drag Engineer	1	.083
Drill Men	2	.160
Drill Men Helper	1	.070
Muckers	2	.140
Haulage Engineer	1	.060
Total	8	$ .554

Any additional tonnage produced will be paid for at the above rates.

When conditions develop beyond the control of a crew that prevents them from loading the basic tonnage and they are required to stay at the working place for the full 8-hour shift, wages equivalent to 80% of the basic tonnage earnings will be paid the crew on a pay period basis.

Yardage Rates

Slopes, 12′ wide or less	$17.80 per lin. yd.
Slopes, 18′ wide	9.90 per lin. yd.
Headings, 18′ wide, or less	9.90 per lin. yd.
Upsets	7.85 per lin. yd.
Stope necks, 12′ wide or less	17.80 per lin. yd.
Stope necks, 15′ wide or less	13.90 per lin. yd.
Stope necks, 18′ wide or less	9.90 per lin. yd.
Splitting a single stope into a double stope	25.00 per lin. yd.

EXHIBIT "C".

Agreement.

This agreement dated March 17, 1941, and entered into by and between the Sloss-Sheffield Steel & Iron Company, (hereinafter referred to as the "Company") and Ruffner Iron Ore Miners Union No. 512 of the International Union of Mine, Mill and Smelter Workers, (hereinafter referred to as the "Union") on behalf of employees employed in the Production and Maintenance Departments of the Ruffner Red Ore Mine, located at Irondale, Alabama.

Section 1—Recognition.

(a) The Union shall be and is hereby recognized as the exclusive bargaining agency for the employees in the Production and Maintenance Departments for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) The term employee used in this Agreement does not include foremen, supervisors, technical and clerical employees.

(c) It is distinctly understood that the Management of the mine and the direction of the working force, and the right to hire and discharge are vested exclusively in the Company.

Section 2—Check-Off.

The Company agrees upon individual written authorization by the employee to deduct Union dues in the amount not to exceed one dollar ($1.00) per month from such employee. Initiation and other fees (not to exceed two dollars ($2.00) for any one man, and in sums not to exceed one dollar ($1.00) per man in any one pay period), wherein individual written authorization has been made to the Company by the employee, shall be deducted by the Company. All such deductions shall be forwarded to the financial secretary of Union No. 512 on or before the tenth of the following month.

In case any employee shall enter suit or process against the Company for the amount deducted under this section pursuant to such check-off paid to its representatives, the Union will reimburse to the Company the amount of any loss sustained by the Company by reasons thereof, including costs and expense of the suit.

Section 3—Mine Committee.

The duties of the Mine Committee shall be confined to the adjustment of disputes arising from this Agreement with the employees represented by them that the mine management and employee, or employees, have failed to adjust. The Mine Committeee shall have no other authority nor exercise any other control, nor in any way interfere with the operation of the mine. The Mine Committee has no authority to direct the working forces in or about the mine or any part thereof. For violation of these clauses or any of them the Committee, or any member thereof, shall be immediately removed from the Committee, and shall be ineligible to serve as a committeeman for six months thereafter.

Section 4—Hours of Work.

(a) Eight hours work per day shall constitute a day's work and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period.

The Company shall have the right during the life of this Agreement to operate the mine one, two or three eight-hour shifts by different crews of men within each twenty-four hour period.

(b) The eight hours per shift will not apply in case of accident or breakdowns which may temporarily necessitate longer hours for those employees required on account thereof, and also excepting the number of men required to handle man trips and those required to remain on duty while men are entering or leaving the mine.

(c) Time and one-half shall be paid for all work performed in excess of eight hours per day or forty hours per week.

Section 5—Holidays.

The following Holidays shall be observed by the Company—Independence Day, Labor Day, Thanksgiving Day and Christmas Day; except for necessary maintenance or repair work, and those employees whose occupations require continuous duty.

Section 6—Vacations.

(a) Each employee who, prior to June 1st, 1941, shall have been continuously in the service of the Company for a period of three (3) years shall receive a vacation with pay on the following basis:

Three (3) years and less than five (5) years—three (3) working days.

Five (5) years and less than ten (10) years—six (6) working days.

Ten (10) years and less than fifteen (15) years—eight (8) working days.

Fifteen (15) years and over—ten (10) working days.

(b) During the three-year period prior to June 1st, 1941, any employee who voluntarily left the service of the Company for one or more days will not be entitled to vacation pay.

(c) An employee must be in the active service of the Company at time of allotment of vacation to be entitled to same and vacations will, so far as possible, be granted at times most desired by the employees, but the final right to allotment of vacation period is exclusively reserved to the Company in order to insure the orderly operation of the plant.

(d) Service will be considered continuous where employee has not been off payroll more than three months in the past year prior to June 1st, 1941, or a total of fifteen months in past five years prior to June 1st, 1941, through being laid off by the Company account of curtailed operations.

Section 7—Miscellaneous Provisions.

It is agreed to observe during the life of this Contract the same practices and customs in regard to the promotion, or increases and decreases in the working forces, as have been practiced in the past.

Section 8—Wages and Rates of Pay.

(a) The wage rates attached hereto will be the prevailing rates of pay for the duration of this Agreement.

(b) It is agreed that in event general wage advances are granted or decreases made to red ore miners by a majority of the red ore producing companies in this district during the life of this Agreement, it is understood that the question of considering wage adjustments for Ruffner employees will then become a subject for collective bargaining under terms of this agreement.

Section 9—Settlement of Disputes.

If an employee, or employees, shall consider that he or they have any grievance against the Company, an earnest effort shall be made, subject to the terms and provisions of this contract, to adjust same by the following successive steps:

(a) Between employee and his foreman.

(b) Between Mine Committee and Superintendent of the Mine.

(c) Between Mine Committee or Representatives of the Union and the General Superintendent of Ore Mines.

(d) If such grievance arising under the terms of this Contract is not adjusted and settled in the manner herein provided; then such grievance, that has been settled by one of the modes aforesaid provided, shall be submitted to a Board of Arbitration, who shall be appointed to consider such unadjusted grievance, and shall be selected as follows:

Two (2) to be chosen by the Company and two (2) to be chosen by the Union, and these four to choose a fifth member within ten (10) days. If these four fail to agree upon the fifth member, then within ten additional days he shall be chosen by the President of Sloss-Sheffield Steel

& Iron Company and the Board Member of District 5 of the International Union of Mill, Mine and Smelter Workers. The decision of such Board of Arbitration shall be rendered without unreasonable delay, and the decision of a majority of said Board shall be final and binding on all parties involved in such grievance. Any expense incurred by the arbitrators shall be borne equally by the Company and the Union.

(e) There shall be no stoppage of work either by the Company or the Union, until full procedure of methods of settling grievances as outlined in this Agreement have been complied with.

(f) If it shall be determined that an employee has been discharged or suspended without just cause, the Company shall immediately reinstate the employee and compensate him for time lost at his regular rate of pay.

Section 10—General Clauses.

(a) This Agreement may be amended or revised in any of its provisions during its existence, provided such amendments or revisions are approved in writing, and subscribed to by the Union and the Company.

(b) It is understood and agreed that Section 9 (d) (Settlement of Grievances) shall not be effective in the arbitration of wage increases, wage reductions or wage adjustments.

(c) Each section of this Agreement has been arrived at through the process of collective bargaining between representatives of the employees and officials of the Sloss-Sheffield Steel & Iron Company.

Section 11—Effective Period and Termination.

This agreement shall become effective on the 17th day of March, 1941, and shall be operative and remain in full force and effect for two (2) years from said date and from year to year thereafter, subject, however, to the right of either party to terminate the agreement at the end of any yearly period after 17th day of March, 1943, by written notice given to the other party not more than thirty (30) days prior to nor less than fifteen (15) days prior to the end of any such year.

In Testimony Whereof, witness the signatures of the undersigned, this 17th day of March, 1941.

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
By ROY RATLIFF,
General Manager.

RUFFNER MINERS UNION
#512, I. U. of M. M. & S. W.,
By FRANK PARKER,
President.
By HORSEA BICKERSTAFF,
Vice-President.
By GEO. F. DRUMMOND,
Chairman Executive Board.
By VAN D. JONES,
Board Member District #5,
I. U. of M. M. & S. W.

Outside Rates.

Occupation	Hourly Rate	Amount Per Shift
Truck Driver	$ .540	$4.32
Engineer—Main Hoist	.770	6.16

Occupation	Hourly Rate	Amount Per Shift
Tippleman	.535	4.28
Weighman	.675	5.40
Railroad Car Loader	.535	4.28
Machinist	.795	6.36
Machinist Helper—1st Class	.570	4.56
Blacksmith	.795	6.36
Carpenter	.650	5.20
Carpenter Helper	.450	3.60
Car Repairmen	.635	5.08
Car Repairmen Helpers	.580	4.64
Compressor Man	.650	5.20
Watchman	.515	4.12
Laborers	.450	3.60
Slate Pickers	.450	3.60
Lamp Man	.570	4.56

Note: One and one-half times the above hourly rates will be paid for all time in excess of eight (8) hours per day or forty (40) hours per week.

Inside Rates.

Occupation	Hourly Rate	Amount Per Shift
Drillers*	$ .755	$6.04
Muckers*	.610	4.88
Track Cleaners	.595	4.76
Rockmen	.685	5.48
Rockmen Helpers	.595	4.76
Timbermen	.685	5.48
Timbermen Helpers	.595	4.76
Rock and Timber Foreman	.755	6.04
Pipeman	.635	5.08
Pipeman Helper	.595	4.76
Chainers—Main Hoist	.625	5.00
Chainers—Auxiliary Hoists	.600	4.80

Occupation	Hourly Rate	Amount Per Shift
Engineers—Auxiliary Hoists	.685	5.48
Trackman	.685	5.48
Trackman Helpers	.595	4.76
Roller Man	.605	4.84
Laborers	.595	4.76
Electrical Repairman	.795	6.36
Drag Operator*	.755	6.04
Face Man*	.595	4.76
Chute Man*	.595	4.76
Spotting Hoist Engineer*	.595	4.76

*See pages 9, 10 and 11 for application for bonus in addition to above rates.

Note: One and one-half times the above hourly rates will be paid for all time in excess of eight (8) hours per day or forty (40) hours per week.

*Tonnage Bonuses

Drag Loading

Normal Crew of Six (6) Men—

Base 80 Tons Per Shift of Eight (8) Hours Worked

All excess tonnage above base of 80 tons per day, computed on a bimonthly basis, will be paid for at the rate of $0.30 per ton, divided between the crew as follows:

Drag Operator	$ .07
Drillers (2)	.14
Face Man	.03
Chute Man	.03
Spotting Hoist Engineer	.03

*Tonnage Bonuses

Hand Loaded Entries

Normal Crew of Three (3) Men—

Base 25 Tons Per Shift of Eight (8) Hours Worked

All excess tonnage above base of 25 tons per day, computed on a bimonthly basis, will be paid for at the rate of $0.48 per ton, divided between crew members as follows:

Driller	$0.18
Muckers (2)	.30

*Tonnage Bonuses

Hand Loaded Slopes

Normal Crew of Three (3) Men—

Base 18 Tons Per Shift of Eight (8) Hours Worked

All excess tonnage above base of 18 tons per day, computed on a bimonthly basis, will be paid for at the rate of $0.48 per ton, divided between crew members as follows:

Driller	$0.18
Muckers	.30

MOTION OF PETITIONER-PLAINTIFF SLOSS-SHEFFIELD STEEL AND IRON COMPANY FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION.

157 (Civil Action No. 5233.)

Comes the plaintiff in the above entitled cause and adopting the allegation of its bill of complaint as a part of this motion, moves the Court to issue herein a temporary restraining order or preliminary injunction, restraining and enjoining said defendants and their agents, representatives, and all other underground employees of the plaintiff made parties defendant hereto as a class, from prosecuting any suit or claim of any nature whatsoever against plaintiff for any additional wages or compensation claimed to be due them under the terms and provisions of the said Act for any portion of their time, including the lunch period, spent in being transported or going to and from their actual places of work, and that the terms of said injunction be as set forth in the prayer of said bill of complaint.

S. M. BRONAUGH,
Attorney for Plaintiff.

Filed April 5, 1941.

ORDER SETTING MOTION OF PETITIONER-PLAINTIFF SLOSS SHEFFIELD-STEEL AND IRON COMPANY FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION FOR HEARING.

158 (Civil Action No. 5233.)

This matter coming on to be heard on the motion and prayer of the plaintiff for the issuance of a temporary restraining order or preliminary injunction, it is Ordered by the Court that said motion be and the same hereby is set for hearing in open Court on the 17th day of April, 1941, at 10 o'clock, A. M.

It is further Ordered that service of a copy of the bill of complaint herein, of said motion, and of this order be made upon the defendants in accordance with Rule 5(b) of the Rules of Civil Procedure, and that such service be made not less than five (5) days before the time set for hearing.

This 5th day of April, 1941.

T. A. MURPHREE,
Judge.

Filed April 5, 1941.

RETURN OF SERVICE OF PROCESS ON PETITION OF SLOSS-SHEFFIELD STEEL & IRON COMPANY, omitted from the printed record, pursuant to Rule 23 of this Court.

* * * * * * * * *

PETITION OF REPUBLIC STEEL CORPORATION

160 (Civil Action No. 5234.)

I.

Allegations of Jurisdiction.

(a) That petitioner and plaintiff (hereinafter referred to as "plaintiff") is a corporation organized under the laws of the State of New Jersey, and a resident of said State, authorized to transact business in the State of Alabama, and having one of its principal places of business, and mining and manufacturing operations, in Jefferson and Etowah Counties, State of Alabama;

(b) All of the defendants are citizens and residents of Jefferson County, State of Alabama;

(c) The matters in controversy, exclusive of interest and costs, exceed the sum of $3,000;

(d) That jurisdiction is also founded on the existence of a federal question in that it is a suit arising under a law regulating commerce;

(e) Jurisdiction is also founded in that this action arises under the Constitution of the United States and the Fifth Amendment to the Constitution of the United States;

(f) Jurisdiction is also founded on the existence of a question arising on a particular statute in that the action arises under the Act of June 25, 1938, Public Act No. 718 of the 75th Congress, Chapter 676, Sections 1 to 19, 52 Stat. 1060, Title 29, U. S. C., Sections 201, to 219, as amended by the Act of Congress of August 9, 1939, Public Act. No. 344 of the 76th Congress, commonly called the "Fair Labor Standards Act of 1938", as hereinafter more fully appears.

(g) This action is to secure a declaratory judgment and such incidental injunctive relief as may be proper under the provisions of the Federal Declaratory Judgment Act, Title 28, U. S. C. A. 400, the Judicial Code, Section 274(d); the Act of March 3, 1911, Chapter 231, Paragraph 274(d), as amended June 14, 1934, Chapter 512; 48 Stat. 955, as amended by the Act of August 30, 1935; C 829, Paragraph 405; 47 Stat. 1027.

(h) This action is also to secure such other different and more general relief as may be proper under the allegations herein contained.

II.

The Plaintiff and Its Operations.

Plaintiff owns and operates in Jefferson County, Alabama, two underground iron ore mines, one at Spalding (this mine is not involved in this proceeding) and the other at Raimund. The ore mine at Raimund has two openings. Access to the mine workings is by inclined slopes of approximately 45 degrees with vertical depth of cover of approximately 1,000 feet. The workable seam of ore averages about 6½ feet. The method of mining is a modified room and pillar plan, with open stopes. The operating requirements call for an average of approximately 82,000 gross tons of red ore per month (from Raimund and Shannon mines). The plaintiff extracts from said mine iron ore, and said ore is used by the Company in the manufacture of pig iron, some of which pig iron is sold in the open market but the larger portion of the pig iron thus manufactured is used in the manufacture at the Alabama plants of the plaintiff of structural steel, iron fencing, sheets, bars, and other products, such products being sold in various markets in competition with manufacturers of like products. The plaintiff obtains a portion of its supplies and equipment from outside the State of Alabama, and it ships the greater portion of its manufactured products by common carrier to points outside of the State of Alabama, and in some instances to foreign countries.

The plaintiff operates coal mines and uses the coal in the manufacture of its products. The operations in its coal mines, in so far as the questions involved here are related and concerned, are the same operations as the operations in its ore mines. The general custom and procedure in the ore mine is substantially as follows:

Plaintiff employs at its ore mine approximately 645 employees, and of this number 589 are underground employees (these underground employees are the employees of the plaintiff with whom the controversy as hereinafter alleged exists and who are hereinafter made parties defendant hereto). For the convenience of its underground employees the plaintiff provides bath house facilities, the bath house being located a short distance from the mine entrance hereinafter referred to as the "portal". The employees are not compelled to use the bath house facilities and the plaintiff does not require the presence of the underground employees at the bath house at any particular time or in any defined groups. No check-in or check-out is had at the bath house. While the use of the bath house is not obligatory, it is used by substantially all of the plaintiff's employees. The employee, after changing from street clothes to work clothes at the bath house, walks to the "portal".

All underground employees are lowered into the slopes in man skips to a central point called the underground manloading station. From this point the employees proceed on foot to their respective working places. For the purpose of transporting employees to the underground manloading station the plaintiff operates man skips. The employees are not required to ride on any particular man trip but can follow their own wishes in determining which trip they shall ride. Eight to ten man trips are required to lower all the underground employees in the mine, the first trip leaving at approximately 5:15 A. M. and P. M. and the last trip leaving at approximately 6:30 A. M. and P. M. All men are expected to be at their regular places of work at the starting time, which is 7:00 A. M. day shift operations and 7:00 P. M. night shift operations. Day shift operations cease at 3:00 P. M. and night shift operations cease at 3:00 A. M.

No time is designated for lunch period, and no time is deducted from the eight-hour work period for lunch. After the day's work has been completed the employees walk from their working places and to the underground manloading station and are hoisted in the same manner as they are lowered into the mines.

The time taken in transportation from the portal to the underground manloading station and from the manloading station to the portal, and the time taken in walking from and to the man loading station to and from the usual working place varies, but may be conservatively estimated at not more than 2 hours and not less than 1 hour. The time taken by the employees from the moment they leave the bath house before the beginning of the day's work until the moment they enter the bathhouse at the end of the day's work varies, but may be conservatively estimated as averaging fifteen minutes. Several years prior to the enactment of the Act the plaintiff established in its ore mine an eight-hour day and forty-hour week, with payment of time and one-half for all the time over eight hours in any one day and for all overtime in excess of forty hours in any one week, the eight-hour day meaning eight hours' work in and about the mines at the usual working place, for all classes of labor. All underground mine employees have been paid and accepted their wages on the basis of eight hours per day from 7:00 A. M. or P. M. to 3:00 P. M. or A. M. The plaintiff has never compensated its underground employees for any portion of their time spent in going to or from or in being transported to and from their actual workplace, and such employees at all times understood and agreed that they should not receive any compensation therefor; and such understanding and agreement has been specifically provided for by agreements, express or implied, between the Company and its underground employees.

The allegations herein set forth as to operations at the present time are substantially in all respects true as to operations for several years prior to the enactment of the Act.

III.

The Defendants.

(a) Defendant, Raimund Local 121, affiliated with the International Union of Mine, Mill & Smelter Workers, is an unincorporated association and has been selected by some of plaintiff's employees as their representative for collective bargaining in all matters concerning wages, hours, and conditions of employment, the exact number of the underground employees represented by said Local being unknown to plaintiff.

(b) The individual defendants, John Butler, Lewis Tarrant, and B. G. Stephens, are underground employees of the plaintiff and officers and members of said Raimund Local 121 who have selected said organization as their representative for collective bargaining.

(c) The defendant, Unit No. 8, Brotherhood of Miners of Captive Ore Mines of Alabama, is an unincorporated association not affiliated with any national organization and has been selected by some of plaintiff's employees (underground) as their representative for collective bargaining in all matters concerning wages, hours, and conditions of employment, the exact number of plaintiff's underground employees who are represented by said Unit being unknown to plaintiff.

(d) Individual defendants, Melvin Lawrence, C. W. Eady, and J. E. Thornton, are underground employees of the plaintiff and members and officers of said Unit No. 8 who have selected said organization for their representative for collective bargaining.

(e) The defendants herein named are made parties defendant in their individual and representative capacities, as hereinabove set forth and described, under Rule 23 of Federal Rules of Civil Procedure, as representative of all of plaintiff's employees, as all of such employees represent a class that is so numerous as to make it impracticable to bring them all before the Court, and such individual defendants, representing as they do the employees and different groups thereof, so fairly represent all employees as to insure adequate representation of all, and are, therefore, sued because the right sought to be enforced by the plaintiff against all of the employees are several and there is a common question of law and fact affecting the several rights and common relief is sought against all.

Plaintiff has elected, in keeping with the statutes and rules of Court in such cases made and provided and more especially Rule 23, Rules of Civil Procedure, to make and name as parties herein the above named and described defendants as being typical of the several classes of plaintiff's said underground mine employees whose rights would be affected by the decision to be rendered herein, and plaintiff avers that said employees, selected and named as defendants, properly and fairly represent all of said underground mine employees, and that said underground mine employees are all interested in and parties to the controversy hereinafterwards described.

The plaintiff invites the timely intervention in this action of any of its other employees who are not specifically or individually made defendants hereto to intervene or join herein as parties defendant, all to the end that the controversy herein set forth and shown may be fully and fairly determined by this Court in this proceeding.

The Administrator of the Wage & Hour Division, United States Department of Labor, as such Administrator, is interested in the construction (hereinafterwards prayed for) of Section 7 of the Act, commonly called the "Fair Labor Standards Act of 1938", and the plaintiff invites the timely intervention in this action of such Administrator.

IV.

Statement of Controversy.

Plaintiff alleges that there is an actual and bona fide controversy existing as of the date of filing this petition between the plaintiff on the one hand and the defendants herein named on the other hand, said controversy growing out of the following facts and being as herein stated:

Said controversy relates to the judicial construction of Section 7 of the Act, said section reading as follows:

"Section 7(a) 'No employer shall, except as otherwise provided in this section, employ any of his employees who are engaged in commerce or in the production of goods for commerce—

"(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

"(2) for a workweek longer than forty-two hours during the second year from such date, or

"(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

The plaintiff asserts:

1. That in working its employees in and about their actual working places eight hours per day for five days per week it is not employing said employees for a workweek longer than forty hours.

2. That no part of the time (unless some actual physical labor or service is during such time performed for the plaintiff) spent by its underground employees in the bath house or in going from and to the bath house to or from the portal, or to and from the underground manloading station from or to the portal, or to or from the actual working places of the employees from or to the underground manloading station, constitutes a part of the "workweek".

Otherwise stated, the plaintiff asserts that the Congress intended the word "workweek" to be construed as meaning the time actually spent by plaintiff's underground miners in or about their usual work, and did not intend to include a part of the "workweek" the time spent by such underground employees in being transported or walking to and from the places where they actually worked.

(3) That if the Congress did intend that traveling time of plaintiff's underground employees to and from the places where they actually worked should be considered as a part of the workweek, such legislation is violative of the Fifth Amendment to the Constitution of the United States.

Some of the defendants (being members of the International Union of Mine, Mill & Smelter Workers, affiliated with the C. I. O.) assert:

1. That the Congress intended to include within the meaning of the word "workweek" all the time from the moment the underground employees leave the bath house before the beginning of the day's work until the moment they enter the bath house at the end of the day's work.

Otherwise stated, that the entire time from the moment the underground employees leave the bath house before the beginning of the day's work until the moment they enter the bath house at the end of the day's work should be considered as a part of the "workweek", and that the underground employees should be paid for all such time and should be paid overtime for such portion of the "workweek", as thus defined, which exceeds forty hours since October 24, 1940, and forty-two hours from October 24, 1939, to October 24, 1940, and forty-four hours from October 24, 1938, to October 24, 1939.

Others of the defendants (being members of Unit No. 8, Brotherhood of Miners of Captive Ore Mines of Alabama), so plaintiff has been informed and believes, assert:

1. That the Congress intended to include within the meaning of the word "workweek" all the time from the moment the underground employees enter the bath house

before the beginning of the day's work until the moment they leave the bath house at the end of the day's work.

Otherwise stated, that the entire time from the moment the underground employees enter the bath house before the beginning of the day's work until the moment they leave the bath house at the end of the day's work should be considered as a part of the workweek, and that the miners should be paid for all such time, and should be paid overtime for such portion of the week's work, as thus defined, which exceeds forty hours since October 24, 1940, and forty-two hours from October 24, 1939, to October 24, 1940, and forty-four hours from October 24, 1938, to October 24, 1939.

The controversy involves a large sum of money because, if the assertions and contentions of the plaintiff are correct and its construction of the Act legal, it has paid to its underground employees all the compensation due them under the provisions of the Act. However, if the assertions and contentions of the underground employees are correct and their construction of the Act legal, plaintiff will be due its underground employees a large sum of money for overtime at a rate not less than one and one-half times the regular rate at which the underground employee was employed, which accrued indebtedness, if the estimates of the underground employees as to the amount of overtime is correct, will amount to approximately Two Hundred Fifty Thousand and No/100 ($250.00) Dollars, and if the plaintiff continues in the performance of its understanding and contention that only time actually spent by an underground employee working at and around the usual workplace constitutes the "workweek", the overtime and obligations of the plaintiff, therefore, will each day become increasingly larger. Without a determination of this controversy it is impossible for plaintiff to know and ascertain whether or not it is violating the Act.

V.

The Opinion of the Administrator.

On March 23, 1941, the Administrator of the Wage and Hour Division, United States Department of Labor, announced a "Modified Portal to Portal Wage-Hour Opinion" and report, a complete copy of said opinion and report is hereto attached, marked Exhibit "A", and made a part hereof.

Plaintiff avers that said report was made on March 15, 1941, for release on Sunday, March 23, 1941, and said opinion was made on March 17, 1941, for release on Sunday, March 23, 1941; that promptly upon receiving information as to said opinion and report, plaintiff, with other employers like situated, filed with the Administrator its application for a reconsideration of said opinion; that a hearing on such application for reconsideration was held on Friday, March 28, 1941, before such Administrator; and that the petition for a reconsideration was taken under advisement. Plaintiff avers that on April 1, 1941, the Administrator denied the petitions for reconsideration but postponed the effective date from April 1, 1941, to May 1, 1941.

In said opinion the Administrator, in effect, expresses the opinion, and advises the plaintiff and other employers like situated, that the enforcement policy of the Division, effective May 1, 1941, will be that the workday in plaintiff's mines "starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the end of the shift".

Otherwise stated, it is the expressed opinion of the Administrator that the word "workweek" in said Act includes the entire portion of time spent by plaintiff's underground miners in going from the entrance or portal of the mine to the places where they actually work, and in returning from such places to said portal.

Plaintiff has been advised by counsel, and on such advice charges that the opinion expressed by the Administrator has no legal force; that the Administrator; under the provisions of the Act, has, and claims to have, no authority to judicially determine the legal effect of said provision of the Act; and that the opinion as thus expressed by the Administrator is erroneous and illegal. Said opinion is by no means a determining factor in this proceeding, but illustrates and emphasizes the bona fides of the controversy as herein set forth and the necessity for having said controversy fully, fairly, and promptly determined by this Court.

Said opinion serves as, and is claimed by defendants, to be, the principal support for their asserted construction of Section 7 of the Act.

There appears in said report (Exhibit "A") the following footnote:

"While the Wage and Hour Division Bulletins are not binding on the Courts, it may be anticipated that Judges will accord them especial weight; see United States v. American Trucking Associations, Inc., 310 U. S. 534. The Administrator has also from time to time issued statements concerning enforcement policy under which he proposes to proceed for reasons of administrative convenience." (Report, page 1, footnote 3.)

The institution and continuance in effect of the enforcement or threatened enforcement of said illegal and erroneous opinion of the Administrator subject the plaintiff to the peril of the heavy penalties of the Act.

In view of the foregoing, plaintiff, therefore, deems it material and relevant to make the following averments, which it asserts show or tend to show the illegality and incorrectness of the Administrator's opinion, and the lack of weight which should be accorded said opinion by this Court in declaring the issue of law herein sought to be declared.

Plaintiff avers that such averments where stated as facts are true, and where not stated as facts, plaintiff has been informed thereof, believes such information, and on such information and belief avers that they are true.

1. Plaintiff on information and believe alleges that prior to July 23, 1940, the Wage and Hour Division of the United States Department of Labor issued to the press the following release:

"First Mining Company Enjoined.

"The Cornucopia Gold Mines, a corporation with principal offices in Seattle, Washington, has been restrained from violations of the Fair Labor Standards Act, according to an announcement of the Wage and Hour Division, U. S. Department of Labor. This is the first Wage and Hour case in which judgment has been entered against a mining company. The corporation, operating a mine and mill near Cornucopia, Oregon, is engaged in the mining and concentrating of ore containing gold and silver.

"A judgment entered in the United States District Court for the Western District of Washington, Northern Division, on May 3, provides for the payment of restitution. Approximately $18,000 in back wages for overtime worked is due some 283 employees.

"An important stipulation contained in the judgment is that time spent by employees in traveling from the 'portal', or entrance, of the mine to the 'face', or place where they work, and from the 'face' back to the 'portal' is to be deemed time worked. This means that hereafter the miners are assured of wages from the time they enter the mine until they leave it. Heretofore the miners were required to show only six hours of work on their time cards, although they were actually in the mine for eight hours. The mining company previously had not paid for the two hours consumed by the men riding into the tunnel in the mine property and going up or down the shafts to their place of work for the day."

That said release was printed in newspapers over the United States, including the newspapers of Birmingham, Alabama; and that the publication of said release was one of, if not the sole, motivating cause of the making by the defendant unions of the claims against the plaintiff for compensation to the underground miners for the time spent in going to and from their actual working places, and that (presented' in flagrant violating of their written contract) these claims were the first insisted upon claims on the part of any underground employees for payment for time in going to and from their working places since mining became an industry in the State of Alabama.

The facts stated in said release above quoted were incorrect or incomplete. The true facts in reference to the Cornucopia case referred to in such release were that the employer: previous to the enactment of the Act, had computed and paid wages on the "portal to portal" plan, and that following the enactment of the Act for the purpose of avoiding or coming within its terms, the employer began to compute and compensate its employees on the so-called "face to face" plan*, and charged as transportation time an arbitrary time set for transportation against the working time of all employees without reference to the time actually spent by such employees in being transported to and from their working places, thereby not counting as a part of the "workweek" the time spent in transportation, although previously it had been the custom to include such time as a part of the "workweek". That under these circumstances the decree referred to in the above released statement was entered *by consent* of the parties.

Upon the publication in the various papers of the country of the release of the Administrator above referred to in reference to such decision, there followed the claim of defendants, in accordance with the information thus incorrectly set out in such release, that transportation time should be included in their "workweek" for which they should receive compensation.

Plaintiff avers that, as hereinbefore and hereinafterwards set out more in detail, the situation in its mines in reference to prior custom, prior contracts, and the computation and payment of compensation was exactly the reverse from the facts that existed in the Cornucopia Gold Mine Company case.

2. Plaintiff alleges on information and belief that on or about Saturday, July 27, 1940, there was issued by

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* Plaintiff uses the term "face to face" because of the fact that these terms have been used generally in describing plaintiff's method of operation. However, a more proper designation would be "working place to working place".

the United States Department of Labor, Wage and Hour Division, for release morning paper, Saturday, July 27, 1940, R-298, said release stating in substance that "two mining determinations were announced, one dealing with the status of lessees in mines and the other with working time in bituminous coal mines." In reference to the "determination" dealing with working time in bituminous coal mines, the release stated:

"Colonel Fleming announced that on the basis of an inquiry submitted by the bituminous coal mining industry, the Wage and Hour Division in carrying out its enforcement duties in that industry will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the particular industry and are supported by a long history of *bona fide* collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, Colonel Fleming announced that practice of computing working time on a 'face to face' basis in the bituminous coal mining industry would not be unreasonable. Colonel Fleming explained the term 'face to face' to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work and the time spent in traveling from the portal or entrance of the mine to the place of work and the time spent in returning from the working place to the portal in the evening. The Administrator added that the determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in the bituminous coal mining industry."

3. Plaintiff alleges on information and belief that the Wage and Hour Division, United States Department of Labor, issued for release Wednesday, September 18, 1940, G-81, an address scheduled for delivery of Colonel Fleming (Philip B.), Administrator, Wage and Hour Division, United States Department of Labor, before the American Mining Congress, Colorado Springs, Colorado, Wednesday, September 18, 1940, and that in said address the Administrator stated, among other things:

"1. Must the time spent by the underground worker in traveling from the portal to the face be counted as time worked?

"2. Must time spent at lunch underground be considered as time worked?"

In reference to the matter herein involved, the Administrator, among other things, said:

"The portal-to-portal matter also has been presented to us by the bituminous coal mining industry. In response to inquiry I said that the Wage and Hour Division, in carrying out its enforcement duties in that industry, will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the industry and are supported by a long history of *bona fide* collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, I announced that the practice of computing working time on a 'face-to-face' basis in bituminous coal mining would not be unreasonable. The term 'face-to-face' was explained to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work, and the time spent in returning from the working place to the portal at the end of the shift. This determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in bituminous coal mining. In the Cornucopia case, for example, custom and tradition had long recognized the portal-to-portal basis of reckoning time worked.

"We are not yet disposed to take any particular position as to whether the half hour spent eating lunch underground may be deducted from hours worked. The problem is a very difficult one because the employee is required to eat under very unfavorable conditions and is subject to many of the hazards of his job while eating. On the other hand, we recognize that the employee does have time off in order to have lunch and an argument can be made that such time need not be considered as hours worked. But as I say, the Division is not prepared at the present time to make any definitive determination on this question."

4. Plaintiff alleges that at various times from July, 1940, until the middle of October, 1940, during which time the Wage and Hour Division of the United States Department of Labor had under investigation with full cooperation of the plaintiff the claims as presented by the unions that the underground miners were entitled under Section 7 of the Act to be compensated for the time spent in going to and from their work places, plaintiff was on several occasions informed by the representatives of the Administrator conducting or taking part in such investigations that in reaching a conclusion as to the claims of the unions the Department would accord great weight to the prevailing customs and practices as sup-

ported by the history of bona fide collective bargaining agreements.

5. Plaintiff alleges on information and belief that hearings were held in Salt Lake City, Utah, conducted by Harold Stein as the representative of the Administrator, on December 11 and 12, 1940; that said hearings related substantially, if not altogether, to the non-ferrous mines of the West and had no proper relationship either to the iron ore mines of plaintiff and of other operators in the State of Alabama or to the iron ore mines as constituting a national industry; that hearings were held in the City of Birmingham, Alabama, conducted by the said Harold Stein, on January 14 and 15, 1941; that said hearings related solely to the limestone mine and iron ore mines of the plaintiff, of the Tennessee Coal, Iron and Railroad Company, Sloss-Sheffield Steel & Iron Company, and Woodward Iron Company as operated in Jefferson County, State of Alabama; that the evidence and information given at such hearing established without dispute the fact that since mining has been an industry in Alabama, down to and including the present time, it has been the universal and unvarying custom in all underground mines (coal, iron, limestone, and all others) to compute and pay underground employees compensation on the basis of "working place to working place", and that there has never been computed or paid any compensation for the time spent in transportation or in going to and from the actual working places, and that all contracts, including those now in existence with organizations representing the employees, expressly provide for the computation and payment of underground employees on the basis of "working place to working place".

6. Plaintiff alleges that neither in the hearings at Salt Lake City, Utah, or Birmingham, Alabama, so far as

plaintiff has been able to acquire knowledge, was any evidence given or statements taken relating to any ore mines in any other portion of the United States other than the Birmingham District, although plaintiff, on information and belief, charges that the percentage of iron ore produced in the Birmingham District is less than ten (10) percent of the total production in the United States of America, and of the total production there has never been, except in a few mines (not more than one and one-half (1½) percent of the total, in states controlled by local statutes) in custom and practice the so-called "portal to portal" plan as sought to be instituted by the Administrator as representing his construction of Section 7 of the Act.

7. The plaintiff alleges that the opinion (Exhibit "A") is based upon the report (Exhibit "A") hereinafter referred to, and that said report contains the following averments:

"(1) *Face to face.* The miners are paid only for working time at the face and excluding lunch. Except where the shift was measured only by the work performed, this is probably the oldest method of computing the shift, but the record indicates that only a small percentage of underground metal miners are still paid on this basis. The only important group of mines now operating on a face to face basis are those in Alabama.

"(2) *Collar to collar.* Far more common than face to face in modern practice, and universal in the states of Utah and Arizona, where it is required by law, is the collar to collar basis. On this basis, the miner is paid for all time from the moment he descends from the surface to the moment he returns to the surface, except that in some mines the lunch period is not paid for.

Characteristically, though not invariably, the collar to collar shift is eight hours. Ordinarily lunch is eaten on the company's time, but a fixed lunch period is normal, nevertheless."

"* * * The great majority of metal miners nowaday work in mines where they are paid for part or all of their underground travel time."

The above factual statements are incorrect. There is not in the States of Alabama any appreciable production of gold, silver, copper, lead, and zinc (the metals for the most part referred to and covered by said report). The only ferrous mines in Alabama referred to and included in said report are the iron ore mines (although the coal mines and other mines in Alabama have always followed the same method of computing and paying wages as the iron ore mines follow). The method of mining and production of iron ore has no real similarity to that of the metals above referred to, the mining of which, so far as said report is concerned, is located principally in the Western States. The ore mines of Alabama do not in any way come in competition with said metal mines; and there is no practical, logical, or historical reason for considering the ore mines of Alabama in relation to or in connection with the metal mines above referred to.

The ore mining industry of the United States is one of tremendous size and importance. In the year 1940 there was produced in the United States a total of approximately 76 million tons of iron ore. Of this total amount approximately 63 million tons or 84.2% were produced by the mines located in what is known as the Lake Superior ore mining territory, approximately 7 million tons or 9.5% were produced by the ore mines of Alabama, approximately 3 million tons of 4.7% were produced by the iron ore mines of New York, New Jersey, and Pennsylvania, and $1\frac{1}{2}$ million tons or 1.6% were produced by the iron ore mines of Utah and Wyoming. Of the small amount produced in the Western states of Utah and Wyoming, approximately 90% thereof is produced in the State of Utah, which is controlled by a state statute requiring computation and payment of compensation on the so-called "portal to portal" basis.

Instead of, as recited in said report, the "greater majority of metal miners nowadays working in mines being paid for part or all of their underground travel time" and the "only important group of mines now operating on the 'face to face' basis are those located in Alabama", substantially all of the iron ore mines in the United States have always been, and are at the present time, operated upon and the compensation of their employees computed and paid on the "working place to working place" plan. In approximately 100% of the mines of the United States producing iron ore, there is not now and has never been in operation the so-called "collar to collar" plan. Even in the non-ferrous mines there has never been in existence, except in a negligible degree, the "portal to portal" plan.

Plaintiff avers that the basis for the opinion as given in the report and the reason therein assigned for applying the measuring rod of "face to face" to the bituminous coal mines of the United States and the measuring rod of "portal to portal" or "collar to collar" to the iron ore mines of the United States is not supported by the facts; that no real distinction can be made between the bituminous coal mining industry and the iron ore mining industry; and that the correct construction of Section 7 of the Act as applied not only to these industries, but to all other industries, is that the word "workweek" was used by the Congress as meaning actual work at the usual working places, and it was not the intention of the Congress to include in the word "workweek" time spent by an employee in going to and from his place of work, during which time he is not in any way engaged in the performance of any physical labor or actual service for the employer.

VI.

Necessity for the Relief of a Declaratory Judgment.

1. The Act contains, among others, the following provisions:

"Section 15:

"* * * it shall be unlawful for any person—

"(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6* (minimum wages) and section 7 (maximum hours), or in violation of any regulation or order of the Administration issued under Section 14 (relating to learners, apprentices, etc.) * * *;

"(2) to violate any of the provisions of Section 6 (minimum wages) and section 7 (maximum hours), or any of the provisions of any regulation or order of the Administrator issued under Section 14 (relating to learners, apprentices, etc.);

"(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on any industry committee;

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* Parenthesis and emphasis herein are ours.

"(4) to violate any of the provisions of Section 12 (prohibition against child labor);

"(5) to violate any of the provisions of Section 11(c) (relating to reports, etc.), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

"Section 16:

(a) Any person who willfully violates any of the provisions of Section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

"(b) Any employer who violates the provisions of section 6 or section 7 of this act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any Court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The Court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

As hereinbefore alleged, the plaintiff, under its assertion that "workweek" means time spent at the underground miners' usual working places, has, for several years prior to the enactment of the Act, employed, and now employs, its underground miners at their usual places of work forty hours per five-day week. It, therefore, follows that if the assertions and contentions of either the Administrator or of any class of plaintiff's underground mining employees are correct that plaintiff will be subject, among other things, first, to the penalties as set forth in section 16(a); second, to the unpaid overtime compensation and to an additional equal amount as liquidated damages and a reasonable fee to be paid to the attorneys of such underground employees who bring suits, together with the costs of the actions; and, third, to the costs, expenses, and inconvenience of a multiplicity of actions, depending upon how many of said underground mining employees of the plaintiff institute such legal proceedings.

2. *Threatened litigation:*

Plaintiff is in immediate peril of threatened litigation, because:

A. Defendant, Raimund Local 121, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers (a C. I. O. organization), on or about October 5, 1940, presented to the plaintiff a written officially adopted resolution and statement asserting that the plaintiff had required its underground employees "to be on the premises on duty and in the performance of their work for the company ten hours per day, totaling fifty hours per 'workweek'" (the claim being based upon the alleged statement that two hours were spent on the premises of the plaintiff in time spent in the bath house or in transportation or walking to and from the working place, and demanding payment by the plaintiff of "all back time since the effective date" of the Act. A copy of said resolution is hereto attached, marked Exhibit "B", and made a part hereof.

B. Defendant, Raimund Local 121, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers (a C. I. O organization), by and through its duly constituted and authorized officers, and through its legal counsel, asserted and contended in the conference held by the Wage and Hour Division of the United States Department of Labor in Birmingham, Alabama, on January 14 and 15, 1941, that under the provisions and terms of the Act it was entitled to have counted as a part of the "workweek" of its members approximately two hours claimed to have been spent each workday from the moment they leave the bath house before the beginning of the day's work until the moment they enter the bath house at the end of the day's work.

C. Defendant officers and members and other members of said defendant, Raimund Local 121, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers (a C. I. O. organization), and defendants Jones, Pegues, and Allen have for several months past, and up to and including the time of the filing of this petition, made many and repeated statements and threats to institute and prosecute suits against the plaintiff under the provisions of the Act for the purpose of enforcing the payment by plaintiff of overtime (claimed as above set forth) at the rate of one and one-half times the regular rate at which plaintiff's underground miners were employed, together with attorneys' fees and costs.

D. Plaintiff has been informed, believes such information, and on such information and belief charges that said defendant, Raimund Local 121, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers (a C. I. O. organization), has employed attorneys and authorized and directed them to proceed in the prompt bringing of such legal proceedings as may be necessary to enforce against the plaintiff their claim for such overtime payments, together with attorneys' fees and costs.

E. Defendant officers and members and other members of all of said defendant Local have for several months past and up to and including the date of the filing of this petition made many and repeated statements and threats to institute and prosecute suits against the plaintiff under the provisions of the Act for the purpose of enforcing the payment of the alleged overtime (claimed as above set forth) at the rate of one and one-half times the regular rate at which plaintiff's underground miners were employed, together with attorneys' fees and costs.

F. Plaintiff has been informed, believes such information, and on such information and belief charges that on Sunday, March 23, 1941, defendant Van D. Jones, Executive Board Member of District No. 5 of the International Union of Mine, Mill and Smelter Workers, and the principal administrative officer of the said Union in the State of Alabama, referring to the "portal to portal" opinion of the Administrator, publicly announced in the press that the red ore miners of the Birmingham District, members of his union, would at once seek to recover a million dollars in back wages claimed to be due from the plaintiff and other operators of iron ore mines in Jefferson County, Alabama, and that approximately 6000 Alabama red ore miners would bring litigation for the purpose of enforcing the collection of the claimed amounts.

Wherefore, Plaintiff asserts that it is threatened with the immediate institution and prosecution of a multiplicity of suits involving large sums of money, and unless the declaration herein prayed for is granted, the plaintiff will be faced with great, if not irreparable, injury.

VII.

Probability of Great, If Not Irreparable, Injury.

If the declaratory judgment herein prayed for is not granted, the plaintiff is in immediate peril of suffering great and irreparable injury because (among other things):

1. Of the vexation, cost, and expense of a multiplicity of suits.

2. Of the delay in the settlement and determination of the controversy which will necessarily follow if the prompt remedy afforded by the Declaratory Judgment Act and Rule 57, Rules, District Courts of the United States, is not applied and the final determination of the legal question involved is left to the adjudication of such threatened suits, the bringing of which is immediately imminent;

3. Of the fact that, under the provisions of the Act, the threatened suits for overtime payments may be brought in different jurisdictions, in Federal Courts or in State Courts, and will be encumbered with the costs and expenses of such litigation and the delays incident to final determination and the changes of different adjudications by different jurisdictions;

4. Of the probability of cessation in work, and losses and damages and ill feelings by reason of labor disturbances, which will almost inevitably follow if the plaintiff fails to comply with the present illegal and erroneous opinion of the Administrator; or if in attempting to comply it is forced to insist on a reduction of the compensation now being paid its underground employees.

5. Of the great expense that the plaintiff will be put to in changing its operations from the "working place to working place" plan to the "portal to portal" plan, in the event, by reason of the Administrator's opinion and the perils of not complying therewith, it feels compelled to endeavor to comply therewith;

6. Of the claims of the different individual employees and the different classes of employees, being so different as to impose upon the plaintiff the perils and uncertainties incident to different contentions, and adjudications in reference to the legal issues herein sought to be declared.

VIII.

Perils of Decision.

Unless the plaintiff can obtain a prompt declaration on the issue of law here presented, it is confronted with unusual and immeasurable perils of making a decision, because:

1. If it, under advice of counsel, decides to stand by its construction of the law, and the Court should ultimately decide that the assertions either of the Administrator or of individual employees or any of the classes of plaintiff's employees are correct, plaintiff would be subjected:

A. To the costs, expenses, and heavy penalties which would be imposed under Section 16(b) of the Act.

B. To the penalties of fine and imprisonment imposed by Section 16(a) of the Act.

C. To having the Administrator, under the warning given in his opinion of March 23, 1941 (Exhibit "A" hereto attached), proceed against it by injunction proceedings under Section 17 of the Act, and the prevention of the shipment in interstate commerce of its manufactured products.

2. If, on account of the perils incident to standing on its conviction under advice of counsel, it feels impelled on account of the uncertainties and delays of litigation to accept and comply with the opinion either of the Administrator, or with the demands and assertions of defendants, plaintiff will probably, and in many respects certainly, be subject to or have imposed upon it (among other things):

A. The payment of large sums of money to its employees for overtime as contended for by them.

B. The planning and institution of new methods of operation which will result in great loss and damages to the plaintiff because:

(a) compliance will result in a large reduction in production if the "portal to portal" plan should be put in effect and the underground employees could not remain underground more than eight hours per working day, which would mean that the time spent in going to and from the working places or from the bath house would have to be subtracted from the time now spent in actual work at the actual working places, thereby reducing the actual day's work time from eight hours to five hours or six hours, depending upon the correctness of the contentions of the various classes of employees.

(b) It would greatly increase plaintiff's cost per ton of ore produced.

(c) It would place the plaintiff at a serious disadvantage with its competitors and would deprive it of a substantial portion of its existing markets.

(d) As an illustration of the increased cost of which would fall upon the plaintiff, plaintiff has carefully calculated what the effect of putting the opinion of the Administrator into effect at its Raimund ore mines would be, and avers:

(1) Should the plaintiff continue to operate said mine on its present and long-existing custom and practice of five days per workweek (eight hours per workday), and continue to receive from its underground employees eight hours' actual work at their usual working places, and pay as overtime the approximate two hours consumed in going to and from the working places, the increased cost per ton of iron ore per ton would be twenty-seven cents.

(2) Should the plaintiff operate the mine four days per week instead of five days per week, it could comply with the opinion of the Administrator without exceeding forty hours per workweek. The increase of cost per ton, if this plan of operation should be put into effect in order to comply with the Administrator's opinion, would be twenty-three cents per ton of iron ore.

(3) Should the Company be able by changing its method of transportation by the purchase at large cost of additional equipment and by arranging a schedule of transportation so that each employee would have a definite time for entering and leaving the mine, the increase in cost would be large and the difficulties of operation great.

(e) Not only would the cost per ton of ore produced be greatly increased, but the percentage of loss in tonnage produced would be large, and the loss of production would not only be to the damage of the plaintiff but, by reason of the bonus which the underground mining employees receive upon the amount of their production, the loss of wages upon employees would be substantial.

(f) "The plaintiff's cycle of operations, computation of wages, payment of wages, methods and forms of bookkeeping, rules and regulations governing employees, method and time of transportation, assembly and delivery of tools, powder, and equipment, and activities of service and surface crews have all been by long and unvaried custom, related to and based upon the "working place to working place" plan, and to change this method would be difficult and costly.

IX.

Great Weight Should Be Accorded to Any Reasonable Standards Which Represent the Prevailing Custom

and Practice in the Particular Industry, and Which Are Supported By a Long History of Bona Fide Collective Bargaining Agreements.

The reasonableness of plaintiff's contention is supported by the following, among other, facts:

1. It has been for more than fifty years the unvarying and continuous custom in plaintiff's ore mines, as well as in all other ore mines in Alabama, for the wages of underground ore miners to be computed and paid on the "face to face" basis.

2. It has been for more than fifty years the unvarying and continuous custom in plaintiff's ore mines, as well as in all other ore mines in Alabama, that underground ore miners should not have their wages computed or paid for the necessary time in going from and to the surface and to and from their underground working places.

3. The same unvarying and continuous custom, as set forth in 1 and 2 above, has for more than fifty years existed in all underground coal mining operations of the plaintiff and of all other coal operators in the State of Alabama.

Plaintiff alleges that there can be, under conditions existing in the State of Alabama, no logical or possible differentiation between underground ore mines and underground coal mines, so far as the question under consideration is concerned.

4. The opinion (and enforcement thereunder) of the Administrator in reference to the bituminous coal mines is inconsistent with his opinion in reference to the iron ore mines.

5. The previous statement and interpretation of Section 7 of the Act by the Administrator are inconsistent with his present opinion in reference to the iron ore mines.

6. The laws of the State of Alabama during all of the period of time herein referred to have recognized in garnishment proceedings, wage suits, and other related matters that the payment and computation of wages in underground mines should be on the "face to face" basis.

X.

Petition and Prayer.

Wherefore, Plaintiff petitions and prays this Court to make and enter a decree and judgment declaring the rights of the respective parties hereto in the premises and more particularly plaintiff's rights as asserted in the following specific propositions:

A.

Has the plaintiff, in following the work schedule and procedure as hereinbefore in Section II hereof set out, compiled with the provisions of Section 7 of the Act?

B.

Did the Congress in the enactment of Section 7 of the Act intend that the "workweek" of plaintiff's underground employees should include any portion of their time spent in being transported or walking to and from their usual working places and while not engaged in any physical work or service for the plaintiff?

C.

Is the plaintiff indebted in any sums to its underground employees for the time spent by them at any time since the enactment of the Act and embracing (without any physical work or service for the plaintiff being done during such time)—

(a) Any time spent in the bath house;

(b) Any time spent in going from and to the bath house to and from the portal;

(c) Any time spent in being transported from and to the portal to and from the underground manloading station;

(d) Any time spent in walking to and from their usual working places from and to the underground manload station?

E.

What did the Congress intend in so far as the method of operation of plaintiff as hereinbefore in Section II hereof set forth are concerned by the use of the word "workweek"?

F.

Are the assertions of the plaintiff as herein set forth as to the intentions of Congress in the use of the word "workweek" legal and correct?

Premises Considered, Plaintiff petitions and prays that the Court adjudge and answer, separately and severally, each of the questions and specifically set forth in the above paragraphs numbered A to F, both inclusive, and determine and declare that the plaintiff is not indebted to the defendants and its underground mining employees as compensation for any time spent by them since the enactment of the Act in the bathhouse or in going from and to the bathhouse to or from the portal or to and from the underground manloading station from or to the portal or to and from the actual working places of the employees from or to the underground manloading station (during which time said employees performed no physical labor or service in connection with their actual work), and that said defendants and their agents, representatives, and all underground employees of the plaintiff made parties defendant hereto as a class be restrained and enjoined from prosecuting any suit or claim of any nature whatsoever against plaintiff for any additional wages or compensation claimed to be due them under the terms and provisions of the said Act for any portion of their time spent as above set forth, and plaintiff prays for a general declaratory judgment with reference to the questions presented by this petition, and a judgment against the defendants for costs herein, and if the plaintiff be mistaken in the relief prayed for, plaintiff hereby prays for such other, further, more different or general relief as to the Court may seem meet, just, and proper, the premises considered.

Plaintiff prays that in accordance with rule 57, District Courts of the United States, the Court order a speedy hearing of this action and advance it on the docket.

XI.

Alternative Prayer.

If for any reason this Court should decline to take jurisdiction hereof under the provisions of the Federal

Declaratory Judgment Act (Section *I*(g) hereof), plaintiff in the alternative prays that this Court assume, take, and exercise equity jurisdiction because of the existence of the facts herein alleged which confer upon said Court such equity jurisdiction in that it, separately and severally, appears therefrom that such jurisdiction should be exercised because:

(a) It is essential to the protection of the rights asserted by the plaintiff herein;

(b) It is essential to secure a determination of the question arising hereunder under a law regulating commerce;

(c) It is essential to the protection of the plaintiff from the costs, expense, inconvenience, and vexation of a multiplicity of suits;

(d) It is essential to protect the plaintiff against irreparable damage;

(e) It is essential to protect the plaintiff against the penalties of an Act of the Congress through an illegal and improper application of the provisions of such Act.

(f) It is essential to protect the rights of plaintiff on account of the inadequacy of any remedy at law:

(g) It is essential for the determination of plaintiff's assertion that the defendants are estopped by the terms of their written contract and by their conduct from asserting their claims for compensation for time in going to and from their places of work;

(h) It is essential to determine plaintiff's claim for and to grant plaintiff a specific performance of defendants' written contract.

Wherefore, Plaintiff prays that this Court will issue a temporary restraining order or preliminary injunction restraining and enjoining said defendants and their agents and representatives and all underground mine employees of the plaintiff made parties hereto as a class from instituting, maintaining, or prosecuting any other action or proceeding to determine the rights of this plaintiff or of the defendants under the averments of this bill of complaint, and, that each of said defendants be required to propound and assert their respective rights, if any they have, to this Honorable Court; and plaintiff further prays, separately and severally, that on final decree it be ordered, adjudged, and decreed by the Court:

1. That plaintiff is not indebted to any of its underground mine employees in any sum under the provisions of the Fair Labor Standards Act of 1938;

2. That defendants are not entitled to recover from plaintiff any compensation under the provisions of the Fair Labor Standards Act of 1938;

3. That plaintiff is not indebted in any sums to any of its underground mine employees for the time spent by them at any time since the enactment of the Act and embracing (without any physical work or service for the plaintiff being done during such time)—

(a) Any time spent in the bathhouse;

(b) Any time spent in going from and to the bathhouse to and from the portal;

(c) Any time spent in being transported from and to the portal to and from the underground manloading station:

(d) Any time spent in walking to and from their usual working places from and to the underground man-loading station;

4. That defendants are estopped by their written contract and by their conduct from asserting any claim for or recovering any compensation for time spent in going to and from their place of work;

5. That plaintiff is entitled to the specific performance of the written contract between plaintiff and the defendants.

6. That plaintiff go hence with its reasonable costs herein incurred.

Plaintiff submits itself to the jurisdiction of the Court and offers to do full equity.

T. F. PATTON & BORDEN
BURR
and
BENNERS, BURR, McKAMY &
FORMAN,
Attorneys for Plaintiff.

Birmingham, Ala.

Verification.

State of Alabama,
Jefferson County.

Personally appeared before me, the undersigned authority in and for the above named State and County, N. E. Thompson who being first duly sworn, on oath deposes and says that he is the Superintendent of Ore Mines of the Republic Steel Corporation, a corporation, named as plaintiff in the foregoing petition, and as such Superintendent and agent is authorized to make this affidavit; that he has read over the facts therein set forth; that he is familiar with the facts as therein stated; and that said facts as therein stated are true except where stated on information and belief and where so stated he verily believes the same to be true.

N. E. THOMPSON.

Sworn to and subscribed before me this 3 day of April, 1941.

MARGARETTE KENNEDY,
(Seal) Notary Public.

Filed April 4, 1941.

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EXHIBIT A.

Exhibit A to the petition of the Republic Steel Corporation is a copy of the Opinion and Report of the Administrator of the Wage and Hour Division of the United States Department of Labor, marked "For Release Sunday, March 23, 1941," and is in all respects identical with Exhibit A to the petition of the Tennessee, Coal, Iron & Railroad Company, heretofore set out on page 76 of this transcript.

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EXHIBIT B.

Copy:

Bessemer, Alabama, October 12, 1940.

In Re: Raimund Local No. 121, of the International Union of Mine, Mill and Smelter Workers, District No. Five, an Affiliate of The Bessemer Smelters Council.

Whereas, there now exists a controversy between this Local and the Republic Iron & Steel Company, at its mines near Bessemer, Alabama, and this controversy is of long standing and deals with the travel pay of our members by the above mentioned Company at its iron ore mines in its production and maintenance departments; and these employees are required to report at the mouth or collar of the mines at 6 o'clock, A. M. in the morning for the purpose of being loaded into mantrips and other methods of entering the mines, they being underground workers; and at the mouth or collar of the mines are checked in at six o'clock and immediately given supplies, tools, equipment and instructions, and then they proceed to their working places, which is approximately 2 miles from the mouth or collar of the mines and down under the ground, which requires and consumes approximately one hour's time before they then arrive at their usual working places; all of this time being spent on the premises of the Company, and after the men are checked in and given supplies, equipment and instructions then they proceed to their working places to perform their usual tasks, after which they return to the mouth or collar of the mines arriving there about four o'clock in the afternoon, and are checked out, thus requiring the employees to be on the premises on duty and in the performance of their work for the company ten

(10) hours per day in the mines, totaling fifty hours per work week, and

Whereas, immediately after our Union was set up, and ever since that time, we have been protesting the travel pay of our members in this mine, and this controversy is based upon the time spent by our members on the premises of the Company each work week and being in excess of the hours required to work under the law, and as we understand it, in violation of the rules and law, and which time amounts to approximately 10 hours per workday, and employees affected by this condition numbering approximately 600. And we further believe that in view of the fact that the Fair Labor Standards Act was passed primarily for the purpose of reducing excescessive required hours on the premises of the employer during any given work week, and

Whereas, the Fair Labor Standards Act is recognized and being complied with in many instances without any controversy on the part of the employers, but notwithstanding that fact and in the face of many rulings by the Wage & Hour Board supporting our position and conditions of work, we are still required by the said Company to be on the premises of the Company many hours in excess of the workweek, and for which we receive no pay.

Therefore: Be it Resolved by this Local in regular meeting assembled that we authorize and request our local and National officers to immediately bring about a correction of these conditions and require the Company to immediately comply with the Fair Labor Standards Act from now on, and also require the Company to pay all back time since the effective date of this law.

And we further authorize our officers to bring this Resolution to the attention of the Hon. Robert P. Amis, Regional Director of the Wage & Hour Division of the Department of Labor in Birmingham, Alabama, and also with Col. Philip B. Fleming, Administrator of the Wage & Hour Division of the Department of Labor, Washington, D. C. And our officers both local and National are further authorized to take such steps as may be necessary and expedient, by negotiations or suit, in order to bring about a speedy conclusion of this controversy.

Be it further resolved that copies of this Resolution be immediately forwarded to all interested parties.

This is to certify that the above is a true and exact copy of a Resolution unanimously adopted by Local No. ... in its regular meeting of October 12, 1940.

(S.) LOUIS TARRANT,
As President of Local #121 of
I. U. M. M. & S. W.

Attested by:
(S.) B. G. STEPHENS,
As Recording Secretary.
(Seal)
(I. U. M. M. & S. W.)
(Raimund Local #121)
(Bessemer, Ala.)

MOTION OF PETITIONER-PLAINTIFF REPUBLIC STEEL CORPORATION FOR A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION.

201 (Civil Action No. 5234.)

Comes the plaintiff in the above entitled cause, and adopting the allegations of its bill of complaint as a part of this motion, moves the Court to issue herein a temporary restraining order or preliminary injunction restraining and enjoining said defendants and their agents, representatives, and all other underground employees of the plaintiff made parties defendant hereto as a class from prosecuting any suit or claim of any nature whatsoever against plaintiff for any additional wages or compensation claimed to be due them under the terms and provisions of the said Act for any portion of their time, including the lunch period, spent in being transported or going to and from their actual places of work, and that the terms of said injunction be as set forth in prayer of said bill of complaint.

BORDEN BURR
and
BENNERS, BURR, McKAMY & FORMAN,
Attorneys for Plaintiff.

Filed April 4, 1941.

ORDER SETTING MOTION OF PETITIONER-PLAINTIFF REPUBLIC STEEL CORPORATION FOR TEMPORARY RESTRAINING ORDER OR PRE-PRELIMINARY INJUNCTION OF HEARING.

202 (Civil Action No. 5234.)

This matter coming on to be heard on the motion and prayer of the plaintiff for the issuance of a temporary restraining order or preliminary injunction, it is ordered by the Court that said motion be, and the same hereby is, set for hearing in open Court on the 17th day of April, 1941, at 10 o'clock A. M.

It is further ordered that service of a copy of the bill of complaint herein, of said motion and of this order be made upon the defendants in accordance with Rule 5(b) of the Rules of Civil Procedure, and that such service be made not less than five (5) days before the time set for hearing.

This 4th day of April, 1941.

T. A. MURPHREE,
Judge.

Filed April 4, 1941.

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203 RETURN OF SERVICE OF PROCESS ON PETITION OF REPUBLIC STEEL CORPORATION, omitted from the printed record, pursuant to Rule 23 of this Court.

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TEMPORARY RESTRAINING ORDER.

204 Civil Action No. 5232.

This cause coming on to be heard on this the 12 day of April, 1941, on the application of certain of the defendants that the hearing heretofore set herein for April 17, 1941, on plaintiff's motion for a restraining order or preliminary injunction be continued, and said application being considered, it is ordered and decreed by the Court:

1. That said hearing previously set for April 17, 1941, be, and the same hereby is, continued;

2. That said cause be, and the same hereby is, set for hearing and for trial on the merits for Monday, June 23, 1941, at 10 o'clock A. M.;

3. That pending said hearing the status quo of said case shall be maintained and that said defendants and the underground employees of the plaintiff as set forth and described in the bill of complaint and their agents and representatives be, and they hereby are, temporarily restrained from instituting and prosecuting any suits in any Court relative to the matters and things in the bill of complaint set forth.

It is further ordered that attorneys for plaintiff be, and they hereby are, expressly authorized and directed to make service of this order upon defendants or their attorneys.

T. A. MURPHREE,
Judge.

Filed April 14, 1941.

On April 12, 1941, an identical order was entered and filed in Civil Action No. 5234—Republic Steel Corporation v. Raimund Local No. 121, et al., and on April 14, 1941, an identical order was entered and filed in Civil Action No. 5233—Sloss-Sheffield Steel & Iron Company v. Sloss Red Ore Local No. 109, et al.

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206 ORDER CONTINUING TEMPORARY RESTRAINING ORDER.

(Civil Actions Nos. 5232, 5233 & 5234.)

The temporary restraining order heretofore issued in the above entitled causes for good cause shown, is hereby continued in force and effect for ten days from the date hereof.

Dated this 24th day of April, 1941.

T. A. MURPHREE,
District Judge.

Filed April 24, 1941.

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207 ORDER CONTINUING TEMPORARY RESTRAINING ORDER.

(Civil Actions Nos. 5232, 5233 & 5234.)

The temporary restraining order heretofore issued in the above entitled causes for good cause shown, is hereby continued in force and effect for ten days from the date hereof.

Dated this 5th day of May, 1941.

T. A. MURPHREE,
District Judge.

Filed May 5, 1941.

208 ORDER CONTINUING TEMPORARY RESTRAINING ORDER.

(Civil Actions Nos. 5232, 5233, & 5234.)

The temporary restraining order heretofore issued in the above entitled causes for good cause shown, is hereby continued in force and effect for ten days from the date hereof.

Dated this 14th day of May, 1941.

T. A. MURPHREE,
District Judge.

Filed May 14, 1941.

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209 ANSWER OF DEFENDANTS AFFILIATED WITH AMERICAN FEDERATION OF LABOR.

(Civil Action No. 5232.)

Come the above named defendants and, for answer to the petition of complaint heretofore filed in this cause, say:

1.

Defendants admit the averments in Section I of said complaint as to allegations of jurisdiction of the Court.

2.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Section II of said complaint.

3.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Section III of said complaint.

4.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in Section IV of said complaint.

5.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in Section V of said complaint.

6.

Defendants deny the averments of Section VI of said complaint.

7.

Defendants deny the averments of Section VII of said complaint.

8.

Defendants deny the averments of Section VIII of said complaint.

9.

Defendants deny the averments of Section IX of said complaint.

10.

Defendants are without knowledge or information sufficient to form a belief as to the truth of said averments in Section X of said complaint.

11.

Defendants deny that petitioners are entitled to the relief prayed for in Sections XI and XII of said complaint.

12.

The petition or complaint fails to state a claim against defendants upon which relief can be granted.

Cross-Claim.

And defendants, hereinafter named, hereby present and file a cross-claim against the plaintiff, Tennessee Coal, Iron & Railroad Company, a corporation, and set forth the following facts, upon which said cross-claim is based:

First. That this cross-claim is made and asserted for and on behalf of all of the named defendants as set out in sub-paragraphs (e), (f), (g), (h), (i), (j) of Article or Section III of the complaint, and all persons who are represented by the said named persons, associations, and labor unions who are or have been employees of Tennessee Coal, Iron & Railroad Company in its iron ore mines in Jefferson County, Alabama, from to-wit: October 24, 1938, to and inclusive of April 30, 1941, and who are or were members of the named local unions affiliated with the American Federation of Labor, and all other employees of the plaintiff who are or were similarly situated, but who are not specifically referred to or made parties to this suit. All of the said parties defendant and cross-claimants being too numerous to specifically name or enumerate, but who are of the classes or groups herein enumerated and described.

Second. That on and prior to October 24, 1938, and up to and inclusive of April 30, 1941, the said Tennessee Coal, Iron & Railroad Company was engaged in the manufacture and production of iron and steel products and transporting, selling, and handling such products in interstate commerce among the several states, as averred in Section II of the complaint, and that the persons named and referred to in paragraph first of this cross-claim were employees of the defendant in its iron ore mines in Jefferson County, Alabama, during said period of time, and as such employees were engaged in the production of said goods for interstate commerce, and were therefore working subject to the provisions of the Fair Labor Standards Act of 1938 as to hours worked and rates of pay.

Third. That the persons named and referred to in paragraph first of this cross-claim who were and are employees of the said Tennessee Coal, Iron & Railroad Company in its iron ore mines in Jefferson County, Alabama, and all other employees similarly situated, have been since October 24, 1938, up to and inclusive of April 30, 1941, required to report for work and to be checked in as on duty, subject to the orders and directions of their said employer at the collar or portal of which every iron ore mine of plaintiff the said employees worked, at to-wit: 6:00 o'clock A. M. for the morning shift, and at to-wit: 6:00 o'clock P. M. for the evening shift, and that from said respective times said employees were and are under the control and subject to the orders and directions of their said employer, and are and were engaged in the performance of their work and duties under said orders and directions until they return to the collar or portal of said mine and are checked out at to-wit: 4:00 o'clock P. M. for the morning shift and at to-wit: 4:00 o'clock A. M. for the evening shift, on each of their respective work days, thereby being engaged in the performance of their work and duties as such employees and subject to the orders and directions of their employer, ten hours on each work day, totaling approximately 50 hours for each work week during the whole of said period of time aforesaid, and for which overtime the said employees have not been paid by the plaintiff as provided for under Section 7 (a) of said Fair Labor Standards Act of 1938, and for such overtime the defendants and cross-claimants herein claim time and a half pay for such overtime, more particularly as follows:

6 hours overtime during each work week of each and every employee (defendants herein) during the first year from the effective date of said Fair Labor Standards Act of 1938;

8 hours overtime during each work week of each and every employee (defendants herein) during the second years from said effective date of said Act;

10 hours overtime during each work week of each and every employee (defendants herein) during the third year from said effective date of said Act to April 30, 1941;

together with an equal amount of payment as penalties, and together with a reasonable attorneys' fee for the services of their attorneys in prosecuting said cross-claim to final determination, as provided for under Section 16 (b) of said Fair Labor Standards Act of 1938.

Wherefore, the Defendants Demand:

(a) That the Court order that the plaintiff, the Tennessee Coal, Iron & Railroad Company, a body corporate, be made a party defendant to respond to this cross-claim, as provided for under the rules of this Court.

(b) That the Court order, adjudge and decree that the work day in under-ground metal mining start when the miner reports for duty as required at or near the collar of the mine, and end when he reaches the collar at the end of the shift, and that the work day also include the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out, and that the work day not include any fixed lunch period of one-half hour or more during which the miner is relieved of all duties.

(c) That plaintiff is indebted to its under-ground mine employees (defendants herein) for overtime worked by them under the provisions of the Fair Labor Standards Act of 1938.

(d) That, if the Court shall determine that the plaintiff is indebted to its said employees in its iron ore mines in any sums of money for overtime work performed by said employees, as provided for under Section 7 of the Fair Labor Standards Act of 1938, the Court will appoint a Special Master to ascertain and find

1. The name, address, and number of hours worked by each of said employees who would be entitled to relief as a cross-claimant in excess of the numbers of hours fixed under Section 7 of said Act for each work week from to-wit: October 24, 1938, to and inclusive of April 30, 1941, and the amount of each and every such claim for such overtime pay;

(e) That the Court will render judgment in favor of defendants (cross-claimants) and against the plaintiff, Tennessee Coal, Iron & Railroad Company, a corporation, for such overtime pay, assessing and including penalties and attorneys' fees to each of said claims and judgment, as provided for under Section 16 (b) of the Fair Labor Standards Act.

(f) That defendants have such other and further relief as is just.

(g) That the defendants and cross-claimants recover their costs.

J. Q. SMITH,
RALPH W. QUINN,
W. F. SPENCER,
Attorneys for Defendants and cross-claimants herein named.

707-8 Farley Building.

I hereby certify that I have this day served a copy of the above answer on Honorable Borden Burr, Attorney for Petitioners and Plaintiff in said cause.

This the 17th day of May, 1941.

J. Q. SMITH,
Attorney for Defendants.

Filed May 17, 1941.

215 MOTION TO DISMISS AND ANSWER OF DEFENDANTS AFFILIATED WITH INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS.

(Civil Action No. 5232.)

Now comes the defendants, Muscoda Local No. 123, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, and W. C. Gunnin, Pete Dulaney, R. H. Martin and John Thompson, individually and as officers and members of such Local; and Wenonah Local No. 157, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, and C. J. McDaniel, W. B. Lemley, R. E. Lemley and Ward Jefferson, individually and as officers and members of such Local; and Ishkooda Local No. 153, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, and E. A. Sisemore, L. H. McBrayer, Elmore Mitchell, and Dennis Hart, individually and as officers and members of such Local; and Van D. Jones, C. L. Pegues, and Frank Allen, individually and as officers of the International Union of Mine, Mill and Smelter Workers, an unincorporated association, and move the Court to dismiss the bill of complaint and for grounds of this motion assign the following, separately and severally:

1. The complaint fails to state a claim against these defendants upon which relief can be granted.

2. It appears upon the face of the complaint that no actual controversy within the meaning of Section 274 (d) of the Judicial Code (U. S. Code, Title 28, Section 400) exists between the plaintiffs and these defendants, and that there is no cause of action for a declaratory judgment.

3. It appears upon the face of the complaint that the defendants are being sued to obtain a declaratory judgment regarding the interpretation and constitutionality of the Fair Labor Standards Act of 1938 and to secure an injunction against the enforcement of said Act, more particularly, relating to the Modified Portal-to-Portal Opinion and Report of the Administrator of said Act, which is Exhibit A to the complaint herein.

4. It appears upon the face of the complaint that the defendants, and each of them, have no power, authority or discretion to make, issue, amend, or modify any regulation or interpretations or opinions and reports under said Act.

5. It appears upon the face of the complaint that if the action had been brought against the Administrator of the said Act, or any of his duly authorized agents, it would be dismissed for failure to state a claim upon which relief could be granted.

6. It appears upon the face of the complaint that the plaintiff is not threatened with or is facing any irreparable damage or injury.

7. It appears upon the face of the complaint that the plaintiff has a complete and adequate remedy at law.

8. The complaint fails to show any case or controversy between the plaintiff and the defendants properly within the jurisdiction of the Court.

II.

Answer of the Defendants.

The defendants, without waiving the motion to dismiss hereinabove set forth, do make answer to the bill of complaint as follows:

1. For answer to the bill of complaint as a whole, defendants say that since this bill if complaint was filed the complainant has voluntarily undertaken to pay its employees on a basis from portal to portal or collar to collar and is voluntarily doing the very thing which it asks the Court to adjudge would be an irreparable hardship upon the complainant.

2. That the bill of complaint shows on its face that it is a mere device contrived to obtain a ruling from this Court against a government official and nullifying his action as such without making him a party to this proceeding. Under established rules of law and prior decisions of this Court, the complainant would not be entitled to such relief in a direct proceeding against the Administrator of the Wage and Hour Division under the Fair Labor Standards Act of 1938. As a result the complainant is seeking to do deviously and by indirection that which it could not do if it made a direct attack against the action of the Administrator in a proceeding to which he was a party. In short, the bill of complaint attempts by collateral attack to do that which the complainant could not do if it made a direct attack.

For detailed and special and particular answer to the bill of complaint the defendants, in answer to section numbered 1 of the bill entitled "Allegations of Jurisdiction", admit the averments of paragraphs a, b, and C, and as to paragraphs d, e, f, g, h, and i, the defendants deny that the averments of the bill of complaint state facts sufficient to authorize the Court to render a declaratory judgment or to grant injunctive relief.

Answering section 2 of the bill of complaint entitled "The Plaintiff and Its Operations", defendants deny the averments that "these hourly rates have been established on a systematic basis, taking into consideration all factors which make up a proper occupational rate". Defendants further deny the averment "The operations in its coal mines insofar as the questions involved here are related and concerned, is substantially the same as its operations in its ore mines and limestone mine". The defendants further deny the averment that "The employees are not compelled to use the bath-house facilities" and on the contrary, allege that the nature of the work itself makes it obligatory upon the employee to use the bath-house facilities, except as to a very small group of employees who live very close to the portal of the mines and are thereby enabled to change at home. The defendants further deny the averment "It is not obligatory upon the employee to buy his carbide from the plaintiff" and allege that the physical circumstances and surroundings and the conditions of employment imposed by the plaintiff make it obligatory upon the employee to buy his carbide from the plaintiff.

Defendants deny the averment that "The employees are not required to ride on any particular mantrip, but can follow their own wishes in determining which trip they shall ride", and alleges that because of the fact that facilities are not available to lower the men immediately upon their arrival at the portal, all of the men, as a matter of necessity, must arrange their arrival at the portal so that with the facilities furnished by the complainant they can be transported to the places designated by the plaintiff for them, in time to comply with the schedule of arrival thereat fixed by the complainant.

Defendants deny the averment that "The men complete their work and leave their working places at approximately 3 P. M. or 3 A. M.", and allege that the men do not leave their working places until they reach the portal.

The defendants deny the averment that "The men's time is computed and they are paid on the basis of eight hours work at the working places", and allege that since the bill of complaint was filed in this cause, beginning on, to-wit: May 1, 1941, the complainant computed and is now computing the men's time on the basis of eight hours from portal to portal.

Defendants deny the averment that "The plaintiff has never compensated its underground employees for any portion of their time spent in going to or from or in being transported to and from their actual work places and such employees have at all times understood and agreed that they should not receive any compensation therefor; and since June, 1934, by letters of understanding; and since May, 1937 by written contracts such understanding has been specifically provided for by express agreements between the Company and the defendant Unions. The average maximum wage paid the underground employees is 68 cents and the minimum 54-½ cents per hour.

"The allegations herein set forth as to operations at the present time are substantially and in all respects true as to operations since and prior to 1936." Defendants allege that the plaintiff is now compensating its underground employees for that portion of their time spent in going to or from or in being transported to and from the portal. Defendants allege that employees have never agreed that they should not receive any compensation for such time. On the contrary, defendants allege that the ore mining operations and limestone mining of the plaintiff has been carried on for a long period of years under conditions which enabled the plaintiff to dictate, without regard to the wishes of the employees, the terms and conditions of their employment. The employees in such operations of the plaintiff were not organized and were in no position to engage in collective bargaining with the plaintiff as to the terms and conditions of their employment. In fact, there has been no bona fide collective bargaining in such operations between the employees and plaintiff over any long period of time. There has been no recognition by the plaintiff of any organization to bargain collectively and its employees, in such operation over any long period of time. Even in June, 1934, the plaintiff did not enter into contracts with any representatives of its employees in such operations except wih Unions which were dominated by the plaintiff. In June, 1934 the letter of understanding was a letter written to the then Secretary of Labor of the United States, the plaintiff scorning any independent representative of its employees for the purpose of collective bargaining to such an extent that they would not address a letter of understanding to such employees or their representative.

Defendants allege that the first time the plaintiff ever signed any contract with these defendants was on, to-wit: October 6, 1938, in connection with the settlement of proceedings instituted by these defendants against the plaintiff under the National Labor Relations Act. Defendants call the attention of the Court to the fact that the contract of October 6, 1938 was entered into only eighteen days before the Wage and Hour Standards of the Fair Labor Standards Act of 1938 became effective. The average maximum wage paid the underground employee was not 68 cents and the minimum was not 54-½ cents per hour because the plaintiff did not take into account the period of, to-wit: two hours each day spent by the employee while in the service of the defendants, in going to and from the portal to the places designated by the plaintiff.

III.

The defendants for answer to Section 3 of the bill of complaint entitled "The Defendants", admit the allegations of paragraphs A, B, C and D and I, and have no knowledge or information except hearsay and remor or reputation as to the facts alleged in paragraphs designated E, F, G, H, and J, and because of lack of such knowledge are unable either to admit or deny the averments thereof. For answer to the averments of paragraph K thereof, these defendants admit that these defendants do fairly represent all employees who are members of Unions affiliated with the International Union of Mine, Mill & Smelter Workers but expressly deny that there is any actual case or controversy within the provisions of the declaratory judgment Act or the principles of equity jurisprudence which entitled the plaintiff to sue these defendants in their representative capacity for any part of the relief prayed in the bill of complaint.

IX.

For answer to that section of the bill of complaint numbered IV and entitled "Statement of Controversy", these defendants deny that at the time of the filing of the bill there was or now is "an actual and bona fide controversy existing between the plaintiff on the one hand

and the defendants herein named on the other hand" of such a nature as would entitle the plaintiff to a declaratory judgment or to any form of injunctive as set up in this section of the bill of complaint were made by the plaintiff and by these defendants. Those assertions do not create a controversy of the kind and character which justify the Court in rendering a declaratory judgment or granting injunctive relief. Those assertions had been made from time to time over a long period of time dating back to 1938 and particularly since the enactment of the Fair Labor Standards Act of 1938. Those assertions were made before the Wage and Hour Administrator under the Fair Labor Standards Act of 1938 and are set up in his opinion and report. The allegations of those assertions has no proper place in the bill of complaint. They constitute an attack on the opinion and report of the Wage and Hour Administrator, although that attack has been abandoned in actuality by compliance therewith on the part of the plaintiff beginning May 1, 1941. The insertion of these allegations becomes a part of a plan to get the Court to inquire into the methods by which the Wage and Hour Administrator arrived at his opinion and report.

As to that part of said section IV of the bill of complaint which reads: "Without a determination of this controversy it is impossible for plaintiff to know and ascertain whether or not it is violating the Act", these defendants say that under accepted rules of law a party is not entitled to have a Court declare whether or not his conduct will violate a law of the United States. The Court does not decide criminal cases in advance of indictment by a Grand Jury. A further complete answer to this claim of the plaintiff is that the plaintiff does not need any advice from the Court. The plaintiff has already decided to comply with the law and the interpretation thereof set forth in the opinion and report of the Wage and Hour Administrator.

V.

As an answer of that section of the bill of complaint numbered V and entitled "The Opinion of the Administrator" these defendants deny the averment that "said opinion is by no means a determining factor in this proceeding". The defendants deny the allegation that "the institution and continuance in effect of the enforcement of said illegal and erroneous opinion of the Administrator subjects the plaintiff to the peril of the heavy penalties of the Act". The defendants deny that the existence at the present time of defense contracts held by the plaintiff containing stipulations requiring the payment of overtime for any hours in excess of forty hours in any one week or eight hours in any one day, in any way subject the plaintiff to the dilemma of being "called upon to either (a) comply (with irreparable loss and damage as hereinabove averred); or (b) undergo by not complying, the peril of having its said contracts declared forfeited and of being subject to the heavy penalties in said contract provided for in case of violation". The defendants allege that the plaintiff has solved the dilemma which it has itself created by complying with the Act and with the stipulations of said defense contracts.

The defendants deny the materiality and relevancy of the remaining averments set forth in said Section of the complaint. Defendants allege that they have no knowledge or information sufficient to form a belief as to the accuracy of the release of the Wage and Hour Division concerning the Cornucopia Coal Mines and defendants deny that the publication of said release was one if not the sole motivating cause of the claims of the defendants under the Fair Labor Standards Act of 1938. The defendants further deny knowledge or information sufficient to form a belief as to the truth of the releases of the Wage and Hour Division concerning statements by Colonel Fleming relating to the application of the Fair Labor Standards Act of 1938 to the Bituminous Coal Industry. The defendants allege that said averments are immaterial and irrelevant but call the attention of this Court to the fact that in the Bituminous Coal Mining Industry there has been "A long history of bona fide collective bargaining agreement". The defendants refer to their previous allegation set forth in section II supra of this answer showing that there is no similar or comparable long history of bona fide collective bargaining agreements in the operations of the plaintiff's ore and limestone mines. The defendants further deny the materiality or relevancy of the allegations set forth in said section of the complaint relating to the hearings conducted by the Wage and Hour Administrator. These allegations of the bill are an attempt on the part of the plaintiff to have this Court probe into the exercise by the said Administrator of his authority and power under the Fair Labor Standards Act of 1938. Defendants allege that the opinion and report of the Wage and Hour Administrator are not open to such attack in this proceeding.

VI.

Answering section VI of the bill of complaint entitled "Necessity for the Relief of Declaratory Judgment", these defendants, as to sub-section 1 thereof, say that if any necessity ever existed for the relief of a declaratory judgment that necessity has disappeared. The plaintiff has determined upon a course of conduct. That determination became effective on May 1, 1941. On that date the plaintiff began to comply with the opinion and report of the Wage and Hour Administrator under the Fair Labor Standards Act of 1938. The plaintiff, therefore, has no need to ask the Court for guidance in its future conduct. All the perils which the plaintiff alleges it would suffer by non-compliance have been removed by actual compliance.

As to sub-section 2 of the said section, entitled "Threatened Litigation", the defendants deny that the plaintiff is in immediate peril of threatened litigation. The defendants deny that they have employed attorneys and directed them to proceed in the prompt bringing of legal proceedings. The defendants deny that the plaintiff is threatened with the "immediate institution and prosecution of a multiplicity of suits involving large sums of money, and unless the declaration herein prayed for is granted, the plaintiff will be faced with great, if not irreparable injury". On the contrary, the provisions of the Fair Labor Standards Act of 1938 cover this situation. That Act provides that a class suit may be brought where the representatives fairly represents the class. The plaintiff has alleged in its bill that these defendants do fairly represent a class. We have heretofore admitted that we do fairly represent a class. Why should this Court assume that these defendants would not avail themselves of the benefit afforded by the express provisions of the Fair Labor Standards Act of 1938.

Furthermore, the plaintiff has a complete and adequate remedy at law. If two or more suits should be brought in the Federal Court this Court has full authority under the laws of the United States to consolidate such suits. If two or more suits should be brought in the State Court the laws of Alabama provide that those suits may be consolidated. The averments of the bill show that there are two groups or classes of employees, those affiliated with the American Federation of Labor constituting one class or group, and those affiliated with the International Union of Mine, Mill and Smelter Workers constituting another class or group. There would, therefore, be only two class suits. Two does not constitute a multiplicity.

These defendants further show unto the Court that the claims of these defendants as to the proper construction of the Fair Labor Standards Act of 1938 are claims of long standing. These defendants began to make them immediately after the Act became effective. More than two years have passed and these defendants have not brought suit. As representatives of a group or class these defendants would exhaust all the possibilities of negotiation and settlement before they would resort to litigation. Why should this Court now determine there is no possibility of negotiation and settlement. The plaintiff alleged that if it complied with the opinion and report of the Wage and Hour Administrator it would suffer irreparable injury. Yet the facts show that the plaintiff has already complied with the opinion and report of the said Administrator.

VII.

Answering that section of the bill numbered VII and entitled "Probability of Great If Not Irreparable Injury", these defendants say as to sub-section 1 thereof that the plaintiff is not faced with the vexation, cost and expense of a multiplicity because the laws governing the procedure of both the State and Federal Courts give the plaintiff complete protection in the event more than one suit is instituted.

Answering sub-section 2 thereof, these defendants say there is no necessity for a prompt remedy for the reason that no uncertainty as to the future conduct of the plaintiff now exists. The plaintiff is complying. The damages of non-compliance and the need for judicial construction have, therefore, completely disappeared.

Answering sub-section 3 thereof, defendants again call the attention of the Court to the judicial power of consolidation which exists in both State and Federal Courts and to the fact that it is not yet made clear that the possibility of negotiation and settlement have been exhausted.

Answering sub-section 4 thereof, these defendants say that the defense contracts ceased to be a problem to the plaintiff when the plaintiff began compliance with the opinion and report of the Wage and Hour Administrator.

Answering sub-section 5 thereof, defendants say that the averments therein contained are now moot and inapplicable to the existing situation.

Answering sub-section 6 thereof, these defendants inform the Court that there is no necessity of reaching or attempting to reach new collective bargaining contracts with labor organizations. Existing contracts are not abrogated by the opinion and report of the Wage and Hour Administrator. They are merely modified to comply with the law.

Answering sub-section 7 thereof, defendants say that the expense therein set up as a justification for the plaintiff's claim has already been incurred by the plaintiff and could not possibly be avoided by any adjudication of this Court.

Answering sub-section 8 of said section, defendants say that the plaintiff blows both hot and cold. In a former section of the bill he asks for relief on the theory that the questions were the same. In this sub-section the plaintiff asks for relief on the theory that the claims are different. The truth is that the law is general, it governs the situation and the rights of all the claimants are governed by one law. A mere matter of mathematical computation of the amount of each individual claim does not change the nature of the claim. Such calculations can easily be made in one class action. If the defendants do not bring a class action and bring separate action then this plaintiff can procure their consolidation and procure these mathematical computations in one action.

VIII.

Answering section numbered VIII of the bill of complaint entitled "Perils of Decision" these defendants say again as to sub-sections 1 A, B, C, D; 2 A, B and (a), (b), (c), (d), (e), (f), (g), (h), that all these contentions and allegations have already been answered by the conduct of the plaintiff. The things which are therein alleged that the plaintiff could not do and could not suffer, the plaintiff has already assumed and undertaken to do. As to the claim in this sub-section B that compliance with the opinion and report of the Wage and Hour Administrator would result in a loss of production, defendants allege that the time spent at the face does not necessarily measure the quantity of ore produced. On the contrary, experience has demonstrated that a shortening of hours increases the speed of production.

IX.

Answering section IX of the bill of complaint, entitled "Great Weight Should Be Accorded to Any Reasonable

Standards Which Represent the Prevailing Customs and Practices in the Particular Industry and Which Are Supported By a Long History of Bona Fide Collective Bargaining Agreements", these defendants assert that there has not been any long history of bona fide collective bargaining agreement in the operations of the plaintiff's ore mines and limestone mines. The situation has already been described in this answer. The situation was one of employer dictation; complete employer strength and employee weakness, complete employer solidarity, and lack of cohesion on the part of the employee; directions equivalent to commands on the part of the plaintiff and enforced obedience on the part of the helpless employees.

Answering sub-section 4 of said section, these defendants say that the law of the land is supreme. Parties can not escape the provisions of a law by entering into a contract. The Congress of the United States has established the rule of action. That rule applies to all men at all times and everywhere. If because of weakness and the necessities of their situation, employees have entered into contracts whereby they agreed to work for less or to work longer than the Fair Labor Standards Act of 1938 prescribes, then those provisions of the contracts violating the Act becomes absolutely void and of no effect. A company cannot obtain the right to violate a law by any theory of individual estoppel.

X.

Answering that section of the bill of complaint entitled "Contractural Obligations" and numbered X, these defendants deny the negotiations and execution of written contracts on or about the 31st day of May, 1937 and call the attention of the Court to the fact that plaintiff attached as Exhibit C a contract made and entered into on October 6, 1938. As to that part of said section which claims that the Unions, with full knowledge of the enactment of the Act and with knowledge and understanding that in consideration of benefits given them under said contracts, they were waiving and surrendering the contentions they are now making, these defendants say that no individual has the right by private agreement to nullify an Act of Congress. The Fair Labor Standards Act of 1938 was enacted to protect the employee. This protection is afforded whether the employee has to submit to being overreached because of his necessities, or whether he ignorantly enters into a contract with provisions contrary to the law. Defendants deny that any person can be bound by the terms of a contract in such fashion as to nullify an Act of Congress. These defendants further deny that there is or can be an estoppel to violate the law. If private contracts can be substituted for Congressional enactments, the Congress of the United States is engaging in a vain and foolish pursuit in passing laws.

XI.

Answering that section of the bill of complaint numbered XI and entitled "Petition and Prayer" these defendants deny that the plaintiff is entitled to any part of the relief prayed in the bill of complaint.

Wherefore, the premises considered, these defendants pray that this Court on the hearing hereof will dissolve the temporary injunction heretofore issued and will dismiss the bill of complaint at the cost of the plaintiff.

LEE PRESSMAN,
CRAMPTON HARRIS,
JOSEPH KOVNER,
J. A. LIPSCOMB,
By E. C. H.,
Attorneys for Defendants named
in the first paragraph hereof.

Note: I hereby certify that I have served a copy of the foregoing motion to dismiss and answer upon Honorable Borden Burr, Solicitor of Record for the Plaintiff. This 17th day of May, 1941.

CRAMPTON HARRIS.

Filed May 17, 1941.

MOTION TO DISMISS AND ANSWER OF DEFENDANTS AFFILIATED WITH INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS.

231 (Civil Action No. 5233.)

Now come the defendants and move the Court to dismiss the bill of complaint, and for grounds of this motion, assign the following separately and severally:

1. The complaint fails to state a claim against these defendants upon which relief can be granted.

2. It appears upon the face of the complaint that no actual controversy within the meaning of Section 274 (d) of the Judicial Code (U. S. Code, Title 28, Section 400) exists between the plaintiffs and these defendants, and that there is no cause of action for a declaratory judgment.

3. It appears upon the face of the complaint that the defendants are being sued to obtain a declaratory judgment regarding the interpretation and constitutionality of the Fair Labor Standards Act of 1938 and to secure an injunction against the enforcement of said Act, more par-

ticularly, relating to the Modified Portal-to-Portal Opinion and Report of the Administrator of said Act, which is Exhibit A to the complaint herein.

4. It appears upon the face of the complaint that the defendants, and each of them, have no power, authority or discretion to make, issue, amend, or modify any regulation or interpretations or opinions and reports under said Act.

5. It appears upon the fact of the complaint that if the action had been brought against the Administrator of the said Act, or any of his duly authorized agents, it would be dismissed for failure to state a claim upon which relief could be granted.

6. It appears upon the face of the complaint that the plaintiff is not threatened with or is facing any irreparable damage or injury.

7. It appears upon the face of the complaint that the plaintiff has a complete and adequate remedy at law.

8. The complaint fails to show any case or controversy between the plaintiff and the defendants properly within the jurisdiction of the Court.

I.

Answer of the Defendants.

The defendants, without waiving the motion to dismiss hereinabove set forth, do make answer to the bill of complaint as follows:

1. For answer to the bill of complaint as a whole, defendants say that since this bill of complaint was filed

the complainant has voluntarily undertaken to pay its employees on a basis from portal to portal or collar to collar and is voluntarily doing the very thing which it asks the Court to adjudge would be an irreparable hardship upon the complainant.

2. That the bill of complaint shows on its face that it is a mere device contrived to obtain a ruling from this Court against a government official and nullifying his action as such without making him a party to this proceeding. Under established rules of law and prior decisions of this Court, the complainant would not be entitled to such relief in a direct proceeding against the Administrator of the Wage and Hour Division under the Fair Labor Standards Act of 1938. As a result the complainant is seeking to do deviously and by indirection that which it could not do if it made a direct attack against the action of the Administrator in a proceeding to which he was a party. In short, the bill of complaint attempts by collateral attack to do that which the complainant could not do if it made a direct attack.

For detailed and special and particular answer to the bill of complaint the defendants, in answer to section numbered 1 of the bill entitled "Allegations of Jurisdiction", admit the averments of paragraphs (a), (b), and (c), and as to paragraphs (d), (e), (f), (g), (h), and (i), the defendants deny that the averments of the bill of complaint state facts sufficient to authorize the Court to render a declaratory judgment or to grant injunctive relief.

II.

Answering section II of the bill of complaint entitled "The Plaintiff and Its Operations", the defendants deny the averments that "these hourly rates have been established systematically through collective bargaining with the defendants, taking into consideration all factors which make up a proper occupational rate". Defendants further deny the averment "The operations in its coal mines insofar as the questions involved here are related and concerned, is substantially the same as its operations in its ore mines". The defendants further deny the averment that "The use of the change or bathhouse is optional", and on the contrary, allege that the nature of the work itself makes it obligatory upon the employees to use the bath-house facilities, except as to a very small group of employees who live very close to the portal of the mines and are thereby enabled to change at home. The defendants further deny the averment "It is not obligatory upon the employees to buy the carbide from the plaintiff" and allege that the physical circumstances and surroundings and the conditions of employment imposed by the plaintiff make it obligatory upon the employee to buy his carbide from the plaintiff.

Defendants deny the averment that "The employees are not required to ride on any particular mantrip, but can follow their own wishes in determining which trip they shall ride," and allege that because of the fact that facilities are not available to lower the men immediately upon their arrival at the portal, all of the men, as a matter of necessity, must arrange their arrival at the portal so that with the facilities furnished by the complainant they can be transported to the places designated by the plaintiff for them, in time to comply with the schedule of arrival thereat fixed by the complainant.

The defendants deny the averment that "The men's time is computed and they are paid on the basis of eight hours work at the working places", and allege that since the bill of complaint was filed in this cause, beginning on, to-wit: May 1, 1941, the complainant computed and is now computing the men's time on the basis of eight hours from portal to portal.

Defendants deny the averment that "The plaintiff has never compensated its underground employees for any portion of their time spent in going to or from or in being transported to and from their actual work places and such employees have at all times understood and agreed that they should not receive any compensation therefor:

"The allegations herein set forth as to operations at the present time are substantially and in all respects true as to operations since and prior to 1933." Defendants allege that the plaintiff is now compensating its underground employees for that portion of their time spent in going to or from or in being transported to and from the portal. Defendants allege that employees have never agreed that they should not receive any compensation for such time. On the contrary, defendants allege that the ore mining operations of the plaintiff have been carried on for a long period of years under conditions which enabled the plaintiff to dictate, without regard to the wishes of the employees, the terms and conditions of their employment. The employees in such operations of the plaintiff were not organized and were in no position to engage in collective bargaining with the plaintiff as to the terms and conditions of their employment. In fact, there has been no bona fide collective bargaining in such operations between the employees and the plaintiff over any long period of time. There has been no recognition by the plaintiff of any organization to bargain collectively for its employees, in such operation over any long period of time.

Defendants allege that even in the year 1934 the plaintiff did not enter into contracts with the defendants as representatives of the defendant unions herein named or with any independent unions, but on the contrary made private agreements with individual employees. In short, there was no agreement as a result of collective bargaining whatsoever between the plaintiff and its employees during the year 1934.

III.

The defendants for answer to Section 3 of the bill of complaint entitled "The Defendants" admit the allegations of paragraphs (a), (b), (c) and (d). For answer to the averments of paragraph (e) thereof, these defendants admit that these defendants do fairly represent all employees who are members of Unions affiliated with the International Union of Mine, Mill & Smelter Workers but expressly deny that there is any actual case or controversy within the provisions of the declaratory judgment Act or the principles of equity jurisprudence which entitled the plaintiff to sue these defendants in their representative capacity for any part of the relief prayed in the bill of complaint.

IV.

For answer to that section of the bill of complaint numbered IV and entitled "Statement of Controversy", these defendants deny that at the time of the filing of the bill there was or now is "an actual and bona fide" controversy existing between the plaintiff on the one hand and the defendants herein named on the other hand" of such a nature as would entitle the plaintiff to a declaratory judgment or to any form of injunctive relief. These defendants admit that assertions substantially as set up in this section of the bill of complaint were made by the plaintiff and by these defendants. Those assertions do not create a controversy of the kind and character which justify the Court in rendering a declaratory judgment or granting injunctive relief. Those assertions had been made from time to time over a long period of time dating back to 1938 and particularly since the enactment of the Fair Labor Standards Act of 1938. Those assertions were made before the Wage and Hour Administrator under the Fair Labor Standards Act of 1938 and are set up in his opinion and report. The allegations of those assertions has no proper place in the bill of complaint. They constitute an attack on the opinion and report of the Wage and Hour Administrator, although that attack has been abandoned in actuality by compliance therewith on the part of the plaintiff beginning May 1, 1941. The insertion of these allegations becomes a part of a plan to get the Court to inquire into the methods by which the Wage and Hour Administrator arrived at his opinion and report.

As to that part of said section IV of the bill of complaint which reads: "Without a determination of this controversy it is impossible for plaintiff to know and ascertain whether or not it is violating the act", these defendants say that under accepted rules of law a party is not entitled to have a Court declare whether or not his conduct will violate a law of the United States. The Court does not decide criminal cases in advance of indictment by a Grand Jury. A further complete answer to this claim of the plaintiff is that the plaintiff does not need any advice from the Court. The plaintiff has already decided to comply with the law and the interpretation thereof set forth in the opinion and report of the Wage and Hour Administrator.

V.

As an answer to that section of the bill of complaint numbered V and entitled "The Opinion of the Administrator" these defendants deny the averment that "said opinion is by no means a determining factor in this proceeding". The defendants deny the allegation that "the institution and continuance in effect of the enforcement of said illegal and erroneous opinion of the Administrator subjects the plaintiff to the peril of the heavy penalties of the Act".

The defendants deny the materiality and relevancy of the remaining averments set forth in said Section of the complaint. Defendants allege that they have no knowledge or information sufficient to form a belief as to the accuracy of the release of the Wage and Hour Division concerning the Cornucopia Gold Mines and defendants deny that the publication of said release was one of if not the sole motivating cause of the claims of the defendants under the Fair Labor Standards Act of 1938. The defendants further deny knowledge or information sufficient to form a belief as to the truth of the releases of the Wage and Hour Division concerning statements by Colonel Fleming relating to the application of the Fair Labor Standards Act of 1938 to the Bituminous Coal Industry. The defendants allege that said averments are immaterial and irrelevant but call the attention of this Court to the fact that in the Bituminous Coal Mining Industry there has been "a long history of bona fide collective bargaining agreements". The defendants refer to their previous allegation set forth in Section II supra of this answer showing that there is no similar or comparable long history of bona fide collective bargaining agreements in the operations of the plaintiff's ore mines. The defendants further deny the materiality or relevancy of the allegations set forth in said section of the complaint relating to the hearings conducted by the Wage and Hour Administrator. These allegations of the bill are an attempt on the part of the plaintiff to have this Court probe into the exercise by the said Administrator of his authority and power under the Fair Labor Standards Act of 1938. Defendants allege that the opinion and report of the Wage and Hour Administrator are not open to such attack in this proceeding.

VI.

Answering section VI. of the bill of complaint entitled "Necessity for the Relief of Declaratory Judgment", these defendants, as to sub-section 1 thereof, say that if any necessity ever existed for the relief of a declaratory judgment that necessity has disappeared. The plaintiff has determined upon a course of conduct. That determination became effective on May 1, 1941. On that date the plaintiff began to comply with the opinion and report of the Wage and Hour Administrator under the Fair Labor Standards Act of 1938. The plaintiff, therefore, has no need to ask the Court for guidance in its future conduct. All the perils which the plaintiff alleges it would suffer by non-compliance have been removed by actual compliance.

As to sub-section 2 of said section, entitled "Threatened Litigation", the defendants deny that the plaintiff is in immediate peril of threatened litigation. The defendants deny that they have employed attorneys and directed them to proceed in the prompt bringing of legal proceedings. The defendants deny that the plaintiff is threatend with the "immediate institution and prosecution of a multiplicity of suits involving large sums of money, and unless the declaration herein prayed for is granted, the plaintiff will be faced with great, if not irreparable injury". On the contrary, the provisions of the Fair Labor Standards Act of 1938 cover this situation. That Act provides that a class-suit may be brought where the representative fairly represents the class. The plaintiff has alleged in its bill that these defendants so fairly represent a class. We have heretofore admitted that we do fairly represent a class. Why should this Court assume that these defendants would not avail themselves of the benefit afforded by the express provisions of the Fair Labor Standards Act of 1938.

Furthermore, the plaintiff has a complete and adequate remedy at law. If two or more suits should be brought in the Federal Court this Court has full authority under the laws of the United States to consolidate such suits. If two or more suits should be brought in the State Court the laws of Alabama provide that those suits may be consolidated. The averments of the bill show that there is only one group of employees, namely, those affiliated with the International Union of Mine, Mill and Smelter Workers. There would, therefore, be only one class suit. One suit does not constitute a multiplicity.

These defendants further show unto the Court that the claims of these defendants as to the proper construction of the Fair Labor Standards Act of 1938 are claims of long standing. These defendants began to make them immediately after the Act became effective. More than two years have passed and these defendants have not brought suit. As representatives of a group of class these defendants would exhaust all the possibilities of negotiation and settlement before they would resort to litigation. Why should this Court now determine there is no possibility of negotiation and settlement. The plaintiff alleged that if it complied with the opinion and report of the Wage and Hour Administrator it would suffer irreparable injury. Yet the facts show that the plaintiff has already complied with the opinion and report of the said Administrator.

VII.

Answering that section of the bill numbered VII and entitled "Probability of Great If Not Irreparable Injury", these defendants say as to sub-section 1 thereof that the plaintiff is not faced with the vexation, cost and expense of a multiplicity because the laws governing the procedure of both the State and Federal Courts give the plaintiff complete protection in the event more than one suit is instituted.

Answering sub-section 2 thereof, these defendants say there is no necessity for a prompt remedy for the reason that no uncertainty as to the future conduct of the plaintiff now exists. The plaintiff is complying. The damages of non-compliance and the need for judicial construction have, therefore, completely disappeared.

Answering sub-section 3 thereof, defendants again call the attention of the Court to the judicial power of consolidation which exists in both State and Federal Courts and to the fact that it is not yet made clear that the possibility of negotiation and settlement has been exhausted.

Answering sub-section 4 of said section, defendants say that the plaintiff blows both hot and cold. In a former section of the bill he asks for relief on the theory that the questions were the same. In this sub-section the plaintiff asks for relief on the theory that the claims are different. The truth is that the law is general, it governs the situation and the rights of all the claimants are governed by one law. A mere matter of mathematical computation of the amount of each individual claim does not change the nature of the claim. Such calculations can easily be made in one class action. If the defendants do not bring a class action and bring separate action then this plaintiff can procure their consolidation and procure these mathematical computations in one action.

Answering sub-section 5 thereof, defendants say that the averments therein contained are now moot and inapplicable to the existing situation.

Answering sub-section 6 thereof, these defendants inform the Court that there is no necessity of reaching or attempting to reach new collective bargaining contracts with labor organizations. Existing contracts are not abrogated by the opinion and report of the Wage and Hour Administrator. They are merely modified to comply with the law.

Answering sub-section 7 thereof, defendants say that the expense therein set up as a justification for the plaintiff's claim has already been incurred by the plaintiff and could not possibly be avoided by any adjudication of this Court.

VIII.

Answering section numbered VIII of the bill of complaint entitled "Perils of Decision" these defendants say again as to sub-sections 1 A, B, C; 2 A, B and (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) that all these contentions and allegations have already been answered by the conduct of the plaintiff. The things which are therein alleged that the plaintiff could not do and could not suffer, the plaintiff has already assumed and undertaken to do. As to the claim in this sub-section B that compliance with the opinion and report of the Wage and Hour Administrator would result in a loss of production, defendants allege that the time spent at the face does not necessarily measure the quantity of ore produced. On the contrary, experience has demonstrated that a shortening of hours increases the speed of production.

IX.

Answering section IX of the bill of complaint, entitled "Great Weight Should Be Accorded to Any Reasonable Standards Which Represent the Prevailing Customs and Practices in the Particular Industry and Which Are Supported By a Long History of Bona Fide Collective Bargaining Agreements", these defendants assert that there has not been any long history of bona fide collective bargaining agreements in the operations of the plaintiff's ore mines. The situation has already been described in this answer. That situation was one of employer dictation; complete employer strength and employee weakness, complete employer solidarity, and lack of cohesion on the part of the employee; directions equivalent to commands on the part of the plaintiff and enforced obedience on the part of the helpless employees.

Answering sub-section 4 of said section, these defendants say that the law of the land is supreme. Parties can not escape the provisions of a law by entering into a contract. The Congress of the United States has established the rule of action. That rule applies to all men at all times and everywhere. If because of weakness and the necessities of their situation, employees have entered into contracts whereby they agreed to work for less or to work longer than the Fair Labor Standards Act of 1938 prescribes, then those provisions of the contracts violating the Act become absolutely void and of no effect. A company cannot obtain the right to violate a law by any theory of individual estoppel.

X.

Answering the section of the bill of complaint entitled "Contractual Obligations" and numbered X, these defendants assert that the contract attached as Exhibit B to the complaint contains in Section IX, sub-paragraph (b) thereof, this provision: "This contract shall not conflict with any present State or Fedral law or laws that may be enacted during the life of such agreement."

For further particular answer to that part of said section which claims that the Unions, with full knowledge of the enactment of the Act and with knowledge and understanding that in consideration of benefits given them under said contracts and are bound thereby, these defendants say that no individual has the right by private agreement to nullify an Act of Congress. The Fair Labor Standards Act of 1938 was enacted to protect the employees. This protection is afforded whether the employee has to submit to being overreached because of his necessities, or whether he ignorantly enters into a contract with provisions contrary to the law. Defendants deny that any person can be bound by the terms of a contract in such fashion as to nullify an Act of Congress. These defendants further deny that there is or can be an estoppel to violate the law. If private contracts can be substituted for Congressional enactments, the Congress of the United States is engaging in a vain and foolish pursuit in passing laws.

XI.

Answering that section of the bill of complaint numbered XI and entitled "Petition and Prayer" these defendants deny that the plaintiff is entitled to any part of the relief prayed in the bill of complaint.

Wherefore, the premises considered, these defendants pray that this Court on the hearing hereof will dissolve the temporary injunction heretofore issued and will dismiss the bill of complaint at the cost of the plaintiff.

LEE PRESSMAN,
CRAMPTON HARRIS,
JOSEPH KOVNER,
J. A. LIPSCOMB,
By E. C. H.,
Attorneys for Defendants.

Note: I hereby certify that I have served a copy of the foregoing motion to dismiss and answer upon Honorable E. L. All, Solicitor of Record for the Plaintiff.

This 17th day of May, 1941.

CRAMPTON HARRIS.

Filed May 17, 1941.

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245 MOTION TO DISMISS AND ANSWER OF DEFENDANTS AFFILIATED WITH INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS.

(Civil Action No. 5234.)

Now come the defendants, Raimund Local 121, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, and John Butler, Lewis Tarrant and B. G. Stephens, individually and as officers and members of such Local, and Van D. Jones, C. L. Pegues, and Frank Allen, individually and as officers of the International Union of Mine, Mill & Smelter

Workers, an unincorporated association, and move the Court to dismiss the bill of complaint, and for grounds of this motion assign the following, separately and severally:

1. The complaint fails to state a claim against these defendants upon which relief can be granted.

2. It appears upon the face of the complaint that no actual controversy within the meaning of Section 274 (d) of the Judicial Code (U. S. Code, Title 28, Section 400) exists between the plaintiff and these defendants, and that there is no cause of action for a declaratory judgment.

3. It appears upon the face of the complaint that the defendants are being sued to obtain a declaratory judgment regarding the interpretation and constitutionality of the Fair Labor Standards Act of 1938 and to secure an injunction against the enforcement of said Act, more particularly, relating to the Modified Portal-to-Portal Opinion and Report of the Administrator of said Act, which is Exhibit A to the complaint herein.

4. It appears upon the face of the complaint that the defendants, and each of them, have no power, authority or discretion to make, issue, amend, or modify any regulation or interpretations or opinions and reports under said Act.

5. It appears upon the face of the complaint that if the action had been brought against the Administrator of said Act, or any of his duly authorized agents, it would be dismissed for failure to state a claim upon which relief could be granted.

6. It appears upon the face of the complaint that the plaintiff is not threatened with and is not facing any irreparable damage or injury.

7. It appears upon the face of the complaint that the plaintiff has a complete and adequate remedy at law.

8. The complaint fails to show any case or controversy between the plaintiff and the defendants properly within the jurisdiction of the Court.

ANSWER OF THE DEFENDANTS.

I.

The defendants, without waiving the motion to dismiss hereinabove set forth, do make answer to the bill of complaint as follows:

1. For answer to the bill of complaint as a whole, defendants say that since this bill of complaint was filed the complainant has voluntarily undertaken to pay its employees on a basis from portal to portal or collar to collar and is voluntarily doing the very thing which it asks the Court to adjudge would be an irreparable hardship upon the complainant.

2. That the bill of complaint shows on its face that it is a mere device contrived to obtain a ruling from this Court against a government official and nullifying his action as such without making him a party to this proceeding. Under established rules of law and prior decisions of this Court, the complainant would not be entitled to such relief in a direct proceeding against the Administrator of the Wage and Hour Division under the Fair Standards Act of 1938. As a result the complainant is seek-

ing to do deviously and by indirection that which it could not do if it made a direct attack against the action of the Administrator in a proceeding to which he was a party. In short, the bill of complaint attempts by collateral attack to do that which the complainant could not do if it made a direct attack.

For detailed and special and particular answer to the bill of complaint, the defendants, in answer to section numbered 1 of the bill entitled "Allegations of Jurisdiction," admit the averments of paragraphs (a), (b), and (c), and as to paragraphs (d), (e), (f), (g) and (h), the defendants deny that the averments of the bill of complaint state facts sufficient to authorize the Court to render a declaratory judgment or to grant injunctive relief.

II.

Answering Section II of the bill of complaint entitled "The Plaintiff and Its Operations," defendants deny the averments that "The operations in its coal mines insofar as the questions involved here are related and concerned, are the same operations as the operations in its ore mines." The defendants further deny the averment that "The employees are not compelled to use the bath-house facilities" and on the contrary, allege that the nature of the work itself makes it obligatory upon the employees to use the bath-house facilities, except as to a very small group of employees who live very close to the portal of the mines and are thereby enabled to change at home.

Defendants deny the averment that "The employees are not required to ride on any particular mantrip, but can follow their own wishes in determining which trip they shall ride," and allege that because of the fact that facilities are not available to lower the men immediately upon their arrival at the portal, all of the men, as a matter of necessity, must arrange their arrival at the portal so that with the facilities furnished by the complainant they can be transported to the places designated by the plaintiff for them, in time to comply with the schedule of arrival thereat fixed by the complainant.

Defendants deny the averment that "The plaintiff has never compensated its underground employees for any portion of their time spent in going to or from or in being transported to and from their work places and such employees have at all times understood and agreed that they should not receive any compensation therefor; and such understanding and agreement has been specifically provided for by agreements, express or implied, between the company and its underground employees."

"The allegations herein set forth as to operations at the present time are substantially and in all repsect true as to operations for several years prior to the enactment of the Act." Defendants allege that the plaintiff is now compensating its underground employees for that portion of their time spent in going to or from or in being transported to and from the portal. Defendants allege that employees have never agreed that they should not receive any compensation for such time. On the contrary, defendants allege that the ore mining operations of the plaintiff have been carried on for a long period of years under conditions which enabled the plaintiff to dictate, without regard to the wishes of the employees, the terms and conditions of their employment. The employees in such operations of the plaintiff were not organized and were in no position to engage in collective bargaining with the plaintiff as to the terms and conditions of their employment. In fact, there has been no bona fide collective bargaining in such operations between the employees and the plaintiff at all. At no time, either, prior to the enactment of the Fair

Labor Standards Act of 1938 or since, has the plaintiff submitted the terms and conditions of employment at its mines to the processes of voluntary and bona fide collective bargaining.

III.

The defendants for answer to Section III of the bill of complaint entitled "The Defendants," admit the allegations of paragraphs (a) and (b), and have no knowledge or information except hearsay and rumor or reputation as to the facts alleged in paragraphs designated (c) and (d), and because of lack of such knowledge are unable either to admit or deny the averments thereof. For answer to the averments of paragraph (e) thereof, these defendants admit that these defendants do fairly represent all employees who are members of Unions affiliated with the International Union of Mine, Mill & Smelter Workers but expressly deny that there is any actual case or controversy within the provisions of the declaratory judgment act or the principles of equity jurisprudence which which entitled the plaintiff to sue these defendants in their representative capacity for any part of the relief prayed in the bill of complaint.

IV.

For answer to that section of the bill of complaint numbered IV and entitled "Statement of Controversy," these defendants deny that at the time of the filing of the bill there was or now is "an actual and bona fide controversy existing between the plaintiff on the one hand and the defendants herein named on the other hand" of such a nature as would entitle the plaintiff to a declaratory judgment or to any form of injunctive relief. These defendants admit that assertions substantially as set up in this section of the bill of complaint were made by the plaintiff and by these defendants. Those assertions do not create a controversy of the kind and character which justify the Court in rendering a declaratory judgment or granting injunctive relief. Those assertions had been made from time to time over a long period of time dating back to 1938 and particularly since the enactment of the Fair Labor Standards Act of 1938. Those assertions were made before the Wage and Hour Administrator under the Fair Labor Standards Act of 1938 and are set up in his opinion and report. The allegation of those assertions has no proper place in the bill of complaint. They constitute an attack on the opinion and report of the Wage and Hour Administrator, although that attack has been abandoned in actuality by compliance therewith on the part of the plaintiff beginning May 1, 1941. The insertion of these allegations becomes a part of a plan to get the Court to inquire into the methods by which the Wage and Hour Administrator arrived at his opinion and report.

As to that part of said Section IV of the bill of complaint which reads, "Without a determination of this controversy it is impossible for plaintiff to know and ascertain whether or not it is violating the act," these defendants say that under accepted rules of law a party is not entitled to have a Court declare whether or not his conduct will violate a law of the United States. The Court does not decide criminal cases in advance of indictment by a Grand Jury. A further complete answer to this claim of the plaintiff is that the plaintiff does not need any advice from the Court. The plaintiff has already decided to comply with the law and the interpretation thereof set forth in the opinion and report of the Wage and Hour Administrator.

V.

As an answer of that section of the bill of complaint numbered V and entitled "The Opinion of the Administrator" these defendants deny the averment that "Said opinion is by no means a determining factor in this proceeding." The defendants deny the allegations that "the institution and continuance in effect of the enforcement or threatened enforcement of said illegal and erroneous opinion of the Administrator subjects the plaintiff to the peril of the heavy penalities of the Act."

The defendants deny the materiality and relevancy of the remaining averment set forth in said section of the complaint. Defendants allege that they have no knowledge of information sufficient to form a belief as to the accuracy of the release of the Wage and Hour Division concerning the Cornucopia Gold Mines and defendants deny that the publication of said release was one of if not the sole motivating cause of the claims of the defendants under the Fair Labor Standards Act of 1938. The defendants further deny knowledge or information sufficient to form a belief as to the truth of the releases of the Wage and Hour Division concerning statements by Colonel Fleming relating to the application of the Fair Labor Standards Act of 1938 to the Bituminous Coal Industry. The defendants allege that said averments are immaterial and irrelevant but call the attention of this Court to the fact that in the Bituminous Coal Mining Industry there has been "a long history of bona fide collective bargaining agreements." The defendants refer to their previous allegations set forth in Section II supra of this answer showing that there is no similar or comparable long history of bona fide collective bargaining agreements in the operations of the plaintiff's ore mines. The defendants further deny the materiality or relevancy of the allegations set forth in said section of the complaint relating to the hearings conducted by the Wage and Hour Administrator. These allegations of the bill are an attempt on the part of the plaintiff to have this Court probe into the exercise by the said Administrator of his authority and power under the Fair Labor Standards Act of 1938. Defendants allege that the opinion and report of the Wage and Hour Administrator are not open to such attack in this proceeding.

VI.

Answering section VI of the bill of complaint entitled "Necessity For The Relief of Declaratory Judgement", these defendants, as to sub-section 1 thereof, say that if any necessity ever existed for the relief of a declaratory judgment that necessity has disappeared. The plaintiff has determined upon a course of conduct. That determination became effective on May 1, 1941. On that date the plaintiff began to comply with the opinion and report of the Wage and Hour Administrator under the Fair Labor Standards Act of 1938. The plaintiff, therefore, has no need to ask the Court for guidance in its future conduct. All the perils which the plaintiff alleges it would suffer by non-compliance have been removed by actual compliance.

As to sub-section 2 of the said section, entitled "Threatened Litigation", the defendants deny that the plaintiff is in immediate peril of threatened litigation. The defendants deny that they have employed attorneys and directed them to proceed in the prompt bringing of legal proceedings. The defendants deny that the plaintiff is threatened with the "immediate institution and prosecution of a multiplicity of suits involving large sums of money, and unless the declaration herein prayed for is granted, the plaintiff will be faced with great, if not irreparable injury". On the contrary, the provisions of the Fair Labor Standards Act of 1938 cover this situation. That Act provides that a class suit may be brought where the representative fairly represents the class. The plaintiff has alleged in its bill that these defendants do fairly represent a class. We have heretofore admitted that we do fairly represent a class. Why should this Court assume these defendants would not avail themselves of the benefit afforded by the express provisions of the Fair Labor Standards Act of 1938.

Furthermore, the plaintiff has a complete and adequate remedy at law. If two or more suits should be brought in the Federal Court, this Court has full authority under the laws of the United States to consolidate such suits. If two or more suits should be brought in the State Court the laws of Alabama provide that those suits may be consolidated. The averments of the bill show that there are two groups or classes of employees, those affiliated with the International Union of Mine, Mill and Smelter Workers constituting one class or group, and the group known as Unit Number 8 Brotherhood of Miners of Captive Ore Mines of Alabama, of whose affiliations these defendants have never been exactly informed. There would, therefore, be only two class suits. Two does not constitute a multiplicity.

These defendants further show unto the Court that the claims of these defendants as to the proper construction of the Fair Labor Standards Act of 1938 are claims of long standing. These defendants began to make them immediately after the Act became effective. More than two years have passed and these defendants have not brought suit. As representatives of a group or class these defendants would exhaust all the possibilities of negotiations and settlement before they would resort to litigation. Why should this Court now determine there is no possibility or negotiation and settlement. The plaintiff alleged that if it complied with the opinion and report of the Wage and Hour Administrator it would suffer irreparable injury. Yet the facts show that the plaintiff has already complied with the opinion and report of the said Administrator.

VII.

Answering that section of the bill numbered VII and entitled "Probability of Great If Not Irreparable Injury", these defendants say as to sub-section 1 thereof that the plaintiff is not faced with the vexation, cost and expense of a multiplicity because the laws governing the procedure of both State and Federal Courts give the plaintiff complete protection in the event more than one suit is instituted.

Answering sub-section 2 thereof, these defendants say there is no necessity for a prompt remedy for the reason that no uncertainty as to the future conduct of the plaintiff now exists. The plaintiff is complying. The damages of non-compliance and the need for judicial construction have, therefore, completely disappeared.

Answering sub-section 3 thereof, defendants again call the attention of the Court to the judicial power of consolidation which exists in both State and Federal Courts and to the fact that it is not yet made clear that the possibility of negotiation and settlement has been exhausted.

Answering sub-section 4 thereof, defendants say that the averments therein contained are now moot and inapplicable to the existing situation.

Answering sub-section 5 thereof, defendants say that the expense therein set up as a justification for the plaintiff's claim has already been incurred by the plaintiff and could not possibly be avoided by any adjudication of this Court.

Answering sub-section 6 of said section, defendants say that the plaintiff blows both hot and cold. In a former section of the bill he asks for relief on the theory that the questions were the same. In this sub-section the plaintiff asks for relief on the theory that the claims are different. The truth is that the law is general, it governs the situation and the rights of all the claimants are governed by one law. A mere matter of mathematical computation of the amount of each individual claim does not change the nature of the claim. Such calculations can easily be made in one class action. If the defendants do not bring a class action and bring separate action then this plaintiff can procure their consolidation and procure these mathematical computations in one action.

VIII.

Answering section numbered VIII of the bill of complaint entitled "Perils of Decision" these defendants say again as to sub-sections 1 A, B, C; 2 A, B, and (a), (b), (c), (d); (1), (2), (3), (e), (f), that all these contentions and allegations have already been answered by the conduct of the plaintiff. The things which are therein alleged that the plaintiff could not do and could not suffer, the plaintiff has already assumed and undertaken to do. As to the claim in this sub-section B that compliance with the opinion and report of the Wage and Hour Administrator would result in a loss of production, defendants allege that the time spent at the face does not necessarily measure the quantity of ore produced. On the contrary, experience has demonstrated that a shortening of hours increases the speed of production.

IX.

Answering section IX of the bill of complaint, entitled "Great Weight Should Be Accorded to Any Reasonable Standards Which Represent the Prevailing Customs and Practices in the Particular Industry and Which Are Supported By a Long History of Bona Fide Collective Bargaining Agreements". these defendants assert that there has not been any history, long or short, of bona fide collective bargaining agreements in the operations of the plaintiff's ore mines. The situation has already been described in this answer. That situation was one of employer dictation; complete employer strength and employee weakness, complete employer solidarity, and lack of cohesion on the part of the employee; directions equivalent to commands on the part of the plaintiff and enforced obedience on the part of the helpless employees.

X.

Answering that section of the bill of complaint numbered X and entitled "Petition and Prayer" these defendants deny that the plaintiff is entitled to any part of the relief prayed in the bill of complaint.

Wherefore, the premises considered, these defendants pray that this Court on the hearing hereof will dissolve the temporary injunction heretofore issued and will dismiss the bill of complaint at the cost of the plaintiff.

LEE PRESSMAN,
CRAMPTON HARRIS,
JOSEPH KOVNER,
J. A. LIPSCOMB,
Attorneys for Defendants named in the first paragraph hereof.

Note: I hereby certify that I have served a copy of the foregoing motion to dismiss and answer upon Honorable Borden Burr, Solicitor of Record for the Plaintiff.

This 17th day of May, 1941.

CRAMPTON HARRIS.

Filed May 17, 1941.

MOTION OF DEFENDANTS AFFILIATED WITH INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS FOR SUMMARY JUDGMENT AFFIDAVIT IN SUPPORT THEREOF AND ORDER THEREON.

257 (Civil Action No. 5232.)

Now come the defendants, Muscoda Local No. 123, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, and W. C. Gunnin, Pete Dulaney, R. H. Martin and John Thompson, individually and as officers and members of such Local; and Wenonah Local No. 157, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, and C. J. McDaniel, W. B. Lemley, R. E. Lemley and Ward Jefferson, individually and as officers and members of such Local; and Iskhooda Local No. 153, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, and E. A. Sisemore, L. H. McBrayer, Elmore Mitchell, and Dennis Hart, individually and as officers and members of such Local; and Van D. Jones, C. L. Pegues, and Frank Allen, individually and as officers of the International Union of Mine, Mill & Smelter Workers, an unincorporated association, and by leave of the Court first had and obtained, move the Court for a summary judgment and for an order dismissing the bill of complaint and dissolving the injunction and for grounds of this motion assign all the grounds separately and severally numbered from 1 to 8 heretofore filed by these defendants in their motion to dismiss the bill of complaint; and in addition thereto assign the following additional grounds separately and severally:

9. The situation has changed since plaintiff filed its bill of complaint claiming irreperable injury if it complied

with the opinion and report of the Wage and Hour Administrator of the Fair Labor Standards Act of 1938 in that on to-wit: May 1, 1941 the plaintiff began to comply with the opinion and report of the Wage and Hour Administrator and has been paying these defendants for work time computed in accordance with the determination and finding of said Wage and Hour Administrator.

10. The plaintiff is no longer in need of a declaratory judgment because it began to comply with the opinion and report of the Wage and Hour Administrator and began to pay these defendants and its other employees in accordance with such opinion and report on May 1, 1941, and is still complying therewith.

And in support thereof do submit the affidavit of W. C. Gunnin, hereto attached and made a part hereof the same as if set out herein.

LEE PRESSMAN,
CRAMPTON HARRIS,
JOE KOVNER,
J. A. LIPSCOMB.

5 20 41 The above motion is overruled and denied.

T. A. MURPHREE,
Dist. Judge.

Filed in open Court on May 20, 1941.

T. A. MURPHREE,
Dist. Judge.

State of Alabama,
Jefferson County.

Before Me, the undersigned authority in and for said County in said State, personally appeared W. C. Gunnin, who being by me first duly sworn, deposes and says, that he was on April 4, 1941, and on May 1, 1941, and on May

20, 1941 an employee of Tennessee Coal, Iron and Railroad Company in its ore mine in Jefferson County, Alabama known as Muscoda, and is one of the defendants named in the bill of complaint filed by the Tennessee Coal, Iron and Railroad Company in the District Court of the United States for the Southern Division of the Northern District of Alabama at Birmingham on April 4, 1941.

Deponent further says that on May 1, 1941 the Tennessee Coal, Iron and Railroad Company began to compute the wages due this deponent and defendant and the other defendants named in the bill of complaint and various other employees engaged in mining ores on the basis and in the manner determined as a proper basis and manner for the computation of such wages by the Wage and Hour Administrator of the Fair Labor Standards Act of 1938 in the opinion and report which was attached by the plaintiff to its bill of complaint.

Deponent further says that since May 1, 1941 to the present time the wages of this deponent and defendant and the other defendants named in the bill have been computed in accordance with said opinion and report and that the plaintiff in said suit is complying with said opinion and report in its mine operations.

W. C. GUNNIN.

Sworn to and subscribed before me this the 21st day of May, 1941.

ALEXA ELLIS,
Notary Public.

ORDER ON PRE-TRIAL HEARING.

(Civil Action No. 5232.)

This cause coming on to be heard on a regular pre-trial hearing, and all parties being present by counsel, the following action was thereupon taken:

1. The following pleadings and amendments were allowed:

Complaint, and answers of defendants.

Counterclaim of A. F. of L. defendants.

Counterclaim of C. I. O. defendants, to be filed within two weeks from May 20, 1941.

2. It was agreed by all of the parties that the following are all of the issues in controversy in this cause:

a. What constitutes the working time which makes up the workweek of the underground ore mining employees of the plaintiff within the meaning of Section 7 of the Fair Labor Standards Act of 1938.

(1) In reference to "a", above, the plaintiff contends that such workweek does not include that portion of the time spent by the underground ore mining employees in being transported or walking to and from their usual working places.

(2) In reference to "a", above, the defendants contend that the workweek covers all time from portal to portal as announced in the opinion and report of the Wage & Hour Administrator under the Fair Labor Standards Act on March 23, 1941, and also includes aggregate of the time

spent on the surface in obtaining and returning lamps, carbide and tools and in checking in and out.

b. If the Court determines issue "a" adversely to the plaintiff, the Court will further determine whether or not the defendants and other underground iron ore employees who are now or who hereafter may become parties are entitled to recover against the plaintiff, and if so, how much.

On the consideration of "b", above, the parties shall have the right and opportunity of presenting for the Court's consideration all of their respective claims, rights and defenses.

3. The following facts are agreed upon as true and without proof thereof:

(a) Suit is brought in the correct name of the proper plaintiff and against the correct defendants in their proper names.

(b) Plaintiff is, and during all of the period of time herein involved was, a corporation organized under the laws of the state as alleged in its complaint; that the plaintiff is a resident of said state of its incorporation authorized to transact business in the State of Alabama, and it has a principal place of business and mining and manufacturing operations in Jefferson County, State of Alabama.

(c) All the defendants named in the complaint are citizens and residents of Jefferson County, Alabama.

(d) It is admitted that this is a class section in which the Court shall determine whether or not the named defendants fairly represent the class of underground iron ore employees of the plaintiff.

4. The following exhibits were agreed upon as authentic and admissible as evidence without proof.

(a) Exhibit A to the complaint, subject to verification by the defendants.

(b) Exhibit B to the complaint, subject to verification and admissibility.

(c) Subject to verification, and admissibility, the papers marked respectively Exhibits 3, 3-A, 3-B and 3-D, were sent by the Administrator of the Wage and Hour Division to and were received by the respective plaintiffs, and the paper marked Exhibit 3-C is a correct copy of the petition filed by the respective plaintiffs asking for a reconsideration of the "Modified Portal to Portal Wage Hour Decision."

(d) Subject to verification and admissibility, all government documents, as listed:

(1) The papers marked respectively Exhibits 4 and 4-A to 4-H, both inclusive, are releases issued by the United States Department of Labor, Wages and Hours Division, and given publicity to plaintiffs and the public in general.

(2) Publication of United States Department of the Interior, Harold L. Ickes, Secretary, Bureau of Mines, R. R. Sayres, Director, United States Government Printing Office, Washington, 1941. (Exhibit No. 7.)

(3) Release of January 15, 1941, United States Department of the Interior, Bureau of Mines, R. R. Sayres, Di-

rector, Mineral Market Report, M. M. S. No. 885. (Exhibit No. 8.)

(4) Publication of United States Department of the Interior, Harold L. Ickes, Secretary, Bureau of Mines, R. R. Sayres, Director, "Lead", United States Government Printing Office, Washington, 1941. (Exhibit No. 9.)

(5) Publication of United States Department of the Interior, Harold L. Ickes, Secretary, Bureau of Mines, R. R. Sayres, Director, "Zinc", United States Government Printing Office, Washington 1941. (Exhibit No. 10.)

(6) Publication of United States Department of the Interior, Harold L. Ickes, Secretary, Bureau of Mines, R. R. Sayres, Director, "Cooper", United States Government Printing Office, Washington, 1941. (Exhibit No. 11.)

(7) Release of United States Department of the Interior, Bureau of Mines, April 25, 1941, Mineral Market Reports, M. M. S. No. 907. (Exhibit 11-A.)

(8) Release of United States Department of the Interior, Bureau of Mines, January 25, 1941, Mineral Market Reports, M. M. S. No. 877. (Exhibit 11-B.)

(9) Release of United States Department of the Interior, Bureau of Mines, January 27, 1941, Mineral Market Reports, M. M. S. No. 878. (Exhibit 11-C.)

(10) Publication of the United States Department of the Interior, Harold L. Ickes, Secretary, Bureau of Mines, R. R. Sayres, Director, "Bituminous Coal", United States Government Printing Office, Washington, 1940. (Exhibit 12.)

(11) Publication of the United States Department of the Interior, Harold L. Ickes, Secretary, Bureau of Mines,

R. R. Sayres, Director, "Pennsylvania Anthracite", United States Government Printing Office Washington, 1940.

(12) Publication of United States Department of the Interior, Bituminous Coal Division, February 15, 1941, "Production, Stocks and Consumption of Coal". (Exhibit 13-A.)

(13) National Recovery Administration, Approved Code No. 24, Registry No. 702-45, Code of Fair Competition for the Bituminous Coal Industry, as approved September 18, 1933, including amendments 1 to 3, inclusive. (Exhibit No. 14.)

(14) It is admitted that no Codes were ever adopted or promulgated for the iron ore industry or for any mining industry other than the Bituminous Coal Industry.

(15) 26 Opinions of United States Attorney Generals, p. 64,—"Eight-hour Law—Reclamation Service." (Exhibit No. 16.)

(16) 26 Opinions of United States Attorney Generals, p. 605,—"Eight-hour Law—Hours of Service of Lock Tenders, Etc." (Exhibit No. 17.)

(17) 27 Comptroller of the Treasury, p. 1060, "Traveling Expenses Railway Postal Clerks". (Exhibit No. 18.)

(18) 9 Decisions of Comptroller General, p. 200, A-29317, "Compensation—Extra Pay for Night Work—Railway Postal Clerks." (Exhibit No. 19.)

(19) 14 Decisions of Comptroller General, p. 907, A-61311. "Compensation—Overtime—Forty-Hour Week." (Exhibit No. 20.)

(20) Opinion of the Attorney General of the United States, dated August 8, 1939, "Application of the Eight Hour Law to the Civilian Conservation Corps." (Exhibit No. 21.)

(e) Tennessee Coal, Iron & Railroad Company Rules and Regulations for Iron Ore Miners, marked A. F. of L. Exhibit A, subject to verification and admissibility.

(f) Notice of Compliance, A. F. of L. Exhibit B and Minutes, A. F. of L. Exhibit C; subject to verification and admissibility.

(g) Contracts between plaintiff and A. F. of L. unions, subject to verification and admissibility, marked A. F. of L. Exhibits D and E.

5. It is agreed that the provisions of this order shall be applicable, *mutatis mutandis*, to cases number 5233 and 5234 pending in the above named division of this Court.

It is therefore Ordered by the Court that all of the above named allowances and agreements be, and the same are hereby binding upon all parties in the above styled cause, unless this order be hereafter modified by order of the Court.

Done this 22nd day of May, 1941.

T. A. MURPHREE,
United States District Judge.

Filed May 22, 1941.

ORDER SETTING CASE DOWN FOR TRIAL ON THE MERITS AND DECREES ON VARIOUS MOTIONS, ETC

266 (Civil Action No. 5232.)

This cause coming on to be heard on the 20th and 21st of May, 1941, there being present in Court all parties represented by their counsel and the matters hereinafterwards ruled upon being heard, argued, and considered, it is accordingly ordered, adjudged, and decreed by the Court as follows:

1. That the request of those defendants referred to as representing that group of plaintiff's employees affiliated with the American Federation of Labor and represented by Attorneys Smith, Quinn, and Spencer to withdraw their motions asking for the dismissal of the complaint herein be and the same hereby is granted, and said motions be and they hereby are withdrawn.

2. That the motion of those defendants referred to as representing that group of plaintiff's employees affiliated with the International Union of Mine, Mill & Smelter Workers and represented by Attorneys, Pressman, Harris, and Lipscomb to dismiss the complaint herein be and the same hereby is overruled, to which ruling of the Court said defendants, separately and severally, except.

3. That the motions of those defendants referred to as representing that group of plaintiff's employees affiliated with the International Union of Mine, Mill & Smelter Workers and represented by Attorneys Pressman, Harris and Lipscomb for a summary judgment against the plaintiff and for the dismissal and dissolution of the restraining order for preliminary injunction heretofore issued be and the same hereby are overruled, to which rul-

ing of the Court said defendants, separately and severally, except.

4. It is further ordered that the defendants referred to as representing that group of plaintiff's employees affiliated with the International Union of Mine, Mill & Smelter Workers and represented by Attorneys Pressman, Harris, and Lipscomb be and they hereby are given two weeks from the date of this order to file an amendment to their answers, setting up in such form as they may be advised their claims or counter-claims against the plaintiff.

5. It is further ordered that said case be and the same hereby is set down for trial on the merits on June 23, 1941, at ten o'clock A. M., in accordance with the pre-trial order this day made.

Dated this 20th day of May, 1941.

T. A. MURPHREE,
District Judge.

Filed May 26, 1941.

Notice of hearing on Motion of Philip B. Fleming, Administration of the Wage & Hour Division, U. S. Dept., of Labor for leave to Intervene, omitted from the printed record, pursuant to Rule 23 of this Court.

* * * * * * *

MOTION OF PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, FOR LEAVE TO INTERVENE.

269 (Civil Action No. 5232.)

Philip B. Fleming, Adiminstrator of the Wage and Hour Division, United States Department of Labor, moves for leave to intervene and become a party to this action in order to assert the claims and defenses set forth in his proposed pleading, a copy of which is hereto attached, on the following grounds:

I.

The object of plaintiff's petition is to obtain an interpretation of the term "workweek" contained in Section 7 of the Fair Labor Standards Act of 1938, which is contrary to the interpretation placed upon said term by the Administrator of the Wage and Hour Division of the United States Department of Labor.

II.

Plaintiff further alleges in its complaint that said interpretation by the Administrator of the Wage and Hour Division of the United States Department of Labor violates and is repugnant to the Fifth Amendment to the Constitution of the United States.

III.

Philip B. Fleming, Administrator of the Wage and Hour Division of the United States Department of Labor, is directly and solely responsible for the administration of the Fair Labor Standards Act of 1938. Any determination of the interpretation to be placed upon any provisions of the Act will directly affect the administration of the said Act. Plaintiff in its petition has invited the Administrator of the Wage and Hour Division to intervene in this action.

IV.

For the foregoing reasons Philip B. Fleming, Administrator of the Wage and Hour Division of the United States Department of Labor, has an interest in the above-entitled cause and seeks to assert his claims and defenses, presenting both questions of law and fact which are common to the main action.

V.

Accompanying this motion is the pleading of Philip B. Fleming, Administrator of the Wage and Hour Division of the United States Department of Labor, to plaintiff's petition.

Wherefore, Philip B. Fleming, Administrator of the Wage and Hour Division of the United States Department of Labor, prays that he be allowed to intervene in the above-entitled cause, and that he be permitted to file his pleading herein, a copy of which is attached.

GERARD D. REILLY,
Solicitor of Labor.
IRVING J. LEVY,
Assistant Solicitor in Charge of Litigation.
JEROME A. COOPER,
Regional Attorney.
ABNER BRODIE,
United States Department of Labor.
Attorneys for Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor.

Post Office Address:
Wage and Hour Division,
U. S. Department of Labor,
1007 Comer Building,
Birmingham, Alabama.
or
Wage and Hour Division,
U. S. Department of Labor,
Washington, D. C.

Filed May 24, 1941.

On May 24, 1941, notice and motion identical with the foregoing were filed in the case of Sloss-Sheffield Steel & Iron Co. v. Sloss Red Ore Local No. 109, Civil Action No. 5233, and in the case of Republic Steel Corporation v. Raimund Local No. 121, Civil Action No. 5234.

ANSWER OF PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, INTERVENER.

271 (Civil Action No. 5232.)

Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, as his pleading setting forth the claim or defense for which intervention is sought, respectfully shows that:

First Defense.

I.

Intervener neither admits nor denies the allegations of Section I of plaintiff's petition but leaves plaintiff to its proof thereof.

II.

With respect to the allegations of Section II of plaintiff's petition regarding the working conditions of plaintiff's employees at its ore mines, intervener alleges that their working conditions are as set forth in Section II, entitled "The Miner's Day," of the Opinion and Report which is annexed to the petition as Exhibit A. Except as herein otherwise stated, the intervener is without knowledge or information sufficient to form a belief respecting any other material allegations of section II of plaintiff's petition.

III.

Intervener has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in section III of the petition entitled "The Defendants" except that intervener admits that the Administrator of the Wage and Hour Division, United States Department of Labor, is interested in the construction of Section 7 of the Fair Labor Standards Act of 1938, but not as prayed for in plaintiff's petition.

IV.

Intervener has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in section IV of the petition entiled "Statement of Controversy". Intervener denies that the material allegations of fact contained in said section constitute an actual controversy within the meaning of the Federal Declaratory Judgment Act (26 U. S. C., Section 400), or otherwise. Intervener admits that Section 7 of the Fair Labor Standards Act is as stated in Section IV of plaintiff's petition. Intervener alleges that there are differences of opinion respecting the interpretation of Section 7 of the Fair Labor

Standards Act of 1938, which differences of opinion are described in section IV of Exhibit A, annexed to plaintiff's petition.

Intervener alleges that the proper interpretation of Section 7 of the Fair Labor Standard Act of 1938 is as set forth in the Opinion and Report, a copy of which is annexed to plaintiff's petition as Exhibit A.

V.

Regarding the allegations contained in section V of plaintiff's petition entitled "The Opinion of the Administrator", intervener admits that an opinion and report in the form annexed to the petition and marked Exhibit A was issued. Further, to the extent that they are material or relevant, intervener refers to reports, releases, bulletins, and opinions of the Wage and Hour Division of the United States Department of Labor, mentioned in plaintiff's petition for the contents thereof. Except as herein otherwise answered, the material allegations of fact contained in said section V of plaintiff's petition are denied. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in said section V of plaintiff's petition.

Intervener alleges that the proper interpretation of Section 7 of the Fair Labor Standards Act of 1938 is as set forth in the Opinion and Report, a copy of which is annexed to plaintiff's petition as Exhibit A.

VI.

For the terms of the Fair Labor Standards Act of 1938, mentioned in section VI of plaintiff's petition entitled "Necessity For the Relief of a Declaratory Judgment" intervener refers to the Act. Regarding any material allegations of fact in section VI of plaintiff's petition, intervener has no knowledge or information sufficient to form a belief. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in said section VI of plaintiff's petition. Intervener denies that there is any necessity for relief by a declaratory judgment.

VII.

Intervener has no knowledge or information sufficient to form a belief regarding the truth of any material allegations of fact in section VII of plaintiff's petition. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in said section VII of plaintiff's petition.

VIII.

Intervener denies the material allegations of fact contained in section VIII of plaintiff's petition. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in said section VIII of plaintiff's petition.

IX.

Intervener denies the material allegations of fact contained in section IX of plaintiff's petition. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in said section IX of plaintiff's petition. Intervener alleges that the working conditions of employees in plaintiff's ore mines are set forth in Section

II of Exhibit A, annexed to plaintiff's petition. Intervener alleges that the terms of private contracts can not alter the proper interpretation of the terms of the Fair Labor Standards Act. Intervener alleges further that the terms of the contracts referred to in Section IX of plaintiff's petition or any other contracts can not relieve plaintiff of its obligations imposed by the Fair Labor Standards Act of 1938 and defendants can not waive by contract or otherwise the benefit of said Act.

X.

Intervener has no knowledge or information sufficient to form a belief respecting the allegations of paragraph X of plaintiff's petition.

Intervener alleges that the terms of private contracts can not alter the proper interpretation of the terms of the Fair Labor Standards Act. Intervener alleges further that the terms of the contracts referred to in section IX of plaintiff's petition or any other contracts cannot relieve plaintiff of its obligations imposed by the Fair Labor Standards Act of 1938 and defendants can not waive by contract or otherwise the benefit of said Act. Intervener alleges further that defendants can not be estopped by the terms of the alleged contracts referred to in section X of the plaintiff's petition or otherwise from claiming the benefits of the Fair Labor Standards Act.

Second Defense.

This Court has no jurisdiction over plaintiff's petition under the Federal Declaratory Judgment Act because there is no actual controversy within the meaning of the said Act, said petition does not present a case or controversy within the meaning of Article III, Section 2 of the United States Constitution, plaintiff is not threatened with or in danger of suffering any irreparable injury, plaintiff has a complete and adequate remedy at law with respect to any rights arising out of the matters alleged.

GERARD D. REILLY,
Solicitor of Labor.
IRVING J. LEVY,
Assistant Solicitor in Charge of Litigation.
JEROME A. COOPER,
Regional Attorney.
ABNER BRODIE,
United States Department of Labor.
Attorneys for Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor.

Post Office Address:
Wage and Hour Division,
U. S. Department of Labor,
1007 Comer Building,
Birmingham, Alabama.
or
U. S. Department of Labor,
Washington, D. C.

Filed June 7, 1941.

ANSWER OF PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, INTERVENER.

276 (Civil Action No. 5233.)

Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, as his pleading setting forth the claim or defense for which intervention is sought, respectfully shows that:

First Defense.

I.

Intervener neither admits nor denies the allegations of section I of plaintiff's petition but leaves plaintiff to its proof thereof.

II.

With respect to the allegations of Section II of plaintiff's petition regarding the working conditions of plaintiff's employees at its ore mines, intervener alleges that their working conditions are as set forth in section II, entitled "The Miner's Day," of the Opinion and Report which is annexed to the petition as Exhibit A. Except as herein otherwise stated, the intervener is without knowledge or information sufficient to form a belief respecting any other material allegations of section II of plaintiff's petition.

III.

Intervener has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in section III of the petition entitled "The Defendants" except that intervener admits that the Administrator of the Wage and Hour Division, United States Department of Labor, is interested in the construction of Section 7 of the Fair Labor Standards Act of 1938.

IV.

Intervener has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in section IV of the petition entitled "Statement of Controversy." Intervener denies that the material allegations of fact contained in said section constitute an actual controversy within the meaning of the Federal Declaratory Judgments Act (26 U. S. C., Section 400), or otherwise. Intervener admits that Section 7 of the Fair Labor Standards Act is as stated in section IV of plaintiff's petition. Intervener alleges that there are differences of opinion respecting the interpretation of Section 7 of the Fair Labor Standards Act of 1938, which differences of opinion are described in section IV of Exhibit A, annexed to plaintiff's petition.

Intervener alleges that the proper interpretation of Section 7 of the Fair Labor Standards Act of 1938 is as set forth in the Opinion and Report, a copy of which is annexed to plaintiff's petition as Exhibit A.

V.

Regarding the allegations contained in Section V of plaintiff's petition entitled "The Opinion of the Administrator" intervener admits that an opinion and report in the form annexed to the petition and marked Exhibit A was issued. Further, to the extent that they are material or relevant, intervener refers to reports, releases, bulletins, and opinions of the Wage and Hour Division of the United States Department of Labor, mentioned in plaintiff's peti-

In Testimony Whereof, witness the signatures of the undersigned, this 11th day of Sept., 1940.

SLOSS RED ORE LOCAL ≠109,
I. U. of M. M. & S. W.,
(S.) By JOHN HILL,
President.
(S.) By JESSE GAINES,
Vice-President.
(S.) By W. A. O'NEAL,
Chairman Executive Board.
(S.) By VAN D. JONES,
Board Member District ≠5,
I. U. of M. M. & S. W.

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
(S.) By ROY RATLIFF,
General Manager.

Outside Rates.

Occupation	Hourly Rate	Amount Per Shift	Hours Per Shift
Truck Driver	$.540	$4.32	8
Teamster	.505	4.04	8
Engineers—Main Hoist	.770	7.70	10
Dumpers	.535	4.28	8
Tipplemen	.535	4.28	8
Conveyor Men	.535	4.28	8
Weighmen	.675	6.08	9
R. R. Car Loaders	.535	4.28	8
Crusher Men	.635	5.08	8
Machinist	.820	6.56	8
Machinist Helper—1st Class	.570	4.56	8
Machinist Helper—2nd Class	.540	4.32	8
Blacksmith	.845	6.76	8
Blacksmith Helper	.540	4.32	8
Carpenter	.650	5.20	8

Occupation	Hourly Rate	Amount Per Shift	Hours Per Shift
Carpenter Helpers	.505	4.04	8
Car Repairmen	.635	5.08	8
Car Repairmen Helpers	.580	4.64	8
Drill Sharpener	.740	5.92	8
Compressor Man	.695	6.26	9
Watchman	.515	4.12	8
Laborers	.450	3.60	8
Slate Pickers	.450	3.60	8
Ore Inspector	.580	4.64	8

Note: One and one-half times the above hourly rates will be paid for all time in excess of eight (8) hours per day or forty (40) hours per week, excepting supervisors, foremen and a few occupations where application of this rule is not practical.

Inside Rates.

Occupation	Hourly Rate	Amount Per Shift	Hours Per Shift
Company drillers	$.755	$6.04	8
Driller helpers	.675	5.40	8
Motormen	.685	5.48	8
Coupler	.600	4.80	8
Rockmen	.685	5.48	8
Rockmen Helpers	.596	4.76	8
Track Cleaners	.506 Ton	...	..
Timbermen	.685	5.48	8
Timbermen helpers	.595	4.76	8
Pipemen	.635	5.08	8
Pipemen helpers	.595	4.76	8
Chainers-Contract—.022 per ton or	.625	5,00	8
Company chainers	.625	5.00	8
Company chainer helpers	.600	4.80	8

Occupation	Hourly Rate	Amount Per Shift	Hours Per Shift
Engineers—Main hoist	.755	6.42	8½
Engineers—Auxiliary hoist	.685	5.48	8
Stablemen	.635	5.08	8
Rock, Timber and Track Foremen	.755	6.04	8
Trackmen	.685	5.48	8
Trackmen helpers	.595	4.76	8
Roller Men	.605	4.84	8
Pumpers	.605	4.84	8
Electric Repairmen	.795	6.36	8
Machinist	.795	6.36	8
Miner on Company work*	.625	5.00	8

*See Section 8, (c) and (d) for application.

Note: One and one-half times the above hourly rates will be paid for all time in excess of eight (8) hours per day or forty (40) hours per week, excepting supervisors, foremen and a few occupations where application of this rule is not practical.

Hand Loaded Ore

Places 18 Feet or Less in Width

Basic Tonnage = 35 Tons Per Shift

5 Man Crew

Occupation	No. Men	Rate Per Ton
Drill Man	1	$ .153
Drill Man Helper	1	.138
Muckers	3	.417
Total	5	$ .708

Any additional tonnage produced will be paid for at the above rates.

When conditions develop beyond the control of a crew that prevents them from loading the basic tonnage and they are required to stay at the working place for the full 8-hour shift, wages equivalent to 90% of the basic tonnage earnings will be paid the crew on a pay period basis.

Hand Loaded Ore

Places Over 18 Feet in Width

Basic Tonnage = 43 Tons Per Shift

5 Man Crew

Occupation	No. Men	Rate Per Ton
Drill Man	1	$ .129
Drill Man*	..	.112*
Drill Man Helper	1	.116
Muckers	3	.351
Total	5	$ .708

*To credit of Head Drill Man for Explosive and Supplies.

Any additional tonnage produced will be paid for at the above rates.

When conditions develop beyond the control of a crew that prevents them from loading the basic tonnage and they are required to stay at the working place for the full 8-hour shift, wages equivalent to 90% of the basic tonnage earnings will be paid the crew on a pay period basis.

Drag Loaded Ore

Basic Tonnage = 100 Tons Per Shift

15 Man Crew

8 Men One Shift: 7 Men Opposite Shift

Occupation	No. Men	Rate Per Ton
Head Miner	1	$ .041
Head Miner	..	.110*
Drag Engineers	2	.062
Drill Men	4	.121
Drill Men Helpers	2	.053
Muckers	4	.106
Haulage Engineers	2	.046
Total	15	$ .539

*To credit of Head Miner for Explosives and Supplies.

Any additional tonnage produced will be paid for at the above rates.

When conditions develop beyond the control of a crew that prevents them from loading the basic tonnage and they are required to stay at the working place for the full 8-hour shift, wages equivalent to 80% of the basic tonnage earnings will be paid the crew on a pay period basis.

Drag Loaded Ore

Headings Only

Basic Tonnage = 75 Tone Per Shift

8 Man Crew

Occupation	No. Men	Rate Per Ton
Head Miner	1	$ .041
Drag Engineer	1	.083
Drill Men	2	.160
Drill Men Helper	1	.070
Muckers	2	.140
Haulage Engineer	1	.060
Total	8	$ .554

Any additional tonnage produced will be paid for at the above rates.

When conditions develop beyond the control of a crew that prevents them from loading the basic tonnage and they are required to stay at the working place for the full 8-hour shift, wages equivalent to 80% of the basic tonnage earnings will be paid the crew on a pay period basis.

Yardage Rates

Slopes, 12′ wide or less	$17.80 per lin. yd.
Slopes, 18′ wide	9.90 per lin. yd.
Headings, 18′ wide, or less	9.90 per lin. yd.
Upsets	7.85 per lin. yd.
Stope necks, 12′ wide or less	17.80 per lin. yd.
Stope necks, 15′ wide or less	13.90 per lin. yd.
Stope necks, 18′ wide or less	9.90 per lin. yd.
Splitting a single stope into a double stope	25.00 per lin. yd.

EXHIBIT "C".

Agreement.

This agreement dated March 17, 1941, and entered into by and between the Sloss-Sheffield Steel & Iron Company, (hereinafter referred to as the "Company") and Ruffner Iron Ore Miners Union No. 512 of the International Union of Mine, Mill and Smelter Workers, (hereinafter referred to as the "Union") on behalf of employees employed in the Production and Maintenance Departments of the Ruffner Red Ore Mine, located at Irondale, Alabama.

Section 1—Recognition.

(a) The Union shall be and is hereby recognized as the exclusive bargaining agency for the employees in the Production and Maintenance Departments for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) The term employee used in this Agreement does not include foremen, supervisors, technical and clerical employees.

(c) It is distinctly understood that the Management of the mine and the direction of the working force, and the right to hire and discharge are vested exclusively in the Company.

Section 2—Check-Off.

The Company agrees upon individual written authorization by the employee to deduct Union dues in the amount not to exceed one dollar ($1.00) per month from such employee. Initiation and other fees (not to exceed two dollars ($2.00) for any one man, and in sums not to exceed one dollar ($1.00) per man in any one pay period), wherein individual written authorization has been made to the Company by the employee, shall be deducted by the Company. All such deductions shall be forwarded to the financial secretary of Union No. 512 on or before the tenth of the following month.

In case any employee shall enter suit or process against the Company for the amount deducted under this section pursuant to such check-off paid to its representatives, the Union will reimburse to the Company the amount of any loss sustained by the Company by reasons thereof, including costs and expense of the suit.

Section 3—Mine Committee.

The duties of the Mine Committee shall be confined to the adjustment of disputes arising from this Agreement with the employees represented by them that the mine management and employee, or employees, have failed to adjust. The Mine Committeee shall have no other authority nor exercise any other control, nor in any way interfere with the operation of the mine. The Mine Committee has no authority to direct the working forces in or about the mine or any part thereof. For violation of these clauses or any of them the Committee, or any member thereof, shall be immediately removed from the Committee, and shall be ineligible to serve as a committeeman for six months thereafter.

Section 4—Hours of Work.

(a) Eight hours work per day shall constitute a day's work and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period.

The Company shall have the right during the life of this Agreement to operate the mine one, two or three eight-hour shifts by different crews of men within each twenty-four hour period.

(b) The eight hours per shift will not apply in case of accident or breakdowns which may temporarily necessitate longer hours for those employees required on account thereof, and also excepting the number of men required to handle man trips and those required to remain on duty while men are entering or leaving the mine.

(c) Time and one-half shall be paid for all work performed in excess of eight hours per day or forty hours per week.

Section 5—Holidays.

The following Holidays shall be observed by the Company—Independence Day, Labor Day, Thanksgiving Day and Christmas Day; except for necessary maintenance or repair work, and those employees whose occupations require continuous duty.

Section 6—Vacations.

(a) Each employee who, prior to June 1st, 1941, shall have been continuously in the service of the Company for a period of three (3) years shall receive a vacation with pay on the following basis:

Three (3) years and less than five (5) years—three (3) working days.

Five (5) years and less than ten (10) years—six (6) working days.

Ten (10) years and less than fifteen (15) years—eight (8) working days.

Fifteen (15) years and over—ten (10) working days.

(b) During the three-year period prior to June 1st, 1941, any employee who voluntarily left the service of the Company for one or more days will not be entitled to vacation pay.

(c) An employee must be in the active service of the Company at time of allotment of vacation to be entitled to same and vacations will, so far as possible, be granted at times most desired by the employees, but the final right to allotment of vacation period is exclusively reserved to the Company in order to insure the orderly operation of the plant.

(d) Service will be considered continuous where employee has not been off payroll more than three months in the past year prior to June 1st, 1941, or a total of fifteen months in past five years prior to June 1st, 1941, through being laid off by the Company account of curtailed operations.

Section 7—Miscellaneous Provisions.

It is agreed to observe during the life of this Contract the same practices and customs in regard to the promotion, or increases and decreases in the working forces, as have been practiced in the past.

Section 8—Wages and Rates of Pay.

(a) The wage rates attached hereto will be the prevailing rates of pay for the duration of this Agreement.

(b) It is agreed that in event general wage advances are granted or decreases made to red ore miners by a majority of the red ore producing companies in this district during the life of this Agreement, it is understood that the question of considering wage adjustments for Ruffner employees will then become a subject for collective bargaining under terms of this agreement.

Section 9—Settlement of Disputes.

If an employee, or employees, shall consider that he or they have any grievance against the Company, an earnest effort shall be made, subject to the terms and provisions of this contract, to adjust same by the following successive steps:

(a) Between employee and his foreman.

(b) Between Mine Committee and Superintendent of the Mine.

(c) Between Mine Committee or Representatives of the Union and the General Superintendent of Ore Mines.

(d) If such grievance arising under the terms of this Contract is not adjusted and settled in the manner herein provided; then such grievance, that has been settled by one of the modes aforesaid provided, shall be submitted to a Board of Arbitration, who shall be appointed to consider such unadjusted grievance, and shall be selected as follows:

Two (2) to be chosen by the Company and two (2) to be chosen by the Union, and these four to choose a fifth member within ten (10) days. If these four fail to agree upon the fifth member, then within ten additional days he shall be chosen by the President of Sloss-Sheffield Steel

& Iron Company and the Board Member of District 5 of the International Union of Mill, Mine and Smelter Workers. The decision of such Board of Arbitration shall be rendered without unreasonable delay, and the decision of a majority of said Board shall be final and binding on all parties involved in such grievance. Any expense incurred by the arbitrators shall be borne equally by the Company and the Union.

(e) There shall be no stoppage of work either by the Company or the Union, until full procedure of methods of settling grievances as outlined in this Agreement have been complied with.

(f) If it shall be determined that an employee has been discharged or suspended without just cause, the Company shall immediately reinstate the employee and compensate him for time lost at his regular rate of pay.

Section 10—General Clauses.

(a) This Agreement may be amended or revised in any of its provisions during its existence, provided such amendments or revisions are approved in writing, and subscribed to by the Union and the Company.

(b) It is understood and agreed that Section 9 (d) (Settlement of Grievances) shall not be effective in the arbitration of wage increases, wage reductions or wage adjustments.

(c) Each section of this Agreement has been arrived at through the process of collective bargaining between representatives of the employees and officials of the Sloss-Sheffield Steel & Iron Company.

Section 11—Effective Period and Termination.

This agreement shall become effective on the 17th day of March, 1941, and shall be operative and remain in full force and effect for two (2) years from said date and from year to year thereafter, subject, however, to the right of either party to terminate the agreement at the end of any yearly period after 17th day of March, 1943, by written notice given to the other party not more than thirty (30) days prior to nor less than fifteen (15) days prior to the end of any such year.

In Testimony Whereof, witness the signatures of the undersigned, this 17th day of March, 1941.

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
By ROY RATLIFF,
General Manager.

RUFFNER MINERS UNION
#512, I. U. of M. M. & S. W.,
By FRANK PARKER,
President.
By HORSEA BICKERSTAFF,
Vice-President.
By GEO. F. DRUMMOND,
Chairman Executive Board.
By VAN D. JONES,
Board Member District #5,
I. U. of M. M. & S. W.

Outside Rates.

Occupation	Hourly Rate	Amount Per Shift
Truck Driver	$ .540	$4.32
Engineer—Main Hoist	.770	6.16

Occupation	Hourly Rate	Amount Per Shift
Tippleman	.535	4.28
Weighman	.675	5.40
Railroad Car Loader	.535	4.28
Machinist	.795	6.36
Machinist Helper—1st Class	.570	4.56
Blacksmith	.795	6.36
Carpenter	.650	5.20
Carpenter Helper	.450	3.60
Car Repairmen	.635	5.08
Car Repairmen Helpers	.580	4.64
Compressor Man	.650	5.20
Watchman	.515	4.12
Laborers	.450	3.60
Slate Pickers	.450	3.60
Lamp Man	.570	4.56

Note: One and one-half times the above hourly rates will be paid for all time in excess of eight (8) hours per day or forty (40) hours per week.

Inside Rates.

Occupation	Hourly Rate	Amount Per Shift
Drillers*	$ .755	$6.04
Muckers*	.610	4.88
Track Cleaners	.595	4.76
Rockmen	.685	5.48
Rockmen Helpers	.595	4.76
Timbermen	.685	5.48
Timbermen Helpers	.595	4.76
Rock and Timber Foreman	.755	6.04
Pipeman	.635	5.08
Pipeman Helper	.595	4.76
Chainers—Main Hoist	.625	5.00
Chainers—Auxiliary Hoists	.600	4.80

Occupation	Hourly Rate	Amount Per Shift
Engineers—Auxiliary Hoists	.685	5.48
Trackman	.685	5.48
Trackman Helpers	.595	4.76
Roller Man	.605	4.84
Laborers	.595	4.76
Electrical Repairman	.795	6.36
Drag Operator*	.755	6.04
Face Man*	.595	4.76
Chute Man*	.595	4.76
Spotting Hoist Engineer*	.595	4.76

*See pages 9, 10 and 11 for application for bonus in addition to above rates.

Note: One and one-half times the above hourly rates will be paid for all time in excess of eight (8) hours per day or forty (40) hours per week.

*Tonnage Bonuses

Drag Loading

Normal Crew of Six (6) Men—

Base 80 Tons Per Shift of Eight (8) Hours Worked

All excess tonnage above base of 80 tons per day, computed on a bimonthly basis, will be paid for at the rate of $0.30 per ton, divided between the crew as follows:

Drag Operator	$ .07
Drillers (2)	.14
Face Man	.03
Chute Man	.03
Spotting Hoist Engineer	.03

*Tonnage Bonuses

Hand Loaded Entries

Normal Crew of Three (3) Men—

Base 25 Tons Per Shift of Eight (8) Hours Worked

All excess tonnage above base of 25 tons per day, computed on a bimonthly basis, will be paid for at the rate of $0.48 per ton, divided between crew members as follows:

Driller	$0.18
Muckers (2)	.30

*Tonnage Bonuses

Hand Loaded Slopes

Normal Crew of Three (3) Men—

Base 18 Tons Per Shift of Eight (8) Hours Worked

All excess tonnage above base of 18 tons per day, computed on a bimonthly basis, will be paid for at the rate of $0.48 per ton, divided between crew members as follows:

Driller	$0.18
Muckers	.30

MOTION OF PETITIONER-PLAINTIFF SLOSS-SHEFFIELD STEEL AND IRON COMPANY FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION.

157 (Civil Action No. 5233.)

Comes the plaintiff in the above entitled cause and adopting the allegation of its bill of complaint as a part of this motion, moves the Court to issue herein a temporary restraining order or preliminary injunction, restraining and enjoining said defendants and their agents, representatives, and all other underground employees of the plaintiff made parties defendant hereto as a class, from prosecuting any suit or claim of any nature whatsoever against plaintiff for any additional wages or compensation claimed to be due them under the terms and provisions of the said Act for any portion of their time, including the lunch period, spent in being transported or going to and from their actual places of work, and that the terms of said injunction be as set forth in the prayer of said bill of complaint.

S. M. BRONAUGH,
Attorney for Plaintiff.

Filed April 5, 1941.

ORDER SETTING MOTION OF PETITIONER-PLAINTIFF SLOSS SHEFFIELD-STEEL AND IRON COMPANY FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION FOR HEARING.

158 (Civil Action No. 5233.)

This matter coming on to be heard on the motion and prayer of the plaintiff for the issuance of a temporary restraining order or preliminary injunction, it is Ordered by the Court that said motion be and the same hereby is set for hearing in open Court on the 17th day of April, 1941, at 10 o'clock, A. M.

It is further Ordered that service of a copy of the bill of complaint herein, of said motion, and of this order be made upon the defendants in accordance with Rule 5(b) of the Rules of Civil Procedure, and that such service be made not less than five (5) days before the time set for hearing.

This 5th day of April, 1941.

T. A. MURPHREE,
Judge.

Filed April 5, 1941.

RETURN OF SERVICE OF PROCESS ON PETITION OF SLOSS-SHEFFIELD STEEL & IRON COMPANY, omitted from the printed record, pursuant to Rule 23 of this Court.

* * * * * * * * *

PETITION OF REPUBLIC STEEL CORPORATION

160 (Civil Action No. 5234.)

I.

Allegations of Jurisdiction.

(a) That petitioner and plaintiff (hereinafter referred to as "plaintiff") is a corporation organized under the laws of the State of New Jersey, and a resident of said State, authorized to transact business in the State of Alabama, and having one of its principal places of business, and mining and manufacturing operations, in Jefferson and Etowah Counties, State of Alabama;

(b) All of the defendants are citizens and residents of Jefferson County, State of Alabama;

(c) The matters in controversy, exclusive of interest and costs, exceed the sum of $3,000;

(d) That jurisdiction is also founded on the existence of a federal question in that it is a suit arising under a law regulating commerce;

(e) Jurisdiction is also founded in that this action arises under the Constitution of the United States and the Fifth Amendment to the Constitution of the United States;

(f) Jurisdiction is also founded on the existence of a question arising on a particular statute in that the action arises under the Act of June 25, 1938, Public Act No. 718 of the 75th Congress, Chapter 676, Sections 1 to 19, 52 Stat. 1060, Title 29, U. S. C., Sections 201, to 219, as amended by the Act of Congress of August 9, 1939, Public Act. No. 344 of the 76th Congress, commonly called the "Fair Labor Standards Act of 1938", as hereinafter more fully appears.

(g) This action is to secure a declaratory judgment and such incidental injunctive relief as may be proper under the provisions of the Federal Declaratory Judgment Act, Title 28, U. S. C. A. 400, the Judicial Code, Section 274(d); the Act of March 3, 1911, Chapter 231, Paragraph 274(d), as amended June 14, 1934, Chapter 512; 48 Stat. 955, as amended by the Act of August 30, 1935; C 829, Paragraph 405; 47 Stat. 1027.

(h) This action is also to secure such other different and more general relief as may be proper under the allegations herein contained.

II.

The Plaintiff and Its Operations.

Plaintiff owns and operates in Jefferson County, Alabama, two underground iron ore mines, one at Spalding (this mine is not involved in this proceeding) and the other at Raimund. The ore mine at Raimund has two openings. Access to the mine workings is by inclined slopes of approximately 45 degrees with vertical depth of cover of approximately 1,000 feet. The workable seam of ore averages about 6½ feet. The method of mining is a modified room and pillar plan, with open stopes. The operating requirements call for an average of approximately 82,000 gross tons of red ore per month (from Raimund and Shannon mines). The plaintiff extracts from said mine iron ore, and said ore is used by the Company in the manufacture of pig iron, some of which pig iron is sold in the open market but the larger portion of the pig iron thus manufactured is used in the manufacture at the Alabama plants of the plaintiff of structural steel, iron fencing, sheets, bars, and other products, such products being sold in various markets in competition with manufacturers of like products. The plaintiff obtains a portion of its supplies and equipment from outside the State of Alabama, and it ships the greater portion of its manufactured products by common carrier to points outside of the State of Alabama, and in some instances to foreign countries.

The plaintiff operates coal mines and uses the coal in the manufacture of its products. The operations in its coal mines, in so far as the questions involved here are related and concerned, are the same operations as the operations in its ore mines. The general custom and procedure in the ore mine is substantially as follows:

Plaintiff employs at its ore mine approximately 645 employees, and of this number 589 are underground employees (these underground employees are the employees of the plaintiff with whom the controversy as hereinafter alleged exists and who are hereinafter made parties defendant hereto). For the convenience of its underground employees the plaintiff provides bath house facilities, the bath house being located a short distance from the mine entrance hereinafter referred to as the "portal". The employees are not compelled to use the bath house facilities and the plaintiff does not require the presence of the underground employees at the bath house at any particular time or in any defined groups. No check-in or check-out is had at the bath house. While the use of the bath house is not obligatory, it is used by substantially all of the plaintiff's employees. The employee, after changing from street clothes to work clothes at the bath house, walks to the "portal".

All underground employees are lowered into the slopes in man skips to a central point called the underground manloading station. From this point the employees proceed on foot to their respective working places. For the purpose of transporting employees to the underground manloading station the plaintiff operates man skips. The employees are not required to ride on any particular man trip but can follow their own wishes in determining which trip they shall ride. Eight to ten man trips are required to lower all the underground employees in the mine, the first trip leaving at approximately 5:15 A. M. and P. M. and the last trip leaving at approximately 6:30 A. M. and P. M. All men are expected to be at their regular places of work at the starting time, which is 7:00 A. M. day shift operations and 7:00 P. M. night shift operations. Day shift operations cease at 3:00 P. M. and night shift operations cease at 3:00 A. M.

No time is designated for lunch period, and no time is deducted from the eight-hour work period for lunch. After the day's work has been completed the employees walk from their working places and to the underground manloading station and are hoisted in the same manner as they are lowered into the mines.

The time taken in transportation from the portal to the underground manloading station and from the manloading station to the portal, and the time taken in walking from and to the man loading station to and from the usual working place varies, but may be conservatively estimated at not more than 2 hours and not less than 1 hour. The time taken by the employees from the moment they leave the bath house before the beginning of the day's work until the moment they enter the bathhouse at the end of the day's work varies, but may be conservatively estimated as averaging fifteen minutes. Several years prior to the enactment of the Act the plaintiff established in its ore mine an eight-hour day and forty-hour week, with payment of time and one-half for all the time over eight hours in any one day and for all overtime in excess of forty hours in any one week, the eight-hour day meaning eight hours' work in and about the mines at the usual working place, for all classes of labor. All underground mine employees have been paid and accepted their wages on the basis of eight hours per day from 7:00 A. M. or P. M. to 3:00 P. M. or A. M. The plaintiff has never compensated its underground employees for any portion of their time spent in going to or from or in being transported to and from their actual workplace, and such employees at all times understood and agreed that they should not receive any compensation therefor; and such understanding and agreement has been specifically provided for by agreements, express or implied, between the Company and its underground employees.

The allegations herein set forth as to operations at the present time are substantially in all respects true as to operations for several years prior to the enactment of the Act.

III.

The Defendants.

(a) Defendant, Raimund Local 121, affiliated with the International Union of Mine, Mill & Smelter Workers, is an unincorporated association and has been selected by some of plaintiff's employees as their representative for collective bargaining in all matters concerning wages, hours, and conditions of employment, the exact number of the underground employees represented by said Local being unknown to plaintiff.

(b) The individual defendants, John Butler, Lewis Tarrant, and B. G. Stephens, are underground employees of the plaintiff and officers and members of said Raimund Local 121 who have selected said organization as their representative for collective bargaining.

(c) The defendant, Unit No. 8, Brotherhood of Miners of Captive Ore Mines of Alabama, is an unincorporated association not affiliated with any national organization and has been selected by some of plaintiff's employees (underground) as their representative for collective bargaining in all matters concerning wages, hours, and conditions of employment, the exact number of plaintiff's underground employees who are represented by said Unit being unknown to plaintiff.

(d) Individual defendants, Melvin Lawrence, C. W. Eady, and J. E. Thornton, are underground employees of the plaintiff and members and officers of said Unit No. 8 who have selected said organization for their representative for collective bargaining.

(e) The defendants herein named are made parties defendant in their individual and representative capacities, as hereinabove set forth and described, under Rule 23 of Federal Rules of Civil Procedure, as representative of all of plaintiff's employees, as all of such employees represent a class that is so numerous as to make it impracticable to bring them all before the Court, and such individual defendants, representing as they do the employees and different groups thereof, so fairly represent all employees as to insure adequate representation of all, and are, therefore, sued because the right sought to be enforced by the plaintiff against all of the employees are several and there is a common question of law and fact affecting the several rights and common relief is sought against all.

Plaintiff has elected, in keeping with the statutes and rules of Court in such cases made and provided and more especially Rule 23, Rules of Civil Procedure, to make and name as parties herein the above named and described defendants as being typical of the several classes of plaintiff's said underground mine employees whose rights would be affected by the decision to be rendered herein, and plaintiff avers that said employees, selected and named as defendants, properly and fairly represent all of said underground mine employees, and that said underground mine employees are all interested in and parties to the controversy hereinafterwards described.

The plaintiff invites the timely intervention in this action of any of its other employees who are not specifically or individually made defendants hereto to intervene or join herein as parties defendant, all to the end that the controversy herein set forth and shown may be fully and fairly determined by this Court in this proceeding.

The Administrator of the Wage & Hour Division, United States Department of Labor, as such Administrator, is interested in the construction (hereinafterwards prayed for) of Section 7 of the Act, commonly called the "Fair Labor Standards Act of 1938", and the plaintiff invites the timely intervention in this action of such Administrator.

IV.

Statement of Controversy.

Plaintiff alleges that there is an actual and bona fide controversy existing as of the date of filing this petition between the plaintiff on the one hand and the defendants herein named on the other hand, said controversy growing out of the following facts and being as herein stated:

Said controversy relates to the judicial construction of Section 7 of the Act, said section reading as follows:

"Section 7(a) 'No employer shall, except as otherwise provided in this section, employ any of his employees who are engaged in commerce or in the production of goods for commerce—

"(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

"(2) for a workweek longer than forty-two hours during the second year from such date, or

"(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

The plaintiff asserts:

1. That in working its employees in and about their actual working places eight hours per day for five days per week it is not employing said employees for a workweek longer than forty hours.

2. That no part of the time (unless some actual physical labor or service is during such time performed for the plaintiff) spent by its underground employees in the bath house or in going from and to the bath house to or from the portal, or to and from the underground manloading station from or to the portal, or to or from the actual working places of the employees from or to the underground manloading station, constitutes a part of the "workweek".

Otherwise stated, the plaintiff asserts that the Congress intended the word "workweek" to be construed as meaning the time actually spent by plaintiff's underground miners in or about their usual work, and did not intend to include a part of the "workweek" the time spent by such underground employees in being transported or walking to and from the places where they actually worked.

(3) That if the Congress did intend that traveling time of plaintiff's underground employees to and from the places where they actually worked should be considered as a part of the workweek, such legislation is violative of the Fifth Amendment to the Constitution of the United States.

Some of the defendants (being members of the International Union of Mine, Mill & Smelter Workers, affiliated with the C. I. O.) assert:

1. That the Congress intended to include within the meaning of the word "workweek" all the time from the moment the underground employees leave the bath house before the beginning of the day's work until the moment they enter the bath house at the end of the day's work.

Otherwise stated, that the entire time from the moment the underground employees leave the bath house before the beginning of the day's work until the moment they enter the bath house at the end of the day's work should be considered as a part of the "workweek", and that the underground employees should be paid for all such time and should be paid overtime for such portion of the "workweek", as thus defined, which exceeds forty hours since October 24, 1940, and forty-two hours from October 24, 1939, to October 24, 1940, and forty-four hours from October 24, 1938, to October 24, 1939.

Others of the defendants (being members of Unit No. 8, Brotherhood of Miners of Captive Ore Mines of Alabama), so plaintiff has been informed and believes, assert:

1. That the Congress intended to include within the meaning of the word "workweek" all the time from the moment the underground employees enter the bath house

before the beginning of the day's work until the moment they leave the bath house at the end of the day's work.

Otherwise stated, that the entire time from the moment the underground employees enter the bath house before the beginning of the day's work until the moment they leave the bath house at the end of the day's work should be considered as a part of the workweek, and that the miners should be paid for all such time, and should be paid overtime for such portion of the week's work, as thus defined, which exceeds forty hours since October 24, 1940, and forty-two hours from October 24, 1939, to October 24, 1940, and forty-four hours from October 24, 1938, to October 24, 1939.

The controversy involves a large sum of money because, if the assertions and contentions of the plaintiff are correct and its construction of the Act legal, it has paid to its underground employees all the compensation due them under the provisions of the Act. However, if the assertions and contentions of the underground employees are correct and their construction of the Act legal, plaintiff will be due its underground employees a large sum of money for overtime at a rate not less than one and one-half times the regular rate at which the underground employee was employed, which accrued indebtedness, if the estimates of the underground employees as to the amount of overtime is correct, will amount to approximately Two Hundred Fifty Thousand and No/100 ($250.00) Dollars, and if the plaintiff continues in the performance of its understanding and contention that only time actually spent by an underground employee working at and around the usual workplace constitutes the "workweek", the overtime and obligations of the plaintiff, therefore, will each day become increasingly larger. Without a determination of this controversy it is impossible for plaintiff to know and ascertain whether or not it is violating the Act.

V.

The Opinion of the Administrator.

On March 23, 1941, the Administrator of the Wage and Hour Division, United States Department of Labor, announced a "Modified Portal to Portal Wage-Hour Opinion" and report, a complete copy of said opinion and report is hereto attached, marked Exhibit "A", and made a part hereof.

Plaintiff avers that said report was made on March 15, 1941, for release on Sunday, March 23, 1941, and said opinion was made on March 17, 1941, for release on Sunday, March 23, 1941; that promptly upon receiving information as to said opinion and report, plaintiff, with other employers like situated, filed with the Administrator its application for a reconsideration of said opinion; that a hearing on such application for reconsideration was held on Friday, March 28, 1941, before such Administrator; and that the petition for a reconsideration was taken under advisement. Plaintiff avers that on April 1, 1941, the Administrator denied the petitions for reconsideration but postponed the effective date from April 1, 1941, to May 1, 1941.

In said opinion the Administrator, in effect, expresses the opinion, and advises the plaintiff and other employers like situated, that the enforcement policy of the Division, effective May 1, 1941, will be that the workday in plaintiff's mines "starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the end of the shift".

Otherwise stated, it is the expressed opinion of the Administrator that the word "workweek" in said Act includes the entire portion of time spent by plaintiff's underground miners in going from the entrance or portal of the mine to the places where they actually work, and in returning from such places to said portal.

Plaintiff has been advised by counsel, and on such advice charges that the opinion expressed by the Administrator has no legal force; that the Administrator; under the provisions of the Act, has, and claims to have, no authority to judicially determine the legal effect of said provision of the Act; and that the opinion as thus expressed by the Administrator is erroneous and illegal. Said opinion is by no means a determining factor in this proceeding, but illustrates and emphasizes the bona fides of the controversy as herein set forth and the necessity for having said controversy fully, fairly, and promptly determined by this Court.

Said opinion serves as, and is claimed by defendants, to be, the principal support for their asserted construction of Section 7 of the Act.

There appears in said report (Exhibit "A") the following footnote:

"While the Wage and Hour Division Bulletins are not binding on the Courts, it may be anticipated that Judges will accord them especial weight; see United States v. American Trucking Associations, Inc., 310 U. S. 534. The Administrator has also from time to time issued statements concerning enforcement policy under which he proposes to proceed for reasons of administrative convenience." (Report, page 1, footnote 3.)

The institution and continuance in effect of the enforcement or threatened enforcement of said illegal and erroneous opinion of the Administrator subject the plaintiff to the peril of the heavy penalties of the Act.

In view of the foregoing, plaintiff, therefore, deems it material and relevant to make the following averments, which it asserts show or tend to show the illegality and incorrectness of the Administrator's opinion, and the lack of weight which should be accorded said opinion by this Court in declaring the issue of law herein sought to be declared.

Plaintiff avers that such averments where stated as facts are true, and where not stated as facts, plaintiff has been informed thereof, believes such information, and on such information and belief avers that they are true.

1. Plaintiff on information and believe alleges that prior to July 23, 1940, the Wage and Hour Division of the United States Department of Labor issued to the press the following release:

"First Mining Company Enjoined.

"The Cornucopia Gold Mines, a corporation with principal offices in Seattle, Washington, has been restrained from violations of the Fair Labor Standards Act, according to an announcement of the Wage and Hour Division, U. S. Department of Labor. This is the first Wage and Hour case in which judgment has been entered against a mining company. The corporation, operating a mine and mill near Cornucopia, Oregon, is engaged in the mining and concentrating of ore containing gold and silver.

"A judgment entered in the United States District Court for the Western District of Washington, Northern Division, on May 3, provides for the payment of restitution. Approximately $18,000 in back wages for overtime worked is due some 283 employees.

"An important stipulation contained in the judgment is that time spent by employees in traveling from the 'portal', or entrance, of the mine to the 'face', or place where they work, and from the 'face' back to the 'portal' is to be deemed time worked. This means that hereafter the miners are assured of wages from the time they enter the mine until they leave it. Heretofore the miners were required to show only six hours of work on their time cards, although they were actually in the mine for eight hours. The mining company previously had not paid for the two hours consumed by the men riding into the tunnel in the mine property and going up or down the shafts to their place of work for the day."

That said release was printed in newspapers over the United States, including the newspapers of Birmingham, Alabama; and that the publication of said release was one of, if not the sole, motivating cause of the making by the defendant unions of the claims against the plaintiff for compensation to the underground miners for the time spent in going to and from their actual working places, and that (presented in flagrant violating of their written contract) these claims were the first insisted upon claims on the part of any underground employees for payment for time in going to and from their working places since mining became an industry in the State of Alabama.

The facts stated in said release above quoted were incorrect or incomplete. The true facts in reference to the Cornucopia case referred to in such release were that the employer, previous to the enactment of the Act, had computed and paid wages on the "portal to portal" plan, and that following the enactment of the Act for the purpose of avoiding or coming within its terms, the employer began to compute and compensate its employees on the so-called "face to face" plan*, and charged as transportation time an arbitrary time set for transportation against the working time of all employees without reference to the time actually spent by such employees in being transported to and from their working places, thereby not counting as a part of the "workweek" the time spent in transportation, although previously it had been the custom to include such time as a part of the "workweek". That under these circumstances the decree referred to in the above released statement was entered *by consent* of the parties.

Upon the publication in the various papers of the country of the release of the Administrator above referred to in reference to such decision, there followed the claim of defendants, in accordance with the information thus incorrectly set out in such release, that transportation time should be included in their "workweek" for which they should receive compensation.

Plaintiff avers that, as hereinbefore and hereinafterwards set out more in detail, the situation in its mines in reference to prior custom, prior contracts, and the computation and payment of compensation was exactly the reverse from the facts that existed in the Cornucopia Gold Mine Company case.

2. Plaintiff alleges on information and belief that on or about Saturday, July 27, 1940, there was issued by

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* Plaintiff uses the term "face to face" because of the fact that these terms have been used generally in describing plaintiff's method of operation. However, a more proper designation would be "working place to working place".

the United States Department of Labor, Wage and Hour Division, for release morning paper, Saturday, July 27, 1940, R-298, said release stating in substance that "two mining determinations were announced, one dealing with the status of lessees in mines and the other with working time in bituminous coal mines." In reference to the "determination" dealing with working time in bituminous coal mines, the release stated:

> "Colonel Fleming announced that on the basis of an inquiry submitted by the bituminous coal mining industry, the Wage and Hour Division in carrying out its enforcement duties in that industry will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the particular industry and are supported by a long history of *bona fide* collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, Colonel Fleming announced that practice of computing working time on a 'face to face' basis in the bituminous coal mining industry would not be unreasonable. Colonel Fleming explained the term 'face to face' to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work and the time spent in traveling from the portal or entrance of the mine to the place of work and the time spent in returning from the working place to the portal in the evening. The Administrator added that the determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in the bituminous coal mining industry."

3. Plaintiff alleges on information and belief that the Wage and Hour Division, United States Department of Labor, issued for release Wednesday, September 18, 1940, G-81, an address scheduled for delivery of Colonel Fleming (Philip B.), Administrator, Wage and Hour Division, United States Department of Labor, before the American Mining Congress, Colorado Springs, Colorado; Wednesday, September 18, 1940, and that in said address the Administrator stated, among other things:

"1. Must the time spent by the underground worker in traveling from the portal to the face be counted as time worked?

"2. Must time spent at lunch underground be considered as time worked?"

In reference to the matter herein involved, the Administrator, among other things, said:

"The portal-to-portal matter also has been presented to us by the bituminous coal mining industry. In response to inquiry I said that the Wage and Hour Division, in carrying out its enforcement duties in that industry, will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the industry and are supported by a long history of *bona fide* collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, I announced that the practice of computing working time on a 'face-to-face' basis in bituminous coal mining would not be unreasonable. The term 'face-to-face' was explained to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work, and the time spent in returning from the working place to the portal at the end of the shift. This determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in bituminous coal mining. In the Cornucopia case, for example, custom and tradition had long recognized the portal-to-portal basis of reckoning time worked.

"We are not yet disposed to take any particular position as to whether the half hour spent eating lunch underground may be deducted from hours worked. The problem is a very difficult one because the employee is required to eat under very unfavorable conditions and is subject to many of the hazards of his job while eating. On the other hand, we recognize that the employee does have time off in order to have lunch and an argument can be made that such time need not be considered as hours worked. But as I say, the Division is not prepared at the present time to make any definitive determination on this question."

4. Plaintiff alleges that at various times from July, 1940, until the middle of October, 1940, during which time the Wage and Hour Division of the United States Department of Labor had under investigation with full cooperation of the plaintiff the claims as presented by the unions that the underground miners were entitled under Section 7 of the Act to be compensated for the time spent in going to and from their work places, plaintiff was on several occasions informed by the representatives of the Administrator conducting or taking part in such investigations that in reaching a conclusion as to the claims of the unions the Department would accord great weight to the prevailing customs and practices as sup-

ported by the history of bona fide collective bargaining agreements.

5. Plaintiff alleges on information and belief that hearings were held in Salt Lake City, Utah, conducted by Harold Stein as the representative of the Administrator, on December 11 and 12, 1940; that said hearings related substantially, if not altogether, to the non-ferrous mines of the West and had no proper relationship either to the iron ore mines of plaintiff and of other operators in the State of Alabama or to the iron ore mines as constituting a national industry; that hearings were held in the City of Birmingham, Alabama, conducted by the said Harold Stein, on January 14 and 15, 1941; that said hearings related solely to the limestone mine and iron ore mines of the plaintiff, of the Tennessee Coal, Iron and Railroad Company, Sloss-Sheffield Steel & Iron Company, and Woodward Iron Company as operated in Jefferson County, State of Alabama; that the evidence and information given at such hearing established without dispute the fact that since mining has been an industry in Alabama, down to and including the present time, it has been the universal and unvarying custom in all underground mines (coal, iron, limestone, and all others) to compute and pay underground employees compensation on the basis of "working place to working place", and that there has never been computed or paid any compensation for the time spent in transportation or in going to and from the actual working places, and that all contracts, including those now in existence with organizations representing the employees, expressly provide for the computation and payment of underground employees on the basis of "working place to working place".

6. Plaintiff alleges that neither in the hearings at Salt Lake City, Utah, or Birmingham, Alabama, so far as

plaintiff has been able to acquire knowledge, was any evidence given or statements taken relating to any ore mines in any other portion of the United States other than the Birmingham District, although plaintiff, on information and belief, charges that the percentage of iron ore produced in the Birmingham District is less than ten (10) percent of the total production in the United States of America, and of the total production there has never been, except in a few mines (not more than one and one-half (1½) percent of the total, in states controlled by local statutes) in custom and practice the so-called "portal to portal" plan as sought to be instituted by the Administrator as representing his construction of Section 7 of the Act.

7. The plaintiff alleges that the opinion (Exhibit "A") is based upon the report (Exhibit "A") hereinafter referred to, and that said report contains the following averments:

"(1) *Face to face.* The miners are paid only for working time at the face and excluding lunch. Except where the shift was measured only by the work performed, this is probably the oldest method of computing the shift, but the record indicates that only a small percentage of underground metal miners are still paid on this basis. The only important group of mines now operating on a face to face basis are those in Alabama.

"(2) *Collar to collar.* Far more common than face to face in modern practice, and universal in the states of Utah and Arizona, where it is required by law, is the collar to collar basis. On this basis, the miner is paid for all time from the moment he descends from the surface to the moment he returns to the surface, except that in some mines the lunch period is not paid for.

Characteristically, though not invariably, the collar to collar shift is eight hours. Ordinarily lunch is eaten on the company's time, but a fixed lunch period is normal, nevertheless."

"* * * The great majority of metal miners nowaday work in mines where they are paid for part or all of their underground travel time."

The above factual statements are incorrect. There is not in the States of Alabama any appreciable production of gold, silver, copper, lead, and zinc (the metals for the most part referred to and covered by said report). The only ferrous mines in Alabama referred to and included in said report are the iron ore mines (although the coal mines and other mines in Alabama have always followed the same method of computing and paying wages as the iron ore mines follow). The method of mining and production of iron ore has no real similarity to that of the metals above referred to, the mining of which, so far as said report is concerned, is located principally in the Western States. The ore mines of Alabama do not in any way come in competition with said metal mines; and there is no practical, logical, or historical reason for considering the ore mines of Alabama in relation to or in connection with the metal mines above referred to.

The ore mining industry of the United States is one of tremendous size and importance. In the year 1940 there was produced in the United States a total of approximately 76 million tons of iron ore. Of this total amount approximately 63 million tons or 84.2% were produced by the mines located in what is known as the Lake Superior ore mining territory, approximately 7 million tons or 9.5% were produced by the ore mines of Alabama, approximately 3 million tons of 4.7% were produced by the iron ore mines of New York, New Jersey, and Pennsylvania, and 1½ million tons or 1.6% were produced by the iron ore mines of Utah and Wyoming. Of the small amount produced in the Western states of Utah and Wyoming, approximately 90% thereof is produced in the State of Utah, which is controlled by a state statute requiring computation and payment of compensation on the so-called "portal to portal" basis.

Instead of, as recited in said report, the "greater majority of metal miners nowadays working in mines being paid for part or all of their underground travel time" and the "only important group of mines now operating on the 'face to face' basis are those located in Alabama", substantially all of the iron ore mines in the United States have always been, and are at the present time, operated upon and the compensation of their employees computed and paid on the "working place to working place" plan. In approximately 100% of the mines of the United States producing iron ore, there is not now and has never been in operation the so-called "collar to collar" plan. Even in the non-ferrous mines there has never been in existence, except in a negligible degree, the "portal to portal" plan.

Plaintiff avers that the basis for the opinion as given in the report and the reason therein assigned for applying the measuring rod of "face to face" to the bituminous coal mines of the United States and the measuring rod of "portal to portal" or "collar to collar" to the iron ore mines of the United States is not supported by the facts; that no real distinction can be made between the bituminous coal mining industry and the iron ore mining industry; and that the correct construction of Section 7 of the Act as applied not only to these industries, but to all other industries, is that the word "workweek" was used by the Congress as meaning actual work at the usual working places, and it was not the intention of the Congress to include in the word "workweek" time spent by an employee in going to and from his place of work, during which time he is not in any way engaged in the performance of any physical labor or actual service for the employer.

VI.

Necessity for the Relief of a Declaratory Judgment.

1. The Act contains, among others, the following provisions:

"Section 15:

"* * * it shall be unlawful for any person—

"(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6* (minimum wages) and section 7 (maximum hours), or in violation of any regulation or order of the Administration issued under Section 14 (relating to learners, apprentices, etc.) * * *;

"(2) to violate any of the provisions of Section 6 (minimum wages) and section 7 (maximum hours), or any of the provisions of any regulation or order of the Administrator issued under Section 14 (relating to learners, apprentices, etc.);

"(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on any industry committee;

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* Parenthesis and emphasis herein are ours.

"(4) to violate any of the provisions of Section 12 (prohibition against child labor);

"(5) to violate any of the provisions of Section 11(c) (relating to reports, etc.), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

"Section 16:

(a) Any person who willfully violates any of the provisions of Section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

"(b) Any employer who violates the provisions of section 6 or section 7 of this act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any Court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The Court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

As hereinbefore alleged, the plaintiff, under its assertion that "workweek" means time spent at the underground miners' usual working places, has, for several years prior to the enactment of the Act, employed, and now employs, its underground miners at their usual places of work forty hours per five-day week. It, therefore, follows that if the assertions and contentions of either the Administrator or of any class of plaintiff's underground mining employees are correct that plaintiff will be subject, among other things, first, to the penalties as set forth in section 16(a); second, to the unpaid overtime compensation and to an additional equal amount as liquidated damages and a reasonable fee to be paid to the attorneys of such underground employees who bring suits, together with the costs of the actions; and, third, to the costs, expenses, and inconvenience of a multiplicity of actions, depending upon how many of said underground mining employees of the plaintiff institute such legal proceedings.

2. *Threatened litigation:*

Plaintiff is in immediate peril of threatened litigation, because:

A. Defendant, Raimund Local 121, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers (a C. I. O. organization), on or about October 5, 1940, presented to the plaintiff a written officially adopted resolution and statement asserting that the plaintiff had required its underground employees "to be on the premises on duty and in the performance of their work for the company ten hours per day, totaling fifty hours per 'workweek'" (the claim being based upon the alleged statement that two hours were spent on the premises of the plaintiff in time spent in the bath house or in transportation or walking to and from the working place, and demanding payment by the plaintiff of "all back time since the effective date" of the Act. A copy of said resolution is hereto attached, marked Exhibit "B", and made a part hereof.

B. Defendant, Raimund Local 121, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers (a C. I. O organization), by and through its duly constituted and authorized officers, and through its legal counsel, asserted and contended in the conference held by the Wage and Hour Division of the United States Department of Labor in Birmingham, Alabama, on January 14 and 15, 1941, that under the provisions and terms of the Act it was entitled to have counted as a part of the "workweek" of its members approximately two hours claimed to have been spent each workday from the moment they leave the bath house before the beginning of the day's work until the moment they enter the bath house at the end of the day's work.

C. Defendant officers and members and other members of said defendant, Raimund Local 121, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers (a C. I. O. organization), and defendants Jones, Pegues, and Allen have for several months past, and up to and including the time of the filing of this petition, made many and repeated statements and threats to institute and prosecute suits against the plaintiff under the provisions of the Act for the purpose of enforcing the payment by plaintiff of overtime (claimed as above set forth) at the rate of one and one-half times the regular rate at which plaintiff's underground miners were employed, together with attorneys' fees and costs.

D. Plaintiff has been informed, believes such information, and on such information and belief charges that said defendant, Raimund Local 121, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers (a C. I. O. organization), has employed attorneys and authorized and directed them to proceed in the prompt bringing of such legal proceedings as may be necessary to enforce against the plaintiff their claim for such overtime payments, together with attorneys' fees and costs.

E. Defendant officers and members and other members of all of said defendant Local have for several months past and up to and including the date of the filing of this petition made many and repeated statements and threats to institute and prosecute suits against the plaintiff under the provisions of the Act for the purpose of enforcing the payment of the alleged overtime (claimed as above set forth) at the rate of one and one-half times the regular rate at which plaintiff's underground miners were employed, together with attorneys' fees and costs.

F. Plaintiff has been informed, believes such information, and on such information and belief charges that on Sunday, March 23, 1941, defendant Van D. Jones, Executive Board Member of District No. 5 of the International Union of Mine, Mill and Smelter Workers, and the principal administrative officer of the said Union in the State of Alabama, referring to the "portal to portal" opinion of the Administrator, publicly announced in the press that the red ore miners of the Birmingham District, members of his union, would at once seek to recover a million dollars in back wages claimed to be due from the plaintiff and other operators of iron ore mines in Jefferson County, Alabama, and that approximately 6000 Alabama red ore miners would bring litigation for the purpose of enforcing the collection of the claimed amounts.

Wherefore, Plaintiff asserts that it is threatened with the immediate institution and prosecution of a multiplicity of suits involving large sums of money, and unless the declaration herein prayed for is granted, the plaintiff will be faced with great, if not irreparable, injury.

VII.

Probability of Great, If Not Irreparable, Injury.

If the declaratory judgment herein prayed for is not granted, the plaintiff is in immediate peril of suffering great and irreparable injury because (among other things):

1. Of the vexation, cost, and expense of a multiplicity of suits.

2. Of the delay in the settlement and determination of the controversy which will necessarily follow if the prompt remedy afforded by the Declaratory Judgment Act and Rule 57, Rules, District Courts of the United States, is not applied and the final determination of the legal question involved is left to the adjudication of such threatened suits, the bringing of which is immediately imminent;

3. Of the fact that, under the provisions of the Act, the threatened suits for overtime payments may be brought in different jurisdictions, in Federal Courts or in State Courts, and will be encumbered with the costs and expenses of such litigation and the delays incident to final determination and the changes of different adjudications by different jurisdictions;

4. Of the probability of cessation in work, and losses and damages and ill feelings by reason of labor disturbances, which will almost inevitably follow if the plaintiff fails to comply with the present illegal and erroneous opinion of the Administrator; or if in attempting to comply it is forced to insist on a reduction of the compensation now being paid its underground employees.

5. Of the great expense that the plaintiff will be put to in changing its operations from the "working place to working place" plan to the "portal to portal" plan, in the event, by reason of the Administrator's opinion and the perils of not complying therewith, it feels compelled to endeavor to comply therewith;

6. Of the claims of the different individual employees and the different classes of employees, being so different as to impose upon the plaintiff the perils and uncertainties incident to different contentions, and adjudications in reference to the legal issues herein sought to be declared.

VIII.

Perils of Decision.

Unless the plaintiff can obtain a prompt declaration on the issue of law here presented, it is confronted with unusual and immeasurable perils of making a decision, because:

1. If it, under advice of counsel, decides to stand by its construction of the law, and the Court should ultimately decide that the assertions either of the Administrator or of individual employees or any of the classes of plaintiff's employees are correct, plaintiff would be subjected:

A. To the costs, expenses, and heavy penalties which would be imposed under Section 16(b) of the Act.

B. To the penalties of fine and imprisonment imposed by Section 16(a) of the Act.

C. To having the Administrator, under the warning given in his opinion of March 23, 1941 (Exhibit "A" hereto attached) proceed against it by injunction proceedings under Section 17 of the Act, and the prevention of the shipment in interstate commerce of its manufactured products.

2. If, on account of the perils incident to standing on its conviction under advice of counsel, it feels impelled on account of the uncertainties and delays of litigation to accept and comply with the opinion, either of the Administrator, or with the demands and assertions of defendants, plaintiff will probably, and in many respects certainly, be subject to or have imposed upon it (among other things):

A. The payment of large sums of money to its employees for overtime as contended for by them.

B. The planning and institution of new methods of operation which will result in great loss and damages to the plaintiff because:

(a) compliance will result in a large reduction in production if the "portal to portal" plan should be put in effect and the underground employees could not remain underground more than eight hours per working day, which would mean that the time spent in going to and from the working places or from the bath house would have to be subtracted from the time now spent in actual work at the actual working places, thereby reducing the actual day's work time from eight hours to five hours or six hours, depending upon the correctness of the contentions of the various classes of employees.

(b) It would greatly increase plaintiff's cost per ton of ore produced.

(c) It would place the plaintiff at a serious disadvantage with its competitors and would deprive it of a substantial portion of its existing markets.

(d) As an illustration of the increased cost of which would fall upon the plaintiff, plaintiff has carefully calculated what the effect of putting the opinion of the Administrator into effect at its Raimund ore mines would be, and avers:

(1) Should the plaintiff continue to operate said mine on its present and long-existing custom and practice of five days per workweek (eight hours per workday), and continue to receive from its underground employees eight hours' actual work at their usual working places, and pay as overtime the approximate two hours consumed in going to and from the working places, the increased cost per ton of iron ore per ton would be twenty-seven cents.

(2) Should the plaintiff operate the mine four days per week instead of five days per week, it could comply with the opinion of the Administrator without exceeding forty hours per workweek. The increase of cost per ton, if this plan of operation should be put into effect in order to comply with the Administrator's opinion, would be twenty-three cents per ton of iron ore.

(3) Should the Company be able by changing its method of transportation by the purchase at large cost of additional equipment and by arranging a schedule of transportation so that each employee would have a definite time for entering and leaving the mine, the increase in cost would be large and the difficulties of operation great.

(e) Not only would the cost per ton of ore produced be greatly increased, but the percentage of loss in tonnage produced would be large, and the loss of production would not only be to the damage of the plaintiff but, by reason of the bonus which the underground mining employees receive upon the amount of their production, the loss of wages upon employees would be substantial.

(f) The plaintiff's cycle of operations, computation of wages, payment of wages, methods and forms of bookkeeping, rules and regulations governing employees, method and time of transportation, assembly and delivery of tools, powder, and equipment, and activities of service and surface crews have all been by long and unvaried custom, related to and based upon the "working place to working place" plan, and to change this method would be difficult and costly.

IX.

Great Weight Should Be Accorded to Any Reasonable Standards Which Represent the Prevailing Custom

and Practice in the Particular Industry, and Which Are Supported By a Long History of Bona Fide Collective Bargaining Agreements.

The reasonableness of plaintiff's contention is supported by the following, among other, facts:

1. It has been for more than fifty years the unvarying and continuous custom in plaintiff's ore mines, as well as in all other ore mines in Alabama, for the wages of underground ore miners to be computed and paid on the "face to face" basis.

2. It has been for more than fifty years the unvarying and continuous custom in plaintiff's ore mines, as well as in all other ore mines in Alabama, that underground ore miners should not have their wages computed or paid for the necessary time in going from and to the surface and to and from their underground working places.

3. The same unvarying and continuous custom, as set forth in 1 and 2 above, has for more than fifty years existed in all underground coal mining operations of the plaintiff and of all other coal operators in the State of Alabama.

Plaintiff alleges that there can be, under conditions existing in the State of Alabama, no logical or possible differentiation between underground ore mines and underground coal mines, so far as the question under consideration is concerned.

4. The opinion (and enforcement thereunder) of the Administrator in reference to the bituminous coal mines is inconsistent with his opinion in reference to the iron ore mines.

5. The previous statement and interpretation of Section 7 of the Act by the Administrator are inconsistent with his present opinion in reference to the iron ore mines.

6. The laws of the State of Alabama during all of the period of time herein referred to have recognized in garnishment proceedings, wage suits, and other related matters that the payment and computation of wages in underground mines should be on the "face to face" basis.

X.

Petition and Prayer.

Wherefore, Plaintiff petitions and prays this Court to make and enter a decree and judgment declaring the rights of the respective parties hereto in the premises and more particularly plaintiff's rights as asserted in the following specific propositions:

A.

Has the plaintiff, in following the work schedule and procedure as hereinbefore in Section II hereof set out, compiled with the provisions of Section 7 of the Act?

B.

Did the Congress in the enactment of Section 7 of the Act intend that the "workweek" of plaintiff's underground employees should include any portion of their time spent in being transported or walking to and from their usual working places and while not engaged in any physical work or service for the plaintiff?

C.

Is the plaintiff indebted in any sums to its underground employees for the time spent by them at any time since the enactment of the Act and embracing (without any physical work or service for the plaintiff being done during such time)—

(a) Any time spent in the bath house;

(b) Any time spent in going from and to the bath house to and from the portal;

(c) Any time spent in being transported from and to the portal to and from the underground manloading station;

(d) Any time spent in walking to and from their usual working places from and to the underground manload station?

E.

What did the Congress intend in so far as the method of operation of plaintiff as hereinbefore in Section II hereof set forth are concerned by the use of the word "workweek"?

F.

Are the assertions of the plaintiff as herein set forth as to the intentions of Congress in the use of the word "workweek" legal and correct?

Premises Considered, Plaintiff petitions and prays that the Court adjudge and answer, separately and severally, each of the questions and specifically set forth in the above paragraphs numbered A to F, both inclusive, and determine and declare that the plaintiff is not indebted to the defendants and its underground mining employees as compensation for any time spent by them since the enactment of the Act in the bathhouse or in going from and to the bathhouse to or from the portal or to and from the underground manloading station from or to the portal or to and from the actual working places of the employees from or to the underground manloading station (during which time said employees performed no physical labor or service in connection with their actual work), and that said defendants and their agents, representatives, and all underground employees of the plaintiff made parties defendant hereto as a class be restrained and enjoined from prosecuting any suit or claim of any nature whatsoever against plaintiff for any additional wages or compensation claimed to be due them under the terms and provisions of the said Act for any portion of their time spent as above set forth, and plaintiff prays for a general declaratory judgment with reference to the questions presented by this petition, and a judgment against the defendants for costs herein, and if the plaintiff be mistaken in the relief prayed for, plaintiff hereby prays for such other, further, more different or general relief as to the Court may seem meet, just, and proper, the premises considered.

Plaintiff prays that in accordance with rule 57, District Courts of the United States, the Court order a speedy hearing of this action and advance it on the docket.

XI.

Alternative Prayer.

If for any reason this Court should decline to take jurisdiction hereof under the provisions of the Federal

Declaratory Judgment Act (Section *1*(g) hereof), plaintiff in the alternative prays that this Court assume, take, and exercise equity jurisdiction because of the existence of the facts herein alleged which confer upon said Court such equity jurisdiction in that it, separately and severally, appears therefrom that such jurisdiction should be exercised because:

(a) It is essential to the protection of the rights asserted by the plaintiff herein;

(b) It is essential to secure a determination of the question arising hereunder under a law regulating commerce;

(c) It is essential to the protection of the plaintiff from the costs, expense, inconvenience, and vexation of a multiplicity of suits;

(d) It is essential to protect the plaintiff against irreparable damage;

(e) It is essential to protect the plaintiff against the penalties of an Act of the Congress through an illegal and improper application of the provisions of such Act.

(f) It is essential to protect the rights of plaintiff on account of the inadequacy of any remedy at law:

(g) It is essential for the determination of plaintiff's assertion that the defendants are estopped by the terms of their written contract and by their conduct from asserting their claims for compensation for time in going to and from their places of work;

(h) It is essential to determine plaintiff's claim for and to grant plaintiff a specific performance of defendants' written contract.

Wherefore, Plaintiff prays that this Court will issue a temporary restraining order or preliminary injunction restraining and enjoining said defendants and their agents and representatives and all underground mine employees of the plaintiff made parties hereto as a class from instituting, maintaining, or prosecuting any other action or proceeding to determine the rights of this plaintiff or of the defendants under the averments of this bill of complaint, and that each of said defendants be required to propound and assert their respective rights, if any they have, to this Honorable Court; and plaintiff further prays, separately and severally, that on final decree it be ordered, adjudged, and decreed by the Court:

1. That plaintiff is not indebted to any of its underground mine employees in any sum under the provisions of the Fair Labor Standards Act of 1938;

2. That defendants are not entitled to recover from plaintiff any compensation under the provisions of the Fair Labor Standards Act of 1938;

3. That plaintiff is not indebted in any sums to any of its underground mine employees for the time spent by them at any time since the enactment of the Act and embracing (without any physical work or service for the plaintiff being done during such time)—

(a) Any time spent in the bathhouse;

(b) Any time spent in going from and to the bathhouse to and from the portal;

(c) Any time spent in being transported from and to the portal to and from the underground manloading station;

(d) Any time spent in walking to and from their usual working places from and to the underground man-loading station;

4. That defendants are estopped by their written contract and by their conduct from asserting any claim for or recovering any compensation for time spent in going to and from their place of work;

5. That plaintiff is entitled to the specific performance of the written contract between plaintiff and the defendants.

6. That plaintiff go hence with its reasonable costs herein incurred.

Plaintiff submits itself to the jurisdiction of the Court and offers to do full equity.

T. F. PATTON & BORDEN
BURR
and
BENNERS, BURR, McKAMY &
FORMAN,
Attorneys for Plaintiff.

Birmingham, Ala.

Verification.

State of Alabama,
Jefferson County.

Personally appeared before me, the undersigned authority in and for the above named State and County, N. E. Thompson who being first duly sworn, on oath deposes and says that he is the Superintendent of Ore Mines of the Republic Steel Corporation, a corporation, named as plaintiff in the foregoing petition, and as such Superintendent and agent is authorized to make this affidavit; that he has read over the facts therein set forth; that he is familiar with the facts as therein stated; and that said facts as therein stated are true except where stated on information and belief and where so stated he verily believes the same to be true.

N. E. THOMPSON.

Sworn to and subscribed before me this 3 day of April, 1941.

MARGARETTE KENNEDY,
(Seal) Notary Public.

Filed April 4, 1941.

197 EXHIBIT A.

Exhibit A to the petition of the Republic Steel Corporation is a copy of the Opinion and Report of the Administrator of the Wage and Hour Division of the United States Department of Labor, marked "For Release Sunday, March 23, 1941," and is in all respects identical with Exhibit A to the petition of the Tennessee, Coal, Iron & Railroad Company, heretofore set out on page 76 of this transcript.

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EXHIBIT B.

Copy:

Bessemer, Alabama, October 12, 1940.

In Re: Raimund Local No. 121, of the International Union of Mine, Mill and Smelter Workers, District No. Five, an Affiliate of The Bessemer Smelters Council.

Whereas, there now exists a controversy between this Local and the Republic Iron & Steel Company, at its mines near Bessemer, Alabama, and this controversy is of long standing and deals with the travel pay of our members by the above mentioned Company at its iron ore mines in its production and maintenance departments; and these employees are required to report at the mouth or collar of the mines at 6 o'clock, A. M. in the morning for the purpose of being loaded into mantrips and other methods of entering the mines, they being underground workers; and at the mouth or collar of the mines are checked in at six o'clock and immediately given supplies, tools, equipment and instructions, and then they proceed to their working places, which is approximately 2 miles from the mouth or collar of the mines and down under the ground, which requires and consumes approximately one hour's time before they then arrive at their usual working places; all of this time being spent on the premises of the Company, and after the men are checked in and given supplies, equipment and instructions then they proceed to their working places to perform their usual tasks, after which they return to the mouth or collar of the mines arriving there about four o'clock in the afternoon, and are checked out, thus requiring the employees to be on the premises on duty and in the performance of their work for the company ten

(10) hours per day in the mines, totaling fifty hours per work week, and

Whereas, immediately after our Union was set up, and ever since that time, we have been protesting the travel pay of our members in this mine, and this controversy is based upon the time spent by our members on the premises of the Company each work week and being in excess of the hours required to work under the law, and as we understand it, in violation of the rules and law, and which time amounts to approximately 10 hours per workday, and employees affected by this condition numbering approximately 600. And we further believe that in view of the fact that the Fair Labor Standards Act was passed primarily for the purpose of reducing excescessive required hours on the premises of the employer during any given work week, and

Whereas, the Fair Labor Standards Act is recognized and being complied with in many instances without any controversy on the part of the employers, but notwithstanding that fact and in the face of many rulings by the Wage & Hour Board supporting our position and conditions of work, we are still required by the said Company to be on the premises of the Company many hours in excess of the workweek, and for which we receive no pay.

Therefore: Be it Resolved by this Local in regular meeting assembled that we authorize and request our local and National officers to immediately bring about a correction of these conditions and require the Company to immediately comply with the Fair Labor Standards Act from now on, and also require the Company to pay all back time since the effective date of this law.

And we further authorize our officers to bring this Resolution to the attention of the Hon. Robert P. Amis, Regional Director of the Wage & Hour Division of the Department of Labor in Birmingham, Alabama, and also with Col. Philip B. Fleming, Administrator of the Wage & Hour Division of the Department of Labor, Washington, D. C. And our officers both local and National are further authorized to take such steps as may be necessary and expedient, by negotiations or suit, in order to bring about a speedy conclusion of this controversy.

Be it further resolved that copies of this Resolution be immediately forwarded to all interested parties.

This is to certify that the above is a true and exact copy of a Resolution unanimously adopted by Local No. ... in its regular meeting of October 12, 1940.

(S.) LOUIS TARRANT,
As President of Local #121 of
I. U. M. M. & S. W.

Attested by:
(S.) B. G. STEPHENS,
As Recording Secretary.
(Seal)
(I. U. M. M. & S. W.)
(Raimund Local #121)
(Bessemer, Ala.)

MOTION OF PETITIONER-PLAINTIFF REPUBLIC STEEL CORPORATION FOR A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION.

201 (Civil Action No: 5234.)

Comes the plaintiff in the above entitled cause, and adopting the allegations of its bill of complaint as a part of this motion, moves the Court to issue herein a temporary restraining order or preliminary injunction restraining and enjoining said defendants and their agents, representatives, and all other underground employees of the plaintiff made parties defendant hereto as a class from prosecuting any suit or claim of any nature whatsoever against plaintiff for any additional wages or compensation claimed to be due them under the terms and provisions of the said Act for any portion of their time, including the lunch period, spent in being transported or going to and from their actual places of work, and that the terms of said injunction be as set forth in prayer of said bill of complaint.

BORDEN BURR
and
BENNERS, BURR, McKAMY & FORMAN,
Attorneys for Plaintiff.

Filed April 4, 1941.

ORDER SETTING MOTION OF PETITIONER-PLAINTIFF REPUBLIC STEEL CORPORATION FOR TEMPORARY RESTRAINING ORDER OR PRE-PRELIMINARY INJUNCTION OF HEARING.

202 (Civil Action No. 5234.)

This matter coming on to be heard on the motion and prayer of the plaintiff for the issuance of a temporary restraining order or preliminary injunction, it is ordered by the Court that said motion be, and the same hereby is, set for hearing in open Court on the 17th day of April, 1941, at 10 o'clock A. M.

It is further ordered that service of a copy of the bill of complaint herein, of said motion and of this order be made upon the defendants in accordance with Rule 5(b) of the Rules of Civil Procedure, and that such service be made not less than five (5) days before the time set for hearing.

This 4th day of April, 1941.

T. A. MURPHREE,
Judge.

Filed April 4, 1941.

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203 RETURN OF SERVICE OF PROCESS ON PETITION OF REPUBLIC STEEL CORPORATION, omitted from the printed record, pursuant to Rule 23 of this Court.

* * * * * * * *

TEMPORARY RESTRAINING ORDER.

Civil Action No. 5232.

This cause coming on to be heard on this the 12 day of April, 1941, on the application of certain of the defendants that the hearing heretofore set herein for April 17, 1941, on plaintiff's motion for a restraining order or preliminary injunction be continued, and said application being considered, it is ordered and decreed by the Court:

1. That said hearing previously set for April 17, 1941, be, and the same hereby is, continued;

2. That said cause be, and the same hereby is, set for hearing and for trial on the merits for Monday, June 23, 1941, at 10 o'clock A. M.;

3. That pending said hearing the status quo of said case shall be maintained and that said defendants and the underground employees of the plaintiff as set forth and described in the bill of complaint and their agents and representatives be, and they hereby are, temporarily restrained from instituting and prosecuting any suits in any Court relative to the matters and things in the bill of complaint set forth.

It is further ordered that attorneys for plaintiff be, and they hereby are, expressly authorized and directed to make service of this order upon defendants or their attorneys.

T. A. MURPHREE,
Judge.

Filed April 14, 1941.

On April 12, 1941, an identical order was entered and filed in Civil Action No. 5234—Republic Steel Corporation v. Raimund Local No. 121, et al., and on April 14, 1941, an identical order was entered and filed in Civil Action No. 5233—Sloss-Sheffield Steel & Iron Company v. Sloss Red Ore Local No. 109, et al.

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206 ORDER CONTINUING TEMPORARY RESTRAINING ORDER.

(Civil Actions Nos. 5232, 5233 & 5234.)

The temporary restraining order heretofore issued in the above entitled causes for good cause shown, is hereby continued in force and effect for ten days from the date hereof.

Dated this 24th day of April, 1941.

T. A. MURPHREE,
District Judge.

Filed April 24, 1941.

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207 ORDER CONTINUING TEMPORARY RESTRAINING ORDER.

(Civil Actions Nos. 5232, 5233 & 5234.)

The temporary restraining order heretofore issued in the above entitled causes for good cause shown, is hereby continued in force and effect for ten days from the date hereof.

Dated this 5th day of May, 1941.

T. A. MURPHREE,
District Judge.

Filed May 5, 1941.

208 ORDER CONTINUING TEMPORARY RESTRAINING ORDER.

(Civil Actions Nos. 5232, 5233, & 5234.)

The temporary restraining order heretofore issued in the above entitled causes for good cause shown, is hereby continued in force and effect for ten days from the date hereof.

Dated this 14th day of May, 1941.

T. A. MURPHREE,
District Judge.

Filed May 14, 1941.

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209 ANSWER OF DEFENDANTS AFFILIATED WITH AMERICAN FEDERATION OF LABOR.

(Civil Action No. 5232.)

Come the above named defendants and, for answer to the petition of complaint heretofore filed in this cause, say:

1.

Defendants admit the averments in Section I of said complaint as to allegations of jurisdiction of the Court.

2.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Section II of said complaint.

3.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments contained in Section III of said complaint.

4.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in Section IV of said complaint.

5.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments in Section V of said complaint.

6.

Defendants deny the averments of Section VI of said complaint.

7.

Defendants deny the averments of Section VII of said complaint.

8.

Defendants deny the averments of Section VIII of said complaint.

9.

Defendants deny the averments of Section IX of said complaint.

10.

Defendants are without knowledge or information sufficient to form a belief as to the truth of said averments in Section X of said complaint.

11.

Defendants deny that petitioners are entitled to the relief prayed for in Sections XI and XII of said complaint.

12.

The petition or complaint fails to state a claim against defendants upon which relief can be granted.

Cross-Claim.

And defendants, hereinafter named, hereby present and file a cross-claim against the plaintiff, Tennessee Coal, Iron & Railroad Company, a corporation, and set forth the following facts, upon which said cross-claim is based:

First. That this cross-claim is made and asserted for and on behalf of all of the named defendants as set out in sub-paragraphs (e), (f), (g), (h), (i), (j) of Article or Section III of the complaint, and all persons who are represented by the said named persons, associations, and labor unions who are or have been employees of Tennessee Coal, Iron & Railroad Company in its iron ore mines in Jefferson County, Alabama, from to-wit: October 24, 1938, to and inclusive of April 30, 1941, and who are or were members of the named local unions affiliated with the American Federation of Labor, and all other employees of the plaintiff who are or were similarly situated, but who are not specifically referred to or made tion for the contents thereof. Except as herein otherwise answered, the material allegations of fact contained in said section V of plaintiff's petition are denied. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in section V of plaintiff's petition.

Intervener alleges that the proper interpretation of Section 7 of the Fair Labor Standards Act of 1938 is as set forth in the Opinion and Report, a copy of which is annexed to plaintiff's petition as Exhibit A.

VI.

For the terms of the Fair Labor Standards Act of 1938, mentioned in section VI of plaintiff's petition entitled "Necessity For the Relief of a Declaratory Judgment" intervener refers to the Act. Regarding any material allegations of fact in section VI of plaintiff's petition, intervener has no knowledge or information sufficient to form a belief. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in said section VI of plaintiff's petition. Intervener denies that there is any necessity for relief by a declaratory judgment.

VII.

Intervener has no knowledge or information sufficient to form a belief regarding the truth of any material allegations of fact, in section VII of plaintiff's petition. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in said section VII of plaintiff's petition.

VIII.

Intervener denies the material allegations of fact contained in section VIII of plaintiff's petition. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in said section VIII of plaintiff's petition.

IX.

Intervener denies the material allegations of fact contained in section IX of plaintiff's petition. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in said section IX of plaintiff's petition. Intervener alleges that the working conditions of employees in plaintiff's ore mines are set forth in section II of Exhibit A, annexed to plaintiff's petition. Intervener alleges that the terms of private contracts, can not alter the proper interpretation of the terms of the Fair Labor Standards Act. Intervener alleges further that the terms of the contracts referred to in section IX of plaintiff's petition or any other contracts cannot relieve plaintiff of its obligations imposed by the Fair Labor Standards Act of 1938 and defendants can not waive by contract or otherwise the benefit of said Act.

X.

Intervener has no knowledge or information sufficient to form a belief respecting the allegations of paragraph X of plaintiff's petition.

Intervener alleges that the terms of private contracts can not alter the proper interpretation of the terms of the Fair Labor Standards Act. Intervener alleges further that the terms of the contracts referred to in section IX of plaintiff's petition or any other contracts can not relieve plaintiff of its obligations imposed by the Fair Labor Standards Act of 1938 and defendants cannot waive by contract or otherwise the benefit of said Act. Intervener alleges further that defendants can not be estopped by the terms of the alleged contracts referred to in section X of plaintiff's petition or otherwise from claiming the benefits of the Fair Labor Standards Act.

Second Defense.

This Court has no jurisdiction over plaintiff's petition under the Federal Declaratory Judgments Act because there is no actual controversy within the meaning of the said Act, said petition does not present a case or controversy within the meaning of Article III, Section 2 of the United States Constitution, plaintiff is not threatened with or in danger of suffering any irreparable injury, plaintiff has a complete and adequate remedy at law with respect to any rights arising out of the matters alleged.

GERARD D. REILLY,
Solicitor of Labor.
IRVING J. LEVY,
Assistant Solicitor in Charge of Litigation.
JEROME A. COOPER,
Regional Attorney.
ABNER BRODIE,
United States Department of Labor.
Attorneys for Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor.

Post Office Address:
Wage and Hour Division,
U. S. Department of Labor,
1007 Comer Building,
Birmingham, Alabama.
or
U. S. Department of Labor,
Washington, D. C.

Filed June 7, 1941.

ANSWER OF PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, INTERVENER.

281 Civil Action File No. 5234.

Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, as his pleading setting forth the claim or defense for which intervention is sought, respectfully shows that:

First Defense.

I.

Intervener neither admits nor denies the allegations of section I of plaintiff's petition but leaves plaintiff to its proof thereof.

II.

With respect to the allegations of section II of plaintiff's petition regarding the working conditions of plaintiff's employees at its ore mines, intervener alleges that their working conditions are as set forth in section II, entitled "The Miner's Day," of the Opinion and Report which is annexed to the petition as Exhibit A. Except as herein otherwise stated, the intervener is without knowledge or information sufficient to form a belief respecting any other material allegations of section II of plaintiff's petition.

III.

Intervener has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in section III of the petition entitled "The Defendants" except that intervener admits that the Administrator of the Wage and Hour Division, United States Department of Labor, is interested in the construction of Section 7 of the Fair Labor Standards Act of 1938, but not as prayed for in plaintiff's petition.

IV.

Intervener has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in section IV of the petition entitled "Statement of Controversy." Intervener denies that the material allegations of fact contained in said section constitute an actual controversy within the meaning of the Federal Declaratory Judgments Act (26 U. S. C., Section 400), or otherwise. Intervener admits that Section 7 of the Fair Labor Standards Act is as stated in section IV of plaintiff's petition. Intervener alleges that there are differences of opinion respecting the interpretation of Section 7 of the Fair Labor Standards Act of 1938, which differences of opinion are described in section IV of Exhibit A, annexed to plaintiff's petition.

Intervener alleges that the proper interpretation of Section 7 of the Fair Labor Standards Act of 1938 is as set forth in the Opinion and Report, a copy of which is annexed to plaintiff's petition as Exhibit A.

V.

Regarding the allegations contained in section V of plaintiff's petition entitled "The Opinion of the Administrator" intervener admits that an opinion and report in the form annexed to the petition and marked Exhibit A was issued. Further, to the extent that they are material or relevant, intervener refers to reports, releases, bulletins, and opinions of the Wage and Hour Division of the United States Department of Labor, mentioned in plaintiff's petition for the contents thereof. Except as herein otherwise answered, the material allegations of fact contained in said section V of plaintiff's petition are denied. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in said section V of plaintiff's petition.

Intervener alleges that the proper interpretation of Section 7 of the Fair Labor Standards Act of 1938 is as set forth in the Opinion and Report, a copy of which is annexed to plaintiff's petition as Exhibit A.

VI.

For the terms of the Fair Labor Standards Act of 1938, mentioned in section VI of plaintiff's petition entitled "Necessity For the Relief of a Declaratory Judgment" intervener refers to the Act. Regarding any material allegations of fact in section VI of plaintiff's petition, intervener has no knowledge or information sufficient to form a belief. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in said section

VI of plaintiff's petition. Intervener denies that there is any necessity for relief by a declaratory judgment.

VII.

Intervener has no knowledge or information sufficient to form a belief regarding the truth of any material allegations of fact in section VII of plaintiff's petition. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in said section VII of plaintiff's petition.

VIII.

Intervener denies the material allegations of fact contained in section VIII of plaintiff's petition. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in said section VIII of plaintiff's petition.

IX.

Intervener denies the material allegations of fact contained in section IX of plaintiff's petition. Intervener neither admits nor denies arguments, conclusions, characterizations, and statements other than material allegations of fact contained in said section IX of plaintiff's petition. Intervener alleges that the working conditions of employees in plaintiff's ore mines are set forth in section II of Exhibit A, annexed to plaintiff's petition.

Second Defense.

This Court has no jurisdiction over plaintiff's petition under the Federal Declaratory Judgment Act because there is no actual controversy within the meaning of the said Act, said petition does not present a case or controversy within the meaning of Article III, Section 2 of the United States Constitution, plaintiff is not threatened with or in danger of suffering any irreparable injury, plaintiff has a complete and adequate remedy at law with respect to any rights arising out of the matters alleged.

GERARD D. REILLY,
Solicitor of Labor.
IRVING J. LEVY,
Assistant Solicitor in Charge of Litigation.
JEROME A. COOPER,
Regional Attorney.
ABNER BRODIE,
United States Department of Labor.
Attorneys for Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor.

Post Office Address:
Wage and Hour Division,
U. S. Department of Labor,
1007 Comer Building,
Birmingham, Alabama,
or
Wage and Hour Division,
U. S. Department of Labor,
Washington, D. C.

Filed June 7, 1940.

CERTIFICATION TO ATTORNEY GENERAL.

285 (Consolidated Civil Action No. 5232.)

To the Attorney General of the United States:

It is hereby certified that in the above entitled cause the constitutionality of an Act of Congress affecting the public interest, to-wit, the Fair Labor Standards Act of 1938, is drawn in question in this Court.

Done this 26th day of May, 1941.

T. A. MURPHREE,
United States District Judge.

Filed May 26, 1941.

286

ORDER PERMITTING INTERVENTION.

(Civil Actions Nos. 5232, 5233 and 5234.)

This cause coming on to be heard on the petition of Philip B. Fleming, as Administrator of the Wage & Hour Division, United States Department of Labor, to be allowed to intervene as a party defendant herein and to file as such intervener an answer to the complaint, and said motion now being considered and all parties being represented by counsel, it is Ordered by the Court:

1. That said motion to intervene be and the same is hereby granted and the said Philip B. Fleming, as such Administrator, be hereafter considered as a party defendant herein as fully as if he had been made a party and jurisdiction had been acquired over him as such party in the beginning hereof.

2. That the motion of the said Philip B. Fleming, as such Administrator, to be allowed to file an answer, copy of which is attached to his motion to intervene, be and the same hereby is granted, subject, however, to the right of the plaintiff and the other defendants herein to file such amendments to the complaint or motions or other pleadings in answer or in response to such answer of such Administrator as they may be advised, such amendments, motions, or pleadings to be filed within ten (10) days from the date of this order.

3. It is further Ordered that the pre-trial agreement and the pre-trial order as previously made herein and all other orders previously made herein shall be in all respects binding upon the said Philip B. Fleming, as such Administrator and party defendant hereto.

Dated this 7th day of June, 1941.

T. A. MURPHREE,
United States District Judge.

Filed June 11, 1941. Chas. B. Crow, Clerk, U. S. Dist. Court.

MOTION OF PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, AS INTERVENER, FOR MODIFICATION OF ORDER PERMITTING INTERVENTION AND FOR CONTINUANCE.

287 (Civil Actions Nos. 5232, 5233 and 5234.)

Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, (hereinafter referred to as intervener), moves the Court as follows:

1. To amend and modify the Court's order dated June 7, 1941, by which intervener was permitted to intervene

in this action, so as to permit intervener to intervene in this action as a party unconditionally, because the amending of a party's pleading as provided in said order is not relevant or properly before the Court upon a motion to intervene and is not foreclosed by the allowance of such a motion.

2. To amend and modify the Court's order dated June 7, 1941, by which intervener was permitted to intervene in this action, so as to permit intervener to intervene in this action as a party unconditionally, because the representation of intervener's interests by the original parties is inadequate, and intervener, directly and solely responsible for the Administration of the Fair Labor Standards Act of 1938, should neither be bound by orders issued prior to his intervention against or on behalf of private litigants nor be bound by pre-trial agreements entered into prior to his intervention by such private litigants.

3. To continue this action because intervener is afforded inadequate time between the date of the order permitting him to intervene in this action (June 7, 1941) and the date set for trial of this action (June 23, 1941) in which to obtain answers to necessary interrogatories and to take depositions of important witnesses, each of whom is out of the State of Alabama at a greater distance than 100 miles from the place of trial.

4. To continue this action because intervener is afforded inadequate time between the date of said order permitting him to intervene in this action and the said date set for trial in which to prepare for trial of the important issues raised by the pleadings.

5. To continue this action because between the said date intervener was permitted to become a party to this

action and the said date set for trial, there will not elapse the normal period of sixty days permitted the United States or an officer or agency thereof to answer to a complaint or claim.

6. To continue this action for a reasonable time for the reasons set out above or in lieu thereof to enter an order permitting intervener (a) to take, within a reasonable period subsequent to the trial of this action, depositions of important witnesses, each of whom is out of the State of Alabama at a greater distance than 100 miles from the place of trial, and (b) to use such depositions as if taken prior to trial.

GERARD D. REILLY,
Solicitor of Labor.
IRVING J. LEVY,
Assistant Solicitor in Charge of Litigation.
JEROME A. COOPER,
Regional Attorney.
ABNER BRODIE,
United States Department of Labor.
Attorneys for Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor.

Post Office Address:
Wage and Hour Division,
U. S. Department of Labor,
1007 Comer Building,
Birmingham, Alabama.
or
Wage and Hour Division,
U. S. Department of Labor,
Washington, D. C.

Notice of hearing on motion of Philip B. Fleming, as Intervener, for Modification of Order permitting Intervention and for Continuance, omitted from the printed record, pursuant to Rule 23 of this Court.

* * * * * * * * *

Served by mailing a copy of the foregoing to Benners, Burr, McKamy & Forman, Attorneys for Plaintiff, Birmingham, Alabama; a copy to Crampton Harris, Esquire, Attorney for Muscoda Local No. 123, et als, Defendants, copy to Messrs. J. Q. Smith, Ralph W. Quinn, and W. F. Spencer, Attorneys for Muscoda Local No. 21935, et als, Defendants, Birmingham, Alabama, this 10th day of June, 1941.

JEROME A. COOPER.

Filed June 10, 1941.

OBJECTIONS OF PLAINTIFFS TO INTERVENER'S MOTION FOR MODIFICATION OF ORDER PERMITTING INTERVENTION AND FOR CONTINUANCE.

290 (Civil Actions Nos. 5232, 5233 and 5234.)

Now come, separately and severally, the plaintiffs in the above styled cause, and object to the granting of the motion to continue this action, and to amend and modify the Court's order date June 7, 1941, by which Intervener was permitted to intervene in this action, and move the Court to overrule and deny said motion, separately and severally, as to each of its averments and as grounds for such objection and such motion to overrule, state:

1. That Intervener was without any absolute legal right to become a party defendant herein, and that the Court

had the right and it was the duty of the Court to impose such conditions upon the intervention being allowed as it thought proper and just, and the conditions which the Court imposed were proper and just.

2. It affirmatively appears that the only interest which this Intervener had or can have in said action is to attempt to sustain the legality of his opinion referred to in the complaint as "Modified Portal to Portal Wage and Hour Opinion"; that the Administrator began his investigation and research in reference to said matter, as shown by the statements in said opinion, many months previous to March 15, 1941, the date of his rendition of said opinion; that the Administrator has been giving attention to and investigating said matter for approximately one year prior to the rendition of the opinion, and had, so plaintiffs aver, been giving consideration to the legal question involved since the effective date of the Act and that, therefore, the Administrator has had much more time and much greater opportunity to become familiar with all facts relating to this matter than has plaintiffs or any one else; that the opinion which the Administrator seeks to sustain by his intervention was rendered on or about March 15, 1941, the opinion being made effective, in accordance with its original release, on April 1, 1941, and on April 1, 1941, after reconsideration on petition of plaintiffs and others, the opinion was reaffirmed and its effective date postponed to May 1, 1941; that the complaints in this case were filed on, to-wit, April 3, 1941, and copies thereof promptly furnished the Administrator; that the Administrator was invited, in said complaints, to become a party defendant herein, which invitation was not accepted or any intimation of its acceptance previously given until the filing of the motion for intervention; that the Administrator appeared by counsel and requested the continuance of the hearing set herein on the motion of plaintiffs for restraining orders or preliminary injunctions; that the Administra-

tor was present in person and by counsel at the hearing herein upon the motions of some of the defendants for a dismissal of the complaints herein, and was present either in person or by counsel during the settlement of the pleadings herein; that the Administrator was advised of the order setting down this case for pre-trial hearing, and if not advised of the results of such hearing and the order of the Court made thereof, has had full opportunity to be so advised; that the Administrator has been thoroughly advised and informed of all proceedings which have taken place in this case since the filing of the complaints herein; that both the Court and the Administrator and the other parties were advised at the time of the filing of the complaints; and subsequent thereto, of the importance to the plaintiffs of an early settlement of this case, and of the fact that under the rules of the Court an action for declaratory judgment has a preferred status and may be, at the discretion of the Court, set at the head of the docket; that the Court (the Administrator having full knowledge and information thereof), recognizing the importance of the case and the justness of an early disposition, arranged its docket, secured assistance from other Judges and with the consent, or without the objection of any parties, including the Administrator, who had full knowledge thereof, set the case for trial on the merits on June 23, 1941, said order setting the case having been made with the knowledge of the Administrator on, to-wit, the .... day of April, 1941; that plaintiffs have prepared the case for trial, have arranged for the attendance of witnesses from outside the subpoena jurisdiction of the Court, and have undergrone heavy expenses for trial preparation; that plaintiffs and the original defendants herein on pre-trial hearing have co-operated in making agreements in reference to the production of a large amount of documentary evidence and other evidence without primary proof of authenticity, etc.; that unless the Administrator is bound by such pre-trial agreements the trial of this case at the time set will be at the mercy of an intervener who, under the circumstances above set forth, belatedly accepted the invitation previously extended, to become a party hereto; that the position which the Administrator now seeks to maintain by his intervention and answer is identical with the one now assumed and taken by all the other defendants, and such position is being and will be adequately presented by able and distinguished counsel who have appeared and will appear in behalf of the original defendants; that unless the intervener had seen fit to intervene herein he would not have been bound in any way by any of the judgments or decrees of this Court, and that having voluntarily sought to become a party hereto, he should not be allowed, when accepting the grace of the plaintiffs and of the Court, to do so without submitting to the fair and just conditions heretofore made in the order of intervention; that if, with the full information and knowledge that intervener has at all times had, he does not wish to be bound by the previous orders of the Court or does not think that counsel representing the original defendants are sufficiently able and adequate to present his position, then intervener could have and should have remained outside the jurisdiction of this Court in this case, and should not now be allowed to come in and take charge of the case.

Plaintiffs further aver that the filing of this motion was the first intimation received by plaintiffs that intervener desired to obtain answers to interrogatories and take depositions of important witnesses. Plaintiffs aver, as aforesaid, that they have arranged for the presence at the trial of this case of a number of witnesses living outside the subpoena jurisdiction of the Court, and that they expect to take the depositions of other witnesses; that they have also prepared interrogatories to the intervener which they expect to file, and to ask the Court for an order requiring prompt answers to be made thereto; that while the intervener has not the right under the circumstances stated above to ask for any consideration in reference to the taking of depositions or answerings of interrogatories, plaintiffs herein express a willingness to cooperate in the answering of interrogatories which may be presented to them and which are legally and properly answerable, and in taking of the depositions of any witnesses whose depositions intervener desires to take, and while they are exceedingly busy with the preparation of their own case, they will so arrange that on reasonable notice, not less than five days, of the time and place of the taking of depositions, together with the giving of the names of the witnesses and summaries indicative of what they are expected to be interrogated about, such depositions may be taken without further notice in order that they may be available for introduction on the trial hereof.

Plaintiffs object to the entering of any order permitting intervener or any other party to take evidence or depositions subsequent to the trial of the case.

Now, having fully answered the motion of intervener, and, separately and severally, each paragraph thereof, plaintiffs move that the same be overruled and dismissed at the cost of intervener.

BORDEN BURR,
E. L. ALL & S. M. BRONAUGH,
Attorneys for Plaintiffs Herein.

Address: Birmingham, Alabama.

I, S. M. Bronaugh, of counsel for the plaintiffs, hereby certify that I have served a copy of the foregoing on Mr. Jerome A. Cooper, Attorney for Intervener, on this the 13th day of June, 1941.

S. M. BRONAUGH.

Filed June 13, 1941.

INTERROGATORIES PROPOUNDED BY PLAINTIFFS TO PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR.

295 (Civil Actions Nos. 5232, 5233 and 5234.)

Now come, separately and severally, Tennessee Coal, Iron & Railroad Company, a corporation, plaintiff, Sloss-Sheffield Steel & Iron Company, a corporation, plaintiff, and Republic Steel Corporation, a corporation, plaintiff, and pursuant to Rule 33 of Rules for Civil Procedure of the District Court of the United States, propounds to Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, the following separate and several written interrogatories:

Interrogatory I.

A. State when you were:

(a) Appointed;

(b) Qualified, and

(c) Began to serve as Administrator of the Wage and Hour Division of the United States Department of Labor.

B. State whether or not you are the Administrator duly appointed under Section 204 of the Fair Labor Standard Act of 1938 (hereinafter referred to as the Act.)

C. State when you, under your appointment, took the direction of the Wage and Hour Division created in the Department of Labor pursuant to the terms of the Act.

D. State whether or not when and since you assumed the direction of the Wage and Hour Division in the Department of Labor all the employees in said Division became and have remained until the present time under your supervision and direction.

E. State whether or not when and since you assumed the direction of the Wage and Hour Division in the Department of Labor all the papers, files and records of the Wage and Hour Division in the Department of Labor became and have remained,

(a) In your custody or control, or

(b) Subject to your direction and control.

F. Give the name or names of the person or persons who served as Administrator of the Wage and Hour Division previous to the time you began your service, and state whether or not, so far as you know, all the papers, files and records of the Wage and Hour Division as administered by the previous Administrator or Administrators were turned over to you and have since such time been, and now are, in your custody or under your direction and control as Administrator.

G. State whether or not, as Administrator of the Wage and Hour Division of the Department of Labor, you have access to the papers and files of the Department of Labor which are in other departments thereof.

H. State whether or not you can, as such Administrator, on request, secure access to the papers, files or records of the Department of Labor other than the Wage and Hour Division thereof.

I. State whether or not the heads of other departments of the Department of Labor other than the Wage and Hour Division will, at your request, allow you to have the originals or copies of any papers in their files which are relevant to the issues in this case.

J. State whether or not you are willing to request from the heads of other departments of the Department of Labor other than the Wage and Hour Division the originals or copies of any papers, files or records which are or may become relevant and material to the issues in this case.

Interrogatory II.

Will you please examine the paper attached to the complaint in Civil Action File 5232, in which the Tennessee Coal, Iron & Railroad Company, a corporation, is petitioner and plaintiff, and which is marked Exhibit "A" and made a part of the complaint?

A. Is such Exhibit "A" a complete and correct copy of an opinion rendered by you as Administrator of the Wage and Hour Division, designed "R-1315 (revised)", for release on Sunday, March 23, 1941, and of a report designated "G-131", which was attached to such opinion for release on Sunday, March 23, 1941?

B. If such Exhibit "A" is not a correct and complete copy of such opinion and such report attach to your answer to this interrogatory a correct and complete copy of such opinion and report.

C. Please refer to the original report as made by Mr. Stein and state in reference to such report:

(a) When it was signed;

(b) When it was made;

(c) When it first reached you and was read by you.

D. Is the report attached as a part of Exhibit "A" in any way different from the report as it was when it first reached you and was read by you? If there were any differences attach hereto, appropriately identified, a correct copy of the report as originally made.

E. Please refer to the original opinion made or signed by you with reference to the matter in issue here and state:

(a) When the opinion was first written;

(b) By whom it was written;

(c) What part you took in its writing;

(d) When it was signed by you;

(e) When it was released by you to the press.

F. Has it been and is it now customary in the Wage and Hour Division of the United States Department of Labor for opinions and reports to be prepared for release to the press in mimeographed form and for distribution to the public generally?

G. Is Exhibit "A" a correct copy of the opinion and report for release on Sunday, March 23, 1941, and was it given out for release in accordance with the custom and practice asked about in the immediately previous question?

H. The announcement of the "Modified Portal to Portal Wage and Hour Opinion" bears the designation "R-1315 (revised)".

Please state what this designation signifies.

Was it a revision of a previous release? If so, state in reference to the previous release:

(a) When it was made;

(b) By whom it was prepared;

(c) By whom it was released;

(d) In what respects, if any, it differed from the revised release.

(e) Of what does the revision consist?

I. Did you prepare, render or sign more than one opinion? If so, answer the questions propounded in Section H of this interrogatory with reference to each of the opinions which you so prepared, rendered or signed.

J. What was the occasion for revising the opinion, and if you have not already done so, state in what respects the opinion was revised.

K. Did Mr. Stein make more than one report to you? If he made any report that was in any way different from the report as set forth as a part of Exhibit "A" to the complaint, attach to your answers to these interrogatories, appropriately identified, a correct copy of each such other and different report or reports.

L. If you have not already done so, give the date you first saw any report made by Mr. Stein, and the dates you first saw any subsequent reports made by him; the date that you first prepared or signed or issued any opinion based on any of said reports, and if you have not already done so, state whether or not any opinion that you signed, made or issued differed in any respect from the opinion as set forth in Exhibit "A", and if there were any differences attach to your answer to these interrogatories, appropriately identified, copy or copies of such opinion or opinions in which such differences appeared.

M. Did any person or persons other than Mr. Stein make any written report or reports to you in reference to this matter and which were considered by you in making your opinion? If so, attach to your answer to this interrogatory correct copy or copies of such report or reports.

N. State whether or not the opinion which you finally rendered in this case is correctly stated and set forth in Exhibit "A". State whether or not that is your opinion as Administrator at the time of the answering of these interrogatories. State whether or not it is your purpose in administering the Act to follow such opinion unless the same is judicially declared to be incorrect.

O. State whether or not the opinion that you made was based upon the report made by Mr. Stein.

P. State whether or not in rendering your opinion you did so in reliance upon the truth and correctness of the factual statements contained in Mr. Stein's report.

Q. Did you read the testimony and record of the hearings held in Salt Lake City, Utah, and Birmingham, Alabama, on December 11-12, 1940, and January 14-15, 1941, respectively?

Interrogatory III.

A. In reference to the Mr. Stein referred to in the announcement of your "Modified Portal to Portal Wage and Hour Opinion" state:

(a) His full name;

(b) His age;

(c) The character and extent of his education, giving the names of schools and colleges that he attended, and the dates of such attendance;

(d) The positions held by him with any governmental departments, giving the dates of such holdings, and a brief description of the duties required on him in each such position;

(e) The positions of private employment held by him with any corporations or persons, giving the names and addresses of such corporations or persons and dates of such holdings.

B. State whether Mr. Stein has ever at any time had any connection with any persons or corporations or businesses engaged in the business of mining or producing iron ore.

C. If you have answered the immediately preceding question in the affirmative, set forth the dates and character of such connections and the names of the persons or corporations with whom such connections were had.

D. State fully the extent and character of his practical experience, if any, in connection with the business of mining iron ore, coal, gold, silver and other minerals.

Interrogatory IV.

A. It is stated in Exhibit "A" to the complaint in Civil Action File 5232 wherein the Tennessee Coal, Iron and Railroad Company is plaintiff, that "an investigation was conducted including field surveys and questionnaires, reports by the Division's Regional Directors, and public conferences before Mr. Stein at Salt Lake City December 11-12, 1940, and Birmingham, January 14-15, 1941," and that "many supplemental statements and briefs were also filed by employers, their associations and by unions."

In reference to this statement, please answer:

(a) Are these papers still in your position or under your direction and control?

B. Give a list and description of the field surveys referred to in said above quoted statements, having such list show by whom the field surveys were made, when they were made and where they were made. Attach copies thereof to your answers to these interrogatories appropriately identifying the same.

C. Give a list and description of the questionnaires referred to in said statement, having such list shown by whom the questionnaires were made, when they were made and where they were made. Attach copies thereof to your answers to these interrogatories, appropriately identifying the same.

D. Give a list and description of the reports by the Division's Regional Directors referred to in said statement, having such list show by whom such reports were made, when they were made and where they were made, and attach copies thereof to your answers to these interrogatories, appropriately identifying the same.

E. Give a list and description of the supplemental statements and briefs filed by employers, their associations and unions referred to in said statement, having such list show by whom such supplemental statements and briefs were made or filed. Attach copies thereof to your answers to these interrogatories, appropriately identifying the same.

F. State whether or not any public conferences were held by Mr. Stein or any one else for the Wage and Hour Division in reference to this matter other than the ones held at Salt Lake City December 11-12, 1940, and Birmingham, January 14-15, 1941.

G. Give the name and location of each and all iron ore mines in the United States which:

(a) Came under your investigation in this matter,

(b) Were actually seen or inspected by Mr. Stein or any of your other investigators or employees (giving the names of such investigators or employees),

(c) Answered questionnaires sent out by you or any of your employees,

(d). Were in any other way included in your investigation and research of this matter (giving a brief description of the way in which they were so investigated).

H. If you have not already done so, state whether or not such investigation or research included the underground iron ore mines of the following states, the question being asked separately and severally as to each of said states: Alabama, Minnesota, Michigan, Wisconsin, Wyoming, Tennessee, Kentucky, Pennsylvania, Missouri, New York, Colorado, and such other states as produce iron ore.

I. If you have not already done so, state whether or not such investigation or research included the strip or open pit iron ore mining operations of the following states, the question being asked separately and severally as to each of said states: Alabama, Minnesota, Michigan, Wisconsin, Wyoming, Tennessee, Kentucky, Pennsylvania, Missouri, New York, Colorado, and such other states as produce iron ore.

J. Were any mines included in your research or investigation other than underground mines?

K. Did you include in your research and investigation mines producing both ferrous and non-ferrous products?

L. Did you include in your research and investigation all products of any kind or character whether iron ore, gold, copper, silver, zinc, limestone, etc., provided such products were produced in underground operations?

L. (1) Did you include in your research and investigation any of the underground coal mines of the United States. If so, give a list of such mines and their locations.

L. (2) Have you, since your opinion was rendered, sent representatives into the Lake Superior District. If so, state when and give the names of these representatives.

M. Did your research and investigation disclose the existence of any competition between the iron ore mines of the plaintiffs in these suits and the underground mines in various sections of the United States which produce, gold, silver, zinc, copper, limestone and any other products other than iron ore?

N. If you have answered the immediately preceding question in the affirmative state fully and in detail the nature and character and extent of such competition, and give the names of all the mines which your investigation disclosed were or are engaged in competitive business with the iron ore mines of these plaintiffs.

Interrogatory V.

A. Please refer to that portion of the complaint in cause number 5232 wherein the Tennessee Coal, Iron & Railroad Company is plaintiff, which sets out under the title "First Mining Company Enjoined," what purports to be a release issued by the Wage and Hour Division in reference to the case of the Cornucopia Gold Mines, and in reference to this release and its contents state:

(a) Was such release made by the Wage and Hour Division and under the authority of its Administrator?

(b) Is the release as so made correctly copied in the complaint?

(c) Was such release given to the newspapers and the public generally, and if it was not so distributed, state how and to what extent it was distributed?

(d) Was such release printed in newspapers over the United States?

(e) Was such release printed in the newspapers of Birmingham, Alabama?

B. State whether or not the following is a true statement of the true facts in relation to the Cornucopia Gold case:

That the employer, "previous to the enactment of the Act, had computed and paid wages on the 'portal to portal' plan, and that following the enactment of the Act for the purpose of avoiding or coming within its terms, the employer began to compute and compensate its employees on the so-called 'face to face' plan, and charged as transportation time an arbitrarily set time for transportation against the working time of all employees without reference to the time actually spent by such employees in being transported to and from their working places, thereby not counting as a part of the 'workweek' the time spent in transportation, although previously it had been the custom to include such time as a part of the 'workweek'. That under these circumstances the decree referred to in the above released statements was entered by consent of the parties."

C. If the facts in reference to the Cornucopia case are not correctly stated above, state in what respect or respects the statement is incorrect.

D. Please refer to that portion of plaintiff's complaint in cause number 5232 wherein the Tennessee Coal, Iron & Railroad Company is plaintiff which sets out what purports to be a copy of a release by the Wage and Hour Division for release morning papers, Saturday, July 27, 1940, R-928, and state whether or not:

(a) Such announcement and release was made by the Administrator or by his authority.

(b) Whether or not the release, as so made, is correctly set forth and copied in the complaint, and if it is claimed that it is not correctly set forth and copied, point out fully and in detail in what respect or respects it is not a correct copy of such release.

E. Please attach a copy of this release to your answers to these interrogatories, appropriately identifying the same.

F. Please refer to that portion of plaintiff's complaint in cause number 5232 wherein the Tennessee Coal, Iron & Railroad Company is plaintiff which sets out what purports to be a copy of a release by the Wage and Hour Division for release Wednesday, September 18, 1940, G-81, an address scheduled for delivery by Colonel Philip B. Fleming, Administrator, Wage and Hour Division, United States Department of Labor, before the American Mining Congress, Colorado Springs, Colorado, Wednesday, September 18, 1940, and state whether or not:

(a) Such announcement and release was made by the Administrator or by his authority,

(b) Whether or not the release, as so made, is correctly set forth and copied in the complaint, and if it is claimed that it is not correctly set forth and copied, point out fully and in detail in what respect or respects it is not a correct copy of such release.

G. Please attach a copy of this release to your answers to these interrogatories, appropriately identifying the same.

H. Please state whether or not a short time ago you wrote a letter to the Editor of the Engineering and Mining Journal, said letter beginning with the words: "The Editor of the Engineering and Mining Journal has asked me to reconcile, if I can, the statements I made in my speech before the American Mining Congress on September 18, 1940, with my recent approval of an examiner's report announcing our opinion that in effect hours worked in underground metal mining include all hours spent portal to portal minus the lunch period."

I. If you have answered the immediately preceding question in the affirmative, state whether or not the letter which you wrote was correctly printed in the April, 1941, edition of the Engineering and Mining Journal, Volume 142, Number 4 thereof, and if it was not correctly printed, will you be good enough to attach a correct copy of the letter above referred to to your answers to these interrogatories, properly identifying the same?

J. Will you please attach a correct copy of the Bulletin referred to in Mr. Stein's report, Exhibit "A" to Plaintiff's complaint, as Interpretative Bulletin Number 12, properly identifying same?

K. Please state whether or not you or any other employee or representative of the Wage and Hour Division have at any time issued any interpretative bulletins, or any written opinions, or written replies to questions propounded by any person or persons asking the opinion or interpretation of you or of the Wage and Hour Division as to any questions relating to traveling time or transportation to and from places to work.

L. If you have answered the immediately preceding question in the affirmative attach hereto correct copies of all such interpretative bulletins, opinions and correspondence, properly identifying the same.

M. Have you in your files and in your possession or under your direction and control the following documents and papers:

(a) Claims or complaints presented by any of the defendants herein or members of any of the defendant unions herein against any of the plaintiffs in this cause in which the claim was made that such complainants or employees of any of these plaintiffs were entitled to be compensated under section 7 of the Act for their traveling or transportation time to and from their working places?

(b) The reports of any employees of the Wage and Hour Division covering or relating to investigations made of such complaints.

(c) Affidavits filed with the Wage and Hour Division by representatives of any of these plaintiffs in answer to or relating to the claims of their employees referred to above.

N. Have you in your files and in your possession or under your direction and control the following documents or papers:

(a) A letter or opinion dated approximately October 28, 1938, from the Comptroller General of the United States to the Secretary of Labor of the United States referring to the schedule of the government owned ferred operated between San Francisco and Angels Island, and expressing the opinion that the travel time spent by such inspectors was not properly included within "hours worked" within the meaning of the Act?

(b) Carbon copy or copies, or other copy or copies of the reply or replies of the Secretary of Labor to the above described letter or opinion.

(c) A letter or opinion dated approximately October 9, 1939, from the Comptroller General of the United States to the Secretary of Labor of the United States referring to the schedule of the government owned ferry operated between San Francisco and Angels Island, and expressing the opinion that the travel time spent by such inspectors was not properly included within "hours worked" within the meaning of the Act.

(d) Carbon copy or copies, or other copy or copies of the reply or replies of the Secretary of Labor to the above described letter or opinion.

(e) Copies of letters that passed between the Comptroller General of the United States and the Attorney General of the United States referring to the same matter as set forth in subdivisions (a) and (c) of Division I of Interrogatory V above, particularly copies of letters from the Comptroller General to the Attorney General and from the Attorney General to the Comptroller General, said letters bearing the approximate dates between August 20, 1940, and November 41, 1940.

(f) The file of papers containing originals and copies of all correspondence that passed between the Secretary of Labor, the Comptroller General, and the Attorney General referring and relating to the schedule of the Government owned ferry operating between San Francisco and Angels Island, and to the traveling time spent by government inspectors or other government employees in traveling to and from Angels Island.

(g) Please attach to your answers to these interrogatories such correspondence, files, letters, opinions, etc., as you have stated in answer to subdivisions (a), (b), (c), (d), (e) and (f) of Division I of Interrogatory V you have in your possession or under your direction and control, or true and correct copies thereof, appropriately identifying the same.

Interrogatory VI.

A. If you have in your possession or under your control or direction any other releases, reports or opinions issued by you or under your direction in reference to the question as to whether or not Section 7 of the Act requires computing as a part of the workweek any portion of the time spent in traveling to and from the actual working place other than the opinion set forth in Exhibit "A" to the complaint and other than the releases and statements set forth in the complaint in case 5332 wherein Tennessee Coal, Iron & Railroad Company is plaintiff, attach full and complete copies of such other releases, reports or opinions to your answers to these interrogatories, properly identifying the same.

B. Is it not true that the first time you ever gave a definite opinion in reference to this matter was at the time you gave or authorized the giving of the opinion as set forth in Exhibit "A" to the complaint in cause number 5232 herein?

C. State whether or not prior to such time the matter covered by your opinion was one of uncertainty and without any definite announcement of any conviction or opinion on the part of the Administrator. If this is not true state fully and in detail in what respect it is not true.

D. State the first time that the question as expressed in your opinion set forth as Exhibit "A" to the complaint was first presented for the consideration of the Administrator.

E. Is it not true that from the time of the enactment of the Act until the issuance and release of the opinion as set forth in Exhibit "A" to the complaint operators of mines, including the plaintiffs or some of the plaintiffs in this case, were assured by you or by your representatives that the question as to whether or not the time spent in traveling to and from the places of work should be considered as part of the workweek was one of uncertainty and that in determining this question the Administrator would give great weight to the prevailing customs and practices in the industry, and to the history of bona fide collective bargaining agreements?

F. If you deny that your position is correctly stated in the immediately preceding interrogatory, state fully and in detail in what respect you claim it is incorrectly stated.

G. State whether or not the announcement that the Divisions would not seek to compel payment or restitution from mine owners who have been operating on a face to face basis, or other basis inconsistent with the principles outlined in Mr. Stein's report, was not due, as stated in the announcement, to the fact that the Division had not previously taken a definite stand on the problem involved.

Interrogatory VII,

A. Please refer to Paragraph 4 of Section V of the complaint in cause number 5232 wherein Tennessee Coal, Iron & Railroad Company is plaintiff and state whether or not the averments contained in said paragraph are true, and if you state that they are untrue, answer fully and in detail in what respect or respects you claim they are untrue.

B. Please refer to Paragraph 5 of Section V of the complaint in cause number 5232 wherein Tennessee Coal, Iron & Railroad Company is plaintiff and state whether or not the averments contained in said paragraph are true, and if you state that they are untrue, answer fully and in detail in what respect or respects you claim they are untrue.

C. Please refer to Paragraph 7 of Section V of the complaint in cause number 5232 wherein Tennessee Coal, Iron & Railroad Company is plaintiff and state whether or not the averments contained in said paragraph are true, and if you state that they are untrue, answer fully and in detail in what respect or respects you claim they are untrue.

D. Please refer to Paragraph 6 of Section V of the complaint in cause number 5232 wherein Tennessee Coal, Iron & Railroad Company is plaintiff and state whether or not it is true that in your investigation of this matter any evidence was ever given or statements made relating to any iron ore mines in any portion of the United States other than the Birmingham District.

If you claim that any evidence was given or statements made relating to any other iron ore mines in any other portion of the United States other than the Birmingham District, state:

(a) The location of the mines that such evidence or statements related to; and

(b) A description of the evidence given or statements taken;

(c) By whom, and in what form all such evidence and statements were given, and the occasion or circumstances under which given.

Interrogatory VIII.

A. State whether or not statistical and ecomonic studies have been made by the Bureau of Labor Statistics in the Economic Section of the Wage and Hour Division in relation to the production of the United States in underground mines of iron ore separate and apart from the production of any other mining products.

B. If you have answered the immediately preceding questions in the affirmative attach to your answers to these interrogatories, properly identified, summary copies of such statistical and economic studies.

C. State whether or not statistical and economic studies have been made by the Bureau of Labor Statistics in the Economic Section of the Wage and Hour Division in relation to the production of the United States in stripping or open pit operations of iron ore separate and apart from the production of any other materials.

D. If you have answered the immediately preceding question in the affirmative attach to your answers to these interrogatories, properly identified, summary copies of such statistical and economic studies.

E. State whether or not any investigations made by the Wage and Hour Division took into consideration competitive inter-relationships and/or the convertability of operations normally carried on in underground iron ore mining operations as contrasted with either the stripping or open pit operations producing iron ore, or the underground operations of mines producing gold, silver, zinc, copper or products other than iron ore.

F. State whether or not the Wage Hour Division or any of its employees ascertained, or whether, within your knowledge, there exists as a fact any competitive inter-relationships between the underground iron ore mining operations of plaintiffs in the State of Alabama and the underground operations in other parts of the United States producing gold, silver, zinc, copper or products other than iron ore.

G. If you have stated that there are such competitive inter-relationships set forth fully and in detail.

(a) What such competitive inter-relationships are;

(b) The basis for your conclusion that such competitive inter-relationships actually exist.

H. State whether or not your investigation disclosed that there existed substantial differences in the methods of underground iron ore mining operations of different sections of the United States as contrasted with such underground iron ore mining operations in other sections of the United States.

I. If you have answered the immediately preceding question in the affirmative, are such differences substantial or insubstantial,—little or great?

J. State whether or not your investigation disclosed that the length of time used by underground mining employees in traveling from and to the portal of the mine to their usual working places varies in different mines in the same locality, and also varies in different mines located in various parts of the United States?

K. Are the differences inquired about in the immediately preceding interrogatory substantial or insubstantial,—great or small?

L. Is it not a fact that the difference of the length of time spent by the underground mining employees in traveling to and from the portal of the mine from and to their usual working places varies, according to your research and investigation, in different underground mining operations in different sections of the United States from as small a time as a comparatively few minutes to as long a time as two hours?

M. If the immediately preceding question does not correctly state the range of differences which your investigation and research ascertained, state the minimum length of time that your investigation so disclosed, and give the name and location of the underground mine in which such minimum was disclosed; also the maximium length of time that your investigation disclosed, and given the name and location of the underground mine in which such maximum was disclosed.

N. If you state in answer to the two immediately preceding questions that you do not know, state whether or not you have had conducted any investigation, or made any research, for the purpose of determining (1) whether or not such travel time varies in such different mining operations, and (2) if so, the extent of such variations.

O. If you have caused such investigation, and made such research, describe the same fully, and if in written form attach copies to your answers hereto, and appropriately identify the same.

Interrogatory IX.

A. State whether or not you, as Administrator of the Wage and Hour Division of the Department of Labor, have in your possession and custody or under your control any papers, documents and correspondence relating to the question whether or not the time or any portion of the time spent by employees in underground coal mines in the United States of America in traveling to and from the usual working places should be computed as part of the workweek, and particularly correspondence between representatives of the coal operators, the United Mine Workers of America and the Administrator of the Wage and Hour Division, or any of them, or with the Wage and Hour Division in reference to such matter, including the opinion rendered by the Administrator in connection with such matter and the papers and documents upon which such opinion is based.

B. If you state you have such papers, documents and correspondence, or any of them, state which of them you have, describing such papers.

C. Attach copies of all such papers, documents and correspondence to your answers to this interrogatory, appropriately identifying the same.

BORDEN BURR,
E. L. ALL,
Attorneys for Plaintiffs. Tennessee Coal, Iron & Railroad Company, Sloss-Sheffield Steel & Iron Company and Republic Steel Corporation whose addresses are Birmingham, Ala.

I, Borden Burr, of counsel for the plaintiffs in the above styled cause, do hereby certify that I have served a copy of the foregoing interrogatories on Jerome A. Cooper, attorney for Philip B. Fleming, Administrator, Wage and Hour Division, United States Department of Labor, on this the 16 day of June, 1941.

BORDEN BURR.

Filed June 16, 1941.

MOTION TO REQUIRE DEFENDANT PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, TO PRODUCE CERTAIN DOCUMENTS.

317 —(Civil Action Files Nos. 5232, 5233, 5234.)

Plaintiffs, separately and severally, move the Court for an order required the defendant Philip B. Fleming, as

Administrator of the Wage and Hour Division, United States Department of Labor, to produce and to permit plaintiffs to inspect and to copy each of the following documents:

A. Field surveys made by the defendant or by the Wage and Hour Division of the United States Department of Labor, or by its employees referred to in the opinion (Exhibit "A" to complaint of Tennessee Coal, Iron & Railroad Company) as being in part the basis for his "Modified Portal to Portal Wage Hour Opinion."

B. Questionnaires received by the defendant Fleming or by the Wage and Hour Division of the United States Department of Labor, or by its employees, referred to in the opinion as being in part the basis for his "Modified Portal to Portal Wage Hour Opinion."

C. Reports by the Regional Directors of the Wage and Hour Division, to the Administrator of the Wage and Hour Division, United States Department of Labor, referred to in the opinion as being in part the basis for his "Modified Portal to Portal Wage Hour Opinion".

D. Supplementary statements filed by employers or their associations with the Administrator of the Wage and Hour Division, United States Department of Labor, referred to in the opinion as being in part the basis for his "Modified Portal to Portal Wage and Hour Opinion."

E. Supplementary statements filed by unions with Administrator of the Wage and Hour Division, United States Department of Labor, referred to in the opinion as being in part the basis for his "Modified Portal to Portal Wage Hour Opinion".

F. The reports on "hours worked" in underground metal mining made by Harold Stein, Examiner, signed at Washington, D. C., on March 15, 1941.

G. Opinions signed, made or issued by this defendant as Administrator, referred to as "Modified Portal to Portal Wage Hour Opinions".

H. The ruling of the defendant, as Administrator, made on April 1, 1941, denying plaintiffs' petitions for reconsideration of the "Modified Portal to Portal Wage Hour Opinion," and postponing the effective date of such opinion from April 1, 1941, to May 1, 1941.

I. The files and documents in the office of the Wage and Hour Division of the United States Department of Labor relating to the case known as the Cornucopia Gold Mines Case, and referred to under the release of said Department entitled "First Mining Company Enjoined."

J. A report made to the Administrator of the Wage and Hour Division of the Department of Labor during the fall or winter of 1940 by Robert T. Amis, Regional Director of the Wages and Hour Division at Birmingham, Alabama, and particularly the report in reference to the investigation made by one Burk or Burks, an employe of the Wage and Hour Division, operating out of said Regional Director's office in Birmingham, Alabama, and detailing or referring to the results of his investigations of the conditions in the mines of the plaintiffs herein in relation to the claim made by certain of their employees that Section 7 of the Act had been violated.

K. The files relating to the question of whether or not the time or any portion of the time spent by employees in underground coal mines in the United States of America in traveling to and from the usual working places should be computed as a part of the workweek, and particularly the correspondence that occurred between representatives of the coal operators and of the United Mine Workers of America and the Administrator of the Wage and Hour Division, or the Wage and Hour Division in reference to such matters, and particularly the opinion rendered by the Administrator in connection with such matter, and particularly all the papers and documents upon which such opinion was based.

L. The stenographic report of the proceedings held before the Administrator of the Wage and Hour Division, United States Department of Labor, in the City of Washington, D. C., on the hearing of the petition filed by these plaintiffs for reconsideration of the Administrator's "Modified Portal to Portal Wage Hour Opinion".

M. The address delivered by the defendant as Administrator of the Wage and Hour Division before the American Mining Congress at Colorado Springs, Colorado, on Wednesday, September 18, 1940.

N. The complaints filed by the defendants herein or by the defendant unions or any of their officers or representatives for the benefit of or on behalf of plaintiffs' employees.

O. A letter or opinion dated approximately October 28, 1938, from the Comptroller General to the Secretary of Labor referring to the schedule of the government owned ferry operating between San Francisco and Angel Island, and expressing the opinion that the traveling time spent by such inspections was not properly included within "hours worked" within the meaning of the Act.

P. Carbon copies or other copies of the reply or replies of the Secretary of Labor to the above described letter or opinion.

Q. A letter or opinion dated approximately October 9, 1939, from the Comptroller General to the Secretary of Labor referring to the schedule of the government owned ferry operating between San Francisco and Angel Island, and expressing the opinion that the traveling time spent by such inspectors was not properly included within "hours worked" within the meaning of the Act.

R. Carbon copies or other copies of the reply or replies of the Secretary of Labor to the above described letter or opinion.

S. Copies of letters that passed between the Comptroller General of the United States, and the Attorney General of the United States, referring to the same matter as set forth in "O" above, particularly copies of letters from the Comptroller General to the Attorney General, and from the Attorney General to the Comptroller General, said letters bearing the approximate dates between August 20, 1940, and November 4, 1940.

T. The file of papers containing originals and copies of all correspondence that passed between the Secretary of Labor, the Comptroller General and the Attorney General, referring and relating to the schedule of the government owned ferry operating between San Francisco and Angel Island, and to the traveling time spent by government inspectors or other government employees in traveling to and from Angel Island.

Defendant Fleming as Administrator as aforesaid, has possession, custody or control of each of the foregoing documents; each of them constitutes or contains evidence relevant or material to the matters involved in this cause; each of them is relevant to the question as to the weight which should be accorded by the Court to the "Modified Portal to Portal Wage Hour Opinion"; said documents can be inspected without any great inconvenience to the defendant, and their inspection and the right to copy the same or such portions thereof as plaintiffs desire to copy are of importance to the proper and fair presentation of plaintiffs' case.

Plaintiffs submit themselves to such conditions and requirements as the Court may make in reference to the inspection and copying of such documents.

BORDEN BURR,
E. L. ALL,
BRADLEY, BALDWIN, ALL & WHITE,
BENNERS, BURR, McKAMY & FORMAN,
Attorneys for Plaintiffs.

Address: Birmingham, Alabama.

State of Alabama,
County of Jefferson.

Before the undersigned authority personally appeared Borden Burr, who being first duly sworn deposes and says that he is of counsel for the plaintiffs herein and authorized to make this affidavit; that in reference to all the facts contained in the foregoing motion he has received information from trustworthy and reliable sources, and based upon such information and belief deposes that the facts therein stated are true.

BORDEN BURR.

Subscribed and sworn to before me this 16 day of June, 1941.

MARGARET KENNEDY,
(Seal) Notary Public.

The above motion will be brought to the attention of the Court on Thursday, June 19, 1941, at 10:00 A. M.

BORDEN BURR.

CERTIFICATE OF SERVICE.

I, Borden Burr, of counsel for plaintiffs herein, hereby certify that I have served a copy of the foregoing motion upon Mr. Jerome A. Cooper, Attorney for Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, on this the 16 day of June, 1941.

BORDEN BURR.

Filed June 16, 1941.

ORDER CONTINUING TRIAL OF CASE FROM JUNE 23, 1941 TO JULY 8, 1941.

323 (Civil Actions Nos. 5232, 5233 and 5234.)

At the request of defendants related to the C. I. O. defendants and on motion of Phillip B. Fleming, Administrator of the Wage and Hour Division, and with the consent of the other parties in the above cases, It Is Ordered By the Court that said cases, which have previously been set for trial on June 23, 1941, be, and the same hereby are, passed and set for trial at 10:00 o'clock A. M., on July 8, 1941.

Done this 18th day of June, 1941.

T. A. MURPHREE,
Judge.

Filed June 18, 1941.

MOTION TO DISMISS COUNTER CLAIM OF AMERICAN FEDERATION OF LABOR, ET AL.

324 (Civil Actions Nos. 5232, 5233, and 5234.)

Come the plaintiffs, separately and severally, and move the Court as follows:

I.

To dismiss the counterclaim filed by the defendant American Federation of Labor, and separately the counterclaim filed by each defendant affiliated with the American Federation of Labor, because said counterclaim does not present a cause of action which can properly or legally be interposed as a counterclaim to the cause of action as set out in the complaint.

II.

To dismiss the counterclaim filed by the defendant American Federation of Labor, and separately the counterclaim filed by each defendant affiliated with the American Federation of Labor, because the cause of action as set forth in the complaint is not such a cause of action to which a counterclaim of the nature of said counterclaim can be legally or properly interposed.

III.

To dismiss the counterclaim filed by the defendant American Federation of Labor, and separately and counterclaim filed by each defendant affiliated with the American Federation of Labor, because said counterclaim fails to state a claim against plaintiffs upon which relief can be granted.

IV.

To dismiss the counterclaim filed by the defendant American Federation of Labor, and separately the counterclaim filed by each defendant affiliated with the American Federation of Labor, because said counterclaim fails to state a claim against plaintiffs upon which relief can be granted on account of the following, stated separately and severally:

(a) It does not sufficiently appear who the persons in whose favor the counterclaim is sought to be asserted are;

(b) It does not sufficiently appear in what amounts it is claimed that the plaintiff is indebted to the person or persons in whose favor said counterclaim is asserted;

(c) It affirmatively appears from the allegations of the complaint that the plaintiff could not be indebted to said persons or persons in whose favor said counterclaim is sought to be asserted;

(d) The facts and details of the alleged counterclaim sought to be asserted are not sufficiently set forth nor described.

V.

To dismiss the counterclaim filed by the defendant American Federation of Labor, and separately the counterclaim filed by each defendant affiliated with the American Federation of Labor, because it affirmatively appears that the only issue in this case legally or properly before the Court is the sole question as to whether or not the declaratory judgment should be had as prayed for, and, upon the declaration of the Court in reference to the question submitted for a declaratory judgment, the question of whether or not the plaintiffs are indebted in any sum to the person or persons in whose favor such counterclaim is asserted should be properly left open for settlement or appropriate litigation.

E. L. ALL,
BORDEN BURR,
Attorneys for plaintiffs separately and severally, whose addresses are Birmingham, Alabama.

Notice of hearing on motion of pltfs., to dismiss Counter-Claim of defts., American Federation of Labor, et al., omitted from the printed record, pursuant to Rule 23 of this Court.

* * * * * * *

I hereby certify that a copy of all of the foregoing motion has been this day served upon defendant American Federation of Labor, and each defendant affiliated with the American Federation of Labor, by handing it to J. Q. Smith, one of the attorneys of record for said defendant.

This 19 day of June, 1941.

BORDEN BURR,

Filed June 19, 1941.

MOTION TO DISMISS COUNTERCLAIM OF INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, ET AL.

(Civil Actions Nos. 5232, 5233 and 5234.)

Come the plaintiffs, separately and severally, and move the Court as follows:

I.

To dismiss the counterclaim filed by the defendant International Union of Mine, Mill and Smelter Workers, and separately the counterclaim filed by each defendant affiliated with the International Union of Mine, Mill and Smelter Workers, because said counterclaim does not present a cause of action which can properly or legally be interposed as a counterclaim to the cause of action as set out in the complaint.

II.

To dismiss the counterclaim filed by the defendant International Union of Mine, Mill and Smelter Workers, and separately the counterclaim filed by each defendant affiliated with the International Union of Mine, Mill and Smelter Workers, because the cause of action as set forth in the complaint is not such a cause of action to which a counterclaim of the nature of said counterclaim can be legally or properly interposed.

III.

To dismiss the counterclaim filed by the defendant International Union of Mine, Mill and Smelter Workers, and separately the counterclaim filed by each defendant affiliated with the International Union of Mine, Mill and

Smelter Workers, because said counterclaim fails to state a claim against plaintiffs upon which relief can be granted.

IV.

To dismiss the counterclaim filed by the defendant International Union of Mine, Mill and Smelter Workers, and separately the counterclaim filed by each defendant affiliated with the International Union of Mine, Mill and Smelter Workers, because said counterclaim fails to state a claim against plaintiffs upon which relief can be granted on account of the following, stated separately and severally:

(a) It does not sufficiently appear who the persons in whose favor the counterclaim is sought to be asserted are;

(b) It does not sufficiently appear in what amounts it is claimed that the plaintiff is indebted to the person or persons in whose favor said counterclaim is asserted;

(c) It affirmatively appears from the allegations of the complaint that the plaintiff could not be indebted to said person or persons in whose favor said counterclaim is sought to be asserted;

(d) The facts and details of the alleged counterclaim sought to be asserted are not sufficiently set forth nor described.

V.

To dismiss the counterclaim filed by the defendant International Union of Mine, Mill and Smelter Workers, and separately the counterclaim filed by each defendant affiliated with the International Union of Mine, Mill and Smelter Workers, because it affirmatively appears that the only issue in this case legally or properly before the Court is the sole question as to whether or not the declaratory judgment should be had as prayed for, and, upon the declaration of the Court in reference to the question submitted for a declaratory judgment, the question of whether or not the plaintiffs are indebted in any sum to the person or persons in whose favor such counterclaim is asserted should be properly left open for settlement or appropriate litigation.

E. L. ALL,
BORDEN BURR,
Attorneys for plaintiffs, separately and severally, whose addresses are Birmingham, Alabama.

Notice of hearing on Motion of Pltfs., to dismiss Counter-Claim of deft., International Union of Mine, Mill & Smelter Workers, et al., omitted from the printed record, pursuant to Rule 23 of this Court.

• • • • • • •

I hereby certify that a copy of all of the foregoing motion has been this day served upon defendant, International Union of Mine, Mill and Smelter Workers, and each defendant affiliated with International Union of Mine Mill and Smelter Workers, by mailing it to J. A. Lipscomb, one of the attorneys of record for said defendants.

This 19 day of June, 1941.

BORDEN BURR.

Filed June 19, 1941.

AMENDMENT TO COMPLAINTS.

(Civil Actions Nos. 5232, 5233 and 5234.)

Come the plaintiffs, separately and severally, and amend their complaints heretofore filed in said causes (said amendment being made necessary by the intervention of Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, as Defendant) as follows:

XIII.

Plaintiffs re-adopt and re-affirm, so far as applicable to Philip B. Fleming, as Administrator of the Wage and Hour Division, United States Department of Labor, each and every allegation contained in the original complaints from the beginning to the end thereof.

XIV.

Plaintiffs re-adopt and re-affirm, so far as applicable to defendant Philip B. Fleming, as Administrator of the Wage and Hour Division, United States Department of Labor, all the averments and petitions and prayers contained in the petition and prayer of their respective complaints and add thereto the following:

A. Wherefore, plaintiffs petition and pray this Court to make and enter a decree and judgment declaring the rights of the respective parties, namely, the plaintiffs herein, and the defendant, Philip B. Fleming, ad Administrator of the Wage and Hour Division, United States Department of Labor, as to the asserted specific propositions set forth in the original petition and prayer, and the following additional specific propositions:

G.

Has the defendant Philip B. Fleming, as the Administrator of the Act, the legal right to enforce or to attempt the enforcement of that section of his opinion (set forth as Exhibit "A" to the complaint of the Tennessee Coal, Iron & Railroad Company) reading: "The workday in underground metal mining starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the end of the shift," against these plaintiffs?

H.

Has the defendant Philip B. Fleming, as the Administrator of the Act, the legal right to enforce or to attempt the enforcement of that section of his opinion (set forth as Exhibit "A" to the complaint of the Tennessee Coal, Iron & Railroad Company" reading: "the workday also includes the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out," against these plaintiffs?

I.

Are these plaintiffs in any way bound or obligated to follow that portion of the opinion of the Administrator (Exhibit "A" to the complaint of Tennessee Coal, Iron & Railroad Company) referred to in the first paragraph of said opinion reading: "The workday in underground metal mining starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the end of the shift"?

J.

Are these plaintiffs in any way bound or obligated to follow that portion of the opinion of the Administrator

(Exhibit "A" to complaint of Tennessee Coal, Iron & Railroad Company) referred to in the second paragraph of said opinion reading: "The workday also includes the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out"?

K.

Is the opinion of the Administrator (Exhibit "A" to the complaint of the Tennessee Coal, Iron & Railroad Company) a correct interpretation of Section 7 of the Act?

B. Premises Considered, plaintiffs further petition and pray that the Court adjudge and answer, separately and severally, each of the questions specifically set forth in the above paragraphs numbered "A" to "F", both inclusive, so far as they are applicable to defendant Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, and further that the Court adjudge and answer, separately and severally, each of the questions specifically set forth in the above paragraphs numbered from "G" to "K", both inclusive, and determine and declare that those portions of the Administrator's opinion as set forth in Exhibit "A" to the complaint of Tennessee Coal, Iron & Railroad Company, in the first and second paragraphs thereof, and reading as follows:

"The workday in underground metal mining starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the ends of the shift."

"The workday also includes the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out," are incorrect, improper and illegal interpretations of Section 7 of the Act, and that these plaintiffs are not in any way bound or obligated to comply therewith, and that the said Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, and the said Wage and Hour Division, United States Department of Labor, and his or its agents and representatives be restrained and enjoined from attempting to enforce or to threaten to enforce or attempting to administer or to threaten to administer Section 7 of said Act as against these plaintiffs, or any of their representatives or employees, as interpreted by him in the opinion (Exhibit "A" to the complaint of Tennessee Coal, Iron & Railroad Company), and in reference to those portions of said opinion as set forth in paragraphs one and two thereof and as quoted above, and plaintiffs pray for a general declaratory judgment with reference to the questions propounded by this petition, and a judgment against the defendants, including Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, for costs herein, and if the plaintiffs be mistaken in the relief prayed for, plaintiffs hereby pray for such other, further, different and general relief as to the Court may seem just, meet and proper, premises considered.

BORDEN BURR,
E. L. ALL,
Attorneys for Plaintiffs.

State of Alabama,
County of Jefferson.

This day personally appeared before me, a Notary Public in and for the State and County aforesaid, Borden Burr who being first duly sworn, on oath deposes and says that he is attorney and agent for the Tennessee Coal, Iron & Railroad Company, a corporation, and the Republic Steel Corporation, a corporation, named as plaintiffs in the foregoing petition; that as such attorney and agent he is authorized to make this affidavit; that he has read over the facts set forth in the foregoing amendment to the complaints therein; that he is familiar with the facts as therein set forth, and that said facts as therein stated are true, except where stated on information and belief; and where so stated he verily believes the same to be true.

BORDEN BURR.

Subscribed and sworn to before me this 19 day of June, 1941.

MARGARETTE KENNEDY,
(Seal) Notary Public.

State of Alabama,
County of Jefferson.

This day personally appeared before me, a Notary Public in and for the State and County aforesaid Borden Burr who being first duly sworn, on oath deposes and says that he is attorney and agent for the Sloss-Sheffield Steel & Iron Company, a corporation, named as plaintiff in the foregoing petition; that as such attorney and agent he is authorized to make this affidavit; that he has read over the facts set forth in the foregoing amendment to the complaints therein; that he is familiar with the facts as therein set forth, and that said facts as therein stated are true, except where stated on information and belief, and where so stated, he verily believes the same to be true.

BORDEN BURR.

Subscribed and sworn to before me this 19 day of June, 1941.

MARGARETTE KENNEDY,
(Seal) Notary Public.

I, Borden Burr, of counsel for plaintiffs hereby certify that I have on this the 19 day of June, 1941, served a copy of the foregoing Amendment of Complaint on the following:

Mr. Jerome A. Cooper, Attorney for Philip B. Fleming as Administrator of the Wage and Hour Division, United States Department of Labor.

Mr. Crampton Harris, Attorney for Raimund Local No. 121, International Union of Mine, Mill and Smelter Workers, et al.

Mr. J. Q. Smith, Attorney for Muscoda Local No. 21935, et al.

This 19 day of June, 1941.

BORDEN BURR,
Of Counsel for Plaintiffs.

Filed June 19, 1941.

OBJECTIONS OF PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, INTERVENER, TO PLAINTIFFS' MOTION TO PRODUCE DOCUMENTS.

336 (Civil Action Nos. 5232, 5233, and 5234.)

Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener in the above actions, objects to and moves the Court to overrule and deny the motion of plaintiffs filed herein to require said Philip B. Fleming to produce certain documents, and assigns the following grounds therefor:

1. All the reports, correspondence and other material which plaintiffs' said motion requests are irrelevant to the determination of the proper issue of these actions.

2. The reports, communications, and documents called for by plaintiffs' said motion are confidential and privileged.

3. The names of employees and other complaints and data supplied to representatives of the Aministrator by employers relating to the internal affairs of their businesses are confidential and privileged.

4. Information gathered by representatives of the Administrator and correspondence, reports, documents, and other material in the files of the Wage and Hour Division are confidential.

5. Regulations of the United States Department of Labor forbid disclosure of official records unless the head of the executive department specifically authorizes such disclosure after determining that access to such records would not defeat the public interests.

6. Documents called for by plaintiffs' said motion which are not confidential and privileged have been made public and are either in possession of the plaintiffs or their attorneys or have been made available to them in the past.

7. Production and inspection of the confidential documents requested by plaintiffs' said motion which have not been made public would be prejudicial to the public interests.

Copies of the documents referred to in plaintiffs' said motion which have been made public, and which plaintiffs and their attorneys do not have, will be supplied to plaintiffs or made available for copying by intervener.

GERARD D. REILLY,
Solicitor for Labor.
IRVING J. LEVY,
Assistant Solicitor in Charge of Litigation.
JEROME A. COOPER,
Regional Attorney.
ABNER BRODIE,
United States Department of Labor.
Attorneys for Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor.

Post Office Address:
Wage and Hour Division,
U. S. Department of Labor,
1007 Comer Building,
Birmingham, Alabama.
or
Wage and Hour Division,
U. S. Department of Labor,
Washington, D. C.

~~Filed June~~ 23, 1941.

AFFIDAVIT OF PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR.

338 (Civil Actions Nos. 5232, 5233 and 5234.)

City of Washington,
District of Columbia, ss.

Philip B. Fleming, being duly sworn, deposes and says that he is Administrator of the Wage and Hour Division, United States Department of Labor, and, as intervener, is a party to the above-entitled actions. These actions were brought under the Federal Declaratory Judgments Act (28 U. S. C., Section 400), and involve the correct interpretation of Section 7 of the Fair Labor Standards Act (hereinafter referred to as the Act) as related to the hours worked by employees in plaintiffs' underground iron ore mines.

Irrelevancy of Documents Requested.

Deponent is advised by counsel that all the reports, correspondence and other material which plaintiffs' motion requests are irrelevant to the determination of the proper issues of these cases. Although plaintiffs' motion states that such documents are relevant on the question of the weight to be given to the Administrator's interpretation, deponent is advised by counsel that the sole issue of these cases is what constitutes hours worked by underground iron ore miners; the issue is not the weight to be given to his interpretation. Consequently, investigations and other steps taken and studies, surveys and other means employed by the Administrator in determining what he considers the proper interpretation would not seem relevant to the determination of the issues involved in these cases.

Duties of Administrator and his Representatives.

One of the duties entrusted to the Administrator by the Act is that of enforcing its provisions. By Section 11(a) the Administrator and his representatives are authorized to investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to the Act for the purposes of ascertaining whether the substantive provisions of the Act are being complied with and to obtain information which may aid in the enforcement of the provisions of the Act. Section 4(b) of the Act empowers the Administrator to appoint such employees and establish such regional and local agencies as he deems necessary to carry out his functions and duties under the Act.

In performing his duties the Administrator has established regional and branch offices, and engaged attorneys, economists, inspectors and other employess. Inspectors and regional officials, including regional directors, are required to make inspections, investigations and perform other duties as directed by superior officials in Washington and to make reports to their superior officials in Washington of the result of their investigations, inspections, and the performance of other duties. Because of the distances of the regional offices from Washington and in the interest of economy, it is necessary that communications between employees at regional and subsidiary offices and their superior officers at Washington be almost entirely by correspondence and written reports. Accordingly, it is necessary that such reports be elaborate and contain all matters affecting policy which the regional officials desire to call to the attention of the Washington officials and which the latter wish to call to the attention of regional officials. Included in correspondence and reports between the Washington office and the regional and subsidiary offices are comments and matters of a highly confidential nature bearing upon various considerations of policy involved in the internal administration of the Wage and Hour Division.

In connection with his duties the Administrator has also created a branch in the Wage and Hour Division known as the Research and Statistics Branch in which are employed economists, statisticians, research assistants and others, who, among other things, investigate and collect data regarding various industries subject to the Act, and investigate such facts as may aid in the enforcement of the Act. Such investigations are by means of field surveys, statistical analysis, studies of authoritative documents and publications, questionnaires, conferences with employer and employee groups, public hearings, and other methods. The results of such investigations, when the Administrator deems the information of public interest, are made public; but the names of persons and firms from whom information is obtained and correspondence and other communications with them are confidential. Such investigations are employed by the Administrator as an aid in formulating his policies respecting the enforcement of the provisions of the Act by the institution of Court actions or by requesting the Attorney General of the United States to institute criminal proceedings.

Confidenial Nature of Materials Gathered By Administrator and Representatives.

One of the precautions which must be taken by inspectors and other employees of the Wage and Hour Division and the Administrator is to keep the material which they gather in the strictest confidence. Employees and other complainants would be loath to make complaints of violations of the Act unless they could be assured that their identity will not be disclosed. The disclosure of their identity would frequently lead to their discharge, black-listing, and other discriminatory measures by the persons complained against. Unless the Administrator is able to assure such complainants and employees against disclosure of their identity, it would be impossible to secure free disclosure by them of facts respecting violations of the Act passed for their benefit and would make the enforcement of the Act extremely difficult if not impossible. Accordingly, the Wage and Hour Division has given public assurance to employees that their complaints would not be disclosed, and the form adopted by the Wage and Hour Division for the taking of employees' complaints is expressly stated to be a confidential complaint form and contains on its face a direction that all information regarding complaint must be held absolutely confidential.

Furthermore, in connection with investigations by representatives of the Administrator into industries subject to the Act, employers have supplied to representatives of the Administrator data which relate to the internal affairs of their businesses with the assurance that such data would not be disclosed to persons who are not authorized to have access to them.

Because of these considerations, it has always been essential for the proper public administration of the Act to provide against disclosure of such confidential reports and communications. Accordingly, the regulations of the Wage and Hour Division governing the conduct of its employees provide:

a. Confidential nature of information.

(1) Employers' records.—The inspector, through his authority to examine employers' records, has access to highly confidential information. Such information must never be discussed in any circumstances with anyone except officers and employees of the Division and then only

in the course of duty. A situation in one plant must not be discussed with or divulged to the owner of another plant, employees thereof or their representatives. If the inspector is asked to copy payroll reports for the use of the Division in a special study not related to enforcement, he should assure the employer that such information will be used without revealing the identity of the establishment.

(2) Complaints.—Similarly, the inspector must safeguard information received in complaints and regard it as highly confidential. The inspector must safeguard the identity of the complaint. No written complaint or other record revealing the identity of a complainant should be used in a way which may bring it, even inadvertently, to the attention of an employer.

Said regulations further provide:

(8) No investigator shall *disclose* to any unauthorized person any information obtained in an official capacity.

(9) No investigator should respond to any *subpoena* relation to any official matter until he has notified his superior and obtained permission to appear. No books, papers, records or documents in the possession of any investigator should be produced in responsee to any subpoena unless such production has been authorized by the proper superior.

Confidential Nature of Intradepartmental Reports, Etc.

Much of the information gathered by representatives of the Administrator, and correspondence, reports, documents, and other material in the files of the Wage and Hour Division relate to the internal policies and administration of the Wage and Hour Division, which is a part of an executive branch of the Government of the United States.

Should the Administrator be required to make public the documents and correspondence called for by the plaintiffs he would reveal to the plaintiffs, their attorneys, and the public generally, governmental reports on matters of importance which must be kept completely confidential for the proper functioning of the Wage and Hour Division and the effective enforcement of the Fair Labor Standards Act. Disclosure of intra-departmental memoranda relating to questions of policy in the administration of the Wage and Hour Division would permit plaintiffs, their attorneys, and the public generally to pry into the internal administration of the Wage and Hour Division and intradepartmental policies.

For these and other reasons, it has always been essential for the proper public administration of any statute or any branch of an executive department of the government to provide against disclosure of official communications and reports. Thus, the regulations of the United States Department of Labor, as do the regulations of other executive departments of the United States, provide and have provided ever since 1915 against disclosure of official records unless the head of the executive department specifically authorizes such disclosure after determining that access to such records would not defeat the public interest. Article III of the regulations of the Department of Labor provides as follows

Section 1.—No account, letter, record, file or other document or paper in the custody of the Department, or of any bureau, office, or officer thereof, shall on any occasion be taken or withdrawn by any agent, attorney, or other person not officially connected with the Department;

no exception will be made without the written consent of the Secretary.

Copies.

Sec. 2. Copies of accounts, letters, records, files, and other documents or papers shall not be furnished to any person except with the written consent of the Secretary. Such written consent will be granted only to such persons as may have a personal material interest in the subject matter of the papers or at their request. Applications for copies of documents, accounts, records, or files should be made to the Secretary and should be accompanied by an affidavit setting forth the interest of the applicant and showing the reason why and the purpose for which the copies are desired. Except where requests are made by the Attorney General under section 188 of the Revised Statutes for evidence touching the claims of persons suing the United States in the Court of Claims, or by persons making the application and affidavit provided for in the act of August 13, 1894, as amended by the act of February 24, 1905 (33 Stat. L., 812), copies of accounts, letters, documents, records, or other papers desired by or on behalf of parties to causes pending in any Court shall be furnished only to the Court on an order or a rule of the Court requesting the Secretary to furnish the same, and then only when the production of such copies will not, in the judgment of the Secretary, be prejudicial to the Government or the public interest. No exception will be made without the written consent of the Secretary.

(Regulations of the Department of Labor, 1915. Page 83-84.)

Confidential Character of Certain Documents Requested by Plaintiffs.

The field survey and questionnaire referred to in paragraphs A and B of plaintiffs' motion contain information and data which the Administrator's representatives have collected to aid the Administrator in the enforcement of the provisions of the Act. Some of the data were voluntary, supplied upon the representations of employees of the Wage and Hour Division that they would be considered confidential. Other data were obtained by personal investigations. The results of the said surveys and questionnaires were embodied in a memorandum and a study both of which were supplied by the Wage and Hour Division to the American Mining Congress. The Administrator is willing to supply plaintiffs with copies of said memorandum and to permit plaintiffs to have access to and inspect said study in response to the request contained in Paragraphs A and B of plaintiffs' motion.

The reports by the Regional Directors to the Administrator referred to and requested in paragraphs C and J of plaintiffs' motion relate to the internal administration of the Wage and Hour Division and matters of governmental policy respecting the enforcement of the Act, as do the files and documents relating to the *Cornucopia Gold Mines* case which are requested in paragraph I of the plaintiffs' motion. The pleadings and other papers which are filed in Court in that case are matters of public record available to plaintiffs.

So far as necessary to acquaint the public with his enforcement policies, deponent has made public certain of the matters referred to in paragraph K of plaintiffs' motion; and he is willing to supply plaintiffs with copies of releases containing his interpretation of what constitutes hours worked in underground coal mines. Correspondence, files, documents and papers which the Administrator has not disclosed are confidential governmental records. Similarly, complaints filed by employees or on their behalf which are referred to in paragraph N are confidential.

The documents referred to in paragraphs O to T, inclusive, of plaintiffs' motion are intradepartmental correspondence and reports relating to internal affairs of the Department of Labor and the Department of Justice and are confidential governmental records.

Further, said correspondence and reports are not in the control of deponent and he is informed and believes that they are in the control of the Attorney General of the United States and have been in his control since the transfer, by executive order of the President, of the Immigration and Naturalization Service from the Department of Labor to the Department of Justice.

Public Documents Are Available to Plaintiffs.

Deponent is informed that copies of all other documents referred to in plaintiffs' motion are either in possession of the plaintiffs or their attorneys or have been made available to them in the past. Should plaintiffs and their attorneys not have copies such of the material referred to in their motion as has been made public, deponent is willing to supply copies to them or to make available for copying those documents of which copies are not now available for distribution.

It would appear that the sole purpose to be served by the production and inspection of the confidential documents requested by plaintiffs would be embarrassment and annoyance to the Wage and Hour Division in the administration of the Fair Labor Standards Act and serious interference with the vital public interests involved. Paintiffs, it would seem, would not be prejudiced by the failure to disclose such reports and correspondence whereas disclosure would have a serious effect upon the operation of an important branch of the government and would be contrary to public policy.

PHILIP B. FLEMING.

Subscribed and sworn to before me this 20 day of June. 1941.

HARRIETTE E. SPALDING,
Notary Public.

(Seal)

My Com. Exp. 4/1/44.

Filed June 23, 1941.

OBJECTIONS OF PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, U. S. DEPARTMENT OF LABOR, TO INTERROGATORIES PROPOUNDED BY PLAINTIFFS.

348 (Civil Actions Nos. 5232, 5233 and 5234.)

To: Benners, Burr, McKamy and Forman,
Attorneys for Tennessee Coal, Iron and Railroad
Company and Republic Steel Corporation,
Plaintiffs,
Brown Marx Building,
Birmingham, Alabama.

Crampton Harris, Esquire,
Attorney for Muscoda Local No. 123, et als,
Defendants,
First National Building,
Birmingham, Alabama.

Messrs. J. Q. Smith, Ralph W. Quinn, and W. F. Spencer,
Attorneys for Muscoda Local No. 21935, et als,
Defendants,
Farley Building.
Birmingham, Alabama.

Bradley, Baldwin, All and White,
Attorneys for Sloss-Sheffield Steel and
Iron Company, Plaintiff,
Comer Building,
Birmingham, Alabama.

Now comes the intervener, Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, and objects to the written interrogatories propounded to him by plaintiffs on the grounds that said interrogatories are not material and relevant to the issues of these cases, and many call for information contained in confidential government files and which is privileged from disclosure.

Wtihout waiving his objections to the relevancy and materiality of said interrogatories and reserving his right to object to the introduction of such interrogatories and the answers thereto at the trial of these cases, intervener will answer many and will file said answers within the time limited by rules of Court.

The following interrogatories will not be answered by the intervener and they are all, and each is, objected to on the grounds that they are not material or relevant to any of the issues of these cases, and because they relate solely to an attempt to probe the processes by which an administrative officer of the United States Government reached a conclusion respecting the policies to be pursued by him in performing his official duties, and the correctness of that conclusion is not an issue before this Court, and for the additional reasons hereinafter specified:

Interrogatory II:

C.

(b)

(c)

D.

E.

(a)

(b)

(c)

(d)

(e)

H.

(a)

(b)

(c)

(d)

(e)

I.

J.

K.

L.

M.

O.

P.

Q.

Interrogatory III:

A.

(a)

(b)

(c)

(d)

(e)

B.

C.

D.

Interrogatory IV:

A.

(a)

B. This interrogatory is also objected to on the further ground that it calls for the production of copies of privileged and confidential documents, disclosuree of which would be contrary to public policy.

C. This interrogatory is also objected to upon the additional grounds stated in objection to Interrogatory IV B.

D. This interrogatory is also objected to upon the additional grounds stated in objection to Interrogatory IV B.

E. This interrogatory is also objected to on the ground that copies of the material referred to have been made available to plaintiffs and that much of the material referred to therein came from the plaintiffs themselves or their counsels.

F.

G.

(a)

(b)

(c)

(d)

H.

I.

J.

K.

L.

L(1)

L(2)

M.

N.

Interrogatory V:

A.

(a)

(b)

(c)

(d)

(e)

B.

C.

K.

L. This interrogatory is also objected to upon the further ground that it is repetitious and vexatious.

M.

(a) This interrogatory is also objected to on the further ground that it calls for confidential and privileged information, disclosure of which would be contrary to public policy.

(b) This interrogatory is objected to upon the same ground assigned in V M (a).

(c) This interrogatory is objected to upon the same ground assigned in Interrogatory V M (a).

N.

(a) This interrogatory is also objected to on the further ground that it calls for confidential and privileged information, disclosures of which would be contrary to public policy.

(b) This interrogatory is objected to upon the same ground assigned in Interrogatory V N (a).

(c) This interrogatory is objected to upon the same ground assigned in Interrogatory V N (a).

(d) This interrogatory is objected to upon the same ground assigned in Interrogatory V N (a).

(e) This interrogatory is objected to upon the same ground assigned in Interrogatory V N (a).

(f) This interrogatory is objected to upon the same ground assigned in Interrogatory V N (a).

(g) This interrogatory is also objected to on the further ground that it calls for the production of copies of privileged and confidential documents, disclosure of which would be contrary to public policy.

Interrogatory VI:

A.

B.

C.

D.

E.

F.

G.

Interrogatory VII:

A. Intervener refers to the answer filed herein on his behalf.

B. Intervener refers to the answer filed herein on his behalf. Intervener objects further to this interrogatory on the ground that it is repetitious and vexatious.

C. Intervener refers to the answer filed herein on his behalf. Intervener objects further to this interrogatory on the ground that it is repetitious and vexatious.

D.

(a)

(b)

(c)

Interrogatory IX:

A. This interrogatory is also objected to on the further ground that it calls for confidential and privileged information, disclosure of which would be contrary to public policy.

B. This interrogatory is objected to upon the same ground assigned in IX A.

C. This interrogatory is also objected to on the further ground that it calls for the production of copies of prilileged and confidential documents, disclosure of which would be contrary to public policy.

GERARD D. REILLY,
Solicitor of Labor.
IRVING J. LEVY,
Assistant Solicitor in Charge of Litigation.
JEROME A. COOPER,
Regional Attorney.
ABNER BRODIE,
United States Department of Labor.
Attorneys for Philip B. Fleming, Administrator of Wage and Hour Division, United States Department of Labor.

Post Office Address:
Wage and Hour Division,
U. S. Department of Labor,
1007 Comer Building,
Birmingham, Alabama.
or
Wage and Hour Division,
U. S. Department of Labor,
Washington, D. C.

Served by handing a copy of the foregoing to Benners, Burr, McKamy and Forman, Attorneys for Tennessee Coal, Iron and Railroad Company and Republic Steel Corporation, Plaintiffs, Brown Marx Building, Birmingham, Alabama; a copy to Crampton Harris, Esq., Attorney for Muscoda Local No. 123, et als, Defendants, First National Building, Birmingham, Alabama; a copy to Messrs. J. Q. Smith, Ralph W. Quinn, and W. F. Spencer, Attorneys for Muscoda Local No. 21935, et als, Defendants, Farley Building, Birmingham, Alabama; and a copy to Bradley, Baldwin, All and White, Attorneys for Sloss-Sheffield Steel and Iron Company, Plaintiff, Comer Building, Birmingham, Alabama, this 27 day of June, 1941.

JEROME A. COOPER.

Filed June 27, 1941.

NOTICE OF INTERVENER OF TAKING OF DEPOSITIONS OF WITNESSES AT BIRMINGHAM, ALA., omitted from the printed record, pursuant to Rule 23 of this Court.

* * * * * * *

U. S. Department of Labor
Wage and Hour Division
June 27, 1941.

Address all communications to:
1007 Comer Building,
Birmingham, Alabama.

In reply refer to File No. .... Nos. 5232, 5233, 5234.

Hon. Charles B. Crow, Clerk,
United States District Court,
Birmingham, Alabama.

Re: Tenn. Coal, Iron & Railroad Co. v. Muscoda Local No. 123, et als; Sloss-Sheffield Steel & Iron Co. v. Sloss Red Ore Local No. 109, et als; Republic Steel Corp. v. Raimund Local No. 121, et als.

Dear Mr. Crow:

Will you be good enough to issue subponeas for the attendance at oral depositions of the witnesses whose names and addresses are as follows:

At 9:00 a. m.,

Russell Hunt, Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama,

Robert Garrett, Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama,

Julian Sandifer, Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama,

Benj. Davis, Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama,

H. A. Lovejoy, Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama.

At 11:00 a. m.,

M. H. Geisking, Tenn. Coal, Iron & Railroad Company, Birmingham, Alabama,

John Underwood, Tenn. Coal, Iron & Railroad Company, Birmingham, Alabama,

Geo. F. N. Hutchins, Tenn. Coal, Iron & Railroad Company, Birmingham, Alabama.

Carl R. Culverhouse, Tenn. Coal, Iron & Railroad Company, Birmingham, Alabama.

Thomas Chalmers, Tenn. Coal, Iron & Railroad Company, Birmingham, Alabama.

E. M. Ball, Tenn. Coal, Iron & Railroad Company, Bessemer, Alabama.

Rollin D. Osgood, Tenn. Coal, Iron & Railroad Company, Birmingham, Alabama.

At 2:30 p. m.,

R. J. Working, Republic Steel Corporation, Thomas, Alabama,

J. M. Hassler, Republic Steel Corporation Thomas, Alabama,

C. L. Bransford, Republic Steel Corporation, Thomas, Alabama,

Norman E. Thompson, Republic Steel Corporation, Bessemer, Alabama,

Jesse L. Hagy, Republic Steel Corporation, Thomas, Alabama.

The subpoenas should call for the witnesses to appear at the office of the Wage and Hour Division, 1007 Comer Building, Birmingham, Alabama, on July 2, 1941, at the times set forth above.

Sincerely,
JEROME A. COOPER,
Regional Attorney.

Filed June 27, 1941.

Received 17 subs., L. B. Dept. 6-27-41.

NOTICE OF INTERVENER OF TAKING OF DEPOSITIONS OF WITNESSES AT MINNEAPOLIS, MINNESOTA, omitted from the Printed Record, pursuant to Rule 23 of this Court.

* * *

OBJECTIONS OF PLAINTIFFS TO INTERVENER TAKING ORAL DEPOSITIONS AT BIRMINGHAM.

361 (Civil Actions Nos. 5232, 5233, and 5234.)

Come plaintiffs, separately and severally, and move the Court to make an order that the oral depositions of Russell Hunt, M. H. Geisking, R. J. Working and others named in notice of the taking of depositions served upon plaintiffs on June 26, 1941, shall not be taken upon the following separate and several grounds:

1. Trial counsel in said case, in accordance with notices previously given, will be engaged in appearing at the taking of oral depositions by this same defendant in the states of Minnesota and Colorado, and it is impossible for them to be present at the same time in such widely separated places.

2. The taking of such depositions is unnecessary, because of the fact that the case is set for trial on its merits on July 8, 1941, and the evidence of such witnesses, if desired, may be had orally before the Court at such time.

3. No showing is made of what evidence of such witnesses is expected to be procured, or that the taking of said depositions is material to any of the issues in this case, and, if material, relates to matters controverted or denied or in reference to which stipulations may not be entered into.

4. The taking of such depositions at the time stated in the notice comes within such an unreasonably short time after the giving of the notice that plaintiffs do not have a fair or full opportunity to prepare for the cross-examination of said witnesses or to make their arrange-

ments to be in attendance at the taking of such depositions.

5. The taking of such depositions on such notice will be unnecessarily burdensome, because (a) of the shortness of time given in the notice, and (b) of the shortness of time between the times set for the taking of the depositions, the time of the service of the notice, and the trial of the case, the plaintiffs and their counsel being engaged now, and will continue to be engaged continuously until the time of the trial of the case, in preparation for the presentment of their cases.

And in support of the above separate and several objections, plaintiffs aver:

(A) M. H. Geisking is Vice President in Charge of Sales, John Underwood is Sales Manager, George F. N. Hutchings is Comptroller, Carl R. Culverhouse is Assistant Comptroller, Thomas Chalmers is Vice President in charge of Operations, E. M. Ball is General Superintendent of Ore Mines and Quarries, and Rollin D. Osgood is Chief Engineer, of the Tennessee Coal, Iron & Railroad Company. All of them reside in Jefferson County, Alabama and are available for appearance as witnesses on the trial of the case at the setting thereof on July 8, 1941.

B. R. J. Working is District Sales Manager, J. M. Hassler is Chief Engineer and Manager of Industrial Relations, C. L. Bransford is General Manager of the Birmingham District, Norman E. Thompson is General Superintendent of Iron Ore Mines, and Jesse L. Hagy is Auditor, of the Republic Steel Corporation. All of them reside in Jefferson County, Alabama, and are available for appearance as witnesses on the trial of the case at the setting thereof on July 8, 1941.

C. Russell Hunt is Vice President and Sales Manager, Robert Garrett and Julian Sandifer are employees engaged in the Accounting Department, Benjamin Davis is Vice President in Charge of Operations, and H. A. Lovejoy is Auditor, of Sloss-Sheffield Steel & Iron Company. All of them reside in Jefferson County, Alabama, and are available for appearance as witnesses on the trial of the case at the setting thereof on July 8, 1941.

(D) Plaintiffs aver that it is their purpose to have present the following of the witnesses named above: E. M. Boll, J. M. Hassler, Norman E. Thompson, and Benjamin Davis and Julian Sandifer, that so far as plaintiffs have any knowledge these witnesses are the only witnesses named who have any knowledge of any kind in reference to the matters and issue in this case which may be in any way controverted or in dispute; that as to the other witnesses named, the only suspicion that plaintiffs have as to the purpose of the examination of such witnesses is that it may be on the question of interstate commerce or matters relating to the coverage of the plaintiffs under the Fair Labor Standards Act of 1938. Plaintiffs aver that they do not in any way dispute this coverage, admit it in the complaint, and are perfectly willing to stipulate fully and completely in reference thereto. In addition to this, matters relating to the jurisdiction have been admitted in the pre-trial agreement.

In view of the foregoing, plaintiffs aver that the taking of said depositions will be unreasonable, burdensome, expensive and useless, and unless the allegations herein contained are successfully denied, the purpose of the taking of such depositions can be accorded to no other motive than that, not of fishing, but of seining for possible evidence which may be of advantage to the defendant intervener on the trial of the cases.

BORDEN BURR,
E. L. ALL,
Attorneys for Plaintiffs.

Address: Birmingham, Alabama.

The above motion will be called to the attention of the Court and set for hearing, the Court agreeing on Tuesday, July 1, 1941, at 9 o'clock A. M.

BORDEN BURR,
Attorney for Plaintiffs.

Service has been made by handing a copy of the foregoing to Jerome A. Cooper, of counsel for Philip B. Fleming, Crampton Harris, counsel for the defendants affiliated with the CIO, and J. Q. Smith, of counsel for defendants affiliated with the American Federation of Labor.

This 27th day of June, 1941.

BORDEN BURR,
E. L. ALL.

Filed June 27, 1941.

ORDER DENYING MOTION FOR PRODUCTION OF DOCUMENTS.

365 (Civil Actions Nos. 5232, 5233, and 5234.)

This matter having come on for argument on motion of plaintiffs to require Philip B. Fleming, Administrator, Wage and Hour Division, United States Department of Labor, intervener, in these actions, to produce certain reports, communications, and other documents and for permission to inspect and make copies thereof, pursuant to Rule 34 of the Rules of Civil Procedure, and the said Philip B. Fleming having filed objections to the granting of said motion and his affidavit in support of the said objections; and the Court having heard and considered arguments of counsel;

And it appearing to the Court that the plaintiffs' said motion calls for the production and disclosure of reports, communications and other documents which are irrelevant and immaterial to the determination of the issues of these actions;

And it further appearing that said reports, communications and other documents are confidential documents of an agency of an executive department of the United States and are privileged from disclosure;

It is, on this 28th day of June, 1941, Ordered that the plaintiffs' said motion be and the same is hereby denied.

T. A. MURPHREE,
United States District Judge.

Filed June 28, 1941. Chas. B. Crow, Clerk, U. S. Dist. Court.

INTERVENER'S ANSWERS TO INTERROGATORIES.

366 (Civil Actions Nos. 5232, 5233 and 5234.)

Philip B. Fleming, having been duly sworn, makes the following answers to interrogatories propounded to him in the above-entitled case except those interrogatories to which intervener has filed objections.

Answer to Interrogatory I—A: I was appointed on the 4th day of March, 1940.

Answer to Interrogatory I—A (b): If I understand your question correctly, the answer is March 4, 1940.

Answer to Interrogatory I—A.(c): I began to serve as Administrator on the 4th day of March, 1940.

Answer to Interrogatory I—B: Yes.

Answer to Interrogatory I—C: See answer to Interrogatory I—A.(c).

Answer to Interrogatory I—D: Yes.

Answer to Interrogatory I—E (b): Yes.

Answer to Interrogatory I—F: Elmer E. Andrews and Harold D. Jacobs acted as previous Administrators. So far as I know, all the papers, files and records of the Wage and Hour Division as administered by the previous Administrators were turned over to me and are now under my direction and control as Administrator.

Answer to Interrogatory I—G: This question can not be answered unqualifiedly. I have access to the papers which have to do with the administration of the Fair Labor Standards Act.

Answer to Interrogatory I—H: I have no control or direction over papers in the Department of Labor other than those papers which pertain to the administration of the Wage and Hour Division. My ability to secure such papers is dependent upon receiving permission from the Secretary of Labor, who has control of such papers.

Answer to Interrogatory I—I: The only papers in departments of the Department of Labor, Other than the Wage and Hour Division, which may be relevant to the issues of this case are those containing information which has been made public and which, I am informed by counsel, are subject to judicial notice.

Answer to Interrogatory I—J: I should be willing to request of the heads of departments of the Department of Labor, other than the Wage and Hour Division, papers, files and records which have been made public and are not confidential and are relevant and material to the issues of this case.

Answer to Interrogatory II—A: Yes.

Answer to Interrogatory II—B: See answer to II—A.

Answer to Interrogatory II—C (a): It was signed on the date indicated on the report, March 15, 1941.

Answer to Interrogatory II—F: It has been and is customary in the Wage and Hour Division of the United States Department of Labor to release opinions and reports to the press in mimeographed form and for distribution to the public generally, when in the opinion of the Administrator it is deemed to be of sufficient public interest.

Answer to Interrogatory II—G: Yes.

Answer to Interrogatory II—H: This designation signifies the official release of the opinion of the Administrator. It is a revision of an unofficial release.

Answer to Interrogatory II—N: My opinion is correctly stated as set forth in Exhibit A of the petitioner's complaint. It is my present opinion as Administrator. The opinion referred to is a notification and a guide to all interested parties of my interpretation of the Fair Labor Standards Act as applied to the situation described in that opinion. There is no duty imposed upon me by the Act to issue any interpretations and such interpretations as are issued by me are not binding upon the Courts or the parties. I intend to follow the interpretation in question unless directed otherwise by the authoritative ruling of the Courts, or unless I should subsequently decide that my prior interpretation is incorrect.

Answer to Interrogatory V—D.(a): I am attaching the release that was authorized for publication on Saturday, July 27, 1940.

Answer to Interrogatory V—C.(b): See D.(a).

Answer to Interrogatory V—E: See answer to D.(a).

Answer to Interrogatory V—F.(a): I am attaching release G-81 that was authorized for publication on Wednesday, September 18, 1940.

Answer to Interrogatory V—F.(b): See F.(a).

Answer to Interrogatory V—G: See V—F.(a).

Answer to Interrogatory V—H: Yes.

Answer to Interrogatory V—I: The answer was correctly printed with the exception that wherever the personal pronoun "I" was used, "Colonel Fleming" was inserted.

Answer to Interrogatory V—J: Attached hereto is Interpretative Bulletin No. 13. It is believe that this is the bulletin meant by the interrogatory and not Interpretative Bulletin No. 12.

Answer to Interrogatory VIII—A: I am informed that there are authoritative studies made by government agencies or under governmental auspices of the production of iron ore in underground mines of the U. S., and that such studies are public documents and are as available to plaintiffs and their counsel as they are to me or my counsel or representatives. I am further informed that the Research and Statistcs Branch of the Wage and Hour Division has made no such studies, but that it may, in preparation for the trial of these cases, consult authoritative sources to determine the production of iron ore by underground mines of the U. S. Counsel informs me that such data are the subject of judicial notice.

Answer to Interrogatory VIII—B: See answer to A.

Answer to Interrogatory VIII—C: See answer to A.

Answer to Interrogatory VIII—D: See answer to A.

Answer to Interrogatory VIII—E: Because of its indefiniteness, I am not sure what this question means. If it is meant to inquire whether the Wage and Hour Division has considered competition between underground iron ore mining operations and open pit iron ore mining operations, or between underground iron ore mining operations and underground operations of mines producing products other than iron ore, my answer is that I am informed that a study of the competition and competitive factors existing between underground and open pit iron ore mining may be made in preparation for the trial of these cases.

Answer to Interrogatory VIII—F: I am informed that at the present time it is not known whether there exists any competitive inter-relationships.

Answer to Interrogatory VIII—G: See F.

Answer to Interrogatory VIII—H: This question is indefinite, since it is not indicated what is meant by "substantial." I do know that there exists differences in methods of underground iron ore mining operations in different sections of the United States.

Answer to Interrogatory VIII—I: I can not answer this question because of its indefiniteness.

Answer to Interrogatory VIII—J: Yes.

Answer to Interrogatory VIII—K: I can not answer this question because of its indefiniteness.

Answer to Interrogatory VIII—L: Yes.

Answer to Interrogatory VIII—M: See L.

Answer to Interrogatory VIII—N: See L.

Answer to Interrogatory VIII—O: See L.

PHILIP B. FLEMING.

Subscribed and sworn to before me this 27 day of June, 1941.

HARRIETTE E. SPALDING,
Notary Public.

(Seal)

My com. exp. 4/1/44.

Served by handing a copy hereof to Benners, Burr, McKamy & Forman, Brown-Marx Building, Birmingham, Ala.; and a copy to Bradley, Baldwin, All & White, Comer Building, Birmingham, Ala., this 1 day of July, 1941.

JEROME A. COOPER.

Filed July 1, 1941.

For Release Morning Papers, Saturday, July 27, 1940.

R-926.

United States Department of Labor

Wage and Hour Division

Washington

Two Mining Determinations Announced.

Two administrative determinations, one dealing with the status of lessees in metal mines, the other with working time in bituminous coal mines, were announced today by Colonel Philip B. Fleming, Administrator, Wage and Hour Division, U. S. Department of Labor.

The first determination was made at the request of metal mine operators and lessees of such operations in the intermountain states on the question of whether or not lessees of mining property are considered by the Wage and Hour Division as employees under the Fair Standards Act. Colonel Fleming stated that each case must be determined on its particular facts, with primary importance given to the terms of each individual lease agreement and the method of operation under such agreement. If under the lease agreement control and supervision over the operations of the so-called lessee are reserved to the lessor, such lease agreement embodies the normal incidents of the employer-employee relationship and the so-called lessees will be considered as employees under the Fair Labor Standards Act. On the other hand, if a particular lessee is operating mining property which is not a part of the property currently being operated by the mining company with regular employees, and if in the lease agreement the mining company does not have the right to control the lessee in his operation of the mining property, it may well be that the lessee is not an employee of the mine owner but is in fact an independent operator of such property. However, Colonel Fleming pointed out, if such lessee has his own employees who assist in the operation of the leased mine, such employees must be paid in accordance with the Fair Labor Standards Act if the products of the mine move in interstate commerce. Colonel Fleming added that in the ordinary case the mine owner retains title to the ore mined by the lessee and his employees and ships the product of the leased mine, along with his own, in interstate commerce. Therefore, if the lessee does not pay his own employees in accordance with the requirements of the Fair Labor Standards Act, section 15(a)(1) (the so-called "hot goods" section of the Act) prohibits the mine owner from shipping the product of the leased mine in interstate commerce.

Colonel Fleming also pointed out that two Courts have recently held lessees of mining property to be employees of the mine owner. One of the cases was decided by the Supreme Court of Utah under the Utah Unemployment Compensation Act, designated as "*National Tunnel and Mines Company v. Industrial Commission of Utah*, 102 P. 2d 508. The other decision was under the Fair Labor Standards Act and was rendered by a Federal Judge in Oregon as a result of proceedings instituted by the Wage and Hour Division against the Cornucopia Gold Mines Company. In both of such cases, Colonel Fleming stated, the mining company exercised complete control over the operations performed by the lessees.

The second administrative determination announced by Colonel Fleming today involved the question of determining the number of hours worked by miners in the bituminous coal mining industry.

Colonel Fleming announced that on the basis of an inquiry submitted by the bituminous coal mining industry, the Wage and Hour Division in carrying out its enforcement duties in that industry will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the particular industry and are supported by a long history of *bona fide* collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, Colonel Fleming announced that practice of computing working time on a "face to face" basis in the bituminous coal mining industry would not be unreasonable. Colonel Fleming explained the term "face to face" to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work and the time spent in returning from the working place to the portal in the evening. The Administrator added that the determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in the bituminous coal mining industry.

For Release Wednesday, September 18, 1940.

G-81.

U. S. Department of Labor
Wage and Hour Division
Washington

Address Scheduled for Delivery

By

Colonel Philip B. Fleming, Administrator

Wage and Hour Division
U. S. Department of Labor

Before The

American Mining Congress

Colorado Springs, Colorado

Wednesday, September 18, 1940

Perhaps you have heard the story of the international commission which once decided to write a treatise on the camel.

Each of the collaborators retired to his library or his laboratory, and in due time the Englishman emerged with a two-volume work entitled, "The Camel in Commerce and Industry." The Russian produced a substantial tome entitled, "The Contribution of the Camel to World Revolution." The Frenchman's contribution was a sprightly little book, entitled "The Love Life of the Camel." But it was not until 25 years later that the German was prepared to publish his reasearches with a 12-volume definitive treatise under the simple caption of "Das Kamel."

If you were to ask the first dozen men you meet what they think of the Wage and Hour Law you would, in all probability, get a variety of answers. One man would tell you that it is the greatest contribution in many years to industrial democracy. Another would point to its usefulness in removing some of the causes of industrial conflicts. Still another would emphasize the beneficial effects upon the national health and morale. A workingman whose income has been directly increased to a point where he is able to move into a better house, to better feed and clothe his family, would tell you that the Wage and Hour Law is a very fine thing indeed, and that it is curious nobody ever thought of it before. A girl who in 1938 was working in a factory 60 hours a week for $5 and who now works 42 hours a week for $12.60, would point with gratitude to her increased leisure and to the fact that she no longer has to be partially supported by charity. The merchant would tell you that the law has better distributed mass buying power so that he now does a greater volume of business at greater profit. One manufacturer would assert that the law has saved him from bankruptcy by lopping off competition based upon starvation wages, but another would point only to his greater labor costs, assure you that the Wage and Hour Law is going to wreck the country's economy, and declaim that this unconscionable interference with business has got to stop.

Much depends upon the point of view. You may recall that other story about the inquisitive old gentleman who stopped at the site of some construction that was going on and asked one of the workmen, "What are you making?" And the workman said, without glancing up, "Four dollars and seventy-five cents a day." He asked another, who replied, "I am making some mortar for the use of the stone-masons." But a third drew himself up proudly, turned his gaze heavenward, and said, "I am building a cathederal.

As to any piece of social legislation designed to build a better and happier and a stronger country, what each man tends to think of it depends upon whether it is going to gore his own private and particular ox, or help to fatten him.

In other words, to change the metaphor, I think each of us tends at times to permit the trees to obscure our view of the forest. This tree may be a gnarled and knotty old oak, and that one a straight and stalwart pine, but beyond them both the forest still stands in all its splendor.

Whether we personally like or dislike the Wage and Hour Law, it is a good thing to stop occasionally and re-examine the conditions in this country that brought about its enactment, and to remind ourselves just what it was that Congress and the people expected it to accomplish when they wrote it on the statute books.

Here is one industrial establishment in which wage rates are so low that the workers cannot exist without the supplement of charity or relief. And here is another establishment in the same industry in another part of the country which wants to pay better wages. But if it does pay higher wages it will be at a great disadvantage in competing with the rival firm with the low wage rates. Aside from the purely humanitarian considerations, does any responsible businessman want to see the starvation wage virus creeping across the country, as it used to do, until it contaminates all of industry and interferes with the free flow and orderly marketing of goods in commerce?

Again, several million men and women were out of work in the United States through no fault of their own. But at the same time there were men and women in certain industries who were being required to work 60, 70, and even 80 hours a week. When such long hours of toil are permitted to obtain in one place, is it not likely that they will be spread by the competitive struggle to other places? Would it not be better to place some limit on the working week so that more people can be employed?

Strikes and industrial disputes, which certainly are not good for the industry of the country, frequently have been fomented by starvation wages and too long hours of employment. Would it not be a good thing for industry, as well as for the country as a whole, to prevent some of those industrial conflicts by removing one of their most provocative causes?

These are the improvements in our traditional ways of doing business that the Wage and Hour Law was intended to bring about. Are they desirable improvements? Do you know of any better way in which they could have been achieved than the way that was employed, namely; by placing at least a minimum floor under wages and by setting a limit to the length of the workweek—at the same time permitting the employer to exceed the maximum workweek, whenever he feels that necessity requires, upon paying, as a penalty for the privilege, wages at the rate of time and a half for the excess hours? I do not know of any way in which the benefits desired could have been achieved except by placing all of industry covered by the Act upon exactly the same basis in these matters, with such exceptions and deviations as might be necessary to prevent the substantial curtailment of employment or earning power, which would have defeated the purpose of the Act.

Congress recognized that American industry is diverse and that flexibility is essential in the administration of any law designed to apply to all of it in interstate commerce. I feel that Congress provided rather generously for such necessary flexibility, and while all of it is not available to your industry, some of it is.

For example, provision was made for the employment of learners, apprentices and handicapped workers at wages less than the minimum. A method was devised for the partial relaxation of the hours requirements in industries found to be seasonal, and this relaxation has been applied to certain gold placer operations. Certain industries are wholly exempt from the hours provisions or from both the minimum wage and maximum hours. Certain occupations were exempted from both the wage and hour provisions—such as those of executives, professional workers and outside salesmen. Provision was made whereby partial relaxation from the hours requirements may be obtained under certain types of collective bargaining agreements. This should be of considerable interest to the mining industry. Finally, the hours standards are not hard and fast limitations. Employees can be worked any number of hours a week, provided only that time and a half is paid for work in excess of the statutory maximum.

I am under the impression that no other industry has presented more complicated problems of compliance to us than metal mining. Almost daily we receive a letter or telegram from somebody in the industry asking for an opinion, or an interpretation, or suggesting some arrangements of hours and wages which he wants us to approve as meeting the requirements of the Act.

One might conclude from this mass of correspondence either that metal mining doesn't want to comply with the law and is looking for a loophole, or that the nature of the industry is such that compliance is more troublesome than in other industries. Let me say at once that I entertain no suspicion that the former may be the correct explanation. I know too many people in metal mining to believe for a moment that the vast majority of the employers are trying to avoid compliance. The very fact that so many of you have written to us in itself is rather conclusive evidence that this matter weighs upon your conscience. If you had not wanted to comply you wouldn't have taken the trouble to tell us your troubles; you would simply have gone along in the old way and waited until we caught you.

No, I think the real explanation is that the industry really is different. In all the country there is no other quite like metal mining.

A part of your difficulty and ours arises from the very nature of the mining industry itself. It is carried on under many varying conditions of climate and geography. There are low grade mines and high grade mines. There are mines operating near large and populous cities, and mines back in the mountains apart from the main currents of American life. To apply to all of them a single standard of labor conditions is admittedly difficult.

But part of the difficulty, I think, is also due to psychological factors and to custom and tradition. Mining in this country always has been a hazardous undertaking, not only for labor but for capital, too. A good deal of it is carried on in small camps isolated from the rest of the world and in which the manners and customs and values associated with living in populous communities do not seem to apply. An industry which has found it necessary to develop its own disciplines would naturally find it difficult to accept regulation imposed from without.

Only in a few exceptional instances are you having trouble about meeting the minimum wage requirements of the Act. Wages in metal mining generally are far in excess of the present 30-cents-an-hour minimum of the statute. Your problems are related almost solely to time-and-a-half for overtime.

The contention with which we most frequently are confronted is that, especially in many of the small, low grade mines, you find it difficult to pay time and a half for hours worked beyond 42 a week and still meet your operating costs, to say nothing of making a profit.

It was the intention of Congress, by putting a penalty upon overtime work, to encourage the employment of additional labor. It was a spread-the-work device. It was assumed that imposition of the overtime penalty would encourage employers to eliminate overtime and employ extra workers. But here we meet the contention that this objective is not possible in metal mining because of the difficulty encountered in staggering shifts or in developing a swing-shift operation so that the mine can operate on a six or seven-shift per week basis. The difficulty of providing additional housing for more employees is put forth as a vital factor. Besides, much of the underground work is highly skilled and can be done effectively only by one worker or one group of workers. It would be dangerous to attempt to solve the overtime problem by sending into the mines men who are unfamiliar with the customary techniques and the lay-out of the mine shaft. Not only is it prohibitive to pay time and a half for work in excess of 42 hours a week in many cases, but we have been told that the men themselves don't want a 42-hour week. Many of them are living in remote mining camps and they would much rather put in long hours while at work and save up until they can take time off to go to town.

I should hesitate to attempt to furnish an offhand solution to every problem that has been presented to us, but I want to list some of the principal ones as a basis, at least, for further discussion.

1. Must the time spent by the underground worker in traveling from the portal to the face be counted as time worked?

2. Must time spent at lunch underground be considered as time worked?

3. What is the status of the lessee miner, or the leaser? Is he an employee of the mine owner or really a lessee? Must he and his helpers, whom he employs and pays, be paid time and a half for over-time?

4. What deductions from wages will be considered by the Administrator to be reasonable?

5. Will the operator be protected from liability if he reduces the hourly rate to avoid the payment of overtime?

6. How about the construction employee—the carpenter who produces no goods for commerce; but merely builds new bunk houses, or a drying room, or a recreation hall? Is he covered by the law and must he be paid time and a half for overtime?

We cannot predict in advance just what the Courts are going to say in respect to every problem that arises. The best we can do is to tell you what, in our opinion, the law means, and what, as to any particular problem, the Courts have held in the past in analogous, or somewhat similar, circumstances. The case of the Cornucopia Gold Mine Corporation, however, may be worth citing, because it involved many of the questions which have been raised by other mine operators.

The Cornucopia corporation owns and operates a mining property near Cornucopia, Oregon. There is no railroad nearer than 27 miles, and the largest "big town" is Baker, Oregon, which has a population of around 8,000 and is 75 miles away. This certainly may be considered an isolated mining property. The company was organized in 1930 and it is operating mines which previously had been worked but abandoned. The company did not commence operations until 1936. It lost money that year and also in 1937, but made a profit of about $122,000 in 1938, and, at the time of our investigation, it was estimated that about the same amount of profit would be made in 1939. Our inspector commented that "the officers and directors appear to be responsible individuals engaged in a legitimate enterprise."

The violations of the law which were reported upon inspection were all related either to overtime or the record-keeping requirements.

About October 24, 1938, when the Wage and Hour Law became effective, the company placed all of its employees on an hourly basis, although before that they had been on an eight-hour shift arrangement. The employees worked 48 hours one week and 56 the next, alternately. However, the new hourly rate was so arranged as to provide approximately the same income as before, and if the exact amount was not arrived at by these calculations, then an arbitrary adjustment was made in some instances to bring the wage up to a sum equivalent to the income as it would have been if figured at the regular daily wage. The question here was, What was the regular rate of pay and did the company pay one and a half the regular rate for overtime since the law became effective? We reached the conclusion that the regular rate of pay was not changed and that, hence, nothing extra was paid for the overtime as required by law.

This pay plan was in effect for 91 surface workers until September 19, 1939, but for the 97 underground workers a new system was devised November 15, 1938. This new system provided that the underground miners would continue to work the same shifts as before the Act became effective. There were two shifts a day and the miners went underground either at 7 P. M. and came out at 3:30 P. M., or in at 7 P. M. and out at 3:30 the following morning. This shift arrangement constituted a total of eight and a half hours spent underground, of which 30 minutes was deducted as a lunch period, leaving a net of eight hours worked per shift. For this the men were paid a set shift wage of $3.50, $4, or $4.50 a day. But the new system provided that the employees show only six hours per shift on their time cards, which they kept themselves and turned in each day. The company then re-established the old shift rates. There could be no overtime because the most that could be worked, even for seven shifts a week, was 42 hours. The company's theory was that this was a proper keeping of time because it was maintained that two hours were consumed in traveling through the tunnel of the mine to the place where the miner actually worked. In other words, time spent in traveling from portal to face and from face to portal was not considered by the company to be time worked. It is interesting to note that while the company recorded that each man spent exactly two hours a day traveling underground, our own investigation showed that no miner actually spent more than 90 minutes daily in underground travel, and that some spent no more than 20 minutes. But, in any event, the question here was whether the time consumed from portal to portal, or only the time actually spent at the face, was to be considered time worked. Our own contention was that time consumed from portal to portal was hours worked, and that for these men the company had failed to pay extra for overtime and had failed to enter on its records the time actually worked.

The company insisted that only 188 employees were directly employed and that 87 were either lessees (or leasers) or employees of leasers, for whom the company was not responsible. We believed that these leasers and their helpers were bona fide employees of the company and had a right to look to it for compensation for their overtime. The normal incidents of the employer-employee relationship existed even though the company called the workmen "lessees."

In regard to this question of the status of lessees under the Wage and Hour Law, I announced in July a determination made at the request of metal mine operators and lessees of such operators in the intermountain States. I stated that each case must be determined on its particular facts, with primary importance given to the terms of each individual lease agreement and the method of operation under such agreement. If under the lease agreement control and supervision over the operations of the so-called lessee are reserved to the lessor, such lease agreement embodies the normal incidents of the employer-employee relationship and the so-called lessees will be considered as employees under the Fair Labor Standards Act.

On the other hand, if a particular lessee is operating mining property which is not a part of the property currently being operated by the mining company with regular employees, and if in the lease agreement the mining company does not have the right to control the lessee in his operation of the mining property, it may well be that the lessee is not an employee of the mine owner, but is in fact an independent operator of such property. However, I pointed out that if such lessee has his own employees who assist in the operation of the leased mine, such employees must be paid in accordance with the Fair Labor Standards Act if the products of the mine move in interstate commerce. In the ordinary case the mine owner retains title to the ore mined by the lessee and his employees and ships the product of the leased mine, along with his own, in interstate commerce. Therefore, if the lessee does not pay his own employees in accordance with the requirements of the Fair Labor Standards Act, Section 15(a)(1) (the so-called "hot goods" section) prohibits the mine owner from shipping the product of the leased mine in interstate commerce.

Two Courts recently have held lessees of mining property to be employees of the mine owner. One of the cases was decided by the Supreme Court of Utah under the Utah Unemployment Compensation Act, designated as "*National Tunnel and Mines Company v. Industrial Commission of Utah.*" The other decision was under the Fair Labor Standards Act and was rendered by a Federal Judge in Oregon as a result of the proceedings instituted by the Division against this same Cornucopia Company. In both cases the mining company exercised complete control over the operations performed by the lessees.

In the Cornucopia case there were 34 employees whom the company claimed were not subject to the Act on the ground that they were employed in constructing a dry room, a recreation room and company house, which employment it held was neither interstate commerce nor the production of goods for interstate commerce. Our attorneys believe that repairs or alterations to existing structures used in the production of goods for interstate commerce are covered by the Act, whereas the construction of entirely new structures may be exempt. The employees engaged exclusively on new construction work were held not to be covered by the law but the employees who were spending part of their time in this work and part in employment clearly subject to the Act were held to be covered.

These were the matters which comprised the substance of our case against the Cornucopia Gold Mines, and these were the practices which the Court enjoined the company from continuing. The Court directed the payment of approximately $13,000 in restitution to some 283 employees. I might add that this was a consent decree, and that the company did not challenge the validity of our interpretations and conclusions.

The portal-to-portal matter also has been presented to us by the bituminous coal mining industry. In response to inquiry I said that the Wage and Hour Division, in carrying out its enforcement duties in that industry, will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the industry and are supported by a long history of *bona fide* collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, I announced that the practice of computing working time on a "face-to-face" basis in bituminous coal mining would not be unreasonable. The term "face-to-face" was explained to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work, and the time spent in returning from the working place to the portal at the end of the shift. This determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in bituminous coal mining. In the Cornucopia case, for example, custom and tradition had long recognized the portal-to-portal basis of reckoning time worked.

We are not yet disposed to take any particular position as to whether the half hour spent eating lunch underground may be deducted from hours worked. The problem is a very difficult one because the employee is required to eat under very unfavorable conditions and is subject to many of the hazards of his job while eating. On the other hand, we recognize that the employee does have time off in order to have lunch and an argument can be made that such time need not be considered as hours worked. But as I say, the Division is not prepared at the present time to make any definitive determination on this question.

Deductions from wages are a recurring source of irritation, but the problem seems to be more acute in coal mining than in metal mining. The law, as you know, defines the wage paid to the employee to include the reasonable cost to the employer, as determined by the Administrator, of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees. Our regulations on the subject state that "reasonable cost" shall not include a profit to the employer, and that the cost of facilities, such as tools, furnished to the employee not for his benefit but for the employer's, may not be deducted from wages, if such deduction "cuts into" the minimum wage or compensation for overtime. An example of deductions which we could not wholly approve was reported by one of our inspectors in Pennsylvania. A coal miner, who had worked 77 hours in a two-week period for which his earnings were $79.79, was charged 77 cents for lamps, 52 cents for smithing, $3.55 for powder, 75 cents for Social Security taxes, $1.26 for the union check-off, 55 cents for bath, $1.50 for hospital dues, $1.50 for medical service $60.09 for his account at the store, $8.10 for rent, 20 cents for the baseball fun—a total deduction of $78.79, leaving exactly $1. in cash in his envelope. In this case we disallowed the charges for lamps, smithing and powder and that proportion of the store account that represented a profit to the employer. But so long as such non-deductible items do not "cut into" the minimum wage of 30 cents an hour and no question of overtime is involved, there is no violation of the Act.

Will the operator be protected from liability if he manipulates the hourly rate to avoid the payment of overtime? A rather familiar example of this particular device is illustrated by the case of the employer who, at the time the Act became effective, was paying his employees $4.50 for a normal work day of eight hours. A normal workweek consisted of seven workdays. Thus, the employees earned $31.50 for a workweek of 56 hours. But the employer calls his employees together and makes a little speech. He tells them that it is necessary for him to pay them on an hourly rate. He has decided, he says, to pay them 50 cents an hour for the first six hours of each workday, and 75 cents (time and a half 50 cents) for the seventh and eighth hours. He asks them to agree to this new wage schedule. Since the plan means no change whatever in either hours or total earnings, the employees may accept it. The difficulty with this little scheme, however, is that it is a mere subterfuge.

The division of a normal 8-hour day into 6 "straight time" hours and two "overtime" hours is purely fictitious. The employee is not actually being paid at the rate of 50 cents an hour and the alleged overtime rate of 75 cents is not paid for overtime work. He is simply getting, as he always got, $4.50 for an 8-hour day and his regular rate of pay continues to be 56 cents an hour.

This employer does not comply with section 7 of the Act unless he pays his employees 84 cents an hour (time and one half 56 cents) for each hour they work in excess of 42 hours a week, or a total of $35.28 for a 56-hour week.

That this is so becomes apparent when one stops to reflect about the purpose of the law. The Act is not intended to force employers to pay more money to their employees who work overtime. The Act seeks to induce employers to reduce hours by making overtime work more costly. Thus, if an employer reduced the hours worked by his employees from 56 to 52 or less during the first year of the law, to 51-1/3 or less during the second year, and to 50-2/3 hours or less after this coming October 24, he could continue to pay $31.50 a week, the salary he paid for a 56-hour week prior to the Act, and still be in strict compliance. It can hardly be said that a law which, in the case we have supposed, requires a reduction of 4 hours a week during the first year of its existence, an additional 40 minutes a week during the second year and another reduction of 40 minutes thereafter is seriously burdensome.

In general, mine operators have attempted to meet hours requirements of the Wage and Hour Law by one or another of three types of adjustments: They have reduced the number of shifts to five a week of eight hours each; or they have shortened the shift to approximately seven hours; or they are paying the overtime above 42 hours a week. When the 40-hour provision becomes effective in October it will require the payment of overtime or the cutting of shifts to five a week, at some increase in labor costs, unless this is compensated for by the greater productivity of the workers, as has been the experience of at least one large mine studied by our economists.

Mine operators frequently assure us that their employees are not in sympathy with the maximum week provisions, that they would much rather work 56 or even 70 hours a week at straight time than run the risk of having their total earnings reduced because of the reluctance of employers to pay for overtime. I certainly do not question the good faith of those mine owners and managers who give us this assurance, but the weight of the evidence which comes to us from the miners through their own spokesmen is on the other side. The International Union of Mine, Mill and Smelter Workers indorses the Act, including its present overtime provisions, and we have received many letters from individual miners to the same effect. Several months ago a representative of the Wage and Hour Division made extensive inquiries in Montana and while he was told that some miners were anxious to put in long hours at straight time, he says he did not himself succeed in meeting any of them. The fellow who enjoyed working overtime without extra compensation was pretty illusive. He was always over in the next county or in some other part of the State.

In the course of his report this Division representative wrote (and I quote):

"I found an interesting situation in Butte. When the Wage and Hour Act first went into effect the Anaconda Company made a forty-hour week immediately effective. The miners formerly were worked 48. The change resulted in the loss of a day's pay each week, but it also resulted in the employment of about 800 additional miners. Considerable agitation was caused by the change, and the miners' pay was so materially reduced that there was a great deal of dissension. However, a wage and hour committee was appointed representing all the unions in the Butte area, and numerous meetings and hearings were held. As a result of the agitation the Anaconda Company offered to return to the 48-hour week, and pay the miners time and a half for the hours in excess of 44. (This was before the 42-hour week became effective.) When this proposal was received it was submitted by the wage and hour committee to all the unions in Butte, who took a vote on it. The Teamsters' Union voted in favor of the

48-hour week, but all the other unions in Butte voted conclusively against it, and the vote of the miners' union was almost unanimously in favor of the 40-hour week. Butte furnishes an excellent illustration of one place where the Act succeeded in spreading employment in an effective way.

"Because of the statements made to me by miners who are themselves in favor of the 40-hour week, I would give full credence to their estimate indicating that some 10 or 15 per cent of the miners in the isolated mines would favor a longer day. It is significant, however, that in my trip around the State I could not find a single miner who favored it. I believe, however, that when investigations are made it will be found that many violations of the Wage and Hour Law now exist in the isolated mining districts where miners are found employed under many types of contracts. This will be found to be true, I believe, not because of any desire to violate the law, but because, as a matter of custom and convenience, miners in the small camps have been accustomed to work in a haphazard fashion."

I trust I have been able to show you that we are fully aware of most of the problems that perplex you under the Wage and Hour Law. I regret that I am not able on the spur of the moment to produce a sure-fire, litigation-proof answer to every question that you may be able to ask. I do not think anybody can do that. Some of those questions can be answered finally only by the Courts.

It would be pleasant, too, if I could show each of you how you can comply with the law without it costing you a single cent. But I can't do that, either. I don't think Congress expected that you were going to be able to comply without it costing you something. The Wage and Hour Law is social legislation in the board sense, and like most other good things the attainment of its objectives involves some sacrifice to somebody. It was expected, however, that, though some employers might have to pay more for labor, they, in common with the rest of us, would benefit in the long run from increased mass buying power, better national health, and the greater contentment of workers. These benefits we are now beginning to enjoy.

I think it fair to point out, too, that the price of metals generally has been rising for the last two years. The impetus given to business by the great national defense program, in which metals of all sorts are vitally needed, will be especially to the advantage of mine operators. I might also say that your government for some years, due to its monetary policies, has been subsidizing gold and silver mine owners. Indeed, but for these subsidies, many mines that are operating today and producing rather handsome profits would still be closed.

Some have felt that the war and our necessity for building up the national defense have so radically changed the industrial situation in this country that we shall have to relax the hours requirements of the Wage and Hour Law. The argument runs that while there is an admitted oversupply of idle labor willing and anxious to go to work, there is an acute shortage of skilled labor and that we must permit the skilled labor already on the job to work overtime without paying time and a half for the overtime.

I have discussed this matter several times recently and I do not want to prolong these remarks unduly by undertaking an extensive treatment of it here. Perhaps it will suffice to repeat that in my opinion no relaxation of the overtime provisions of the Act at this time is either necessary or desirable.

It may be natural to assume that if a man can perform so much work in one hour he can perform 60 times that amount of work in 60 hours, or 70 times in 70 hours. But that doesn't happen to be true, as our own experieence in the World War, as well as England's experience both in that conflict and in the present war, amply demonstrates. The Chief of Ordinance and the Quartermaster General of the United States Army both urged restriction of working hours in the World War. Careful studies made in England showed that labor did not produce as much under the 60 hour week as in a shorter workweek, and 45 hours seemed to have been about the optimum, beyond which production fell off, or the workmen, due to fatigue, spoiled about as much material as they satisfactorily completed.

Even if it were true that there is a shortage of skilled labor today, common sense argues the necessity of training more workers now while we have the time for it. If we use up our available supply of skilled labor by requiring long hours of overtime at the beginning of our defensive effort, we will have no reserve to fall back upon later when our situation may be more critical. The overtime penalties of the Wage and Hour Law provides an important incentive to employers to begin training additional workers. The possibility of lengthening working hours forms a reservoir which we should draw upon sparingly and only as a last resort.

An editorial by Charles F. Willis, Editor of the Mining Journal, reflects, I like to think, the best opinion of the industry.

"While the person who thinks that the Wage and Hour Law, and other reform legislation, is all bunk and unnecessary may feel inclined to give as his answer, 'Repeal the whole .... thing!'" he wrote, "we must recognize the fact that the idea of a floor for wages and a ceiling on hours is here to stay. We can travel farther by determining among ourselves just how that principle can be retained, yet fitted to an industry that requires continuous operation in remote places.

"It is urged that those who are conducting mining operations, and who have had trouble in making the present law fit their own situation, advise the investigators of their difficulties . . . and maybe, out of the maze of facts gathered, an answer will be found whereby the mining industry can be granted the changes necessary to make the law workable. If, after cooperating and trying to find the answer and retain the principle, it still cannot be made to operate without undue hardship on both employee and employer, the remedy of repeal is still open.

"The mining industry has no quarrel or trouble with the wage provisions, as it pays far in excess of the minimum provided, but the hours provisions create many problems and inflict much hardship upon both the owners and workers in the metal mines. It is not an unsolvable problem, but can be worked out better by getting our heads together in consultation rather than butting them against each other." So wrote Mr. Willis.

I, too, feel that the principle of a floor under wages and a ceiling over hours is here to stay. I suggest, therefore, the fullest cooperation among industry, labor and the Division to bring about the achievement of its purpose.

Interpretative Bulletin

No. 13

Hours Worked

Determination of Hours for Which Employees are Entitled to Compensation under the Fair Labor Standards Act of 1938.

First issued July 1939.

First revision (Para. 15) October 1939.

Second revision (Para. 15) October 1940.

Revised November 1940.

United States Department of Labor

Wage and Hour Division

Office of the Administrator

10 30 40 (6090).

Interpretative Bulletin No. 13

Determination of Hours for which Employees are Entitled to Compensation Under the Fair Labor Standards Act of 1938.

General.

1. The accurate determination of what constitutes hours worked is essential in order to establish whether the minimum wage and maximum hours requirements of section 6

and 7 of the act have been satisfied. This bulletin is intended to indicate the course which the Administrator will follow with respect to the determination of employees' hours of work in the performance of his administrative duties under the act unless he is directed otherwise by the authoritative rulings of the Courts or unless he shall subsequently decide that his interpretation is incorrect. The manner of computing minimum wages and overtime compensation which is discussed in Interpretative Bulletin No. 4 is not within the scope of this bulletin.

2. The act contains no express guide as to the manner of computing hours of work and reasonable rules must be adopted for the purposes of enforcement of the wage and hour standards. As a general rule, hours worked will include (1) all time during which an employee is required to be on duty or to be on the employer's premises or to be at a prescribed workplace, and (2) all time during which an employee is suffered or permitted to work whether or not he is required to do so. In the large majority of cases, the determination of an employee's working hours will be easily calculable under this formula and will include, in the ordinary case, all hours from the beginning of the workday to the end with the exception of periods when the employee is relieved of all duties for the purpose of eating meals.[1] The following specific problems with respect to the determination of hours worked which have been presented for our consideration are not sufficiently answered by this formula, however, and more detailed discussions of these problems are, therefore, set out in the following paragraphs.

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[1] No opinion can be expressed at this time as to certain cases—e. g., employees engaged in mining or in working under high pressure—where by custom or agreement time spent eating meals is paid for as hours worked.

Time Clocks.

3. Neither the statute nor Regulations, Part 516 (Requirements for Keeping Records) require that time clocks be used or specify the manner in which an employer has to keep a record of the number of hours worked by his employees. Time-clocks where used will be an appropriate basis for recording hours worked only when they accurately reflect the period worked by the employee. Whether or not time clocks accurately reflect the period worked by the employee is to be determined by the formula in the preceding paragraph. It should be noted also that if the employer requires the employees to punch a time clock and the employee is required to be present for a considerable period of time before doing so, such time will be considered hours worked.

Waiting Time And Employees Subject to Call.

4. Many inquiries have been received with respect to periods of inactivity due to the break-down of machinery and time spent in waiting for materials to be furnished or waiting for the loading or unloading of railroad cars or other vehicles of transportation. Generally, the time during which an employee is inactive by reasons of interruptions in his work beyond his control should be included in computing hours worked either if the imminence of the resumption of work requires the employee's presence at the place of employment or if the interval is too brief to be utilized effectively in the employee's own interest. This result would not be affected by the fact that the employer tells his employees that they are free to leave the premises. Hours worked are not limited to the time spent in active labor but includes time given by the employee to the employer even though part of the time may be spent in idleness.

5. Many inquiries have likewise been received regarding employments, the very nature of which involve periods of inactivity for varying lengths of time. Ordinarily such periods of inactivity during which employees are on duty should be considered hours worked. Thus, for example, messenger boys who sit around in the office and wait for messages to be routed out should be considered as working not only when they are actually delivering messages but also while waiting for such messages to be assigned. Similarly, a chauffeur who is required to drive officials of a company engaged in the production of goods for commerce should be considered as working not only when he is actually driving such officials but also during the time he is obliged to hold himself in readiness to drive. In these cases the employee engages in active work intermittently, but his time is not his own while he remains conveniently available to carry out the instructions of his employer.

6. In a few occupations periods of inactivity need not be considered as hours worked even though the employee is subject to call. The answer will generally depend upon the degree to which the employee is free to engage in personal activities during periods of idleness when he is subject to call and the number of consecutive hours that the employee is subject to call without being required to perform active work—i. e., the frequency with which the employee is called upon to engage in work. In these cases, the nature of the employee's work involves long periods of inactivity which the employee may use for uninterrupted sleep, to conduct personal business affairs, to carry on a normal routine of living, etc. A good example of this is the employee of a small telephone exchange operating a switchboard located in the employee's house. During the night no one is in direct attendance at the switchboard and an alarm bell awakens the operator if a subscriber wishes to make a telephone call. The operator has her bed alongside the switchboard and is able to get several hours of

uninterrupted sleep every night, as experience over a considerable period of time may often demonstrate. Thus, if over a period of several months a telephone operator has been called upon to answer only a few calls between the hours of 12 and 5 in the morning a segregation of such hours from hours worked will probably be justified.

7. In some cases employees are engaged in active work for part of the day but because of the nature of the job are also required to be on call for 24 hours a day. Thus, for example, a pumper of a stripper well often resides on the premises of his employer. The pumper engages in oiling the pump each day and doing any other necessary work around the well. In the event that the pump stops (at any time during the day or night) the pumper must start it up again. Similarly, caretakers, custodians, or watchmen of lumber camps during the off season when the camp is closed, live on the premises of the employer, have a regular routine of duty but are subject to call at any time in the event of an emergency. The fact that the employee makes his home at his employer's place of business in these cases does not mean the employee is necessarily working 24 hours a day. In the ordinary course of events, the employee has a normal night's sleep, has ample time in which to eat his meals, and has a certain amount of time for relaxation and entirely private pursuits. In some cases the employee may be free to come and go during certain periods. Thus, here again the facts may justify the conclusion that the employee is not working at all times during which he is subject to call in the event of an emergency, and a reasonable computation of working hours in this situation will be accepted by the Division.

8. In some cases employees may be subject to call after the completion of their regular working day; employees may be called upon after regular hours to furnish emerg-

ency service to customers. If the employee is required to remain on call in or about the place of business of the company, the time spent should be considered hours worked. If, on the other hand, the employee is merely required to leave word where he can be reached in the event of a call and is not tied down to any particular place, such time need not ordinarily be considered hours worked. The employee, however, should be considered as working at any time during which he is actually making a call and his hours worked would include all time traveling to and from such a call.

Travel Time.

9. The problem of travel time, in relation to hours worked, arises in a great variety of situations and no precise mathematical formula will provide the answer in every case. The question is often one of degree; if the time spent by an employee in traveling is reasonably to be described as "all in a day's work," such time should be considered hours worked under the act.

10. As a general rule it may be stated that an employee should treat time spent by an employee during regular working hours in traveling pursuant to the employer's instructions as hours worked. If an employer requests his employee to do a job during regular working hours which required the employee to leave the place of business the traveling time of the employee should be included in hours worked, and this is true whether or not the particular job is within the employee's regular duties.

11. In many cases travel time outside of regular working hours is considered "part of the day's work" and, accordingly, should be treated as hours worked. Thus, an employee whose normal working day extends from 8 A. M. to 5 P. M. may be requested by his employer at 5 P. M.

to make one more outside call which involves 2 hours of traveling time (to get to the place where the work is to be performed and report back to the office) and active labor of 1 hour. In such case the employer may not disregard the travel time in computing the number of hours worked by the particular employee; the employee's working day would extend from 8 a. m. to 8 p. m. In this case the employee engages in active labor for his employer after the close of his regular working day and prior to the commencement of his next regular working day, and his activities between 5 p. m. and 8 p. m. are, under the circumstances, reasonably to be considered as a continuation or extension of his normal working day. The same results, of course, would be reached if the employer requested his employee to report for work 2 hours earlier in the morning in order to make the one extra call.

12. If a crew of workers is required to report for work at a designated place at a specified hour and all the employees are then driven to the place where they are to perform work, the time spent in riding to such place should be considered hours worked. Similarly, the time spent returning from the place at the close of the day's work should be considered hours worked. In some cases, however, the employer requests his employees to report for work at a specified hour at the place where the work is to be performed instead of at the employer's place of business. In these cases the employee's working time may be considered to begin at the time he reports for work, unless the traveling time required in order to reach the place where the productive work is to be performed is unreasonably disproportionate to the normal traveling time required in reporting for work at the headquarters of the employer. No precise formula will solve this type of situation. What is unreasonably disproportionate depends upon the facts in the particular case and reasonable stand-

ards agreed upon between the employer and employee will be accepted for purposes of the act.

13. In some cases an employee is required to travel continuously for more than a full working day during which time the employee is not engaged in actual productive work for his employer. For example, an employee whose regular working hours extend from 8 a. m. to 5 p. m. may be required to spend 2 or 3 days and nights of continuous travel to reach a place where he is to perform assigned work. In such case, as indicated generally in paragraph 10, time spent traveling during the regular working hours should be considered hours worked. Travel time outside of regular working hours need not ordinarily be considered hours worked. If, however, the employee is required to travel on Saturdays, Sundays, and holidays, he should be considered as working on those days for the number of traveling hours between his established starting and stopping time on other days of the week. In determining whether the foregoing is applicable, factors such as the length of time required to reach the place where the assigned work is to be performed, whether the employee is given adequate time for sleeping and relaxation, the time that the employee is required to report for actual productive labor, etc., are very important.

14. Inquiries have been received with respect to employees who are required to travel continuously for several days and who perform active labor while traveling. Thus, for example, when cattle or poultry, etc., are sent to market by rail, an employee of the shipper is required to travel on the train in order to water and feed the stock en route. In other cases an employer who ships machinery by train to a distant customer requires an employee to oil the machinery en route and otherwise to see that it arrives in perfect condition. The employee generally rides in the caboose with the train crew. In each of

the foregoing cases, the employees are subject to call for 24 hours a day, but time required for active work by such employees would ordinarily be much less. The employee generally has a substantial amount of time for sleeping, eating, relaxation, etc.[2] No precise formula will decide this type of case and any reasonable agreement entered into between the parties or established by custom and usage which takes into account the amount of time required for active labor by the employee and the fact that the employee is subject to call for 24 hours a day, will be respected by this Division in its enforcement policy.

Meetings, Lectures and Training Programs.

I. General.

15. If the following four criteria are met, the time spent in attending meetings and lectures need not be considered hours worked: (1) Attendance on the part of the employee is in fact voluntary (attendance will not be considered voluntary if a condition of the employee's continued employment in his present job is attendance at the meeting or lecture); (2) the employee does not produce any goods or perform any other productive work during such meeting or lecture; (3) the meeting or lecture is given outside of regular working hours; and (4) the meeting or lecture is not directly related to the employee's work. (With respect to this last criterion, a meeting or lecture will not generally be considered directly related to the employee's work unless such meeting or lecture may reasonably be considered part of his job. Obviously, attendance at a picnic or to participate in an athletic contest would not be considered directly related to the employee's work. On the other hand, meetings and lectures

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[2] The question is obviously one of degree. No opinion is expressed in the case of the relief truck driver. As to the exemption provided by sec. 13 (b) (1) from the hours provision of the act, see Interpretative Bulletin No. 9.

for the purpose of teaching the employee mine rescue or fire prevention and control do seem directly related to the employee's work.)

II. Specific Situations.

The following is a discussion of the applicability of these general criteria to specific situations:

A. Industrial Training Programs. With respect to industrial training programs, it is our opinion that time spent in attendance at industrial training courses need not be considered hours worked if (1) attendance on the part of the employee is in fact voluntary, (2) the employee does not produce any goods or perform any other productive work during such periods of training, (3) the training course is given outside of regular working hours and (4) the training course is intended to train the employee to a new, different or additional skill, and is not intended to make the employee more efficient at doing what he has been doing in his present job. The last condition (4) is not a departure from the general criterion mentioned in the preceding paragraph that the meeting or lecture must not be directly related to the employee's work. Rather, this condition is merely intended to indicate specifically how that criterion operates with respect to industrial training programs. In other words, in the case of industrial training programs, the programs will not be considered directly related to the employee's work if the training course trains the employee to a new, different or additional skill.

A few examples will serve to show the distinction between those industrial training programs, attendance at which will be deemed hours worked, and those programs, attendance at which will *not* be deemed hours worked:

(1) One example is that of a welder who is working in an automobile plant welding steel automobile frames. The employer has accepted an order for airplane fuselages, in the construction of which employees having the skill to weld aluminum will be required. The employer gives to any welder in his organization the opportunity, if he chooses, to take a course after working hours in welding aluminum. In such course no finished product is made, but the end product of the welding is scrapped. There is provision that if the welder does not acquire this higher skill he shall be permitted to continue to be a welder working for the employer on steel automobile frames.

(2) Another example is that of a typist. An expansion of the plant gives opportunity for stenographers. The employer offers to any of his typists who choose an opportunity after work to be trained for stenographic work. Such training is not made a condition of their continuing as typists and no regular office work is done for the employer during the training period.

(3) Another example is the case of a punch press operator who knows that his employer will install drop forging machines, employment in the operation of which will yield a higher rate of pay. The employer offers a certain number of punch press operators and employees in other skills an opportunity after work to be trained on drop forging machines. The end product of the forging is scrapped. Punch press operators who do not take this course are allowed to continue in employment as punch press operators.

(4) Finally, an example of a case in which attendance at the training course must be considered hours worked is that of a sewing machine operator in a garment factory whose productivity is such that it is marginal in comparison with the median productivity of all the other sewing

machine operators. The employer says, "you are too slow and unless you practice on waste material after work and get up your productivity and speed, you cannot work here any more." This would be hours worked for two reasons: (1) attendance would not be voluntary, and (2) the employee would not be learning a new, additional or different skill.

These examples point out the underlying purpose of the four conditions which must be met if attendance at the training course is not to be considered hours worked. Such purpose is to prevent exploitation of labor in violation of the act by using alleged training programs to effect a stretchout or speed-up in the work of employees in their present position. The program to satisfy the four criteria must essentially be for the purpose of providing better employment by adding skills primarily for the benefit of the employee, although, of course, the program would also benefit the employer by providing him with certain skills in which his labor market is deficient.

B. *Attendance at public schools, recognized universities or other bona fide institutions of learning.* In some cases employees attend public schools or take regular courses in a recognized university or other bona fide institution of learning. The courses given are part of a standard curriculum and are not designed to accomodate the requirements of any particular plant. Thus, for example, a teller in a bank may take a university course on the financial policy of corporations, or a mechanic in a factory may take a course in draftsmanship or physics. In these cases the subject matter of the course impinges on the general subject matter of the employee's job and makes him more reversatile and better qualified to assume additional responsibility. The instruction, however, has no necessary and immediate relation to the particular work done by the employee and he does not, of course, engage in any productive work for the employer during time spent taking this course. In our opinion time spent by an employee outside regular working hours in attending lectures at, or in studying correspondence given by, a public school, or university, or other bona fide institution of learning (even if the employer pays the necessary tuition) will not be considered "directly related to the employee's work" and, if attendance is voluntary, need not be considered hours worked.

C. *Safety meetings.* Safety meetings which take place outside working hours and are conducted, sponsored, or otherwise approved by a governmental agency (state or federal) or by any recognized independent or other bona fide organization engaged primarily in disseminating safety information, will not be considered "directly related to the employee' work." Furthermore, even if the safety meeting is not so conducted, sponsored, or approved, it will not be considered "directly related to the employee's work" if it is conducted outside working hours as part of a general safety program which is not restricted to the hazards of the job at hand or to the personal responsibilities of employees in doing their job safely and efficiently. Accordingly, voluntary attendance at such meetings need not be considered hours worked.

III. Apprenticeship training.

In view of the special circumstances involved in bona fide apprenticeship training, it is our opinion that time spent in related supplemental instruction by a bona fide apprentice—one who is employed under a written apprenticeship agreement which meets the standards of the Federal Committee on Apprenticeships or which conforms substantially with such standards—need not be considered hours worked if the written apprenticeship agreement so provides. Bona fide apprenticeship programs involve consideration of public policy not present in the case of the ordinary employer-employee relationship. They are intended to provide the community with an adequate number of journeymen who have had a combination of practical experience and theoretical instruction and thus to enchance employability. The comprehensive program of practical training covering an entire trade is supplemented by theoretical instruction designed to give the apprentice a better understanding of the mechanical activities which he will be called upon to perform in his trade. It should be noted, however, that related supplemental instruction does not include time spent by an apprentice in performing his regular duties or in any active work. Such time should be considered hours worked under all circumstances.

Employees Having More Than One Job.

16. Many inquiries have been received with respect to employees who work for two or more companies. Thus, for example, company A and company B may arrange to employ a common watchman, the employee having the duty of watching the property of both companies concurrently for a specified number of hours each night. In this case A and B are not each required to pay the minimum rate required under the statute for all hours worked by the watchman (i. e.. 30 cents an hour each) but A and B should be considered as a joint employer for purposes of the act.

17. In some cases, however, an employee may work 40 hours for company A and 15 additional hours during the same week on a different job for company B. In this case it would seem that if A and B are acting entirely independently of each other with respect to the employment of the particular employee, both A and B, in ascertaining their obligations under the act, would be privileged to dis-

regard all work performed by the employee of the other company. If, on the other hand, the employment by A is not completely disassociated from the employment by B, the entire employment of the employee for both A and B should be considered as a whole for the purposes of the statute. Whether the employment by A and B are completely disassociated depends, of course, upon the facts in the particular case. This Division will scrutinize all cases involving more than one employment and, at least in the following situations, an employer will be considered as acting in the interest of another employer in relation to an employee: If the employers make an arrangement for the interchange of employees or if one company controls, is controlled by, or is under common control with, directly or indirectly, the other company.

OBJECTIONS TO WRITTEN INTERROGATORIES UPON WHICH PLAINTIFFS PROPOSE TO TAKE DEPOSITIONS.

411 (Civil Actions Nos. 5232, 5233 and 5234.)

Comes now Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener in these cases, and objects to written interrogatories hereinafter enumerated upon which plaintiffs propose to take the depositions of L. C. Gunter, of Knoxville, Tennessee, and as grounds for his objection states the following:

(1) Intervener objects to so much of Interrogatory 4 as asks for information respecting the witnesses' experience in the production or mining of coal upon the grounds that such evidence is immaterial and irrelevant and does not bear upon the issues of these cases.

(2) Intervener objects to Interrogatory 5 upon the following grounds:

(a) Said question is vague and indefinite.

(b) Said question does not indicate to what industries said collective bargaining negotiations or agreements referred to therein relate.

(c) Said question does not indicate with whom United Mine Workers of America or other labor organizations negotiated or entered into any collective bargaining agreements.

(d) Said question does not specify any particular period of time.

(e) Said question calls for information of which contracts or other written memoranda will be the best evidence.

(f) Said question calls for information which is the result of hearsay.

(3) Intervener objects to Interrogatory 6(a) on the grounds that the general custom and practice in coal mines or in the coal industry are immaterial and irrelevant and do not bear upon the proper issues of these cases.

(4) Intervener objects to Interrogatory 6(b) on the grounds that the general custom and practice in coal mining or in the coal industry are irrelevant and immaterial and do not bear upon the proper issues of these cases and said interrogatory is a repetition of Interrogatory 6(a).

(5) Intervener objects to Interrogatory 6(c) on the ground that it calls for information which is immaterial

and irrelevant and does not bear upon the proper issues of these cases.

(6) Intervener objects to Interrogatory 6(d) on the grounds that said question calls for information which is immaterial and irrelevant and does not bear upon the proper issues of these cases.

(7) Interrogatory 7(a) is objectionable upon the following grounds:

(a) The said question is vague and indefinite in that it does not specify which branch of the mining industry is referred to or the mining of what minerals is referred to.

(b) It does not relate to any particular period of time.

(c) It calls for evidence of which contracts or other written documents will be the best evidence.

(8) Interrogatory 7(b) is objected to upon the ground that it calls for information of which written documents will be the best evidence.

(9) Interrogatory 7(c) is objectionable on the ground that it calls for copies of documents of which the originals would be the best evidence, and for evidence of which written documents would be the best evidence.

(10) Interrogatory 8 is objectionable upon the following grounds:

(a) It is vague and indefinite in that it does not specify the industry to which it is directed and as to which information is sought.

(b) It calls for a conclusion of law as to what is the place of work, which this Court must determine.

(c) It calls for information of which written documents are the best evidence.

(11) Interrogatory 9(a) is objectionable upon the following grounds:

(a) The information called for is immaterial and irrelevant.

(b) The question is vague and indefinite in that it does not specify what mine or what type of minerals are produced in the mines referred to.

(c) It contains within it a statement of fact, of which no proof has been adduced.

(12) Interrogatory 9(c) (sic) is objectionable upon the same grounds as Interrogatory 9(a).

(13) Interrogatory 10(a) is objectionable upon the following grounds:

(a) It calls for information which is immaterial and irrelevant.

(b) It is vague and indefinite in that it does not particularize the mine as to which information is sought, the type of minerals produced and the period of time covered by said question.

(c) It calls for a conclusion as to what is the working place, which is the question to be determined by this Court.

(d) It calls for information which is the result of hearsay.

(14) Interrogatory 10(b) is objectionable upon the following grounds:

(a) It calls for information which is the result of hearsay.

(b) It is a leading question.

(c) It is vague and indefinite.

(15) Interrogatory 10(c) is objectionable upon the following grounds:

(a) It is vague and indefinite.

(b) It calls for information which is the result of hearsay.

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Solicitor for Labor.
IRVING J. LEVY,
Assistant Solicitor in Charge of Litigation.
JEROME A. COOPER,
Regional Attorney.
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United States Department of Labor.
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or
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U. S. Department of Labor,
Washington, D. C.

Served by handing a copy of the foregoing to: Benners, Burr, McKamy & Forman, Brown Marx Building, Birmingham, Alabama; and a copy to Bradley, Baldwin, All & White, Comer Building, Birmingham, Alabama, this 1st day of July, 1941.

JEROME A. COOPER.

Filed July 1, 1941.

OBJECTIONS TO WRITTEN INTERROGATORIES UPON WHICH PLAINTIFFS PROPOSE TO TAKE DEPOSITIONS.

415 (Civil Actions Nos. 5232, 5233 and 5234.)

Comes now Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener in these cases, and objects to written interrogatories hereinafter enumerated upon which plaintiffs propose to take the depositions of D. C. Kennedy of Charleston, West Virgina, and as grounds for his objections states the following:

(1) Intervener objects to so much of Interrogatory 4 as asks for information respecting witnesses' experience in the production or mining of coal upon the grounds that such evidence is immaterial and irrelevant and does not bear upon the issues of these cases.

(2) Intervener objects to Interrogatory 5 upon the following grounds:

(a) Said question is vague and indefinite.

(b) Said question does not indicate to what industries said collective bargaining negotiations or agreements referred to therein relate.

(c) Said question does not indicate with whom United Mine Workers of America of other labor organizations negotiated or entered into any collective bargaining agreements.

(d) Said question does not specify any particular period of time.

(e) Said question calls for information of which contracts or other written memoranda will be the best evidence.

(f) Said question calls for information which is the result of hearsay.

(3) Intervener objects to Interrogatory 6(a) on the grounds that the general custom and practice in coal mines or in The Coal industry is irrelevant and immaterial and does not bear upon the proper issues of these cases.

(4) Intervener objects to interrogatory 6(b) on the grounds that the general custom and practice in coal mining or in the coal industry is irrelevant and immaterial and does not bear upon the proper issues of these cases and said interrogatory is a repetition of interrogatory 6(a).

(5) Intervener objects to Interrogatory 6(c) on the ground that it calls for information which is immaterial and irrelevant and does not bear upon the proper issues of these cases.

(6) Intervener objects to interrogatory 6(d) on the grounds that said question calls for information which is

immaterial and irrelevant and does not bear upon the proper issues of these cases.

(7) Interrogatory 7(a) is objectionable upon the following grounds:

(a) The said question is vague and indefinite in that it does not specify what branch of the mining industry is referred to or the mining of what minerals is referred to.

(b) It does not relate to any particular period of time.

(c) It calls for evidence of which contracts or other written documents will be the best evidence.

(8) Interrogatory 7(b) is objected to upon the ground that it calls for information of which written documents will be the best evidence.

(9) Interrogatory 7(c) is objectionable on the ground that it calls for copies of documents of which the originals would be the best evidence, and for evidence of which written documents would be the best evidence.

(10) Interrogatory 8 is objectionable upon the following grounds:

(a) It is vague and indefinite in that it does not specify the industry to which it is directed and as to which information is sought.

(b) It calls for a conclusion of law as to what is the place of work, which this Court must determine.

(c) It calls for information of which written documents are the best evidence.

(11) Interrogatory 9(a) is objectionable upon the following grounds:

(a) The information called for is immaterial and irrelevant.

(b) The question is vague and indefinite in that it does not specify what mine or what type of minerals are produced in the mines referred to.

(c) It contains within it a statement of fact, of which no proof has been adduced.

(12) Interrogatory 9(c) (sic) is objectionable upon the same grounds as Interrogatory 9(a).

(13) Interrogatory 10(a) is objectionable upon the following grounds:

(a) It calls for information which is immaterial and irrelevant.

(b) It is vague and indefinite in that it does not particularize the mine as to which information is sought, the type of minerals produced and the period of time covered by said question.

(c) It calls for a conclusion as to what is the working place, which is the question to be determined by this Court.

(d) It calls for information which is the result of hearsay.

(14) Interrogatory 10(b) is objectionable upon the following grounds:

(a) It calls for information which is the result of hearsay.

(b) It is a leading question.

(c) It is vague and indefinite.

(15) Interrogatory 10(c) is objectionable upon the following grounds:

(a) It is vague and indefinite.

(b) It calls for information which is the result of hearsay.

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Served by handing a copy of the foregoing to: Benners, Burr, McKamy & Forman, Brown Marx Building, Birmingham, Alabama; and a copy to Bradley, Baldwin, All & White, Comer Building, Birmingham, Alabama, this 1 day of July, 1941.

JEROME A. COOPER.

Filed July 1, 1941.

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419 OBJECTIONS TO WRITTEN INTERROGATORIES UPON WHICH PLAINTIFFS PROPOSE TO TAKE DEPOSITIONS.

(Civil Actions Nos. 5232, 5233 and 5234.)

Comes now Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener in these cases, and objects to written interrogatories hereinafter enumerated upon which plaintiffs proppse to take the depositions of W. J. Jenkins of St. Louis, Missouri, and as grounds for his objections states the following:

(1) Intervener objects to so much of Interrogatory 4 as asks for information respecting the witnesses' experience in the production or mining of coal upon the grounds that such evidence is immaterial and irrelevant and does not bear upon the issues of these cases.

(2) Intervener objects to Interrogatory 5 upon the following grounds:

(a) Said question is vague and indefinite.

(b) Said question does not indicate to what industries said collective bargaining negotiations or agreements referred to therein relate.

(c) Said question does not indicate with whom United Mine Workers of America or other labor organizations negotiated or entered into any collective bargaining agreements.

(d) Said question does not specify any particular period of time.

(e) Said question calls for information of which contracts or other written memoranda will be the best evidence.

(f) Said question calls for information which is the result of hearsay.

(3) Intervener objects to Interrogatory 6(a) on the grounds that the general custom and practice in coal mines or in the coal industry are immaterial and irrelevant and do not bear upon the proper issues of these cases.

(4) Intervener objects to Interrogatory 6(b) on the grounds that the general custom and practice in coal mining or in the coal industry are irrelevant and immaterial and do not bear upon the proper issues of these cases and said interrogatory is a repetition of Interrogatory 6(a).

(5) Intervener objects to Interrogatory 6(c) on the ground that it calls for information which is immaterial and irrelevant and does not bear upon the proper issues of these cases.

(6) Intervener objects to Interrogatory 6(d) on the grounds that said question calls for information which is immaterial and irrelevant and does not bear upon the proper issues of these cases.

(7) Interrogatory 7(a) is objectionable upon the following grounds:

(a) The said question is vague and indefinite in that it does not specify which branch of the mining industry is referred to or the mining of what minerals is referred to.

(b) It does not relate to any particular period of time.

(c) It calls for evidence of which contracts or other written documents will be the best evidence.

(8) Interrogatory 7(b) is objected to upon the ground that it calls for information of which written documents will be the best evidence.

(9) Interrogatory 7(c) is objectionable on the ground that it calls for copies of documents of which the originals would be the best evidence, and for evidence of which written documents would be the best evidence.

(10) Interrogatory 8 is objectionable upon the following grounds:

(a) It is vague and indefinite in that it does not specify the industry to which it is directed and as to which information is sought.

(b) It calls for a conclusion of law as to what is the place of work, which this Court must determine.

(c) It calls for information of which written documents are the best evidence.

(11) Interrogatory 9(a) is objectionable upon the following grounds:

(a) The information called for is immaterial and irrelevant.

(b) The question is vague and indefinite in that it does not specify what mine or what type of minerals are produced in the mines referred to.

(c) It contains within it a statement of fact, of which no proof has been adduced.

(12) Interrogatory 9(c) (sic) is objectionable upon the same grounds as Interrogatory 9(a).

(13) Interrogatory 10(a) is objectionable upon the following grounds:

(a) It calls for information which is immaterial and irrelevant.

(b) It is vague and indefinite in that it does not particularize the mine as to which information is sought, the type of mineral produced and the period of time covered by said question.

(c) It calls for a conclusion as to what is the working place, which is the question to be determined by this Court.

(d) It calls for information which is the result of hearsay.

(14) Interrogatory 10(b) is objectionable because upon the following grounds:

(a) It calls for information which is the result of hearsay.

(b) It is a leading question.

(c) It is vague and indefinite.

(15) Interrogatory 10(c) is objectionable upon the following grounds:

(a) It is vague and indefinite.

(b) It calls for information which is the result of hearsay.

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Served by handing a copy of the foregoing to: Benners, Burr, McKamy & Forman, Brown Marx Building, Birmingham, Alabama; and a copy to Bradley, Baldwin, All & White, Comer Building, Birmingham, Alabama, this 1 day of July, 1941.

JEROME A. COOPER.

Filed July 1, 1941.

MOTION OF PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, U. S. DEPARTMENT OF LABOR, OBJECTING TO ANSWERS TO INTERROGATORIES AND A MOTION FOR CONTINUANCE OF DATE OF TRIAL.

(Civil Actions Nos. 5232, 5233 and 5234.)

Now comes Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener in these cases, and objects to the answers to the interrogatories hereinafter enumerated on the following grounds:

(1) Intervener objects to the answer filed and served by Plaintiff Tennessee Coal Iron & Railroad Company to Interrogatory XXVI on the ground that said answer is not responsive to the interrogatory and does not comply with the order of the Court directing that plaintiff answer said interrogatory.

(2) Intervener objects to the answers filed by all plaintiffs to Interrogatory XXVII on the grounds that said answers are not responsive to the said interrogatory and do not comply with the order of this Court directing plaintiffs to answer said interrogatory.

Intervener moves for a continuance of the trial of these cases on the ground that he has been prejudiced in his preparation for the trial thereof by the failure and refusal of the plaintiffs to answer responsively and fully the said interrogatories hereinabove referred to and comply with said order of this Court. Intervener avers that as a result of the order of this Court directing that he be not permitted to take oral depositions and by the failure and refusal of the plaintiffs to answer the interrogatories hereinabove referred to and to comply with the order of the Court, he has not and will not receive the information called for, relating to one of the issues raised by the plaintiffs' complaints, in a reasonable time before the trial of these cases to make full use thereof in the preparation of his cases for trial.

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424 NOTICE OF HEARING ON OBJECTIONS AND MOTION, omitted from the printed record, pursuant to Rule 23 of this Court.

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425 ORDER SUSTAINING INTERVENER'S OBJECTIONS TO PLAINTIFFS' INTERROGATORIES.

(Civil Actions Nos. 5232, 5233, and 5234.)

This matter coming on to be heard on objections by Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener in these cases, to interrogatories propounded to him by plaintiffs in the presence of counsel for plaintiffs and counsel for intervener;

And the Court having heard and considered the argument of counsel and it appearing to the Court that the interrogatories hereinafter enumerated call for information which is immaterial and irrelevant to the issues of these cases and that intervener should not be required to answer said interrogatories;

It is on this 1st day of July, 1941, Ordered that the objections of Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener in these cases, to the following interrogatories propounded by plaintiffs be and the same are hereby sustained:

Interrogatory II

C.

(b)

(c)

D.

E.

(a)

(b)

(c)

(d)

(e)

H.

(a)

(b)

(c)

(d)

(e)

I.

J.

K.

L.

M.

O.

P.

Q.

Interrogatory III

A.

(a)

(b)

(c)

(d)

(e)

B.

C.

D.

Interrogatory IV

A.

(a)

B.

C.

D.

E.

F.

G.

(a)

(b)

(c)

(d)

H.

I.

J.

K.

L.

L(1)

L(2)

M.

N.

Interrogatory V

A.

(a)

(b)

(c)

(d)

(e)

B.

C.

K.

L.

M.

(a)

(b)

(c)

N.

(a)

(b)

(c)

(d)

(e)

(f)

(g)

Interrogatory VI

A.

B.

C.

D.

E.

F.

G.

Interrogatory VII

A.

B.

C.

D.

(a)

(b)

(c)

Interrogatory IX

A.

B.

C.

T. A. MURHPREE,
United States District Judge.

Filed July 3, 1941.

429 ORDER DENYING INTERVENER FLEMING THE RIGHT TO TAKE ORAL DEPOSITIONS.

(Civil Actions Nos. 5232, 5233 and 5234.)

This cause coming on to be heard on the motion of plaintiffs for an order that the oral depositions of Russell Hunt, M. H. Geisking, R. J. Working and others named in the notice of taking depositions served upon plaintiffs on June 26, 1941, shall not be taken, and said motion now being heard in open Court, all parties being present by counsel, and being duly considered by the Court, it is Ordered and Decreed by the Court that said motion be, and the same hereby is, sustained.

This the 28th day of June, 1941.

T. A. MURPHREE,
Judge.

Filed July 3, 1941.

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430 EXCEPTION TO ORDER DENYING RIGHT TO TAKE ORAL DEPOSITIONS.

(Civil Actions Nos. 5232, 5233 and 5234.)

Now comes Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener in these cases, and files his exception to the order of this Court granting the motion made by the plantiffs objecting to the taking of the oral depositions of the witnesses named in the notice filed and served upon the parties hereto by intervener on June 26, 1941, and states as the ground for his exception the following:

(1) On June 23, 1941, Borden Burr, counsel for plaintiffs, Tennessee Coal, Iron & Railroad Company and Republic Steel Corporation, on behalf of all plaintiffs, moved in open Court without previous notice that depositions to be taken by intervener at Denver, Colorado, June 28, 1941, and Minneapolis, Minnesota, June 30, 1941, of which notice was mailed June 20, 1941, be not taken or that the Court direct the taking of same on written interrogatories. Upon the statement by the Court that written interrogatories would be ordered unless the dates for the taking of said oral depositions could be arranged to the satisfaction of Mr. Burr, counsel for intervener pointed out that a change of dates would not be convenient because he proposed to take additional depositions of witnesses in Birmingham, Alabama, before trial. Counsel for intervener then, June 23, 1941, conferred with Mr. Burr, who stated that other lawyers in his firm would be available to attend the taking of any depositions which intervener wished to take in Birmingham at any time prior to the trial of these actions on July 8, 1941.

(2) On June 26, 1941, intervener's notice was filed and served upon the parties hereto for the taking of oral depositions in Birmingham, Alabama, on July 2, 1941. All persons named in said notice are either officers or employees of the plaintiffs; and certain of these by admission of counsel for plaintiffs are competent to testify upon issues raised by the complaint and will be utilized as witnesses by the plaintiffs at the trial hereof. The testimony of all witnesses named in said notice is necessary to the adequate preparation by intervener of his case for trial.

(3) Intervener is denied a right granted by Rule 26(a) of the Rules of Civil Procedure permitting the taking

of depositions for the purpose of discovery or for use as evidence in the action or for both purposes.

(4) The denial by the Court of the right to take said oral depositions, particularly for the reason that some of the witnesses whom intervener desired to examine would be present in Court at the trial of the cases, denies to intervener an opportunity properly to prepare for the trial of these cases in the manner which is contemplated by and pursuant to the right conferred by the Rules of Civil Procedure.

(5) Plaintiffs, the moving parties objecting to the taking of said oral depositions, failed to make any showing that an order preventing the taking of such depositions was necessary to protect any of the parties in these cases from annoyance, embarrassment or oppression.

(6) Intervener was served with a motion objecting to the taking of said depositions on the afternoon of Friday, June 27, 1941; and to said motion was appended a notice that it would be brought on for argument on Tuesday, July 1, 1941. Said motion was granted by the Court on the morning of Saturday, June 28, 1941, at a conference called by the Court to determine whether the parties to these cases objected to any further continuance of the trial thereof, and without any previous notice by plaintiffs to intervener that the said motion would be heard at that conference on Saturday, June 28, 1941. Consequently, intervener did not have an opportunity to prepare pleadings or affidavits in support of his right to take depositions and did not have a full and fair hearing upon adequate notice on plaintiffs' motion.

Wherefore, intervener prays an exception to the order of the Court directing that such depositions be not taken.

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U. S. Department of Labor,
Washington, D. C.

State of Alabama,
County of Jefferson.

Jerome A. Cooper, being duly sworn, deposes and says that he has read the foregoing statement of exceptions and that the matters of fact therein stated are true.

JEROME A. COOPER.

Sworn to and subscribed before me this 5th day of July, 1941.

HELEN LOONEY EVANS,
(Seal). Notary Public.

My commission expires 1 8 42.

Filed July 5, 1941.

433

AMENDED ANSWER OF PHILIP B. FLEMING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, INTERVENER.

(Civil Actions Nos. 5232, 5233 and 5234.)

First Defense.

Intervener refers to, adopts and realleges in its entirety the answer previously filed herein by him.

Second Defense.

The specific propositions designated "G", "H", "I", "J", and "K", set forth in plaintiffs' amended complaint, are not material or relevant to or determinative of the proper issues of these actions.

Third Defense.

This Court has no jurisdiction over plaintiffs' amended complaint under the Federal Declaratory Judgment Act because there is no actual controversy within the meaning of the said Act, said amended complaint does not present a case or controversy within the meaning of Article III, Section 2 of the United States Constitution, plaintiffs are not threatened with or in danger of suffering any irreparable injury.

GERARD D. REILLY,
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Assistant Solicitor in Charge, of Litigation,
JEROME A. COOPER,
Regional Attorney,

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Washington, D. C.

Served by handing a copy of the foregoing to Benners, Burr, McKamy and Forman, Attorneys for Tennessee Coal, Iron & Railroad Company and Republic Steel Corporation, Plaintiffs, Brown Marx Building, Birmingham, Alabama; a copy to Crampton Harris, Esq., Attorney for Muscoda Local No. 123, et als, Defendant, First National Building, Birmingham Alabama, a copy to Messrs. J. Q. Smith, Ralph W. Quinn, and W. F. Spencer, Attorneys for Muscoda Local No. 21935, et als, Defendants, Farley Building, Birmingham, Alabama; and a copy to Bradley, Baldwin, All & White, Attorneys for Sloss-Sheffield Steel & Iron Company, Plaintiff, Comer Building, Birmingham, Alabama, this 5 day of July, 1941.

JEROME A. COOPER.

Filed July 5, 1941.

435 OBJECTIONS TO WRITTEN INTERROGATORIES UPON WHICH PLAINTIFFS PROPOSE TO TAKE DEPOSITIONS.

(Civil Actions Nos. 5232, 5233 and 5234).

Comes now Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener in these cases, and objects to written interrogatories hereinafter enumerated upon which plaintiffs propose to take the depositions of Harvey Cartwright of Terre Haute, Indiana, and as grounds for his objections states the following:

(1) Intervener objects to so much of Interrogatory 4 as asks for information respecting the witness' experience in the production or mining of coal upon the grounds that such evidence is immaterial and irrelevant and does not bear upon the issues of these cases.

(2) Intervener objects to Interrogatory 5 upon the following grounds:

(3) Said question is vague and indefinite.

(b) Said question does not indicate to what industries said collective bargaining negotiations or agreements referred to therein relate.

(c) Said question does not indicate with whom United Mine Workers of America or other labor organizations negotiated or entered into any collective bargaining agreements.

(d) Said question does not specify any particular period of time.

(e) Said question calls for information of which contracts or other written memoranda will be the best evidence.

(f) Said question calls for information which is the result of hearsay.

(3) Intervener objects to Interrogatory 6(a) on the grounds that the general custom and practice in coal mines or in the coal industry are immaterial and irrelevant and do not bear upon the proper issues of these cases.

(4) Intervener objects to Interrogatory 6(b) on the grounds that the general custom and practice in coal mining or in the coal industry are irrelevant and immaterial and do not bear upon the proper issues of these cases and said interrogatory is a repetition of Interrogatory 6(a).

(5) Intervener objects to Interrogatory 6(c) on the ground that it calls for information which is immaterial and irrelevant and does not bear upon the proper issues of these cases.

(6) Intervener objects to Interrogatory 6(d) on the grounds that said question calls for information which is immaterial and irrelevant and does not bear upon the proper issues of these cases.

(7) Interrogatory 7(a) is objectionable upon the following grounds:

(a) The said question is vague and indefinite in that it does not specify which branch of the mining industry is referred to or the mining of what minerals is referred to.

(b) It does not relate to any particular period of time.

(c) It calls for evidence of which contracts or other written documents will be the best evidence.

(8) Interrogatory 7(b) is objected to upon the ground that it calls for information of which written documents will be the best evidence.

(9) Interrogatory 7(c) is objectionable on the ground that it calls for copies of documents of which the originals would be the best evidence, and for evidence of which written documents would be the best evidence.

(10) Interrogatory 8 is objectionable upon the following grounds:

(a) It is vague and indefinite in that it does not specify the industry to which it is directed and as to which information is sought.

(b) It calls for a conclusion of law as to what is the place of work, which this Court must determine.

(c) It calls for information of which written documents are the best evidence.

(11) Interrogatory 9(a) is objectionable upon the following grounds:

(a) The information called for is immaterial and irrelevant.

(b) The question is vague and indefinite in that it does not specify what mine or what type of minerals are produced in the mines referred to.

(c) It contains within it a statement of fact, of which no proof has been adduced.

(12) Interrogatory 9(c) (sic) is objectionable upon the same grounds as Interrogatory 9(a).

13. Interrogatory 10(a) is objectionable upon the following grounds:

(a) It calls for information which is immaterial and irrelevant.

~~(b)~~ It is vague and indefinite in that it does not particularize the mines as to which information is sought, the type of minerals produced and the period of time covered by said question.

(c) It calls for a conclusion as to what is the working place, which is the question to be determined by this Court.

(d) It calls for information which is the result of hearsay.

(14) Interrogatory 10(b) is objectionable upon the following grounds:

(a) It calls for information which is the result of hearsay.

(b) It is a leading question.

(c) It is vague and indefinite.

(15) Interrogatory 10(c) is objectionable upon the following grounds:

(a) It is vague and indefinite.

(b) It calls for information which is the result of hearsay.

GERARD D. REILLY,
Solicitor of Labor,
IRVING J. LEVY,
Assistant Solicitor in Charge of Litigation,
JEROME A. COOPER,
Regional Attorney,
ABNER BRODIE,
United States Department of Labor Attorneys for Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor.

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1007 Comer Building,
Birmingham, Alabama,
or
Wage and Hour Division,
U. S. Department of Labor,
Washington, D. C.

Served by handing a copy of the foregoing to: Benners, Burr, McKamy and Forman, Brown Marx Building, Birmingham, Alabama; and a copy to Bradley, Baldwin, All & White, Comer Building, Birmingham, Alabama, this 5 day of July 1941.

JEROME A. COOPER.

Filed July 5, 1941.

439 OBJECTIONS TO WRITTEN INTERROGATORIES UPON WHICH PLAINTIFFS PROPOSE TO TAKE DEPOSITIONS.

(Civil Actions Nos. 5232, 5233 and 5234.)

Comes now Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener in these cases, and objects to written interrogatories hereinafter enumerated upon which plaintiffs propose to take the depositions of Frances Keegan of Pittsburg, Kansas, and as grounds for his objections states the following:

(1) Intervener objects to so much of Interrogatory 4 as asks for information respecting the witness' experience in the production or mining of coal upon the grounds that such evidence is immaterial and irrelevant and does not bear upon the issues of these cases.

(2) Intervener objects to Interrogatory 5 upon the following grounds:

(a) Said question is vague and indefinite.

(b) Said question does not indicate to what industries said collective bargaining negotiations or agreements referred to therein relate.

(c) Said question does not indicate with whom United Mine Workers of America or other labor organizations negotiated or entered into any collective bargaining agreements.

(d) Said question does not specify any particular period of time.

(e) Said question calls for information of which contracts or other written memoranda will be the best evidence.

(f) Said question calls for information which is the result of hearsay.

(3) Intervener objects to Interrogatory 6(a) on the grounds that the general custom and practice in coal mines or in the coal industry are immaterial and irrelevant and do not bear upon the proper issues of these cases.

(4) Intervener objects to interrogatory 6(b) on the grounds that the general custom and practice in coal mining or in the coal industry are irrelevant and immaterial and do not bear upon the proper issues of these cases and said interrogatory is a repetition of Interrogatory 6(a).

(5) Intervener objects to Interrogatory 6(a) on the ground that it calls for information which is immaterial and irrelevant and does not bear upon the proper issues of these cases.

(6) Intervener objects to Interrogatory 6(d) on the grounds that said question calls for information which is immaterial and irrelevant and does not bear upon the proper issues of these cases.

(7) Interrogatory 7(a) is objectionable upon the following grounds:

(a) The said question is vague and indefinite in that it does not specify which branch of the mining industry is referred to or the mining of what minerals is referred to.

(b) It does not relate to any particular period of time.

(c) It calls for evidence of which contracts or other written documents will be the best evidence.

(8) Interrogatory 7(b) is objected to upon the ground that it calls for information of which written documents will be the best evidence.

(9) Interrogatory 7(c) is objectionable on the ground that it calls for copies of documents of which the originals would be the best evidence, and for evidence of which written documents would be the best evidence.

(10) Interrogatory 8 is objectionable upon the following grounds:

(a) It is vague and indefinite in that it does not specify the industry to which it is directed and as to which information is sought.

(b) It calls for a conclusion of law as to what is the place of work, which this Court must determine.

(c) It calls for information of which written documents are the best evidence.

(11) Interrogatory 9(a) is objectionable upon the following grounds:

(a) The information called for is immaterial and irrelevant.

(b) The question is vague and indefinite in that it does not specify what mine or what type of minerals are produced in the mines referred to.

(c) It contains within it a statement of fact, of which no proof has been adduced.

(12) Interrogatory 9(c) (sic) is objectionable upon the same grounds as Interrogatory 9(a).

(13) Interrogatory 10(a) is objectionable upon the following grounds:

(a) It calls for information which is immaterial and irrelevant.

(b) It is vague and indefinite in that it does not particularize the mine as to which information is sought, the type of minerals produced and the period of time covered by said question.

(c) It calls for a conclusion as to what is the working place, which is the question to be determined by this Court.

(d) It calls for information which is the result of hearsay.

(14) Interrogatory 10(b) is objectionable upon the following grounds:

(a) It calls for information which is the result of hearsay.

(b) It is a leading question.

(c) It is vague and indefinite.

(15) Interrogatory 10(c) is objectionable upon the following grounds:

(a) It is vague and indefinite.

(b) It calls for information which is the result of hearsay.

GERARD D. REILLY,
Solicitor of Labor.
IRVING J. LEVY,
Assistant Solicitor in Charge,
of Litigation.
JEROME A. COOPER,
Regional Attorney,
ABNER BRODIE,
United States Department of Labor Attorneys for Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor.

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or
Wage and Hour Division,
U. S. Department of Labor,
Washington, D. C.

Served by handing a copy of the foregoing to: Benners, Burr, McKamy & Forman, Brown Marx Building, Birmingham, Alabama; and a copy to Bradley, Baldwin, All & White, Comer Building, Birmingham, Alabama, this 5 day of July, 1941.

JEROME A. COOPER.

Filed July 5, 1941.

443 OBJECTIONS TO WRITTEN INTERROGATORIES UPON WHICH PLAINTIFFS PROPOSE TO TAKE DEPOSITIONS OF W. B. DALY.

(Civil Actions Nos. 5232, 5233 and 5234.)

Comes now Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener in these cases, and objects to the written interrogatories hereinafter enumerated upon which plaintiffs propose to take the depositions of W. B. Daly, of Butte, Montana, and as grounds for his objections states the following:

1. Intervener objects to interrogatory 6 on the ground that it calls for information which is immaterial and irrelevant to the issue of these cases.

2. Intervener objects to interrogatory 8 upon the ground that it calls for a conclusion of the witness respecting what are "underground working places" which is an issue of these cases.

3. Intervener objects to interrogatory 9 upon the ground that it calls for a conclusion of the witness respecting what are "their working places" which is an issue of these cases.

4. Intervener objects to interrogatory 10 upon the ground that it asks for a conclusion of the witness respecting what are "underground working places" which is an issue of these cases.

5. Intervener objects to interrogatory 11 upon the ground that it asks for a conclusion of the witness respect-

ing what are "underground working places" which is an issue of these cases.

6. Intervener objects to interrogatory 12 for the reasons stated in his objections to interrogatories 8, 9, 10, and 11.

7. Intervener objects to interrogatory 13 upon the grounds that it is vague and indefinite and part (d) thereof calls for information which is irrelevant and immaterial.

8. Intervener objects to interrogatory 14 for the reasons stated in his objections to interrogatories 11, 12, and 13, and upon the further ground that it calls for hearsay, testimony, is vague and indefinite, and is not confined to any specific period of time.

9. Intervener objects to interrogatory 15 upon the grounds that it calls for information which is immaterial and irrelevant to the issues of these cases, and it asks for a conclusion of the witness respecting what are "underground working places" which is an issue to be determined by this Court.

10. Intervener objects to interrogatory 16 upon the ground that it asks for information which is immaterial and irrelevant to the issues of these cases, and upon the further ground that it calls for a conclusion from the witness with respect to what are "underground working places" which is an issue of these cases.

11. Intervener objects to the interrogatory 17 upon the ground that it is vague and indefinite, and upon the further grounds that it calls for hearsay testimony and for a conclusion of the witness with respect to what are "underground working places" which is an issue of these cases.

12. Intervener objects to interrogatory 18 upon the grounds that it is vague and indefinite, and calls for hear-

say testimony and for information which is immaterial and irrelevant to the issues of these cases.

13. Intervener objects to interrogatory 19(a) upon the grounds that it is vague and indefinite, that the best evidence rule requires the production of the original contracts, it calls for hearsay testimony, and it asks for a conclusion of the witness respecting what are "underground working places" which is an issue to be determined by this Court.

14. Intervener objects to interrogatory 19(b) upon the same grounds as he objects to interrogatory 19(a).

15. Intervener objects to interrogatory 20(a) upon the grounds that it calls for information which is immaterial and irrelevant, and it calls for hearsay testimony.

16. Intervener objects to interrogatory 20(b) on the grounds that it calls for information which is immaterial and irrelevant to the issues of these cases, and it asks for hearsay testimony, and for a conclusion of the witness with respect to what are "places of work" which is an issue to be determined by the Court in these cases.

17. Intervener objects to interrogatory 20(c) upon the grounds that it is vague and indefinite, it calls for a conclusion of the witness as to what is "the working place" which is an issue that this Court must determine in these cases, and it calls for hearsay testimony.

18. Intervener objects to interrogatory 21 upon the grounds that it calls for hearsay testimony and is vague and indefinite.

19. Intervener objects to interrogatory 22 upon the ground that it asks for information which is immaterial and irrelevant to the issues of these cases.

20. Intervener objects to interrogatory 23 upon the grounds that it is vague and indefinite and calls for a

conclusion of the witness respecting what is material or relevant to the issues in these cases, which is a question for the Court to determine.

21. Intervener objects to interrogatory 24 upon the ground that it asks for a conclusion of the witness with respect to what are "their working places" which is an issue to be determined by this Court.

22. Intervener objects to interrogatory 25 upon the grounds that it is vague and indefinite and calls for information which is immaterial and irrelevant to the issues of these cases.

GERARD D. REILLY,
Solicitor of Labor,
IRVING J. LEVY,
Assistant Solicitor in Charge of Litigation,
JEROME A. COOPER,
Regional Attorney,
ABNER BRODIE,
United States Department of Labor Attorneys for Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor.

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Birmingham, Alabama,
or
Wage and Hour Division,
U. S. Department of Labor,
Washington, D. C.

Served by handing a copy of the foregoing to: Benners, Burr, McKamy & Forman, Attorneys for Tenn. Coal, Iron & Railroad Company and Republic Steel Corp., Plaintiffs, Brown Marx Building, Birmingham, Alabama, and a copy to Bradley, Baldwin, All & White, Attorneys for Sloss-Sheffield Steel & Iron Company, Plaintiff, Comer Building, Birmingham, Alabama, this 7th day of July, 1941.

JEROME A. COOPER.

Filed July 7, 1941.

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447 OBJECTIONS TO WRITTEN INTERROGATORIES UPON WHICH PLAINTIFFS PROPOSE TO TAKE DEPOSITIONS OF J. J. CARRIGAN.

Comes now Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener in these cases, and objects to the written interrogatories hereinafter enumerated upon which plaintiffs propose to take the depositions of J. J. Carrigan of Butte, Montana, and as grounds for his objections states the following:

1 Intervener objects to interrogatory 6 on the ground that it calls for information which is immaterial and irrelevant to the issue of these cases.

2. Intervener objects to interrogatory 8 upon the ground that it calls for a conclusion of the witness respecting what are "underground working places" which is an issue of these cases.

3. Intervener objects to interrogatory 9 upon the ground that it calls for a conclusion of the witness respecting what are "their working places" which is an issue of these cases.

4. Intervener objects to interrogatory 10 upon the ground that it asks for a conclusion of the witness respecting what are "underground working places" which is an issue of these cases.

5. Intervener objects to interrogatory 11 upon the ground that it asks for a conclusion of the witness respecting what are "underground working places" which is an issue of these cases.

6. Intervener objects to interrogatory 12 for the reasons stated in his objections to interrogatories 8, 9, 10, and 11.

7. Intervener objects to interrogatory 13 upon the grounds that it is vague and indefinite and part (d) thereof calls for information which is irrelevant and immaterial.

8. Intervener objects to interrogatory 14 for the reasons stated in his objections to interrogatories 11, 12 and 13, and upon the further ground that it calls for hearsay testimony, is vague and indefinite, and is not confined to any specific period of time.

9. Intervener objects to interrogatory 15 upon the grounds that it calls for information which is immaterial and irrelevant to the issues of these cases, and it asks for a conclusion of the witness respecting what are "underground working places" which is an issue to be determined by this Court.

10. Intervener objects to interrogatory 16 upon the ground that it asks for information which is immaterial and irrelevant to the issues of these cases, and upon the further ground that it calls for a conclusion from the witness with respect to what are "underground working places" which is an issue of these cases.

11. Intervener objects to interrogatory 17 upon the ground that it is vague and indefinite, and upon the further grounds that it calls for hearsay testimony and for a conclusion of the witness with respect to what are "underground working places" which is an issue of these cases.

12. Intervener objects to interrogatory 18 upon the grounds that it is vague and indefinite, and calls for hearsay testimony and for information which is immaterial and irrelevant to the issues of these cases.

13. Intervener objects to interrogatory 19(a) upon the grounds that it is vague and indefinite, that the best evidence rule requires the production of the original contracts, it calls for hearsay testimony, and it asks for a conclusion of the witness respecting what are "underground working places" which is an issue to be determined by this Court.

14. Intervener objects to interrogatory 19(b) upon the same grounds as he objects to interrogatory 19(a).

15. Intervener objects to interrogatory 20(a) upon the grounds that it calls for information which is immaterial and irrelevant, and it calls for hearsay testimony.

16. Intervener objects to interrogatory 20(b) on the grounds that it calls for information which is immaterial and irrelevant to the issues of these cases, and it asks

for hearsay testimony, and for a conclusion of the witness with respect to what are "places of work" which is an issue to be determined by the Court in these cases.

17. Intervener objects to interrogatory 20(c) upon the grounds that it is vague and indefinite, it calls for a conclusion of the witness as to what is "the working place" which is an issue that this Court must determine in these cases, and it calls for hearsay testimony.

18. Intervener objects to interrogatory 21 upon the grounds that it calls for hearsay testimony and is vague and indefinite.

19. Intervener objects to interrogatory 22 upon the ground that it asks for information which is immaterial and irrelevant to the issues of these cases.

20. Intervener objects to interrogatory 23 upon the grounds that it is vague and indefinite and calls for a conclusion of the witness respecting what is material or relevant to the issues in these cases, which is a question for the Court to determine.

21. Intervener objects to interrogatory 24 upon the ground that it asks for a conclusion of the witness with respect to what are "their working places" which is an issue to be determined by this Court.

22. Intervener objects to interrogatory 25 upon the grounds that it is vague and indefinite and calls for information which is immaterial and irrelevant to the issues of these cases.

GERARD D. REILLY,
Solicitor of Labor.
IRVING J. LEVY,
Assistant Solicitor in Charge
of Litigation,

JEROME A. COOPER,
Regional Attorney,
ABNER BRODIE,
United States Department of Labor Attorneys for Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor.

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or
Wage and Hour Division,
U. S. Department of Labor,
Washington, D. C.

Served by handing a copy of the foregoing to: Benners, Burr, McKamy & Forman, Attorneys for Tenn. Coal, Iron & Railroad Company and Republic Steel Corp., Plaintiffs, Brown Marx Building, Birmingham, Alabama, and a copy to Bradley, Baldwin, All & White, Attorneys for Sloss-Sheffield Steel & Iron Company, Plaintiff, Comer Building, Birmingham, Alabama, this 7th day of July, 1941.

JEROME A. COOPER.

Filed July 7, 1941.

451 AMENDMENT TO COMPLAINT AS AMENDED OF PETITIONER-PLAINTIFF TENNESSEE COAL, IRON & RAILROAD COMPANY.

(Civil Action No. 5232.)

Comes plaintiff, Tennessee Coal, Iron & Railroad Company, a corporation, and amends its amended complaint (said complaint having been amended on the 19 day of June, 1941, following the filing of the answer of the intervener defendant and no responsible pleadings having been filed to said amendment) in the following separate and several particulars:

(a) It strikes from said complaint "Section V—The Opinion of the Administrator" (pages 11-18, inclusive, of complaint), including all exhibits therein referred to.

(b) It strikes from Section VI.—paragraph 1, the following words appearing in the last sentence on Page 19 thereof, namely "of either the Administrator or".

(c) It strikes from Section VI, Paragraph H thereof (page 22 of the complaint) the following words: "Referring to the 'portal to portal' opinion of the Administrator".

(d) It strikes from Section VII, Paragraph 5 thereof (page 23 of the complaint) the following words: "Which will almost inevitably follow if the plaintiff fails to comply with the present illegal and erroneous opinion of the Administrator."

(e) It strikes from Section VII, Paragraph 6 thereof (page 23 of the complaint) the following words: "If the illegal and erroneous opinion of the Administrator or the assertions of the defendants are adhered to".

(f) It strikes from Section VII, Paragraph 7 thereof (page 23 of the complaint), the following words: "In the event by reason of the Administrator's opinion and the perils of not complying therewith it feels compelled to endeavor to comply therewith."

(g) It strikes from Section VIII, Paragraph 1 thereof (page 23 of the complaint), the following words: "Of the Administrator or".

(h) It strikes from Section VIII, Paragraph C thereof (page 23 of the complaint), the following words: "Under the warning given in his opinion of March 23, 1941 (Exhibit "A" hereto attached)".

(i) It strikes from Section VIII, Subparagraph 2 of Paragraph D thereof (page 24 of the complaint), the following words: "With the opinion either of the Administrator, or".

(j) It strikes from Section VIII, Subparagraph (a) of Paragraph B thereof (page 24 of the complaint), the following words: "Opinion of the Administrator into effect". And substituting in lieu thereof the following words: "'Portal to portal' plan into effect".

(k) It strikes from Section VIII, Subparagraph (a) of Paragraph B thereof (page 24 of the complaint), the following words: "Which will probably have to be put in if the Administrator's ruling is adhered to".

(l) It strikes from Section VIII, Subparagraphs (c) and (d) of Paragraph B thereof (page 26 of the complaint).

(m) It strikes from Section IX, Paragraphs 9 and 10 thereof (page 28 of the complaint).

(n) It strikes from Section XIV, Paragraph A of the amendment to the complaint (page 2 of the amended complaint), the following words: "And the following specific propositions". It also strikes Paragraphs G, H, I, J, and K of Section XIV of the complaint as amended (pages 2 and 3 of the amended complaint).

(o) It strikes Paragraph B of Section XIV of the complaint as amended and inserts in lieu thereof the following: "Premises considered, plaintiff further petitions and prays that the Court adjudge and answer, separately and severally, each of the questions specifically set forth in paragraphs numbered 'A' to 'F', both inclusive, of Section XIV of the complaint, and that the said intervener defendant, Philip B. Fleming, as Administrator of the Wage & Hour Division, United States Department of Labor, and the said Wage & Hour Division, United States Department of Labor, or its agents and representatives, be restrained and enjoined from attempting to enforce or to threaten to enforce or attempt to administer or to threaten to administer or enforcing or administering Section 7 of said Act as against this plaintiff, or any of its representatives or employees, so as to require plaintiff or any of its representatives or employees to compute and pay for as part of the work-day of its employees in its underground metal mines any portion of the time spent by said employees or any of them in going from the portal or entrance of the mine to the usual place of the employees' work or in returning from the usual place of the employees' work to the portal of the mine, and plaintiff prays for a general declaratory judgment with reference to the questions propounded by this petition, and a judgment against the defendants, including Philip B. Fleming, as Administrator of the Wage and Hour Division, United States Department of Labor, for costs herein, and if the plaintiff be mistaken in the relief prayed for plaintiff hereby prays for such other, further, different, and general relief as to the Court may seem just, meet, and proper, premises considered.

E. L. ALL,
BORDEN BURR,
Attorneys for Plaintiffs.

Address:
B'ham, Ala.

State of Alabama,
County of Jefferson.

This day personally appeared before me, a Notary Public in and for the State and County aforesaid, Borden Burr, who, being first duly sworn, on oath deposes and says that he is attorney and agent for the Tennessee Coal, Iron & Railroad Company, a corporation, named as plaintiff in the foregoing complaint; that as such attorney and agent he is authorized to make this affidavit; that he has read over the foregoing amendment to the complaint therein; that he is familiar with the facts as therein set forth; that said facts in said complaint as amended as therein stated are true, except where stated on information and belief, and where so stated he verily believes the same to be true.

BORDEN BURR.

Address:
B'ham, Ala.

Subscribed and sworn to before me this 7th day of July, 1941.

MARGARETTE KENNEDY,
(Seal) Notary Public.

I hereby certify that service of all of the foregoing has this day been made by personal service upon the following attorneys: J. A. Cooper, Crampton Harris, and J. Q. Smith.

This 7th day of July, 1941.

BORDEN BURR.

Filed July 7, 1941.

AMENDMENT TO COMPLAINT AS AMENDED OF PETITIONER-PLAINTIFF SLOSS-SHEFFIELD STEEL & IRON COMPANY.

(Civil Action No. 5233.)

Now comes the plaintiff, Sloss-Sheffield Steel & Iron Company, a corporation, and by leave of Court first had and obtained, amends its complaint as amended on, to-wit the 19th day of June, 1941, by striking therefrom the following:

(1) It strikes from said complaint as amended subsection "(e)", on page 2, of Part I "Allegations of Jurisdiction."

(2) It strikes from said complaint as amended subsection "(f)", on page 2, of said Part I "Allegations of Jurisdiction."

(3) It strikes from said complaint as amended subsection 3 of Part IV "Statement of Controversy" on page 13 thereof.

(4) It strikes from said complaint as amended Part V "The Opinion of the Administrator" on pages 15-26 thereof, together with all the exhibits therein referred to.

(5) It strikes from paragraph 1 of Part VI the phrase "either the administrator or" appearing in the last sentence thereof on page 28.

(6) It strikes from Part VII "The Probability of Great If Not Irreparable Injury" the following:

(a) From paragraph 5, appearing on page 32 thereof the following:

"which will almost inevitably follow if the plaintiff fails to comply with the present illegal and erroneous opinion of the Administrator; or if in attempting to comply it is forced to insist on a reduction of the compensation now being paid its underground employees."

(b) From paragraph 6, appearing on pages 32-33 thereof, the following:

"if the illegal and erroneous opinion of the Administrator or the assertions of the defendants are adhered to."

(c) From paragraph 7, appearing on page 33 thereof, the following:

"in the event by reason of the Administrator's opinion and the perils of not complying therewith, it feels compelled to endeavor to comply therewith."

(7) It strikes from Part VIII "Perils of Decision" the following:

(a) From paragraph 1, appearing on page 33 thereof, the following:

(b) From paragraph 1 C, appearing on page 34 thereof, the following phrase

"under the warning given in his opinion of March 23, 1941 (Exhibit A hereto attached).

(c) From paragraph 2 appearing on page 34 thereof, the following phrase:

"with the opinion either of the Administrator, or".

(d) Paragraph 2 B, appearing on pages 35-37 thereof, in its entirety.

(8) From part XIV as added by the said amendment dated 19th day of June, 1941, plaintiff strikes the following:

(a) From paragraph A thereof the phrase "and the following specific propositions".

(b) Paragraphs G, I, I, J, and K of said part XIV in their entirety.

(c) Paragraph B of said part XIV in its entirety.

(9) Plaintiff inserts in lieu of said paragraph B of part XIV as originally added by the amended complaint dated June 19th, 1941, the following:

"Premises considered, plaintiff further petitions and prays that the Court adjudge and answer, separately and severally, each of the questions specifically set forth in paragraphs numbered 'A' to 'F', both inclusive, of Section XI of the complaint, and that the said intervener defendant, Philip B. Fleming, as Administrator of the Wage and Hour Division, United States Department of Labor, and the said Wage & Hour Division, United States Department of Labor, or its agents and representatives, be restrained and enjoined from attempting to enforce or to threaten to enforce or attempt to administer or to threaten to administer or enforcing or administering Section 7 of said Act as against this plaintiff, or any of its representatives or employees, so as to require plaintiff or any of its representatives or employees to compute and pay for as part of the work-day of its employees in its underground metal mines any portion of the time spent by said employees or any of them in going from the portal or entrance of the mine to the usual place of the employees' work or in returning from the usual place of the employees' work to the portal of the mine, and plaintiff prays for a general declaratory judgment with reference to the questions propounded by this petition, and a judgment against the defendants, including Philip B. Fleming, as Administrator of the Wage & Hour Division, United States Department of Labor, for costs herein, and if the plaintiff be mistaken in the relief prayed for plaintiff hereby prays for such other, further, different, and general relief as to the Court may seem just, meet and proper, premises considered."

ERNEST L. ALL,
BORDEN BURR,
Attorneys for Plaintiffs.

State of Alabama,
Jefferson County.

This day personally appeared before me, a Notary Public in and for the State and County aforesaid, Ernest L. All, who, being first duly sworn, on oath deposes and says that he is attorney and agent for the Sloss-Sheffield Steel & Iron Company, a corporation, named as plaintiff in the foregoing complaint; that as such attorney and agent he is authorized to make this affidavit; that he has read over the foregoing amendment to the complaint therein; that he is familiar with the facts as therein set forth; that said facts in said complaint as amended as therein stated are true, except where stated on information and belief, and where so stated he verily believes the same to be true.

ERNEST L. ALL.

Address: Birmingham, Alabama.

Subscribed and sworn to before me, on this the 7th day of July, 1941.

MARGARETTE KENNEDY,
(Seal) Notary Public.

A copy of the foregoing amendment to complaint, as amended was on this the 7th day of July, 1941, mailed to Jerome A. Cooper, Attorney of Record for Philip B. Fleming, Administrator, and a copy mailed to J. Q. Smith, Attorney of Record for the defendant Muscoda Local No. 21935, and other defendants affiliated with the A. F. of L., and Crampton Harris, Attorney of Record for the defendant Muscoda Local No. 123 and other defendants affiliated with the CIO.

B. A. MONAGHAN,
Of Counsel for Plaintiffs.

Filed July 7, 1941.

AMENDMENT TO COMPLAINT AS AMENDED OF PETITIONER-PLAINTIFF REPUBLIC STEEL CORPORATION.

460 (Civil Action No. 5234.)

Comes plaintiff, Republic Steel Corporation, a corporation, and amends its amended complaint (said complaint have been amended on the 19 day of June, 194 ollowing the filing of the answer of the intervener defendant and no responsive pleadings have been filed to said amendment) in the following separate and several particulars:

(a) It strikes from said complaint "Section V—The Opinion of the Administrator" (pages 13-26, inclusive, of complaint), including all exhibits therein referred to.

(b) It strikes from Section VI, Paragraph 1 thereof, the following words appearing on page 28 of the complaint, namely, "either the Administrator or of".

(c) It strikes from Section VI, Paragraph 2 thereof, page 31 of the complaint, the following words: "referring to the 'portal to portal' opinion of the Administrator".

(d) It strikes from Section VII, Paragraph 4 thereof, page 32 of the complaint, the following words: "to comply with the present illegal and erroneous opinion of the Administrator", and substitutes in lieu thereof the words: "to comply with the 'portal to portal' plan".

(e) It strikes from Section VII, Paragraph 5 thereof, page 32 of the complaint, the following words: "by reason of the Administrator's opinion and".

(f) It strikes from Section VIII, Paragraph 1 thereof, page 33 of the complaint, the following words: "either of the Administrator or".

(g) It strikes from Section VII Subparagraph (c) of Paragraph 1, page 33 of the complaint, and inserts in lieu thereof the following words: "To be proceeded against by injunction proceedings under Section 17 of the Act and the prevention of the shipment in interstate commerce of its manufactured goods."

(h) It strikes from Section VIII, Paragraph 2 thereof, page 34 of the complaint, the following words: "with the opinion either of the Administrator, or".

(i) It strikes from Section VIII, Subsection (d) of Paragraph 2 thereof, page 35 of the complaint, the following words: "of putting the opinion of the Administrator", and substitutes therefor the following words: "of putting the 'portal to portal' plan".

(j) It strikes from Section VIII, Subsection (1) of Section B of Paragraph 2 thereof, page 35 of the complaint.

(k) It strikes from Section VIII, Subsection (2) of Section B of Paragraph 2 thereof, page 35 of the complaint, the following words: "with the opinion of the Administrator without exceeding forty hours per workweek", and substituting therefor the following words: "with the assertions of the defendants".

It strikes from Subsection (2), also, the following words: "with the Administrator's opinion", and substitute in lieu thereof the following words: "with the 'portal to portal' plan".

(l) It strikes from Section IX, paragraph 4 on page 37 of the complaint.

(m) It strikes from Section IX, paragraph 5 on page 38 of the complaint.

(n) It strikes from Section XIV, Paragraph A of the amendment to the complaint (page 2 of the amended complaint), the following words: "And the following specific propositions". It also strikes Paragraphs G, H, I, J, and K of Section XIV of the complaint as amended pages 2 and 3 of the amended complaint).

(o) It strikes Paragraph B of Section XIV of the complaint as amended and inserts in lieu thereof the following: "Premises considered, plaintiff further petitions and prays that the Court adjudge and answer, separately and severally, each of the questions specifically set forth in paragraphs numbered 'A' to 'F', both inclusive, of Section XIV of the complaint, and that the said intervener defendant, Philip B. Fleming, as Administrator of the Wage and Hour Division, United States Department of Labor, and ~~the~~ said Wage and Hour Division, United States Department of Labor, or its agents and representatives, be restrained and enjoined from attempting to enforce or to threaten to enforce or attempt to administer or to threaten to administer or enforcing or administering Section 7 of said Act as against this plaintiff, or any of its representatives or employees, so as to require plaintiff or any of its representatives or employees to compute and pay for as part of the work-day of its employees in its underground metal mines any portion of the time spent by said employees or any of them in going from the portal or entrance of the mine to the usual place of the employees' work or in returning from the usual place of the employees' work to the portal of the mine, and plaintiff prays for a general declaratory judgment with reference to the questions propounded by this petition, and a judgment against the defendants, including Philip B. Fleming, as Administrator of the Wage and Hour Division, United States Department of Labor, for costs herein, and if the plaintiff be mistaken in the relief prayed for plaintiff hereby prays for such other, further, different, and general relief as to the Court may seem just, meet, and proper, premises considered.

E. L. ALL,
BORDEN BURR,
Attorneys for Plaintiffs.

Address: Birmingham, Alabama.

State of Alabama,
Jefferson County:

This day personally appeared before me, a Notary Public in and for the State and County aforesaid, Borden Burr, who, being first duly sworn, on oath deposes and says that he is attorney and agent for the Republic Steel Corporation, a corporation, named as plaintiff in the foregoing complaint; that as such attorney and agent he is authorized to make this affidavit; that he has read over the foregoing amendment to the complaint therein; that he is familiar with the facts as therein set forth; that said facts in said complaint as amended as therein stated are true, except where stated on information and belief, and where so stated he verily believes the same to be true.

BORDEN BURR.

Address: Birmingham, Alabama.

Subscribed and sworn to before me this 7th day of July, 1941.

MARGARETTE KENNEDY,
(Seal) Notary Public.

I hereby certify that service of all of the foregoing has this day been made by personal service upon the following attorneys: J. A. Cooper, Crampton Harris, and J. Q. Smith.

This 7th day of July, 1941.

BORDEN BURR.

Filed July 7, 1941.

464 ORDER CONSOLIDATING FOR TRIAL.

(Civil Actions Nos. 5232, 5233 and 5234.)

It appearing to the Court that the above-entitled actions involve common questions of law and fact, and all parties to each of them having consented thereto, and it appearing to the Court said action should be consolidated for trial; and for good cause shown:

It is hereby Ordered by the Court that the above-entitled actions be and the same are hereby consolidated for trial only.

Done this 7th day of July, 1941.

T. A. MURPHREE,
United States District Judge.

Filed July 7, 1941.

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465 MOTION FOR ORDER TO PERMIT ENTRY.

(Civil Actions Nos. 5232, 5233 and 5234.)

Comes Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener in these cases, and moves the Court, pursuant to Rule 34 of Rules of Civil Procedure as follows:

For an order requiring plaintiffs, Tennessee Coal, Iron & Railroad Company, Sloss-Sheffield Steel & Iron Company, and Republic Steel Corporation, to permit entries into their mines named in their complaints filed herein for the purpose of inspecting, photographing, making tests of air conditions, and the taking of dust counts in said mines.

Intervener shows the Court that said entries are sought for an industrial hygienist, who is an engineer connected with the Bureau of Standards of the United States Department of Labor, and for a senior industrial economist of the Research and Statistical Branch of the United States Department of Labor.

Respectfully submitted,
GERARD D. REILLY,
Solicitor of Labor,
IRVING J. LEVY,
Assistant Solicitor in Charge of Litigation,
JEROME A. COOPER,
Regional Attorney,
ABNER BRODIE,
United States Department of Labor Attorneys for Philip B. Flemming, Administrator of the Wage and Hour Division, United States Department of Labor.

Post Office Address:
Wage and Hour Division,
U. S. Department of Labor,
1007 Comer Building,
Birmingham, Alabama,
or
Wage and Hour Division,
U. S. Department of Labor,
Washington, D. C.

Served by handing a copy of the foregoing to: Benners, Burr, McKamy & Forman, Attorneys for Tenn. Coal, Iron & Railroad Company and Republic Steel Corp., Plaintiffs, Brown-Marx Building, Birmingham, Alabama, and a copy to Bradley, Baldwin, All & White, Attorneys for Sloss-Sheffield Steel & Iron Company, Plaintiff, Comer Building, Birmingham, Alabama, this 8 day of July, 1941.

JEROME A. COOPER.

Filed July 8, 1941.

ORDER GRANTING MOTION TO VIEW PREMISES.

467 (Civil Actions Nos. 5232, 5233 and 5234.)

This matter having come on to be heard in the presence of all parties, on motion of Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener, in which defendants join, and the Court having heard counsel for all parties,

It Is Ordered that two representatives to be selected by the said Philip B. Fleming be, and they are hereby permitted to enter each and all of the mines mentioned in the complaints, and that they be permitted to take photographs, make dust counts; said entries into the mines to be on the ordinary conveyances used to lower ore miners and at the regular time of lowering men into and hauling them out of said mines. The inspection trips are scheduled as follows:

Sloss-Sheffield Red Ore Mine, Numbers 1 and 2—July 9, 1941.

Representing Company: T. E. Costner, General Superintendent, J. W. Russell, Mine Superintendent and Engineer, A. C. Keily, Photographer.

Representing C. I. O.: John Hill.

Representing Government: Geo. S. Wheeler, Senior Economist, J. S. Rogers, Industrial Hygienist.

Tennessee Coal, Iron & Railroad Company, Muscoda No. 4—July 10, 1941.

Representing Company: J. C. Guyton, Works Industrial Engineer, W. C. McKenzie, Muscoda Division Engineer, F. R. Mitchell, Wenonah Division Engineer, J. L. Parsons, Assistant Mine Foreman, W. L. McAlexander, Staff Photographer.

Representing Employees: Pete Dulaney, C. I. O., Arthur Praytor, A. F. of L.

Muscoda No. 6—July 11, 1941.

Representing Company: J. C. Guyton, Works Industrial Engineer, W. C. McKenzie, Muscoda Division Engineer, F. R. Mitchell, Wenonah Division Engineer, O. B. Stone, Mine Foreman, W. L. McAlexander, Staff Photographer.

Representing Employees: Robert Martin, C. I. O.

Wenonah No. 8—July 15, 1941.

Representing Company: J. C. Guyton, Works Industrial Engineer, W. C. McKenzie, Muscoda Division Engineer, F. R. Mitchell, Wenonah Division Engineer, W. L. Webb, Foreman, W. L. McAlexander, Staff Photographer.

Representing Employees: William Gamble, C. I. O.

Republic Steel Corporation—July 17, 1941.

Representing Company: B. C. Jones, Assistant Superintendent, Pelham Justice, Engineer.

Representing Employees: John Butler, C. I. O.

Representing Government: Geo. S. Wheeler, Senior Economist, J. S. Rogers, Industrial Hygienist.

It Is Further Ordered that on all or any of the aforesaid inspections or investigations, the plaintiffs or their representatives and one C. I. O. miner defendant, together with one A. F. of L. miner defendant, to be selected by each group, who are employed in the particular mine being inspected, be permitted to accompany the representatives of said Philip B. Fleming.

Dated: July 8th, 1941.

T. A. MURPHREE,
Judge.

Filed July 30, 1941.

AMENDMENT TO PETITION AND COMPLAINT OF PETITIONER-PLAINTIFF REPUBLIC STEEL CORPORATION.

469 (Civil Action No. 5234.)

Comes Republic Steel Corporation, a corporation, petitioner and plaintiff in the above entitled cause, and, in accordance with notice heretofore given before the close of plaintiff's testimony and by permission of the Court first had and obtained, amends its petition and complaint in the following separate and several particulars:

By striking from Section II the following words where they appear therein:

"This mine is not involved in this proceeding" and by adding to said Section II at the end thereof the following averments:

"The practice of drilling, blasting and loading at the Spalding Mine is substantially the same as that at the Raimund Mine. At the Spalding Mine day shift operations begin at 7 o'clock A. M. and night shift operations at 4 o'clock P. M. for all underground work. The men are required to be at their regular places of work at the starting time. Day operations cease at 3 o'clock P. M. and night operations at 12 o'clock midnight. The underground employees deposit their checks at the tally house located at the mouth of the manway in the same way as at Raimund. However, the men are not transported in man cars at Spalding, but walk to and from their working places on their own time. Arrival at the working place at Spalding is contingent upon the length of time required for the miner to change clothes, deposit his check, obtain his battery lamp, and walk to his working place. There is no requirement as to the time the men deposit their checks, and this is only done for the purpose of knowing as to what men are in the mine and in order to supply vacanc[illegible] on the crews. The only requirements as to when the men come to the bathhouse or to the entrance is that they must come at such times as to enable them to walk to their working places and be there by 7 o'clock A. M. or 4 o'clock P. M".

E. L. ALL,
BORDEN BURR,
Attorneys for Republic Steel Corporation.

Address: Birmingham, Alabama.

I hereby certify that a copy of the foregoing amendment has been duly served on Crampton Harris, J. Q. Smith, Jerome Cooper, Attorneys for the respective defendants for whom they appear as attorneys of record.

This 31 day of July, 1941.

BORDEN BURR.

Filed July 31, 1941.

ORDER ALLOWING AMENDMENT OF PETITION AND COMPLAINT OF REPUBLIC STEEL CORPORATION.

471 (Civil Action No. 5234.)

This cause coming on to be heard on petition of the Republic Steel Corporation, a corporation, petitioner and plaintiff in the above entitled cause, to amend its petition in accordance with the amendment, a copy of which was this day served upon adverse counsel, it is

Ordered, Adjudged and Decreed by the Court that permission to file such amendment be, and the same hereby is, granted.

This the 31st day of July, 1941.

T. A. MURPHREE,
United States District Judge.

Filed Sept. 19, 1941.

(Civil Actions Nos. 5232, 5233 and 5234.)

These cases, which were consolidated for trial, are actions for declaratory judgments. The plaintiffs are three corporation engaged, *inter alia*, in mining iron ore; they contend that the workweek of their underground ore mining employees does not include, within the meaning of Section 7 of the Fair Labor Standards Act of 1938 (Title 29, U. S. C. A., Sec. 207), that portion of the time spent by those employees in being transported and in walking to and from their usual working places. The defendants are labor union, labor union officials, and individuals, who are representatives of the general class of underground ore mining employees of the several plaintiffs. The defendants contend that the workweek of these employees includes all of the periods between the times when the miner reports for duty as required at or near the collar of the mine and when he reaches the collar at the end of the shift, except any fixed lunch period during which the miner is relieved of all duties, and also includes the aggregate of time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out. Because many persons in the class of the defendants are making claims upon the several plaintiffs for overtime compensation, based on the contention made by defendants in these actions, a justiciable controversy is presented.

The Administrator of the Wage and Hour Division of the United States Department of Labor has been permitted to intervene in each action, and he has made herein substantially the same contentions as have the several defendants.

The question presented is one of construction and application of the Fair Labor Standards Act of 1938 (hereinafter referred to as the Act). The important portion of Section 7 of the Act is:

> "(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—
>
> (1) for a workweek longer than forty-four hours during the first year from the effective date of this section,
>
> (2) for a workweek longer than forty-two hours during the second year from such date, or
>
> (3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

By the provisions of Section 3 (g) of the Act [Title 29, U. S. C. A. S 203 (g)], "employ" is defined to include "to suffer or permit to work".

The plaintiffs, in order to prove their contended construction and application, adduced evidence of two kinds: (1) evidence of an alleged custom or usage, with respect to the issues here presented, of a kind that the plaintiffs contend Congress must have adopted in Section 7; and (2) evidence of the activities of typical underground miners in the plaintiffs' ore mines, in order to prove that their traveling and walking time is not within the purview of the language of the Act.

The defendants' evidence has been to prove: (1) that no such custom as contended by the plaintiffs existed, and that if it did it may not be given the effect contended for by the plaintiffs, and (2) that the activities of the underground ore mine employees here in issue have in fact constituted part of their employment and workweek.

1. Custom or Usage.

The plaintiffs' evidence as to custom or usage consists chiefly of the terms and agreements under which the defendants and their class of employees have worked and been paid, both by plaintiffs and other employers in the same industry. The plaintiffs contend that the custom has always and universally been such as to exclude any payment for the time spent by underground iron ore mine employees in walking and being transported to and from their usual working places, and to include only payment for time actually spent by such employees at their regular stations underground. The plaintiffs contend that this custom was so well established and understood that Congress must have adopted it in its use of the terms "employ" and "workweek" in Section 7 of the Act.

The evidence has disclosed no such custom. During the great part of iron ore mining history in this district payment of the producing crews has been on a tonnage basis, the time spent by them at any place or places having no bearing whatsoever on their wages. At other times and places, payment was on a task basis, without regard to hours worked at any point. But plaintiffs place their greatest reliance of proof of custom upon the arrangements and contracts with the defendant labor unions under which the underground ore miners have worked for plaintiffs during the past several years. A typical provision of these contracts is: "Eight hours work per day shall constitute a day's work and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period." This provision carries little weight in establishment of a custom not to pay for travel time, since in practice no record of the time spent "at the usual working place" has been kept and it was the exception rather than the rule that a man worked precisely eight hours at such a place. The actual practice under those contracts was for the company to arrange a shift which was supposed to run, by way of example, from 6:45 A. M. to 3:15 P. M. at the usual stations of duty underground, with thirty minutes off for lunch. The men in the working stations closer to the underground man unloading stations would usually actually arrive at their working stations before 6:45 A. M. and start working earlier than 6:45 A. M., the men in the furtherest working stations would frequently actually arrive later than 6:45 A. M. Quite generally most of the producing crews left their particular stations before 3:15 P. M. In all cases the men were credited with exactly eight hours work, except in very unusual cases, although the time spent "at the usual working place" fluctuated thirty to forty-five minutes per shift as between men. Under those circumstances, regardless of the phraseology of the contracts, the pay was on a shift basis, rather than an hourly basis, and since some of the men did not spend a full eight hours at their particular stations, it cannot be categorically stated that they received no compensation for at least part of the time spent by them in travelling to and from their usual stations.

It cannot be said that any established usage existed in the method of pay that made it clearly understood, by those concerned with iron ore mining, that the time spent in being transported and walking to and from the usual working places was not work or time spent in the employ of the employer. No custom existed that would indicate that the phrases "employ" and "workweek", used in Section 7 of the Act, would be understood, in their application to underground iron ore mining, to exclude such time from their purport.

Even if the mode of payment of these men did clearly exclude such time as employment and workweek time, it could not provide a controlling construction of Section 7 of the Act. The evidence clearly establishes that the methods of payment of wages were dictated almost entirely by the employers. The employees worked on the best terms they could obtain and the fact that they could not obtain terms that would compensate them for time spent in travelling underground to and from their working stations does not indicate that they did not consider that time as working time. It cannot be said that the way in which the iron ore miners have received their pay establishes, with their free and uncoerced agreement, the proposition that the time in question is not work time. Prior to the enactment of the Fair Labor Standards Act of 1938, iron ore miners repeatedly made efforts to obtain full, or at least a larger partial, compensation for so-called travel time. The fact that they were unsuccessful does not determine that they were erroneous in their contention that such time was work time, nor does it determine that Congress, in using the phraseology of Section 7 of the Act, adopted the prevailing method of payment. Since the usual methods of payment were not arrived at by unhampered consent of the workers, it would be no more reasonable to assume that Congress, in the Fair Labor Standards Act, adopted the employers' formula than to assume that Congress intended to remedy the practice so far as it may have denied compensation for actual work. That Congress has the authority to abrogate such a practice was made clear in *Holden v. Hardy*, 169 U. S. 366, 397, where the Court said:

"The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employes, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority."

No matter how strong a custom existed as to payment of ore miners, if the activities here in issue actually constituted employment and work, it could not be contended that the custom prevailed to deny the defendants compensation for the time consumed thereby. An occupational custom or usage cannot operate to avoid the mandate of an Act of Congress. *United States v. Houston Belt and Terminal Ry. Co.*, 205 Fed. 344 (C. C. A. 5, 1913). *Ramsauer v. United States*, 21 F. (2d) 907, (C. C. A. 9, 1927). See: *Holden v. Hardy, supra.* Especially is this true in the case of the Fair Labor Standards Act, which is clearly remedial in character. (*Fleming v. Carleton Screw Products Co.*, 37 F. Supp. 754 (D. C. Minn., 1941). The Act was established for the avowed purpose of eliminating detrimental labor conditions (Section 2 of the Act, Title 29, U. S. C. R. § 202) and it would be a mockery of the beneficient purposes of the Act if the provisions prohibiting employment for over a specified number of hours for each workweek, except at an increased rate of compensation, were held to incorporate a custom to pay employees only for a part of the time worked by them. Assuming the time in question is actually working time, there can be no doubt that it must be considered as a part of the workweek within the terms of the Act, and the alleged custom could not avoid the remedial effects of the Act.

Evidence has been introduced of administrative applications of other and similar laws, limiting or specifying hours of labor, to other situations. Because the facts in those cases to which those administrative applications were made, were quite different from the facts of the present case, little light on the proper construction and application of the Fair Labor Standards Act to these cases has been shed by this evidence.

In the last analysis, therefore, plaintiffs must stand or fall on the question whether the time in issue was employment and work, as a matter of simple fact.

2. Activities Constituting Work.

No serious conflict of evidence is apparent as to the liability of the plaintiffs for payment to their underground ore mining employees for the aggregate of time spent on the surface in obtaining and returning lamps, carbide and tools and in checking in and out. The plaintiffs' evidence with respect to this time has been that the employees in question only occasionally obtained and returned tools on the surface, and that obtaining and returning carbide and lamps and checking in and out only consumed short periods of time. Certainly the infrequency of activities or the speed with which they can be performed will not change their essential nature as work, and it seems an inescapable conclusion that the activities mentioned are obviously work. They are performed on the premises of the employer, in the furtherance of the employer's business, with no benefit to the employee (except to aid him in the performance of work for the employer), under conditions created and controlled by the employer, and they involve responsibility to the employer and physical exertion, even though not burdensome, on the part of the employee. No characteristic of work is lacking. This time must be included in the workweek of the employees represented by the defendants.

The second element of time which plaintiffs seek to have adjudicated as not within the workweek is the time spent by the underground ore mining employees in being transported from the surface to points at varying distances below the surface and back again at the end of the shift. In the same category must be considered supplemental rides given the men on the way to and from their underground stations between underground points. The plaintiffs ask for a declaration from this Court determining whether this transportation is within the workweek, without consideration of the actual conditions and manner in which the transportation has occurred. This Court is not empowered to make such a declaration. Jurisdiction is delimited by the bounds of the actual controversy presented, and to attempt adjudications beyond those bounds could not be a proper judicial function. See: *Aetna Life Ins. Co. v. Haworth*, 300 U. S. 227, 240 et seq. (1937). The actual controversy concerns only the working time of the underground iron ore mining employees in the plaintiffs' iron ore mines, during the time between the effective date of the Act and the commencement of these actions, where and when certain conditions and activities existed and occurred. It is with reference to these conditions and activities, and not with reference to some hypothetical future circumstances, that we must deal with the questions here presented.

It is particularly important in these cases that the problem be approached in this factual manner, because transportation in the abstract might be construed to be a restful and pleasurable activity for the passengers. In the underground ore mines of the plaintiffs and in the manner in which the underground ore mining employees have been transported, the reverse has been true. The cars in which the employees have been transported have not been designed for comfort, have frequently been merely ore cars bearing remnants of iron ore muck. The cars have been nearly always crowded to the extreme. The positions which the men have been required to assume during the transportation varies from a crouch with their bodies overlying one another to a rigid propping of legs and arms against the sides of the car and the fellow passengers. These positions were assumed partially because of the press of human bodies in the cars and partially because of the necessity of keeping head and body in a deflected position in order to avoid injury from collision with low points in the roofs of the mine slopes or with projections from the roofs. These conditions have occasionally resulted in injuries of various kinds to the employees when the required degree of restraint and alertness has been relaxed. The trips were, of course, in the comparative darkness and enclosure of an artifically lighted mine. The air was humid and malodorous, the ventilation relatively poor, and the heat increasing with the descent into the mine. These conditions are recited not for the purpose of censure of the plaintiffs' manner of maintenance of their mines, for these conditions may well be normal conditions in iron ore mines and practically inevitable. Nevertheless, the conditions are clearly conditions peculiar to the occupation of the men in the class represented by the defendants, conditions replete with hazards, conditions requiring physical exertion and mental alertness, and conditions unpleasant and burdensome to those encountering them.

The evidence has made clear that the transportation was had under the strict control and supervision of the plaintiffs. The plaintiffs prescribed the schedule of the trips; the speed of the trips, the loading of the men into the trips, the rules of conduct during the trips, and in most cases required the men to ride the trip rather than walk. The plaintiffs contend that these were safety measures that would be applicable to any outsider coming into the mines. But the controls of the plaintiffs over the trips were clearly exercised in the interest of efficient operation of their mining business. Too, it is significant to note that infractions by employees of plaintiffs' controls over these trips caused such employees to be subjected to the discipline of the plaintiffs. Clearly, during the trips, up and down, the men were under the complete supervision of the plaintiffs. This conclusion is emphasized by the fact that frequently men were given their first instructions of the day prior to commencement of their trip down the slope, and it appears that they were always subject to such instructions on the surface regardless of the frequency with which explicit instructions were actually given. This fact further indicates that the employees on the trips down into the mines were engaged in and about the business of the plaintiffs.

We must conclude that the time spent in this type of transportation is worktime. It bears in a substantial degree every indicia of worktime: supervision by the employer, physical and mental exertion, activity necessary to be performed for the employers' benefit, and conditions peculiar to the occupation of mining. While time consumed in such transportation is not itself part of the time consumed in the actual production of ore, yet such time is a necessary and incidental part of the actual production of ore.

We do not mean to indicate that every detail of the conditions and activities referred to are requisite to constitute this travel time worktime, because these conditions have varied slightly from mine to mine and from time to time. But these details have generally prevailed, and even the minimization of the essential elements of work, which have here usually been present in some degree, does not change the conclusion that work has in fact been performed. See: *Missouri, K. & T. Ry. Co. v. United States*, 231 U. S. 112 (1913).

The final element of time in issue is the time spent in walking between the points underground at which the men were unloaded on the way in and loaded on the way out and the points at which the men were stationed, i. e. between the underground manloading station and the particular working places.

During these walks, the physical conditions encountered by the men were even more difficult than during the part of the descent spent in riding. The atmosphere becomes warmer and more humid, the ventilation even less effective and the air fetid. The roof is low in places, requiring the walkers to stoop. The footing is irregular, sometimes rough, sometimes wet and slippery, overhead wires (often not insulated or guarded) and pipes must be carefully avoided. The passageways are up and down grades of varying steepness. In short, a very substantial amount of physical and mental energy is required during this walking.

What has been said of the supervision by the employer of the time during which the men are transported up and down the main slope applies equally to the walking time of the men away from and back to the slope.

We find that the time consumed by the men in walking from the underground manloading station to their usual working places and back again at the end of the shifts, was part of their employment and was worktime.

We conclude that the fixed lunch periods of one-half hour during which the employees have been relieved of all duties are not part of their employment or of their workweek.

The conclusions here stated have been reached by examination of the facts existent in the plaintiffs' mines during the period in which the underground ore miners are claiming that they earned unpaid compensation for overtime work under the provisions of the Fair Labor Standards Act. It may be helpful, however, to observe that these conclusions are the same as those announced in the summary of the so-called "modified portal to portal" opinion of the Administrator of the Wage and Hour Division of the United States Department of Labor on March 15, 1941, which summary is as follows:

"The workday in underground metal mining starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the end of the shift.

"The workday also includes the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out.

"The workday does not include any fixed lunch period of one-half hour or more during which the miner is relieved of all duties, even though the lunch period is spent underground."

The defendants have filed counterclaims against the plaintiffs for themselves and others entitled to compensation for overtime worked, by virtue of the fact that the time and activity put in issue by plaintiffs' complaints constitutes employment work. Since we have concluded that the defendants are correct in their general position, these counterclaims will be set down for separate trial and judgment at a convenient date [See Rule 42(b), Federal Rules of Civil Procedure]. #

Findings of fact, conclusions of law and declaratory judgment, in conformity with this opinion, will be entered in each of these actions.

T. A. MURPHREE,
United States District Judge.

Filed in Clerk's office August 13, 1941.

MOTION OF PETITIONER-PLAINTIFF, TENNESSEE COAL, IRON & RAILROAD COMPANY, FOR JUDGMENT OR DECREE IN ITS FAVOR.

485 (Civil Action No. 5232.)

Comes plaintiff in the above entitled cause, and moves the Court, separately and severally, as follows:

1. For a judgment or decree in its favor and against the defendants, separately and severally.

2. For a judgment or decree in its favor and against the defendants, separately and severally, in accordance with its petition and prayer as set forth in Section XI of its complaint as last amended.

3. For a judgment or decree in its favor and against the defendants, separately and severally, in accordance with its petition and prayer as set forth in subsection (a) of Section XI of its complaint as last amended.

4. For a judgment or decree in its favor and against the defendants, separately and severally, in accordance with its petition and prayer as set forth in subsection (b) of Section XI of its complaint as last amended.

5. For a judgment or decree in its favor and against the defendants, separately and severally, in accordance with its petition and prayer as set forth in subsection (c) of Section XI of its complaint as last amended.

7. For a judgment or decree in its favor and against the defendants, separately and severally, in accordance with its petition and prayer as set forth in subsection (e) of Section XI of its complaint as last amended.

6. For a judgment or decree in its favor and against the defendants, separately and severally, in accordance with its petition and prayer as set forth in subsection (d) of Section XI of its complaint as last amended.

8. For a judgment or decree in its favor and against the defendants, separately and severally, in accordance with its petition and prayer as set forth in subsection (f) of Section XI of its complaint as last amended.

9. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "work-week" of plaintiff's underground employees should not include any portion of their time spent in being transported or walking to and from their usual working places and while not engaged in any physical work or service for the plaintiff.

10. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7

thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of plaintiff's underground employees consists only of the time actually spent by such underground employees in working at and around their usual working places.

11. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of plaintiff's underground employees should not include any time of its underground employees embracing (without any physical work or service for the plaintiff being done by such employees during such times):

(a) Any time spent in the bath house;

(b) Any time spent in going from and to the bath house to and from the portal;

(c) Any time spent in being transported from and to the portal to and from the underground manloading station;

(d) Any time spent in walking to and from their usual working places from and to the underground manloading station;

(e) Any time during the thirty-minute lunch period.

12. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of the underground employees of the plaintiff, the "workweek" of such underground employees should not include all of the time of such underground employees spent underground.

13. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of the underground employees of the plaintiff should not be computed so as to include as time worked all of the time spent by such underground employees in traveling from and to the portal of the mine.

14. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was not the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that in computing the "workweek" the work day of plaintiff's

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underground employees should start when the employees reported at or near the portal of the mine and end when they reached the portal at the end of the shift.

15. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was not the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that in computing the "workweek" the work day of plaintiff's underground employees should start when the employees reported at or near the portal of the mine and end when they reached the portal at the end of the shift, unless such employees during the time of being transported or walking to and from their working place were required or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions in reference to their work or perform some work or service for the plaintiff aside from their transportation or walking to and from their usual working places.

16. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was not the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of the underground employees of the plaintiff, the "workweek" of such underground employees should include all of the time of such underground employees spent underground.

17. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was not the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of the underground employees of the plaintiff should be computed so as to include as time worked all of the time spent by such underground employees in traveling from and to the portal of the mine.

18. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time consumed by the underground employees of the plaintiff in walking from the underground manloading station to their usual working places and back again at the end of the shift should not be computed as a part of the "workweek" of such employees.

19. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that

the time consumed by the underground employees of the plaintiff in walking from the underground manloading station to their usual working places and back again at the end of the shift should not be computed as a part of the "workweek" of such employees, unless such employees during such time were required or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions in reference to their work, or perform some work or service for the plaintiff aside from their walking to and from their usual working places from and to the underground manloading station.

20. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in being transported from the portal of the mine to the underground manloading station should not be computed as a part of the "workweek" of such employees.

21. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in being transported from the portal of the mine to the

underground manloading station should not be computed as a part of the workweek, unless such employees during the time of being transported from the portal of the mine to the underground manloading station were required or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions in reference to their work, or perform some work or service for the plaintiff aside and apart from their being transported from the portal of the mine to the underground manloading station.

22. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in being transported from the underground manloading station to the portal of the mine should not be computed as a part of the workweek."

23. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in being transported from the underground manloading station to the portal of the mine should not be computed as a part of the "workweek", unless such employees during the time of being transported from the

underground manloading station to the portal of the mine were required or suffered or permitted by the plaintiff to carry tools of supplies, receive instructions in reference to their work or perform some work or service for the plaintiff aside and apart from their being transported from the underground manloading station to the portal.

'24. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of the underground employees of the plaintiff should not be computed so as to include the aggregate of the time spent by plaintiff's underground mining employees on the surface in obtaining and returning lamps, carbide, and tools and in checking in and out.

25. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of the underground employees of the plaintiff during the period of time from October 24, 1938 to October 24, 1939, should not be computed so as to include the aggregate of the time spent by plaintiff's underground mining employees on the surface in obtaining and returning lamps, carbide, and tools and in check-

ing in and out, unless the aggregate of such time and the underground working time of such employees exceeded the aggregate of forty-four hours spent by such employees during such workweek.

26. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of the underground employees of plaintiff during the period of time from October 24, 1939, to October 24, 1940, should not be computed so as to include the aggregate of the time spent by plaintiff's underground mining employees on the surface in obtaining and returning lamps, carbide, and tools and in checking in and out, unless the aggregate of such time and the underground working time of such employees exceeded the aggregate of forty-two hours spent by such employees during such workweek.

27. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of the underground employees of plaintiff during the period of time from October 24, 1940 to May 1, 1941 should not be computed so as to include the aggregate of the time spent by plaintiff's underground

mining employees on the surface in obtaining and returning lamps, carbide, and tools and in checking in and out, unless the aggregate of such time and the underground working time of such employees exceeded the aggregate of forty hours spent by such employees during such "workweek."

28. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that in computing the "workweek" of plaintiff's underground service employees, their work days should be computed as beginning when they report for work in that place in plaintiff's mine where their work under their immediate supervisor actually begins, and should not be computed as including any portion of the time which they spend in being transported or in walking to such place.

29. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that in computing the "workweek" of plaintiff's underground service employees, their work days should be computed as beginning when they report for work in that place in plaintiff's mine where their work under their

immediate supervisor actually begins, and should not be computed as including any portion of the time which they spend in being transported or in walking to such place, unless such employees during the time of being transported or walking to and from such place was required or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions in reference to his work, or perform some work or service for the plaintiff aside from his transportation or walking to and from such place.

30. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that in computing the "workweek" of plaintiff's underground service employees, the work day of such employees should be computed as beginning when they reported for work in that place in plaintiff's mine where their work under their immediate supervisor actually began, and should not be computed as including any portion of the time which they spent in being transported or in walking to and from such place, unless they were required or suffered or permitted by the plaintiff during such time to carry tools or supplies, receive instructions, or engage in some work or service for the plaintiff apart from or in addition to being transported or walking to and from such working place.

31. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground em-

ployees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of plaintiff's underground productive employees, the work day of such employees should be computed as beginning when they reported for work at their usual working place in plaintiff's mine and where their work under their immediate supervisor actually began, and should not be computed as including any portion of the time spent in being transported or in walking to and from such place, unless they are required during such time or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions, or perform some work or service for the plaintiff.

32. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of plaintiff's underground productive employees, the work day of such employees should be computed as ending when they left their usual working place in plaintiff's mine, and should not be computed as including any portion of the time spent in being transported or in walking from such usual working place, unless they are required during such time or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions, or perform some work or service for the plaintiff.

33. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of the underground employees of the plaintiff the time spent by them in depositing their checks on or before entering the mine and in taking them up upon their exit from the mine should not be included as a part of the "workweek."

34. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of plaintiff's underground employees, the mere fact that plaintiff's underground employees in being required or suffered or permitted by the plaintiff to be transported from and to the portal of the mine to and from the underground manloading station, were thereby made subject to the hazards of being injured as a proximate result of the character or condition of the vehicle furnished by plaintiff for such transportation, or subject to other hazards usually incident to underground employees, did not in and of itself require the time spent in such transportation to be computed as a part of the "workweek" of such employees.

35. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7

thereof; in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's undergound employees, and under the pleadings and proof herein) that, in computing the "workweek" of plaintiff's underground employees, the mere fact that plaintiff's underground employees in being required or suffered or permitted by the plaintiff to walk from the underground manloading station to their usual place of work and from their usual place of work to the underground man-loading station were thereby made subject to the hazard of being injured as a proximate result of falling rock, or other hazards incident to underground mining did not in and of itself require the time spent in walking to and from such places to be computed as a part of the "workweek" of such employees.

36. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in traveling from the portal or entrance of its mines to their usual working places, and in returning from such working places to the entrance or portal of the mines, should not be computed as work time within the meaning of the Fair Labor Standards Act, and that in determining the number of hours worked in any "workweek" such time should not be included.

37. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek", within meaning of the Fair Labor Standards Act of 1938, Section 7, should not include travel time, as such, consumed by plaintiff's underground employees in going from the portal or entrance of the mine to their usual working place, and in returning therefrom to such portal or entrance.

38. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the unlerground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek," within the meaning of the Fair Labor Standards Act of 1938, Section 7, should not include travel time, per se, consumed by plaintiff's underground employees in going from the portal or entrance of the mine to their usual working places, and in returning therefrom to such portal or entrance.

39. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and un-

der the pleadings and proof herein) that the time spent by any underground employee of the plaintiff in going from the portal or entrance of the mine to his usual working place, and in returning from such usual place to the portal or entrance, should not constitute work time within the meaning of Section 7 of the Fair Labor Standards Act of 1938, unless such employee during the time in which he is traveling from the portal to the working place and returning does some work for the plaintiff other than taking with him his lights and carbide.

40. For a judgment or decree in its favor and against the defendants, separately and severally, determining and declaring that the plaintiff is not indebted to the defendants and its underground mining employees as compensation for any time spent by them since the enactment of the Act in the bath house, or in going from and to the bath house to and from the portal, or to and from the underground man loading station from or to the portal, or to and from the actual working places of the underground employees from or to the underground manloading station (during which time said employees perform no physical labor or service in connection with their actual work).

The above motion, and each separate and several portion thereof, is made separately and severally as to:

(a) each of plaintiff's ore mines, and all of the underground employees working in each of said ore mines, and

(b) plaintiff's underground limestone mine and all of the underground employees working in such mine.

E. L. ALL,
BORDEN BURR,
Attorneys for Plaintiff, Tennessee Coal, Iron and Railroad Company.

Address: Birmingham, Alabama.

I hereby certify that a copy of the foregoing has been served upon Crampton Harris, J. Q. Smith, and Jerome A. Cooper, attorneys for the respective defendants, on this the 5 day of September, 1941.

E. L. ALL,
BORDEN BURR,
Attorneys for Plaintiff, Tennessee Coal, Iron and Railroad Company.

Address: Birmingham, Alabama.

Filed Sept. 6, 1941.

MOTION OF PETITIONER-PLAINTIFF, SLOSS-SHEFFIELD STEEL & IRON COMPANY, FOR JUDGMENT OF DECREE IN ITS FAVOR.

500 (Civil Action No. 5233.)

Comes the plaintiff in the above entitled cause, and moves the Court, separately and severally as follows:

1. For a judgment or decree in its favor and against the defendants and each of the defendants separately and severally.

2. For a judgment or decree in its favor and against the defendants and each of the defendants separately and severally, in accordance with its petition and prayer as set forth in Section XI of its complaint as last amended and the subsections of said Section XI.

3. For a judgment or decree declaring and adjudging that the plaintiff has fully complied with the provisions of Section 7 of the Fair Labor Standards Act of 1938.

4. For a judgment or decree declaring and adjudging that the Congress, in the enactment of Section 7 of the Fair Labor Standards Act intended that the "workweek" should consist of the time actually spent by the underground employees of the plaintiff working at and around their usual working places.

5. For a judgment or decree declaring and adjuding that the Congress, in the enactment of Section 7 of the Fair Labor Standards Act, intended that the "workweek" of plaintiff's underground employees should not include any portion of their time spent in being transported or in walking to and from their working places.

6. For a judgment or decree declaring and adjudging that the Congress, in the enactment of Section 7 of the Fair Labor Standards Act, intended that the "workweek" of plaintiff's underground employees should not include any portion of their time spent in being transported or in walking to and from their working places unless the time spent in being transported or in walking to and from their usual working places is attended by some work or service on behalf of the company in addition to traveling.

7. For a judgment or decree declaring and adjuding that the Congress, by the language employed in the Fair Labor Standards Act, and particularly Section 7 thereof, intended that the "Workday" of plaintiff's underground employees should not include any time other than the time agreed upon between them and plaintiff, as shown by the long existing custom and usage and the history of the contracts between plaintiff and the unions representing the employees of plaintiff in the negotiation and execution of contracts, including the present contract under which such employees are working.

8. For a judgment or decree declaring and adjudging that the "workday" of plaintiff's underground employees begins and ends when the employee is required to begin work at his usual working place and ends when he ceases at such usual working place.

9. For a judgment or decree declaring and adjudging that the "worktime" of plaintiff's underground employees should be computed and compensated for upon the basis of work done at their usual working places, excluding the travel time as such in going to and from such working place.

9(a) For a judgment or decree declaring and adjudging that the "worktime" of plaintiff's underground employees should be computed and compensated for upon the face to face basis.

9(b) For a judgment or decree declaring and adjudging that the plaintiff is not indebted to its underground employees for time spent in traveling from the surface to their working places and in returning from such working places to the surface.

9(c) For a judgment or decree declaring and adjudging that the time spent by plaintiff's underground employees in traveling from the portal or entrance of plaintiff's mines to their underground usual working places and in returning from such working places to the portal or entrance of the mines in cases where such travel is attended only by the carrying by the employees of the lamp and the carbide or other lighting equipment, is not worktime within the meaning of the Fair Labor Standards Act of 1938 and is not to be included in the "Workweek" within the meaning of said Fair Labor Standards Act.

9(d) For a judgment or decree declaring and adjudging that the travel time spent by the plaintiff's underground employees in going from the portal or entrance of the mine to their usual working places and in returning from such working places to the portal or entrance of the mine at the end of the shift, where, during such travel time the employees only take with them the lamp and the carbide or other lighting appliance and perform no service on behalf of the employer during such travel time and receive no instructions and directions with respect to their work during such interval of travel, is not to be included in the "workweek" for purposes of compensation, within the meaning of the Fair Labor Standards Act of 1938.

10. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of plaintiff's underground employees consists only of the time actually spent by such underground employees in working at and around their usual working places.

11. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of plaintiff's underground employees should not include any time of its underground employees embracing (without any physical work or service for the plaintiff being done by such employees during such times):

(a) Any time spent in the bath house;

(b) Any time spent in going from and to the bath house to and from the portal;

(c) Any time spent in being transported from and to the portal to and from the underground manloading station;

(d) Any time spent in walking to and from their usual working places from and to the underground manloading station;

(e) Any time during the thirty-minute lunch period.

12. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of the underground employees of the plaintiff, the "workweek" of such underground employees should not include all of the time of such underground employees spent underground.

13. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of the underground employees of the plaintiff

should not be computed so as to include as time worked all of the time spent by such underground employees in traveling from and to the portal of the mine.

14. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was not the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that in computing the "workweek", the work day of plaintiff's underground employees should start when the employee reported at or near the portal of the mine and end when he reached the end of the shift.

15. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was not the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that in computing the "workweek" the work day of plaintiff's underground employees should start when the employee reported at or near the portal of the mine and end when he reached the portal at the end of the shift, unless such employees during the time of being transported or walking to and from their working place were required or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions in reference to their work or perform some other work or service for the plaintiff aside from their transportation or walking to and from their usual working places.

16. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was not the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of the underground employees of the plaintiff, the "workweek" of such underground employees should include all of the time of such underground employees spent underground.

17. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was not the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of the underground employees of the plaintiff should be computed so as to include as time worked all of the time spent by such underground employees in traveling from and to the portal of the mine.

18. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time consumed by the underground employees of the plaintiff in walking from the underground manloading station to their usual working places and back again at the end of the

shift should not be computed as a part of the "workweek" of such employees.

19. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time consumed by the underground employees of the plaintiff in walking from the underground manloading station to their usual working places and back again at the end of the shift should not be computed as a part of the "workweek" of such employlees, unless such employees during such time were required or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions in reference to their work, or perform some work or service for the plaintiff aside from their walking to and from their usual working places from and to the underground manloading station.

20. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in being transported from the portal of the mine to the underground manloading station should not be computed as a part of the "workweek" of such employees.

21. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in being transported from the portal of the mine to the underground manloading station should not be computed as a part of the workweek, unless such employees during the time of being transported from the portal of the mine to the underground manloading station were required or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions in reference to their work, or perform some other work or service for the plaintiff aside and apart from their being transported from the portal of the mine to the underground manloading station.

22. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in being transported from the underground manloading station to the portal of the mine should not be computed as a part of the "workweek."

23. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the in-

tention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in being transported from the underground manloading station to the portal of the mine should not be computed as a part of the "workweek", unless such employees during the time of being transported from the underground manloading station to the portal of the mine were required or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions in reference to their work or perform some work or service for the plaintiff aside and apart from their being transported from the underground manloading station to the portal.

24. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of the underground employees of the plaintiff should not be computed so as to include the aggregate of the time spent by plaintiff's underground mining employees on the surface in obtaining and returning lamps, carbide, and tools and in checking in and out.

25. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and

under the pleadings and proof herein) that in computing the "workweek" of plaintiff's underground service employees, their work days would be computed as beginning when they report for work in that place in plaintiff's mine where their work under their immediate supervisor actually begins, and should not be computed as including any portion of the time which they spend in being transported or in walking to such place.

26. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that in computing the "workweek" of plaintiff's underground service employees, their work days should be computed as beginning when they report for work in that place in plaintiff's mine where their work under their immediate supervisor actually begins, and should not be computed as including any portion of the time which they spend in being transported or in walking to such place, unless such employees during the time of being transported or walking to and from such place were required or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions in reference to their work, or perform some work or service for the plaintiff aside from their transportation or walking to and from such place.

27. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its

application to plaintiff's underground employees, and under the pleadings and proof herein) that in computing the "workweek" of plaintiff's underground service employees, the work day of such employees should be computed as beginning when they reported for work in that place in plaintiff's mine where their work under their immediate supervisor actually began, and should not be computed as including any portion of the time which they spent in being transported or in walking to and from such place, unless they were required or suffered or permitted by the plaintiff during such time to carry tools or supplies, receive instructions, or engage in some work or service for the plaintiff apart from or in addition to being transported or walking to and from such working place.

28. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of plaintiff's underground productive employees, the work day of such employees should be computed as beginning when they reported for work at their usual working place in plaintiff's mine and where their work under their immediate supervisor actually began, and should not be computed as including any portion of the time spent in being transported or in walking to and from such place, unless they are required during such time or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions, or perform some work or service for the plaintiff.

29. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 there-

of, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of plaintiff's underground productive employees, the work day of such employees should be computed as ending when they left their usual working place in plaintiff's mine, and should not be computed as including any portion of the time spent in being transported or in walking from such usual working place, unless they are required during such time or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions, or perform some work or service for the plaintiff.

30. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of the underground employees of the plaintiff the time spent by them in depositing their checks on or before entering the mine and in taking them up upon their exit from the mine should not be included as a part of the "workweek."

31. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and

under the pleadings and proof herein) that, in computing the "workweek" of plaintiff's underground employees, the mere fact that plaintiff's underground employees in being required or suffered or permitted by the plaintiff to be transported from and to the portal of the mine to and from the underground manloading station were thereby made subject to the hazards of being injured as a proximate result of the character or condition of the vehicle furnished by plaintiff for such transportation, or subject to other hazards usually incident to underground employees, did not in and of itself require the time spent in such transportation to be computed as a part of the "workweek" of such employees.

32. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of plaintiff's underground employees, the mere fact that plaintiff's underground employees in being required or suffered or permitted by the plaintiff to walk from the underground manloading station to their usual place of work and from their usual place of work to the underground manloading station were thereby made subject to the hazard of being injured as a proximate result of falling rock, or other hazards incident to underground mining did not in and of itself require the time spent in walking to and from such places to be computed as a part of the "workweek" of such employees.

33. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of

the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in traveling from the portal or entrance of its mines to their usual working places, and in returning from such working places to the entrance or portal of the mines, should not be computed as work time within the meaning of the Fair Labor Standards Act, and that in determining the number of hours worked in any "workweek" such time should not be included.

34. For a declaratory judgment judically construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek", within the meaning of the Fair Labor Standards Act of 1938, Section 7, should not include travel time, as such, consumed by plaintiff's underground employees in going from the portal or entrance of the mine to their usual working places, and in returning therefrom to such portal or entrance.

35. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek,"

within the meaning of the Fair Labor Standards Act of 1938, Section 7, should not include travel time, per se, consumed by plaintiff's underground employees in going from the portal or entrance of the mine to their usual working places, and in returning therefrom to such portal or entrance.

36. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, insofar as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by any underground employee of the plaintiff in going from the portal or entrance of the mine to his usual working place, and in returning from such usual place to the portal or entrance, should not constitute work time within the meaning of Section 7 of the Fair Labor Standards Act of 1938, unless such employee during the time in which he is traveling from the portal to the working place and returning does some work for the plaintiff other than taking with him his lights and carbide.

37. For a judgment or decree in its favor and against the defendants, separately and severally, determining and declaring that the plaintiff is not indebted to the defendant and its underground mining employees as compensation for any time spent by them since the enactment of the Act in the bath house, or in going from and to the bath house to and from the portal, or to and from the underground manloading station from or to the portal, or to and from the actual working places of the underground employees from or to the underground manloading station (during which time said employees perform no physical labor or service in connection with their actual work).

The above motion, and each separate and several portion, thereof, is made separately and severally as to each of the plaintiff's ore mines, viz, Sloss Mines and Ruffner, and all of the underground employees working in each of said mines.

E. L. ALL,
S. M. BRONAUGH,
BORDEN BURR,
Attorneys for Plaintiff, Sloss-Sheffield Steel & Iron Company.

Address: Birmingham, Alabama.

I hereby certify that a copy of the foregoing has been served upon Crampton Harris, J. Q. Smith, and Jerome A. Cooper, attorneys for the respective defendants, on this the 6th day of September, 1941.

E. L. ALL,
Of Attorneys for Plaintiff, Sloss-Sheffield Steel & Iron Company.

Address: Birmingham, Alabama.

Filed September 6, 1941.

MOTION OF PETITIONER-PLAINTIFF REPUBLIC STEEL CORPORATION FOR JUDGMENT OR DECREE IN ITS FAVOR.

515 (Civil Action No. 5234.)

Comes plaintiff in the above entitled cause, and moved the Court, separately and severally, as follows:

1. For a judgment or decree in its favor and against the defendants, separately and severally.

2. For a judgment or decree in its favor and against the defendants, separately and severally, in accordance with its petition and prayer as set forth in Section *X* of its complaint as last amended.

3. For a judgment or decree in its favor and against the defendants, separately and severally, in accordance with its petition and prayer as set forth in sub-section A of Section *X* of its complaint as last amended.

4. For a judgment or decree in its favor and against the defendants, separately and severally, in accordance with its petition and prayer as set forth in sub-section B of Section *X* of its complaint as last amended.

5. For a judgment or decree in its favor and against the defendants, separately and severally, in accordance with its petition and prayer as set forth in sub-section C of Section *X* of its complaint as last amended.

6. For a judgment or decree in its favor and against the defendants, separately and severally, in accordance with its petition and prayer as set forth in sub-section D of Section X of its complaint as last amended.

7. For a judgment or decree in its favor and against the defendants, separately and severally, in accordance with its petition and prayer as set forth in sub-section E of Section *X* of its complaint as last amended.

8. For a judgment or decree in its favor and against the defendants, separately and severally, in accordance with its petition and prayer as set forth in sub-section F of Section *X* of its complaint as last amended.

9. For a judgment or decree in its favor and against the defendants, separately and severally, determining and

declaring that the plaintiff is not indebted to the defendants and its underground mining employees as compensation for any time spent by them since the enactment of the Act in the bath house, or in going from and to the bath house to and from the portal, or to and from the underground manloading station from or to the portal, or to and from the actual working places of the underground employees from or to the underground manloading station (during which time said employees perform no physical labor or service in connection with their actual work).

10. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees and under the pleadings and proof herein) that the "workweek" of plaintiff's underground employees should not include any portion of their time spent in being transported or walking to and from their usual working places and while not engaged in any physical work or service for the plaintiff.

11. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of plaintiff's underground employees consists only of the time actually spent by such underground employees in working at and around their usual working places.

12. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 there-

of, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of plaintiff's underground employees should not include any time of its underground employees embracing (without any physical work or service for the plaintiff being done by such employees during such times):

(a) Any time spent in the bath house;

(b) Any time spent in going from and to the bath house to and from the portal;

(c) Any time spent in being transported from and to the portal to and from the underground manloading station;

(d) Any time spent in walking to and from their usual working places from and to the underground manloading station;

(e) Any time during the thirty-minute lunch period.

13. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of the underground employees of the plaintiff, the "workweek" of such underground employees should not include all of the time of such underground employees spent underground.

14. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of the underground employees of the plaintiff should not be computed so as to include as time worked all of the time spent by such underground employees in traveling from and to the portal of the mine.

15. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was not the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek", the work day of plaintiff's underground employees should start when the employees reported at or near the portal of the mine and when they reached the portal at the end of the shift.

16. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was not the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek", the work day of plaintiff's underground employees should start when the employees reported at or near the portal of the mine and end when they reached

the portal at the end of the shift, unless such employees during the time of being transported or walking to and from their working place were required or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions in reference to their work or perform some work or service for the plaintiff aside from their transportation or walking to and from their usual working places.

17. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was not the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of the underground employees of the plaintiff, the "workweek" of such underground employees should include all of the time of such underground employees spent underground.

18. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was not the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of the underground employees of the plaintiff should be computed so as to include as time worked all of the time spent by such underground employees in traveling from and to the portal of the mine.

19. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 there-

of, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time consumed by the underground employees of the plaintiff in walking from the underground manloading station to their usual working places and back again at the end of the shift should not be computed as a part of the "workweek" of such employees.

20. For a declaratory judgment, judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time consumed by the underground employees of the plaintiff in walking from the underground manloading station to their usual working places and back again at the end of the shift should not be computed as a part of the "workweek" of such employees, unless such employees during such time were required or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions in reference to their work, or perform some work or service for the plaintiff aside from their walking to and from their usual working places from and to the underground manloading station.

21. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of

the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in being transported from the portal of the mine to the underground manloading station should not be computed as a part of the "workweek" of such employees.

22. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in being transported from the portal of the mine to the underground manloading station should not be computed as a part of the workweek, unless such employees during the time of being transported from the portal of the mine to the underground manloading station were required or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions in reference to their work, or perform some work or service for the plaintiff aside and apart from their being transported from the portal of the mine to the underground manloading station.

23. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in being

transported from the underground manloading station to the portal of the mine should not be computed as a part of the "workweek".

24. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in being transported from the underground manloading station to the portal of the mine should not be computed as a part of the "workweek", unless such employees during the time of being transported from the underground manloading station to the portal of the mine were required or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions in reference to their work or perform some work or service for the plaintiff aside from their being transported from the underground manloading station to the portal.

25. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of the underground employees of the plaintiff should not be computed so as to include the aggregate of the time spent by plaintiff's underground mining employees on the surface in obtaining and returning lamps, carbide, and tools and in checking in and out.

26. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of the underground employees of the plaintiff during the period of time from October 24, 1938, to October 24, 1939, should not be computed so as to include the aggregate of the time spent by plaintiff's underground mining employees on the surface in obtaining and returning lamps, carbide, and tools and in checking in and out, unless the aggregate of such time and the underground working time of such employees exceeded the aggregate of forty-four hours spent by such employee during such workweek.

27. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek" of the underground employees of plaintiff during the period of time from October 24, 1939, to October 24, 1940, should not be computed so as to include the aggregate of the time spent by plaintiff's underground mining employees on the surface in obtaining and returning lamps, carbide, and tools and in checking in and out, unless the aggregate of such time and the underground working time of such employees exceeded the aggregate of forty-two hours spent by such employees during such workweek.

28. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 there-

of, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees; and under the pleadings and proof herein) that the "workweek" of the underground employees of plaintiff during the period of time from October 24, 1940, to May 1, 1941, should not be computed so as to include the aggregate of the time spent by plaintiff's underground mining employees on the surface in obtaining and returning lamps, carbide, and tools and in checking in and out, unless the aggregate of such time and the underground working time of such employees exceeded the aggregate of forty hours spent by such employees during such "workweek".

29. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof therein) that, in computing the "workweek" of plaintiff's underground service employees, their work days should be computed as beginning when they report for work in that place in plaintiff's mine where their work under their immediate supervisor actually begins and should not be computed as including any portion of the time which they spend in being transported or in walking to such place.

30. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of

the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of plaintiff's underground service employees, their work days should be computed as beginning when they report for work in that place in plaintiff's mine where their work under their immediate supervisor actually begins, and should not be computed as including any portion of the time which they spend in being transported or in walking to such place, unless such employees during the time of being transported or walking to and from such place was required or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions in reference to his work, or perform some work or service for the plaintiff aside from his transportation or walking to and from such place.

31. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of plaintiff's underground service employees, the work day of such employees should be computed as beginning when they reported for work in that place in plaintiff's mine where their work under their immediate supervisor actually began, and should not be computed as including any portion of the time which they spent in being transported or in walking to and from such place, unless they were required or suffered or permitted by the plaintiff during such time to carry tools or supplies, receive instructions, or engage in some work or service for the plaintiff apart from or in addition to being transported or walking to and from such working place.

32. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of plaintiff's underground productive employees, the work day of such employees should be computed as beginning when they reported for work at their usual working place in plaintiff's mine and where their work under their immediate supervisor actually began, and should not be computed as including any portion of the time spent in being transported or in walking to and from such place, unless they are required during such time or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions, or perform some work or service for the plaintiff.

33. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of plaintiff's underground productive employees, the work day of such employees should be computed as ending when they left their usual working place in plaintiff's mine, and should not be computed as including any portion of the time spent in being transported or in walking from such usual working place, unless they are required during such time or suffered or permitted by the plaintiff to carry tools or supplies, receive instructions, or perform some work or service for the plaintiff.

34. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of the underground employees of the plaintiff the time spent by them in depositing their checks on or before entering the mine and in taking them up upon their exit from the mine should not be included as a part of the "workweek".

35. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of plaintiff's underground employees, the mere fact that plaintiff's underground employees in being required or suffered or permitted by the plaintiff to be transported from and to the portal of the mine to and from the underground manloading station were thereby made subject to the hazards of being injured as a proximate result of the character or condition of the vehicle furnished by plaintiff for such transportation, or subject to other hazards usually incident to underground employees, did not in and of itself require the time spent in such transportation to be computed as a part of the "workweek" of such employees.

36. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 there-

of, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that, in computing the "workweek" of plaintiff's underground employees, the mere fact that plaintiff's underground employees in being required or suffered or permitted by the plaintiff to walk from the underground manloading station to their usual place of work and from their usual place of work to the underground manloading station were thereby made subject to the hazard of being injured as a proximate result of falling rock, or other hazards incident to underground mining did not in and of itself require the time spent in walking to and from such places to be computed as a part of the "workweek" of such employees.

37. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by the underground employees of the plaintiff in traveling from the portal or entrance of its mines to their usual working places, and in returning from such working places to the entrance or portal of the mines, should not be computed as work time within the meaning of the Fair Labor Standards Act, and that in determining the number of hours worked in any "workweek" such time should not be included.

38. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 there-

of, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek", within the meaning of the Fair Labor Standards Act of 1938, Section 7, should not include travel time, as such, consumed by plaintiff's underground employees in going from the portal or entrance of the mine to their usual working places, and in returning therefrom to such portal or entrance.

39. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the "workweek", within the meaning of the Fair Labor Standards Act of 1938, Section 7, should not include travel time, per se, consumed by plaintiff's underground employees in going from the portal or entrance of the mine to their usual working places, and in returning therefrom to such portal or entrance.

40. For a declaratory judgment judicially construing the Fair Labor Standards Act of 1938 and Section 7 thereof, in so far as it relates to the underground employees of the plaintiff, so as to find and declare that it was the intention of the Congress in the enactment of Section 7 of the Fair Labor Standards Act of 1938 (considered in its application to plaintiff's underground employees, and under the pleadings and proof herein) that the time spent by any underground employee of the plaintiff in going from the portal or entrance of the mine to his usual working

place, and in returning from such usual place to the portal or entrance, should not constitute work time within the meaning of Section 7 of the Fair Labor Standards Act of 1938, unless such employee during the time in which he is traveling from the portal to the working place and returning does some work for the plaintiff other than taking with him his lights and carbide.

The above motion, and each separate and several portion thereof, is made separately and severally as to:

(a) The Raimund mind of the plaintiff, and all of its underground employees working in such mine, and

(b) The Spalding mine of the plaintiff, and all of its underground employees working in such mine.

E. L. ALL,
BORDEN BURR,
Attorneys for Plaintiff, Tennessee Coal, Iron and Railroad Company.

Address: Birmingham, Alabama.

I hereby certify that a copy of the foregoing has been served upon Crampton Harris, J. Q. Smith, and Jerome A. Cooper, Attorneys for the respective defendants, on this the 5 day of September, 1941.

BORDEN BURR,
Attorneys for Plaintiff, Tennessee Coal, Iron and Railroad Company.

Address: Birmingham, Alabama.

Filed September 6, 1941.

FINDINGS OF FACT.

(Cicil Actions Nos. 5232, 5233 and 5234.)

1.

Unless otherwise indicated, the following Findings of Fact relate to and cover the period between October 24, 1938, to May 1, 1941.

1 (a).

The amount in controversy herein exceeds $3,000.00.

2.

Petitioner Tennessee Coal, Iron and Railroad Company (hereinafter referred to as T. C. I.) is a corporation organized under the laws of the State of Tennessee, is a resident of the State of Tennessee, is authorized to transact business in the State of Alabama, has its principal place of business in Jefferson County, Alabama, and operates red ore mines in Jefferson County, Alabama. Petitioner Republic Steel Corporation (hereinafter referred to as Republic) is a corporation organized under the laws of the State of New Jersey, is a resident of the State of New Jersey, is authorized to transact business in the State of Alabama, has a principal place of business in Jefferson County, Alabama, and operates red ore mines in Jefferson County, Alabama. Petitioner Sloss-Sheffield Steel and Iron Company (hereinafter referred to as Sloss,) is a corporation organized under the laws of the State of New Jersey, is a resident of the State of New Jersey, is authorized to transact business in the State of Alabama, has its principal place of business in Jefferson County, Alabama, and operates red ore mines in Jefferson County, Alabama.

3.

The ore produced in these mines has been and is produced for use as an ingredient in iron and steel products which are sold and shipped to points outside of the State of Alabama.

4.

All named individual defendants are residents of Jefferson County, Alabama, with the exception of Philip B. Fleming, intervener, who is Administrator of the Wage and Hour Division, United States Department of Labor. The defendant organizations affiliated with the Congress of Industrial Organizations and the defendant organizations affiliated with the American Federation of Labor are labor unions whose memberships are composed of employees of plaintiffs' ore mines, and the defendants and the employees whom they represent are and have been engaged in substantially all of the underground occupations in the plaintiffs' red ore mines.

5.

During the approximately 60-years history of iron ore mining in the Birmingham, Alabama, district, plaintiffs' (or their predecessors') employees employed as red ore miners have been paid compensation upon a basis without regard to the number of hours spent daily by said employees at the face of the ore seam or at any specified place or station in the mines. This compensation has never been based upon any precise number of hours spent daily at the face of the seam or at any specified place or station in the mines.

6.

The employees of plaintiffs' red ore mines involved in this suit include both producing crews, who actually blast, dig, and load ore, and company or service men who perform duties auxiliary and necessary to the activities of the producing crews. Unless otherwise specifically stated, these Findings and Conclusions of Law relate to and include both producing ore miners and company or service miners.

7.

The "usual working places" or underground stations of the company or service men occur throughout the mines and are not at the face of the seam.

8.

Until 1914 production men of T. C. I. were paid on a so-called "contract basis", under which the amount of the individual miner's compensation was determined by the amount of ore which his crew could load. If the crew during any shift failed to load and get out any tonnage of ore, the miners who constituted that crew received no compensation at all for that shift. The compensation of members of the crew for particular shifts, fluctuated up and down as the amount of ore loaded and gotten out during those shifts increased or decreased. The head miner or "contractor" was credited at a certain rate per ton with all tonnage produced by members of his crew, and each member of the crew had a specified tonnage rate. The amount of time consumed during a shift by a crew at the face of the seam did not determine the amount of compensation received by the members of the crew.

9.

During the period beginning 1914 to 1933 production men of T. C. I. were paid upon a "task basis" without regard to hours spent daily at any point, and under which the method of payment remained on a tonnage basis and the number of hours spent by a miner daily at the face of the seam was immaterial so long as he produced his daily "task". The "task basis" was but a slight modification of the "contract basis"; under the "task basis", a member of a producing crew was paid according to the amount of ore produced by his crew and not according to the amount of time spent during a given shift at the face of the seam.

10.

From 1933 to May 1, 1941, production men's compensation at T. C. I. was determined upon a shift basis, not upon an hourly basis, and the method of determining compensation continued to fail to reflect the actual number of hours spent daily at the face of the seam. At Sloss, the employees were paid on the "contract basis," until 1934, and thereafter upon a similar tonnage basis; at Republic, the employees are still paid under the "contract system"; at both Sloss and Republic until May 1, 1941, the method of determining production men's compensation continued to fail to reflect the actual number of hours spent daily at the face of the seam.

11.

Company or service men have never been paid on a basis of the time actually spent at their underground stations.

12.

There has never been any custom under which plaintiffs paid their underground red ore mine employees—company or service men as well as producing miners—only and solely for time actually spent at their particular stations underground.

13.

Plaintiffs T. C. I. and Republic at no time prior to the commencement of this action entered into a contract between themselves and any union of their said ore mine employees certified by the National Labor Relations Board as an appropriate unit for collective bargaining.

14.

Prior to the enactment of the Fair Labor Standards Act of 1938 Plaintiffs' said employees made several efforts, which were unsuccessful, to obtain compensation for all, or a greater part, of the time expended daily by them after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday.

15.

Before they reached the mouth of the mine, plaintiffs' employees arrive on plaintiffs' property and ordinarily change to their work clothes in the bath house owned by the company. They then walk varying distances on company property from the bath house to the tally house at or near the portal of the mine where they report for duty.

16.

At the beginning of a shift, these employees reported for duty at the tally house at or near the mouth of the mines. Every employee of T. C. I. and Republic hangs up a check previously issued to him by the company. At Sloss, the employees regularly went from the bath house to the tally house and reported their presence to representatives of the company.

17.

Plaintiffs' employees occasionally obtain and return tools and frequently obtain carbide (at T. C. I. and Sloss) on the surface before entering the mine. At Republic, employees pick up a battery light, rented to them by the company, and turn the battery light in when they emerge from the mine at the end of a shift. Plaintiffs' employees daily spend a few moments checking in and out, and in obtaining the lamps without which their work at the face of the seam would be impossible.

18.

After reporting for duty at or near the mouth of the mine, these employees are daily subject to the receipt of instructions from plaintiffs relative to the duties of their employment. They are frequently given their first instructions of the day prior to entering the slope of the mine. The check-in board or the act of checking in at the tally house informs officials of plaintiffs that members of the respective crews have reported for work; and these employees are forbidden to enter plaintiffs' mines until their brass checks have been deposited or until they have been checked in at the tally house. At this point, vacancies in working crews are ordered filled by company officials; the crews or head miners are informed of any changes in their underground stations; the head miners are given advice about the operations of their underground stations; the head miner or crew foreman begins to assemble his crew, to fill any vacancies and to issue orders to its members; at Sloss, an official of the company checked the names of the men as they reported at the tally house.

19.

When these employees report at the mouth of the mine they are in their mining clothes and have their indispensable lamps. In the vehicle in which these employees are transported between the mouth of the mine and the underground man-loading station, the employees are subjected to discomfort, substantial changes in temperature, and are subjected to the risk of injury by collision with low points in the roof of the mine slopes or with projections from those roofs. The air in plaintiffs' mines is humid and malodorous, the ventilation relatively poor, and the heat increases with the descent into the mine.

20.

All employees were required by the companies to report at the mouth of the mines, at the beginning of a shift, in time to catch the vehicle on one of its trips scheduled by plaintiffs.

21.

Plaintiffs supervise, control, and prescribe the schedule of the vehicles on which the men are transported into and out of the mine, the speed of the vehicles, the loading of the men into them, the rules of conduct during the trips in and out; and require the men to ride rather than to walk. Company rules require certain employees to ride particular trips of the vehicles.

22.

In entering the vehicle for the descent or to be raised from the mine, on the way down and up, these employees are subject to disciplinary rules of the plaintiffs and are supervised by representatives or officials of the plaintiffs.

23.

During the time consumed walking between the underground man-loading station and the face of the seam and return, these employees are subject to disciplinary rules of the plaintiffs, and, en route between the man-loading station and the face, frequently carry tools and materials necessary for the mining of ore.

24.

In walking between the underground unloading station and the face of the seam and return, the employees encounter an increasingly warmer and humid atmosphere with the increasingly less effective ventilation. At points the walkers are required to stoop to avoid collision with the roof; footing is irregular, sometimes rough, sometimes wet and slippery, and sometimes marked by overhead uninsulated wires and pipes underfoot. The manways utilized in this walking involve grades of varying steepness. After negotiating the distance between underground man-loading station and the face of the seam, a miner is often wet with perspiration.

25.

From the time plaintiffs' employees enter the mouth of the mine until their exit from the mouth of the mine, they are subject to conditions peculiar to their occupation and employment in ore mines.

26.

Those employees who use brass checks pick up their checks when they reach the mouth of the mine at the end of the shift. From the mouth of the mine at the end of the shift, plaintiffs' employees proceed on company property to the bath house, bathe and change from work clothes.

27.

The conditions of the slopes of plaintiffs 'mines, of the haulage-ways and walk-ways utilized by said employees in moving between the underground man-loading stations and the face of the seam and return, and the vehicles used to lower and raise plaintiffs' red ore miners, have remained substantially the same from October 24, 1938, until the present time.

28.

Subsequent to October 24, 1938, subsequent to October 24, 1939, and subsequent to October 24, 1940, the hours spent by plaintiffs' employees from the time they reported at or near the portal of the mines until they reached the portal at the end of the shift, including time on the surface in obtaining tools and materials and excepting any lunch period of 30 minutes or more, totaled in giving workweeks more than 44, 42 and 40 hours respectively. All this time was work time, and part of the workweek.

29.

Plaintiffs have failed to pay their employees at one and one-half their regular rate of pay for the hours in excess of 44, 42, and 40 hours weekly set out in finding 28.

The foregoing Findings of Fact are hereby made and entered this 10th day of September, 1941.

T. A. MURPHREE,
United States District Judge.

Filed Sept. 10th, 1941. T. A. Murphree, Dist. Judge.

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CONCLUSIONS OF LAW.

(Civil Actions Nos. 5232, 5233, and 5234.)

1.

The actions by the plaintiffs are class actions in which the defendants fairly represent the class of underground ore mining employees of the plaintiffs. This is admitted by all parties.

2.

The underground ore mining employees of plaintiff have, since October 24, 1938, been engaged in the production of goods for commerce or in the processes or occupations necessary to such production within the meaning of the Fair Labor Standards Act of 1938, and have been and are entitled to its benefits:

3.

Within the meaning of Section 7 of the Fair Labor Standards Act of 1938, time worked includes all time spent by plaintiff's underground ore mine employees, including production and company or service men, from the time they report at or near the collar of the mine until they reach the collar at the end of the shift, and includes the aggregate of all time spent on the surface in obtaining and returning lamps, carbide, and tools, and in checking in and out. This time worked does not include any fixed lunch period, above or underground, of one-half hour or more and during which the miner is relieved of all duties.

4.

Plaintiff's said employees become subject to the discipline, control, and supervision of plaintiff at the time they report at or near the mouth of the mine and remain so subject, with the exception of any 30-minute lunch period during which they are relieved of all duties, until they leave the mouth of the mine at the end of the shift. During this entire time, with the exception noted, they are expending physical and mental energies in activities necessary to and in the interest of plaintiff's business; and employer-employee relationship within the meaning of the Act exists throughout, and they are employed and at work within the meaning of Section 7 of the Act.

5.

The phrase "usual working places" is a technical expression peculiar to the mining industry and has no reference to and does not determine the limits of the employer-employee relationship.

6.

The failure of plaintiff to compensate its employees for time worked within the meaning of the Act as set out above, cannot prevail to deny those employees compensation to which they are entitled under the Act.

7.

The employees of plaintiff have not waived their right to lawful compensation nor have they estopped themselves to claim the same.

8.

Plaintiff has violated Section 7 of the Act by failing to pay its employees for all time worked since October 24, 1938, in excess of the hours provided in Section 7 of the Act at time and one-half their regular rate of pay.

9.

Plaintiff is not entitled to a declaratory judgment that the working time which makes up the workweek of its underground ore mining employees within the meaning of Section 7 of the Fair Labor Standards Act of 1938 does not include that portion of the time spent by said employees in being transported or walking to and from the face of the seam.

10.

Plaintiff is not entitled to an injunction against Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, intervener, herein, or his agents and representatives from administering or enforcing Section 7 of said Act against plaintiff as interpreted by him in the administrative opinion, set out in Exhibit A to the complaint, to the effect that the time worked by plaintiff's said employees, within the meaning of Section 7, starts when they report for duty at or near the mouth of the mines, and ends when they reach the mouth at the end of the shift, and includes the aggregate of all time spent on the surface in obtaining and returning lamps, carbide and tools and in checking in and out, but does not include any fixed lunch period of one-half hour or more during which the miner is relieved of all duties.

11.

The foregoing conclusions of law entered on this 10th day of September, 1941.

T. A. MURPHREE,
United States District Judge.

Filed Sept. 10th, 1941. T. A. Murphree, Dist. Judge.

JUDGMENT.

(Civil Actions Nos. 5232, 5233, and 5234.)

This cause coming on to be heard on the pleadings and proof, and the Court having heard and considered the evidence and arguments of counsel, and having made Findings of Fact and Conclusions of Law, which have been entered of record herein, it is, upon said pleadings and proof and upon said Findings of Fact and Conclusions of Law,

Ordered, Adjudged And Decreed, as follows:

1. This suit is entertained as a suit for a declaratory judgment, and it is considered and adjudged by the Court that the defendants and intervener, Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, are entitled to the relief hereby awarded.

2. The working time of the underground ore mining employees of plaintiff, within the meaning of Section 7 of the Fair Labor Standards Act of 1938, includes all time spent by plaintiff's said employees from the time they report at the collar or portal of the mine or mouth of the mine, until they emerge from the collar, portal, or mouth of the mine at the end of the shift, and includes the aggregate of all time spent by said employees on the surface in obtaining and returning lamps, carbide, and tools and in checking in and out. This time worked does not include any fixed lunch period of one-half hour or more during which said underground ore mining employee is relieved of all duties.

3. Plaintiff, in not compensating its said underground ore mining employees for all time worked as defined in paragraph 2 hereof in excess of 44 hours weekly between

October 24, 1938, and October 23, 1939; in excess of 42 hours weekly between October 24, 1939, and October 23, 1940; and in excess of 40 hours weekly since October 24, 1940 and until May 1, 1941, at a rate not less than one and one-half times the regular rate at which said employees were employed, has violated Section 7 of the Fair Labor Standards Act of 1938.

4. Plaintiff is not entitled to injunctive relief against any of the defendants and the intervener, Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, and plaintiff's prayers for such injunctive relief be, and the same hereby are, denied.

5. The temporary restraining order previously entered herein be, and the same hereby is, vacated and dissolved.

6. Such employees or their personal representatives as have not filed claims are given sixty days from the date hereof in which to file the same.

7. Jurisdiction of this cause is retained for the purpose of giving full effect to this decree and specifically to adjudge and determine the claims of the employees and their personal representatives for unpaid wages and liquidated damages and to adjudge and to appoint a special master or masters to report thereon and to determine and fix the fee for the attorneys for the defendants herein.

Ordered, Adjudged And Decreed this the 10th day of September, 1941.

T. A. MURPHREE,
United States District Judge.

Filed September 10th, 1941. T. A. Murphree, United States District Judge.

MOTION TO AMEND JUDGMENT.

(Civil Action No. 5232.)

Now comes plaintiff, Tennessee Coal, Iron and Railroad Company, a corporation, and, without waiving its motion for a judgment in its favor heretofore filed and overruled by the Court, but insisting thereon, and for the sole purpose of correcting said judgmeent so that it will conform to the opinion of the Court and will be pursuant to the matters submitted for judgment herein, moves the Court to amend the judgment heretofore rendered herein on September 10, 1941, in the following separate and several particulars:

1. By adding immediately after the words, "this cause coming on to be heard" where they appear in the first sentence thereof the following words: "was submitted for final judgment on the petition of the plaintiff for a declaratory judgment, and."

2. By striking therefrom paragraph numbered 3.

3. By striking therefrom paragraph numbered 6.

4. By amending paragraph numbered 7 so that the same shall read as follows:

The jurisdiction of this cause is retained for the purpose of giving full effect to this decree, and specifically to adjudge and determine the claims of the employees and their personal representatives for unpaid wages and liquidated damages, and to hear and determine plaintiff's defenses thereto, and to adjudge and to appoint a special master or masters to report thereon, and to determine and fix the fee for the attorneys for the defendants herein, and to enter such orders herein as to the Court may seem right and proper. If plaintiff promptly takes and prosecutes an appeal herefrom to the United States Circuit Court of Appeals for the Fifth Circuit proceedings under such retained jurisdiction shall be suspended pending such appeal.

Plaintiff submits herewith, and expressly makes a part hereof, the attached memorandum, assigning its separate and several causes in support of such amendment and its reasons therefor.

E. L. ALL,
BORDEN BURR,
Attorneys for Tennessee Coal,
Iron and Railroad Company,
Plaintiff.

Address: Brown-Marx Building,
Birmingham, Alabama.

NOTICE OF HEARING ON MOTION OF PLTF., TENNESSEE COAL, IRON AND RAILROAD CO., TO AMEND JUDGMENT, omitted from the printed record, pursuant to Rule 23 of the Court.

* * * * * * *

Filed Sept. 19, 1941. Chas. B. Crow, Clerk, U. S. Dist. Court.

On September 19, 1941, motions to amend judgment, identical with the foregoing were filed by Petitioner-

Plaintiff Sloss-Sheffield Steel & Iron Company in Civil Action No. 5233, and by Petitioner-Plaintiff Republic Steel Corporation in Civil Action No. 5234.

CAUSES FOR AND IN SUPPORT OF MOTION OF PETITIONER-PLAINTIFF TENNESSEE COAL, IRON & RAILROAD COMPANY TO AMEND JUDGMENT.

548 (Civil Action No. 5232.)

Comes the plaintiff in the above entitled cause, and for causes for and in support of its motion to amend the judgment rendered herein submits the following:

For the convenience of the Court plaintiff submits herewith a copy of the judgment as it will read if the motion is granted. The effect of all of the suggested changes is to have the judgment conform to the facts, to show that the case was heard only on the petition for a declaratory judgment, to eliminate from the judgment adjudication in reference to issues which were not before the Court, and to conform the judgment to an adjudication on the petition for a declaratory judgment, which we respectfully submit was the only matter before the Court during the trial which began on July 8, 1941 and concluded on August 1, 1941.

We submit that the motion should be granted, that paragraphs numbered 3 and 6 of the judgment as written should be stricken, and the first sentence of the judgment and paragraph numbered 7 thereof should be amended as suggested because such separate and several paragraphs:

(a) Adjudicate matters which had not been tried or heard by the Court;

(b) Adjudicate matters in reference to which plaintiffs have never had their day in Court;

(c) Adjudicate matters concerning which the plaintiff has never had an opportunity to present its contentions as to the law, and has never been heard on these contentions;

(d) Adjudicate matters without disposing of pleadings on file in reference to such matters;

(e) Adjudicate matters as to which the plaintiff has never been given an opportunity to plead;

(f) Adjudicate matters as to which the plaintiff has never been given an opportunity to present evidence;

(g) Adjudicate matters as to which the plaintiff has never been given an opportunity to be heard on;

(h) Adjudicate matters which have never been set down for trial by the Court;

(i) Adjudicate matters which the record in this case shows have never been set down for hearing or determination;

(j) Deprive the plaintiff of its day in Court;

(k) Deprive the plaintiff of the opportunity to present pleadings, and, in the event their defenses are held good as a matter of law, to offer evidence in relation to any defenses which they wish in good faith to interpose to the claims of defendants, even though the Court is correct in its judicial construction of Section 7 of the Act.

(l) Adjudicate matters contrary to the following separate and several orders, agreements, and occurrences:

1. The statement of the Court made at the time of the hearing of defendant's motion to dismiss the case, such statement being in substance that the sole question to be determined on the setting of the case for June 23, 1941 (thereafter by agreement continued until July 8, 1941) was that portion of the case relating to a judicial declaration as to the meaning of the word "workweek" as used in Section 7 of the Fair Labor Standards Act of 1938 in relation to the underground ore mining employees of the plaintiff.

2. The pre-trial agreement executed by attorneys for plaintiffs and for the original defendants.

3. The pre-trial order made by the Court on May 22, 1941.

4. The decree of the Court filed on May 26, 1941, overruling, among other things, defendants' motion to dismiss, and ordered the case set down for trial in accordance with the pre-trial order.

5. The order of the Court made on the 7th day of June, 1941, in which, among other things, the motion of Fleming to intervene as a party defendant was granted with a provision that the pre-trial agreement and the pre-trial order and all orders previously made in the case should be in all respects binding upon the intervener as a condition to the intervention.

6. The statements made by the Court as to the issue on trial at the time of the beginning of the trial on July 8, 1941, and during subsequent proceedings while the trial was pending.

7. The fact that the introduction of evidence in the case on the part of the plaintiffs indicated full reliance by plaintiff upon previous rulings of the Court that matters relating to estoppel, waiver, payment, method of computation, and other defenses were not on trial.

8. The fact that the introduction of evidence in the case on the part of the plaintiffs indicated full reliance upon previous rulings of the Court that the only issue on trial and under consideration was the judicial construction of Section 7 of the Fair Labor Standards Act of 1938 as applicable to plaintiff's underground employees.

9. The fact that in the opinion rendered by the Court on August 13, 1941, the only matters discussed or referred to related to the only question submitted to the Court, namely, the judicial construction of Section 7 of the Act, and that the only reference in such opinion to any other matters was in the following words:

"Since we have concluded that the defendants are correct in their general position, these counterclaims shall be set down for a separate trial and judgment at a convenient date. See Rule 42(b), Federal Rules of Civil Procedure."

10. The fact that on August 13, 1941, the Court in notifying the attorneys in the case of his opinion wrote and had delivered to said attorneys named in said letter a letter in words and figures as follows:

"United States District Judge's Chambers, Northern District of Alabama, Birmingham, Alabama.

Thomas A. Murphree,
District Judge.

August 13, 1941.

Re: Tennessee Coal, Iron & Railroad Company, a corporation, Sloss-Sheffield Steel and Iron Company a corporation, and Republic Steel corporation, a corporation, vs. Certain Labor Unions, etc. Civil Actions 5232, 5233, and 5234.

Gentlemen:

Enclosed you will find a copy of my opinion in the above actions I believe that it supplies all the necessary information for the formal findings of fact, conclusions of law and for the declaratory judgments that must be entered in these actions.

I request the attorneys for the defendants and for the intervener to confer and prepare written findings of fact, conclusions of law and declaratory judgments, in conformity with the enclosed opinion.

I will be unavailable from the present date until September 8, 1941; therefore, these papers may be presented to me on or after September 8, 1941.

Cordially yours,
(S.) T. A. MURPHREE,
United States District Judge.

TAM:f.

To: Messrs. Benners, Burr, McKamy and Forman, Messrs. Bradley, Baldwin, All and White, Crampton Harris, Equire, Lee Pressman, Esquire, Jerome A. Cooper, Esquire, Abner Brodie, Esquire, J. Q. Smith, Esquire, Ralph Quinn, Esquire, W. F. Spencer, Esquire, J. M. Limpsomb, Esquire."

11. The fact that on August 14, 1941, the Court stated to counsel for plaintiff, namelly, E. L. All and Borden Burr, substantially that it was his intention, following his understanding of what had occurred, that the judgment when rendered in accordance with his opinion would be so written as to insure plaintiff's right of appeal from the declaratory judgment in advance of any considerations of questions raised by defendants' counterclaims.

E. L. ALL,
BORDEN BURR,
Attorneys for Tenn. Coal, Iron
& RRCo., Plaintiff.

Address: Brown-Marx Building,
Birmingham, Alabama.

I hereby certify that a copy of the foregoing has been served upon Crampton Harris, J. Q. Smith, and Jerome A. Cooper, Attorneys for the respective defendants, on this the 20 day of Sept. 1941.

BORDEN BURR,
Attorney for Plaintiff.

Birmingham, Alabama.

Filed September 19, 1941.

553 JUDGMENT.

In the District Court of the United States for the Northern District of Alabama, Southern Division.

Tennessee Coal, Iron & Railroad Company, A Corporation,
Petitioner and Plaintiff,
vs.
Muscoda Local No. 123, et al, Defendants,

Philip B. Fleming, Administrator, etc., Intervener.

Civil Action File No. 5232.

This cause coming on to be heard was submitted for final judgment on the petition of the plaintiff for a declaratory judgment, and on the pleadings and proof, and the Court having heard and considered the evidence and arguments of counsel, and having made findings of fact and conclusions of law, which have been entered of record herein, it is, upon said pleadings and proof and upon said findings of fact and conclusions of law,

Ordered, Adjudged, And Decreed, As follows:

1. This suit is entertained as a suit for a declaratory judgment, and it is considered and adjudged by the Court

that the defendants and intervener, Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, are entitled to the relief hereby awarded.

2. The working time of the underground ore mining employees of plaintiff, within the meaning of Section 7 of the Fair Labor Standards Act of 1938, includes all time spent by plaintiff's said employees from the time they report at the collar or portal of the mine or mouth of the mine, until they emerge from the collar, portal, or mouth of the mine at the end of the shift, and includees the aggregate of all time spent by said employees on the surface in obtaining and returning lamps, carbide, and tools and in checking in and out. This time worked does not include any fixed lunch period of one-half hour or more during which said underground ore mining employee is relieved of all duties.

3. Plaintiff is not entitled to injunctive relief against any of the defendants and the intervener, Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, and plaintiff's prayers for such injunctive relief be, and the same hereby are, denied.

4. The temporary restraining order previously entered herein be, and the same hereby is, vacated and dissolved.

5. The jurisdiction of this cause is retained for the purpose of giving full effect to this degree, and specifically to adjudge and determine the claims of the employees and their personal representatives for unpaid wages and liquidated damages, and to hear and determine plaintiff's defenses thereto, and to adjudge and to appoint a special master or masters to report thereon, and to determine and fix the fee for the attorneys for the defendants herein, and to enter such orders herein as to the Court may seem

right and proper. If plaintiff promptly takes and prosecutes an appeal herefrom to the United States Circuit Court of Appeals for the Fifth Circuit, proceedings under such retained jurisdiction shall be suspended pending such appeal.

Ordered, Adjudged, And Decreed This the 10th day of September, 1941.

....

United States District Judge.

On September 19, 1941, Causes for and in Support of Motion to Amend Judgment, identical with the foregoing, were filed by Petitioner-Plaintiff Sloss-Sheffield Steel & Iron Company in Civil Action No. 5233, and by Petitioner-Plaintiff Republic Corporation in Civil Action No. 5234.

PLAINTIFF'S OBJECTIONS TO FINDINGS OF FACT AND MOTION FOR AMENDMENT THEREOF.

556 Civil Action File No. 5232.

Comes Tennessee Coal, Iron and Railroad Company, a corporation, plaintiff, and objects to the findings of fact filed herein on September 10, 1941, as a whole, and, separately and severally, to each separate and several numbered finding, and for grounds of said objection assigns the following, separately and severally:

1. The findings of fact are contrary to the evidence.

2. The findings of fact are against the overwhelming weight of the evidence.

3. The findings of fact are not substantially supported by the evidence.

4. The findings of fact are not sufficient to support the judgment rendered thereon.

5. The findings of fact are not sufficient to support the judgment rendered thereon in that the trial of said cause was begun on July 8, 1941, and was concluded on August 1, 1941; the stenographic transcript of the oral evidence contained 2600 pages; there was offered in evidence approximately 244 exhibits, consisting of maps, printed documents, typewritten matter, etc., aggregating thousands of pages, and such findings of fact consist of only nine typewritten pages, and fail to include any findings on many matters bearing on vital issues of the case, and find as to other matters only facts relating to fragmentary portions of the evidence.

6. The findings of fact are not sufficient to support the judgment rendered thereon in that the trial of said cause was begun on July 8, 1941, and was concluded on August 1, 1941; the stenographic transcript of the oral evidence contained 2600 pages; there was offered in evidence approximately 244 exhibits, consisting of maps, printed documents, typewritten matter, etc., aggregating thousands of pages, and such findings of fact consist of only nine typewritten pages, and fail to include any findings on many matters bearing on vital issues of the case, and find as to other matters only facts relating to fragmentary portions of the evidence, and make findings which support only the contentions of the defendants and the defendant-intervener, and makes no findings as to facts proven either by the undisputed evidence or its great preponderance which support the contentions of plaintiff.

7. Such findings of fact fail altogether to make any finding as to the operations of this plaintiff at its separate ore mines.

8. Such findings relate to all the separate underground ore mines of this plaintiff, and as to some of such mines are unsupported by the evidence.

9. Such findings of fact are insufficient in that they relate to and cover the period of time between October 24, 1938, and May 1, 1941, and do not make any sufficient finding as to the relevant and vital facts relating to the period prior to October 24, 1938, a large portion, if not the greater portion, of the evidence introduced relating to such prior period of time, and being relevant to the issue.

10. Such findings of fact are too uncertain and indefinite to support the decree or judgment rendered on September 10, 1941, in that it does not sufficiently appear therefrom as to what period of time the findings relate to.

11. The findings of fact relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such findings of fact are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's number 5 limestone mine at Muscoda.

12. The findings of fact relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such findings of fact are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's number 6 mine at Muscoda.

13. The findings of fact relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such findings of fact are not applicable un-

der the pleadings and proof to the underground ore mining employees at plaintiff's number 7 mine at Wenonah.

14. The findings of fact relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such findings of fact are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's number 8 mine at Wenonah.

15. The findings of fact relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such findings of fact are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's number 9 mine at Wenonah.

16. The findings of fact relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such findings of fact are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's number 10 mine at Wenonah.

17. The findings of fact relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such findings of fact are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's number 11 mine at Ishkooda.

18. The findings of fact relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such findings of fact are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's number 13 mine at Ishkooda.

19. The "usual working places" of the productive employees are at the face of the seam, and include that area

of the mine in close proximity to the fact of the seam in which they are required to perform work in connection with or incidental to mining the ore from the face of the seam.

20. The "usual working places" or underground stations of the company or service men are at such various places throughout the mine as they have been directed to work by their immediate supervisors.

21. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Tennessee Coal, Iron and Railroad Company's (or its predecessors') production employees employed as underground ore miners have never been paid or received compensation for time spent by them in being transported or in walking to and from their usual working place.

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22. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Republic Steel Corporation's (or its predecessors') production employees employed as underground ore miners have never been paid or received compensation for time spent by them in being transported or in walking to and from their usual working places.

23. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama, District, Sloss-Sheffield Steel & Iron Company's (or its predecessors') production employees employed as underground ore miners have never been paid or received compensation for time spent by them in being transported or in walking to and from their usual working place.

24. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama, District, Woodward Iron Company's (or its predecessors') production

employees employed as underground ore miners have never been paid or received compensation for time spent by them in being transported or in walking to and from their usual working place.

25. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Tennessee Coal, Iron and Railroad Company's (or its predecessors') production employees employed as red ore miners have never been paid or received compensation for the time spent by them in traveling from the entrance or mouth of the mine to the underground loading station and from the underground loading station to the entrance of the mine.

26. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Republic Steel Corporation's (or its predecessors') production employees employed as red ore miners have never been paid or received compensation for the time spent by them in traveling from the entrance or mouth of the mine to the underground loading station and from the underground loading station to the entrance or mouth of the mine.

27. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Sloss-Sheffield Steel & Iron Company's (or its predessors') production employees employed as red ore miners have never been paid or received compensation for the time spent by them in traveling from the entrance or mouth of the mine to the underground loading station and from the underground loading station to the entrance or mouth of the mine.

28. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Wood-

ward Iron Company's (or its predecessors') production employees employed as red ore miners have never been paid or received compensation for the time spent by them in traveling from the entrance or mouth of the mine to the underground loading station and from the underground loading station to the entrance or mouth of the mine.

29. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Tennessee Coal, Iron & Railroad Company's (or its predecessors') production employees employed as red ore miners have never been paid or received compensation for the time consumed by such employees in walking between the underground manloading station and the face of the seam and return.

30. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Republic Steel Corporation's (or its predecessors') production employees employed as red ore miners have never been paid or received compensation for the time consumed by such employees in walking between the underground manloading station and the face of the seam and return.

31. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Sloss-Sheffield Steel & Iron Company's (or its predecessors') production employees employed as red ore miners have never been paid or received compensation for the time consumed by such employees in walking between the underground manloading station and the face of the seam and return.

32. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Woodward Iron Company's (or its predecessors') production

employees employed as red ore miners have never been paid or received compensation for the time consumed by such employees in walking between the underground man-loading station and the face of the seam and return.

33. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Tennessee Coal, Iron and Railroad Company's (or its predecessors') company or service underground iron ore mining employees have never been paid or received compensation for time spent by them in being transported or in walking to and from their usual working place. √√

34. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Republic Steel Corporations' (or its predecessors') company or service underground iron ore mining employees have never been paid or received compensation for time spent by them in being transported or in walking to and from their usual working place.

35. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Sloss-Sheffield Steel & Iron Company's (or its predecessors') company or service underground iron ore mining employees have never been paid or received compensation for the time spent by them in being transported or in walking to and from their usual working place.

36. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Woodward Iron Company's (or its predecessors') company or service underground iron ore mining employees have never been paid or received compensation for time spent by them in being transported or in walking to and from their usual working place.

37. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Tennessee Coal, Iron and Railroad Company's (or its predecessors') company or service underground iron ore mining employees have never been paid or received compensation for the time spent by them in traveling from the entrance or mouth of the mine to the underground loading station and from the underground loading station to the entrance or mouth of the mine.

38. During the approximately 60-year history of iron ore mining in Birmingham, Alabama District, Republic Steel Corporation's (or its predecessors') company or service underground iron ore mining employees have never been paid or received compensation for the time spent by them in traveling from the entrance or mouth of the mine to the underground loading station and from the underground loading station to the entrance or mouth of the mine.

39. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Sloss-Sheffield Steel & Iron Company's (or its predecessors') company or service underground iron ore mining employees have never been paid or received compensation for the time spent by them in traveling from the entrance or mouth of the mine to the underground loading station and from the underground loading station to the entrance or mouth of the mine.

40. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, Woodward Iron Company's (or its predecessors') company or service underground iron ore mining employees have never been paid or received compensation for the time spent by them in traveling from the entrance or mouth

of the mine to the underground loading station and from the underground loading station to the entrance or mouth of the mine.

41. Company or service men have never been paid for any of the time actually spent in traveling to and from their underground stations.

42. It has always been the custom under which plaintiff paid its underground red ore mining employees not to pay them for any of the time spent in traveling to and from their particular stations.

43. Prior to the enactment of the Fair Labor Standards Act of 1938, plaintiff's underground iron ore mining employees never made any effort to obtain compensation for all of the time spent by them daily after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday.

44. Prior to the enactment of the Fair Labor Standards Act of 1938, plaintiff's underground iron ore mining employees never made any effort to obtain compensation for all of the time spent by them daily after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday, and during such time said employees made no effort to obtain compensation for all of such time and only made an effort to obtain compensation for a part of such time, and after the 13th day of June, 1935, never made any effort to obtain compensation for any of such time.

45. Prior to the enactment of the Fair Labor Standards Act of 1938, plaintiff's underground iron ore mining employees never made any effort to obtain compensation for all of the traveling time spent by them daily after re-

porting at the mouth of the mine until they left the mouth of the mine at the end of the workday, knew that they were not receiving compensation for such time, and during such time and with such knowledge signed either twice a month or four times a month written receipts (which did not include compensation for such traveling time) acknowledging payment in full for all compensation due to them from the plaintiff.

46. Finding of fact numbered 14 is at variance with and contrary, if not to the undisputed evidence, to the overwhelming weight of the evidence.

47. Prior to October 24, 1938, Tennessee Coal, Iron and Railroad Company's employees employed as red ore miners made to the management the following proposals or propositions for a written contract in reference to wages, hours, and conditions of employment, and relating to the question of receiving compensation for traveling time expended daily by them after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday, to which the management made the following replies:

(a) On October 19, 1933, a committee of seven men representing the ore mining employees of the Company who were members or were connected with the defendant locals affiliated with the International Union of Mine, Mill and Smelter Workers presented to the Company for its consideration six suggestions in reference to conditions of employment, three of these suggestions being as follows:

"4—Suggestion that men enter the mines on their own time and come out on Company time:

"5—Suggestion for an 8-hour day and 40-hour week and

"6—Suggestion that rates of pay be increased accordingly."

The Company made to these suggestions the following reply:

"These three suggestions are considered as one since they can be answered as such. The code adopted for moal mining is being followed very closely by this Company in connection with its ore mining operations and that code provides for 8 hours of work at the usual working place, exclusive of the lunch period, for a 40-hour week and for certain wage scales. While we do not propose the adoption of identical wage scales at the ore mines as those of coal mines, proper differentials are being maintained and adjustments have been made to insure a fair wage to each employee."

Tennessee Coal, Iron and Railroad Company's Exhibit No. 5 sets out in full the proposals made at this time and the Company's reply thereto.

(b) On April 13, 1934, officers and representatives of the defendant locals affiliated with the International Union of Mine, Mill and Smelter Workers presented and submitted to the Company, in representation of and in behalf of the iron ore employees of the Company who were connected with or members of the International Union of Mine, Mill and Smelter Workers, a written demand "in working agreements and wage scales" containing 22 separate demands. The eighth written demand thereof read as follows:

"8. In view of the fact that the Company can force the men to enter and leave the mines at any time stated by the Company, we ask the right to enter on our own time and leave on the Company's time."

In reference to this demand, the Company replied as follows:

"Item 8: When we changed the working time in the mines from ten hours to eight, we found that the average time spent at the face was about nine hours. We then adjusted the wage to equal nine hours pay for eight hours at the face or regular working place, so that we feel we have done all that you now request. There must be a regular starting time and quitting time for the orderly operation of the mine and we are convinced that our present policy is fair and proper."

Tennessee Coal, Iron and Railroad Company's Exhibits No. 6 and No. 7 set out in full the proposals made at this time, and the Company's replies thereto.

(c) On June 13, 1935, a committee consisting of the presidents and other officers of the three defendant locals affiliated with the International Union of Mine, Mill and Smelter Workers' presented in writing to the Company a copy of a proposed written contract containing 17 paragraphs. The ninth paragraph thereof read as follows:

"9. It is agreed that the employees shall enter the mine on their own time and come out on the Company's time."

The company replied in writing on June 24, 1935, declining to execute the contract.

Tennessee Coal, Iron and Railroad Company's Exhibits No. 9, 9(a), and 9(b) set out in full the proposals made at this time and the Company's replies thereto.

(d) On May 26, 1936, A. E. Horn, President, District No. 5, International Union of Mine, Mill and Smelter Workers, acting in behalf of the iron ore employees of the Company who were connected with or members of the International Union of Mine, Mill and Smelter Workers, presented and submitted to the Company a proposed written contract, consisting of 6 pages and entitled "Working Agreement in Reference to Wages, Hours of Service, and Conditions of Employment", and among such provisions was the following:

"The eight-hour day means eight hours in or about the mines at the usual working places for all classes of work —exclusive of the lunch period, whether they be paid by the day or paid by tonnage."

This proposed contract made no demand or suggestion that the underground mining employees of the plaintiff should receive compensation for any part of the traveling time expended daily by them after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday. On the contrary, it suggested to the Company that the men were to receive their compensation on the basis of an eight-hour day, meaning "eight hours in or about the mines at the usual working places."

Tennessee Coal, Iron and Railroad Company's Exhibits No. 10 and 10(a) set out in full the proposals for contract and a copy of the proposed contract.

The efforts set out and described above are the only efforts ever made by said employees relating to the question of receiving compensation for any part of the time expended daily by them in traveling after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday.

48. Prior to October 24, 1938, Republic Steel Corporation's employees employed as red ore miners made to the

management the following proposals or propositions for written contracts in reference to wages, hours, and conditions of employment, and relating to the question of receiving compensation for traveling time expended daily by them after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday, to which the management made the following replies:

(a) On September 30, 1933, International Union of Mine, Mill and Smelter Workers, Raimund Local No. 121, handed to Mr. N. E. Thompson, Superintendent of the Raimund Ore Mine of Republic Steel Corporation, a letter in which there was incorporated thirteen separate demands. Demand No. 6 was as follows:

"The men enter the mine on their own time and come out of the mine on the Company time."

This demand No. 6 was not mentioned or brought up at the meeting between the Union and the Company which subsequently considered these thirteen demands.

Republic Steel Corporation's Exhibit No. 3 sets out these demands in full.

(b) On March 13, 1934, a committee of men, purporting to be the chosen representatives of more than 90% of the Republic Steel Corporation's employees at their Raimund mines, and members of Raimund Red Ore Local No. 121, International Union of Mine, Mill and Smelter Workers, presented and submitted in writing to the Republic Steel Corporation a proposal containing 22 separate demands (these demands are set forth fully in Republic Steel Corporation's Exhibit No. 4). Among these demands, No. 10 reads as follows:

"That the men not be required to enter and leave their place of work on their own time."

In subsequent discussions with the Company's representatives demand No. 10 was not discussed, and the work time remained on a "face to face" basis, which did not include any compensation for traveling time.

(c) On or about June 18, 1935, representatives of Raimund Local No. 121 of the International Union of Mine, Mill and Smelter Workers presented and submitted for consideration a proposed agreement (Republic Steel Corporation's Exhibit No. 6 sets out in full the proposal. Provision No. 9 reads as follows:

"It is agreed that the employee shall enter the mines on their own time and come out of the mine on the Company's time."

The Company in reference to this proposal replied as follows:

"* * * these requests or demands, as set out, are denied."

The Company's reply is set out in full in Republic Steel Corporation's Exhibit No. 8.

(d) On May 26, 1936, A. E. Horn, President, District No. 5, International Union of Mine, Mill and Smelter Workers, presented and submitted to the Company a proposed written contract, consisting of 6 pages and entitled "Working Agreement in Reference to Wages, Hours of Service, and Conditions of Employment", and among such provisions was the following:

"The eight-hour day means eight hours in or about the mines at the usual working places for all classes of work—exclusive of the lunch period, whether they be paid by the day or be paid by tonnage."

This proposed contract made no demand or suggestion that the underground mining employees of the plaintiff should receive compensation for any part of the traveling time expended daily by them after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday. On the contrary, it suggested to the Company that the men were to receive their compensation on the basis of an eight-hour day, meaning "eight hours in or about the mines at the usual working places."

Republic Steel Corporation's Exhibit No. 7 sets out in full the proposals for contract and a copy of the proposed contract.

The efforts set out and described above are the only efforts ever made by said employees relating to the question of receiving compensation for any part of the time expended daily by them in traveling after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday.

49. Prior to October 24, 1938, Sloss-Sheffield Steel & Iron Company's employees employed as red ore miners made to the management the following proposals or propositions for written contracts in reference to wages, hours, and conditions of employment, and relating to the question of receiving compensation for traveling time expended daily by them after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday, to which the management made the following replies:

(a) On April 13, 1934, officers and representatives of the defendant locals affiliated with the International Union of Mine, Mill and Smelter Workers presented and submitted to the Company, in representation of and in behalf of the iron ore employees of the Company who were connected with or members of the International Union of Mine, Mill and Smelter Workers, a written demand "in working agreements and wage scales" containing 22 separate demands. The eighth written demand thereof read as follows:

"8. In view of the fact that the Company can force the men to enter and leave the mines at any time stated by the Company, we ask the right to enter on our own time and leave on the Company's time."

The Company declined to execute or make the contract as thus proposed, and no insistence was made for this demand.

Sloss-Sheffield Steel & Iron Company's Exhibit No. 1 sets out in full the proposals made at this time.

(b) In June 1935 representatives of the Sloss Red Ore Local No. 109, International Union of Mine, Mill and Smelter Workers, on behalf of the iron ore employees of the Company who were connected with or members of defendant Local No. 109, presented and submitted to the Company for consideration a proposed agreement. Proposal No. 11 reads as follows:

"It is agreed that the employees shall enter the mines on their own time and come out of the mines on the Company's time."

The Company declined to execute or make the contract as thus proposed.

Sloss-Sheffield Steel & Iron Company's Exhibit No. 3 sets out the proposals in full.

(c) On May 26, 1936, A. E. Horn, President, District No. 5, International Union of Mine, Mill and Smelter Workers, acting in behalf of the iron ore employees of the Company who were connected with or members of the International Union of Mine, Mill and Smelter Workers, presented and submitted to the Company a proposed written contract, consisting of 6 pages and entitled "Working Agreement in Reference to Wages, Hours of Service, and Conditions of Employment", and among such provisions was the following:

"The eight-hour day means eight hours in or about the mines at the usual working places for all classes of work —exclusive of the lunch period, whether they be paid by the day or paid by tonnage."

This proposed contract made no demand or suggestion that the underground mining employees of the plaintiff should receive compensation for any part of the traveling time expenses daily by them after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday.

Sloss-Sheffield Steel & Iron Company's Exhibit No. 7 sets out in full the proposals for contract and a copy of the proposed contract.

(d) In August, 1938, the mine committee of the Sloss ore mine, composed of John Hill, W. A. O'Neil, Jessie Gaines, as local representatives of Local No. 109 presented and submitted to the Company for consideration 31 demands.

None of the written demands asked for compensation for travel time expended daily by the Company's underground ore mining employees after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday, nor was any suggestion or demand made in the subsequent meeting between the employees' representatives and the Company.

The demands are set out in full in Sloss-Sheffield Steel & Iron Company's Exhibit No. 12.

The efforts set out and described above are the only efforts ever made by said employees prior to Oct. 24, 1938, relating to the question of receiving compensation for any part of the time expended daily by them in traveling after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday.

50. Prior to October 24, 1938, Woodward Iron Company's employees employed as red ore miners made to the management the following proposals or propositions for written contracts in reference to wages, hours, and conditions of employment, and relating to the question of receiving compensation for traveling time expended daily by them after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday, to which the management made the following replies:

(a) On April 13, 1934, officers and representatives of Lipscomb Red Ore Local No. 103, affiliated with the International Union of Mine, Mill and Smelter Workers, on behalf of its iron ore members who were employees of the Woodward Iron Company, presented and submitted to the Company a written demand containing 22 separate demands, the eighth demand thereof reading as follows:

"8. In view of the fact that the Company can force the men to enter and leave the mines at any time stated by the Company, we ask the right to enter on our own time and leave on the Company's time."

The Woodward Company refused to comply with the demand.

The demands are set out in full in Sloss-Sheffield Steel & Iron Company's Exhibit No. 25.

(b) In June, 1936, the General Committee of Local 103, International Union of Mine, Mill and Smelter Workers, presented and submitted to Woodward Iron Company a proposed working agreement between that Company and their employees, members of the International Union of Mine, Mill and Smelter Workers. Among the proposals was the following:

"The eight-hour day means eight hours in or about the mines at the usual working places for all classes of labor —exclusive of the lunch period, whether they be paid by the day or paid by tonnage."

This proposed contract made no demand or suggestion that the underground mining employees of the Company should receive compensation for any part of the traveling time expended daily by them after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday.

Sloss-Sheffield Exhibit No. 27 sets out in full the proposed agreement referred to.

(c) On May 31, 1937, representatives for Lipscomb Red Ore Local 103, affiliated with the International Union of Mine, Mill and Smelter Workers, presented and submitted to Woodward Iron Company a proposed agreement which contained no suggestion or demand that the underground ore mining employees of that Company should receive compensation for any part of their travel time expended daily by them after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday:

Sloss-Sheffield Exhibit No. 29 sets out in full the proposed agreement referred to.

(d) In September, 1938, the Red Ore Committee of the International Union of Mine, Mill and Smelter Workers, presented and submitted to the Woodward Iron Company for consideration a proposed contract. This proposed contract made no demand or suggestion as to payment for travel time.

Sloss-Sheffield Exhibit No. 31 sets out in full the proposed agreement referred to.

The efforts set out and described above are the only efforts ever made by said employees prior to October 24, 1938, relating to the question of receiving compensation for any part of the time expended daily by them in traveling after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday.

51. Subsequent to October 24, 1938, Sloss-Sheffield Steel & Iron Company's employees employed as red ore miners made to the management the following proposals for written contracts in reference to wages, hours, and

conditions of employment, and relating to the question of receiving compensation for traveling time expended daily by them after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday:

(a) In August 1939 a proposed agreement was submitted to the Company by representatives of the Sloss Red Ore Local 109, affiliated with the International Union or Mine, Mill and Smelter Workers. The proposed agreement contained no reference to payment of travel time. This agreement is set out in full in Sloss-Sheffield Steel & Iron Company's Exhibit No. 14.

(b) On August 30, 1940, there was presented to the Company by representatives of the Sloss Red Ore Local No. 109 of the International Union of Mine, Mill and Smelter Workers a proposed agreement. This proposed agreement contained, among other things, the following:

"Provided, further, that a day's work shall mean eight hours, including the time entering and leaving the mine, and exclusive of lunch period."

This proposed agreement is contained in Sloss-Sheffield Steel & Iron Company's Exhibit No. 16.

The Company declined to execute this agreement as proposed.

The above constitute all of such proposals presented to Sloss Co. subsequent to Oct. 24, 1938.

52. Subsequent to October 24, 1938, Woodward Iron Company's employees employed as red ore miners made to the management the following proposals for written

contracts in reference to wages, hours, and conditions of employment, and relating to the question of receiving compensation for traveling time expended daily by them after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday:

(a) On March 10, 1939, Lipscomb Red Ore Local No. 103, affiliated with International Union of Mine, Mill and Smelter Workers, presented to Woodward Iron Company proposed agreement in which, among other things, there was contained the following clause:

"Eight hours a day shall mean eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on a tonnage basis."

This proposed agreement contained no demand that the employee be paid for travel time.

Sloss-Sheffield Steel & Iron Company's Exhibit No. 32 sets out in full the proposed agreement.

(b) On September 1, 1939, Lipscomb Red Ore Local No. 103, affiliated with the International Union of Mine, Mill and Smelter Workers, presented to Woodward Iron Company a proposed agreement in which, among other things, there was contained the following clause:

"Eight hours a day shall mean eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on a tonnage basis."

There is no provision contained in this proposal that employees be compensated for any portion of their travel time.

Sloss-Sheffield Steel & Iron Company's Exhibit No. 33 sets out in full the provisions of this proposal.

(c) On November 6, 1940, Lipscomb Red Ore Local No. 103, affiliated with the International Union of Mine, Mill and Smelter Workers, presented to Woodward Iron Company a proposed agreement. There was contained in this proposal the following provision:

"Provided time worked shall be computed from collar to collar. That is to say, the employees shall be paid for all time in each day they are required to be on the premises of the Company, except, of course, lunch period when so provided."

The Company declined to execute this agreement as proposed.

Sloss-Sheffield Steel & Iron Company's Exhibit No. 35 sets out in full the proposals contained in this proposed agreement.

The above constitute all of such proposals presented to Woodward Company subsequent to Oct. 24, 1938.

53. Tennessee Coal, Iron and Railroad Company, prior to the commencement of the trial of this case, entered into the following described written contracts with certain of its iron ore mining employees represented by the following described representatives and containing, among other things, the following described agreements:

(a) On October 6, 1938, a contract was entered into between the Company and the International Union of Mine, Mill and Smelter Workers on behalf of its members employed by the Company, signed on behalf of the International Union of Mine, Mill and Smelter Workers by Reid Robinson, Van D. Jones, C. J. McDaniel, E. T. Patterson, J. M. Lemley, and Frank Allen, officers and representatives of said Union, and on behalf of the Company by E. M. Ball, General Superintendent of Ore Mines.

Section 4 of the contract relating to hours of work was as follows:

"Section 4—Hours of Work. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.

"The eight (8) hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

Tennessee Coal, Iron & Railroad Company's Exhibit No. 14 sets out in full said contract.

(b) On May 31, 1937, a contract was entered into between the Tennessee Coal, Iron and Railroad Company and the Brotherhood of Mine Workers of Captive Mines (the predecessors of defendant locals of the Red Ore Miners Union, affiliated with the American Federation of Labor) on behalf of its members employed by the Company, and signed as representatives of those employees who are members of the Brotherhood of Mine Workers of Captive Mines, Ore Mines Division, by Stanley I. Hudnall, E. A. Best, T. J. Massey, Paul Dumas, J. W. Wilson, John McGhee, J. Smith, and Julian Hicks, officers of said

Union, and on behalf of the Company by E. M. Ball, General Superintendent, Ore Mines, and J. F. Vance, Manager of Industrial Relations.

Section 4 of the agreement relating to hours of work contained the following provisions:

"Section 4—Hours of Work. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.

"The eight (8) hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

Tennessee Coal, Iron and Railroad Company's Exhibit No. 18 sets out in full said contract.

(c) On June 15, 1938, a contract was entered into between the Tennessee Coal, Iron and Railroad Company and the Brotherhood of Mine Workers of Captive Mines (the predecessor of defendant locals of the Red Ore Miners Union affiliated with the American Federation of Labor) on behalf of its members employed by the Company, and signed as representatives of those employees who are members of the Brotherhood of Mine Workers of Captive Mines, Ore Mines Division, by J. W. Wilson, E. A. Best, T. J. Massey, I. V. Robinson, W. R. Maxwell, Stephen Jackson, James A. Bailey, and Hays Judkin, Sr., officers of said Union, and on behalf of the Company by E. M. Ball, General Superintendent, Ore Mines, and J. F. Vance, Manager of Industrial Relations.

Section 4, relating to hours of work, contained provisions identical with Section 4 of the contract of May 31, 1937.

Tennessee Coal, Iron and Railroad Company's Exhibit No. 19 sets out in full said contract.

(d) On June 29, 1939, a contract was entered between the Tennessee Coal, Iron and Railroad Company and the Red Ore Miners Union, affiliated with the American Federation of Labor (the successor of the Brotherhood of Mine Workers of Captive Mines), on behalf of its members employed by the Company, and signed by S. E. Roper, J. W. Wilson, T. J. Massey, Willis Cole, W. R. Maxwell, John McGhee, James A. Bailey, and George E. Moon, officers of such union, and on behalf of the Company by E. M. Ball, General Superintendent, Ore Mines, and J. F. Vance, Manager of Industrial Relations.

Section 4 of this contract, relating to hours of work, contained the following provision:

"Section 4—Hours of Work. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.

"The eight (8) hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

On December 23, 1940, this contract was extended by an agreement on behalf of the Red Ore Miners, signed by J. W. Wilson, Chairman, Executive Committee, on behalf of the Union, and by W. J. Kelly, Acting Manager of Industrial Relations, on behalf of the Company, to January 31, 1941.

Tennessee Coal, Iron and Railroad Company's Exhibit No. 20 sets out in full said contract.

(e) On May 5, 1941, an agreement was entered into between the Tennessee Coal, Iron and Railroad Company and the International Union of Mine, Mill and Smelter Workers on behalf of its members employed by the Company, and signed on behalf of the International Union of Mine, Mill and Smelter Workers by Allen D. McNeil, Van D. Jones, Frank Allen, W. C. Gunnin, and E. A. Sizemore, officers and representatives of said Union, and on behalf of the Company by E. M. Ball, General Superintendent, Ore Mines, and W. J. Kelly, Acting Manager of Industrial Relations.

Section 4, relating to hours of work, contained the following provisions:

"Section 4. * * *

"b. The normal hours of work shall be eight (8) per day and forty (40) per week. The daily hours of work shall be consecutive except for such rest periods as may be provided in accordance with practices heretofore prevailing in the ore and limestone mines of the Company.

"c. The eight (8) hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch or rest periods as provided for in (b) above, whether they be paid for the day or be paid on the tonnage basis, less such traveling time as is reasonably necessary for the employees to go to and from their usual working place, such traveling time starting when the employee is required to report for transportation at the entrance of the mine and ending when he returns to that point."

Tennessee Coal, Iron and Railroad Company's Exhibit No. 51 sets out in full said contract.

The above described written contracts constitute all of written contracts executed by TCI with representatives of its employees.

54. Republic Steel Corporation at no time prior to the commencement of the trial of this action entered into any written contracts between itself and any union of its said ore mining employees.

55. Sloss-Sheffield Steel & Iron Company, prior to the commencement of the trial of this case, entered into the following described written contracts with certain of its iron ore mining employees represented by the following described representatives and containing, among other things, the following described agreements:

(a) On July 21, 1936, a contract was entered into between the Sloss-Sheffield Steel & Iron Company and representatives of employees of its red ore mines, signed on behalf of the employees by John Hill, Jessie Gaines, W. A. O'Neill, and W. H. Gunter, employees' representatives, and on behalf of the Company by Ben Davis.

Section No. 11(a) of the contract, relating to hours of work, was as follows:

"An eight-hour day and five days per week for employees shall prevail, exclusive of the lunch period. The eight-hour day means eight hours of work at the usual working places, exclusive of the lunch period."

Sloss-Sheffield Steel & Iron Company's Exhibit No. 8 sets out in full said contract.

(b) On September 13, 1937, a contract was entered into between Sloss-Sheffield Steel & Iron Company and representatives of employees of its red ore mines, signed on behalf of the employees by John Hill, W. A. O'Neill, and Jessie Gaines, employees' representatives, and on behalf of the Company by Ben Davis.

Section 11(a) of the contract, relating to hours of work, was as follows:

"11(a). An eight-hour day and five days per week for employees shall prevail, exclusive of the lunch period. The eight-hour day means eight hours of work at the usual working places."

Sloss-Sheffield Steel & Iron Company's Exhibit No. 9 sets out in full said contract.

(c) On October 3, 1938, the contract referred to in (b) above was extended for twelve months and the expiration date changed to September 13, 1939. See Sloss-Sheffield Steel & Iron Company's Exhibit No. 13.

(d) On September 9, 1938, a contract was entered into between Sloss-Sheffield Steel & Iron Company and Sloss Red Ore Local No. 109, International Union of Mine, Mill and Smelter Workers, signed on behalf of Sloss Red Ore Local No. 109 by John Hill, Jessie Gaines, W. H. Gunter, of Executive Committee, and Van D. Jones, Board Member, District No. 5, International Union of Mine, Mill and

Smelter Workers, and on behalf of the Company by Ben Davis.

Section 5(a) of the contract, relating to hours of work, was as follows:

"Eight hours of work per day shall constitute a day's work and forty hours shall constitute a week's work. The eight-hour day means eight hours of work at the usual working place, exclusive of lunch period."

Sloss-Sheffield Steel & Iron Company's Exhibit No. 15 sets out in full said contract.

(e) On September 11, 1940, a contract was entered into between Sloss-Sheffield Steel & Iron Company and Sloss Red Ore Local No. 109, International Union of Mine, Mill and Smelter Workers, signed on behalf of Sloss Red Ore Local No. 109 by John Hill, Jessie Gaines, W. A. O'Neill, of Executive Committee, and Van D. Jones, Board Member, District No. 5, International Union of Mine, Mill and Smelter Workers, and on behalf of the Company by Roy Ratliff, General Manager.

Section 4(a) of the contract, relating to hours of work, was as follows:

"Eight hours work per day shall constitute a day's work and forty hours shall constitute a week's work. The eight-hours per day means eight hours of work at the usual working place, exclusive of the lunch period."

Sloss-Sheffield Steel & Iron Company's Exhibit No. 18 sets out in full said contract.

(f) On March 17, 1941, Ruffner Iron Ore Miners Union No. 512 of the International Union of Mine, Mill & Smelter-Workers, signed by Ruffner Iron Ore Miners Union No. 512 by Frank Parker, President, Hosea Bickerstaff, Vice-President, George F. Drummond, Chairman, Executive Board, and Van D. Jones, Board member, District No. 5, International Union of Mine, Mill and Smelter Workers, and on behalf of the Company by Roy Ratliff, General Manager.

Section 4(a) of the contract, relating to hours of work, was as follows:

"Eight hours per day shall constitute a day's work and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period."

Sloss-Sheffield Steel & Iron Company's Exhibit No. 51 sets out said contract in full. The above described written contracts constitute all of the written contracts executed by Sloss-Sheffield Steel & Iron Company with representatives of its employees.

56. Woodward Iron Company, prior to the commencement of the trial of this case, entered into the following described written contracts with certain of its iron ore mining employees represented by the following described representatives and containing, among other things, the following described agreements:

(a) On October 2, 1937, a contract was entered into between Woodward Iron Company and Lipscomb Red Ore Local No. 103 for members of the International Union of Mine, Mill and Smelter Workers.

Among the provisions of this contract were the following sections:

"1. Eight hours shall constitute a maximum schedule day's work and forty hours a maximum schedule week's work.

"2. Time and one-half shall be paid for all time in excess of eight hours in any one day and for all time in excess of forty hours in any one week."

Sloss-Sheffield Steel & Iron Company's Exhibit No. 30 sets out said contract in full.

(b) On November 13, 1939, a contract was entered into between Woodward Iron Company and Lipscomb Red Ore Local No. 103, International Union of Mine, Mill and Smelter Workers, on behalf of the members employed by the Company in its ore mine located at Lipscomb, Jefferson County, Alabama, signed on behalf of said union by Van D. Jones, J. L. Robinson, John Crumpton, Oliver Johnson, and Will Rencher, officers of said union, and on behalf of the Company by H. A Berg, President.

Section 4 of said contract, relating to hours of work, was as follows:

"Section 4—Hours of Work. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week."

Sloss-Sheffield Steel & Iron Company's Exhibit No. 34 sets out in full said contract.

(c) On December 30, 1940, a contract was entered into between Woodward Iron Company and Lipscomb Red

Ore Local No. 103, International Union of Mine, Mill and Smelter Workers, on behalf of the members employed by the Company in its ore mine located at Lipscomb, Jefferson County, Alabama, signed on behalf of said union by Van D. Jones, J. L. Robinson, Will Colvin, John Crompton, Carl Vanderburg, Jewett Warren, Will Rencher, and John W. White, officers of said Union, and on behalf of the Company by H. A. Berg, President.

Section 4 of said contract, relating to hours of work, was as follows:

"Section 4—Hours of Work. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight hours in any one day or for all overtime in excess of forty (40) hours in any one week."

Sloss-Sheffield Steel & Iron Company's Exhibit No. 36 sets out said contract in full.

The above described written contracts constitute all of the written contracts executed by Woodward Company with representatives of its employees.

57. During the period of the pendency of each of the written contracts as described in the above numbered findings from 53 through 56, inclusive, the Tennessee Coal, Iron and Railroad Company, Sloss-Sheffield Steel & Iron Company, and Woodward Iron Company, respectively, and Woodward Iron Company, respectively, and their respective employees, operated under the respective contracts in regard to wages, hours of service, and conditions of employment.

58. The words: "the eight-hour day means eight hours of work in and about the mines at the usual working places for all classes of labor" as they appear in the contracts described in the above findings from 53 through 56, inclusive, were at all times understood by the contracting parties to mean that the underground iron ore mining employees should not receive any compensation for any of the time expended daily by them in traveling after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday.

59. Prior to the enactment of the Fair Labor Standards Act of 1938, plaintiff's underground iron ore mining employees never made any effort to obtain compensation for all of the traveling time spent by them daily after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday. They knew they were not receiving compensation for such traveling time and with such knowledge signed either twice a month or four times a month written receipts (which did not include compensation for such traveling time) acknowledging payment in full for all compensation due to them from the plaintiff at the time of the signing of such receipts.

60. After the 13th day of June, 1935, up to and including October 24, 1938, plaintiff's underground iron ore mining employees never made any effort to obtain compensation for any of the traveling time spent by them daily after reporting at the mouth of the mine until they left the mouth of the mine until they left the mouth of the mine at the end of the workday. They knew they were not receiving compensation for such traveling time and with such knowledge signed either twice a month or four times a month written receipts (which did not include compensation for such traveling time) acknowledg-

ing payment in full for all compensation due to them from the plaintiff at the time of the signing of such receipts.

61. Prior to October 24, 1938, it has been substantially the universal custom in all of the iron ore underground mines in the United States that the underground miners therein should not receive compensation for traveling time.

62. Prior to October 24, 1938, the underground ore mining employees did not receive in any of the iron ore mines of the United States (so far as this evidence discloses) compensation for traveling time expended daily by them after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday.

63. Prior to October 24, 1938, in all of the iron ore mines of the United States (so far as this evidence discloses) underground ore mining employees have always been paid on the basis of their time being computed at their usual working places, and have never been paid for all of the time spent by them in being transported or in of the time spent by them in being transported or in traveling to and from such usual working place.

64. Since the year 1933, and until May 1, 1941, Tennessee Coal, Iron and Railroad Company's employees employed as red ore miners have been paid compensation upon a basis which computed the compensation on the number of hours to be spent daily by said employees at the face of the ore seam or specified places or stations in the mines. This compensation, during such period of time, was based upon a precise number of hours to be spent daily at the face of the seam or at a specified place or station in the mines. During such

period, if such employees spent more than the number of such hours to be spent at the face of the ore seam or at the specified place or station in the mines, they received compensation for overtime for such excess. If they spent less than the number of such hours to be spent at the specified place or station in the mines, they received compensation for the period of hours upon which their compensation was computed.

65. In the year 1933 plaintiff, Tennessee Coal, Iron and Railroad Company, instituted in all of its underground iron ore mines the eight-hour day, and since such time, up until May 1, 1941, all of its underground ore mining employees have had their compensation computed, and have received compensation on the basis of eight hours of work daily at their usual working place and excluding traveling time, and if, during such time, any of such employees worked more than eight hours daily at their usual working places, such employees received overtime compensation therefor; and if any of such employees worked less than eight hours at their usual working places, they received compensation for the eight hours.

66. Since the year 1933, and until May 1, 1941, the job of each underground ore mining employee of the Tennessee Coal, Iron and Railroad Company was evaluated by the Company on the basis of eight hours daily work by such employee at the usual working place, and the compensation received by such employee was computed on such basis.

67. Since October 24, 1938, the underground ore mining employees of the plaintiff have at all times been paid by the plaintiff and received compensation in excess of thirty cents per hour for each hour spent by such employee underground.

68. Since October 24, 1938, all of the underground ore mining employees of the plaintiff have received compensation in excess of the minimum required by the Act.

69. Since October 24, 1938, and until May 1, 1941, plaintiff has paid its underground ore mining employees in excess of the minimum compensation required by the Act, and has paid such employees time and a half for all overtime, in strict compliance with the provisions of the Act, the working time of such employees being computed on the basis of the time spent at the usual working place, not including traveling time.

70. Since January, 1937, and until May 1, 1941, the minimum rate per hour paid by the plaintiff, Tennessee Coal, Iron and Railroad Company, to its underground ore mining employees has been 54½ cents per hour, and the average rate for all such employees has been not less than 68 cents per hour, their time being computed on the basis of time spent at their usual working places; and during such time the plaintiff has paid its employees at the rate of time and a half for all overtime spent in excess of eight hours, excluding travel time.

71. At all times since October 24, 1938, and until May 1, 1941, the minimum rate paid by the plaintiff, Tennessee, Coal, Iron and Railroad Company, to its underground ore mining employees has been 54½ cents per hour and the average rate paid all of its said employees has been not less than 68 cents per hour, with time and a half paid at said regular rates for all overtime in excess of 44 hours per week from October 24, 1938, to October 24, 1939, 42 hours from October 24, 1939, to October 24, 1940, and 40 hours since October 24, 1940 and until May 1, 1941, the time being computed and paid upon the basis

of time spent at their usual working places and excluding traveling time.

72. Prior to October 24, 1938, the plaintiff, in the sale of its manufactured products into which ore produced in its iron ore mines went as an ingredient, was in competition with other manufacturers of like production in other portions of the United States.

73. Prior to October 24, 1938, the plaintiff, in the sale of its manufactured products into which ore produced in its iron ore mines went as an ingredient, was in competition with other Alabama manufacturers of like products.

74. All wage scales of the plaintiff which have been in force and effect since 1933, and until May 1, 1941, have been based upon eight hours of work at the "usual working places", excluding traveling time.

75. All wage scales of the plaintiff which have been in force and effect since 1933, and until May 1, 1941, have been based upon eight hours of work at the usual working places, and all written contracts executed between plaintiff and the Union local defendants have been based upon such eight-hour day.

76. During the period of time between October 24, 1938, and May 1, 1941, the average number of Tennessee Coal, Iron & Railroad Company's underground ore mining employees was approximately 2,650, of which number approximately 60% were service or company employees and 40% were production employees.

77. During the period of time between October 24, 1938, and May 1, 1941, the average number of Republic

Steel Corporation's underground ore mining employees at its Raimund Mines was approximately 580, of which number approximately 46% were service or company employees and 54% were production employees.

(a) Sloss-Sheffield Steel & Iron Company, prior to May 1, 1941, employed approximately 360 men at its Sloss Red Ore Mine, which has been in operation continuously for many years prior to said date; of the 360 men so employed approximately 36% were service or company employees and approximately 64% were production employees. Sloss-Sheffield Steel & Iron Company at the same time employed approximately 120 men at its Ruffner Red Ore Mine, which was put into operation in the Summer of 1940 for the first time in many years; of such employees approximately 75% were production men and approximately 25% were service employees.

(b) In April or May of 1941 Woodward Iron Company employed approximately 540 men underground, of which approximately 60% were production employees and approximately 40% were service or company men.

The Republic Steel Corporation had in its job classification of underground ore mining employees approximately 51 different occupations at its Raimund Mine and approximately 32 different occupations at its Spalding Mine.

80. The conditions found in Findings of Fact Numbers 15 to 27, inclusive, as relating to and covering the period between October 24, 1938, and May 1, 1941, existed in all substantial effect during the approximately sixty-year history of iron ore mining in the Birmingham, Alabama District.

81. Plaintiff objects to the separate and several findings as set forth in the Findings of Fact numbered from

16 to 27, inclusive, on the separate and several grounds heretofore stated, and on the following separate and several additional grounds:

(a) Such findings apply to all of the underground ore mining employees of the plaintiff, whereas the evidence shows that the facts so found apply only to a small portion of such employees.

(b) Such findings apply to all of the underground ore mining employees of the plaintiff, whereas the evidence shows that they only apply to some of the production employees.

(c) Such findings apply to all of the underground ore mining employees of the plaintiff, whereas the evidence shows that they only apply to some of the service employees.

(d) Such findings are made as being typical of all of the underground mining employees and as of frequent occurrence, whereas the evidence shows that the facts so found are exceptional, instead of typical, and are occasional, instead of frequent.

(e) Such findings apply to all of the underground ore mining employees of the plaintiff at each of its ore mines, whereas the evidence shows that the facts so found do not apply to such employees at other ore mines of the plaintiff.

(f) Such findings do not fairly find the facts.

(g) The evidence does not support the finding of fact in Finding of Fact No. 16, which reads as follows:

"These employees reported for duty,"

in that the evidence shows that as to most, if not all, of such employees, they reported only for transportation to their working places.

(h) The evidence does not support the finding of fact in Finding of Fact No. 17, which reads as follows:

"Plaintiff's employees occasionally obtain and return tools,"

in that the evidence shows that not all, but only a few of such employees occasionally, obtain and return tools.

(i) The evidence does not support the separate and several findings of fact in Finding of Fact No. 18, which reads as follows:

"These employees are daily subject to receive instructions from plaintiff relative to the duties of their employment—They are frequently given their first instructions of the day prior to entering the slope of the mine."

"The head miners are given advice about the operation of their underground stations. The head miner of a crew foreman begins to assemble his crew, to fill any vacancies, and to issue orders to its members,"

in that the evidence shows that only a few, and not all, of said employees thus received instructions from plaintiff, and those who did receive such instructions received them occasionally, and not daily, and the instructions given were in relation to places of work and conditions of these places, and not in reference to the performance of duties at these places of work, and only a few of the head miners, and none of the crew-foremen, began to assemble crews, or fill vacancies, or issue orders to its members.

(j) The evidence does not support the findings of fact in Finding of Fact No. 18, which reads as follows:

"The check-in board or the actual checking-in at the tally house informs officers or plaintiffs that members of the respective crews have reported for work, and these employees are forbidden to the plaintiff's mine until their brass checks have been deposited or until they have been checked-in at the tally house. * * * At this point vacancies in working crews are ordered filled by Company officials.",

in that the finding fails to state, though the undisputed evidence so shows, that the depositing at the entrance and taking up upon exit of checks has been a custom, not only as found within the period from October 24, 1938, to May 1, 1941, but for approximately 50 years prior thereto; that such checking-in was not for the purpose of informing officials of plaintiff that members of the respective crews had reported for work, but was to enable the Company for purposes of safety to have information as to what men had entered the mines and what men had made their exit therefrom, and to enable the foreman to supply vacancies occasionally on the surface, but usually by telephone or messages sent inside.

(k) The evidence does not support the findings of fact in Finding of Fact No. 19, in that the conditions therein found to have existed in all of the underground mines are not correctly or fairly stated. Said conditions are stated only as having existed during the period of time between October 24, 1938, to May 1, 1941, although the undisputed evidence shows that such conditions (with the exception that there has been improvement in recent years) have always substantially existed in the ore mines in the Birmingham, Alabama, District; said conditions are stated as if they applied particularly to the iron ore mines in the Birmingham, Alabama, District, although the undisputed evidence shows that they were not conditions peculiar to these mines, but were conditions in reference to which underground employees in all iron ore mines in the United States were subject, and were no worse in the Alabama mines, or, as stated in the opinion of the Court:

> "These conditions may well be normal conditions in iron ore mines, and practically inevitable,"

said conditions are stated as if, as a proximate result thereof, the underground ore mining employees have been frequently injured, their health undermined, and bodies maimed or lives lost, although the evidence establishes that injuries received as a proximate result of any of such conditions have been occasional, instead of frequent, and resulted not from the existence of the conditions, but because of the lack of care on the part of the persons injured; said conditions have been stated as if the air, ventilation, and heat in plaintiff's mines were so poor and bad as to endanger life, body, and health, when the evidence discloses that as a matter of fact the ventilation, instead of being relatively poor, has been normally good, and the temperature in the mine, instead of being a matter of danger or discomfort, has in the main been uniform, and certainly not abnormal; said conditions are stated as if they existed in all of plaintiff's ore mines, when the evidence shows without contradiction that in some of these mines most, if not all, of such conditions did not exist at all.

(l) The evidence does not support the findings of fact in Findings of Fact No. 20, in that the evidence shows that only a few of the employees reported at the mouth of the mines for any purpose other than to deposit their checks, and because the finding fails to state, although the undisputed evidence shows, that such employees were not required to report to their immediate superiors and were not required (with the possible exception of drillmen) to catch any particular trip, but had the privilege of riding on any trip they elected to ride on, provided they reached their usual place of work at the time computation of the workday began.

(m) The evidence does not support the findings of fact in the separate and several Findings of Fact numbered 21, 22, 23, 24, 25, 26, and 27, in that the findings read as if the underground ore mining employees of plaintiff were at all times, during the conditions set forth, under the supervision, control, and rules of the plaintiff, and all of the time are subject to the conditions set forth in such findings, as if conditions had existed only during the period of time from October 24, 1938, to May 1, 1941, as if all underground employees at all mines were subject to such control, rules and conditions, and as if the conditions were abnormal and of constant occurrence, instead of being normal and occasional or exceptional occurrences, when the evidence shows that such employees when traveling in the vehicle or in walking to their usual places of work were never under the orders, supervision, or control of their bosses who had charge of them when they began their work at their usual places of work, were never subject to any rules or any control or any discipline while being transported which did not relate solely to the safety of all who were riding on the vehicle, that the conditions in reference to supervision, control and physical conditions of mines, roofs, etc., had existed many years prior to October 24, 1938, and have been substantially the same, any change therein having been an improvement; that only a part of the employees in all of the mines were subject to such orders, control, conditions or dangers, and that none of the employees in some of the mines were so subjected, and said conditions, instead of being unusual or peculiar to mines in the Alabama District were normal, if not better, than iron ore mines generally throughout the United States, and particularly in Minnesota.

82. Plaintiff objects to the separate and several findings as set forth in the Findings of Fact numbered 28 and 29 on the separate and several grounds heretofore stated, and on the following separate and several additional grounds:

(a) Said findings relate to issues which were not set for trial and have never been tried by this Court;

(b) They adjudicate matters as to which plaintiff has never had its day in Court;

(c) They adjudicate matters as to which evidence was not offered on the trial of the sole issue which has been tried, namely, as stated by the Court: "What I am going to try to determine is what constitutes a 'workweek.'"

83. All underground ore mining employees of the plaintiff, on entering the mine, could catch such trip of the several trips operated by the plaintiff as he wished to catch, provided he reached his usual working place not later than 6:45 A. M. or 6:45 P. M., depending on whether he worked on the day shift or the night shift.

84. All underground ore mining employees of the plaintiff, on entering the mine, could catch such trip of the several trips operated by the plaintiff as he wished to catch, provided he reached his usual working place not

later than the time used by the employer for the purpose of computing his workday.

85. The only supervision or control that the plaintiff exercised over the loading of the men into the vehicles in which they were transported in and out of the mine and the only rules of conduct prescribed and in force during the trips in and out of the mines were those relating to the safety of the men riding in the vehicles.

86. The only supervision or control that the plaintiff exercised over the loading of the men into the vehicles in which they were transported in and out of the mine and the only rules of conduct prescribed and in force during the trips in and out in such vehicles were those relating to the safety of the men riding in the vehicles.

87. Plaintiffs did not require the men to ride rather than to walk in going from the mouth of the mine to the underground loading station or in returning from the underground loading station to the mouth of the mine.

88. The only employees of the plaintiff required to ride particular trips of the vehicles on which the men were transported into and out of the mines were the drill men.

89. The conditions found in Finding of Fact No. 24 are not peculiar to the underground iron ore mines of the companies in the Alabama District, but are also peculiar to underground iron ore mines in other portions of the country.

90. The conditions found in Findings of Fact No. 24 are not peculiar to the underground iron ore mines of the companies in the Alabama District, but are peculiar

to underground iron ore mines in other portions of the country, and may well be normal conditions in iron ore mines generally, and practically inevitable.

91. The conditions of the slopes of the plaintiff's mines and the haulageways and walkways utilized by said employees in moving between the underground manloading stations and the face of the seam and return, and the vehicles used to lower and raise plaintiff's red ore miners, have been substantially the same during the approximately six-year history of iron ore mining in the Birmingham, Alabama District.

92. In walking between the underground unloading station and the face of the seam and return, the employees encounter an increasingly warmer and humid atmosphere with increasingly less effective ventilation. At points the walkers are required to stoop to avoid collision with the roof, footing is irregular, sometimes rough, sometimes wet and slippery, and sometimes marked by overhead uninsulated wires and pipes underfoot. The many ways utilized in this walking involves grades of varying steepness. After negotiating the distance between the underground manloading station and the face of the seam, a miner is often wet with perspiration. These conditions as existing in Alabama mines are found, not for the purpose of censure of plaintiff's manner of maintenance of their mines, for these conditions may well be normal conditions in iron ore mines and practically inevitable.

93. In walking between the underground unloading station and the face of the seam and return, the employees encounter an increasingly warmer and humid atmosphere with increasingly effective ventilation. At points the walkers are required to stoop to avoid collision

with the roof, footing is irregular, sometimes rough, sometimes wet and slippery, and sometimes marked by overhead uninsulated wires and pipes underfoot. The manways utilized in this walking involves grades of varying steepness. After negotiating the distance between underground manloading station and the face of the seam, a miner is often wet with perspiration. These conditions are normal conditions in iron ore mines.

94. From the time plaintiff's employees enter the mouth of the mine until their exit from the mouth of the mine, they are subject to conditions peculiar to their occupation and employment in ore mines. These conditions are normal conditions in iron ore mines.

95. The conditions of the slopes of plaintiff's mines, of the haulageways and walkways utilized by said employees in moving between the underground manloading stations and the face of the seam and return, and the vehicles used to lower and raise plaintiffs' red ore miners, have been substantially the same during the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, and until May 1, 1941, and if there has been any substantial change in such condition in the past 10 years, and up until the present time, such change has been by way of improvement for the comfort and safety of the employees.

96. It has always been the custom under which plaintiff's employees received compensation for their work that the Company or service men were paid and received compensation only and solely for the time actually spent at their usual working place, and such employees never at any time were paid or received compensation for the time spent by them in going to and from such actual working places.

97. The so-called Company or service men employed by plaintiff to work underground have always been paid and have received compensation on a basis of the number of hours spent at their usual working places and have never been paid on a shift or other basis arbitrarily computing the number of hours worked. Such employees have never been paid or received compensation for the time spent by them in going to and from their actual working places nor have they ever been paid or received compensation on any other basis than at their agreed hourly rate for the number of hours actually spent by them at their actual working places.

98. During the approximately 60-year history of iron ore mining in the Birmingham, Alabama District, substantially the same customs and practices that existed in plaintiff's mines from October 24, 1938, to May 1, 1941, namely, the appearance at the mouth of the mine of the underground mining employees in their mining clothes and with their carbide lights, both clothes and lights being owned by the miner, have existed, and substantially the same vehicles and method of transportation between the mouth of the mine and the underground manloading station, substantially the same conditions as to comfort, changes in temperature, risk of injury by collision with low points in the roof of the mine slope or with projections from these roofs, and substantially the same conditions as to air, ventilation, and heating have always existed during this period of time.

99. Plaintiff assigns as additional grounds to its objections to the findings of fact all of the grounds of objections assigned by it to the conclusions of law found and filed herein.

100. Plaintiff also assigns as objections to the findings of fact each and every objection heretofore assigned to

the judgment, to the motion to amend the judgment and to the conclusions of law.

Plaintiff moves the Court to amend its findings by sustaining the separate and several objections from 1 to 100, both inclusive, herein made and separately moves the Court to make the additional findings of fact stated herein in 19 to 80, inclusive (with the exception of 46), and 83 to 97, inclusive, and it makes such motions, separately and severally, as to each separate and several paragraphs above referred to.

E. L. ALL,
BORDEN BURR,
Attorneys for Tennessee Coal,
Iron and Railroad Company,
Plaintiff.

Address: Brown-Marx Building,
Birmingham, Alabama.

I hereby certify that a copy of all of the foregoing has this day been served upon Crampton Harris and J. Q. Smith, Attorneys of Record for Defendants, and Jerome A. Cooper, Attorney of Record for Defendant-Intervener.

This 20th day of September, 1941.

BORDEN BURR,
Attorneys for Tennessee Coal,
Iron and Railroad Company,
Plaintiff.

Filed September 19, 1941.

605 OBJECTIONS TO CONCLUSIONS OF LAW.

(Civil Action No. 5232.)

Comes plaintiff, Tennessee Coal, Iron & Railroad Company, a corporation, and objects to the conclusions of law filed by the Court on September 10, 1941, on the following separate and several grounds, such objections being made separately and severally to the conclusions of law as a whole and separately and severally to each numbered paragraph thereof:

1. The conclusions of law are not properly related to the issues tried and determined by the Court.

2. The conclusions of law are not supported by the law as applicable to the facts in the case.

3. The conclusions of law are contrary to the law under the pleadings and proof of the case.

4. The conclusions of law are insufficient and inadequate to support the judgment or decree of the Court.

5. The conclusions of law are insufficient and inadequate to support the judgment or decree of the Court, in that they fail to declare the law of the case under the pleadings and proof of the case.

6. The alleged conclusions of law are not conclusions of law but are findings of fact.

7. The conclusions of law relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines, and such conclusions of law are not applicable under the pleadings and proof to the under-

ground ore mining employees at plaintiff's Number 4 mine at Muscoda.

8. The conclusions of law relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such conclusions of law are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's Number 5 limestone mine at Muscoda.

9. The conclusions of law relate to all plaintiff's underground ore-mining employees in all plaintiff's underground ore mines and such conclusions of law are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's Number 6 mine at Muscoda.

10. The conclusions of law relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such conclusions of law are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's Number 7 mine at Wenonah.

11. The conclusions of law relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such conclusions of law are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's number 8 mine at Wenonah.

12. The conclusions of law relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such conclusions of law are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's Number 9 mine at Wenonah.

13. The conclusions of law relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such conclusions of law are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's Number 10 mine at Wenonah.

14. The conclusions of law relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such conclusions of law are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's Number 11 mine at Ishkooda.

15. The conclusions of law relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such conclusions of law are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's Number 13 mine at Ishkooda.

16. The conclusions of law as to the time included in the time worked by plaintiff's underground ore mining employees is too uncertain and indefinite in that it does not definitely and certainly appear as to when or where, within the meaning of Section 7 of the Fair Labor Standards Act of 1938, the time worked by the underground mining employees begins or ends.

17. The conclusions of law as to the time included in the time worked by plaintiff's underground ore mining employees is too uncertain and indefinite, in that it does not definitely and certainly appear as to when or where, within the meaning of Section 7 of the Fair Labor Standards Act of 1938, the time worked by the underground mining employees begins or ends, in that such conclusion

includes in the time worked by plaintiff's underground ore mining employees the aggregate of all time spent on the surface in obtaining lamps, carbide, and tools and in checking in and out, and all the time from the time the underground ore mining employees report at or near the collar of the mine until they reach the collar at the end of the shift, which time, under the evidence, is or may be a part of the aggregate of the time spent on the surface.

18. It is impossible, under the conclusion of law as found in paragraph numbered three or conclusions of law, for plaintiff or defendants to determine the time for which, within the meaning of Section 7 of the Fair Labor Standards Act of 1938, plaintiff's underground ore mining employees are to receive compensation.

19. Conclusion of law numbered four is a finding of fact and not a conclusion of law.

20. Conclusion of law numbered four is not supported by the evidence and is not properly related to the evidence.

21. Conclusion of law numbered four is not supported by the evidence and is not properly related to the evidence, in that the undisputed evidence shows that plaintiff's underground ore mining employees were subject to discipline, control and supervision of plaintiff only in relation to matters of safety and not in relation to the performance of work.

22. Conclusion of law numbered four is not supported by the findings of fact and is not properly related to the findings of fact.

23. The facts incorporated in the conclusions of law as a basis for such conclusions are contrary to the evidence in the case.

24. The facts incorporated in the conclusions of law as a basis for such conclusions are contrary to the overwhelming weight of the evidence.

25. The facts incorporated in the conclusions of law as a basis for such conclusions are not sufficiently supported by the evidence in the case.

26. Such conclusions of law are mere conclusions and have not a sufficient supporting base either in law or in fact.

27. Such conclusions of law are not within the issues which have been tried and heard by the Court.

28. The only issue in this case which has been heard and tried by the Court is the judicial declaration as to what constituted the working time of plaintiff's underground ore mining employees within the meaning of Section 7 of the Fair Labor Standards Act of 1938, and such conclusions of law improperly and irrelevantly include matters which have no bearing on such question.

29. Conclusion of law numbered six that "the failure of plaintiff to compensate its employees for time worked within the meaning of the Act as set out above can not prevail to deny those employees compensation to which they are entitled under the Act", is a conclusion in reference to a matter which has not been tried or heard in this case.

30. Conclusions of law numbered seven that "the employees of plaintiff have not waived their right to lawful compensation, nor have they estopped themselves to claim the same", is a conclusion in reference to a matter which has not been tried or heard in this case.

31. Conclusion of law numbered eight, that "plaintiff has violated Section 7 of the Act by failing to pay its employees for all time worked since October 24, 1938, in excess of the hours provided in Section 7 of the Act, at time and one half their regular rate of pay", is a conclusion in reference to a matter which has not been tried or heard in this case.

32. Conclusion of law numbered ten is uncertain and indefinite, in that it does not appear therefrom as to what period of time such conclusion of law relates; that is to say, as to whether or not it relates only to the period from the effective date of the Act to May 1, 1941, or whether it relates to the period subsequent to May 1, 1941.

33. Said conclusions of law utterly fail to state a conclusion of law as to whether or not under the pleadings and the proof the time spent by plaintiff's underground ore mining employees in traveling should be included as a part of the work-week of such employees.

34. The conclusions of law are insufficient to state a conclusion of law in reference to the sole issue tried in this case, namely: Whether or not traveling time, as such, of the underground ore mining employees, should be included as a part of their work-week.

35. Said conclusions of law, so far as defendant intervener is concerned, fails to in any way state a conclusion of law in reference to the issues raised and evidence presented thereon from May 1, 1941, up to the beginning of the trial of this case.

36. Plaintiff also assigns as objections to the conclusions of law each and every objection assigned to the findings of fact:

37. Plaintiff also assigns as objections to the conclusions of law each and every objection assigned to the judgment rendered here in and in support of its motion to amend such judgment.

E. L. ALL,
BORDEN BURR,
Attorneys for Tennessee Coal,
Iron & Railroad Company,
a corporation.

Copy of the foregoing has this day been served on Crampton Harris and J. Q. Smith, attorneys of record for all original defendants, and Jerome Cooper, attorney for defendant intervener.

This 20 day of September, 1941.

BORDEN BURR,
Attorney for Plaintiff.

Filed September 19, 1941.

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611 MOTION OF PETITIONER-PLAINTIFF TENNESSEE COAL, IRON AND RAILROAD COMPANY FOR A NEW TRIAL.

(Civil Action No. 5232.)

Now comes the plaintiff and moves the Court to grant to the plaintiff a new trial herein, and as grounds of said motion it assigns, separately and severally, the following separate and several grounds:

1. The judgment is against the overwhelming weight of the evidence.

2. The judgment is against the great weight of the evidence.

3. The judgment as rendered adjudicates matters which have not been heard or tried by the Court.

4. The judgment as rendered as illegal and improper for the several and separate reasons set forth in plaintiff's motion to amend the judgment.

5. Plaintiff assigns as grounds for its motion for a new trial, separately and severally:

(a) The action of the Court in overruling its motion to amend the judgment;

(b) The action of the Court in overruling its objections to the judgment.

6. Plaintiff assigns as separate and several grounds in support of its motion for a new trial the several and separate grounds heretofore assigned by it as reasons for its motion to amend the judgment herein, and as grounds of its objections to such judgment, and being grounds numbered from (a) to (l), inclusive, as such grounds appear in support of its motion to amend the judgment and its objections to the judgment as rendered herein.

7. The Court committed error in overruling plaintiff's motion to amend the judgment.

8. The Court committed error in overruling plaintiff's objections to the judgment as rendered herein.

9. The Court erred in its separate and several conclusions of law as filed herein.

10. The Court erred in overruling the separate and several objections of plaintiff to the conclusions of law filed by the Court herein.

11. Plaintiff assigns as separate and several grounds for its motion for a new trial the several and separate grounds which it has heretofore filed herein as objections to the conclusions of law filed herein by the Court.

12. The Court erred in its separate and several findings of fact as filed herein.

13. The Court erred in overruling the separate and several objections of plaintiff to the findings of fact filed by the Court herein.

14. Plaintiff assigns as separate and several grounds for its motion for a new trial the separate and several grounds which it has heretofore filed herein as objections to the findings of fact filed herein by the Court.

15. The separate and several findings of fact filed herein by the Court are contrary to the evidence.

16. The separate and several findings of fact filed herein by the Court are not supported by the evidence herein.

17. The Court erred in overruling plaintiff's motion to amend findings of fact as filed herein by the Court.

18. The Court erred in overruling the separate and several grounds of plaintiff's motion to amend the findings of fact as filed herein by the Court.

19. Plaintiff assigns as separate and several grounds for its motion for a new trial the separate and several

grounds which it has heretofore filed herein in support of its motion to amend findings of fact filed herein by the Court.

20. The Court erred in the following part of its judgment and decree:

"Plaintiff, in not compensating its said underground ore mining employees for all time worked as defined in paragraph 2 hereof in excess of 44 hours weekly between October 24, 1938, and October 23, 1939; in excess of 42 hours weekly between October 24, 1939, and October 23, 1940; and in excess of 40 hours weekly since October 24, 1940, and until May 1, 1941, at the rate not less than one and one-half times the regular rate at which said employees were employed, has violated Section 7 of the Fair Labor Standards Act of 1938."

21. The Court erred in the following part of its judgment and decree:

"Plaintiff, in not compensating its said underground ore mining employees for all time worked as defined in paragraph 2 hereof in excess of 44 hours weekly between October 24, 1938, and October 23, 1939; in excess of 42 hours weekly between October 24, 1939, and October 23, 1940; and in excess of 40 hours weekly since October 24, 1940, and until May 1, 1941, at a rate not less than one and one-half times the regular rate at which said employees were employed, has violated Section 7 of the Fair Labor Standards Act of 1938,"

for that the Court adjudged and decreed that the plaintiff is indebted to its underground employees notwithstanding the agreement between the parties that the sole issue to be tried was what constitutes the "workweek" within the meaning of the Fair Labor Standards Act of 1938.

The Court erred in the following part of its judgment and decree:

"Such employees or their personal representatives as have not filed claims are given sixty days from the date hereof in which to file the same."

23. For that the judgment of the Court adjudging that the plaintiff is liable to its employees for overtime compensation under the Fair Labor Standards Act of 1938 is erroneous in that it adjudicates issues which have not been tried.

24. For that the trial and hearing, as a result of which the judgment in this cause is rendered, was by agreement between the Court and all the parties confined to the one issue, namely what constitutes the "workweek" within the meaning of the Fair Labor Standards Act of 1938.

25. For that the Court in its judgment "went beyond the issues tried upon the hearing of this cause."

26. For that upon the trial of this cause the question of whether or not the plaintiff owed its underground employees overtime compensation was not presented to the Court, nor were the plaintiff's answers and defenses to the claims of plaintiff's employees tried and considered, notwithstanding which the Court in its judgment ordered and decree as follows:

"Plaintiff, in not compensating its said underground ore mining employees for all time worked as defined in paragraph 2 hereof in excess of 44 hours weekly between October 24, 1938, and October 23, 1939; in excess of 42 hours weekly between October 24, 1939, and October 23, 1940; and in excess of 40 hours weekly since October 24, 1940, and until May 1, 1941, at a rate not less than one and one-half times the regular rate at which said employees were employed, has violated Section 7 of the Fair Labor Standards Act of 1938."

27. For that the matter of the trial of the claims of the plaintiff's underground employees and the defenses of those claims have not been tried, and the plaintiffs have had no opportunity to resist or defend against the same.

28. For that the matter of the trial of the claims of the plaintiff's underground employees and the defenses of those claims have not been tried, and the plaintiff has had no opportunity to resist or defend against the same, and plaintiff avers that it has evidence which it believes and has been advised by counsel presents a bona fide defense to said claims, and which defense and evidence it has not had the opportunity to present.

29. The Court erred in the following part of the judgment and decree:

"Jurisdiction of this cause is retained for the purpose of giving full effect to this decree and specifically to adjudge and determine the claims of the employees and their personal representatives for unpaid wages and liquidated damages and to adjudge and to appoint a special master or masters to report thereon, and to determine and fix the fee for the attorneys for the defendants herein."

30. For that said judgment, in the particulars hereinbefore set forth, adjudicated matters without the pleadings in reference to said matters having been disposed of.

In support of grounds 2 to 30, inclusive, of this motion, plaintiff attaches hereto and makes a part hereof affidavit of Borden Burr, E. L. All, and D. M. Carr. Plaintiff, in further support of said motion and each ground thereof, will submit to the Court the record of the trial of said cause, including the various hearings or pleadings or other relevant matters, or such portions thereof as are relevant hereto.

E. L. ALL,
BORDEN BURR,
Attorneys for Tennessee Coal,
Iron & Railroad Company,
Petitioner and Plaintiff.

Address: Brown-Marx Building,
Birmingham, Alabama.

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616 NOTICE OF HEARING ON MOTION OF PLAINTIFF, TENNESSEE COAL, IRON & RAILROAD COMPANY FOR NEW TRIAL, omitted from the printed record, pursuant to Rule 23 of this Court.

* * * * * * *

I hereby certify that a copy of all of the foregoing has this day been served upon Crampton Harris and J. Q. Smith, attorneys of record for defendants, and Jerome A. Cooper, attorney of record for defendant-intervener.

This 19th day of September, 1941.

BORDEN BURR,
Attorney for Tennessee Coal,
Iron & Railroad Company.

Filed September 19th, 1941.

In the District Court of the United States for the Southern Division of the Northern District of Alabama.

Tennessee Coal, Iron & Railroad Company, a Corporation,
Petitioner and Plaintiff
vs. Civil Action File No. 5232.
Muscoda Local No. 123, et al, Defendants,

Philip B. Fleming, Administrator, Etc., Intervener.

State of Alabama.
Jefferson County.

Before me, the undersigned authority, personally appeared D. M. Carr who being by me first duly sworn, deposes and says as follows:

My name is D. M. Carr. I am a shorthand reporter, having had more than twenty-five years experience in shorthand reporting before various State and Federal Courts, and bureaus, boards and commissions of various state and federal governments.

Under the employment of the plaintiff in the above styled action, and the plaintiffs in Civil Actions Nos. 5233 and 5234, pending in the District Court of the United States for the Southern Division of the Northern District of Alabama, I have been present and reported in shorthand the various Court proceedings in these cases. Among such proceedings in said cases was a hearing held by the above Court on May 19, 1941, which hearing related to various motions made by defendants, proceedings on the pleadings in said cases, and matters relating to a pretrial hearing.

I correctly reported in shorthand on said date, and later transcribed correctly into typewritten matter from my shorthand notes the hereinafter quoted portion of the proceedings on said date. After the argument of counsel in support of the motions of the defendants affiliated with the CIO to dismiss the bills of complaint and arguments of counsel for the plaintiffs in opposition to such motions, and statements of counsel and of the Court bearing upon the question of the right of the defendants affiliated with the CIO to subsequently file counter-claims the following occurred:

The Court:
As I understand it is a matter of fact, what constitutes a work week, and on that we will take evidence.

Mr. Burr:
Yes, sir.

Mr. Smith:
We may get down to what is really in dispute. In filing our answer we had to say in some cases we didn't have information. That may be true or may not be exactly accurate. It occurs to me if we could get down to the part we can eliminate out of this bill and agree on the issues Your Honor is going to require proof on we would be getting somewhere pretty fast.

The Court:
That is the province of the pre-trial hearing.

Mr. Harris:
There are some things we don't know how to get out.

Mr. Burr:
There are a good many things I don't know how to get in. I have prepared a pre-trial order—

The Court:

Let's have an understanding. Mr. Harris, you will file your answer.

Mr. Burr:

He is going to amend his answer?

Mr. Harris:

Amend our answer and put in claims for all the people we represent.

Mr. Smith:

In the meantime we have in our claims and—this has been pretty fast going—but if necessary to do that, we can change it.

The Court:

While I will make an order on pretrial hearing, if justice requires it there can always be a change.

Mr. Harris:

How much time—

The Court:

This case is set on June 23rd (which date was by order of the Court subsequently changed to July 8, 1941) but you need not necessarily bring all your parties in. On June 23rd what I am going to try to determine is what constitutes a work week.

Mr. Harris:

If we have our claims in three or four days before June 23rd that would be sufficient?

The Court:

It would be a question of proof.

Mr. Smith:
About my claims under 16(b), all people situated under that particular group. Mr. Burr has brought them all in by different groups. If they want to get down finer than that there will be about six thousand.

Mr. Harris:
I think we ought to have two weeks to get in those amendments.

The Court:
You will have ample time before they are set on June 23rd.

Mr. Burr:
That is all right, but I think we ought to save some time, if we can, by agreeing on the things admitted without proof.

The Court:
We are going to go into that in the morning. We fully understand on the 23rd we are going into the sole question of what constitutes the work week.

Mr. Smith:
Your Honor intends to take testimony?

The Court:
Yes, sir.

Mr. Smith:
That is day after tomorrow?

The Court:
No, 23rd of June.

Mr. Smith:
Oh, June.

The Court:
Yes, sir. Suppose we get down to the pleadings, the pleadings in this case.

Mr. Burr:
I have here, "The following pleadings were allowed". I thought we would put the complainants, answers and cross claims.

The Court:
And answer or cross claimed to be filed by—I don't know how many of them.

Mr. Burr:
Why can't you just designate it CIO affiliates?

Mr. Harris:
International Union of Mine, Mill and Smelter Workers.

The Court:
Complaint and answers of defendants, counter claim of A. F. of L. defendants and counter claim of CIO defendants. That is the pleadings. That will constitute the pleadings.

Mr. Burr:
We don't admit it is a counter claim, but it is all right to call it that.

The Court:
It is agreed by all the parties that the following are all the issues of controversy in this case. You can have several issues of controversy, but we are going to have only one on the twenty-third."

D. M. CARR.

Sworn and subscribed before me on this 19th day of September, 1941.

J. W. DICKINSON,
Notary Public.

(Seal)

Filed September 19th, 1941.

On September 19, 1941, in Civil Action No. 5233 petitioner-plaintiff Sloss-Sheffield Steel & Iron Company filed its Motion for New Trial, said Motion for New Trial, with affidavit of D. M. Carr attached, being identical with the Motion for New Trial and affidavit of D. M. Carr attached filed by petitioner-plaintiff Tennessee Coal, Iron & Railroad Company heretofore set out.

And on September 19, 1941, in Civil Action No. 5234 petitioner-plaintiff Republic Steel Corporation filed its Motion for New Trial, said Motion for New trial, with affidavit of D. M. Carr attached, being identical with the Motion for New Trial and affidavit of D. M. Carr attached filed by petitioner-plaintiff Tennessee Coal, Iron & Railroad Company heretofore set out.

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622 ORDER OVERRULING PLAINTIFF'S MOTION FOR A JUDGMENT OR DECREE IN ITS FAVOR.

(Civil Action No. 5232.)

This cause coming on to be heard on the motion of plaintiff for a judgment or decree in its favor and against the defendants, separately and severally, and said motion *having been heard and considered* by the Court,

It Is Ordered, Adjudged and Decreed that said motion, and each separate numbered paragraph thereof, be, and the same hereby is, in all respects overruled, and to the action of the Court, plaintiff duly excepted.

Done this the 3rd day of October, 1941.

T. A. MURPHREE,
United States District Judge.

Filed October 3, 1941, Chas. B. Crow, Clerk.

On October 3, 1941, orders identical with the foregoing were made and filed in Civil Actions Nos. 5233 and 5234.

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623 JUDGMENT AND DECREE OF THE COURT OVERRULING PLAINTIFF'S MOTIONS AND OBJECTIONS.

(Civil Action No. 5232.)

This cause coming on to be heard on the 20th day of October, 1941, on the separate and several hereinafter named motions and objections of the plaintiff, all parties being present in Court by counsel, after argument of counsel, was submitted to and taken under advisement by the Court, and said matters having been fully considered by the Court,

It is Ordered, Adjudged and Decreed:

1. That plaintiff's motions referred to and the objections of the plaintiff to the judgment of the Court as

herein rendered on the 10th day of September, 1941, and each separate and several paragraph of said motion and of said objections be and the same thereby are in all respects overruled.

2. That plaintiff's objections to the conclusions of law filed herein by the Court and each of them separately and severally be and the same hereby are in all respects overruled.

3. That plaintiff's objections to the findings of fact filed by the Court herein and each of them, separately and severally, be and the same hereby are in all respects overruled.

4. That plaintiff's motion to amend the findings of fact filed herein and separately and severally each paragraph thereof be and the same hereby are overruled.

5. And to the action of the Court in each of the matters above set forth, separately and severally, plaintiff in open Court duly excepted.

Done This the 20th day of October, 1941.

T. A. MURPHREE,
United States District Judge.

Filed October 20, 1941. Chas. B. Crow, Clerk, U. S. Dist. Court.

On October 20, 1941, judgments and decrees in all respects identical with the foregoing were entered in Civil Action No. 5233 and in Civil Action No. 5234, and filed in Court.

625 ORDER OVERRULING MOTION FOR NEW TRIAL.

(Civil Action No. 5232.)

This cause came on to be heard on the 7th day of November, 1941, on plaintiff's motion for a new trial. All parties being present in Court by counsel, and said motion having been duly considered by the Court, and the Court being of the opinion that as a matter of law waiver and estoppel cannot defeat an employee's right to overtime compensation due under Section 7 of the Fair Labor Standards Act of 1938 regardless of what evidence is adduced;

It is Ordered, Adjudged and Decreed that said motion in its entirety be and the same hereby is overruled, to which plaintiff duly excepts.

Done this 8th day of November, 1941.

T. A. MURPHREE,
United States District Judge.

Filed November 8, 1941.

On November 8, 1941, orders identical with the foregoing were made and filed in Civil Actions Nos. 5233 and 5234.

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626 NOTICE OF APPEAL.

(Civil Action No. 5232.)

Notice is hereby given that the Tennessee Coal, Iron & Railroad Company, a corporation, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit from that certain decree or judgment entered in this action on the 10th day of September, 1941, and said plaintiff separately and severally appeals from the following separate and several portions of said judgment:

"2. The working time of the underground ore mining employees of plaintiff, within the meaning of Section 7 of the Fair Labor Standards Act of 1938, includes all time spent by plaintiff's said employees from the time they report at the collar or portal of the mine or mouth of the mine, until they emerge from the collar, portal, or mouth of the mine at the end of the the shift, and includes the aggregate of all time spent by said employees on the surface in obtaining and returning lamps, carbide, and tools and in checking in and out. This time worked does not include any fixed lunch period of one-half hour or more during which said underground ore mining employee is relieved of all duties.

"3. Plaintiff, in not compensating its said underground ore mining employees for all time worked as defined in paragraph 2 hereof in excess of 44 hours weekly between October 24, 1938, and October 23, 1939; in excess of 42 hours weekly between October 24, 1939, and October 23, 1940; and in excess of 40 hours weekly since October 24, 1940, and until May 1, 1941, at a rate not less than one and one-half times the regular rates at which said employees were employed, has violated Section 7 of the Fair Labor Standards Act of 1938.

* * * * * * * *

"6. Such employees or their personal representatives as have not filed claims are given sixty days from the date hereof in which to file the same.

"7. Jurisdiction of this cause is retained for the purpose of giving full effect to this decree and specifically to adjudge and determine the claims ~~of the~~ employees and their personal representatives for unpaid wages and liquidated damages and to adjudge and to appoint a special master or masters to report thereon and to determine and fix the fee for the attorneys for the defendants herein."

This appeal is taken from the judgment in its entirety, and, separately and severally, from each separate and several part thereof, and separately from the order of the Court entered in this action on the 8th day of November, 1941, overruling plaintiff's motion for a new trial.

This Dec. 5, 1941.

E. L. ALL,
BORDEN BURR,
Attorneys for plaintiff, Tennessee Coal, Iron & Railroad Company, a corp.

Address: Birmingham, Alabama.

Filed December 5, 1941.

On December 5, 1941, in Civil Action No. 5233 Petitioner-Plaintiff Sloss-Sheffield Steel & Iron Company filed its Notice of Appeal, and on the same date, in Civil Action No. 5234 ~~Plaintiff-Petitioner~~ Republic Steel Corporation filed its Notice of Appeal, both said notices being identical with the foregoing.

(Civil Action No. 5232.)

Know All Men By These Presents: That we, Tennessee Coal, Iron & Railroad Company, a corporation, of Birmingham, Alabama, as Principal; and Borden Burr and A. Benners, of Birmingham, Alabama, as Surety, authorized to become surety upon judicial bonds, are held and firmly bound unto Muscoda Local No. 123, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and W. C. Gunnin, Pete Dulaney, R. H. Martin and John Thompson, individually and as officers and members of such Local; and Wenonah Local No. 157, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and C. J. McDaniel, W. B. Lemley, R. E. Lemley, and Ward Jefferson, individually and as officers and members of such Local; and Ishkooda Local No. 153, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and E. A. Sisemore, L. H. McBrayer, Elmore Mitchell, and Dennis Hart, individually and as officers and members of such Local; and Van D. Jones, C. L. Peques, and Frank Allen, individually and as officers of the International Union of Mine, Mill and Smelter Workers, an unincorporated association, and Muscoda Local No. 21935, Red Ore Miners Union, and unincorporated association affiliated with the American Federation of Labor, and Fred Trammel, Joe P. Bell, W. R. Headrick, and I. V. Robinson, individually and as officers and members of such Local; and Wenonah Local No. 21936, Red Ore Miners Union, and unincorporated association affiliated with the American Federation of Labor, and W. W. Kendrick, G. L. Batson, Will McGhee, and W. T. Maxwell, individually and as officers and members of such Local; and Ishkooda Local

No. 21937, Red Ore Miners Union, an unincorporated association affiliated with the American Federation of Labor, and J. S. Pitts, James A. Bailey, Jr., A. E. Wesley, John White, James Knox, Nathan Smith, and James Snow, individually and as officers and members of such Local; and S. E. Roper and W. O. Hare, individually and as officers and members of the American Federation of Labor, an unincorporated association, and Philip B. Fleming, Administrator of the Wage & Hour Division of the United States Department of Labor, their successors, heirs, or assigns, the above named defendants, in the penal sum of Two Hundred & Fifty & No/100 ($250.00) Dollars, to be paid by the said Tennessee Coal, Iron & Railroad Company, for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

The condition of the foregoing obligation is that:

Whereas, The above bounden Tennessee Coal, Iron & Railroad Company, a corporation, of Birmingham, Alabama, the plaintiff in the above styled cause, has prosecuted an appeal to the United States Circuit Court of Appeals for the Fifth Circuit to reverse the decree and judgment entered in the above entitled action by the District Court of the United States for the Northern District of Alabama, Southern Division, made and entered on September 10, 1941, and the order of the Court entered on November 8, 1941, overruling plaintiff's motion for a new trial.

Now, Therefore, if the said Tennessee Coal, Iron & Railroad Company, a corporation, shall prosecute said appeal to effect and pay all the costs, if its appeal is dismissed, the judgment or decree affirmed, or such costs as the Appellate Court may award if the judgment is modified, then this obligation shall be void; otherwise, to remain in full force and effect.

This Dec. 5, 1941.

TENNESSEE COAL, IRON &
RAILROAD COMPANY.
By BORDEN BURR,
Its Attorney,
As Principal,
A. BENNERS and
BORDEN BURR,
As Surety.

Filed December 5, 1941.

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631 APPEAL BOND.

(Civil Action No. 5233.)

Know All Men By These Presents: That we, Sloss-Sheffield Steel & Iron Company, a corporation, of Birmingham, Alabama, as Principal, and E. L. All and W. B. White, of Birmingham, Alabama, as Surety, authorized to become surety upon judicial bonds, are held and firmly bound unto Sloss Red Ore Local No. 109, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and John Hill, Jesse Gaines and W. A. O'Neal, individually and as officers and members of such Local; and Ruffner Miners Union No. 512, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and Frank Parker, Hosea Bickerstaff, and George T. Drummond, individually and as officers and members of such Local; and Van D. Jones, C. L. Peques and Frank

Allen, individually and as officers of the International Union of Mine, Mill and Smelter Workers, an unincorporated association, and Philip B. Fleming, Administrator of the Wage & Hour Division of the United States Department of Labor, their successors, heirs or assigns, the above named defendants, in the penal sum of Two Hundred & Fifty & No/100 ($250.00) Dollars, to be paid by the said Sloss-Sheffield Steel & Iron Company, for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents.

The condition of the foregoing obligation is that:

Whereas, the above bounden Sloss-Sheffield Steel & Iron Company, a corporation, of Birmingham, Alabama, the plaintiff in the above styled cause, has prosecuted an appeal to the United States Circuit Court of Appeals for the Fifth Circuit to reverse the decree and judgment entered in the above entitled action by the District Court of the United States for the Northern District of Alabama, Southern Division, made and entered on September 10, 1941, and the order of the Court entered on November 8, 1941, overruling plaintiff's motion for a new trial.

Now, Therefore, If the said Sloss-Sheffield Steel & Iron Company, a corporation, shall prosecute said appeal to effect and pay all the costs, if its appeal is dismissed, the judgment or decree affirmed, or such costs as the Appellate Court may award if the judgment is modified, then this obligation shall be void; otherwise, to remain in full force and effect.

Dated this 5th day of December, 1941.

SLOSS-SHEFFIELD STEEL &
IRON COMPANY,
By E. L. ALL,
Its Attorney, as Principal,
E. L. ALL,
and
W. B. WHITE,
As Sureties.

Filed December 5, 1941.

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633 APPEAL BOND.

(Civil Action No. 5234.)

Know All Men By These Presents: That we, Republic Steel Corporation, a corporation, of Birmingham, Alabama, as Principal, and Border. Burr and A. Benners, of Birmingham, Ala., as Surety, authorized to become surety upon judicial bonds, are held and firmly bound unto Raimund Local 121, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and John Butler, Lewis Tarrant, and B. G. Stephens, individually and as officers and members of such Local, and Van D. Jones, C. L. Pegues, and Frank Allen, individually and as officers of the International Union of Mine, Mill & Smelter Workers, an unincorporated association, and Unit No. 8, Brotherhood of Miners of Captive Ore Mines of Alabama, an unincorporated association not affiliated with any labor organization, and Melvin Lawrence, C. W. Eady and J. E. Thornton, individually and as officers and members of said Unit, and Philip B. Fleming, Administrator of the Wage and Hour Division of the United States Department of Labor, their successors, heirs or assigns, the above named defendants in the penal sum of two hundred & fifty Dollars to be paid by the said Republic Steel Corporation, for the payment of which, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

The condition of the foregoing obligation is that:

Whereas, The above bounden Republic Steel Corporation, a corporation, of Birmingham, Alabama, the plaintiff in the above styled cause, has prosecuted an apepal to the United States Circuit Court of Appeals, for the Fifth Circuit, to reverse the decree and judgment entered in the above entitled action by the District Court of the United States for the Northern District of Alabama, Southern Division, made and entered on September 10, 1941, and the order of the Court entered on November 8, 1941, overruling plaintiff's motion for a new trial.

Now, Therefore, If the said Republic Steel Corporation, a corporation, shall prosecute said appeal to effect and pay all the costs, if its appeal is dismissed, the judgment or decree affirmed, or such costs as the Appellate Court may award if the judgment is modified, then this obligation shall be void; otherwise to remain in full force and effect.

This Dec. 5, 1941.

REPUBLIC STEEL CORPORATION.
By BORDEN BURR,
Its Attorney and Agent,
As Principal,
A. BENNERS,
BORDEN BURR,
As Surety.

Filed December 5, 1941.

635 CONCISE STATEMENT OF THE POINTS ON WHICH APPELLANTS INTEND TO RELY ON THE APPEAL.

(Civil Actions Nos. 5232, 5233 & 5234.)

Appellants, separately and severally, set out and make a part of their designation of the contents of the record on appeal the following separate and several points on which they intend to rely on appeal, and they will assert that the District Court of the United States for the Southern Division of the Northern District of Alabama erred in its several orders, rulings, and judgments upon the trial of said cause in the following, among other, separate and several respects:

1. The Court erred in rendering the judgment entered on September 10, 1941, and in entering and rendering those separate and several portions thereof identified as paragraphs numbered 2, 3, 4, 5, 6, and 7.

2. The Court erred in refusing to find the several facts contained in Plaintiff's Requests for Findings of Fact separately and severally as to each fact set forth in each numbered request.

3. The Court erred in refusing to grant the plaintiff's Requests for the Entry of Conclusions of Law separately and severally as to each conclusion set forth in each numbered request.

4. The Court erred in finding the facts or statements treated as facts contained in each of the following numbered paragraphs of its Findings of Fact entered on September 10, 1941, to-wit: 5, and 8 to 28, both inclusive. The plaintiff will urge error in respect of each of the

facts or statements treated as facts above designated and set forth separately and severally, that the same should not have been found or stated as a fact by the Court, on all grounds available to the plaintiff, including the claim that the same should not have been so found or stated on one or more of two or more of the following grounds, to-wit: (a) It was irrelevant, incompetent or immaterial; (b) it constituted a conclusion of law; (c) it constituted an ultimate finding of fact; (d) it was not supported by any evidence; (e) it was not supported by any legal evidence; (f) it was against the weight of the evidence; (g) it was against the great weight of the evidence; (h) it involved a mixed question of law and fact; (i) it was misleading; (j) it was partial or incomplete; (k) it was not supported by the evidentiary facts found, or any of them.

5. The Court erred in its conclusions of law, separately and severally as to each conclusion.

6. The Court erred in declaring in its judicial construction of the Fair Labor Standards Act of 1938 and Section 7 thereof that:

"2. The working time of the underground ore mining employees of plaintiff, within the meaning of Section 7 of the Fair Labor Standards Act of 1938, includes all time spent by plaintiff's said employees from the time they report at the collar or portal of the mine or mouth of the mine, until they emerge from the collar, portal, or mouth of the mine at the end of the shift, and includes the aggregate of all time spent by said employees on the surface in obtaining and returning lamps, carbide, and tools and in checking in and out. This time worked does not include any fixed lunch period of one-half hour or more during which said underground ore mining employee is relieved of all duties."

7. The Court erred in incorporating in its decree construing the Fair Labor Standards Act of 1938, and Section 7 thereof the following:

"3. Plaintiff, in not compensating its said underground ore mining employees for all time worked as defined in paragraph 2 hereof in excess of 44 hours weekly between October 24, 1938, and October 23, 1939; in excess of 42 hours weekly between October 24, 1939, and October 23, 1940; and in excess of 40 hours weekly since October 24, 1940, and until May 1, 1941, at a rate not less than one and one-half times the regular rates at which said employees were employed, has violated Section 7 of the Fair Labor Standards Act of 1938."

8. The Court erred in incorporating in its decree construing the Fair Labor Standards Act of 1938 and Section 7 thereof the following:

"6. Such employees or their personal representatives as have not filed claims are given sixty days from the date hereof in which to file the same."

9. The Court erred in incorporating in its decree construing the Fair Labor Standards Act of 1938 and Section 7 thereof the following:

"7. Jurisdiction of this cause is retained for the purpose of giving full effect to this decree specifically to adjudge and determine the claims of the employees and their personal representatives for unpaid wages and liquidated damages and to adjudge and to appoint a special master or masters to report thereon and to determine and fix the fee for the attorneys for the defendants herein."

10. The Court adjudicated and determined matters as to which appellants have never had their day in Court.

and matters which by express agreement and understanding had between all the parties and the Court, were not to be considered and with respect to which evidence was not to be introduced on the trial heretofore had.

11. The Court adjudicated matters in its decrees dated September 10, and November 8, 1941, which the parties in the pretrial agreement dated May 22, 1941, stipulated were not to be considered on the trial heretofore had.

12. The Court erred in overruling Appellant's motion for a new trial.

13. The Court erred in its order entered on November 8, 1941, in ruling that:

"—The Court being of the opinion that as a matter of law waiver and estoppel cannot defeat an employee's overtime right to compensation due under Section 7 of the Fair Labor Standards Act of 1938, regardless of what evidence is adduced;

"It is Ordered, Adjudged and Decreed that said motion in its entirety be and the same hereby is overruled—."

14. Appellants will assert that the Court, in those portions of its order entered on September 10, 1941, quoted in paragraphs number 7 and 9 hereof, determined that the appellants could have no defense in bar to the claims asserted by the Appellees without affording appellants any opportunity at any time either to present such defenses as they may have thereto. Appellants will further assert that the Court, in entering the above quoted portions of its order of November 8, 1941, erroneously assumed that the only defenses open to appellants were waiver and estoppel, and determined that such defenses

should be decided adversely to appellants as a matter of law notwithstanding the Court had before it neither the law nor the facts relating thereto.

15. The Court erred in entering its judgment dated September 10, 1941, and its order dated November 8, 1941, in that said judgment and said order adjudicated the appellees' right to recover of the appellants, although there were on file before the Court motions to dismiss and answers to all counter-claims filed by appellees, which said answers and motions to dismiss had not either prior to or since the entry of the judgment dated September 10, 1941, and the order dated November 8, 1941, been ruled upon or otherwise disposed of.

16. The Court erred in refusing to allow appellants to prove the conditions that existed in the underground bituminous coal mines in the State of Alabama prior to October 24, 1938.

17. The Court erred in refusing to allow appellants to prove the conditions that existed in the underground bituminous coal mines in the United States prior to October 24, 1938.

18. The Court erred in refusing to allow appellants to prove the conditions that existed in the underground anthracite coal mines in the United States prior to October 24, 1938.

19. The Court erred in sustaining appellees' objections to evidence offered by appellants showing the conditions that existed in the underground bituminous coal mines in the State of Alabama prior to October 24, 1938.

20. The Court erred in sustaining appellees' objections to evidence offered by appellants showing the conditions

that existed in the underground bituminous coal mines in the United States prior to October 24, 1938.

21. The Court erred in sustaining appellees' objections to evidence offered by appellants showing the conditions that existed in the underground anthracite coal mines in the United States prior to October 24, 1938.

22. The Court erred in refusing to allow appellants to prove that, prior to October 24, 1938, in the underground bituminous coal mines in the State of Alabama, it had been the universal custom to pay the underground coal mining employees compensation only for the time spent by them at their usual working places and to exclude as noncompensable all time spent by them in being transported or in walking to and from their usual working places.

23. The Court erred in refusing to allow appellants to prove that, prior to October 24, 1938, in the underground bituminous coal mines in the United States, it had been the universal custom to pay the underground coal mining employees compensation only for the time spent by them at their usual working places and to exclude as noncompensable all time spent by them in being transported or in walking to and from their usual working places.

24. The Court erred in refusing to allow appellants to prove that, prior to October 24, 1938, in the underground anthracite coal mines in the United States, it has been the universal custom to pay the underground coal mining employees compensation only for the time spent by them at their usual working places and to exclude as noncompensable all time spent by them in being transported or in walking to and from their usual working places.

25. The Court erred in refusing to allow appellants to prove that for many years prior to October 24, 1938, by written contract between the operators of underground bituminous coal mines in the State of Alabama and their underground employees, it had been stipulated that the day's work of the underground employee should be computed and paid on the basis of the time that he had actually spent at his usual working place, and that all time spent in being transported or in walking to and from such working place had been excluded as non-compensable.

26. The Court erred in refusing to allow appellants to prove that for many years prior to October 24, 1938, by written contract between the operators of underground bituminous and anthracite coal mines in the United States and their underground employees, it had been stipulated that the day's work of the underground employees should be computed and paid on the basis of the time that he had actually spent at his usual working place, and excluding the time spent in being transported or in walking to and from such working place.

27. The Court erred in refusing to allow appellants to prove that prior to October 24, 1938, in the open pit iron ore mines, it had been the universal custom to compensate and pay the miners on the basis of the time actually spent by them at their usual working places, exclusive of the time spent by them in being transported or in walking to and from such working places.

28. Appellants will assert and will rely on the appeal on their contention that in order to reach a proper interpretation of Section 7 of the Act the Court should have received in evidence and considered as evidence the fact that: (a) In all of the bituminous underground coal mines

in the State of Alabama; (b) all of the bituminous underground coal mines of the United States of America; (c) all of the underground anthracite coal mines in the United States of America; and (d) all of the open pit iron ore mining operations in the United States of America, it had been the universal and traditional custom and had been stipulated in written contracts executed between the operations of such mines and their employees or the duly authorized representatives of such employees that the day's work of the underground employees should be computed and paid on the basis of the time actually spent by them in their usual working places, exclusive of the time spent in traveling to and from such working places.

29. The Court erred in sustaining appellees' objections to and in refusing to admit in evidence those documents designated as plaintiff's Exhibits numbered 4-B, 4-C, 6 and 48, which said documents constitute interpretations made by the Wage and Hour Division of the United States Department of Labor, or by the Administrator thereof, of Section 7 of the Fair Labor Standards Act of 1938.

30. The Court erred in sustaining appellees' objections to and in refusing to admit in evidence those documents designated as plaintiff's Exhibits 16, 19, 21 and 45, which said documents established administrative constructions of law substantially similar to import, insofar as "work week" or "work day" is concerned, to Section 7 of the Fair Labor Standards Act of 1938.

31. The Court erred in sustaining appellees' objections to and in refusing to admit in evidence official publications of various Departments of the United States Government designated as plaintiff's Exhibits numbered 12,

13 and 13-A, said publications relating to the bituminous and anthracite coal industries in the United States.

32. The Court erred in sustaining appellees' objections to and refusing to admit in evidence those documents designated as plaintiff's Exhibit 14, 31, 32 and 46, constituting administrative determinations of the work day in bituminous and anthracite coal industries in the United States.

33. The Court erred in sustaining objections to and in refusing to admit in evidence the depositions, with exhibits thereto, of W. J. Jenkins, L. C. Gunter, Francis J. Keegan, and D. C. Kennedy, designated respectively as plaintiff's Exhibits 26, 27, 28 and 29.

34. The Court erred in sustaining appellees' objections to and in refusing to admit in evidence a document designated as plaintiff's Exhibit 25, constituting a formal communication addressed to Colonel Philip B. Fleming, as Administrator of the Wage and Hour Division of the United States Department of Labor, by a committee representing coal operators and the United Mine Workers of America.

35. The Court erred in sustaining appellees' objections to and in refusing to admit in evidence certain contracts had between coal operators and organizations representing their employees, and certain other documents relating to coal mining operations in Alabama and in the United States, designated as Plaintiff's Exhibits 30, 33, 34 and 47, Republic Exhibits 17, 18, 19, Sloss Exhibits 38, 39, 40, 41 and 42.

36. The Court erred in sustaining appellees' objections to and in refusing to admit in evidence certain maps de-

picting open pit iron ore mining operations, designated as Plaintiff's Exhibits 40, 41, 42 and 43.

37. The Court erred in sustaining appellees' objections to and in refusing to admit data concerning lost-time accidents in the coal mines of appellant Tennessee Coal, Iron & Railroad Company, and in the coal mines of the United States as a whole, designated as T. C. I. Exhibit 40 and plaintiff's Exhibit 52.

38. The Court erred in overruling appellant's objections to and allowing the introduction in evidence of certain copies of a publication entitled the "Ore Miners" offered by appellees designated as defendants' Exhibits 5, 6, and 13 through 18, both inclusive.

39. The Court erred in overruling appellants' objections to and allowing the introduction in evidence of testimony offered by appellees relating to the personal hazards suffered by the appellants' underground iron ore mining employees while being transported and walking to and from their usual working places.

40. The Court erred in overruling appellants' objections to and allowing the introduction in evidence of testimony offered by appellees relating to the personal discomfort experienced by the appellants' iron ore mining employees while being transported and walking to and from their usual working places.

41. The Court erred in construing the term "work-week" as used in Section 7 of the Fair Labor Standards Act of 1938 so as to include travel time, as such, consumed by the appellants' underground iron ore mining employees in going to and returning from their usual working places.

42. The term "workweek" as used in Section 7 of the Fair Labor Standards Act of 1938 does not include travel time, as such, consumed by the appellants' underground iron ore mining employees in going to and returning from their usual working places.

43. The Court erred in holding that travel time, as such, consumed by the underground iron ore mining employees of appellants' in going to and from their usual working places, is to be included in their workweek under the Fair Labor Standards Act of 1938.

44. Travel time, as such, consumed by the underground iron ore mining employees of appellants in going to and from their usual working places is not properly to be included in their workweek under the Fair Labor Standards Act of 1938.

45. The Court erred in construing Section 7 of the Fair Labor Standards Act of 1938 to include within the term "workweek" all the time spent by all appellants' underground iron ore mining employees in being transported and in walking to and from their usual working places.

46. By long established custom and practice and by contract between employer and employees for years before and continuously up to October 24, 1938, "work time" of underground employees in all iron ore mines in Alabama was considered as, and compensated for, on the basis of work performed at the usual working places, exclusive of time consumed in going to and from the working places.

47. By long established custom and practice and by contract between employer and employee for years before and continuously up to October 24, 1938, "work time" of

underground employees in all iron ore mines in the United States was considered as, and compensated for, on the basis of work performed at the usual working places, exclusive of time consumed in going to and from the working places.

E. L. ALL,
BORDEN BURR,
Attorneys for Appellants.

A copy of the foregoing statement of the points on which appellants intend to rely on the appeal has been served on Messrs. Crampton Harris, J. Q. Smith, Ralph Quinn, W. F. Spencer and Jerome A. Cooper, Attorneys of Record for those unions and employees affiliated with the International Union of Mine, Mill and Smelter Workers, with the Red Ore Mines Union of the A. F. of L., and for the intervener, respectively.

BORDEN BURR,
Of Counsel for Appellants.

Filed January 14, 1942.

STIPULATION.

In the District Court of the United States for the Southern Division of the Northern District of Alabama.

Tennessee Coal, Iron & Railroad Company, a Corporation,
Petitioner and Plaintiff
vs. Civil Action No. 5232.
Muscoda Local No. 123, Etc., et al, Defendants.

Sloss-Sheffield Steel & Iron Company, a Corporation,
Petitioner and Plaintiff
vs. Civil Action No. 5233.
Sloss Red Ore Local No. 109, Etc., et al, Defendants.

Republic Steel Corporation, a Corporation, Petitioner and
Plaintiff
vs. Civil Action No. 5234.
Raimund Local No. 121, Etc., et al, Defendants.

It Is Stipulated between the parties hereto that the record as certified by the clerk of the District Court to the Clerk of the Circuit Court of Appeals, and the record as printed under the direction of the Clerk of the Circuit Court of Appeals, and in the event an appeal from the Circuit Court of Appeals, or petition for writ of certiorari, to the Supreme Court of the United States be granted, shall contain the following changes, modifications or abridgements:

(a) On June 3, 1941. defendants affiliated with International Union of Mine, Mill and Smelter Workers filed their "Amendments to Answer of Defendants Affiliated with International Union of Mine, Mill and Smelter Workers," which amendment contained approximately 1800 names of individual who were intervening as parties defendants, and it is stipulated that in order to obviate the printing of the 1800 names, the following, being the full text of the amendment with the exception of said 1800 names, shall be certified by the Clerk of the District Court to the Clerk of the Circuit Court of Appeals and printed in the record:

Amendments to Answer of Defendants Affiliated with International Union of Mine, Mill and Smelter Workers.

(Civil Action No. 5232.)

Now come the defendants, Muscoda Local No. 123, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and W. C. Gunning, Pete Dulaney, R. H. Martin and Johnson Thompson, individually and as officers and members of such Local; and Wenonah Local No. 157, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and C. J. McDaniel, W. B. Lemley, R. E. Lemley and Ward Jefferson, individually and as officers and members of such Local; and Ishkooda Local No. 153, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and E. A. Sisemore, L. H. McBrayer, Elmore Mitchell, and Dennis Hart, individually and as officers and members of such Local, and Van D. Jones, C. L. Pegues, and Frank Allen, individually and as officers of the International Union of Mine, Mill and Smelter Workers, an unincorporated association, and pursuant to the stipulation reached at the pretrial hearing of the above entitled cause, amend their answer heretofore filed herein by adding the following additional averments:

XII.

For a further separate defense, these defendants allege that under the Fair Labor Standards Act of 1938 the workweek for the employees of the plaintiff engaged in production of goods for commerce includes all the time when a miner reports for duty as required at or near the collar or portal of the mine and ends when such miner reaches the collar or portal of the mine at the end of the shift, and all of the time spent on the surface in obtaining and returning lamps, carbide and tools, and checking in and out.

XIII

As a further separate defense, these defendants assert a counter-claim against the plaintiff for unpaid overtime compensation and an additional equal amount of liquidated damages pursuant to section 16. (b) of the Fair Labor Standards Act of 1938. In support of this counterclaim the defendants allege:

(a) That since the effective date of the said Act and until on or about May 1st, 1941, the plaintiff has never compensated any of its employees engaged in the production of goods for commerce within the meaning of said Act for any of the time spent by said employees in traveling to and from the collar or portal of the mine at the beginning and end of the shift and for any of the time spent by said employees on the surface in obtaining and returning lamps, carbide and tools and checking in and out.

(b) That since the effective date of the Act and until on or about May 1st, 1941, by reason of the failure of the plaintiff to compute said time in the work-week of its employees engaged in production for commerce within the meaning of said Act, the plaintiff has employed said employees for work weeks longer than forty-four (44) hours from October 24th, 1938, to October 24th, 1939, forty-two (42) hours from October 24th, 1939, to October 24th, 1940, and forty (40) hours from October 24th, 1940 to on or about May 1st, 1941.

(c) That these defendants bring this counter-claim as agents and representatives of the employees of the plaintiff affected pursuant to section 16 (b) of the said Act and pursuant to Rule 23 (2) of the Rules of Civil Procedure of the District Courts of the United States, in behalf of their members and all other employees similarly situated of the plaintiff who may now or hereafter during the pendency of this suit designate these defendants as their agents and representatives for the purpose of this suit, and these defendants specifically file counter-claims for and in behalf of each of the following named employees of complainant, separately and severally, to wit:

Agee, Frank; Ashley, Horace C.; Allison, Toll; (and approximately 1800 others).

(d) These defendants do claim for each of the individuals hereinabove named a total of work hours for which such individual counter-claimant has not been paid, in the number of, to-wit: thirteen hundred and ten (1310) hours, being ten (10) hours a week for one hundred and thirty-one (131) weeks, at the maximum rate of 87-½ cents an hour, making a total sum of, to-wit: eleven hundred and forty-six dollars and twenty-five cents ($1,146.25), as the unpaid wage items of each counter-claimant, and in addition thereto, claims for each an equal amount as liquidated damages, as provided by the Fair Labor Standards Act of 1938; and in addition, does claim an attorney's fee, to be ascertained and fixed by this Honorable Court. In making this counter-claim for the maximum number of hours and the maximum rate of pay, these defendants inform the Court that if an excessive amount is claimed hereby the exact amount can be readily determined in appropriate proceedings under the direction of this Court, and calls the attention of the Court to the order on pre-trial hearing entered herein, which provides in paragraph 2(b) that in such determination "the parties shall have the right and opportunity of presenting for the Court's consideration all of their respective claims, representatives and defenses."

Wherefore, the premises considered, these defendants pray that the Court take jurisdiction of these counter-claims and hear and adjudicate the same and that on the final hearing, will dissolve the temporary injunction heretofore issued and will dismiss the bill of complaint at the cost of the plaintiff.

These defendants further pray that judgment be awarded to the defendants as agents and representatives of the employees of the plaintiff hereinabove named for the unpaid overtime compensation due each of said employees and for an additional equal amount as liquidated damages to each of them, together with costs, and that the Court allow a reasonable attorney's fee to be paid by the plaintiff to Harris & Brown, a law firm composed of Crampton Harris and George S. Brown, and J. A. Lipscomb, the attorneys for the defendants.

(b) On June 3, 1941, all defendants in Civil Action No. 5233, Sloss-Sheffield Steel & Iron Company v. Sloss Red Ore Local No. 109, Etc., filed their "Amendments to Answer of all Defendants," which amendment contained the names of approximately 575 individuals who were intervening as parties defendants in said cause, and which amendment, except for the preamble and said names was in all respects identical with the amendments filed in Civil Action No. 5232, and set out in (a) of this Stipulation, and in order to obviate the printing of said names, and duplication of the same text in the record, it is stipulated that the following concerning said amendments shall be certified by the Clerk of the District Court to the Clerk of the Circuit Court of Appeals and printed in the record:

Amendments to Answer of All Defendants.

(Civil Action No. 5233.)

Now comes the defendants and pursuant to the stipulation reached at the pretrial hearing of the above entitled cause, amend their answers heretofore filed herein by adding the following additional averments:

(The remainder of said Amendments is identical with the Amendments in Case No. 5232, set out in (a) of this stipulation, except that the names of interveners are as follows: Ashworth, J. L.; Artis, David; Allen, Sam; Anderson, Thad, and approximately 575 others.)

(c) On June 3, 1941, in Civil Action No. 5234,—Republic Steel Corporation v. Raimund Local No. 121, etc.,—the defendants affiliated with International Union of Mine, Mill and Smelter Workers filed their "Amendments to Answer of Defendants Affiliated with International Union of Mine, Mill and Smelter Workers," which amendments contained the names of approximately 505 individuals who were intervening as parties defendants in said cause, and which amendments, except for the preamble and said names, were in all respects identical with the amendments filed in Civil Action No. 5232, and set out in (a) of this Stipulation, and in order to obviate the printing of said names, and duplication of the same text in the record, it is stipulated that the following concerning said amendments shall be certified by the Clerk of the District Court to the Clerk of the Circuit Court of Appeals and printed in the record:

Amendments to Answer of Defendants Affiliated with International Union of Mine, Mill and Smelter Workers.

(Civil Action No. 5234.)

Now come the defendants, Raimund Local 121, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, and John Butler, Lewis Tarrant and B. G. Stephens, individually and as officers and members of such Local, and Van D. Jones, C. L. Pegues and Frank Allen, individually, and as officers of the International Union of Mine, Mill & Smelter Workers, an unincorporated association, and pursuant to the stipulation reached at the pretrial hearing of the above entitled cause, amend their answer heretofore filed herein by adding the following additional averments:

(The remainder of said Amendments is identical with the Amendments in Case No. 5232, set out in (a) of this stipulation, except that the names of interveners are as follows: Anderson, Hubert Lavell; Atkinson, James Edward, and approximately 505 others.)

(d) With reference to additional amendments to answers filed by the defendants adding additional parties claimant, it is stipulated that the following shall be certified by the Clerk of the District Court to the Clerk of the Circuit Court of Appeals and printed in the record:

Additional Amendments to Answers of Defendants.

Amendments to answers of defendants which added additional claimants, and entered appearances as additional attorneys for defendants affiliated with International Union of Mine, Mill and Smelter Workers Lee Pressman and Joe Kovner of Washington, D. C., were made as follows:

In case No. 5234,—Republic Steel Corporation v. Raimund Local No. 121, Etc.,—filed July 31, 1941, adding 16 additional claimants, and in the same case, amendment filed October 6, 1941, adding 113 additional claimants; in the same case amendment filed October 8, 1941, adding as additional parties claimant widows, heirs at law, and administrators of twelve deceased employees.

In case No. 5233,—Sloss-Sheffield Steel & Iron Company v. Sloss Red Ore Local No. 109, Etc.,—amendment to answer filed July 31, 1941, adding seven additional claimants; amendment to answer filed October 6, 1941, adding 9 additional claimants; amendment to answer filed October 8, 1941, adding as additional parties claimant widows, heirs at law and administrators of six deceased employees.

In case No. 5232,—Tennessee Coal, Iron & Railroad Company vs. Muscoda Local No. 123, Etc.,—amendment to answer of defendants affiliated with American Federation of Labor filed September 10, 1941, adding 556 additional claimants; amendment to answer of defendants affiliated with International Union of Mine, Mill & Smelter Workers, filed October 6, 1941, adding 85 additional claimants; amendment to answer of defendants affiliated with International Union of Mine, Mill and Smelter Workers, filed October 8, 1941, adding as additional parties claimant widows, heirs at law and administrators of 38 deceased employees.

The plaintiffs, within twenty days from the time of the filing of such amendments, filed as to each of them their motions to dismiss the counterclaims as amended, assigning as grounds for such motions the same grounds assigned, separately and severally, from I to V, both inclusive, as filed to said amendments to cross claims filed June 19, 1941.

It is further stipulated that all amendments to the complaints of the plaintiffs, and amendments to the answer and counterclaims of defendants, shall be considered as having been made within the time allowed for pleading, and each responsive pleading, wherever necessary, shall be considered as having been refiled when amendments to the various pleadings have been made.

(e) With reference to "Plaintiff's Objections to Finding of Facts and Motion for Amendment thereof," filed by Plaintiff Sloss-Sheffield Steel & Iron Company in Case No. 5233, and by Republic Steel Corporation in Case No. 5234, it is stipulated that the Clerk of the District Court shall certify to the Clerk of the Circuit Court of Appeals, and there shall be printed in the record the following:

Plaintiffs' Objections to Findings of Fact and Motion for Amendment Thereof.

(Civil Action Nos. 5233 and 5234.)

On September 19, 1941, Petitioner-Plaintiff Sloss-Sheffield Steel & Iron Company, in Civil Action No. 5233, filed "Plaintiff's Objections to Findings of Fact and Motion for Amendment Thereof," and on the same date Petitioner-Plaintiff Republic Steel Corporation, in Civil Action No. 5234, filed "Plaintiff's Objections to Findings of Fact and Motion for Amendment thereof," grounds 1 to 10 of each of said objections and motions being identical with grounds 1 to 10, both inclusive of "Plaintiff's Objections to Findings of Fact and Motion for Amendment thereof," filed in Civil Action No. 5232 by Petitioner-Plaintiff Tennessee Coal, Iron & Railroad Company set out at Record p. 556 to 604.

Grounds 11 and 12 filed by Petitioner-Plaintiff Sloss-Sheffield Steel & Iron Company are as follows:

"11. The findings of fact relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such findings of fact are not applicable under the pleadings and proof to the underground ore mining employees at Plaintiff's No. 1 Iron ore mine.

"12. The findings of fact relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such findings of fact are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's Ruffner Iron ore mine."

Grounds 11 and 12 filed by Petitioner-Plaintiff Sloss-Sheffield Steel & Iron Company are as follows:

"1. The findings of fact relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such findings of fact are not applicable under the pleadings and proof to the underground Ore Mining employees at plaintiff's Raimund Iron Ore Mine.

"12. The findings of fact relate to all plaintiff's underground ore mining employes in all plaintiff's underground ore mines and such findings of fact are not applicable under the pleadings and proof to the underground ore mining employes at plaintiff's Spaulding Iron Ore Mine."

Grounds 13 to 38, both inclusive, filed by Petitioner-Plaintiffs Sloss-Sheffield Steel & Iron Company and Republic Steel Corporation, are identical with grounds 19 to 44, both inclusive, filed by Petitioner-Plaintiff Tennessee Coal, Iron & Railroad Company, set out at Record P. 579 to 630.

Ground 39, filed by Petitioners-Plaintiffs Sloss-Sheffield Steel & Iron Company and Republic Steel Corporation is as follows:

"39. Prior to the enactment of the Fair Labor Standards Act of 1938, plaintiff's underground iron ore mining employees never made any effort to obtain compensation for all of the travelling time spent by them daily after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday, and during such time and with such knowledge, signed either twice a month or four times a month written receipts acknowledging payment in full for all compensation due to them from the plaintiff."

Grounds 40, 41 and 42 filed by Petitioners-Plaintiffs Sloss-Sheffield Steel & Iron Company and Republic Steel Corporation are identical with grounds 46, 47 and 48, filed by Petitioner-Plaintiff Tennesse Coal, Iron & Railroad Company set out at Record p. 579 to 630.

Ground 43 filed by Petitioners-Plaintiff Sloss-Sheffield Steel & Iron Company and Republic Steel Corporation is identical with ground 49 filed by Petitioner-Plaintiff Tennessee Coal, Iron & Railroad Company, set out at Record p. 579 to 630 except that the last paragraph of said ground filed by Sloss-Sheffield Steel & Iron Company and Republic Steel Corporation is as follows:

"The efforts set out and described above are the only efforts ever made by said employees relating to the question of receiving compensation for any part of the time expended daily by them in travelling after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday."

Grounds 44 to 50 both inclusive, filed by Petitioners-Plaintiffs Sloss-Sheffield Steel & Iron Company and Republic Steel Corporation are identical with grounds 50 to 56, both inclusive, filed by Petitioner-Plaintiff Tennessee Coal, Iron and Railroad Company, set out at record p. 579 to 630.

Grounds 51 and 52 filed by Petitioners-Plaintiffs Sloss-Sheffield Steel & Iron Company and Republic Steel Corporation are as follows:

"51. During the period of the pendency of each of the written contracts as described in the above numbered findings from 47 through 50, inclusive, the Tennessee Coal, Iron & Railroad Company, Sloss-Sheffield Steel & Iron Company, and Woodward Iron Company, respectively, and their respective employees, operated under the respective contracts in regard to wages, hours of service, and conditions of employment.

"52. The words, "The eight-hour day means eight hours of work in and about the mines at the usual working places for all classes of labor," as they appear in the contracts described in the above findings from 47 through 50, inclusive, were at all times understood by the contracting parties to mean that the underground iron ore mining employes should not receive any compensation for any of the time expended daily by them in traveling after reporting at the mouth of the mine until they left the mouth of the mine at the end of the workday."

Grounds 53 to 71, both inclusive, filed by Petitioners-Plaintiffs' Sloss-Sheffield Steel & Iron Company and Republic Steel Corporation are identical with grounds 59 to 77, both inclusive, filed by Petitioner-Plaintiff Tennessee Coal, Iron and Railroad Company, set out at record p. 579 to 630.

Grounds 72, 73 and 74 filed by Petitioner-Plaintiff Republic Steel Corporation were as follows:

"72. During the period of time between October 24, 1938, and May 1, 1941, the Tennessee Coal, Iron & Railroad Company had in its job classification of underground ore mining employees approximately 44 different occupations.

"73. During the period of time between October 24, 1938, and May 1, 1941, the Republic Steel Corporation had in its job classification of underground ore mining employees approximately 51 different occupations at its Raimund Mine and approximately 32 different occupations at its Spaulding Mine.

"74. The conditions found in Finding of Fact Numbers 15 to 27, inclusive, as relating to and covering the period between October 24, 1938, and May 1, 1941, existed in all substantial effect during the approximately sixty-year history of iron ore mining in the Birmingham, Alabama, District."

There were no grounds numbered 72, 73 and 74 filed by Petitioner-Plaintiff Sloss-Sheffield Steel & Iron Company.

Grounds 75 to 94, inclusive, filed by Petitioners-Plaintiffs Sloss-Sheffield Steel & Iron Company and Republic Steel Corporation are identical with grounds 81 to 100, both inclusive, filed by Petitioner-Plaintiff Tennessee Coal, Iron and Railroad Company, set out at record 579 to 630.

(f) With reference to "Objections to Conclusions of Law" filed by Plaintiff Sloss-Sheffield Steel & Iron Company in Case No. 5233, and by Republic Steel Corporation in Case No. 5234, it is stipulated that the Clerk of the District Court shall certify to the Clerk of the Circuit Court of Appeals, and there shall be printed in the record the following:

Objections to Conclusions of Law.

(Civil Actions Nos. 5233 and 5234.)

On September 19, 1941, Petitioner-Plaintiff Sloss-Sheffield Steel & Iron Company, in Civil Action No. 5233, filed "Objections to Conclusions of Law" and on the same date Petitioner-Plaintiff Republic Steel Corporation, in Civil Action No. 5234 filed "Objections to Conclusions of Law," grounds 1 to 6 of each of said objections being identical with grounds 1 to 6 of "Objections to Conclusions of Law" filed in Civil Action No. 5232 by Petitioner-Plaintiff Tennessee Coal, Iron & Railroad Company, set out at Record P. 631 to 637.

Grounds 7 and 8 in said "Objections to Conclusions of Law" filed by Petitioner-Plaintiff Sloss-Sheffield Steel & Iron Company are as follows:

"7. The conclusions of law relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines, and such conclusions of law are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's Ruffner iron ore mine.

"8. The conclusions of law relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such conclusions of law are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's Sloss No. 1 iron ore mine."

Grounds 7 and 8 in said "Objections to Conclusions of Law" filed by Petitioner-Plaintiff Republic Steel Corporation are as follows:

"7. The conclusions of law relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines, and such conclusions of law are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's Raimund iron ore mine.

"8. The conclusions of law relate to all plaintiff's underground ore mining employees in all plaintiff's underground ore mines and such conclusions of law are not applicable under the pleadings and proof to the underground ore mining employees at plaintiff's Spaulding iron ore mine."

Grounds numbered 9 to 30, both inclusive of the "Objections and Conclusions of Law" of Petitioners-Plaintiffs Sloss-Sheffield Steel & Iron Company and Republic Steel Corporation are identical with grounds 16 to 37, both inclusive, of "Objections to Conclusions of Law" of Petitioner-Plaintiff Tennessee Coal, Iron & Railroad Company set out at Record P. 631 to 637.

(g) It is stipulated that T. C. I. Exhibits 41, 42, 43, 44, 45 and 46, consisting of hundreds of pages, shall not be set out in entirety in the record, but that the Clerk of the District Court shall certify to the Clerk of the Circuit Court of Appeals, and there shall be printed in the record the following with respect to said Exhibits:

T. C. I. Exhibits 41, 42, 43, 44, 45 and 46.

Tennessee Coal, Iron & Railroad Company Exhibit No. 41, introduced by the plaintiffs, consisted of the minutes of meetings between George B. Neal, Superintendent of the Wenonah Division, and employees who later became affiliated with the defendant unions. These minutes show the meetings were for the purpose of discussing individual grievances. They did not cover hours of work or terms of employment. The minutes offered were dated as follows:

July 19, 1934
October 30, 1934
January 8, 1935
February 2, 1935
February 16, 1935
February 26, 1935
August 22, 1935
September 19, 1935
December 19, 1935
January 9, 1936
January 21, 1936
April 7, 1936
April 22, 1936
July 12, 1939
July 28, 1939
October 12, 1939
November 21, 1939
December 14, 1939
January 5, 1940
January 16, 1940
March 5, 1940
June 4, 1940
August 28, 1940
September 5, 1940
October 1, 1940
October 22, 1940

November 2, 1936
May 20, 1937
June 30, 1937
March 26, 1938
April 16, 1938
August 23, 1938
November 18, 1938
December 8, 1938
February 2, 1939
February 23, 1939
March 30, 1939
April 27, 1939
May 20, 1939
October 31, 1940
November 13, 1940
December 19, 1940
January 30, 1941
February 13, 1941
March 6, 1941
April 5, 1941
April 15, 1941
May 1, 1941
May 15, 1941
May 22, 1941
June 5, 1941
June 19, 1941

Tennessee Coal, Iron & Railroad Company Exhibit No. 45 consists of minutes of meetings of employees from various divisions with E. M. Ball, General Superintendent, or G. B. Neal, General Superintendent. The minutes offered in evidence are from the meetings held on the following dates:

July 16, 1934
July 17, 1934
November 9, 1934
November 22, 1934
November 27, 1934
January 11, 1935
January 18, 1935
January 31, 1935
February 19, 1935
February 20, 1935
March 29, 1935
May 29, 1935
June 11, 1935
June 11, 1935
June 12, 1935
July 6, 1935
July 13, 1935
July 23, 1935
August 28, 1935
August 28, 1935
August 29, 1935
September 14, 1935
October 14, 1935
January 17, 1936
January 27, 1936
March 13, 1936
May 1, 1936
May 13, 1936
May 27, 1936
May 28, 1936

June 13, 1935
June 20, 1935
June 24, 1935
June 26, 1935
June 28, 1935
July 1, 1935
June 10, 1936
August 11, 1936
August 13, 1936
August 18, 1936
October 22, 1936
November 12, 1936

October 7, 1937

Tennessee Coal, Iron & Railroad Company Exhibits Numbered 43 and 42 purport to bring the minutes begun in Exhibit 45 up to date of January 1, 1941. The dates are as follows:

Exhibit 43.

June 9, 1938
October 27, 1938
December 1, 1938
December 16, 1938
January 17, 1939
January 28, 1939
February 22, 1939
March 31, 1939
May 31, 1939
July 28, 1939
October 4, 1939
November 6, 1939
February 5, 1940
June 28, 1940
September 6, 1940
November 25, 1940

Exhibit 42.

January 23, 1941
February 5, 1941
February 6, 1941
February 20, 1941
March 3, 1941
March 31, 1941
April 1, 1941
April 11, 1941
May 8, 1941
May 23, 1941
June 11, 1941
June 13, 1941

Tennessee Coal, Iron & Railroad Company Exhibit Number 44 contains minutes of meetings between employees in the Muscoda Division. The dates of these minutes introduced are as follows:

September 27, 1934
November 1, 1934
November 21, 1934
December 13, 1934
December 31, 1934
January 15, 1935
February 6, 1935
February 27, 1935
March 11, 1935
April 10, 1935
April 23, 1935
May 21, 1935
June 12, 1935
July 10, 1935
July 19, 1935
August 28, 1935
September 13, 1935
November 6, 1935
November 29, 1935
December 9, 1935
December 19, 1935
December 30, 1935
January 7, 1936
January 21, 1936
February 18, 1936
April 1, 1936
May 7, 1936
September 2, 1938
January 31, 1939
April 19, 1939
May 1, 1939
September 26, 1939
December 5, 1939
May 1, 1940
September 3, 1940
November 20, 1940
February 4, 1941
March 29, 1941
April 8, 1941
July 1, 1941

Tennessee Coal, Iron & Railroad Company Exhibit Number 46 contains minutes of meetings between employees in the Ishkooda Division. The dates of those minutes introduced are as follows:

July 18, 1934
November 5, 1934
January 3, 1935
January 7, 1935
February 7, 1935
March 20, 1935
May 29, 1935
June 13, 1949
July 7, 1949
November 2, 1939
January 10, 1940
February 8, 1940
April 17, 1940
May 16, 1940

October 7, 1935
November 18, 1935
January 23, 1936
February 21, 1936
October 28, 1936
September 21, 1937
October 7, 1937
November 11, 1938
January 11, 1939
February 8, 1939
March 8, 1939
March 23, 1939
April 12, 1939
May 10, 1939
June 12, 1940
July 12, 1940
August 13, 1940
September 4, 1940
October 8, 1940
November 20, 1940
December 11, 1940
January 8, 1941
February 12, 1941
March 12, 1941
April 9, 1941
May 14, 1941
June 10, 1941

None of the minutes above enumerated (T. C. I. Exhibits 41 to 46, both inclusive) contain any discussion of Portal-to-Portal. Tennessee Coal, Iron & Railroad Exhibit Number 45 shows in the meeting of June 13, 1935, that a contract was presented; but the contract is not in the minutes.

The minutes of May 27, 1936, show that an agreement was presented. That agreement was not in the minutes of the meeting, nor was it attached thereto, but T. C. I. Exhibit No. 10-A does not contain a proposed contract attached to letter dated May 26, 1936, T. C. I. Exhibit No. 10.

This 17 day of March, 1942.

E. L. ALL,
BORDEN BURR,
Attorneys for Plaintiffs.
CRAMPTON HARRIS,
......................,
Attorneys for Defendants Affiliated with International Union of Mine, Mill and Smelter Workers.

J. Q. SMITH,
RALPH W. QUINN,
W. F. SPENCER,
Attorneys for Defendants Affiliated with American Federation of Labor,
JEROME A. COOPER,
Attorneys for Philip B. Fleming, Administrator of Wage and Hour Division, United States Department of Labor —Intervener.

Filed March 19, 1942.

In the District Court of the United States for the Southern Division of the Northern District of Alabama.

Tennessee Coal, Iron & Railroad Company, a Corporation, Plaintiff,
vs. Civil Action No. 5232.
Muscoda Local No. 123, et al, Defendants.

Sloss-Sheffield Steel & Iron Company, a Corporation, Plaintiff,
vs. Civil Action No. 5233.
Sloss Red Ore Local No. 109, et al, Defendants.

Republic Steel Corporation, a Corporation, Plaintiff,
vs. Civil Action No. 5234.
Raimund Local No. 121, et al, Defendants.

The Above Entitled Causes, having been consolidated for purposes of trial, came on for hearing in the District

Court of the United States for the Southern Division of the Northern District of Alabama, at Birmingham, Alabama, beginning at 10:00 A. M., July 8, 1941.

Appearances:

Messrs. Borden Burr and Grady W. Patterson of Benners, Burr, McKamy & Forman, Birmingham, Alabama, and Messrs. E. L. All, S. M. Bronaugh and B. A. Monaghan of Bradley, Baldwin, All & White, Birmingham, Alabama, for Plaintiffs.

Mr. Crampton Harris, of Birmingham, Alabama, and Mr. J. A. Lipscomb, of Bessemer, Alabama, for all Defendants affiliated with International Union of Mine, Mill & Smelter Workers.

Mr. J. Q. Smith, Mr. Ralph W. Quinn and Mr. W. F. Spencer, of Birmingham, Alabama, for all defendants affiliated with American Federation of Labor.

Mr. Abner Brodie, of Washington, D. C., and Mr. Jerome A. Cooper of Birmingham, Alabama, for Philip B. Fleming, as Administrator of Wage and Hour Division, United States Department of Labor, Intervener.

PROCEEDINGS.

The Court:

Now, I want to say at the beginning of this case all the lawyers and the judge too,—we want to keep a cool head. It is going to be hot and the Court is going to be patient with you if it can, but at the same time we don't want any party in the case doing anything other than what is to be done unto others; that is, we don't want to say things we shouldn't. The Court doesn't want to have to reprimand anybody, and for that reason I think we can have an understanding and go ahead with the case without any trouble at all.

Now, how many defendants in this case?

The Clerk:

I can call them and let them answer to their names and make arrangements for them to sit back here.

(Thereupon the clerk called the defendants as follows: Muscoda Local No. 123, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, and W. C. Gunnin, Pete Dulaney, R. H. Martin and John Thompson individually and as officers and members of such local, all of whom answered present.

Wenonah Local No. 157, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, and C. J. McDaniel, W. B. Lemley, R. E. Lemley and Ward Jefferson, individually and as officers and members of such local, all of whom answered present.

Ishkooda Local No. 153, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, and E. A. Sisemore, L. H. McBrayer, Elmore Mitchell and Dennis Hart, all of which defendants answered present.

Van D. Jones, C. L. Pegues and Frank Allen, individually and as officers of the International Union of Mine, Mill & Smelter Workers, and all of said defendants answered present.

Muscoda Local No. 21935, Red Ore Miner's Union, an unincorporated association affiliated with the American

Federation of Labor and Fred Trammell, Joe P. Bell, W. R. Headrick and I. V. Robinson, all of which defendants answered present except the defendant Joe P. Bell, and when the name of that defendant was called, the following occurred:)

A Voice in the Courtroom:
He is sick.

The Court:
Who represents him?

Mr. Smith:
We represent him.

(Thereupon the clerk called the following defendants:

Wenonah Local No. 21936, Red Ore Miners Union, an unincorporated association affiliated with the American Federation of Labor, and [illegible] W. Kendrick, G. L. Batson, Will McGhee and W. T. Maxwell, none of which defendants answered present.

Thereupon the following occurred:)

The Clerk:
Who represents the—

Mr. Smith:
We represent them.

(Thereupon the clerk called the following defendants:

Ishkooda Local No. 21937, Red Ore Miners Union, and J. S. Pitts, James A. Bailey, Jr., A. E. Wesley, John White, Nathan Smith and James Snow, all of whom answered present except J. S. Pitts, A. E. Wesley, John White and Nathan Smith.)

Mr. Smith:
We represent all those, if Your Honor please.

The Clerk:
They are ready, then?

Mr. Smith:
Yes.

(Thereupon the clerk called the following defendants:

Sloss Red Ore Local No. 109, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and John Hill, Jesse Gaines, and W. A. O'Neal, individually and as members and officers of such local.)

The Clerk:
Who represents those defendants?

Mr. Lipscomb:
We do.

The Clerk:
Ruffner Miners Union Number 519, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and Frank Parker, Hosea Bickerstaff and George T. Drummond, individually and as members of such local.
Who represents those?

Mr. Lipscomb:
We do.

The Clerk:

Raimund Local Number 121, affiliated with the International Union of Mine, Mill and Smelter Workers and John Butler, Lewis Tarrant, B. G. Stephens.

You represent them also?

Mr. Lipscomb:

Represent them also.

The Clerk:

Van D. Jones, C. L. Pegues and Frank Allen, individually and as members and officers of the International Union of Mine, Mill and Smelter Workers.

Mr. Lipscomb:

Represent them also.

The Clerk:

Unit Number 8, Brotherhood of Miners of Captive Mines of Alabama, Melvin Lawrence, C. W. Eady and J. E. Thornton.

Represent them also?

Mr. Lipscomb:

No.

The Clerk:

Who represents Unit Number 8? Is there any lawyer representing Unit Number 8, Brotherhood of Captive Ore Miners?

Mr. Smith:

Mr. Clerk, you neglected to call S. E. Roper and W. O. Hare as individuals and as officers and members of the American Federation of Labor.

The Clerk:

S. E. Roper and W. O. Hare, individually and as officers and members of the American Federation of Labor.

Mr. Smith:

They are here.

The Court:

Who is supposed to represent these defendants?

Mr. Smith:

Your Honor, I don't think they have been represented since we have been having these hearings.

Mr. Burr:

What defendants is that?

The Clerk:

Unit Number 8.

Mr. Burr:

What case is that in?

The Clerk:

Republic Steel.

Mr. Burr:

I don't know. That is an organization some of our employees are supposed to belong to. I suppose we will have to handle it as a default proposition and travel on with the case.

The Clerk:

Both sides say they will take care of their own witnesses and not have them called.

The Court:
Is that true of both sides?

Mr. Burr:
That is true of ours.

Mr. Brodie:
Beg pardon; I didn't hear you.

The Court:
Each side will take care of their own witnesses?

Mr. Brodie:
Yes, sir.

The Court:
What did you wish to say?

Mr. Brodie:
I wish to present two motions to the Court. Will Your Honor hear me now?

The Court:
Yes.

Mr. Burr:
We haven't had notice.

The Court:
Have you given the other side notice?

Mr. Brodie:
No, sir, we have not.

The Court:
You are supposed to give the other side a copy.

Mr. Brodie:

One of them relates to the question of interrogatories discussed before Your Honor the other day, and Your Honor ruled that the plaintiffs would not be required to furnish other answers on their representation that the material to which the interrogatories related would be taken out of the complaint. I have—just a moment. I have a stenographic transcript of that, and I would like to call Your Honor's attention precisely to what happened at that time.

The Court:

You can tell me what happened.

Mr. Brodie:

All right. Your Honor will recall that the motion concerned itself—the motion Thursday concerned itself with interrogatories relating to costs. The particular interrogatories in question were 26 and 27, and during the discussion as to whether the plaintiffs had answered those sufficiently, Mr. Burr stated that all the material in the case to which those interrogatories related would be stricken from his complaint and he was going to file an amendment to the complaint taking out of the case any question of costs, and—

The Court:

Has he done that?

Mr. Brodie:

He has filed an amended complaint—rather, an amendment to the complaint striking out from the complaint a number of irrelevant and argumentative allegations which the Court has already ruled are not the concern of this Court in this issue. Specifically, he has taken out all the references to the Administrator's opinion and so forth. He has not, however, removed from the complaint the allegations relating to the impossibility of performance, to contracts, to increased costs and things of that nature to which those interrogatories relate.

I would like to call Your Honor's attention to page 22 of the T. C. I. complaint under Section 7,—Does Your Honor have that?

The Court:

I have it.

Mr. Brodie:

Under Section 7, entitled "Probability of great, if not irreparable injury," paragraph 4 states—Well, the preliminary paragraph states that "The plaintiff is in immediate peril of suffering great and irreparable injury because, among other things:

"4. Of the probable loss or interference with the performance of government contracts (and other existing contracts for the production of products for the national defense)."

Paragraph 7: "Of the great expense that the plaintiff would be put to in changing its operations from the 'working place to working place' plan to the 'portal to portal' plan."

On page 24 the following allegations still remain in the complaint:

"D. To undergoing the perils incident to its defense and other contracts.

"B. The planning and institution of new methods of operation which will result in great loss and damage to the plaintiff because—

"(a) Compliance will result in a large reduction in production," and so forth, and on page—all the rest of that paragraph. I don't want to take Your Honor's time to read the whole now.

Page 25, top of the page, "the loss of working time which plaintiff will continue to suffer."

The second paragraph on page 25, "On the basis of loss of production as estimated by the plaintiff, the installation of the 'portal to portal' system would mean a loss on an annual production of" so many tons.

Down in the center on page 25, starting with, "If the time of work at the usual working places is reduced from eight to six or less hours (this apparently will be necessary because increase in cost would become prohibitive if the present and contracted for eight hours per day work at the working place was changed to six hours compensated work with payment of time and one-half for the additional two hours of over time spent in going to and from the working place), the earnings under the incentive plan will be greatly reduced, if not altogether eliminated."

On page 26 the following allegation still remains in the complaint:

"(e) It would place the plaintiff at a serious disadvantage with its competitors and would deprive it of a substantial portion of its existing market."

"(g) The plaintiff has placed itself subject to the call of national defense, and based upon the requirements of national defense, has already contracted for or indicated it will have to increase its annual production approximately 20 percent above the 1940 production figures," and similar material.

"(h) Contains references to the impossibility of operating under the portal to portal plan and says to change this face to face method would be difficult and costly.

There is still remaining in the complaint at page—No, that is a collective bargaining contract, solely.

Now, on Thursday, during the course of the discussion, the Court asked me, "If it is stricken from the complaint do you want all that?"

My answer to Your Honor was, "If all those allegations are out, the denial of due process, about the impossibility of complying, about the excessive costs, about the cost of national defense, are stricken and we haven't all those allegations in the complaint, we don't want these answers.

"Mr. Burr:

They will be stricken, Your Honor. We want to get down to the issues in this case. That is the first thing I did this morning, was to try to work out an amendment. I am going to present an amendment striking out anything that involves costs."

Under the circumstances, if Your Honor please, we do not have the information regarding costs; the allegations regarding them are still in the complaint, and we have to come into this Court again in the dark. I submit counsel should not be permitted to play ducks and drakes with either the Court or us. Your Honor ruled on July 1st these questions should be answered responsively. They were not answered. The motion was made last Thursday and argued, and it was on the statement that all allegations relating to the subject matter of the interstate commerce would be stricken from the complaint that Your Honor denied our motion for responsive and full answers to those interrogatories.

Now, we call upon the Court to require the plaintiffs to give us the information that was requested in the interrogatories, or to require them to amend their complaints to strike from them all reference to costs and the impossibility of performance, and national defense contracts, and so forth, as Mr. Burr stated he would do, and I also respectfully request the Court, after this information is furnished to us, that we have a sufficient recess during the trial of this case to allow us to assimilate it and break it down and afford us an opportunity to meet those allegations, a right which has been denied to us by the denial of the motion to take oral depositions and to have the information requested in these interrogatories.

What I have said with reference to the Tennessee Coal, Iron & Railroad Company complaint applies to the other two complaints, and I ask that the plaintiffs be required to give us this information, and that the Court give us sufficient recess to allow us time to meet those contentions.

The Court:

As I remember it, the Sloss-Sheffield Company and Republic had answered those questions.

Mr. Brodie:

They had answered Question number 26. They had not answered sufficiently question 27. That, however, in view of Mr. Burr's statement these issues were going out of the case, was not argued. The question of whether the answers of the Sloss-Sheffield Company and the Republic Corporation to interrogatory 27 were sufficient was not argued. The thing that was argued was the answer to question 26, and my recollection is that the answer to question 26 was supplied by Republic and Sloss was sufficient. I would like an opportunity to look at those answers for a minute. But they all stated they would amend, and Your Honor said, "In view of that statement, I will deny your application," but we did not argue question 27 at all with regard to any of these plaintiffs.

The Court:
All right, sir.

Mr. Burr:
If Your Honor please, I assure Your Honor I haven't been trying to make ducks or drakes of either the Court or these gentlemen.

What I have been trying to do is to get a trial of this case, and I think this is the sixth time I have been confronted with a request for a recess or continuance.

Now, the other day, to get the case tried, while I was anxious to go into the question of collateral matters that relate to irreparable injury, I was not willing to have those collateral matters interfere with the prompt trial of this case, and so, in order to avoid that question, I stated I would amend my complaint so they would not be issues in the case, and I will state to Your Honor that is the way I have amended my complaint. If I have not amended it that way, if Your Honor will suggest how it should be done, I will be glad to amend it that way although we might thereby lose the advantage of some testimony we might otherwise introduce.

Now, let's see what he claims hasn't been stripped from this complaint. You will recall interrogatory 26 asked for the cost of iron ore production, and interrogatory 27 asks for the cost of pig iron production, a matter which I don't see could be material in this case.

Your Honor sees what has been stricken from the complaint. I have stricken everything I can see that involves the question of costs.

Let's take the ones that do involve it. Take page 26, defense contracts. That doesn't involve the question of costs in the remotest way. The way that comes into the complaint is not in connection with costs, but as pointed out in the bill, and as I state now, and as we expect to prove by the evidence, every government contract makes us subject, without reference to whether it is the law or not, to the regulations of this Administrator, so, naturally, in order to preserve those contracts we had to follow the Administrator's interpretation.

Your Honor is familiar with the recent opinion of the Supreme Court with reference to government purchases that they could write therein such restrictions as they pleased.

That is what that is left in there for and that alone. To show you what the cost of complying with these contracts will not be an issue is that averment. What we are averring is because, as we see it, of this unjustifiable ruling of the Administrator we will be adversely affected in the performance of our national defense contracts of which we have millions of dollars. That is all that is involved in the question of government contracts.

Let's take up the next one.

Of course, Your Honor, it is not necessary—Mr. All suggests I call attention under that to the effective power of the Administrator under the hot goods clause of the Act. We are not raising there any question of cost. We are raising the question, and the sole question of the damage that will be produced; that under these contracts we will be put practically under the supervision of the Administrator.

The next one he called attention to is, as I remember it, on page 24.

Mr. Brodie:
23. Mr. Burr.

Mr. Burr:
23?

Mr. Brodie:
Paragraph 7.

Mr. Burr:
"Of the great expense that the plaintiff will be put to in changing its operations from the 'working place to working place' plan to the 'portal to portal' plan."

Now, that doesn't involve the cost of either pig iron or iron ore. We expect to prove under that, to give you a concrete illustration, that one of these companies, to save transportation time, has had to open up a new travel way that was available in some old workings.

The Court:
In other words, you will be put to some more expense?

Mr. Burr:
Yes, sir.

The Court:
In other words, you wanted to get them in quickly in order to—

Mr. Burr:
Had to do it.

The Court:
—save that time?

Mr. Burr:
To save that time.

The Court:
I see.

Mr. Burr:

It is not a matter of costs, either directly or indirectly.

The Court:

I see.

Mr. Burr:

All right:

"B. The planning and institution of new methods of operation which will result in great loss and damage to the plaintiff because compliance will result in a large reduction in production."

Now, that doesn't involve the cost of production at all. That involves the loss in the production of the tonnage of ore that we are able to get out. Certainly you can't interpret a law as saying you are going to read into it the costs.

We are willing now—we have had to go down and buy another furnace to try to keep up with our production. We have had to buy iron ore from other people. We propose to show that,—not in money,—not to try to trace it into money, but we propose to show if it continues on the present basis we have lost 500,000 tons annually of production under the ruling of the Administrator. There are no costs involved there, and none will be involved.

The next one is on page 25:

"The loss of working time would be much greater if the employees' contention that time spent in going to and from the bath house, the time spent in transportation from portal to portal and the thirty minutes lunch period are included as a part of the workday for which they should be compensated."

That is not an element of cost. What we propose to show there is that having only one opening into our mines, and having only one portal now through which the men and iron ore and material has to go in and go out, to reduce the working time from eight hours to six and a half hours at the face, we have lost that much time of the men's productive ability. No costs are involved and none will be involved.

What is the next one? I may have overlooked some.

Mr. Brodie:

Next to the last paragraph on page 25.

Mr. Burr:

Next to the last paragraph on page 25?

Mr. Brodie:

Yes, sir.

Mr. Burr:

It is the same thing as that.

"If the time of work at the usual working places is reduced from eight to six or less actual hours (this apparently will be necessary because increase in cost would become prohibitive if the present and contracted for eight hours per day work at the working place was changed to six hours compensated work with payment of time and one-half for the additional two hours of over time spent in going to and from the working place), the earnings under the incentive plan will be greatly reduced, if not altogether eliminated."

What does that mean? It means either one of two things, that we have either got to be content with six hours work, or, if the Administrator's contention is correct, we have to pay time and a half for two hours overtime. It doesn't go into cost. We will prove we can't afford to pay these miners,—it would be prohibitive,—we could buy the iron ore elsewhere if it were available,—to pay the iron ore miners for mining ore on an overtime basis. We are bound to confine it to the six and a half hours under the Administrator's ruling. That is the only one that mentions cost at all, and it is clearly with reference to the overtime ruling, and that is all we propose to use it for.

(g) On page 26:

"The plaintiff has placed itself subject to the call of national defense, and based upon the requirements of national defense, has already contracted for or indicated it will have to increase its annual production approximately 20 percent above the 1940 production figures. It would be difficult, if not impossible, to meet this requirement if the present 'working place to working place' system were changed. Said defense contracts as to costs were based upon the existence and continuance under the existing contracts of the 'working place to working place' plan."

The Court:
He mentioned (e) too, as well as (g).

Mr. Burr:
All right.

"(e) It would place the plaintiff at a serious disadvantage with its competitors and would deprive it of a substantial portion of its existing market."

Well, that doesn't involve any cost. It involves the sole question by reason of the fact—all that will not come in on our direct case. I will assure your Honor of that, but assuming the Administrator has got the nerve to try to defend his opinion as indicated,—we say we have stripped the opinion from the case; we will try the case on the law, but if and when the Administrator comes in here trying to apply to Alabama the laws of Utah and Arizona and Lake Superior and copper mines and other things, we expect to raise the question that would be a violation of those provisions of the law based on the theory competition is the main basis of the Act. That is all that is involved there.

Next is the national defense.

Next is the plaintiff's cycle of operation. The only thing that is involved in the cycle of operations is this—

The Court:
I don't think he mentioned (h).

Mr. Burr:
He could have done so just as easily.

Mr. Brodie:
Yes, I did.

Mr. Burr:
I submit to this Court, instead of playing ducks and drakes with anybody, I have made a sincere effort to eliminate these provisions, and if I haven't eliminated them, I will ask Your Honor to tell me how to eliminate them to get through with this effort every day to continue this case.

I assure Your Honor, as far as we are concerned, in presenting our case we don't expect in the remotest degree to go—

The Court:
To go into costs?

Mr. Burr:

—into the cost of producing iron or of pig iron or plate steel anything else.

Mr. Brodie:

May I reply, Your Honor?

The Court:

Yes. Make it short.

Mr. Brodie:

With respect to the first point Mr. Burr made, that paragraph 4 on page 22 does not involve the question of costs, I want to say here and now that there is no regulation of the Administrator—under the statute the Administrator is empowered in certain circumstances to issue regulations, and those regulations have the force and effect of law. In this instance the Administrator has no power to issue any regulations, and claims to have no power to issue any regulations, so that question is out.

They say "of the probable loss or interference with the performance of government contracts." Certainly that involves the question of costs. This whole matter involves the question of costs, because these people have continued to operate as they operated theretofore and paid time and a half for the hours in excess of forty. They claim the costs of doing that are prohibitive. Now, they don't sell iron ore. They make pig iron and make steel, and we want to know what products they manufacture are going to be affected. The price of getting out iron ore is only the component of the cost of pig iron and steel, and if they allege an impossibility of operating under the portal to portal plan, or any system which will require them to increase the cost of extracting ore from the mines, we are entitled to the information on that, so we can have an opportunity to determine whether or not their allegation is a fair one. We don't have to come into Court in the dark without an opportunity to examine anybody or without access to any figures relating to any of these allegations which they have brought into the complaint.

Moreover, it says they are also subject to the Administrator's power under the hot goods section of the statute. I want to say right now the Administrator has no power under the hot goods section of the statute. The Administrator must come into Court, and it is up to the Court to decide whether an injunction shall be granted, or if a preliminary injunction is applied for, or an order of restraint is applied for, it is up to the Court to determine whether the law has been violated and whether the party has thus become subject to the hot goods provision of the Act. The hot goods provisions of the Act are not self-operating. The Court must determine that.

With respect to the allegations on page 23 regarding the expense of putting into operation the portal to portal plan, counsel states that bears only upon the expense of getting the men in and getting the men out. They don't get the men in and get the men out for the fun of it, because it is just a joy ride; they get the men in and get the men out because it is part of the process of producing ore and producing iron and producing finished products. The cost bears upon the expense of producing the articles which the plaintiffs are engaged in selling. That cannot be considered as a vacuum divorced from the business of these plaintiffs.

The same thing is true with respect to the allegations on page 24 relating to production. That is purely and simply a matter of costs. I have already pointed out they can operate as they operated previous to May 1st by paying time and a half for over time. They contend the cost would be excessive. I submit that is nothing more or less than a problem of costs. If they could produce the ore under the old system, they could continue under the old system and pay time and a half.

But we are entitled to know just what the situation with respect to those costs is, how they are going to be burdened, what expenses they are going to be put to, how those expenses will affect the costs of their finished products bears upon the very issue in this case which they have raised.

These issues are not to be tried in any intellectual vacuum, I submit. They must be tried in view of the allegations which the plaintiffs have brought into the case themselves.

With respect to the allegations on page 25 where Mr. Burr read that one paragraph and said this refers only to the loss of time,—loss of working time,—rather, the increased cost of working time if the employees' contention regarding the bath house to bath house prevails, if Your Honor will look at that Your Honor will see that is merely an introduction to the very next paragraph which says:

> "On the basis of loss of production as estimated by the plaintiff, the installation of the 'portal to portal' system would mean a loss on an annual production of 4,320,309 net tons of iron ore and limestone (Plaintiff's 1940 production) of 381,324 tons."

Limestone has nothing to do with this case.

Again I say if they can produce more ore under the old system, and if they want to continue under the old system, there is nothing in this statute which prevents them. This statute imposes no maximum. Congress says, in passing this statute, if you want to work your people more than 40 hours a week, you can do so by paying time and a half. There again we have the cost situation.

Everything the plaintiff has done has been keeping us in the dark.

The same thing applies to Paragraph (e) on page 26 where it is contended that the plaintiffs would be placed at a serious disadvantage with their competitors.

Now, if competition is not based upon costs, I don't know what it is based upon. Certainly the cost problem becomes an important one. The only reason that allegation is in the complaint is because the problem of costs is involved.

The same thing is true with respect to paragraph (g) on page 26 where they say:

> "The plaintiff has placed itself subject to the call of national defense, and based upon the requirements of national defense, has already contracted for or indicated it will have to increase its annual production approximately 20 percent above the 1940 production figures. It would be difficult, if not impossible, to meet this requirement if the present 'working place to working place' system were changed. Said defense contracts as to costs were based upon the existence and continuance under the existing contracts of the 'working place to working place' plan."

The same thing is true with respect to (h), the plaintiff's cycle of operations. If it be a fact the cycle of operations is disrupted, then they could continue to operate under the same method they have always operated, and pay time and a half for work in excess of forty hours during the week, and the problem again becomes one of costs.

Every one of these allegations, allegations respecting impossibility of operating under this plan and so forth, the allegations respecting irreparable injuries, every one of them relate to cost and nothing else. They can't relate to anything else but cost.

No allegations regarding costs were taken out of the complaint that amount to anything. The only things that were taken out of the complaint were all the argumentative allegations with respect to the outrages of the things the Administrator has done, and that was done after that whole question was argued and re-argued and briefed and passed upon by this Court. What the Administrator has done, the mental processes of the Administrator, his good faith, all those things had no bearing upon the issues of this case, and all they have done is to take out of the complaint those allegations and a few more argumentative statements.

The allegations respecting costs remain in the complaint, and under those circumstances, I respectfully ask Your Honor to direct either that they give us that information, as Your Honor has previously ruled we are entitled to, or that Your Honor direct them to take out from the complaint all these allegations about which we complain, and a stipulation put in upon the record that no evidence will be offered respecting those allegations.

We have been put off continually in an endeavor to get this information.

I have stated before and I will state again we are not afraid to meet the issue of costs. We are not afraid of that issue. If they want to try that issue out, we are willing to meet it if we have an opportunity to get the information we are entitled to under the rules which have made out of a lawsuit a trial for justice and not a sporting proposition where each party endeavors to surprise the other. We are entitled under the rules to know what problems we will have to meet and not a vague guess.

The Court:

Mr. Burr, you are not going into the question of costs?

Mr. Burr:

No, sir, I haven't the remotest idea of going into the question of costs.

I might say this: I was turning over in my own head about one illustration he used,—how time and a half would relate to the question of costs. We are not going to try whether some economist or protestant will say we can run our plant. I know these gentlemen over here are as full of theories as a dog is of fleas. What we are trying—the law applies to all plants, not well conducted plants alone. While the gentleman admitted the Administrator has not the power to make the law, I want to tell you when the Administrator is sitting in the saddle and he calls you into Court on the hot goods clause, his word is law until you can get a Court ruling.

Now, what we propose to show on the overtime proposition—roughly, the Tennessee Company employes,—that appears in the complaint,—about 2600 men. Roughly, these men get about ten dollars a day on the eight-hour face to face plan. It is so easy for people to come in and tell you to cut your time down to six hours and pay these people time and a half for overtime. I don't care how badly our operations are conducted particularly, —we don't believe they are,—if we had time to mess around with these things we wouldn't run away from that charge, but here is the $10,000 payroll on the 8-hour basis, and those same men under this order, say, would work 6 hours a day. All right. Now, the overtime for those two hours would amount to, instead of $10,000 a day, we would be paying about $25,000 a day, and about one-fourth of that would be the hour and a half as Your Honor can readily see. There is an actual fact. I don't care anything about your economists,—I haven't got any patience with them on matters of this sort. What I want to present are the bare, bald facts. Here is a client of mine, by an order—by a rule or interpretation—I keep calling it an order because that is what it amounts to,— a rule or interpretation we are faced with the question of whether if we get production we pay these men time and a half for overtime. I think we have stripped that complaint of costs. I am perfectly willing any time I get in costs Your Honor to raise your hand, and I will immediately pass on to something else.

The Court:
The motion is overruled.

Mr. Brodie:
Your Honor grant me an exception?

The Court:
Yes. You don't have to do it.

Mr. Brodie:
May I state the grounds of the motion?

The Court:
You don't have to. It is not necessary.

Mr. Brodie:
I have one other motion. Mr. Burr and I discussed this matter over the phone about five o'clock yesterday afternoon, and that refers to permission to enter the mine—for our people to enter the mine and look around and take photographs and make dust counts and so forth.

Mr. Burr told me he would have no objection to one engineer going in and making dust counts of the atmosphere. He said he would also object to an economist whom we would also like to be present to make an inspection,—not make an inspection of the mine but to see it. He said he would not permit it.

Under Rule 34—I have here a formal, written motion covering that.

The Court:
Go on to your law.

Mr. Brodie:

Under Rule 34 it is provided, "Upon motion of any party showing good cause therefor, and upon notice to all other parties, the Court in which an action is pending may:

"1. Order any party to produce and permit the inspection and copying or photographing of any documents", etc.; or

"2. Order any part to permit entry upon tracks, land or other property in his possession or control for the purpose of inspecting, measuring, surveying or photographing the property or any designated relevant objection or operation thereon.

"The order shall specify the time, place and manner of taking the inspection and taking the copies or photographs, and may prescribe such terms and conditions as are just."

All we want, as I stated—Mr. Burr has agreed, as I understand it,—if I am wrong he will correct me,—that our engineer may go in and make dust counts in the mines, and the only other thing we want is our economist, a member of the staff of the Department of Labor,—the engineer wants him to help him take pictures and with his equipment, and I would like for him to make a study of the mine. Both of these men are in the employ of the government and connected with the Department of Labor, and I submit under the rules we should be given that opportunity. The only purpose of that is to present all the facts to Your Honor. If the plaintiffs have nothing to hide I am sure they can have no objection to these two men going into the mine.

The engineer—with respect to the engineer, Mr. Burr stated he would permit him to go in once, and that was all.

To get dust counts he has to take certain samples of the atmosphere,--I am not familiar with the technique of it,—to get dust counts he will have to take samples of the atmosphere—he will not interfere with the operation of the mine, but he will have to go back a few times. How many, I don't know.

The Court:
What is the relevancy of the dust counts?

Mr. Brodie:
The purpose is to show whether these men were at work before they reached the face. Bearing upon that question are a number of factors, among which is whether they are exposed to any hazards of employment while they are in the mine between the portal and the face, whether the conditions are healthful or otherwise. It has been suggested there is no difference between the time spent going between the portal and the face and the time spent by a man going from his home to the mine on a trolley car. We would like to have an opportunity to show the actual conditions with respect to ventilation and atmosphere and ease of walking and danger of falling rock and various other factors; that these men are subjected to the hazards of their employment from the minute they enter the portal of the mine.

Rule 34 gives us this opportunity. That can be done without any interruption—

The Court:
With reasonable restrictions.

Mr. Brodie:
Yes, sir.

The Court:

It is discretionary with the Court. I think the plaintiffs will permit two men—

Mr. Burr:

When he gets through, Your Honor, I will state my position.

The Court:

All right.

Mr. Burr:

He has said so much I will have to be heard on it.

The Court:

Are you through?

Mr. Brodie:

Yes, sir.

The Court:

All right; I will hear Mr. Burr.

Mr. Harris:

I will probably want to be heard when Mr. Burr gets through.

Mr. Burr.

Along the same lines as his?

Mr. Harris:

In part.

Mr. Burr:

Suppose you go ahead.

The Court:

I will hear you now, Colonel.

Mr. Harris:

In reference to the points Mr. Brodie has mentioned, as I view it from the standpoint of the men who work in the mines, the conditions which confront those men are a vital part of this case. When a man comes to the mines of the Tennessee Coal, Iron & Railroad Company, he comes in his street clothes. He goes to a bath house and changes; he was not subject to the orders of the company; he was not assigned by the company. The moment he comes out of that bath house dressed for work, he is subject to orders, going to any place to which they have assigned him, that man becomes confronted with certain hazards, risks and dangers to his health and to his life, so this Court, in my opinion, is vitally interested in everything that affects his safety and well being from the time he puts his check on the window and starts down into that mine until the time he comes out. It is all one productive process, and that man, subject to their orders, subject to this danger, is entitled, in my judgment, to present them to the Court, and any expert testimony which shows what he is subjected to and the conditions under which he works is of vital importance in this case.

I see no reason why, under the rules and the enlightened procedure that we have, these plaintiffs can say you can take one man down there, or they can say what kind of man we shall take down there. If it is discovery we are entitled to select the men we think can discover the most for us.

Mr. Smith:

Your Honor, we join—we think it is competent and material that the whole outlay of the mines be brought out, and we join with Mr. Harris and Mr. Brodie in respect of that motion.

Mr. Burr:

Now, if Your Honor please, I want to first discuss this matter in the light of the rule. The rule provides on the motion of any party showing good cause therefor, and getting down to the part involved here, "Order any party to permit entry upon tracks, land or other property in his possession or control for the purpose of inspecting, measuring, surveying or photographing the property, or any designated relevant object or operation thereon.

"The order shall specify the time and place and manner of making the inspection and taking the copies and photographs, and may prescribe such terms and conditions as are just."

Now, last week,—I think on the 3rd of July,—why, the attorneys for the Administrator indicated that they wanted an inspection of the mines made by an engineer. Your Honor asked me if we would have any objection to that, and I stated we wouldn't so long as we were satisfied of the competency and good repute of the engineer and of the time—the convenience.

Now; on yesterday afternoon about 5:30 I was informed for the first time that these gentlemen desired, not one engineer, but they desired two engineers, the name of neither one of which they could give me at the time, and an economist, and wanted someone to take photographs, and three lawyers. Well, I couldn't make that sort of agreement for reasons I will tell Your Honor now.

In the first place, I can't conceive of any business the lawyers have got in the mine, and I think that is out. We are not going down there. I have just gotten back from Minneapolis cross examining witnesses with reference to mines, the conditions in which are as dissimilar from our mines as night is from day, but I didn't need to go into the mines in order to cross examine them. I can't conceive of what business an economist has got in reference to this.

I told Mr. Brodie that we had no objection to two engineers going in the mine, provided it was arranged at a convenient time, and provided our engineer could go along with them and an independent engineer we expect to employ.

Let me show Your Honor the situation. You are not going out here dealing with a piece of land or a building. You are dealing with a business that is working as continuously and as hard as it can to get out the production of iron ore. Every time you take a party down in that mine—I speak advisedly,—my people and I know what happens. There is one entrance to that mine. The men are hauled down on a mantrip, which, as soon as the hauling of the men is completed, is put in operation hauling material in the mine and ore out. We submit it wouldn't be proper to send a party down there. Every time a party goes down there we have a disorganization in the work. You have to stop supplying the people with cars; you have to have them around where the men are working, and you have to stop the work.

Now, when you get to taking photographs, it depends on who takes them and how many you want to take.

I am not going to say anything out of order, but I am going to ask these gentlemen to quit charging me, by insinuations, with trying to hide anything in this case. I am not trying to hide anything. What I am trying to do is to keep these people from disrupting our operations. I am willing for two engineers,—I am willing for the Court to pass on them,—to go down in the mine and see what they want to see.

As far as photographs, we don't object to photographs being taken, although it depends on who takes them largely what they show. I remember hearing a case tried in Shelby County about a photograph. It is one of the most illuminating things I ever heard about photographs, but I will not take the time to go into that now.

I would suggest with reference to photographs we have in our files photographs of nearly every operation in that mine, and they are available to these gentlemen. If they don't suit them, let Your Honor appoint some photographer, some view man, and go down and take pictures, but to turn loose in these mines a bunch of people—asking us to let them go down into the mines is going entirely too far.

Mr. Brodie:
There are only two people.

Mr. Burr:
You have come down. You told me on yesterday—

Mr. Brodie:
Let me explain.

Mr. Burr:
He told me yesterday—told Mr. Monaghan—

The Court:
How many do you want?

Mr. Brodie:
I want an engineer.

Mr. Burr:
I will let two engineers go.

Mr. Brodie:
And an economist.

The Court:

I don't see any difference between an economist and an engineer.

Mr. Burr:

I wouldn't want a preacher to go. He might preach a sermon on hell fire and damnation.

Who is the economist?

(Thereupon a man stood in the Court Room.)

Mr. Burr:

There he is. He looks like I thought he would,—a nice looking young man, probably a Harvard graduate.

I am willing to make it anything Your Honor says.

The Court:

I will let two men go. Then, there is the question of time.

Mr. Burr:

I should think when we recess this week end.

The Court:

How about between shifts? When is the best time?

Mr. Brodie:

May I suggest they go down on the mantrip with the miners?

Mr. Burr:

Now, we have had a good deal more experience in running our mines than these gentlemen from Washington.

The Court:

Of course, the company wants them to go in a safe manner.

Mr. Burr:

We have had one experience of this kind with this very department.

The Court:

I am going to permit two representatives at the selection of the defendants to go down and view the mines and take pictures and view the mines and see what they want.

Mr. Burr:

We will arrange to have go with those two men our own engineers, and we will arrange to have a photographer go along too, so when they get a picture we may get one also.

Mr. Brodie:

This is each mine.

Mr. Burr:

You want to go in every mine?

Mr. Smith:

This includes Sloss and Republic too.

Mr. Burr:

Let me see if I understand. Are they going to have to go in every mine or one mine of each plaintiff? What is Your Honor going to require?

The Court:

How many mines have you of the Tennessee Company?

Mr. Burr:

We have eight,—nine mines.

The Court:
You want to go in all the mines?

Mr. Burr:
Republic has two. How many has Sloss?

Mr. All:
Sloss has two.

The Court:
Do you want to go in every mine?

Mr. Harris:
There are substantially different conditions in the various mines.

The Court:
As I understand there are different conditions prevailing in the mines. Go in each mine.

Mr. Burr:
We think that order at the proper time should be put in writing.

The Court:
Mr. Brodie, put an order in writing.

Mr. Burr:
Your Honor will have that order submitted to us before it is signed? We want an opportunity to put such restrictions in there as to protect the rights of the clients.

The Court:
If you have your engineer or some employee to accompany them, I don't see any—.

Mr. Harris:

If Your Honor please, a part of the conditions surrounding the men in their work is the trip down, and the trip out on the mantrip. You see they haul the men down and don't haul ore at that time. It is our opinion that would be a reasonable thing as far as not interfering with their operation of the mines—

Mr. Burr:

If Crampton wants to ride down, I will let him ride.

Mr. Harris:

I am not going.

Mr. Burr:

I don't mind Crampton going, but I don't want these fifteen or twenty people—

Mr. Harris:

I am not going in the mine. I am in no physical condition to try a lawsuit and be wandering around underground. But I think the trip down with the mantrip—

The Court:

Is there any objection?

Mr. Burr:

If there are seven of them, it will interfere with our lowering the men into the mine.

The Court:

Use another car.

Mr. Burr:

We haven't another car.

The Court:
Let another come back and get them.

Mr. Burr:
That is what we are going to do.

Mr. Harris:
Lowering the men is part of the working conditions.

Mr. Burr:
I want to take an exception to the ruling. I don't think any of this testimony is relevant. So far as witnesses, he has 2600 men—

The Court:
He wants some experts.

Mr. Burr:
Your Honor remembers what Sam Jones said about experts. I will not quote it here.

Mr. Harris:
Two of my clients will give up their places on the mantrip so it will not make it any more crowded than on regular trips.

Mr. Burr:
We like the looks of your clients.

The Court:
Well, let's—

Mr. Harris:
I am not being facetious.

The Court:
I don't think there is anything facetious about it. The order will be signed.

Mr. Burr:

And it will be submitted to me for consideration of the terms?

The Court:

Let's don't be too meticulous about the terms.

Mr. Burr:

We will have to arrange a schedule.

The Court:

All right.

Mr. Burr:

We have nine mines of the Tennessee Company and two of the Republic and two of the Sloss, is fourteen, and Woodward is not a party,—there are thirteen mines. Of course, a schedule will have to be worked out that covers that situation.

Mr. All:

If the Court please, I think the order should be so arranged that each mine—we would know when they are going to appear to go into each mine, and, of course, we are anxious for them not to be in the mines all day, something of that sort. If they want to go and come, all right. Spending a great deal of time in the mine is one thing. Of course, as Mr. Burr stated, Your Honor is making the restriction.

Mr. Harris:

We will submit the order.

The Court:

Mr. All, I assume these other gentlemen will be reasonable and you all will be reasonable too in the time consumed in examining these mines.

Mr. Burr:

I think if Mr. Harris is going to draw the order, if he will prepare it and submit it to me, we can get together on it.

Mr. Harris:

Perhaps we can get together on it before we draw the order.

Mr. Burr:

Well, you prepare it and we will work it out.

The Court:

Is that all the motions? Are we ready for the plaintiffs to proceed?

Mr. Burr:

Yes, sir. As you know, personally—

The Court:

I signed an order consolidating these cases for the purposes of trial.

Mr. Burr:

All right, sir. May I suggest we ought to have the record show that during the trial all testimony introduced by anyone is considered as admitted in each case separately

Is that satisfactory?

The Court:

That is agreeable with the Court.

Mr. Brodie:

I am sorry, I didn't get that.

Mr. Burr:

That all evidence presented by any party is considered as being offered on behalf of all persons unless a statement is made at the time it is not so offered. That will protect your two unions.

Mr. Harris:

There is one difference I have, and you gentlemen may have other differences. There is certain evidence that may come in that is applicable—as the pleadings stand here, if he offers evidence on—if that evidence is let in it may be applicable to the entire situation, and then there may be other evidence that will be pertinent and material only to a particular company or a particular mine. I don't think the conditions that exist at Muscoda or Ishkooda or Wenonah,—that any evidence that comes out with reference to those conditions has anything to do with what goes on at Republic or Woodward, and I think Mr. Burr will agree with me on that.

Mr. Burr:

I think under the broad aspects of this case it will be relevant testimony.

The Court:

I think—

Mr. Harris:

Your Honor is going to find—

The Court:

I may be there is such lack of relevancy—

Mr. Harris:

I wouldn't want to make any blanket agreement until I see what it is. You can't eliminate facts.

Mr. Burr:

My suggestion was not a blanket agreement, but that unless someone suggests otherwise it be considered as applicable to all cases.

The Court:

It be considered as applicable to all the cases?

Mr. Brodie:

I would prefer the evidence be introduced with respect to what it is being produced for, and not with respect to something else. I cannot enter into any such agreement as Mr. Burr suggests. These mines are all different. They may put an engineer on that knows about one mine—

The Court:

Do you want to try these cases separately?—

Mr. Brodie:

No, sir.

The Court:

If you do, I will do it.

Mr. Brodie:

No, sir; no, Your Honor. Suppose they put a witness on that is familiar with a certain mine,—we will not know until he has been on the stand for hours,—we will not know what he is testifying to, and with what he is familiar. How can I bind myself all the testimony will be applicable to every issue in the case?

Mr. Burr:

All right.

Mr. All:

Let me make this statement.

The Court:

I think we had better not make an agreement.

Mr. All:

It would be anomalous to suggest that the portal to portal applies to one mine and not another. You couldn't say this order applies to Sloss and couldn't apply to Republic or anything of that sort. This evidence that might involve conditions as between mines is evidence of a general condition that affects the issues as to everybody, if it does at all.

The Court:

That is my idea about it.

Mr. All:

That is my idea.

Mr. Smith:

At this time—I don't think we have done it yet,—I want to reinterpose my answer to the bill of complaint as amended—

The Court:

Do you want to address the Court on the subject now under consideration?

Mr. Smith:

I want to do that too.

The Court:

I would prefer you to do that.

Mr. Smith:

I presume, this being an equity case, the Court will consider only pertinent evidence,—consider evidence that is pertinent to the Tennessee Company mines, consider evidence that is pertinent to the Sloss mines, consider evidence that is pertinent to the Republic Company's mines, it being an equity procedure. That is just my thought on the matter while we are at it.

The Court:
Yes.

Mr. Harris:
Judge, I don't want any impression to get out we want to draw the case out.

The Court:
I don't think that.

Mr. Harris:
I represent thousands of different individuals; those different individuals have different claims and work under different conditions. The mines, some of them, are miles from the other, and the investigation I have been able to make in this case since I got back from my trip to the east leads me to the conclusion I wouldn't attempt for a moment to say the testimony which applied to one of these mines applied to the other, and I cannot, in justice to the clients I represent,—I cannot make a blanket agreement that might injure my clients and might cause confusion in the mind of the Court.

The Court:
I think we had better go on and if you have an objection, state it.

Mr. Burr:
There is one other matter, so I will know how to conduct the handling of the case and my associates also will know. We are perfectly willing, as far as we are con-

cerned, to let any objection that is made by any party, and any exception that is taken by any party be considered as made for the benefit of all parties and taken by all parties. I can't see any possible objection to that. If these gentlemen want—every time you object to the Court you have to object separately for each defendant or each plaintiff—

Mr. Harris:
We feel that would expedite the trial. In other words, if I get up and make an objection,

The Court:
Somebody else wouldn't have to object?

Mr. Harris:
Yes, wouldn't have to get up and repeat the objection; if Mr. Burr makes an objection, Mr. All does not have to get up and repeat it, if that is what you mean—

Mr. Burr:
I don't see how it could be any clearer.

The Court:
It is understood if anyone on a side makes an objection it will be considered as interposed for the benefit of all on that side.

Now, it is my understanding under the new rules you don't have to take an exception.

Mr. Burr:
I think that is right. At any rate, we will go on that basis.

Mr. Brodie:
With the addition if any party has anything he wishes to say, or wishes to make a different point, or does not

wish to object but wishes the evidence to go in, he may specify.

The Court:
Give your reasons?

Mr. Brodie:
Yes.

The Court:
Give the grounds for your objection.

Mr. Brodie:
Yes.

The Court:
In other words, if Colonel Harris gets up and objects and states his reasons and you may have other reasons, you may state your additional grounds.

Mr. Brodie:
We might not want to object.

The Court:
You want to reserve—

Mr. Harris:
We can easily fix that. Whenever a man objects and thinks his objection is particular or peculiar to his own case or his own client, he can very easily call the attention of the Court to it. I wouldn't want this agreement to operate as a waiver of any theory of law or any right anybody has, and I don't think Mr. Burr does. With the understanding that agreement is to expedite the trial of the case and shall not operate as a waiver of any right or any testimony—That is what you have in mind?

Mr. Brodie:
Yes, sir.

The Court:
That is all right.

Mr. Burr:
I think if, at any time, I made an objection and Mr. All didn't want it to apply to his client, he could say so.

The Court:
Or if Mr. All had an additional ground he could state it.

Mr. Burr:
Yes. Is Your Honor ready to proceed?

The Court:
Yes, sir. Anything further?

Mr. Harris:
I was wondering if we could have a four or five minute recess.

Mr. Burr:
There is one other thing—

The Court:
We will have a few minutes recess.

Mr. Smith:
How about the order of cross examination? I had this thought. Of course, the burden is on these gentlemen to make out their case. After they examine their witnesses, it becomes the question of the order as to who shall cross examine them next. In the order in which the

bill of complaints are filed, I think the CIO comes first, Mr. Harris' client, and mine second, and then the Administrator. I am perfectly willing, in the state of the case, for Mr. Harris to have the first examination under the order in which the defendants are listed, and the interverner next, and we will examine after that. I am perfectly willing to do that.

The Court:
Is that satisfactory?

Mr. Brodie:
I take it Mr. Harris will cross examine first and me last, or are we last?

Mr. Smith:
I am conceding you are second.

The Court:
He is giving you second.

Mr. Smith:
I think it will keep down a lot of duplication.

The Court:
I think that is all right.

Mr. Smith:
I don't know whether we have or not, Your Honor, but I would like to interpose our answer to the bill as amended. I don't know whether that has been done or not.

The Court:
It hasn't been done. The clerk will refile it. Have you prepared your answer?

Mr. Harris:
I thought I would refile it.

Mr. Smith:
We will have to refile it by separate paper?

The Court:
No; just let it be refiled.

Mr. Smith:
We offer to refile now our answer to the bill of complaint as amended.

Mr. Harris:
Since we are taking up those preliminary matters, I mentioned to Mr. Burr before there were men coming in with their contracts to us, and I have not been bothering to come down and make amendments and put in these other men who didn't get in at the time. At some time during the time I want to add additional parties.

Mr. Burr:
That is all right.

Mr. Harris:
And then there is one other paragraph that doesn't affect the legal propositions where I was under a misapprehension that I will want to amend.

Mr. Burr:
That is all right.

The Court:
All right.

Mr. Smith:

Your Honor, we made a demand for all persons similarly interested. When we started out this case Your Honor intimated you were going to take it up piece meal, and necessarily if Your Honor decides the declaratory judgment should be issued you will never reach the cross claim, but if you do reach the cross claim and decide in our favor that the declaratory judgment be denied, it comes up on that matter.

I would like to have it understood we have three or four hundred names of individual miners, but we don't at this time want to burden the Court by putting in that cross claim, but we want to do it at the proper time.

The Court:

Didn't I state—it is my idea now the thing for me to determine now is the question in this case the workweek?

Mr. Smith:

That is right.

The Court:

And if I did rule adversely to the plaintiffs I would appoint a special master to go into the claims.

Mr. Smith:

What I was thinking about was amending the cross claim so as to include all these individuals at this time. I want leave—

The Court:

I think it would be perfectly all right for you to be permitted to do that later.

Will that be all right, Mr. Burr?

Mr. Burr:

Yes, sir. I think all these preliminary matters can be disposed of by the order on pre-trial hearing. That is the first thing I want to offer in this connection. It reads as follows:

"The following pleadings and amendments were allowed:

"Complaints and answers of defendants:"

I suggest for the record that be made the amended complaint and answers of the defendants as refiled to the amended complaint. I think that will cover that.

The Court:

Yes, sir.

Mr. Burr:

Next is the answer to the counter claim. That is not involved here now.

The Court:

That is not involved here now. The defendants will be given opportunity to present the counter claims later if they become relevant

Mr. Burr:

"It was agreed by all of the parties that the following are all of the issues in controversy in this cause:

"What constitutes the working time which makes up the workweek of the underground ore mining employees of the plaintiffs within the meaning of Section 7 of the Fair Labor Standards Act of 1938."

The Court:
Didn't we go over that on pretrial?

Mr. Burr:
Yes, sir. I am offering it now. The only issue we have here is in those words.

The Court:
Read that again.

Mr. Burr:
"What constitutes the working time which makes up the workweek of the underground ore mining employees of the plaintiffs within the meaning of Section 7 of the Fair Labor Standards Act of 1938.

"(1) In reference to 'a' above, the plaintiff contends that such workweek does not include that portion of the time spent by the underground ore mining employees in being transported or walking to and from their usual working places.

"(2) In reference to 'a' above, the defendants contend that the workweek covers all time from portal to portal as announced in the opinion and report of the Wage and Hour Administrator under the Fair Labor Standards Act on March 23, 1941, and also includes aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools and in checking in and out."

That is the admitted issue we have to try.

Mr. Burr:
Now, we offer the pre-trial agreement also in reference to the following facts:

"(a) Suit is brought in the correct name of the proper plaintiffs and against the correct defendants in their proper names.

"(b) Plaintiff is, and during all of the period of time herein involved was, a corporation organized under the laws of the State as alleged in its complaint; that the plaintiff is a resident of said state of its incorporation authorized to transact business in the State of Alabama, and it has a principal place of business and mining and *manufacturing operations in Jefferson County*, State of Alabama."

The Court:
I signed that as an order.

Mr. Burr:
I know you did.

The Court:
It is in the file.

Mr. Burr:
It is in the file as an order. I was bringing it to our attention so we would know—

The Court:
All right.

Mr. Burr:
I want to get it in the record. I don't want to take time proving something that is admitted.

The Court:
All right.

Mr. Burr:
"(c) All the defendants named in the complaint are citizens and residents of Jefferson County, Alabama.

"(d) It is admitted that this is a class action in which the Court shall determine whether or not the named defendants fairly represent the class of underground iron ore mining employees of the plaintiffs."

I think that covers the issues.

Mr. Harris:
There is one other thing—

The Court:
There were some that did not belong to any union.

Mr. Harris:
There are some men that did not belong to any union.

The Court:
Wasn't it agreed if anybody had any right of action they might come in?

Mr. Burr:
Yes, sir, that was understood.

The Court:
That saves multiplicity of cases

Mr. Burr:
Yes, sir.

Mr. Harris:
I had another matter on the evidence proposition. I had in mind it was stated in open Court and it was

understood there is no question but that the plaintiffs material to this issue were at the time of the filing of the complaint, and at all times involved, engaged in interstate commerce.

Mr. Burr:
That is admitted. It is charged in our complaint.

The Court:
All right.

Mr. Harris:
There is another thing I haven't discussed with Mr. Burr. Mr. Lipscomb has brought it to my attention several times. I frankly confess I don't see how to handle it. There are some hundred or more men who have died, and their widows are interested.

Mr. Burr:
You have plenty of time to bring that up.

Mr. Harris:
If we could enter into a stipulation—

Mr. Smith:
Colonel, won't that come up—

Mr. Harris:
I want an understanding about it now. They are not living people. If it is understood that those people, regardless of this time question,—there may be a question of time,—some reasonable understanding for those people—

Mr. Burr:
I am perfectly willing for you to put them in, Administrator, or anybody you please, and consider them as represented.

The Court:
That is right.

Mr. Burr:
As I see this case, we have certainly more than enough employees to make this a class action.

The Court:
Certainly.

Mr. Burr:
No question about that; probably ninety-five percent of them are represented.

The Court:
That is all right.

Mr. Harris:
Mr. Cooper calls my attention to the fact that I didn't make my statement broad enough; that all the plaintiffs were engaged in interstate commerce as well as the defendants.

Mr. Burr:
No, I don't admit they are engaged in interstate commerce. I will stipulate they are engaged in the production of goods for interstate commerce.

The Court:
Anything else?

Mr. Brodie:
Mr. Burr, in reading from the pre-trial order stated that the defendants contend that the workweek covers all time from portal to portal as announced in the opinion and report of the Wage and Hour Administrator. Excluded from the time is the half hour lunch period.

Mr. Burr:
That is what the opinion says.

The Court:
Wasn't that entered in the pre-trial order?

Mr. Brodie:
I am speaking of the statement of Mr. Burr.

The Court:
The half hour lunch period is not included.

Mr. Burr:
Not included in the pleadings from top to bottom.

The Court:
Anything else before we adjourn temporarily? We will take a few minutes recess.

Mr. Burr:
How long?

The Court:
Just a few minutes. How long do you want?

Mr. Burr:
Ten minutes.

Mr. Harris:
I think ten minutes would be better, Judge.

The Court:
All right, ten minutes, then.

(Thereupon proceedings were in recess from 11:30 A. M. to 11:45 A. M., at which time proceedings were resumed as follows:)

The Court:
All right.

Mr. Burr:
We will examine Mr. E. M. Ball first.

Evidence on Behalf of Plaintiffs.

720 E. M. BALL, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. Mr. Ball, what is your present position with the Tennessee Coal, Iron & Railroad Company?

A. General Superintendent of ore mines and quarries.

Q. And how long have you had that position?

A. Since January 1. 1924,—17 years.

Q. Mr. Ball, I wish you would give to the Court your previous training and experience, beginning with what college you graduated from and then rapidly bring it down to date. Please give those as near as you can recall them.

A. I attended Washington & Lee University one year, University of Wisconsin four years, graduating in 1909.

Q. With what kind of degree?

A. General engineering,—B. S. in general engineering.

Q. All right, sir. Do you mind telling how old you were then?

A. 22.

Q. 22?

A. Yes, sir.

Q. All right, sir.

A. After graduating I went to the Oliver Mining Company at Hibbing, Minnesota, and worked there two or three years and came back to the Tennessee Company as construction engineer.

Q. Is the mine referred to at Hibbing in the Lake Superior Ore District?

A. Yes, sir. After being construction engineer for some time, in 1912 I was made superintendent of the Ishkooda Division. I was there approximately twelve years, and then was superintendent of the Wenonah Division for about a year, after which I was appointed general superintendent of ore mines and quarries.

During my summer vacations while attending college, I worked in the blacksmith shop, repair gang, rodman and transitman, and one year, when I was out of college, in 1907, I was division engineer at the Wenonah Division.

Q. At where?

A. At the Wenonah Division.

Q. That covers broadly your experience—

A. Yes, sir.

Q. —in connection with the plaintiff, the Tennessee Company?

A. Yes, sir.

Q. Since you have been general superintendent of ore mines and quarries, has your office been at one of the divisions, your general office, and if so, which division?

A. At the Muscoda Division.

Q. At the Muscoda Division?

A. Yes, sir.

Q. As the general superintendent of ore mines and quarries, how many ore mines have you under your supervision?

A. Eight ore mines and one limestone mine; two iron ore mines at Muscoda Division, Number 4 and Number 6, and one limestone mine at the Muscoda Division called Number 5; four iron mines at the Wenonah Division, Numbers 7, 8, 9 and 10, and two iron ore mines at the Ishkooda Division, Numbers 11 and 13.

Q. Now, Mr. Ball, I want you to understand until I tell you to the contrary that all periods of time relate prior to May 1, 1941.

A. I understand.

Q. I may use the present tense, but I hope you will answer the questions with that understanding between us.

A. Yes, sir.

Q. The ore mines you have just mentioned were all in operation prior to May 1, 1941?

A. Yes, sir.

Q. And also the limestone mine you mentioned?

A. It was.

Q. What division is the limestone you mentioned located in?

A. In the Muscoda Division, near Bessemer, Alabama.

Q. The Muscoda Division?

A. Yes, sir.

Q. I wish you would tell the Court whether the limestone mine, with reference to the method of operation, with reference to slopes and so on, is substantially the same as the iron ore mines?

Mr. Brodie:

I object to that question, if Your Honor please. We are not concerned here with the limestone mine. That question is not material.

Mr. Burr:

Of course, it is highly material. There is nothing in Section 7 of the Act that refers to iron ore mines or limestone mines or any other mines.

The Court:

Overruled.

Mr. Burr:

I propose to show the conditions.

Q. Are the conditions the same or different?

A. In the limestone mine we are operating there and mining a seam of limestone about 28 feet thick which overlies the iron ore seam about 300 feet. To reach this mine we go down in the old Number 5 ore slope and from there by incline up approximately 300 feet up to the limestone strata above. Levels are turned off in this limestone mine in practically the same way as they are in the ore mines, and then the sloping of the limestone mine from one level to another is practically the same as in our Number 13 iron ore mine.

The equipment used is practically the same, mechanical loaders, drills and so forth.

Q. Is the transportation, taking the men down practically the same?

A. Yes, sir.

Q. Do they walk to their working places after they get in?

A. After they get—

Mr. Brodie:

May it be understood I have an objection to this whole line of testimony?

The Court:

Yes, sir. The same ruling.

Mr. Burr:

That is agreeable to us. He may have an objection to all the line of questioning involving the limestone mine.

Q. I wish you would tell us, Mr. Ball, next about the approximate location of these iron ore mines and the limestone mine so we can get some idea of the distances. Take Muscoda first. What mines are located at Muscoda?

A. Number 4 and number 6 iron ore mines and—.

Q. How far is number 6 from Number 4?

A. Approximately 3000 feet, I would say, between the slope entrances?

Q. What mine is next?

A. The Number 5 limestone mine is between the Number 4 iron mine and the Number 6 iron ore mine.

Q. How far is the Number 5 mine from the Number 4 mine?

A. Approximately a thousand feet, I would say.

Q. And how far from Number 6?

A. Probably 1500 feet, roughly.

Q. Were there any other ore mines in the Muscoda Division besides those I asked you about?

A. No, sir.

Q. They constitute the Muscoda Division?

A. Yes, sir.

Q. For the record—of course, the Court knows—how far are those mines from the City of Bessemer?

A. Approximately a mile.

Q. And do the slopes go down into Red Mountain?

A. Yes, sir.

Q. And that is true of all the mines, all slopes go down into Red Mountain?

A. All the entrances to the mines of the Tennessee Company are by slopes, and the slopes are driven from the outcrop and follow along the ore seam to the ore basin.

Q. Coming up toe mountain you next come to the Wenonah Division; is that correct?

A. That is correct.

Q. How far is the Wenonah Division from the Muscoda Division as the crow flies?

A. Approximately five miles. The mines are opposite the little station called Brown's Station, on the South Bessemer car line.

Q. How many mines do you have at Muscoda?

A. Four; the mines are Number 7, 8, 9 and Number 10.

Q. Are they ore mines?

A. Yes, sir.

Q. How far apart are they? Are they close to each other?

A. Oh, the slopes are generally—they would carry from 2000 feet up to 3000 feet. I don't recall the exact distances. We have our map here showing the scale, if you wish.

Q. I will get to that further on. Coming on further towards Birmingham you come to the Ishkooda Division?

A. Ishkooda.

Q. What mines do you have there?

A. Mines Number 11 and Number 13. They are approximately a mile from a station known as Powderly Station on the South Bessemer car line.

Q. Do you know, to get the general perspective of the whole situation, whereabouts the two mines of the Sloss Company are located on the mountain? Are they located adjacent to the Tennessee Company properties?

A. They are located adjacent to the Number 6 mine at Muscoda, and between the Woodward Iron Company's mine and the Tennessee Company mines.

Q. How many slope mines do the other companies have there in that territory?

A. Several.

Q. Do you know how many are in operation at this time?

A. No, I do not.

Q. Is there any other company that has mines on this mountain?

A. Woodward Iron Company.

Q. Where are their mines located?

A. Their mines are located on the right hand side of the Number 7 mine of the Wenonah Division, and between Number 7 of the Tennessee Company and the Sloss Company.

Mr. Harris:

When you say the right hand side, you mean coming down the mountain?

The Witness:

Looking down the mine.

Q. How about the Republic Steel Corporation? Have they any mines on the mountain?

A. They have a mine called Raimund, which is southwest of our Muscoda group of mines. They also have a mine called Spaulding, which is on the north side, approximately of our Number 13 mine,—the northeast side, and towards Birmingham.

Q. Are all these mines now located on Red Mountain?

A. They are.

Q. And all of them are slope mines?

A. Yes, sir, with the exception of the Sango Mine of the Woodward Iron Company, which was originally a slope mine, but a portion of the slope has been abandoned and the mine entrance is now through a shaft, and the balance is a slope.

Q. I see. Could you tell the Court approximately the number of underground mining employees that the Tennessee Company had working in all of its mines, including the limestone quarry,—I mean the limestone mine?

A. Approximately 2,650.

Q. That is the underground men?

A. Or 2700 men; around that figure approximately.

Q. That includes all the ore mines and the limestone mine?

A. Yes, sir.

Q. Those, as I understand, are the underground mining employees?

A. Those are all the employees from the mine portal down into the mine.

Q. Are your underground employees divided broadly into two classes?

A. We have two classes, one known as production men, miners,—we call them heading crews—

Q. I see.

A. —and another set of men called service crews, which are the timber men, track men, motormen and transportation men.

Q. They are the men who are usually and commonly referred to as company men, are they not?

A. That is right. The old name used to be company men.

Q. The ones you refer to as productive employees, the miners, are the ones engaged in producing the iron ore?

A. In producing the iron ore at the working face.

Q. At the working face?

A. Yes, sir.

Q. Could you tell the Court the proportion of underground employees that were service men as contrasted with the proportion that were productive men?

A. Approximately 58 or 60 percent of the underground men are service men who service the 40 percent, roughly, of the mining crews.

Q. Now, Mr. Ball, I wish you would tell the Court the method of—the access to the mine workings in these slope mines.

A. In general our mine workings enter at or near the outcrop of the ore seam and go downhill at approximately a 25 or 30 degree pitch for a distance varying from 1000 to 1500 feet, when there is a gradual flattening out of the ore seam to about 5 or 6 degrees at the present bottom of our mines.

Q. What is the average seam of your workable ore there?

A. Ten feet, more or less; ten feet at the Muscoda Division, varying to around 8 feet at the Wenonah Division, and approximately ten or 11 feet at the Ishkooda Division.

Q. Is the depth, if that is the proper name to call it, of the slopes uniform in all the mines, or does it vary?

A. They are all approximately 6000 feet more or less. Some of them are 6200 feet and some 5800. All our slopes reach bottom at what is known as the basin of the ore seam, where we have pockets from which the ore is dumped into skips and brought to the surface.

Mr. Brodie:

I am sorry I didn't get that word,—basin?

The Witness:

Ore basin.

The Court:

B-a-s-i-n?

The Witness:

Correct. The average distance along the ore seam from the outcrop is approximately 6000 feet, but the average cover, vertical cover over the mines would be around 1200 feet.

Q. In the process of the development of those mines you drive the slopes down, do you?

A. Yes, sir.

Q. That is the first thing that is done?

A. Yes, sir.

Q. Then when you—how far was the slope originally driven before we come to a place where the ore is first produced, worked?

A. Well, in the old days you had to drive through the soft ore from the outcrop for a distance of three hundred feet, and the ore is called soft ore from the fact the lime content in the ore has been leached out by weathering.

Q. Originally you would mine that ore first?

A. Oh, yes.

Q. That was how far from the mouth of the mine?

A. That soft ore covered a distance of about 300 feet from the outcrop down the ore seam, and as the workings advanced you turned headings off at different intervals.

Q. As the workings keep on advancing, the headings get further down the slope; is that right?

A. That is correct.

Q. Until the other headings are down in the basin?

A. The mine pocket is at the basin ,but the workings extend beyond the mine pocket.

Q. The mine pocket?

The Court:

Let me ask you a question. Can you use that ore, Mr. Ball?

Mr. Burr:

Yes, sir.

The Witness:

Yes, sir. It was in the olden days.

The Court:

You said it used to be.

The Witness:

I meant to refer back to the old days when they mined part of the outcrop.

Q. Those have been worked out now, have they not?

A. Yes, sir.

Q. As I understand, you take the slope down when you first open the mine until you reach the first workable ore?

A. That is right.

Q. That is worked out—

A. In fact, you drive your slope on the ore.

Q. You drive your slope on the ore and that is worked out and you turn headings to the right—at what intervals are those headings turned off?

A. A good many years ago they used to be turned off at sixty feet, and then from 1915 up to the present date they turned them off at intervals varying from 180 to 220 feet. Our present practice is approximately 220 feet between levels.

Q. The time of travel in the slope becomes then greater as the mines are extended?

A. That is correct.

Q. I will ask you if, in the original workings and when the mines are first opened and are shallow, if the men didn't walk to their working places down the slope?

Mr. Brodie:

If Your Honor please, at this time I would like to enter an objection to the words "working place". It is our contention the entire mine is the working place.

The Court:

I understand that.

Mr. Burr:

Your Honor understands what I mean.

Mr. Brodie:

May I ask that the counsel use the term "face" instead of "working place"?

The Court:

As I understand he is interrogating the witness as to the places from which he is producing ore.

Mr. Brodie:

The crux of this case is what is the working place.

The Court:

That is not binding on my mind. I understand what the witness is talking about.

Mr. Brodie:

Yes, sir, but we also have a record that is undoubtedly going up on appeal, and while Your Honor might understand it, the appellate judge might not, not being familiar with the phraseology.

The Court:

What do you suggest we use?

Mr. Brodie:

I suggest they use face.

Mr. Burr:

If Your Honor please, the face is not the working place half the time. The face is only the working place—

The Court:

I will overrule the objection.

Mr. Burr:

Read the question.

(Thereupon the reporter read the question last propounded as above recorded.)

Q. Is that true or not?

A. It is. In the Muscoda group they hauled men in 1903 or '04, but in some of the mines in the Ishkooda Division some of the men walked to their working places as late as 1923.

The Court:

And the working place to which you are referring is what has been referred to as the working place up to May 1, 1941?

The Witness:

The working place, we consider the heading in which the ore stopes are in, and the working face may be at three or four points at which the miners can drill the ore from the solid.

Q. Yes.
A. I can illustrate by a sketch in a few minutes.
Q. All right, if you will. Get a piece of chalk.
A. The Judge might like to have that.

Mr. Brodie:

If Your Honor please, may I suggest at this point that a map be produced and used instead of this so that it can go in the record? I would certainly like for it to go in the record.

The Witness:

We can do that.

Mr. Burr:

I prefer to go on with the case as I usually try them: If he wants it in the record it can be gotten there.

The Court:

Overrule the objection.

Mr. Brodie:

May I have a ruling on my objection?

The Court:

I say I overrule it.

Mr. Brodie:

A. This area here is considered the working place. You have your chutes here.

Mr. Harris:

He said considered. Is that considered by him?

The Court:

Yes.

Q. That is what you are testifying is the working place, Mr. Ball?

A. Yes.

The Court:

You say that is the working place?

The Witness:

Yes, sir. In driving this slope this ore is taken out this way. At this place between there are your pillars. These parts here where you take the ore out is called the working face, whereas the entire section, which contains the stope and heading, is called the working place.

Q. Is that the accepted definition of the—

Mr. Harris:

We object to that.

A. It is with the Tennessee Coal, Iron & Railroad Company.

Q. In your operations?

Mr. Harris:

Wait a minute. We object.

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 409

TENNESSEE COAL, IRON & RAILROAD COMPANY, SLOSS-SHEFFIELD STEEL & IRON COMPANY, AND REPUBLIC STEEL CORPORATION, PETITIONERS,

vs.

MUSCODA LOCAL No. 123, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 4, 1943

CERTIORARI GRANTED NOVEMBER 15, 1943

VOLUME II

TRANSCRIPT OF RECORD

UNITED STATES

CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Appellant,

versus

MUSCODA LOCAL No. 123, ETC., ET AL.,
Appellees.

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
Appellant,

versus

SLOSS RED ORE LOCAL No. 109, ETC., ET AL.,
Appellees.

REPUBLIC STEEL CORPORATION,
Appellant,

versus

RAIMUND LOCAL No. 121, ETC., ET AL.,
Appellees.

Appeals from the District Court of the United States for the Northern District of Alabama.

ORIGINAL RECORD RECEIVED APR 4 1942

The Court:

I sustain the objection.

Q. All right, sir. Now, you said that the walking down the slope continued at Ishkooda until what date?

A. Approximately 1923. They did not walk the slope. They walked a manway which was parallel to the slope.

Q. Parallel to the slope?

A. Yes, sir.

Q. I see. All right, sir. Now, as you go down the slope, the headings are turned off on both sides, or only to the right, which is it?

A. On both sides.

Q. On both sides?

A. Yes, sir.

Q. What is the heading, Mr. Ball?

A. The heading is the entry turned off from the main slope, or, if the basin is reached, it is the heading turned off from your main haulage way which takes the place of the slope.

Q. Would you indicate there on that little sketch where the headings would run in connection with that sketch?

A. If it were the main slope going down this way—

Q. Yes.

A. This would be called a heading.

Q. I see. All right. Now, as I understand it, your entrance to the mine—if this were the first heading,—would be here?

A. Yes, sir.

Q. Then you would drive the slope down and turn the heading off to the right to strike the ore?

A. Yes, sir.

Q. This heading—you have drags in there to haul the ore?

A. Yes, sir.

Q. And your face would be here?

A. You would mine between this heading and this one above.

Q. You would take the ore out here?

A. Yes, sir.

Q. As the mine progressed and the slope extended further down, other headings would be driven off?

A. To the right and left.

Q. So the length of travel down the slope depends on what heading the man was going to and how many headings there were?

A. That is right.

Q. If John Jones was working in Number 1 heading his travel distance would be shorter than Bill Smith's, who worked in number 2 heading?

A. That is right, and so on on down.

Q. And so on on down?

A. Yes, sir, and when the basin is reached this would be your main haulage way, and you turn your levels off from the main haulage way, and the same thing would apply.

Q. As I understand, when your headings are turned off, the first heading would be the closest one to the slope?

A. Yes, sir.

Q. Then you advance this face?

A. Yes sir, and leave a pillar and make another opening over here.

Q. And that goes on as far as the heading extends?

A. The limit of mining for that mine.

Q. So Bill Smith, if he worked in the first heading of that slope would have a less distance to go than John Jones who worked in the next heading?

A. Yes, sir.

Q. And so on as the headings were extended?

A. Yes, sir.

Q. Yes, and I will ask you if it isn't also true that Bill Smith,—I am using him as an illustration,—

A. Yes.

Q. —does he continue to work every day in the same heading, or he may work in different headings on different days, or not?

A. As a rule we try to keep our crews in the same heading, but over a period, a pay period, a man may work in one or two or sometimes three working places. That applies especially to section helpers and employees of that type.

Q. The men we have been talking about so far of the Tennessee Company, trying to get a general picture of it, is the productive employees?

A. Yes, sir.

Q. I wish you would tell the Court where the working place of the service crews is?

A. The service crews are the men who do the timbering, laying tracks, building the chutes for the ore, and they operate all over the mine.

The Court:

They operate the haulage—

The Witness:

Yes, sir, the motormen run over the mine.

Q. The machinists, electricians?

A. Yes, sir, the machinists, electricians, pipe men.

Q. What do they call—what do you call the method of mining you have just described there? What is the name for it?

A. I call that a modified room and pillar plan. Your room is the stope, and your little pillars at the side with the big pillars between the stopes,—modified room and pillar system.

Q. In your operations I have been asking you about prior to May 1, 1941, are they worked out on any particular cycle?

A. As a rule—well, in fact, it is a rule where your mines are operating under normal operations and regularly, your cycle of driving this heading here and getting ready for another stope while this is being mined out is generally around three and a half months.

The Court:

You mean that is all the time it takes you to work that out?

The Witness:

Yes, sir, three and a half months.

The Court:

You run that heading over to another stope?

The Witness:

No, sir; we keep extending this to the limit of our mine.

Q. From the same heading?

A. From the same heading. These pillars in here bear anywhere from 60 to 80 feet. These pillars here are from 80 to 120 feet. We maintain a factor of safety on these pillars here of 4.3.

Q. Mr. Ball, for example, this stope here, as the cycle advanced that would be worked out and these men would go to another stope?

A. They would come over here and go in this stope right here which is a continuation.

Q. Which shows a man—his difference in traveling time is covered in the individual differences in these relationships all the way through?

A. Yes, sir.

Q. As you have told me?

A. That is right.

Q. In your operations how many turns do you count on for the average condition you have described?

Mr. Harris:
I don't understand what you mean by turns.

The Court:
I don't either.

Mr. Burr:
Some call it shifts. It is the same thing.

A. I see what you mean. In twelve turns, about a payroll period, you generally encounter average conditions in a normal stope.

The Court:
I understand that.

Q. Explain that to him, Mr. Ball.

The Court:
I don't know what the idea is.

A. For instance, in an average of around twelve working turns, this face is being driven; they shoot in this face, and you drive. These places are being driven up around pillars. These little places are known as inter-stope pillars. This part here, you take it out in these locks like that. You generally get an average condition in driving this face and driving this stope in about—an average of about twelve turns.

I might explain in starting out—

Mr. Harris:
If you will tell me what a turn is —

Mr. Burr:
A shift.

The Witness:
A shift.

Mr. Burr:
Eight hours.

The Witness:
Eight hours, a mine turn, working day

The Court:
That is a shift.

The Witness:
That is a shift. This next stope would look like this: Here is your heading coming along here. These little upsets are broken off like this (indicating on diagram), and then the miner comes in here and drives in approximately twenty feet and you begin to widen your place into these places and widen out until you finally get the entire stope here. These are interstope pillars. That would correspond to this pillar here and this to that pillar there. The average is about 80 feet. This pillar remains there to support your roof so there is no danger of large falls of ground,—just local falls.

Q. Can you tell us approximately what the amount of red ore was in tons that you produced last year, for instance, for your normal operating requirements?
A. Around four and three-quarter million tons approximately.
Q. I have stated here in the bill about 360,000 net tons. Is that approximately correct or not?
A. You mean per month?
Q. Yes, per month.
A. We averaged around 366,000 tons per month.
Q. Per month?
A. Something like that.

Q. And about how many tons of limestone?

A. Around 20,000, roughly.

Q. I see. Now, prior to the time I have asked you about, how many turns, or, we will call them shifts,—that seems to be the general—the used word,—better known that way. How many shifts do you operate in those mines, or did you operate in those mines?

Mr. Brodie:

I object to that question, if Your Honor please. I don't know as to what time reference is made.

Mr. Burr:

I have made that clear.

The Court:

I assume he means for 24 hours. Is that right?

Mr. Burr:

Sure.

Mr. Harris:

What Mr. Brodie meant is what year?

Mr. Burr:

I said all these questions were prior to May 1, 1941.

Mr. Harris:

He has been out there 25 years. I don't know whether he means the last three or four years or—

Q. We will start with the year prior to May 1, 1941. How many shifts per twenty-four hours did you operate out there?

A. Two.

Q. How many years behind that did you operate the two shifts?

Mr. Brodie:

If your Honor please, for the purpose of the record, I interpose an objection to the testimony. I understand this is out of place, because we have been denied the information we asked for in our interrogatories about costs.

The Court:

Overruled.

Q. Go ahead.
A. For a good many years we have worked two.
Q. About how many years, in your knowledge?
A. Oh, it goes back to 1914.

The Court:

As I understand, this has a bearing on the practices of the company?

Mr. Burr:

Yes, sir. That is what I am showing it for.

Q. Now, the iron ore and limestone you extracted from those mines, what was done with it; where was it sent to and how used?

A. The iron ore was shipped to the blast furnaces to be made into pig iron, and the limestone was shipped to the open hearth furnaces to be used in making the steel.
Q. Was the pig iron used for manufacturing products—
A. How is that?
Q. Was the pig iron used in making finished products?
A. Yes, sir; it was used in making steel, from which they make the finished products.
Q. About how far do you have to ship the ore before it reaches the company's blast furnaces; about what is that distance?
A. About four and a half miles.

Q. Are you acquainted with the location of the coal mines of the company?

A. I am.

Mr. Brodie:

I object to that, if Your Honor please. It is immaterial and irrelevant.

The Court:

I don't know its materiality.

Mr. Burr:

Of course, it is material. We expect to prove the coal mines are underground mines just like underground ore mines, and that the conditions are similar.

Mr. Harris:

We are not trying coal mines.

The Court:

We are not trying coal mines.

Mr. Burr:

No, sir. Of course, if it is admitted here for the record the only mines we have under consideration are these ore mines, that is perfectly satisfactory to me.

The Court:

That is what I understand.

Mr. Burr:

If they don't propose to travel—talk about Lake Superior—

The Court:

If I don't let you go into it I don't let them go into it.

Mr. Burr:
Metal mines—

Mr. Brodie:
Oh, no.

The Court:
You are trying to confine this to metal mines?

Mr. Brodie:
Yes, sir.

The Court:
In this district?

Mr. Brodie:
Yes, sir.

Mr. Burr:
If it is in this district, I don't care to ask about that.

Mr. Brodie:
May I make a statement about that?

The Court:
He is not going to ask him any more about that.

Mr. Brodie:
May I state for the record I do not agree to the restriction of the evidence to the iron mines in this district.

The Court:
Well.—

Mr. Brodie:
I merely do not wish the record to show I agree—

Mr. Harirs:

Mr. Burr said he was limiting it to this district: We said limit it to iron mines. We didn't say anything about this district.

The Court:

That will come up later. In other words, we are not going into coal mines now.

Mr. Burr:

You mean under Your Honor's interpretation of the issue?

The Court:

That is right.

Mr. Burr:

That is all right if that is Your Honor's interpretation of the issue, but believe me, when they go into gold mines out in the West, I am going into the coal mines which are a few miles from the ore mines; that is, if Your Honor agrees with me.

The Court:

I think we might as well adjourn for lunch now.

Mr. Burr:

That is fine.

The Court:

We will be back at 1:30.

(Whereupon, at 12:30 P. M., July 8, 1941, a recess was had to 1:30 P. M. of the same day.)

After Recess, 1:30 P. M.

744 E. M. BALL thereupon resumed the stand, and having been previously sworn, testified further as follows:

Direct Examination—Resumed.

(By Mr. Burr):

Q. Mr. Ball, in extending the headings and the stopes out from the slope, are they extended an unlimited distance, or does the extension depend upon the ore and also upon the property lines?

A. In some cases the mine is near the property line, and we extend to the property line. In case the ore is all on our property, we extend the line approximately halfway between the two slopes.

Q. Of course, you can't go on the other fellow's property?

A. No, sir. We keep a barrier pillar.

Q. And your company's operations come in contact in that way with the properties of the other companies you mentioned this morning?

A. Yes, sir.

Q. I suppose, Mr. Ball, the conditions as to which you have been testifying are similar to all the Tennessee Company mines?

A. Yes, sir, they are.

Q. By that I mean differences as to the conditions in different mines as to distances and so on?

A. And the extent to which locomotive haulage has been applied.

Q. But your testimony gives a good, general, bird's-eye view of the situation in all the ore mines?

A. Yes, sir, in all eight ore mines.

Q. Now, I will ask you if the company owns and maintains at each division what is called a bath house or a change house?

A. We do. We have one large bath house at Muscoda Division for the employees of Number 4 and 6 and Number 5 limestone mine. At the Wenonah Division we have a bath house at Number 7 mine, and another bath house at Number 8 mine and another bath house between Number 9 and Number 10 mines. We have three bath houses at Wenonah. At the Ishkooda Division we have one bath house for Number 11 mine, and another bath house for Number 13 mine.

Q. Are those bath house of different distances from the mouth of the mines or portals?

A. Yes, sir. They vary—Number 11, I believe, is the shortest distance, about 400 feet from the mine, and Number 6 mine, it is twenty-four or twenty-six hundred feet distant from the bath house.

Q. And the others varying distances between those?

A. Varying distances between those.

Q. Will you describe in a general way one of those bath houses so we can get the picture?

A. At Muscoda, at Number 5 bath house, and at Wenonah, at Number 9, we have what is called the hanger system. The clothes are hung on a hook attached to a chain which can be pulled up. Each man has a place for his clean cloths and his mine clothes. At the other bath houses we have what is called the locker system. Each man has a locker. In addition to that they have toilets and shower facilities for the colored and white. They are separate.

Q. Are those bath house facilities furnished free, or is there a charge made for them?

A. They have been furnished free since about 1922 or '23, somewhere in there.

Q. Previous to that was a charge made?

A. Yes, sir. The charge varied from 50 to 65 cents.

Q. Has there been a time when the employees would change at home,—bathe and change at home?

A. There are a few of the employees now that bathe at home.

Q. In other words, the employees don't have to use the bath house unless they want to?

A. No, sir. It is generally more convenient than going home and dirtying up their own homes.

Q. Most of them use it?

A. Yes, sir, most of them.

Q. Previous to the time—when there was a charge made for the use of the bath house, was that charge compulsory or—

A. No, sir.

Q. Could they bathe at home?

A. They could bathe at home.

Q. Did many of them bathe at home?

A. I should say 95 percent of the men used the bath house.

Q. How was the deduction handled, from the payroll?

A. Yes, sir.

Q. At their request?

A. Yes, sir.

Q. When the underground man goes to the bath house he changes his clothes and puts on his working clothes which are either, as I understand it, in this locker, or on this hanger system?

A. That is correct.

Q. Does he go from there to the entrance of the mine, or does he stop on the way?

A. It generally takes them around nine or ten minutes to change, and they walk direct from there to the portal, to the tally house.

Mr. Smith:

How long did you say that change was?

The Witness:

Approximately nine or ten minutes that it takes the average man to change to his underground clothes.

Q. What sort of individual lights, during the time we have been inquiring about, did the men use in the mines?

A. They used the regular miners' carbide light.

Q. Who owned the light?

A. Each man owns his own light.

Q. The carbide, as I understand it, was in a cap—a little can on top of the cap?

A. Yes, sir, a little cap,—either hold it on his cap or by a hook which was on the lamp.

Q. How does that carbide come; does it come in—

A. Comes in hundred pound drums made out of sheet steel, and it is issued to the miners in one-pound cans.

Q. Whereabouts does the miner get his carbide for his lamp?

A. At the tally house at each division except at the Muscoda Division for a time that carbide was issued at the wash house for the convenience of the men. It is all issued at the tally house.

Q. In getting the carbide; does the man get it every day or does the can he gets supply him for two or three days or longer than that?

A. Some men use more carbide than others, but I would say an average would be about every other day, every two days or three days.

Q. In getting that carbide, where does he get it?

A. At the entrance at the beginning of the shift.

Q. Except that time at Muscoda you mentioned when they got it at the wash house?

A. Yes, sir.

Q. What appreciable time does it take a man to get a can of carbide?

A. About a minute and a half.

Q. What does he do?

A. Gives in his empty can and receives a full can for his empty can.

Q. That is the extent of it, all of it?

A. Yes, sir.

Q. That is done before he goes underground?

A. Yes, sir.

Q. It is compulsory on the men to get the carbide from the company or can they get it anywhere they please?

A. It is not compulsory, but as the carbide is furnished at cost by the company to the men, they do practically 100 per cent get it from the company.

Q. The company sells it at cost and makes no charge for the service?

A. That is right.

Q. Those practices there have been in effect how long, would you say?

A. Oh, ever since we put in the carbide lights, which dates back to 1904 or '05, somewhere along in there.

Q. Is there any schedule of time as to when the men come to the bath house or leave the bath house, or is that left up to the individual man to do as he pleases?

Mr. Brodie:
As of what date?

Mr. Burr:
All the dates are back of May. I thought I made that clear to everybody. All the questions I ask relate back behind May 1, 1941.

The Court:
When the act went into effect?

Mr. Burr:
Yes, sir.

Mr. Smith:

You mean the time of compliance with this act, not when the act went into effect?

Mr. Burr:

That is right, the time of compliance, and I am going back of there about twenty years.

Q. When did you start using carbide?

A. I think it was back about 1904 or '05. Prior to that time they used the old oil lights.

Q. Has this custom been in force since then?

A. It has.

Q. ~~Since the change?~~

A. Yes, sir.

Q. When did you commence building bath houses?

A. Oh, we were building bath houses back in 1905 or '06 or '07, and I think we built the two at Ishkooda about 1909.

Q. It has been ever since 1909 as a limit?

A. Yes, sir.

Q. From that time on down to May 1, 1941?

A. Well, we recently build a bath house at Number 9 mine.

Q. I know you have built new houses, but the system and practice has been in force?

A. Oh, yes.

Q. I know you have built new houses, but the practice and custom you have told about has been in force since that time?

A. Yes, sir.

The Court:

Since 1900?

Mr. Burr:

Since 1909.

Q. I don't know whether I asked you this question; I don't know whether you answered it or not. Since 1909—back from 1909 was there any schedule as to which the men were to be at the bath house, or was that left to them?

A. It was left to them except they were required to be there to catch one of the regular skips.

Q. What they did prior to that was according to their own judgment and wishes?

Mr. Brodie:

May it please the Court, we have a witness on the stand. I don't think counsel should lead the witness.

Mr. Burr:

I will try not to lead him any more than I can help. I don't think it is necessary to lead him at all It is to save time.

Mr. Brodie:

If it is not necessary, then why do it?

Mr. Burr:

These objections like that of these gentlemen just take up time.

Will you read the question?

(Thereupon the reporter read the question last propounded as above recorded.)

A. Prior to the time they entered the portal of the mine.

Mr. Brodie:

Your Honor, my objection to that question was sustained.

The Court:
He answered it on his own volition.

Mr. Brodie:
I didn't hear it.

The Court:
Is that the way you understood it, Mr. Harris?

Mr. Harris:
I thought the question was objected to as leading and then he completed the question by whether or not.

The Court:
Go ahead.

Q. State whether or not there was any checking-in or checking-out at the bath house, any delay when they came or left; was there anything of that kind?

A. There was not.

Q. Is the practice you have stated about the men getting the carbide—has that practice been substantially the same all the time or not—

A. It has.

Q. —since you started the use of the carbide lights at the time you mentioned?

A. It has.

Q. After the man gets his carbide the next thing is the appearance at what you call the tipple?

A. At the tally house.

Q. At the tally house?

A. Yes, sir.

Q. What is the method or what was the method of transportation from the tally house down into the mine on the mine slope; what was that method of transportation?

A. The men were—

Mr. Brodie:

Just a minute. May I ask a date be specified for that? There have been a number of methods with regard to that. This witness has already testified at one time they walked.

The Court:

You might specify.

Mr. Burr:

Why, if Your Honor please, I have stated immediately prior to May 1st, and then I expect to go back and show how long that has existed. If he wants to go further, he can do it.

The Court:

Well, specify.

Mr. Burr:

Yes, sir. I don't see the reason for these technical objections.

The Court:

Go ahead.

Mr. Burr:

Will you read the question?

(Thereupon the reporter read the question last propounded as above recorded.)

A. The men were lowered in the mine, being ridden in the regular ore skips; approximately 38 to 40 men in the skips were lowered at one time.

Q. What is this ore skip, Mr. Ball?

A. It is a box, you might say, with four wheels on it which ran on a five-foot gauge track.

Q. Does it go downhill on a track?

A. Goes down the slope fastened to a hoist rope, and the other end being fastened to a hoisting engine.

Q. Is that skip made for the men to ride in on or is it used for other purposes, and if so, for what other purposes?

A. It is used for hauling the men, and after the men are in the mine it is used for hauling ore out of the mine.

Q. Is it used for taking material in the mine?

A. It is. What we call a larry or trailer is fastened to the skip, and it is used for lowering materials.

Q. That slope which the skip goes up and down, is that the only entrance and exit from the mine?

A. It is for that one mine, except the mines are connected by stopes. You can go from one mine to the other.

Q. As far as getting down from the surface is concerned—

A. You have to use the slope for that mine.

Q. For that mine?

A. Yes, sir.

Q. Now, when the miner first—tell me this: Prior to the time I have asked you about, was there a regular schedule upon which those mantrips operated —

A. There was.

Q. —leaving the entrance?

A. There was.

Q. You had two shifts, I believe you said, before dinner?

A. Yes, sir.

Q. So the schedule on one of those shifts would be the same except—

A. 6 A. M. and 6 P. M.

Q. Suppose you give the Court, if you will, what the time of the going down of the first skip in the morning was, the average time?

A. The average time for the eight ore mines was 6:07

Q. Now, I understand by that that the first skip started down on an average time at all the ore mines, from these studies you have made, at 6:07 in the morning,—A. M.?

A. P. M. and A. M.

Q. How many skips were operated that morning; how many trips were made to carry the men in the mine?

A. Anywhere from three to six, depending on the mine.

Q. Some mines had more employees than others?

A. Some had three and some had six.

Q. You say the first skip went at 6:07. At what time did the second one go down?

A. As a rule it took about five or six minutes to lower the men, and then you would have to pull that skip out, which would probably take another three or four minutes, so that would be five—about every eight or nine minutes, we will say. Of course, in lowering men you cannot lower as fast as you can hoist an empty skip. We are limited on the speed at which we lower men, approximately 1,000 to 1200 feet a minute, while hoisting a skip you can hoist that skip at 3000 feet a minute.

Q. In that way are the men hauled down—do they get off at one station or get off at different levels?

A. They get off at one station known as the underground loading station.

Q. The distance from the surface to that underground manloading station, is that the same in all the mines, or different in different mines?

A. There are some differences in the different mines, but approximately 6000 feet.

Q. Was there any difference—were the men scheduled to go down in any particular skip?

A. They weren't scheduled. Over a period of years they scheduled themselves. All we require was that there be enough men there to fill a skip when we lowered it.

Q. Now, what time—before I ask you that, I will go back again. When the men get on the skip is there anything they have that is deposited before they go down into the mine?

A. They deposit what is known as their brass check at the tally house, and that is hung on a board which designates their working place. That is done so if there is a shortage in that crew the mine foreman will know it and can take men from the service crews and put on the producing crews.

Q. What time, appreciably, is taken up in a man handing in his check?

A. Just a fraction of a second, I will say.

Q. Is that check board a large board that hangs there in the tally house?

A. Yes, a board probably—according to the size of the mine it varies a little, but the average board is probably three times as wide as this board here, and not quite as long.

Q. Are there hooks—

A. Yes, sir, there are hooks, and we mark the working places on it.

Q. That brass check hung on that board would indicate the working place of the man?

A. Yes, sir, that is correct; whether he was on the production crews or service crews.

Q. And the man there would take that check—

A. And put it on the proper hook.

Q. —so the mine foreman could look and tell who was in the mine and who was not in the mine?

A. Yes, sir.

Q. Is that a safety measure also?

A. Yes, sir. It is the only way you can be absolutely certain a man is not left in the mine.

Q. But if a hook is vacant in a production crew, you have to make arrangements for another man?

A. Yes, sir, you have to put a man in his place.

Q. You take a man from the service crew and put him in that production crew?

A. Yes, sir.

Q. That is the only check-in at all?

A. That is correct.

Q. When the men come out of the mine at the end of the shift, what do they do with reference to these checks?

A. They go to the tally house and the check man hands each man his check, which indicates he is out of the mine.

Q. And he keeps that check until he redeposits it the next morning when he goes in?

A. Yes, sir.

Q. How long prior to May 1, 1941, was that practice and custom in effect there on the mountain?

A. Checking the men by brass checks was in effect back as far as I can remember,—back in 1902.

Q. That is far enough. Back as far as 1902 that same thing has been done?

A. Yes, sir.

Q. All right, sir. I want to get the schedule of those trips a little bit more definitely. Later on we will probably get the studies made of that, but now the—what time immediately prior to May 1, 1941,—and then I will show how long that custom and practice existed. At what time were the day turn operations begun in the mines, the day shift?

A. You mean after they get inside the mine?

Q. That is right. When the pay started, the computation of their pay.

A. The pay started when they got to their working places and began to work.

Q. What time were they supposed to be at their working places and begin to work?

A. At 6:45 A. M. and P. M.

Q. Was there any time during that period of time given for lunch?

A. They all had thirty minutes for lunch. In some of the different mines it may have varied,—oh, half an hour, generally,—put it this way: some of the mines took their lunch hour, say, at 10:30, and others at 11:00. The men get up real early, and different mines had their lunch time at different times to suit the men.

Q. Was any signal given which indicated when the workday began in the mine under this custom?

A. The lights in the mine were what we call blinked. That was done by the motor generator set which furnished the current for the light and the mechanical loaders.

Q. That was for the beginning of work?

A. That was at lunch time.

Q. At the beginning of work time was any signal given?

A. No. They just depended on their being there at 6:45. They would blink the lights for shooting time at the end of the shift.

Q. The shift began at 6:45?

A. Yes, sir.

Q. A. M. and P. M.?

A. Yes, sir.

Q. And then half an hour for lunch?

A. Yes, sir.

Q. And the shooting time was when?

A. The standard shooting time was 3:10.

Q. According to the practice and custom, did or did not the men or any of them leave their working places before the shooting started?

A. Yes, sir. As a rule, the section helpers, the drag operator, the men helping on the drills left much earlier than the head miner and the drill runner, who stayed to load and blast the drill holes.

Q. About how long before 3:15 would you say they left?

A. Oh, I would say anywhere around 2:45 to 3:00 o'clock.

Q. And when they left, where did they go?

A. They took their time and walked up to the manloading station ready to take the first skip that was going out at the end of the turn.

Q. What time did that first skip go out taking the men out of mine?

A. The average for the eight ore mines was at 3:14.

The Court:
What time?

Mr. Burr:
3:14.

Q. That is the average?

A. Yes, sir, from our time studies.

Q. Of course, it varied in the different mines?

A. Yes, sir.

Q. Now, during that period of time,—this same schedule of cars and computation of work time,—how long prior to May 1, 1941, had that practice and custom been in universal effect down there?

A. Will you please state that question again, Mr. Burr?

Q. How long had that same method and schedule of operations of taking the men into the mine and bringing them out and leaving the working places at shooting time, how long—

A. Oh, it had been in effect ever since we started to hauling men in and out of the mines. Of course, at one time they were on a ten-hour basis, and that would make the time at which you pulled the men out a little later than on the 8-hour basis.

Q. How long prior to May 1, 1941, was the mine on the 8-hour basis? About when did the—

A. I believe October 19—somewhere in there,—1933.

Q. 1933?

A. Yes, sir.

Q. Previous to that time it had varied—

A. They had been on a ten-hour basis face to face.

Q. And previous to that time what sort of basis had they been on?

A. There was a time during the last World War where they were on an 8-hour basis for a short time, and then they were on a 9-hour basis for a short time. I wasn't here, and I am not familiar with just what dates those were.

Q. You were not here? You were in the World War?

A. I was in the World War,—the A. E. F.

Q. I believe you said the 8-hour day had been in effect from when, now?

A. The last time from October, 1933.

Q. So, from October, 1933, until May 1, 1941, the 8-hour day was in operation, computing from the time the man got to his working place until he left his working place; is that correct?

A. That is true; from 6:45 to 3:15, excluding the time out for lunch.

Q. On—prior to May 1, 1941, Mr. Ball, who kept the time, the daily time sheets of the mining and underground employees?

A. Each head miner made an abstract sheet giving the name and check number and the hours worked for each man in his crew, and the same thing applied to the service crews, the head timbermen, head track man, or head chute builder would make out an abstract for the men on his crew. For the other maintenance men, such as motormen, mine mechanics, motor inspectors, pipe men and so forth there was a sheet made out by the assistant mine foreman who kept their time.

Q. Did those respective people who kept the time of these underground workers,—did they visit the place of work and get the time? Is that how it was done?

A. Each foreman stayed with his crew and knew where his men were.

Mr. Burr:

Will you mark this T. C. I. Exhibit X, and X-1 to X-5?

(Thereupon the said documents were marked T. C. I. Exhibit X, and X-1 to X-5, both inclusive.)

Mr. Harris:
May I see those before you offer them?

Mr. Burr:
Yes, sir.

Mr. Harris:
We have no objection. Will you make clear as to the time?

Q. Yes, I will. Mr. Ball, I will ask you, please, sir, to look at these exhibits as I will identify them to you, and answer the questions in reference to them. Exhibit marked T. C. I. Exhibit X appears to be headed daily time sheet, mine, underground. Was that the form used prior to May 1, 1941?
A. It was.
Q. By the headminers?
A. Yes, sir.
Q. In reference to the productive miners?
A. Yes, sir.
Q. They filled in the badge number over to the left?
A. He did.
Q. And the name in the names-column?
A. He did.
Q. His own name would be the head miner?
A. Yes, sir.
Q. And then the crew consisted of drag operator, drill runner and section helpers?
A. Yes, sir.
Q. And then he would put here the hours worked that day?
A. Yes, sir.

Q. Would those hours worked include any part of the traveling time, or did they include only the time he worked at his working place?

A. Only the time he worked at his working place. It was always shown at eight hours.

The Court:

Shown at what?

The Witness:

Shown at eight hours.

The Court:

Shown at eight hours?

Mr. Burr:

Yes, sir.

Q. Would that always be shown at eight hours irrespective of whether the man left his working place thirty minutes before the eight hours?

A. Yes, sir.

Q. Down here would be information about the powder used?

A. Yes, sir, and fuse and caps.

Q. Did he sign that?

A. Yes, sir.

Q. And turn it in each day?

A. Yes, sir.

Q. To whom?

A. To the mine foreman who would check it and approve it.

Q. What did he do with it?

A. The mine foreman turned it over to the superintendent, who checked it.

Q. Then where did it go?

A. After the superintendent looked it over and made any allowances for loading rock or slate, it was turned over to the time clerk and it was put on the payroll.

Q. And the man paid by it?

A. Yes.

Q. Yes. The next sheet, T. C. I. Exhibit X-1 seems to be "Daily Time Sheet, Mechanical, Electrical and General Underground Employees."

A. Yes, sir.

Q. And includes the different occupations listed on the sheet?

A. Yes, sir.

Q. Such as haulage engineer, sinking hoist engineer?

A. Yes, sir.

Q. And so on?

A. Yes, sir.

Q. And on that appears the badge number, the name, occupation and the hours worked?

A. Yes, sir.

Q. Who is that sheet kept by?

A. The assistant mine foreman.

Q. And what does he do with it?

A. He turns it over to the mine foreman, who approves it and turns it into the office.

Q. Then what is done with it?

A. The superintendent checks it over and approves it and it is passed on to the time clerk and put on the payroll.

Q. And the men are paid by the time shown on that sheet?

A. Yes, sir.

Q. The next one is T. C. I. Exhibit X-2, and appears to be, "Daily Time Sheet, Timbering, Tracks, Chutes, Material and Slate Dump, Underground."

A. It is the one the timber man or track man will sign as foreman, and he would put his men down in the same way.

Q. In the same way as the head miner?

A. Yes, sir.

Q. And the next one, T. C. I. Exhibit X-3, is the same for the ore inspector, dispatcher, motorman, trip rider and such men as that?

A. Yes, sir.

Q. That would be handled in the same way?

A. Yes, sir.

Q. The next one I am asking you about is T. C. I. Exhibit X-4. That seems—

The Court:

X-4?

Mr. Burr:

Yes, sir, X-4.

Q. —to be an authorization for overtime. What was that form used for?

A. When any production crew or any service crew had to work over the regular hours and did not come out on the regular shift, this sheet was made, stating the reason for it, whether a breakdown or whatever it was.

Q. That was in excess of eight hours?

A. Yes, sir.

Q. That was handled in the same way and would go to the payroll clerk, and the men would get payment for overtime in the same way as the others?

A. Yes, sir.

Q. This next one, T. C. I. Exhibit X-5, is what?

A. A form where men left the mine before the shift was over, and also shows the number of railroad cars loaded and the number of railroad cars sent to the furnaces.

Q. Sometimes a man would have to leave the mines on account of sickness?

A. On account of sickness, or especially injuries.

Q. And then this sheet would be used?
A. Yes, sir.

The Court:
What exhibit is that?

Mr. Burr:
This is Exhibit X-5.

Q. Now, for about how many years previous to May 1, 1941, was that practice and system in force, and those forms substantially of that kind in use?

A. Those forms were—we put in the practice and use of those forms on August 19, 1936.

Q. Was that the date when what is known as the incentive plan went into operation with the Tennessee Company?

A. Yes, sir.

Q. Previous to that time, so the Court can have an idea of what was done,—previous to that time how was the time kept underground on which the men's pay was computed?

A. There was an underground timekeeper who was stationed at the underground man-loading station. As the men came by there he took their name and check number, and he knew at which working place they were going to work that day. After the day's shift was done they came by the same place and he checked them on his book.

Q. That practice existed for how many years previously? About how many years, as near as you can get at it?

A. Oh, for, I think, as far back as probably 1910 when they first put underground timekeepers in the mines.

Q. The underground timekeepers, when they were there, did they go around to the different working places and take the time; is that the way it was done?

A. They did until about the year 1925 or 1926, when I stopped that practice because I didn't think—

Mr. Brodie:

We object.

Q. Never mind what you stopped it for. You stopped it?

A. Yes, sir.

Q. When?

A. About '25 or '26.

Q. And then you—

A. Then we had the man stationed at the underground loading station.

Q. He stayed at the underground loading station and each man reported to him there when he came in and when he left; is that the way it was done?

A. Yes, sir.

Q. One thing I want to get clear before I get on to something different. You referred to this as working place—

A. I would like to add to my statement there sometime prior to May 1, 1941, the underground timekeeper—it was during the depression,—was taken outside the mine and stationed at the outside tally house.

Q. During the depression?

A. Yes, sir, 1933 or '34.

Q. You refer to this as the working place.

A. That is the working face.

Q. The whole thing is the—.

A. Is the working place.

Q. When, prior to May 1, 1941, in reference to underground—the productive—the production crews, did their time, the 8 hours, start when they got to the face or working place?

A. When they got into the working place. There was a tool box at each place, and when they got to the tool box to get their skidder blocks and jackhammers and wedges and things of that kind, it was considered their time started.

Q. They ran on then until the afternoon—

A. At shooting time.

Q. At shooting time?

A. Their time was computed until 3:15.

Q. Until 3:15?

A. Yes, sir.

Q. Under that system the men were actually at their working place, or supposed to be at their working place eight hours, and there was no computation of or payment made for traveling time?

A. None whatever.

Q. Where was the working place of the service crews; where was that?

A. The working place of the service crew was generally near the vicinity of the underground manloading station, because they had their tool boxes and tool house and got their supplies right there, and from that point they went to the different working places to fix tracks or put in timber.

Q. Wherever they were sent?

A. Wherever it was necessary.

Q. But the time began to be computed at the tool box near the underground loading station?

A. Near the underground loading station.

Q. They didn't wait until they got off down the track somewhere?

A. No, sir.

Q. But it was near the underground loading station?

A. Yes, sir.

Mr. Burr:

Will Your Honor let me mark some exhibits here?

The Court:

Yes, sir.

Mr. Burr:

Mark these Exhibit Y, Y-1, Y-2, and so on; and mark these Exhibit V, V-1, V-2 and so on.

(Thereupon signed pay receipt stubs of I. V. Robinson were marked T. C. I. Exhibits Y and Y-1 to Y-22, both inclusive, and pay statements of I. V. Robinson with unsigned receipt stubs attached were marked T. C. I. Exhibits Y-23 through Y-46, both inclusive; and signed pay receipt stubs of Fred H. Trammell were marked T. C. I. Exhibits V, V-1 to V-22, both inculsive, and pay statement forms with unsigned stub receipt forms attached were marked T. C. I. Exhibits V-23 to V-48, both inclusive.)

Mr. Burr:

Off the record.

(Here followed an off the record statement.)

Mr. Harris:

Something that has been revolving through my mind—

The Court:

Is this for the record?

Mr. Harris:

Yes, sir, I want it on the record.

—with respect to this situation, anything before the Fair Labor Standards Act went into effect, how the men were paid and how they kept records would not be material.

Your Honor will recall it has been our argument heretofore that no contract or custom or anything else could operate here as a waiver or estoppel as to the Fair Labor Standards Act as promulgated by the President and Congress of the United States.

Now, just how they paid the men and how they kept records prior to 1938,—if Your Honor is going to let that go in, that will, of course, open a very wide range of evidence, and even if you let it go in, we by no means concede that any of that evidence would be material on the question of these individual claimants.

It is our position that all custom, all precedent and agreements and everything else was abrogated when the supreme power of the United States announced the law, and therefore how a man went down in the mine, and the time he went,—how his time was kept, and how they kept those specimens, is immaterial. If they go back of October 24, 1938, when the Fair Labor Standards Act went into effect, it is my contention that none of those things can operate to deprive a man of money for time spent in the service of his employer.

Whether Your Honor wants to get the historical background and then make up your mind, or—

The Court:

I think I ought to rule on it now.

Mr. Burr:

If Your Honor please, this evidence is not offered at this time on any question of waiver against any individual employee. That is not a matter we have here for consideration. We have one question for consideration, and that question we have for consideration is this: It is what the intent of the Congress was at the time it enacted this act in using the word "Workweek".

Now, instead of it not being admissible prior to 1938, that is the time, it seems to me, that it is most admissible on that question. The authorities hold if there is no ambiguity about the language of the statute,—in other words, if Your Honor can say now what the word "workweek" means, that decides the question, but if there is any uncertainty or ambiguity in it, the Court will consider all customs that existed at and prior to the time of the passage of the Act on the theory the Congress itself should have and did consider those facts.

Here is what we are offering these receipts for: We are offering these receipts to prove,—it doesn't open up any question along the line he suggested, on the question of waiver,—we propose to prove here that not only casually, but it was maintained for years before this Act was passed, the custom and practice in these mines was for the employer and the employee to agree that the workweek and workday didn't include transportation time. Here are the receipts over the man's own signature to that effect, because every one of these statements, every one of these receipts show traveling time was not included in the computation.

There can't be any doubt about that being admissible evidence.

The Court:

I don't know that that is disputed.

Mr. Burr:

That is all I am asking. I am not trying to get any waiver now. I haven't gotten that far. Later on I may raise it.

The Court.

Colonel Harris, I don't ask you to make any stipulation, but the matter addresses itself to my mind whether or not it could be admitted that was the custom, that they did that in the past up to 1938 as well as up to May 1, 1941.

Mr. Harris:

As to the—whether or not it was the custom to consider first comes to my mind,—whether the custom is one voluntarily consented to on the part of the people against whom the custom is invoked comes to my mind. In other words, was that custom one in which they had no choice? Did they have anything to do with the creation of the custom?

Second, would that custom be legally admissible at all once Congress has passed a law for the purpose of wiping out all customs and creating one system on a clearcut, simple basis for determining how men in industry in the United States should work, and how they should be paid?

The Court:

The trouble of it is Congress didn't do that. That is why we are here in this lawsuit.

Mr. Burr:

The Court—

Mr. Harris:

Well, the fact we have a lawsuit—

The Court:

When Congress hasn't defined, as I think they should have, what does constitute a workday—

Mr. Burr:

That is right.

Mr. Harris:

Of course, it would have prevented litigation if Congress had appended a bibliography or history to the different industries,—if they had classified all the industries in the United States and analyzed them and gave us an alphabetical index and said certain work starts at a certain place and ends at a certain place, it would have saved a great deal of trouble, but we couldn't possibly have legislation of that type.

The Court:
But the argument of Mr. Burr is that this Court ought to have before it what happened in the past.

Mr. Harris:
How do we know Mr. Burr or any representative of the Tennessee Coal, Iron & Railroad Company ever communicated to Congress any information Mr. Burr is asking Mr. Ball to communicate to the Court?

Mr. Burr:
I will make you a sporting proposition, Crampton. Congress is supposed to know the custom, but we had Senators and Representatives who were engaged in mining—

The Court:
Not from Alabama.

Mr. Burr:
Yes, we had one. John Bankhead made all the money—he ever made in his life from it.

The Court:
Not ore mining.

Mr. Burr:
No, in coal mining, but there is no difference.

Mr. Harris:
If the Congress of the United States is omniscient then obviously Congress had before it the gold mining situation in the West, the copper mining that was at Heckla, and out in Wyoming, and it had the gypsum mining operations, and so, if he can go ahead and show the custom in this par-

ticular mine these gentlemen represent, the Wage and Hour Board, by the same token can come in here and show Your Honor every custom that existed in every kindred mine in the United States,—every ore mine in the United States. You can't say we will show the custom of this little company,—and it is little compared to some of the others,—and that Congress was thinking of it and wasn't thinking of the national picture. If we are going into that custom, too, as I say, it opens up—

The Court:

I don't think we will go into it. I will sustain the objection if it is objected to. Is it objected to?

Mr. Harris:

Yes, sir; I object to all that happened before 1938.

The Court:

Before the Act was enacted?

Mr. Harris:

Before the Act was enacted?

Mr. Harris:

Yes, sir.

Mr. Burr:

Your Honor, of course, will give me an opportunity to be heard on that later, because I want to cite the authorities on it, or if you can hear me now—

Mr. Smith:

What is the date of that one you introduced?

Mr. Burr:

I propose to show not only that everyone of these 6000 employees assented, but that they, from the time they entered the employment until the time of the enactment of this Act, and from the time of the enactment of this Act up until May 1, 1941, every one of them, knowingly under contract and under solemn agreement, walked up and accepted payment for their wages with the traveling time excluded.

Mr. Smith:
Couldn't get them without doing that.

Mr. Burr:
The authorities hold without any question if there is any ambiguity in the Act,—I don't think there is any because I think if you travel into the Western territory like he is wanting to travel, if Congress had wanted to do what they are contending for in this case, it would have done like Utah and Arizona,—it would have inserted in the Act the workday should include the time spent in going to and from the portal, but Your Honor has to let the evidence in on this proposition in order to see the whole viewpoint when you get ready to make up your mind, but if there is any ambiguity, then unquestionably the conditions and customs and practices that existed at the time the Congress passed the Act are very material and are the most substantial evidence we can have.

The Court:
I will let it in for the moment.

Mr. Harris:
We except.

The Court:
We will have a short recess.

(Thereupon proceedings were in recess from 2:30 P. M. to 2:40 P. M., at which times proceedings were resumed as follows:)

The Court:

All right, proceed.

Mr. Harris:

I had an order I wanted to take up during the recess.

Mr. Burr:

I can't do it and examine a witness.

The Court:

Do it now.

Mr. Burr:

Suppose I finish this little matter and then take it up.

Mr. Harris:

All right.

The Court:

All right.

(By Mr. Burr):

Q. Mr. Ball, do you recall when the company began paying once a week? I believe they are paying once a week?

A. Well, four times a month.

Q. Four times a month; that is what I mean. Do you remember about the time that happened?

A. When the commissary check system was abolished.

Q. To refresh your recollection,—I know the date,—wasn't it on January 1, 1939?

A. I believe that is right.

Q. Previous to that time they had been paying twice a month?

A. Twice a month.

Q. I will ask you, please, sir, to examine these exhibits here, Y, and I will ask you if Y through Y-22, all of which bear the signature of I. V. Robinson are the stubs signed by the employee covering his earnings?

A. That is right.

Mr. Harris:

Will you permit us to reserve an exception to all going back of the date of the Fair Labor Standards Act?

The Court:

I will overrule the objection and give you an exception.

Q. Those that have the stubs and statements attached, are they copies of the statement?

A. Yes, sir.

The Court:

If you say "these" you had better tell what they are.

Mr. Burr:

I asked him about Y through 22. They are the stubs and receipts signed by the men.

The Witness:

That is right.

Q. And Y-23 through -46 are carbon copies?

A. Of the original statement.

Q. And the stubs?

A. And the stubs.

Q. I will ask you if the original statements of these from Y through Y-22,—the originals would be with Mr. Robinson?

A. He was supposed to keep that for his own information.

Q. Given to him anyhow for that purpose?

A. Yes, sir.

Q. Is that also true with reference to the exhibits with reference to Mr. Fred H. Trammel, which are marked T. C. I. Exhibit V?

A. Yes, sir.

Q. Is that also true of all the employees at the ore mines during this time?

Mr. Harris:
We object on all the grounds we have heretofore stated.

The Court:
Overruled.

Mr. Harris:
Except.

Mr. Burr:
Of course, later on, if any insistence is made, I will get the statements for every one.

A. Yes, sir.

Mr. Burr:
All right; we can take up the question about which Mr. Harris spoke.

Mr. Harris:
I haven't had an opportunity to discuss this with Mr. Burr, but since this morning I have discussed it with my associates.

It is a very simple matter and a very practical matter, and to leave no question of the inspection, it was suggested, —I mentioned it to Mr. Burr and incorporated it in the order,—that the companies send these two engineers down, that is, take them down, and the companies have their engineers along with them.

Now, we have two groups of defendants, the A. F. of L. and C. I. O. groups. Each one of these has men working in the mines, so if an A. F. of L. miner and a C. I. O. miner accompany them when they come into that mine and start on their inspection, then the parties will know whether or not the samples that are taken for the benefit of this Court,—that is, did they go to the proper places, or did they go to limited places, and it couldn't possibly hurt anything to take two trained miners, one of the A. F. of L. and one of the C. I. O.,—they are parties to this case,—it couldn't possibly hurt anything, and in preparing the order, feeling that was the just and fair thing, I put it in there.

Another thing, we think it is fair that these men should go down on a regular skip. Mr. Ball has testified about a skip, about how many men are hauled on it, 38 to 40, and how long it have been going on. We think these men would be in better position to testify if they could see the whole operation. Your Honor is interested in everything that goes on.

The Court:
Of course I am.

Mr. Harris:
It isn't such a dangerous thing that the men are going to get killed and the company is going to have damage suits, because the men got killed down there serving this Court.

The Court:
How many are you asking for?

Mr. Harris;
Just two men, a miner connected with each group group of defendants. We ask they be allowed to go along.

The Court:
With whom?

Mr. Harris:
Those two experts and the company men.

The Court:
The engineer and chemist, or whatever he is?

Mr. Harris:
The economist, I believe. Of course, the company will want to take them so they will know how they are going and where they are going.

The Court:
I think that will be all right.

Wouldn't it be better, Mr. Burr, if they go down in the regular course of business?

Mr. Burr:
I will have to discuss this with the management.

The Court:
I would prefer that to be done if it could.

Mr. Burr:
Yes, sir, but I know what has happened before; and I don't see any reason why there should be put on those skips five or six men,—if they want to know anything about those skips—

Mr. Harris:
We—

Mr. Burr:
Just a minute,—they have individuals that ride them twice a day. Why the engineer and economist should ride these skips is more than—

The Court:

Your Engineer will be along too.

Mr. Burr:

They will be on a special trip to be made.

The Court:

They are going with these gentlemen?

Mr. Burr:

Yes, but these two engineers and our engineer will go on a special trip. We don't want those five or six people crowding our regular workmen out.

Mr. Harris:

We would like for them to get a chance to start today, if the Court please.

Mr. Burr:

I don't see how that is possible. They have had since July 1st to make this request. Now, they want to come up here and get it at an hour's notice.

The Court:

We will be reasonable.

Mr. Burr:

I think the whole matter could be obviated. Why bring in these people from I don't know where to testify about conditions they see there? If the Court wants to view the premises, that is different.

The Court:

The Court has passed on this.

Mr. Burr:

Yes, but I am not going to disrupt our whole organization; unless the Court tells me to, I am not going to do it.

The Court:
I am not going to disrupt your whole organization.

Mr. Burr:
Let us have an opportunity to consult.

The Court:
Very well. We will take a recess.

(Thereupon proceedings were in recess from 2:55 P. M. to 3:05 P. M., when proceedings were resumed as follows:)

Mr. Burr:
Judge, we want to do everything we can to cooperate in getting this inspection made since Your Honor thinks it ought to be made,—

The Court:
Yes.

Mr. Burr:
But I have talked to the operators of both companies,—we haven't the Republic operators here at all because I felt the Tennessee Company would be here quite a while and I didn't want to bring in the key men from the Republic Company.

The Tennessee Company has thirteen mines and Sloss two and Republic two—that is seventeen mines—

The Witness:
We have nine.

Mr. Burr:
Yes, I had it wrong. It is a total of thirteen mines.

These men tell me they are not willing for any outside men or their own employees to go on the regular mantrip. They tell me it will interfere with the schedule. They want the men to get to their work, and there might be some danger. What they are willing to do is to arrange a special mantrip—

The Court:
A special mantrip?

Mr. Burr:
Yes, sir.

The Court:
Can you do it about the time of the change of shifts?

Mr. Burr:
Yes, sir, as near as we can. We will arrange it for 6:30 at the Tennessee Company's mine.

The Court:
Your regular men start at 6:15?

The Witness:
About 6:02.

Mr. Burr:
In other words, taking the special trip down at 6:30, they will have had time to get all their men to their working places and have gotten material delivered and gotten in shape not to interfere with the operations. The Tennessee Company, like these other mines, are operating under a five day week, you know. That is under the contract.

The Court:
Yes.

Mr. Burr:

Some mines operate some days and some another. Number 4 mine is on operation at 6:30. We will be ready to have the special mantrip go down in Number 4 at 6:30—

The Court:

In the morning?

Mr. Burr:

No, we can't do it by in the morning.

The Court:

I mean 6:30 in the morning?

Mr. Burr:

Yes; we can do it by Thursday. Then the next day at some mine that happens to be in operation. You see what I mean. We don't know now what mines will be in operation, but we will pick out one of the Tennessee Company mines that is in operation.

The Court:

Let me ask this: Can't they go down and back in an hour and a half or two hours and make the inspection?

Mr. Harris:

No, sir.

Mr. Burr:

They say they want to go longer?

The Court:

I don't know.

Mr. Burr:

I don't know either. We want to get them in there and get them out and get through with them. If they want a day we are going to give them a day.

The Sloss people say their operations—Mr. All will explain that,—they can take them at 8:00 o'clock at the Sloss Mine and 8:00 o'clock at the Ruffner Mine.

The Republic Mines, I am having Mr. Patterson phone out to see when they can take them in. They have two mines, Raimund and Spaulding.

We want Your Honor to have this done, to have every man that goes in the mines sign an individual release.

The Court:

I will require that.

Mr. Burr:

Next, we want to know who the men are that are going in the mine.

The Court:

I think you are entitled to know who they are.

Mr. Burr:

Then we object to putting this in the order. They say they be permitted to take photographs,—that is all right, —make dust counts. What that is I don't understand, and I don't know what it has to do with this case. I have been wondering if they are proceeding on the theory they can show our ventilation is bad and the men ought not to work in the mines over eight hours, but they can't take that position because, as stated by the counsel today, they don't care how long we work them just so we pay them for the extra time.

What has silicosis to do with it?

We wouldn't be willing for that to be in the order.

And then this: "And engage in such other investigations as they deem necessary."

We would object to that.

The Court:

If they want to make investigation of the dust in the mines, I don't see why that shouldn't be done, but as to that, that is too general.

Mr. Burr:

I had one case with reference to these departments coming investigating and the information they got turned up in another department. I don't say that is going to happen here, but I have learned a few things.

Those are our suggestions. That is the best we can do.

I might say this in conclusion; while we are not raising that point, this is not like going into an ordinary plant or inspecting papers. We might say to these gentlemen, just come down, but if we are called upon to furnish transportation we have got to do it at a time when we can do it without interfering with our operations.

Mr. Harris:

The words "such other investigations" are too broad.

The Court:

I think that is too general.

Mr. Harris:

Now, I didn't keep up with his schedule. He was talking too fast for me to remember it all.

The Court:

You can get that—

Mr. Harris:

As I got it, as to the company you haven't got here, you can't deal with them at all.

Mr. Burr:

We have them all here except the Republic.

Mr. Harris:
You can't deal with them?

Mr. Burr:
No.

Mr. Harris:
You have the Sloss and T. C. I.?

Mr. Burr:
Yes.

Mr. Harris:
As I understand, the earliest time you can take them as to the Sloss and T. C. I. would be when?

Mr. Burr:
Thursday morning.

Mr. Harris:
That is day after tomorrow.

The Court:
You mean you can't go before then?

Mr. Burr:
No, sir.

The Court:
What is the reason for that?

Mr. Burr:
They tell me they can't do it.

Mr. Harris:
That is something I can't understand.

Mr. Burr:

Mr. Ball can tell you why.

Mr. Harris:

I have read everything I can get my hands on, pamphlets and magazines and everything else. If two or three or five or six hundred men are going down in these mines every day why can't these men go in?

Mr. Burr:

I have got to get Mr. Maxwell and Mr. McKenzie, our engineers—

Mr. All:

We will try to work Sloss tomorrow. Tomorrow is going to be a lost day, but we are willing to lose it and go ahead.

The Court:

You are not working tomorrow?

Mr. All:

No; I say if it is going to be a lost day, we will work out arrangements for them to go to Sloss in the morning.

The Court:

They have two places?

Mr. All:

Ruffner and Sloss.

The Court:

Which one can they go to in the morning?

Mr. All:

Either one they want.

The Court:
Can they do two in one day?

Mr. Harris:
If they can do it in one day—

Mr. Burr:
I want to put a limit on it. I want to know when it stops. I should think the engineers could vary the schedule as they see fit. If they can do two mines in one day, that is fine.

Mr. Harris:
As I understand, instead of these men going on the skip with the men, they go on a special skip right after the men go down?

Mr. Burr:
That is the way ours will go.

Mr. Harris:
We wouldn't want to be allowed to go in two hours later. We would want to go in as close after the—

The Court:
That is the agreement with the Tennessee Company.

Mr. All:
If we could work it this way, to go to one of the Sloss Company's mines at 7:30, and if they can get out around one o'clock they can go to the other mine the same day.

Mr. Harris:
We will have them there at 7:30. Which one?

Mr. All:
Sloss Red Ore Mine.

Mr Harris:
We will have the two men there.

Mr. Burr:
Who are they?

Mr. Brodie:
One is George Wheeler, and the other J. S. Rogers.

The Court:
Who are they?

Mr. Brodie:
Both of them are employed by the Department of Labor. Mr. Wheeler is the economist. He is right here. Mr. Rogers is an industrial engineer. I don't know that he is in the Court room now. He was this morning. They are both employed by the government.

The Court:
How long have you been with the Department of Labor.

Mr. Wheeler:
Since 1934.

Mr. All:
What division with the Department of Labor?

Mr. Wheeler:
I started in with the first National Labor Relations Board, and then I have been with the Labor Board until this division was created, the Wage and Hour Division, and I went with this division.

Mr. Burr:
What was your previous experience?

Mr. Wheeler:
Been an economist and analyst—

Mr. Burr:
What was your experience prior to becoming economist with the National Labor Relations Board?

Mr. Wheeler:
I worked—

Mr. Burr:
That is where you began your experience?

Mr. Wheeler:
I worked with Dr. Miller at the University of Chicago—

Mr. Burr:
While you were a student there you worked for him?

Mr. Wheeler:
Graduate student.

Mr. Burr:
Have you been in an Alabama mine before?

Mr. Wheeler:
Not in Alabama; in Indiana.

Mr. Burr:
Coal mine?

Mr. Wheeler:
Big coal mine.

Mr. All:
What experience have you had since you left school? Has it all been with the Labor Department?

Mr. Brodie:
If Your Honor please, I assume if we put Mr. Wheeler on the stand they will have ample opportunity to pass upon his qualifications.

The Court:
I don't think it is necessary to go into his qualifications. It is a question of who he is.

You take this stand over here and answer any questions they want to ask you.

Were you born in the United States?

Mr. Wheeler:
Tacoma, Washington.

The Court:
American citizen?

Mr. Wheeler:
Yes, sir.

The Court:
You are not a Communist?

Mr. Wheeler:
No, sir.

The Court:
I think those are pertinent questions.

Mr. All:
Mr. Costner, if we get them at Sloss at 7:30, what time can they go in Ruffner?

Mr. Costner:
It depends on how long they want to stay in Sloss.

Mr. All:
What is the inclusive time?

Mr. Costner:
They will have to be there by one o'clock. We shoot at 3:30. There will be too much smoke after that.

The Court:
How long, Mr. Costner, will it take to go through Ruffner?

Mr. Costner:
By taking indicated places, they could be back on top by noon.

The Court:
Then, how far is it from Sloss to Ruffner? Ruffner is out at Gate City?

Mr. Costner:
Yes, sir, it is twenty miles.

Mr. Harris:
I don't believe they could make two mines in one day. If they don't get a satisfactory test there is no use in their going.

Mr. All.
Who are the individual miners that are going?

Mr. Smith:
We will give them to you.

Mr. All:
We want to get them now.

Mr. Harris:
Give us a minute or two and we will find out.

Mr. Burr:
I think we ought to get the names.

Mr. All:
There will be only one of the A. F. of L.?

Mr. Harris:
Only one.

Mr. Smith:
We are just interested in three mines of the Tennessee Corporation. We will get one man.

Mr. Burr:
Give us their names.

Mr. Smith:
Just a minute.

Mr. Harris:
Will Your Honor excuse us? We will go out and see who we can give them.

The Court:
We will take a recess while you are doing that.

(Thereupon proceedings were in recess from 3:25 P. M. to 3:40 P. M., at which time proceedings were resumed as follows:)

Mr. Harris:

If the Court please, we have been able to pick out—I have worked as quickly as I possibly could, and we have picked out everybody without any question except one man at Ruffner. We think he will be available.

At T. C. I. Mine Number 4 there is Pete Dulaney.

Now, then, we don't know the dates of your other T. C. I. mines to give you first, so I will call out the man, and if you will give me the date I will fill in my paper.

Mr. Burr:

T. C. I. Number 4, 6:30 Thursday.

Mr. Harris:

Number 6, whatever date you gentlemen say, Houston Martin.

Mr. Smith:

What date?

Mr. Harris:

Can't tell yourself yet?

Mr. Burr:

Each day we will tell them where to go the next day.

Mr. Harris:

Number 7, Walter McBrayer.

Mr. Burr:

All right.

Mr. Harris:

Number 8, Ward Jefferson.

Mr. Burr:
All right.

Mr. Harris:
Number 9, C. J. McDaniel.

Mr. Burr:
All right.

Mr. Harris:
Number 10, Percy Kirby.

Mr. Burr:
K-i-r-b-y?

Mr. Harris:
That is right.

Mr. Burr:
All right.

Mr. Harris:
Number 11, Ed Patterson.

Mr. Burr:
All right.

Mr. Harris:
Number 13, Bill Thompson.

Mr. Burr:
Wait a minute. You left out Number 5.

Mr. Harris:
Number 5 is a limestone mine. I am not interested in a limestone mine.

Mr. Burr:

How about the government? I want to find out whether they think a limestone mine interests them or not.

Mr. Brodie:

If it is going to be talked about, we want to see it. We don't think any evidence regarding it would be relevant.

Mr. Burr:

We are going to contend it is relevant.

Mr. Harris:

We don't think it is relevant, but if they are going to insist on it we want to see it.

Mr. Burr:

It is a mine owned by the same company and within three hundred feet of the iron ore mine.

Mr. Harris:

Then we will want to go into it. We will get a man. Number 5, Dewey Baker.

Mr. Burr:

All right.

Mr. Harris:

With Mr. Burr's other company, Raimund Mine,—that is of the Republic Company—Lewis Tarrant.

Mr. Burr:

All right.

Mr. Harris:

Your Spaulding Mine, Monty Ray.

Mr. Burr:
Monty Ray?

Mr. Harris:
R-a-y.

Mr. Burr:
Suppose we arrange to start at Republic the minute you finish at the Tennessee Company.

Mr. Harris:
Sloss Thursday.

Mr. Burr:
Judge, we have a definite understanding, as I understand, each one of these men,—that whether it is the economist or the industrial engineer or the miners accompanying them, they will all sign individual releases.

Mr. Harris:
Yes, sir.

The Court:
You can have them ready for them to sign.

Mr. Burr:
Yes, sir; they will have them ready where they report.

Then, of course, we will undergo the expense of furnishing the transportation into the mine and things of that sort, but all other expenses they will take care of themselves.

The Court:
They will go to the mines themselves.

Mr. Burr:

We wouldn't want these other men that go with them in the mines to think they are on the company's payroll.

Mr. Harris:

I didn't give Mr. All the Sloss—

Mr. All:

No, sir.

Mr. Harris:

Sloss Red Ore, Jesse Gaines; Ruffner, we think G. H. Drummond will be available. If not, we will get someone.

Mr. All:

Have you gentlemen anybody?

Mr. Spencer:

Yes, sir; Number 4, Dawson Johnson; Number 6, Fred Trammell; Number 5 Haskell Harris.

That is all the names we have at this time.

Mr. All:

That is all you can give us at this time?

Mr. Spencer:

Yes, sir.

Mr. Smith:

That is all the mines we have people in.

Mr. Burr:

If you have others it is satisfactory with us if you will give us reasonable notice so we will know who they are.

The Court:
Do that, Judge Smith.

Mr. Burr:
Your Honor has stricken the general terms, "engage in such other investigations"?

The Court:
Sir?

Mr. Burr:
You have stricken from the order the general terms "engage in such other investigation as they deem necessary"?

The Court:
Yes, sir.

Mr. Harris:
And we will insert the schedule.

The Court:
You will have it in writing?

Mr. Harris:
I have it in writing, except the change.

The Court:
All right.

Mr. Burr:
Of course, these other investigations wouldn't include talking to employees.

The Court:
I assume that is what you gentlemen will not do.

Mr. Harris:
They will not be hunting witnesses.

Mr. Burr:
I want to be sure of that.

The Court:
That is the instructions of the Court; these men are going down to inspect the mine and not interrogate other people.

Mr. Burr:
All right, sir. I think that—

The Court:
That being finished, we will proceed with Mr. Ball.

Mr. Brodie:
There is no restriction against Government representatives talking to the union representatives who go with them?

The Court:
What?

Mr. Brodie:
There is no restriction against Government representatives talking to the C. I. O. or A. F. of L. representatives that go along with them?

Mr. Harris:
You see, our representatives that go along with the Government men are going along for the purpose of helping them.

The Court:
Who are you asking they may talk to?

Mr. Harris:

For instance, when they go into Mine Number 4, Pete Dulaney is our representative there; Pete Dulaney is going to be going around with them.

The Court:

He may speak to them.

Mr. Harris:

It would be almost impossible for them—any information he wants to give them—

The Court:

About where they are going and how to get to certain places.

Mr. Brodie:

As I understand—

The Court:

You are not going into there to make an investigation or inquiry.

Mr. Brodie:

No.

The Court:

You are not going in there and quiz these people as if you are hunting evidence?

Mr. Brodie:

No.

The Court:

To a reasonable extent. I don't mean you couldn't speak to someone.

Mr. Brodie:
No.

The Court:
I think that is not necessary.

Mr. Brodie:
All right.

(By Mr. Burn):

Q. Mr. Ball, I think I asked about the average time spent in transportation from the entrance of the mine down to the underground loading station. I believe you gave me that this morning, the average time?

A. That is for getting all the men in the mine or just for one trip?

Q. For one trip. You gave that this morning?

A. Yes, sir; between five and six minutes.

Q. Between five and six minutes?

A. For the trip.

Q. Some mines would be more than that?

A. Some mines would be more and some less.

Q. Some would be less?

A. Yes, sir.

Q. That is the average mines?

A. Yes, sir.

Q. Could you give me from these surveys the average time that it takes the miner to walk from the underground loading station to his working place?

A. It is 14 minutes.

Q. 14 minutes?

A. The average.

Q. Do you remember what the longest time was as shown by the—

A. About 27 minutes.

Q. And the shortest time, do you remember?

A. I believe around 8 minutes.

Q. Do you recall how those surveys were made and when they were made upon which you base your answers to these questions?

A. The surveys were made by mining engineers and foremen walking the distances to the different working places from the man unloading station and walking at a normal rate of speed. The studies were first made in July and were then checked by engineers of the industrial relations department of the company going over the same route again in December, the industrial engineers checking the mining engineers and the operating men in the same way as they had in July.

Q. And those figures are a composite of the three checks?

A. Yes, sir.

Q. Of course, as you said this morning, if you got to trying to find out the time taken by each individual miner, that would be—

A. Impossible.

Q. —impossible in your opinion?

A. Yes, sir.

Mr. Burr:

All right, sir. I would like at this time to offer these maps. They may be of interest in these—

The Court:

Is there any objection to the map? I imagine they are accurate?

Mr. Burr:

Yes, sir, we tried—

Mr. Smith:

Is that a map of each mine, Borden?

Mr. Burr:
A map of each division, and shows each mine.

The Court:
Muscoda Division shows all mines of that division?

Mr. Burr:
Yes, sir.

The Court:
And the same as to the other divisions?

Mr. Burr:
Yes, sir.

The Court:
Borden, when were they made?

Mr. Patterson:
It will show there when you look at it.

The Court:
When were they made, Mr. Burr; when were they made?

Mr. Burr:
Sir?

The Court:
Judge Smith asked when were they made?

The Witness:
December, 1940.

Q. Extended down to January 1, 1941?
A. Yes, January 1, 1941.

Mr. Lipscomb:
Which division is this?

Mr. Burr:
I am going to identify them right now.

The Court:
Mr. Ball, does it show the mines in each division?

The Witness:
Yes, sir, the mines in each division, and the distances, and the composite average for each mine.

Q. Mr. Ball, I am showing you the map that is identified as T. C. I. Exhibit Number 1, which, in large print, has on it, "Muscoda Iron Mine, Study and Map." That has been made under your direction and supervision, showing the mines in that division which consists of Number 6 mine, Number 5 mine and Number 4 mine?

A. Yes, sir.

Q. And the distances that are marked on here and the minutes, does that indicate the distances—

A. From the mine portal.

Q. —from the mine portal?

A. To the underground loading station.

Q. To the underground loading station down that way, and then the—

A. The different red spots, the distances and time it takes to travel the usual route to the various working places.

Mr. Harris:
Have you all got the men who made the maps and the time studies?

Mr. Burr:
Yes, sir.

Mr. Harris:
This is all hearsay.

Mr. Burr:
I don't think so. He says it was made under his supervision.

The Court:
Do you know, Mr. Ball, that is correct?

The Witness:
Yes, sir, because this was all referred back to me.

Mr. Lipscomb:
Judge, you understand we are not willing to adopt the time his engineers got?

Mr. Burr:
Neither are we, because some of these men don't walk as fast as the engineers.

Mr. Lipscomb:
A lot of these men have to carry tools and equipment.

The Court:
That will be a matter of proof as to the walking time.

Mr. All:
It will be a matter of proof whether they carry tools and equipment.

The Court:
You just don't agree it is correct?

Mr. Lipscomb:
We don't adopt it.

Q. Is Exhibit 2 a correct map of the division known as the Wenonah Division which includes mines Numbered 10, 9, 8 and 7?

A. Right.

Q. And the same thing you said about the other, traveling time and distance is true about this one?

A. Yes, sir.

The Court:

You are talking about traveling time; that is walking time?

The Witness:

Yes, sir, and the time from the mine portal to the underground manloading station is indicated.

Q. The one I show you identified as T. C. I. Exhibit Number 3, and has the large printed words, "Ishkooda Iron Ore Mines", is that a correct map, and also the information stated on there, giving in the same way as you testified about Number 2, the information with reference to Number 11 mine and Number 12 mine of the Ishkooda division?

A. Yes, sir; correct.

The Court:

The same is true about that?

The Witness:

Yes, sir.

Mr. Harris:

I would like to have these maps tonight to study them, if that is agreeable.

The Court:

Delighted.

Q. Is the map I show you marked T. C. I. Exhibit 4, which bears the designation, "Limestone Mine, Muscoda," is that correct as to that mine?

A. Yes. It must be remembered in connection with this map, Mr. Burr, that on the Muscoda Division you could not show it there because this mine is up above the stone mine?

Q. And you had to make a separate map for the limestone mnie?

A. Separate map.

The Court:

There is a question in my mine whether the limestone mine would be admissible.

Mr. Harris:

Your Honor will recall I objected to that and stated I didn't consider any limestone mine had anything to do with it. I don't see it has.

Mr. Burr:

Your Honor can pass on that after you hear us.

The Court:

I will pass on it. I will permit testimony on it and if the Court thinks it is improper, it will be excluded.

Mr. Burr:

Our position is Section 7 doesn't mention iron ore or limestone or any other kind of mine, and—

Mr. Harris:

In that connection, I think we should call your attention to the fact that section is not limited as to mines.

Mr. Burr:

That is true.

Mr. Harris:

This law wasn't passed for some little ore mines out here.

Mr. Burr:

No, sir; it includes our steel plant with fences around it.

Mr. All:

Your Honor will mentally exclude that if you determine it is not proper?

The Court:

Yes, or I might state to you gentlemen I will not consider it either way.

Mr. All:

Yes, sir.

Q. Now, Mr. Ball, I believe you say you have been connected, and have given the details of that connection, with iron ore mining in this district since what year now?

A. About 1902.

Q. I will ask you whether or not since 1902 down to May 1, 1941, the underground mine workers have ever been compensated or paid for the traveling time as part of the day's work?

Mr. Harris:

We object on the theory which I have heretofore indicated to Your Honor.

Mr. Burr:

I—

Mr. Harris:

We object to anything that happened before the Fair Labor Standards Act went into effect; that if those customs, if they had customs, if those practices,—if they had the power to adopt practices as they were existing throughout the United States, and the rights of litigants covering 48 states in every conceivable industry are to be affected by the customs, then Congress might just as well have kept silent. The law was passed to wipe away all those customs and practices just like going into a room and brushing out the cob webs and cleaning it up and letting the light in.

Following our theory, if they had a custom the other men had agreed to, if they had a practice the other men had power to dispute and had failed to dispute that, none of those things would have any bearing on the question of whether or not men were at work and whether or not they have been at work since this law went into effect.

Mr. Burr:
If Your Honor please, of course, my position—

The Court:
I will overrule the objection.

Mr. Harris:
We except.

Mr. Burr:
Did you understand the question?

The Witness:
Read it, please.

(Thereupon the reporter read the question last propounded as above recorded.)

Mr. Harris:
I repeat my objection.

The Court:
Overruled.

Mr. Harris:
Except.

A. They have not.

Q. I will ask you as to what the universal custom has been since you have been connected with the iron ore mining in Alabama—

Mr. Harirs:
We have the same objection to the line of testimony.

The Court:
The same ruling.

Q. —with reference to how the underground employees' time was computed and paid for; that is, whether it was computed and paid for from the time transportation began at the portal, and until the time transportation ended coming out at the portal, or whether it was computed and paid for on the time spent at his working place.

A. The time was computed and paid for at his usual place of work underground, and was known as face to face.

Q. Has that been the universal custom all these years?

A. Yes, sir, it has.

Mr. Harris:
By universal you mean here in the Alabama ore mines?

Mr. Burr:
Yes, sir. I am not going to travel out of Alabama. Now, the next matter I have got is going to take a good long time. Does Your Honor want to run on? Your Honor said between four and four thirty.

The Court:
I think we will adjourn now.

Mr. Harris:
It is all right with me.

The Court:
What time do you want to meet back in the morning?

Mr. Burr:
Your Honor said nine.

The Court:
We will adjourn at 4:00 o'clock and meet tomorrow morning at 9:00 o'clock.

(Whereupon, at 4:05 P. M., July 8, 1941, an adjournment was had to 9:00 A. M., July 9, 1941.)

July 9, 1941, 9:00 A. M.

Court met Pursuant to Adjournment.

The Court:
Let's proceed.

Mr. Burr:
Come around, Mr. Ball.

805 E. M. BALL thereupon resumed the stand, and having been previously sworn, testified further as follows:

Direct Examination—Resumed.

(By Mr. Burr):
Q. Mr. Ball, on May 1, 1941, was the Tennessee Company at its ore mines operating on, so far as computing

wages and paying the men, on a shift basis or hourly wage basis?

A. They were paid on an 8-hour hourly wage basis.

Q. For how long previous to that had they been on an hourly wage basis?

A. Back about until 1914, when the contract system was abolished.

Q. I see. Previous to that time they were on what is called the contract system?

Mr. Harris:

Your Honor understands we have an objection to everything that happened before 1938?

The Court:

Yes, sir.

Mr. Harris:

The same line we had yesterday.

The Court:

The same ruling and exception.

Q. Can you tell the Court in a general way how those hourly rates were established, how the company reached the rates, and how they were established?

Mr. Harris:

I don't think that is important, Judge. Why should the internal calculations and computations of the company on figuring rates be material to us? We would have to go into each operation.

The Court:

I think so. I sustain the objection.

Mr. Burr:

I think Your Honor, in fairness, ought to know what I have in mind. I know it is difficult in this case for anyone to understand, unless they do kind of look into the other fellow's mind and know what he is thinking about.

Now, it is our position that the company established these hourly rates after making a study of the occupational rates and putting it on a scientific basis, and they all revolve around the eight hour day at the working place, and the complaint is just—that is one of the meaty items in the complaint; that the effect of this is to cause us to change our basis of rate making and everything else. It is certainly a matter that throws light on the situation, and as suggested yesterday, Your Honor is going to have to determine this case after you have heard all the evidence and viewed all the evidence.

The Court:

Oh, yes.

Mr. Burr:

I certainly wouldn't offer the evidence unless I thought it had a relevant bearing.

Mr. Harris:

I—

Mr. Burr:

Just a minute, Mr. Harris.

I am not talking into detailed examination at this time as to how it was done. I want to prove the fact these rates were created in 1915 and based on studies of the occupational rates; that it was an occupational rate in contrast with an individual rate. Your Honor understands what we mean. In other words, it means this: The company made a study of the occupation of a mucker, what that rate should be, after studying his basis, his work, after taking what a standard ought to be, they based it on 80 per cent of 100 percent. That gives you the set-up I want to show the rates after 1915 were on an occupational rate basis on an 8-hour day at the working place. That is the question I want to ask, and I think it is admissible.

Mr. Harris:

The question of Mr. Burr believing it is admissible, I don't challenge that, but it is the fact different lawyers have different opinions which call forth objections and arguments during the course of a trial.

I am equally convinced that is wholly inadmissible. In the first place, he goes back 23 years before—23 years before the immediate time involved. Then he says we decided to pay a certain price based on certain studies that we made. Now, Does Your Honor want to call in those experts, whoever they were, that made those studies to check up to see how they made them and what they made? What difference does it make what thoughts run through the minds of men when the question is one of fact?

We are not investigating mental processes or mathematical calculations. Now, if they are going to determine the reasonableness of those calculations, how can we determine them without going into costs, and he said day before yesterday or yesterday he was not going into any costs at all, that that is wholly beside the question.

Now, he says, we are not going to let you see the picture as it affects our business, but we will let you see what we figure these men should have on some studies we made back yonder. Now, if we are going into that we are going into an interminable investigation of irrelevant matters, and I suggest this is neither the time nor place to investgate the mental operations of officers of this plaintiff that handled those things for the T. C. I. Company.

Mr. Burr:

May it please the Court, his last statement makes it clear why this matter is material.

The further you go back on a matter, the more light it throws on the subject if you can show there was a continuous custom. In other words, in construing what Congress meant by legislation of this sort, the further back the custom goes the more Congress is charged with knowledge of the custom in passing these laws. So much for the time back. I am asking it to show it has been continuous from that time on until now.

Now, we are not concerned here with the mathematics of this question; we are not concerned with the fairness of it; we are not concerned with whether the company fixed the occupational rate too high or too low. All I am asking to prove is the simple fact since 1915 this company, after study, fixed an occupational rate, and that was fixed on the 8-hour day, and further than that, these men have acceded to that time after time since then by taking the pay on that basis.

The Court:

I overrule the objection.

Mr. Harris:

We except.

Q. Is that a fact or not? How about this occupational rate, how was it made?

Mr. Harris:

Same objection.

A. By a study by the industrial engineers, taking into account—

Mr. Harris:
He is telling what somebody took into account.

Q. You know about this?
A. Yes, sir.
Q. It was done under your supervision?
A. Yes, sir.
Q. All right; proceed.
A. The jobs were investigated to determine an occupational rate and a rate per hour was set for each occupation.
Q. Was that rate set on an 8-hour per day basis?
A. It was set on a 10-hour basis.
Q. It was set on a 10-hour per day basis?
A. Yes, sir.
Q. Then, did you subsequently change from 10 hours to 8 hours?
A. We did.
Q. Were the rates then placed on an 8-hour basis?
A. They were fixed on an 8-hour basis, but it was a give and take. In other words, we split on 9 hours to get a new hourly rate.
Q. Did that rate include transportation?
A. It did not include transportation.
Q. Then there came in what has been referred to as the incentive plan. When did that come in?

Mr. Harris:
Same objection.

The Court:
Same ruling.

Mr. Burr:
Yes, sir.

A. In August, 1936.

Q. Just explain briefly what the incentive plan was without going into great detail about it in order that the Court—

Mr. Harris:

In order that I might not have to repeat, is it understood everything back of 1938 we are objecting to on all grounds?

Mr. Burr:

That is satisfactory to me.

The Court:

All right.

Q. All right, Mr. Ball.

A. The employees were guaranteed a certain rate, or a certain rate for eight hours of work at their usual working places underground. In addition to that, if the mine crews loaded over a certain number of tons, which was called a base tonnage, they received extra compensation for that tonnage. That, in brief, is the incentive plan.

Q. That has been in operation since the date you named?

A. August, 1936.

Q. All right. Now, I will ask you during that entire period of time you have testified about, from 1915 down to May 1, 1941, if the occupational rates always excluded traveling time, and were based on work at the working place?

A. It was.

Q. Do you recall, Mr. Ball,—this Act, I think I can properly state, that we refer to as the Fair Labor Standards Act of 1938, went into effect on October 24, 1938.

I will ask you whether or not if prior to that time the company had established payment for overtime?

A. They had. Approximately the latter part—it was either in December, 1936, or in January, 1937,—along in that period.

Q. What was the overtime they established at that time?

A. Time and a half for any work over the 8-hour period.

Q. I see. Now, state whether or not in computing that overtime under the custom that existed and continued to exist until May 1, 1941, if transportation time was included or not included?

A. It was not included?

Mr. Brodie:

If Your Honor please, I would like to interpose an objection to the form of the question. Mr. Burr has continually referred to the custom. What is a custom is a mixed question of law and fact. It may have been the practice of the company, but there is no evidence the men acceded.

The Court:

As I understand, he is asking what the custom and practice is.

Mr. Burr:

Yes, sir, and the evidence will show every man knew it, and there is no conflict to it; that they got a pay statement every week that showed exactly what they were getting. There are not any of our miners going to claim anything to the contrary.

Mr. Lipscomb:

We wish to say it is not a fact, and we expect to prove it is not a fact. Our men didn't want to do it.

Mr. Burr:

We will meet you, Jim, when it comes in.

Mr. Lipscomb:

I don't think it is necessary—

Mr. Burr:

Take it out of the record. Leave it out of the record.

I was arguing in reply to the objection of the other gentleman.

The Court:

Go ahead.

Q. Can you tell us, Mr. Ball, what was the average maximum wage for underground miners—

Mr. Brodie:

I object to that, Your Honor, on the ground it is illegal and irrelevant to this case. The issue is when these men were at work. What they were paid before a particular date or what they are paid now, what their hourly rate is, is immaterial. It only becomes material on the question of damages.

The Court:

Overruled.

Q. What was the average maximum rate prior to May 1, 1941?

A. The average rate—by the average rate I mean the average of the rates for the different occupations, of which there are a great many,—was 68 cents per hour.

Q. Do you know what the minimum rate was?

A. The minimum rate was 54½ cents per hour.

The Court:
That was before May 1st?

Mr. Burr:
Yes, sir.

The Witness:
Yes, sir.

Q. Has there ever been a time since the enactment of this act when the wages of the underground employees have been as low or lower than the minimum prescribed by this act?

Mr. Brodie:
I object to that, if Your Honor please.

The Court:
Overruled.

Mr. Burr:
Yes, sir.

A. Please state that again.

Q. The minimum prescribed by the Act, you understand, is thirty cents an hour?

A. Yes, sir.

Q. Have the wages of any of the underground employees of the company, since the act was enacted and for several years prior thereto, ever been as low as thirty cents an hour?

A. They have not.

Q. And the minimum you gave is what they were—how far back of May 1, 1941, did that go?

A. Oh, that goes back several years.

The Court:
What is the average minimum?

Mr. Burr:
The average minimum is 54½ cents per hour,—that is the minimum, and the maximum was 68 cents per hour.

The Court:
All right.

Q. Mr. Ball, the complaint alleges that there were two union organizations in your—in the ore mines of the company on and prior to May 1, 1941?

A. Yes, sir.

Q. Would you give us the names of those two organizations as of that date?

A. One was the International Union of Mine, Mill & Smelter Workers, the CIO affiliates, and the other was the Red Ore Miners Union, affiliated with the A. F. of L., American Federation of Labor.

Q. All right, sir. In asking you questions about those two union organizations I will refer to the International Union of Mine, Mill & Smelter Workers as the Smelters Union, and I will refer to the Red Ore Miners Union as the American Federation Union.

A. Yes, sir.

Q. In that way we can keep from having to repeat those words.

A. Yes, sir.

Q. Will you tell us when the Smelters Union first was active and—

Mr. Harris:
We object, if the Court please, illegal, irrelevant, incompetent and immaterial.

The Court:
Overruled.

Mr. Harris:
Going back of the year 1938, the effective date of the act.

The Court:
Overruled.

Mr. Harris:
We except.

Q. When did it become active among your employees?
A. The summer of 1933.
Q. Well, in the summer of 1933 they began organizing in your camp?
A. Yes, sir, each division. There was a local organization at each of the ore mines divisions, Muscoda, Wenonah and Ishkooda.
Q. Do you recall the numbers—

Mr. Harris:
Without having to repeat my objection, I have the same objection?

The Court:
Same ruling.

Q. Do you remember the numbers, the Muscoda Local, 123?
A. I think it was 123.
Q. Wenonah 157?
A. Yes, sir.
Q. And Ishkooda 153?
A. Yes, sir.
Q. Do you recall being present at a conference that was held between representatives of those three locals and some of their general officers, including the defendant Van Jones, which was held in the president's office for a

conference with the management on or about October 19, 1933?

A. I do.

Mr. Smith:
We object to that so far as it applies to the A. F. of L., if the Court please.

The Court:
This is in reference to the Smelters?

Mr. Smith:
CIO organization.

The Court:
That is the CIO organization?

The Witness:
Yes, sir.

Mr. Smith:
That wouldn't be applicable to us.

The Court:
Yes, sir.

Mr. Burr:
We think it is all to be considered on the intent of Congress.

The Court:
Yes, sir, it may be admissible on that. That is why it is admitted.

Q. Do you recall who was present at that conference, Mr. Ball?

A. Mr. Van Jones, Mr. Charley McDaniel, Mr. Richard Anderson,—

Mr. Harris:
I am sorry, I didn't hear that.

The Witness:
Mr. Richard Anderson.

Q. Mr. Richardson Anderson—
A. Mr. Pegues—

The Court:
He is one of the defendants, isn't he?

Mr. Burr:
Yes, sir, he is one of the defendants.

A. Frank Allen, Will Mahan, and Morris Smith, colored. The company representatives were Mr. Gregg—

Q. What position did he hold with the company at the time?

A. President of the Tennessee Coal, Iron & Railroad Company; Mr. J. F. Vance, Manager of Industrial Relations; Mr. C. E. Abbott, Vice President in Charge of Raw Materials; and myself.

Q. At that time did the Union representatives present a number of suggestions or request or demands, whatever you might call it, to the company they wanted acted upon representing their membership?

Mr. Harris:
If it is in writing, the writing would be the best evidence.

Mr. Burr:
I am going to get to that right now. I am going to show how it was done.

The Court:

He can say yes to that.

A. They presented eight or nine demands.

Q. Were they presented orally or in writing?

A. They presented a written demand, written request, rather.

Q. I will ask you to look at this memorandum and see if that is the one taken at the time?

Mr. Harris:

In addition to our usual objection we have in, the writing would be the best evidence.

Mr. Burr:

I am refreshing his recollection. There were two of these meetings; one is in writing, and one is not.

A. Yes, sir.

Mr. Smith:

Was this in 1933?

Mr. Burr:

Yes, sir, in 1933.

A. Yes, sir. This is an answer to the suggestions.

Q. The suggestions were not in writing at this particular meeting?

A. Yes, sir, I think they were. They may have been in the form of a memorandum.

Q. Does this memorandum set out these suggestions and requests made at that time?

A. It does.

Q. And sets them out correctly?

A. Yes, sir.

Q. And does it set out the replies made by the company?

A. It does.

Mr. Harris:
Where is the original?

Mr. Burr:
Here it is right here.

Mr. Harris:
I thought you said that was a memorandum.

Q. Was this memorandum taken immediately at the meeting?

Mr. Harris:
This is just a typewritten statement. We don't know when it was taken or who took it. The person that took it is not here.

Mr. Burr:
I wish you would read it. You might not object to it.

Mr. Smith:
Did you make it?

The Witness:
Sir?

Mr. Smith:
I asked if you made the memorandum yourself.

A. No, sir. The president's secretary made the memorandum.

Q. Now, while they are looking at the memorandum, will you tell us independently of the memorandum what request was made by those union representatives you have named with reference to traveling time in the mine, independently of anything in writing?

Mr. Harris:
We object to it on all the grounds previously assigned.

The Court:
Overruled.

Mr. Harris:
We except.

A. There was a request made the men enter the mine on the company's time and come out on their own time.

The Court:
That was in 1933?

The Witness:
Yes, sir.

Q. In '33?
A. Yes, sir.
Q. State whether or not that was the first time any request has been made by any union organization or members to the management with reference to traveling time?

Mr. Brodie:
I object to that.

The Court:
Overruled.

A. Yes, sir.

Mr. Brodie:
May the record show I have an objection to all this line of testimony?

The Court:
Yes, sir.

Mr. Burr:
Sure; you are objecting to it; you are objecting to this testimony?

Mr. Brodie:
Yes, sir.

Mr. Burr:
You are objecting to what is the practice and custom between these parties?

Mr. Brodie:
Yes, sir.

Mr. Harris:
I have been objecting all the time.

Mr. Burr:
Yes, sir, but I want it understood the government is objecting also.

Mr. Smith:
May it be understood our objection goes along also? I don't want to state my objection if it is not necessary.

The Court:
Yes, sir.

Mr. Brodie:
May I state my grounds?

The Court:
Yes, sir.

Mr. Brodie:

That agreement between parties can't set aside the terms of the statute.

The Court:

Overruled. This was back of the statute.

Q. Can you tell what reply was made by the management in answer to the request that the men should enter the mine on company time and come out on their own time?

A. The reply was at that time there was no code for the ore mines and the ore mines were following as closely as possible the code set up for the coal mines in this district, and that code called for 8-hours work at the usual working place, and a 40-hour week; that a differential would be maintained between the rates paid the coal miners and the rates paid the ore miners.

Q. When that statement was made with reference to the Code of the Bituminous Coal Mining Industry, do you refer to the NRA Code?

A. I do.

Q. Is it true at that time there had been a code adopted for the coal mines and none had been adopted for the ore mines?

A. My recollection is there had been no code adopted for the ore mines and there had been one adopted for the coal mines.

Q. Was any code ever adopted for the ore mines?

A. There was not.

Q. And that was the response made by the Company in reference to that request?

A. It was.

Q. I will ask you to read this memorandum and state whether or not it was made co-temporaneously with that meeting and sets forth all the demands that were made and all the replies that were made at that time correctly?

A. Yes, sir; this was the memorandum.

Mr. Burr:
We will ask this be identified as—

The Clerk:
T. C. I. Exhibit No. 5.

Mr. Burr:
5?

The Clerk:
Yes, sir.

(Thereupon the said document, entitled, "Copy of memorandum of meeting held in office of president, October 19, 1933, with a committee of seven men purporting to represent certain employees of the ore mining division, Tennessee Coal, Iron & Railroad Company," was marked T. C. I. Exhibit No. 5.)

Q. Was Mr. McDaniel that was present there the same Mr. McDaniel that is sitting over here now?
A. Yes, sir.
Q. The same gentleman?
A. Yes, sir.
Q. And Mr. Van Jones was there, I believe you said, but he is not here this morning?
A. He was there, but he is not in the Court room.
Q. And Pegues, another defendant?
A. Yes, sir.

Mr. Burr:
We offer this in connection with his testimony.

Mr. Smith:
What is that?

Mr. Burr:
This memorandum.

Mr. Harris:
Same objection.

The Court:
I don't know whether that is admissible or not.

Mr. Burr:
I am offering it in fairness so they shall have it and Mr. McDaniel can check it.

The Court:
I will let it go in.

Mr. Harris:
We except.

Mr. Burr:
Shall I read it to Your Honor.

The Court:
Yes, sir.

(Thereupon Mr. Burr read T. C. I. Exhibit No. 5 to the Court.)

Mr. Burr:
Now, we offer the entire paper, but we offer as relevant the part of it in relation to this transportation time. The other,—we thought it was fair to have the entire paper in there.

Mr. Harris:
The same objection.

The Court:
Same ruling.

Mr. Harris:
As I understand it, Your Honor doesn't require me to detail the objection? There are some eight or ten different objections.

The Court:
No.

Mr. Harris:
I haven't repeated the grounds each time, but I understand I can assign any objections I please.

The Court:
That is satisfactory.

Mr. Burr:
That is perfectly satisfactory. You can assign any grounds you please now or later.

Q. All right, sir. Now, I will ask you if on April 13, 1934, another meeting was held with the President of the Company and with representatives of the union and representatives of the management concerning some written demands that were made upon the company by the Smelters' Union?

A. There was. They submitted a form of proposal for a written contract.

Mr. Burr:
Will you please mark this as an Exhibit?

The Clerk:
That will be exhibit T. C. I. Number 6.

(Thereupon a document headed "Bessemer, Alabama, April 13, 1934," and bearing the signatures M. C. Anderson, C. J. McDaniel, Van D. Jones, M. E. Adams, Morris Smith and E. A. Sisemore, was marked T. C. I. Exhibit No. 6.)

Q. I show you now, Mr. Ball T. C. I. Exhibit Number 6 which purports to be a statement or a letter directed to the Tennessee Coal, Iron & Railroad Company, Attention Mr. Robert R. Gregg, President, in re Muscoda Division, Wenonah Division, and Ishkooda Division, and signed by M. C. Anderson, Number 153, C. J. McDaniel, Number 157, Van D. Jones, Number 123, M. E. Adams, Number 123, Morris Smith, 157, and E. A. Sisemore,—

A. Yes, sir.

Q. —is that the original proposal submitted at that time by this union?

A. Yes, sir.

Q. Smelters Union?

A. Yes, sir.

The Court:

What is the date of that?

Mr. Burr:

That is dated April 19, 1934.

Now, we offer this and offer particularly as relevant in this case the request Number 8 in the contract or paragraph 8 in the contract which reads as follows:

"In view of the fact that the company can force the men to enter and leave the mines at any time stated by the company, we ask the right to enter on our own time and leave on the company's time."

Do you gentlemen want to see this?

Mr. Brodie:
Yes, sir, I would like to see it.

Mr. Burr:
Off the record, I wonder if it would be satisfactory with the Court and these gentlemen to substitute copies for the originals?

Mr. Harris:
It is satisfactory with me.

Mr. Lipscomb:
We would like to see the originals.

Mr. Burr:
Sure, I have here. You can check them now or later.

Mr. Smith:
I would like to get a note it doesn't apply to the A. F. of L.

Mr. Lipscomb:
We were in the A. F. of L. at that time.

Mr. Burr:
We submit it applies to everybody as showing the intention of the Congress.

The Court:
It is being admitted to show the intent of Congress when the Act was passed October 24, 1938.

Mr. Harris:
What I understand from your request is that you produce the originals and later substitute copies?

Mr. Burr:
That is right.

Mr. Harris:
I don't have any objection to that.

Mr. Quinn:
What exhibit is that, Mr. Burr?

Mr. Burr:
Exhibit Number 6.

Q. Now, do you recall—was there a memorandum made at the time that was given to the representatives of the union—will you mark this, please, sir?

The Clerk:
T. C. I. Exhibit Number 7.

(Thereupon a document entitled "Memorandum of Replies Made to Proposals submitted by Committee Composed of the Following Employees of Tennessee Coal, Iron & Railroad Company," was marked T. C. I. Exhibit No. 7.)

Q. —which I show to you and which has been marked T. C. I. Exhibit Number 7.
A. There was at that time.
Q. The replies were placed in writing?
A. Yes, sir.

Mr. Burr:
I will give you all a copy of this if you would like to have it.

Mr. Harris:
We would like to have it.

Mr. Burr:

Here it is right here.

Q. I will ask you to examine defendants' Exhibit—T. C. I. Exhibit Number 7 and state whether or not the following reply which is headed Item 8, was made by the management to the men at that time:

"When we changed the working time in the mines from ten hours to eight, we found that the average time spent at the face was about nine hours. We then adjusted the wage to equal nine hours pay for eight hours at the face, or regular working place, so that we feel we have done all that you now request. There must be a regular starting time and quitting time for the orderly operation of the mines and we are convinced that our present policy is fair and proper."

A. Yes, sir, that reply was made.

Q. And the other replies, if they should become relevant, were made to the other suggestions?

A. Yes, sir.

Q. As shown in this written memorandum?

A. Yes, sir.

Mr. Lipscomb:

Your Honor, will you let me see the original letter at this time?

Mr. Burr:

Yes, sir.

Q. I will ask you, Mr. Ball, if that was the second time that the management ever received from anyone any request that any portion of the transportation time be considered as part of the days' work, and computed in the pay.

A. That was the only two times.

Q. In other words, the time in the meeting with the president, and this time, were the only two times you heard this question suggested by anybody?

A. Yes, sir.

Q. And the suggestion was not portal to portal, but fifty-fifty?

A. Yes, sir.

Q. That was the only times?

A. Yes, sir.

The Court:

That was in 1933 and 1934?

The Witness:

Yes, sir.

Q. Now, I will ask you if at this time, April 13, 1934, without going into the merits of the strike at all one way or another, was there a strike at your ore mines on Red Mountain at that time?

A. At that time—the strike went into effect on the morning or evening of May 4th. It was on May 4, 1934.

Q. Was that strike called and conducted by the Smelters Union? Was it a Smelters Union strike?

A. It was.

Q. Was the Union sufficiently strong at that time to force the closing down of your mine? Did they close them down completely?

A. All our mines were closed down.

Q. By the strike?

A. Yes, sir.

Q. Will you tell us how long that strike continued? When did the mines reopen?

A. They reopened on approximately July 2nd or 4th, and operated for three or four days when all the mines had to be closed down again due to lack of orders for materials.

Q. Now, Mr. Ball, between the time of the beginning of that strike and before the mines reopened, did you attend a number of conferences with representatives of the Union in an effort to settle the strike?

A. I did as I remember it.

Q. Do you recall whether or not any gentleman here in Birmingham was selected by both sides to sit in on those conferences to see if an agreement could be reached?

A. General Persons of the First National Bank sat in on those conferences as umpire.

Q. What did those conferences—what was the subject matter of those discussions? I will put it this way, because there is no use bringing all the other up: I will ask you to state whether or not at any time at any of those conferences the representatives of the Union brought up again or in any way indicated on this half and half or portal to portal plan of computing and paying wages?

A. I believe there were three such conferences held in the Board room of the American Trust Building at which were present Mr. Jim Lipscomb, the president of the three different locals, and myself, and several superintendents representing the company:

There were two points that were discussed at these meetings. One was—

Mr. Harris:

I don't see the materiality of what points were discussed. The question is whether that was discussed.

Q. I don't care for that if they don't want it.

Was the payment for transportation time brought up or discussed or considered at those meetings?

A. It was not.

Q. You say there was three of those meetings?

A. As I remember, approximately three of them. There may have been four.

Q. Do you remember whether the defendants Van Jones and Pegues attended those meetings?

A. Yes, sir.

Q. And the presidents of the locals?

A. The presidents of the locals with some other committeemen.

Q. Now, did those meetings settle the strike or not?

A. They did not.

Mr. Harris:
We object to that. That calls for a conclusion.

Q. All right. Did the strike continue after the meetings?

A. It did.

Q. Now, had the company accumulated prior to the strike a stock pile of iron ore on the mountain, surplus stock?

Mr. Brodie:
We object.

Mr. Harris:
We see no materiality in that if the Court please.

The Court:
I don't either.

Mr. Burr:
All right, sir. I might state to the Court what we offer it for. It may become material later. It is very material in anticipation because that is one question Your Honor required us to answer interrogatories on, and the answer is on file. They asked us about the stock pile.—

The Court:
I think that was in recent years.

Mr. Burr:
I don't remember the date.

The Court:
I think it was in 1938, 1939, and 1940.

Mr. Burr:
If it comes up later, I will show Your Honor what I had in mind. I don't see how it can be—I imagine their theory was at the time they made it they could thereby show we were able to accumulate a stock pile and could work under this new plan the same way.

I just wanted to show that has been the custom and habit of the company for years and years, and is of all companies, to accumulate a surplus stock.

The Court:
For that limited purpose, I will let it in.

Mr. Burr:
All right.

Q. Did you have a stock pile accumulated?
A. We had three piles.
Q. About how many tons?
A. Approximately 700,000 tons.

Mr. Lipscomb:
As of 1934?

Mr. Burr:
Yes, sir, at the time of the strike.

Mr. Brodie:
How many tons?

The Witness:
About 700,000 tons, I believe.

Q. Has it been the practice and custom previous to that time and ever since, to accumulate a surplus stock of ore?
A. It has.
Q. In case of emergency?
A. Yes, sir.
Q. During this mine strike in 1934, were the manufacturing plants kept in operation by means of that stock pile?
A. They were.

Mr. Harris:
We don't see the materiality of that, if the Court please.

The Court:
I don't either.

Mr. Harris:
If Your Honor lets him show they were accumulating and using at that particular time—

Mr. Burr:
Just showing the emergency existed and they used it.

The Court:
The purpose—

Mr. Burr:
We don't insist on it.

Q. I will ask you when did that strike close and when did the mines reopen in 1934?

A. Approximately on July 2nd or July 4, 1934.

Q. Do you recall the circumstances under which they were reopened and whether or not any written letters or agreements were made with the union at that time?

A. Yes, sir.

Q. Now, Mr. Ball,—mark this, please.

The Clerk:

T. C. I. Exhibit No. 8.

(Thereupon a document dated June 25, 1934, and addressed to Honorable Francis Perkins, Secretary of Labor, Commissioner James Dewey, Commissioner C. L. Richardson, consisting of two pages, to which are attached nine other pages, was marked T. C. I. Exhibit No. 8.)

Mr. Burr:

Do you gentlemen want to see this before I ask about it? These are the letters of understanding by which the men went back to work.

Mr. Harris:

I have seen it.

The Court:

What is that, Mr. Burr?

Mr. Burr:

The letter of understanding showing the terms under which the men went back to work.

The Court:

Do you have the original?

Mr. Burr:
No, sir. Madame Perkins has the original, of course.

The Court:
Do you want to compare them with your copy?

Mr. Lipscomb:
We have compared our original with our copy.

Q. Now, Mr. Ball, I will ask you please, sir, to examine T. C. I. Exhibit Number 8 and state whether or not that is a copy of the letter that was sent on or about June 25, 1934, to Honorable Francis Perkins, Secretary of Labor, Commissioner James Dewey, Commissioner, C. L. Richardson, which states, "This is to confirm the understanding reached today at the conference between representatives of employees of our ore mines and the management."

A. Yes, sir, that is a copy of that letter.

Q. And attached to it is a written classification of occupation, and showing the present occupational rate of each occupation and the new one that was reached by the settlement?

A. That was correct.

Q. For instance, camp watchman, the present rate was 51½ cents, and the proposed rate was 54½ cents?

A. Yes, sir.

Q. And on down through each rate?

A. Each rate.

Q. Were each one of those rates decided upon in this conference?

A. They were.

Q. Were each one of those rates based on eight hours at the usual working place, or did they include transportation?

Mr. Harris:

We object to that question, what they were based on. It speaks for itself.

Mr. Burr:

No, sir, it doesn't. I think it does, too, but I want to make it clear.

The Court:

I think you can ask him briefly. It speaks for itself, doesn't it?

Mr. Burr:

It says, "Rate per hour," and "Present," and "Proposed." It doesn't say anything about transportation.

The Court:

It doesn't say anything about transportation at all?

Mr. Burr:

No, sir. It says, "Rate per hour."

The Court:

I will let him go into it.

Q. Was it understood and discussed at that meeting and agreed that the pay should exclude or should include transportation; what was the agreement?

A. Exclude transportation. In fact, that was not discussed, but it was discussed these rates were to be paid for underground and surface occupations, and the underground occupations were at their usual place of work underground, 8 hours.

Q. Eight hours?

A. Yes, sir.

Q. Just like it had been in the past?

A. Yes, sir.

Q. As a matter of fact, I will ask you whether in any of those conferences with General Parsons you have told us about, or with either of the two Commissioners of Conciliation, Dewey or Richardson,—at any of those conferences did the representatives of the Union bring up or insist on payment for transportation at any time?

A. They did not.

Q. Never was suggested in any of those conferences?

A. No, sir.

Q. Did the men go back to work under this letter of understanding?

A. They did.

Q. And continued to work as they had worked at their usual working places at these rates?

A. They did.

The Court:

Do you gentlemen want a recess?

Mr. Burr:

Yes, sir.

The Court:

A few minutes recess.

(Thereupon proceedings were in recess from 9:55 A. M., to 10:10 A. M., when proceedings were resumed as follows:)

Mr. Burr:

Shall we proceed, Your Honor?

The Court:

Proceed, yes, sir.

Mr. Burr:

Will you mark this the next exhibit number, please?

The Clerk:

T. C. I. Exhibit 9.

(Thereupon a document entitled "Tennessee Coal, Iron & Railroad Company, Muscoda Division, Held in General Superintendent E. M. Ball's Office on June 13, 1935," to which was attached a form of contract consisting of four pages, and a letter dated June 24, 1935, addressed to Mr. Byrd Barksdale, Mr. Charlie McDaniel and Mr. M. C. Anderson, was marked T. C. I. Exhibit No. 9.)

Q. Mr. Ball, will you please, sir, examine the paper marked Defendants—T. C. I. Exhibit Number 9 and state whether or not on June 13, 1935, you had a meeting with the representatives of the Smelters Union in which they presented to you the proposed contract which is attached here?

A. Yes, sir, I did.

Mr. Brodie:

May I ask what year that is?

Mr. Burr:

June 13, 1935.

Q. What happened at that meeting?

A. They presented the form of proposed contract which I submitted to the management. I had no authority to negotiate wages and hours of work.

Q. Are the minutes of that meeting—do they appear correctly—

A. Yes, sir.

Q. On this exhibit?

A. Yes, sir.

Q. All right, sir. Now, I will ask you to state whether or not that proposed contract was referred to you by the management?

A. I referred it to the management.

Q. Did you meet with the Union representatives and the President when it was considered?

A. Yes, sir.

Q. I will ask you to examine the third document attached to this exhibit and state whether or not that is a copy of the understanding that was reached at that time with the Union officials?

Mr. Harris:

Will you identify the documents?

Mr. Burr:

They are already identified.

A. That was signed by Mr. John L. Perry, who was president of the company at that time.

Q. I notice it was addressed to Mr. Barksdale, President of the Muscoda Local, Mr. McDaniel, President of the Wenonah Local, and Mr. Anderson, President of the Ishkooda Local, and a copy to Mr. A. E. Horn?

A. Yes, sir.

Mr. Burr:

Do you gentlemen wish to see this before I read it?

Mr. Smith:

What is that?

Mr. Burr:

The proposed contract and letter of understanding settling the question.

Mr. Harris:

I am not offering separate objections because we have an objection to everything—

Mr. Burr:

I understand your position is everything prior to the enactment of the Act is out of the window. If your theory is correct we wouldn't have any case here at all.

Mr. Harris:

Sometimes very complicated matters are settled by a very simple proposition.

The Court:

Sometimes it is a good way to tangle the judge too.

Mr. Harris:

If you don't mind, when you get through have all your originals together and I can take them for cross examination in the order you have them.

Mr. Burr:

Yes, I have them that way. I am not going to take any out because I am so prone to lose papers.

I will read to Your Honor what these exhibits are. The first is the minutes of the meeting on June 13, 1935, in the general superintendent's office.

(Thereupon Mr. Burr read to the Court the minutes of the meeting on June 13, 1935, as embraced in the first sheet of T. C. I. Exhibit No. 9.)

Mr. Burr:

And then presented at the same time—

Q. This is the proposed contract presented at the same time?

A. Yes, sir.

Q. It contains in paragraph 9 this provision:

"It is agreed that the employees shall enter the mine on their own time and come out on the company's time."

A. Yes, sir.

Q. All right. Did you meet with the same representatives of the Union in the President's office when this contract was considered?

A. We did.

Q. Now, at that meeting was the agreement as shown in this letter reached?

A. It was. It was just a continuation of the previous letter to the Honorable Secretary of Labor.

Q. Did you have any understanding with them besides the letter, any minor grievances you would take up and adjust with them at that time?

A. There were a few grievances Mr. Horn and the committee said if we could adjust they would go along with that letter of understanding. That meeting was held and those grievances adjusted satisfactorily.

Q. Do you recall in a general way what those grievances were?

A. Oh, I think there were several cases of discipline.

The Court:
Of what?

The Witness:
Discipline.

The Court:
Discipline?

The Witness:

Yes, sir, and probably a rate or two they asked to be adjusted.

Q. I will ask you whether or not at that meeting there was any discussion on the part of the union, or any insistance on the part of the union on the half time and half time brought up for discussion at all?

A. Never was.

Q. That matter was never brought up for discussion by the Union?

A. No, sir.

Q. The only times it was mentioned were these three times?

Mr. Harris:

We think those questions are a little leading. As a matter of fact it was. Mr. Burr is wrong. It did come up later.

Mr. Burr:

We don't think it was, and we are going through every record we have. If there is anything different we would like to have some reference to it.

The Court:

He is saving time by leading.

Q. Did the men go back to work after the strike?

A. Yes, sir.

Q. Did they go back on this 8-hour working place to working place basis?

A. They did after the strike in 1934.

Q. After this letter was made, June 13, 1935, did they continue to work on the 8-hour working place to working place basis?

A. They did.

Q. Now, Mr. Ball, did the letter—the documents you have just identified, the second letter of understanding, dated June 24, 1935, with the Smelters Union—I will ask you if the next negotiations for a new agreement—for an agreement that you had with the Smelters Union occurred sometime in the summer of 1936?

A. Yes, sir; I believe at that time there was another proposal submitted to the management.

Q. Now, before that proposal was submitted, which I will show you in a few minutes, did you have any meetings with this same committee representing the Smelters Union in reference to the proposal of the company to put in operation the incentive plan you told us about a while ago?

A. Sometime in March, 1936, we had a meeting with the committee at which time I told them we had been very seriously considering an incentive plan, and that in due course we would present that plan to the committee.

Mr. Burr:

Will you mark this one, please, sir, the next Exhibit?

The Clerk:

Yes, sir, it will be number 10,—T. C. I. Number 10.

(Thereupon a letter dated May 26, 1936, addressed to Mr. E. M. Ball, and signed A. E. Horn, to which is attached a document entitled, "Working agreement between the Tennessee Coal, Iron & Railroad Company and their employees, members of the International Union of Mine, Mill & Smelter Workers," was marked T. C. I. Exhibit No. 10.)

Q. Now, was there a strike at the ore mines of the company in 1936?

A. There was. It took effect on May 31, 1936.

Q. May 31, 1936?

A. Yes, sir.

Q. Will you tell us how long that strike closed down the operations of the Company, if it did close them down?

A. Until August 19, 1936.

Q. I am showing you T. C. I. Exhibit Number 10, which is a letter addressed to you, Mr. E. M. Ball, General Superintendent, mines and quarries, and has attached to it a document described as, "Working agreement between the Tennessee Coal, Iron & Railroad Company and their employed, members of the International Union of Mine, Mill & Smelter Workers."

Was that letter presented to you, Mr. Ball?

A. It was.

Q. Is this agreement attached to it the agreement that was presented along with the letter?

A. Yes, sir.

Mr. Burr:

Now, we offer this letter, and, of course, I would like the record to show,—I don't know whether I have done it each time,—I do formally offer in evidence all the exhibits that have been admitted by Your Honor so there can't be any question about that.

Mr. Harris:

That was my understanding, that you had offered them and we had objected, and they had been admitted.

The Court:

That has been my understanding all along.

When did you say the strike ended? August 21st?

The Witness:

August 19th.

Mr. Harris:
Did you say it began May 19th or May 31st?

Mr. Burr:
May 31st.

The Witness:
No, May 31st.

Mr. Harris:
Are you waiting on this exhibit?

Mr. Burr:
Yes, sir, waiting on the paper.

Mr. Harris:
As I understood your question to Mr. Ball and his answer, he testified this was the original that accompanied this letter?

Mr. Burr:
That is right; that is right.

Q. Mr. Ball, you testified a few minutes ago that sometime in March the incentive plan of the company was finally formulated and the Union was given notice you expected to put it into effect?

A. They were given notice we would take up the details with them and discuss it with them in the very near future.

Q. Did you have discussions with them after that time?

A. We did.

Q. Did you have discussions before the strike occurred?

A. Yes, sir.

Q. Without going into the details of those discussions, did the Union decline to work under the incentive plan, the Smelters Union?

A. They did.

Q. And then followed the strike?

A. Yes, sir.

Q. Now, then,—and T. C. I. Exhibit 10 is the letter that was delivered to you by the Union Committee, signed A. E. Horn, President, District 5, International Union of Mine, Mill & Smelter Workers; that is the original letter, is it?

A. Yes, sir.

Q. With the accompanying working agreement?

A. Yes, sir.

Mr. Cooper:

What is the date of that?

Mr. Burr:

May 26, 1935.

Mr. Harris:

1936.

Mr. Burr:

Yes, sir, 1936.

The letter reads as follows:

"On June 24th, 1936, the agreement between your employees, members of the International Union of Mine, Mill & Smelter Workers and the company will expire."

Q. That is the second letter of understanding—

A. Yes, sir.

Q. —you have told us about?

A. Yes, sir.

(Thereupon Mr. Burr read to the Court the remainder of the letter dated May 26, 1936, embraced in T. C. I. Exhibit No. 10.)

Q. Now, I ask your attention to the contract that accompanied that letter and ask you to state whether or not it included the following definition of the workday:

"Maximum hours: An 8-hour day and 5-day week (40 hours per week) shall prevail, exclusive of the 30 minute lunch period, with option to run through without suspension, if agreed to between the company and the mine committee."

Was the union at that time considered not having the lunch period?

A. I believe they had in a request.

Q. "The 8 hour days means 8 hours in or about the mines, at the usual working places for all classes of work, (other than those excepted from this agreement), exclusive of the lunch period, whether they be paid by the day or paid by tonnage."

Was that the clause they submitted themselves at that time?

A. Yes, sir.

Q. You are familiar with this proposed contract?

A. Yes, sir.

Q. That is the only clause that relates to the definition of the day's work in the contract?

A. Correct.

Q. In other words, in this contract, presented on May 26, 1936, the union made no request for any portion of the traveling time?

A. None whatever.

Q. Or that request was the right hours in and about the mines in the usual working place?

A. Correct.

Q. In other words—We can get these dates right now. You have testified previously the first time any suggestion was ever made about any traveling time was on October 19, 1933, when they asked for half and half?

A. Yes, sir.

Q. Or suggested it?

A. Yes, sir.

Q. The next time was on April 13, 1934, when they asked for half and half?

A. Yes, sir.

Q. And the third time on June 13, 1935, when they again suggested half and half?

A. Yes, sir.

Q. I will ask you if those are the only three times and constitute all the times the union has presented any request at all for computation and payment of time including any part of the transportation?

A. Those were the only times.

Q. Those were the only three?

A. Yes, sir.

Q. On this occasion they defined the day's work as defined in this contract?

A. Yes, sir.

Q. That is what they asked for?

A. Yes, sir.

Q. Of course, my questions are all prior to 1941.

A. I understand.

Q. Prior to this controversy arising?

A. I understand.

Q. All right, sir. I will ask you if you will please, sir, examine Tennessee Company's Exhibit Number 11?

Mr. Smith:

Borden, let me get a thing straight in my mind:

Mr. Burr:
Yes, sir.

Mr. Smith:
Which one of the contracts was it you had in there you would pay half the traveling time,—which one of the contracts?

The Witness:
There were three of those proposals.

Mr. Smith:
Did it ever actually go in—

Mr. Burr:
No; proposed contracts.

Mr. Smith:
There were three proposal?

The Witness:
Yes, sir.

Mr. Smith:
But it never actually went into a contract?

The Witness:
No, sir.

Mr. Smith:
But they insisted on that?

The Witness:
It was suggested that it go into a contract.

Mr. Harris:
Suppose you let him go on.

Mr. Burr:
So you may get that in your minds, it was requested three times?

The Witness:
Yes, sir.

The Court:
Never had an agreement on it?

Mr. Burr:
Never an agreement on it.
Q. Did the union insist on it?

Mr. Harris:
That calls for a conclusion.

Mr. Burr:
No, sir,—

The Court:
They proposed it?

Mr. Burr:
They proposed it but never did bring it up in the negotiations following the proposal

The Witness:
That is correct.

Q. I will ask you to examine plaintiff's Exhibit Number 11, and state whether or not that is a copy of the proposed agreement submitted by this same union committee in which they presented to you their objections to the incentive plan?

Mr. Harris:
Could we see it?

Mr. Burr:
Yes, sir. I have got the original of this, Crampton. I will get it for you later so you can check it. It is in a different department.

Mr. Burr:
Mark that the next one for me.

The Clerk:
Number 12.

(Thereupon a document entitled "proposed agreement" was marked T. C. I. Exhibit No. 11, and a document entitled "Tennessee Coal, Iron & Railroad Company, Muscoda Division, Minutes of Meeting held in General Superintendent E. M. Ball's office June 10, 1936;" was marked T. C. I. Exhibit No. 12.)

A. Yes, sir, this is—

Mr. Harris:
Let me see—Wait a minute, let me see the original of that.

Mr. Burr:
I told you I would give to you the original later. That is a copy, a correct copy. It is in another department. We haven't taken it out yet.

Q. You know this is a correct copy?
A. Yes, sir.

Mr. Burr:

We will have the original here for the gentlemen to examine.

Q. Now, I will ask you to state whether or not after that was handed to you by the Union Committee you had a meeting with them at which this was discussed?

A. About ten days or two weeks after the strike was callled we had a meeting with them and discussed their answer to that incentive plan.

Q. That answer is this Exhibit Number 11?

A. Yes, sir.

Q. Were there minutes made of that meeting and kept and signed by you and also by B. H. Barksdale as chairman of the Union Committee?

A. Yes, sir.

Q. And are those minutes shown by Plaintiffs' Exhibit Number 12?

A. Yes, sir.

Q. Was Barksdale chairman of the committee of the Union that met with you on that occasion?

A. He was president of the Muscoda Local at that time.

Q. Were the following ones present at that meeting as shown by these minutes of June 10, 1936, as signed by you and Mr. Barksdale representing the opposing factions:

Those present were Mr. E. M. Ball, General Superintendent, Mr. J. S. Vance, Manager of Industrial Relations, Mr. Ewing Carter, Superintendent, Muscoda, Mr. G. B. Neal, Superintendent, Wenonah, Mr. C. B. Cameron, Superintendent, Ishkooda Mr. M. E. Baird, General Superintendent's Clerk; and the following committee representing the members of the Red Mountain Locals of the International Union of Mine, Mill & Smelter Workers:

Mr. A. E. Horn, President, District 5; Mr. Van Jones, International Representative, Mr. B. H. Barksdale, President, Muscoda Local, Mr. C. J. Daniel, President, Wenonah Local, Mr. M. C. Anderson, President, Ishkooda, Local, Mr. M. E. Adams, Secretary Muscoda Local, Mr. Britt Lemley, Secretary Wenonah Local, Mr. Ed. Sizemore, Secretary, Ishkooda Local, Frank Allen, Vice President, District 5, Bill Baylor, Vice President Muscoda Local, Will Mahan, Vice President Wenonah Local, Elmore Mitchell, Vice President Ishkooda Local."

Were they the ones that were present?

A. Yes, sir.

Q. Now, then, I call your attention to the following paragraph of these minutes in reference to that discussion without reading it all. Let me see if I can find that.

Mr. Burr:

Now, then, Mr. Ball, I call your attention to the proposal of the Union, Plaintiff's Exhibit 11, where the union proposed that "day's work to consist of 8 hours, 8:30 A. M. to 2:30 P. M., and 6:30 P. M. to 2:30 A. M., with no time off for lunch." That was the proposal made?

A. Yes, sir.

Q. In reference to that I call your attention to and ask you if this is what happened at the meeting discussing that, reading back a little bit to get the connection.

"The next paragraph requires no answer. In the following paragraph: 'No drag scrape or section crew except during emergency be permitted to start before usual working time and must cease work at the regular quitting time.'

"Our time studies show that the men do not do that now. When we check men in the mines we expect them to give a full 8 hours work.

The next paragraph states:

" 'Days work to consist of 8 hours, 6:30 A. M., to 2:30 P. M., and 6:30 P. M., to 2:30 A. M., with no time off for lunch.' "

That is the union's proposal?

A. Yes, sir.

Q. "Our answer to that is no. Our men go in the mines about 6:05 A. M., and they get to their working places about 6:45 A. M. Lunch is from 11:45 to 12:15, however, if the men want their lunch hour at some other time that is o. k. Quitting time is 3:15. That is 8 hours face to face. Men that are working all day need their lunch period. They get up early and to keep in the best physical condition these hours should remain as they are. This also applies to the service men. Are there any comments?"

And Mr. Horn replied to that: "That is clear."

A. That is correct.—That—

Q. Is that or not the same schedule of operations you have been working on for many years previous to that?

A. That is the same schedule we had worked on.

Q. That you testified about yesterday?

A. Yes, sir.

Mr. Lipscomb:

What are the dates of this exhibit?

Mr. Burr:

June 10, 19—

The Court:

What is that exhibit?

Mr. Burr:
It is the signed minutes—

The Court:
What is the Exhibit Number?

Mr. Burr:
The minutes are Exhibit Number 12, and the proposal the minutes refer to is Exhibit Number 11.

Q. All right, sir. Now, I will ask you if in that same meeting, as shown by these minutes signed by the two contracting parties, if—

Mr. Harris:
If the Court please, he says by contracting parties—

Mr. Burr:
Well, I mean by the negotiating parties. I didn't mean to—There was no contract reached at that particular time.

Q. If, in discussing this item in the union's proposal you didn't read from that proposal this:

"Your employees feel that Paragraph 1 should read, 'A fair day's work'. This is the daily production of an average section crew working in an average heading at the average rate of skilled miners with average allowances for personal necessities, fatigue and general mining delays and conditions,"

And the reply to that:

"That is unnecessary, as the meaning is the same as in the incentive plan."

A. Yes, that was contained in those minutes.

Q. All right, sir. Now, at any time during that discussion or at any other time since June 13, 1935, has this union or any member of it or any members of it ever discussed in any way or proposed in any way that they be paid for traveling time in the mines?

A. They have not.

Mr. Burr:

Here is a copy of the minutes. We would like for you to check those for us.

Mr. Harris:

Of course, I would like to have—I didn't understand the originals would be taken out before we started cross examination.

Mr. Burr:

That is all right. We will leave them here. We will substitute them later.

Mr. Harris:

This is Exhibit Number 12, and that includes both the minutes and the proposal?

Mr. Burr:

No, the proposal is Number 11.

Q. All right, sir. Now, I believe you said that the strike continued until August 19, 1935?

A. Yes, sir, until August, 1936.

Q. 1936, I mean, of course.

A. Yes, sir.

Q. Without going into the details of it were the mines reopened at that time under—growing out of a conference that occurred between the Government and the Union representatives and Governor Graves?

A. Yes, sir, an understanding known as the Governor's agreement, and they went back to work under that Governor's agreement.

Mr. Burr:
In order that we can have the entire record right straight on through, mark that exhibit.

The Clerk:
Be Number 13.

Mr. Harris:
Governor's agreement?

Mr. Burr:
That is the Governor's Agreement, yes, sir.

The Clerk:
T. C. I. Exhibit Number 13.

(Thereupon a document entitled "Statement Issued to the Press by Governor Graves at 6:00 P. M., August 4, 1936," was marked T. C. I. Exhibit No. 13.)

Q. I will ask you, please, sir, to examine T. C. I. Exhibit Number 13 and state if that is a correct copy of the announcement that was made by the Governor announcing the agreement under which the men went back to work on August 19, 1936?

A. Yes, sir.

Q. All right, sir. Now, when they went back to work did they go back to work under the same practice that you have testified about, that is, computing and paying the men on eight hours a day?

A. Went back on the same basis, eight hours in the working place.

Q. I will ask you if in any of those discussions you attended representing the company the Union at any time brought up or even by—in writing or in any way, any question of being paid for any part of the transportation time?

A. No, sir, they did not.

Q. Was it mentioned at all?

A. Not mentioned as I recall.

Q. And they went back to work on the same basis—

A. Yes, sir.

Q. —and they had worked on since you had been there?

A. Yes, sir.

Q. Now, then, under the Governor's agreement, without going into the details of it, the Union agreed to go back to work and give the incentive plan—

A. A 90-day trial.

Q. A 90-day trial?

A. Yes, sir.

Q. Was there what was commonly called a Governor's hearing which met in September of 1936 and continued until sometime—

A. '37.

Q. Sometime near Christmas, or maybe the early part of 1937?

A. Yes, sir.

Q. Without going into the details of that hearing, it was an extended hearing here at the Court House here in Birmingham?

A. Yes, sir.

Q. In which the publicity committee appointed by the Governor held set meetings?

A. Yes, sir.

Q. Were you a member—

A. Yes, I was a member of the seven-man board.

Q. Was any question ever brought up at that hearing of the transportation time?

A. Not that I remember hearing.

Q. There is a stenographic report, is there not?

A. Yes, sir.

Q. You have no recollection of that question being raised during that hearing?

A. No, sir.

Q. Since that time has the operation of the mines been conducted with the incentive plan in force with such changes as have been made with reference to rates and so forth from time to time down to May 1, 1941?

A. It is in force practically the same way it started. There have been certain changes in rates due to conditions.

Q. And you expect to continue to make those changes?

A. Yes, sir.

Mr. Harris:

What was that question?

Mr. Burr:

Expect to make those changes where there is necessity to make them?

A. Yes, sir.

Q. I will ask you to state whether the next time any question came up between the Smelter's Union and the company in reference to negotiating a contract was in 1938 and finally resulted in the execution of a written contract between the parties?

A. There was a meeting held in New York, and a final meeting in Chicago, at which they agreed to sign a contract, and the final contract was signed in Birmingham.

Mr. Burr:

Your Honor, I think the original of this—Can we have the complaint? I think the original is attached to the complaint, the signed copy.

The Court:
Yes, sir.

Mr. Burr:
If it isn't, we can get the original. Both parties have a copy of this original, and we will get our original from the Industrial Relations Department and they can check it.
That was the contract that was signed—

The Court:
'38?

Mr. Burr:
Yes, sir.

The Court:
What date?

Mr. Harris:
October 6, 1938.

Mr. Smith:
That was after this act went into effect?

The Witness:
Yes, sir.

The Court:
Before.

Mr. Burr:
Just before it went into effect.

Mr Smith:
What date?

The Court:
October 6th.

Mr. Burr:
Did you make it?

The Clerk:
I haven't yet.

Mr. Burr:
All right, sir.

The Clerk:
Be T. C. I. Exhibit Number 14.

(Thereupon a document entitled "Agreement", dated October 6, 1938, and signed Tennessee Coal, Iron & Railroad Company by E. M. Ball, General Superintendent, Ore Mines, and J. F. Vance, Manager of Industrial Relations, and the International Union of Mine, Mill & Smelter Workers by Reid Robinson, Van D. Jones, C. J. McDaniel, E. T. Patterson, J. M. Lemley and Frank Allen, was marked T. C. I. Exhibit Number 14.)

Mr. Burr:
This is the original. I beg Your Honor's pardon.

Mr. Harris:
You had a duplicate on top.

Q. I will ask you, please, sir, to examine T. C. I. Exhibit Number 14, which is dated October 6, 1938, and signed Tennessee Coal, Iron & Railroad Company, by E. M. Ball, General Superintendent of Ore Mines, and J. F. Vance, Manager of Industrial Relations, and International Union of Mine, Mill & Smelter Workers, by Reid Robinson, Van D. Jones, C. J. McDaniel, E. T. Patterson, J. M. Lemley and Frank Allen.

Is that the original contract—

A. It is.

Q. That was made at the time?

A. It is.

Q. Is Reid Robinson, who signed the first name for the Smelters Union,—is he the national president of this organization?

A. He is.

Q. Was at that time?

A. Was at that time.

Q. Now, I will ask you if in the discussion about this contract, so far as you have any knowledge of, any question was ever raised by Mr. Robinson or anyone else that the men should be paid for the traveling time or any part of the traveling time?

A. The question was not raised.

Q. Now, I call your attention to Section 4 of this contract, which reads as follows, quoting the part that is applicable here:

"Eight hours shall constitute a day's work, and forty hours shall constitute a week's work. Time and one half shall be paid for all over time in excess of eight hours in any one day, or for all over time in excess of forty hours in any one week."

Now, had that exactly same practice and understanding been in effect for a good many years previous to that?

A. The practice had been in effect?

Q. And for how many years? I believe you told us this morning?

A. A great many years.

Q. This definition follows that:

"The eight-hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

Is that the practice that has been in effect since you have been connected with the industry?

A. Yes, sir.

Q. Is that the practice the union and these officers signed this contract under?

A. Yes, sir.

Q. That is found in this contract?

A. Yes, sir.

Q. And after this contract was made was that the practice that continued being observed?

A. Yes, sir.

Q. The men's time being computed and paid on this basis, and the men signing receipts four times a month?

A. Two or four times a month.

Q. Now, Mr. Ball, the one I have just showed you, which was plaintiff's Exhibit 14, the signed contract between the Union—the Smelters Union and the company, was that the last contract that was executed between the Union and the company up to May 1, 1941?

A. It was.

Q. Now, there has been one made subsequent to that time?

A. Yes, sir.

Mr. Burr:

Now, Your Honor, we have a contract here made subsequent to that time, subsequent to May 1st. I don't offer it, but if the Court or these gentlemen want it, we have no objection to it whenever they want it. In other words, I am confining my case to the conditions that existed on May 1, 1941, at the present time.

Would you gentlemen—

Mr. Harris:
I imagine we have a copy of it.

The Court:
The last contract prior to May 1941, was October—

Mr. Harris:
That is the only contract.

Mr. Burr:
That is the only contract ever negotiated.

Mr. Lipscomb:
That is the only contract they ever signed.

Mr. Burr:
That is right, yes, sir.

Q. Now, let's, as rapidly as we can, Mr. Ball, run over the relationships that have existed between the other union and the company, the American—which has the present name of Red Ore Miners Union, an unincorporated association affiliated with the American Federation of Labor.

Can you tell the Court what labor organization that present union absorbed or succeeded to?

A. They absorbed the union known as the Brotherhood of Captive Mine Workers, or—I believe that was the correct name,—Brotherhood of Captive Mine Workers.

Q. Can you tell us when that—the Brotherhood, I will refer to it for the present,—when the Brotherhood organized?

A. In the fall of the year 1934.

Q. Did a committee representing the Brotherhood call on you in September of 1934?

A. As I remember, they did.

Q. Did they at any time, or has that particular organization ever requested or suggested the payment of any portion of transportation time?

A. I do not recollect of this union ever making a request for traveling time.

Mr. Burr:

Will you mark this exhibit please?

The Clerk:

T. C. I. Exhibit Number 15.

(A document dated at Birmingham, Alabama, June 26, 1935, and addressed to Mr. Luke Cushman, Brotherhood of Mine Workers of Captive Mines, Muscoda, Alabama, Mr. Louis Harmon, President, Brotherhood of Mine Workers of Captive Mines, Wenonah, Alabama, and Mr. Tom Brown, President, Brotherhood of Mine Workers of Captive Mines, Ishkooda, Alabama, and signed J. L. Perry, President, was marked T. C. I. Exhibit Number 15.)

Mr. Smith:

If Your Honor please, before you go into that I want to renew my objections to all those other contracts as not affecting my party.

Now, he seems to be starting on the party we represent.

The Court:

Overrule the objection.

Mr. Smith:

We except.

Q. Mr. Ball, did you have a meeting with the committee representing the Brotherhood on June 24, 1935?

A. I think I did, yes, sir. There would be minutes made if I had one.

Mr. Burr:
Mark that, please.

The Clerk:
T. C. I. Exhibit Number 16.

(Thereupon a document entitled, "Tennessee Coal, Iron & Railroad Company, Muscoda Division, Minutes of Meeting Held in General Superintendent E. M. Ball's Office, June 24, 1935," was marked T. C. I. Exhibit No. 16.)

The Court:
Mr. Burr, this is the affiliate of the American Federation of Labor?

Mr. Burr:
Yes, sir.

The Court:
What do you call it now? Captive Miners?

Mr. Burr:
No, sir. It is the Red Ore Miners. It was the Brotherhood of Captive Miners.

Mr. Smith:
Was that what was called the company union too?

Mr. Burr:
Some people called it that.

Mr. Lipscomb:
The C. I. O. disclaims any identity with that union.

The Court:
I am separating them.

Mr. Burr:

I have separated them also, but that union is entitled to representation here the same as the Smelters Union. I don't know who represents the most men except what I have heard.

Q. I show you Exhibit Number 16 and ask you if that is a correct copy of the minutes made at that time of the meeting held with that union with reference to this matter embraced in those—

A. It is.

Q. Now, following that meeting I will ask you to state whether or not the—that union agreed to the letter of understanding similar to the one that was written and accepted by the Smelters Union?

A. They agreed to the second letter of understanding.

Q. Second letter of understanding?

A, Yes, sir.

Q. That is what I mean.

A. Yes, sir.

Q. Is that Tennessee Company's Exhibit Number 15—is that a copy of the letter that was written and accepted by the union?

A. It is.

Q. Signed by Mr. Perry as President?

A. It is.

Mr. Burr:

You ought not to forget your client.

Mr. Smith:

That was yours at that time.

Mr. Burr:

That was the Brotherhood of Miners of Captive Mines, of Alabama.

The Court:

That is 16?

Mr. Burr:

The minutes referring to it is 16, and the letter is 15.

Mr. Quinn:

They didn't become affiliated with the American Federation of Labor until 1937.

Mr. Burr:

Yes, sir. What we propose to show and will show that no employee of the company during that time ever mentioned, except what is shown here, traveling time.

The Court:

You show the minutes of the meeting, whatever they will show?

Mr. Burr:

Yes, sir.

Mr. Smith:

We object to that up to the time this defendant A. F. of L. came into being.

The Court:

I overrule the objection.

Mr. Smith:

We except.

The Court:

I am letting these in for whatever bearing they may have.

Mr. Burr:
Yes, sir.

Q. All right, sir. Now, did you have a meeting with representatives of the Brotherhood Union, or, as Judge Smith prefers to call it, the company union,—I will take his designation for it for the purpose of these questions,—

Mr. Smith:
I am not taking either one. I am representing the A. F. of L.

Mr. Burr:
I don't—

Mr. Smith:
We except.

Q. Did you have a meeting with them with reference to the incentive system when they went into operation?

A. I did.

Q. Was that previous to the strike?

A. Yes, sir, sometimes probably two weeks or more before the strike of 1936.

Q. Did that union agree to work under the incentive plan?

A. They did.

Q. Did they accept it for trial?

A. Yes, sir.

Q. That was the strike that began on the 31st of May, 1936, and closed on August 19, 1936?

A. That is correct.

Mr. Burr:
Mark this, please.

The Clerk:

T. C. I. Exhibit Number 17.

(Thereupon a document dated May 6, 1937, addressed to Mr. E. M. Ball, General Superintendent, Ore Mines, Tennessee Coal, Iron & Railroad Company, Muscoda, was marked T. C. I. Exhibit 17, and a proposed form of contract between Tennessee Coal, Iron & Railroad Company and the Brotherhood of Mine Workers of Captive Mines was marked T. C. I. Exhibit 17-A, and a document entitled "Tennessee Coal, Iron & Railroad Company, Muscoda Division, minutes of Meeting Held in General Superintendent E. M. Ball's Office May 8, 1937," was marked T. C. I. Exhibit 17-B.)

Mr. Smith:

Mr. Clerk, just as a matter of convenience, will you keep those as pinned together for a matter of convenience with reference—

The Clerk:

I am clipping the entire group as they come in.

Q. Mr. Ball, I will ask you, please, sir, to examine T. C. I. Exhibit Number 17 which is the first—the first page of the Exhibit is a letter dated May 6, 1937, directed to you as general superintendent, ore mines of the Tennessee Coal, Iron & Railroad Company, reading as follows:

"As you know, the employees of the three Red Ore Divisions, viz., Muscoda, Wenonah and Ishkooda, are now working under an agreement between the Brotherhood of Mine Workers of Captive Mines and the Company contained in a letter from Mr. Perry and minutes of meetings between the management and the Brotherhood Committee. It is the desire of these employees, more than 75 percent of whom are members of the Brotherhood, to have executed a formal agreement, signed by the management of the Tennessee Coal, Iron & Railroad Company and the duly chosen representatives of the Brotherhood, and you will find attached hereto proposed agreement, with a request for a meeting of the committee with the management at the earliest convenient date.

Is that the proposed agreement that was attached?

A. Yes, sir.

Q. And is the next paper attached there a correct copy of the minutes of the meeting that was held to discuss that matter signed by—

A. They are—

Q. —E. A. Best, who was the representative of the union for the committee, and by you, the original minutes?

A. Yes, sir, these are the original minutes.

Q. Now, for the benefit of the Court, in that contract or proposal is the same basis—

Mr. Smith:

Just who is that contract signed by?

Mr. Burr:

It wasn't signed by anyone. It was presented by the Brotherhood for consideration.

Mr. Smith:

We object if it is not signed by anybody.

The Court:

Overruled.

Mr. Smith:

Except.

Mr. Burr:

Will you mark this one, please, sir?

The Clerk:

T. C. I. Exhibit 18.

(Thereupon a document entitled "Agreement" and dated May 31, 1937, signed Tennessee Coal, Iron & Railroad Company by E. M. Ball, General Superintendent, Ore Mine, and by J. F. Vance, Manager of Industrial Relations, and representatives of those employees who are members of the Brotherhood of Mine Workers of Captive Mines, Ore Mines Division; by Stanley T. Hudnall, Chairman, Executive Committee, Brotherhood of Mine Workers of Captive Mines, Ore Mines Division, E. A. Best; Secretary, T. J. Massey, Committeeman, Muscoda, Paul Dumas, Committeeman, Muscoda, J. W. Wilson, Committeeman, Wenonah, John McGhee, Committeeman, Wenonah, J. S. Pitts, Committeeman, Ishkooda, and Julian Hicks, Committeeman, Ishkooda, was marked T. C. I. Exhibit No. 18.)

Q. I wish you would please, sir, Exhibit T. C. I. Exhibit Number 18, which purports to be an agreement, and is signed on May 31, 1938, by yourself as General Superintendent of Mines and J. F. Vance, Manager of Industrial Relations, and by the committee and the employees who are members of the Brotherhood by Stanley T. Hudnall, Chairman, Executive Committee, Brotherhood of Mine Workers of Captive Mines, Ore Mines Division, E. A. Best, Secretary, T. J. Massey, Committeeman Muscoda, Paul Dumas, Committeeman, Muscoda, J. W. Wilson, Committeeman, Wenonah, John McGhee, Committeeman, Wenonah, J. S. Pitts, Committeeman, Ishkooda, Julian Hicks, Committeeman, Ishkooda.

Is that the first written agreement that was finally executed between this labor organization and the company?

A. No, sir. This is the second one. The first one was signed in 1937, I believe.

Q. This is 1937. I made a mistake. It expires—

The Court:
What is the date?

Mr. Burr:
It was executed on the 31st day of May, 1937.

A. Yes, sir, that is the first one.

Q. It expires on May 31, 1938?

A. Yes, sir,

Q. On the execution of this contract between the employees and their representatives and—

Mr. Smith:
Who was that between?

The Court:
The Brotherhood.

Mr. Burr:
The Brotherhood.

The Court:
Proceed.

Mr. Burr:
Read the question.

(Thereupon the reporter read the question last propounded as above recorded.)

Mr. Burr:

Change it.

Q. During the negotiations of this contract, T. C. I. Exhibit 18, did the representatives of the employees or the employees present the question or raise in any way the contention they ought to be paid for travel time and should not be on a face to face basis?

A. They did not raise the question.

Q. And the contract in Section 4 contains the definition reading:

"The 8-hour day means eight hours of work in or about the mines at the usual working places for all classes of labor"?

A. It does contain that clause.

Q. That is the same system that had been in force during all the years, you testified?

A. It is.

Q. All right, sir.

Mr. Burr:

Will you mark this one, please, sir? This is the next one.

The Clerk:

T. C. I. Exhibit Number 19.

(Thereupon a document entitled "Agreement", and dated June 15, 1938, and signed Tennessee Coal, Iron & Railroad Company by E. M. Ball, General Superintendent, Ore Mines, and by J. F. Vance, Manager of Industrial Relations, and representatives of those employees who are members of the Brotherhood of Mine Workers of Captive Mines, Ore Mines Division, by J. W. Wilson, Chairman, Executive Committee, Brotherhood of Mine Workers of Captive Mines, Ore Mines Division, E. A. Best, Secretary, T. J. Massey, Committeeman, Muscoda, I. V. Robinson, Committeeman, Muscoda, W. R. Maxwell, Committeeman, Wenonah, Stephen Jackson, Committeeman, Wenonah, James A. Bailey, Committeeman, Ishkooda, Hayes Judkins, Sr., Committeeman, Ishkooda, was marked T. C. I. Exhibit Number 19.)

Q. I now show you, Mr. Ball, T. C. I. Exhibit Number 19, which is dated the 15th day of June, 1938, between the Tennessee Company and the Brotherhood of Mine Workers of Captive Mines, signed by J. W. Wilson, Chairman of Executive Committee, E. A. Best, Secretary, by Massey, Robinson, Maxwell, Jackson, Bailey and Hayes Judkins, Committeeman of the different locals, and by yourself and Mr. Vance representing the company.

Is that the next contract entered into between this labor organization and the company?

A. The second contract with the Brotherhood.

The Court:

What is the Brotherhood called? What is the name of it?

Mr. Burr:

It is the Brotherhood of Mine Workers of Captive Mines.

Q. In the negotiation of this contract was there any request or suggestion or the suggestion ever brought up in any way that the existing custom or practice of paying on the working place to working place basis should be changed and transportation included in that workday.

A. It was not discussed.

Q. I believe you said as far as this organization was concerned, the Brotherhood, the American Federation who succeeded to the Brotherhood, that had never been raised by them at any time?

A. I do not remember them ever raising that question.

Q. Until this controversy arose?

A. Yes, sir.

Q. All right, sir.

Mr. Burr:
Have you got the next one?

Mr. Patterson:
Yes, sir.

Mr. Burr:
All right, sir.

Q. Now, after the execution of Defendant's Exhibit 19, T. C. I. Exhibit Number 19, the contract about which you have just testified, I will ask you if shortly after that the Brotherhood of Mine Workers was succeeded by the Red Ore Miners Union affiliated with the American Federation of Labor?

A. Sometime during 1939. I believe in the spring.

Q. Did the American Federation of Labor Union present to you the claim they had succeeded to the other union?

A. Yes, sir, we had a notification to that effect.

Q. Notification to that effect?

A. Yes, sir.

Mr. Burr:
All right, sir—

The Clerk:

This will be T. C. I. Exhibit Number 20.

(Thereupon a document dated December 23, 1940, and signed Tennessee Coal, Iron & Railroad Company, by W. J. Kelly, Acting Manager of Industrial Relations, and Red Ore Miners Union, by J. W. Wilson, Chairman, Executive Committee, to which was attached a document entitled "Agreement", dated June 29, 1913, between Tennessee Coal, Iron & Railroad Company and the Red Ore Miners Union, was marked T. C. I. Exhibit No. 20.)

Q. Following that I will ask you if this contract was executed, identified as T. C. I. Exhibit Number 20, signed, Red Ore Miners Union, by J. W. Wilson, Chairman, Executive Committee, and W. J. Kelly, Acting Manager of Industrial Relations, with the contract which was extended referred to—attached to the letter,—agreement—

Mr. Smith:

What is the date of that contract, Mr. Burr?

Mr. Burr:

December 23, 1940, and it reads as follows, so Your Honor can catch the organization:

"It is agreed that the terms and conditions of the agreement between the Tennessee Coal, Iron & Railroad Company and the Red Ore Miners Union, Affiliated with the American Federation of Labor, entered into on June 29, 1939, and concerning which written notice for the commencement of a conference for the purpose of negotiating the terms and conditions of a change of such agreement was given by the Union to the Company on December 4, 1940, and no agreement having been reached during the period of negotiations, the agreement dated

June 29, 1939, is extended in full force and effect to and including January 31, 1941."

The agreement extended is the one which was identified.

The Court:
June 29, 1939.

Mr. Burr:
Yes, sir. That is the last one with this particular company, or is another one, Pat?

The Witness:
This one is the last one.

Mr. Smith:
Who is that signed by?

Mr. Burr:
Red Ore Miners Union.

Mr. Smith:
What?

Mr. Burr:
Red Ore Miners Union, J. W. Wilson, Chairman of the Executive Committee.

Mr. Smith:
Is that an A. F. of L. Affiliate?

Mr. Burr:
The one you appear for.

Mr. Smith:
You said something about Red Ore.

Mr. Quinn:
They got rid of the company union.

Mr. Smith:
I am not familiar with the Red Ore Union.

Mr. Burr:
Let him see it.

Mr. Smith:
I will take your word for it.

Mr. Burr:
I think Jack is the head of your Executive Committee. That is all right if you don't want to accept it.

Mr. Smith:
I didn't recognize the Red Ore Union of that name.

Mr. Burr:
That union, the Red Ore Union, is one of the defendants in this case?

The Witness:
Yes, sir, affiliated with the American Federation of Labor.

Mr. Burr:
Judge, that concludes all the—Just a minute.

Q. Now, Mr. Ball, have you given here all the written documents and contracts and minutes that in any way relate to either proposals for contracts or contracts actually executed between either of these unions or any locals constituting them?

A. Yes, sir, I have presented all the—

Q. And have you testified to all the times and the character of the occurrences where the question of payment for any part of the time spent in transportation was brought up by filing written proposals? Have you testified to all of them?

A. I have so testified.

Q. I will ask you this: Has there ever been at any time a suggestion on the part of any union or any representative of any union or any employee of yours previous to the beginning of this controversy that the men should be paid on the basis of portal to portal?

A. No, sir.

Q. The only suggestion that in any way approached that—

Mr. Harris:

That is leading.

The Court:

Don't lead him, Mr. Burr.

Mr. Burr:

All right, sir.

Q. I will ask you whether or not the three instances you have mentioned, dated October, 1933, and April 13, 1934, and June 13, 1935, whether they are the only times or occasions upon which or in which any part of transportation time being a part of the day's work was suggested or intimated by any of these unions or locals or employees?

Mr. Harris:

That is the third time he has asked that question.

The Court:

I think he has asked that question.

Mr. Burr:

I wanted to be sure.

The Court:

He may answer it, though. Go ahead.

A. Those are the only three times.

Q. Mr. Ball, during this period of time, since 1933, the time you said the Smelters Union was organized, I will ask you did you have regular conferences with their committees to consider complaints for their members or complaints for their organizations?

A. They had meetings with the local superintendents and meetings with the general superintendent.

Q. And would those meetings be attended by the management and committees representing these unions?

A. They would be.

Q. Were minutes kept of those meetings?

A. There would be.

Q. Have you had search—Have you had those minutes read through from cover to cover to determine whether or not at any of those meetings any complaint was ever made about not paying for transportation time or changing the hours of work?

Mr. Harris:

We—

The Court:

I think that would call for entirely hearsay testimony.

Mr. Burr:

All right. We will have to present the minutes and let them read them. We will do that later. I will state minutes were kept of those meetings. I was just trying to save time.

Mr. Harris:

We haven't thrown all of the rules of evidence away to save time.

Mr. Burr:

If they object on that basis we will do it that way.

The Court:

I think that is objectionable.

Mr. Burr:

All right. I will have a witness here who will have the minutes and has read them. I think the minutes are signed by both parties.

The Court:

By representatives?

Mr. Burr:

Yes, sir. Mark this one, please.

The Clerk:

T. C. I. Exhibit Number 21.

Mr. Burr:

Yes, sir.

(Thereupon a document headed "Bessemer, Alabama, October 5, 1940," and entitled, "In re: Ishkooda Local Number 153, of International Union of Mine, Mill & Smelter Workers, District Number 5, an affiliate of the Bessemer Smelters Council," and signed by E. A. Sisemore as President of Local Number . . . of I. U. M. M. & S. W., and attested by T. J. Sizemore, as Recording Secretary, was marked T. C. I. Exhibit Number 21.)

Q. Mr. Ball, I now show you T. C. I. Exhibit Number 21, which is dated Bessemer, Alabama, October 5, 1940, and purports to be signed by E. A. Sisemore as President of Local Number blank of I. U. M. M. and S. W., attested T. J. Siztmore, as Recording Secretary, with the seal of the local on it.

I will ask you if that is the original that the company received when this particular local presented the matters embraced in that particular resolution with request or demand they be paid this transportation time?

A. Yes, this is the one from the Ishkooda Local.

Q. I will ask you to state whether or not similar resolutions, exactly like that, were presented from the other two locals?

A. They were.

Q. Muscoda and Wenonah?

A. They were.

Mr. Burr:

That, if Your Honor please, is the resolution referred to in the Bill of Complaint in which they present this controversy.

Mr. Smith:

What date is that?

Mr. Burr:

October 5, 1940.

Crampton, off the record, I have the others, but I don't think it is necessary to put them in.

Mr. Harris:

I don't either.

Mr. Burr:

They are similar.

Mr. Harris:
These gentlemen say they want them in.

Mr. Burr:
What gentlemen; the government?

Mr. Harris:
The government.

Mr. Burr:
Will copies be sufficient?

Mr. Brodie:
Yes, sir.

Mr. Burr:
We will give you copies now. Here is Muscoda. I will give you the Wenonah one later when we can find it.

The Clerk:
Do you want that marked as an exhibit?

Mr. Burr:
No. I am just giving them copies.

Mr. Lispcomb:
Borden, did you make a statement that was received in 1941? I think the record—

Mr. Burr:
1940.

The Court:
October 5, 1940.
Is that all?

Mr. Burr:

Will Your Honor give me just a minute? I think I am through with Mr. Ball.

The Court:

We will take about a three minute recess.

(Thereupon proceedings were in recess from 11:35 A. M. to 11:50 A. M., following which proceedings were resumed as follows:).

The Court:

Did you have some other questions, Mr. Burr?

Mr. Burr:

I think, if Your Honor please,—if there is something I have overlooked, I am sure Your Honor will give me an opportunity later.

The Court:

I will.

Mr. Burr:

I think this covers what we want to ask him now.

The Court:

I was just wondering whether to interrupt the cross examination or not.

Mr. Harris:

Well, I have this problem, Judge: It is getting pretty close to adjournment. I have this situation: This Court has adjourned so the Court and lawyers can go to the Bar Association meeting, and I have a case set in Police Court on the 11th. I don't know whether that Judge is going to let me out or not. The only time I can go to see him to see if he is going to let me out is during the noon hour.

The Court:

Tell him we are all going down.

Mr. Harris:

If Your Honor will give me an extra ten minutes—

The Court:

I am going to give you until a quarter to two. We will adjourn until then.

(Whereupon, at 11:51 A. M., July 9, 1941, a recess was had until 1:45 P. M. of the same day.)

After Recess.

1:45 p. m.

877 E. M. BALL thereupon resumed the stand, and having been previously sworn, testified further as follows;

Cross Examination.

Mr. Harris:

Judge, there is one question I don't think these gentlemen got clear as to those resolutions from those other companies, and in order to clear the situation you were introducing the resolution from each local, but you didn't have the originals but you were giving them copies.

Mr. Burr:

Each Division.

Mr. Harris:
Each Division of the company.

Mr. Burr:
That is right.

The Clerk:
I haven't but one copy. I have a copy of the Ishkooda resolution.

Mr. Burr:
That is the only one offered in evidence, and the proof shown they were exactly the same, and these gentlemen wanted copies and I gave them to them.

Mr. Harris:
And you introduced the copies for each division?

Mr. Burr:
No, I don't see any sense in offering them. I proved they were similar and introduced one.

Mr. Harris:
I wonder if the Court reporters have copies the little diagram on the board.

The Court:
I think it should be done.

Mr. Harris:
It maybe I will want to use the board.

The Court:
You can switch it around and use the other side.

(By Mr. Harris):

Q. Mr. Ball, is the Tennessee Coal, Iron & Railroad Company a wholly owned subsidiary of the United States Steel Corporation?

Mr. Burr:

We want—

A. It is.

Mr. Burr:

—to object to that. We don't think it has any relevancy in this case at all.

The Court:

Overruled.

Q. What is the answer?

A. It is a subsidiary of the United States Steel Corporation.

Q. Are the policies of the Tennessee Coal, Iron & Railroad Company, the labor policies of that corporation determined by the officers here in Birmingham independent of the officers of the United States Steel Corporation or determined after consultation with the officers of the United States Steel Corporation?

Mr. Burr:

Same objection to that question.

The Court:

Overruled.

A. I could not answer that question. I only get my orders from the local management.

Q. Have you had anything to do with the formulation of the policies of the Tennessee Coal, Iron & Railroad

Company with reference to its labor policies or its wage policies since you have been connected with them?

A. None whatever.

Q. Who is the policy committee of the Tennessee Coal, Iron & Railroad Company?

A. I can't answer that question. I can tell you who the executive officers are.

Q. Well, you stated this morning that you referred a question to the management?

A. Yes, sir.

Q. Whom did you mean when you said management?

A. My superior officer, the vice president in charge of production of raw materials.

Q. Who was that man?

A. Mr. C. E. Abbott.

Q. You got your instructions from him as to what you were to do as general superintendent?

A. Yes, sir; I work for Mr. Abbott as general superintendent.

Q. You don't get instructions direct from the president of the corporation?

A. No, sir. We don't do business that way.

Q. You use a military organization scheme, do you?—

A. You do not—

Q. —each communication comes down from the head man of that department, through regular departmental channels?

A. Exactly.

Q. And the men in one department wouldn't cut across to give orders in your department, but if they had anything to take up in your department, it would go up to the head of their department and they would contact the head of your department, and it would come back down to you?

A. That is correct, sir.

Q. And the times and occasions when the labor policies of the T. C. I. were determined are matters of which you have no personal knowledge whatsoever?

A. No, I do not.

Q. Were you called in for advice or consultation by your superior, Mr. Abbott, with reference to the labor policies of your company?

A. I was called in and asked questions on local conditions as reflected in the operations which I was in charge of.

Q. Now, as general superintendent, do you mean that you are general superintendent of the ore mining operations or all the operations of every kind and character of the Tennessee Company?

A. I am general superintendent of the eight ore mines, the one limestone mine and one dolomite quarry.

Q. But you have nothing to do with the furances, the pig iron furnaces or the steel furnaces, the blast furnaces, the rolling mills, sheet mills, things of that sort?

A. None whatever.

Q. The mining of iron ore in the Birmingham District has undergone considerable changes since you first came here in 1902, hasn't it?

A. It has.

Q. As I understand it, when these ore deposits were first discovered in this district, the so-called hard ore was not mined at all; is that correct?

A In the early days the first mining was what was known as outcrop mining, in which the ore seam was mined approximately for a distance of several hundred feet down from the outcrop,—I would say an average of 300 feet,—where that ore had been weathered and leached out by underground water, the lime being dissolved, and that was known as soft ore, or semi-hard ore.

Q. So that when, in the early days, they mined that soft ore there really wasn't any engineering problem without ventilation to speak of, was there?

A. None when you are that close to the surface.

Q. And in the early days there was no problem about men going from the entry to the face, was there?

A. None whatever. There were generally well established manways parallel to the main slope,—usually walkways.

Q. Now, the mountain out of which you mine—all of your mines are on one mountain, aren't, they?

A. Yes, sir.

Q. Approximately how high above sea level is the crest of that mountain, on an average?

A. The highest point on Red Mountain is at our Number 13 mine, which 492 feet above the Gulf of Mexico.

Q. How high is the crest of the mountain above the level of the valley?

A. Oh, approximately—in some places—it varies,—three or four hundred feet, I would say.

Q. In other words, the sea level of the valley would be five or six hundred feet, and the sea level of the crest of the mountain would be nine hundred and some odd feet?

A. Nine hundred and forty-two feet, yes, sir.

Q. Does that mountain run northeast and southwest, or how does it run?

A. Northeast and southwest on a general trend.

Q. Could you give us the compass bearing; it is almost due northeast and southwest?

A. Yes, just about. I don't remember just what the bearings are, but approximately northeast and southwest.

Q. So, your entries to the ore body all begin on one side of that mountain, don't they?

A. Begin on the outcrop side where the ore outcrops to the surface.

Q. That outcrop side is the side towards the City of Birmingham, Jones Valley?

A. Yes, sir, in Jones Valley.

Q. Birmingham is in Jones Valley and the other side of the mountain is called Shades Valley?

A. Yes, sir, that is right.

Q. Through, some geological upheaval, the mountain was formed and these ore deposits were thrown up or broken off or stopped on the Jones Valley side of the mountain, weren't they?

A. No, sir, they were not stopped. The ore was originally laid down,—The mud was the floor of a historic sea which was a part of the Gulf of Mexico. It was bounded on the east by the Allegheny mountains and on the west by the mountains of the California coast. This iron ore was laid down under water, and as ages went on there was a gradual upheaval, and where this valley is today there was a top of the mountain, but due to erosion through the ages the ore on this side has disappeared due to erosion and natural causes, leaving the scarf or outcrop of the Red Ore beyond Red Mountain.

Q. So that if you started from the south with your ore bed and traced it in a northern or northeastern direction, you would come to the end of the ore bed at Red Mountain?

A. The southwest—There is ore below the Raimund Mine of the Republic people, and as far southwest as what is known as Sparks Gap, and the ore runs all the way north of Birmingham to the other side of what is known as Ruffner Mine, and the ledges or similar ridges along the mountain at Chattanooga, Tennessee, contain some red ore.

Q. In mining this ore do you have just one seam in these ore beds or do you have three or four different seams?

A. We have one seam, but you take the Birmingham end, and there is what is called two benches, the upper bench and the lower bench, which is divided by just a smear, you might say, as thick as that blotter, of shale. As we go towards the southwest end, towards Bessemer, that shale parting increases until at the Wenonah Division it is about 18 inches thick, and as we get towards Bessemer, the Muscoda Division, that bottom seam disappears and the upper bench of that ore is the only one that is mineable.

Q. Now is that called the big seam; is that the name of this—

A. The big seam is the seam on the north end.

Q. What about the Ida seam and the Hickory Nut seam?

A. The Ida seam occurs about forty feet below the Red Ore seam.

Q. What is the Hickory Nut seam?

A. The Hickory Nut seam is a seam that outcrops a little above the Red Ore seam, and is plainly shown at our Ishkooda Division where it outcrops there.

It is called the Hickory Nut seam, because when it was in the sea the fossils laid down in the residuary deposits looked very much like a hickory nut. It is not a hickory nut; it is a fossil.

Q. So the seams are in the same geographical area; it is not true that at one place is the red ore seam and at another the Hickory Nut seam, and at another the Ida seam, but they all appear, one above the other?

A. Yes, sir.

Q. In mining this ore the hard ore is all you mine?

A. Yes, sir. There is some outcrop ore, but very little.

Q. Nothing to enter into the operations of the Tennessee Company in the last few years?

A. No, sir.

Q. Have you ever had the ore bed your company is mining bored with test holes to make tests to see how far the deposits stretch so you could get both the area of the deposit and the thickness of the deposit?

A. Oh, yes, we have for years put down different test holes, what we call diamond drill holes in the valley back from the outcrop.

Q. And when you got those test holes, those cores is what you call them?

A. It is called cores, yes, sir.

Q. That is what is left in the drill?

A. Yes, sir; if you are going through ore or sandstone or slate or limestone, you have a core of that material.

Q. You have analyses made of that core?

A. Yes, sir, so we know the grade of the ore in its pure state.

Q. As a matter of fact, the chemical content of the ore in the big seam that the T. C. I. has been mining for a number of years runs pretty even on analyses, doesn't it?

A. No, sir. As you get down towards the Muscoda group,—in fact, the Muscoda group of mines, Number 4 and Number 6 are known as the self-fluxing ore. In other words, there is enough lime contained in the ore to flux the acid and silica in the ore. When you get up to Ishkooda the limestone in the ore is not sufficient to flux the material. Therefore, when that ore is used in the blast furnaces, it is necessary to use a fluxing material, such as dolomite, or else mix it with the self-fluxing ores from some of the other mines.

Q. Now, the Ishkooda ore has a silicon content of about 9 percent?

A. Runs between 8 and 9 percent; yes, sir.

Q. And the Muscoda ore has a lime content of what?

A. Around 12 to 14 percent.

Q. Does the mining of the silicon content ore give off as much dust as the mining of the lime content ore?

A. There is practically no difference in the breaking of the two types of ore.

Q. You are familiar, are you not, with every operation in each one of the mines of the Tennessee Company?

A. I am.

Q. And I would like to know just what tools a red ore miner uses in mining red ore. Will you give us a list of the tools that the head drill man works with, and then the tools that a mucker works with, or a drill man, so, if you will tell us, that we and the Court will know just what physical and mechanical apparatus an ore miner has—

A. In each working place there is what is known—I wish to state first that approximately 98 percent of our ore, of the Tennessee Company, is mined mechanically; that is, by drag scrapers and scraper hoists. Each working heading has a hoist, scraper hoist, which is nothing more than two drums with a motor between a clutch. On each of these drums are wound a wire rope 7/8 of an inch in diameter, and connected to that rope is what is known as a drag scraper that looks very much like a bucket that has four or five teeth on it and shaped very much like this. (Drawing sketch on blackboard.)

There is a rope fastened to this end, and a rope fastened to the front end.

After the ore is drilled and shot, the operator of this drag hoist moves one of the drums which pulls the drag scraper back to the working face. That drag scraper is then pulled in by the other drum, and it follows a path down over what is known as a loading tram or ramp.

The car—the tram car sets in front of this loading ramp, and the operator of that scraper hoist moves the drag scraper over the ramp and pushes the ore into the car. It generally takes four or five operations of this scraper back and forth to fill a six-ton car.

The drill men in drilling the holes for blasting the ore use a pneumatic water type air drill. The type we use are known as the 4 inch machines. All drilling is handled off a tripod.

By a tripod I mean three legged arrangement this way (illustrating) with your drill setting on top.

Holes are drilled to an average of 8½ feet, and in a 20-foot work place with a 10-foot ore, you would drill sixteen or eighteen holes 8½ feet deep.

Each hole is loaded with explosive, and those fuses lighted at the end of the shift, and the force of the explosion in each hole jerks out the solid ore body in chunks.

These chunks are what are loaded by the drag scraper and dragged into the ore cars.

Q. Now, that pneumatic drill weighs about 186 pounds, doesn't it?

A. I think—I believe that is correct, somewhere along there.

Q. And it is left down near the face of the heading or the stope, wherever they are drilling and not brought out of the mine each day?

A. Oh, no, just brought out of the working face so it will not be injured when blasting is done.

Q. Now, the drills that go into the pneumatic part, the parts that cut the ore—

A. The drill steel.

Q. —the steel, is that all in one piece, or under modern practice do you have a steel shaft with removable or detachable bit?

A. In our practice we have four pieces of steel of varying lengths. Your drill is set on what is known as a drill carriage, and you can crank that drill up on this drill carriage, and you make changes of drill steel approximately every thirty inches.

The Court:

Make changes?

The Witness:

Yes, sir.

Q. As your hole—

A. As your hole is drilled you take out your shorter piece of steel and put in a longer piece, and you do that until you get eight and a half feet of hole drilled.

Q. How long are those four pieces of steel? Take the shorter—

A. That is called the starter, and the last piece is called the ten-foot steel.

Q. How long is the starter?

A. That varies,—about this length, (indicating)—about two and a half feet.

Q. And the next piece?

A. Just so you can get in that thirty inches when you crank the drill up.

Q. And your next one?

A. Thirty inches longer until you get in your ten foot steel.

Q. Each one thirty inches longer than the next one?

A. Yes, sir.

Q. Those pieces I have been asking you about, do they end in a cutting edge?

A. No. The drill steel we use have what is known as a forged cross bit which is forged on a piece of steel itself. We do not use detachable bits. We have made some experiments with them, but we do not have them in general use.

Q. Does the drill man have to use anything else besides this drill and tripod and those four pieces of drill steel?

A. Yes. He has to have his air hose and water hose and his lubricator which goes on the drill and supplies oil to the drill.

Q. Aren't there some other drills that are used down in the workings?

A. We have what is known as a small jackhammer drill.

Q. Who uses the jackhammer drill?

A. The drill man uses that in drilling the small holes in the solid wall for putting in what is known as your hanger hooks to hold the hanger around which the skidder block goes, so that this drag scraper can be pulled backwards and forwards.

Q. Now, suppose we have—we consider this (drawing on blackboard) the face right here. That is the vertical face of the unminded ore?

A. Yes, sir.

Q. Of course, the floor would be out here?

A. Correct, known as the foot wall.

Q. The foot wall?

A. Yes, sir.

Q. And your man sets up—the drill man sets up his tripod somewhere on this floor?

A. Above that line.

Q. Above this line?

A. Yes, sir, right there. That is the base, the foot wall.

Q. He will drill how many holes in the average face?

A. The average face, 20 to 22 feet wide, he will drill anywhere from 16 to 18 holes.

Q. Twenty- to 22 feet equals 16 to 18 holes?

A. Yes, sir.

Q. Now, those holes go in at an angle, don't they? They don't go right straight back into the ore?

A. Oh, no. The center of that heading—it is known as a wedge cut. I can show you if you will give me a piece of chalk.

Q. Yes, here it is.

A. I am putting this line across here (drawing on blackboard), because the line of holes, as a rule, is three and a half feet down from what is known as the hanging wall or roof. The line of holes in the bottom is about three and a half feet above the foot wall or floor. Your drilling will start here in the center. We will say that is a hole. They will go in this direction. Those are known as cut holes. You have another series of holes that will go in this direction, and other holes will pick up in here and you gradually get further apart, and the same way on this side. There would be an end view of this. That is cut holes. Referring to these—

Q. Yes.

A. They look very much like that. They do not come together. Then your other holes come out at a wider angle, and so forth. Then, when that is blasted, this whole area is shot out. The whole thing is pulled this way.

Q. By putting the drill holes in at an angle, the explosive force is better?

A. Yes, sir.

Q. Just as if you reach your finger in a hay stack and jerk it back?

A. Jerk it back. You have to do that to get a point from which to have a free shooting edge on what we call the slab hole.

Q. We don't know what a slab hole is.

A. Those are the slab holes. You understand this entire face is shot, but with fuses,—delayed electrical caps; these holes go off a few seconds before the other holes go off so there is a free open space for these holes to face. It doesn't take as much explosive loading these holes as the center holes.

Q. That pulls out a kind of prismatic area and that takes more explosive to break it out; and the other has a tendency to pull it out in that open space?

A. Yes, sir. In mining language you can get almost as much ore on the toe of the hole there as on the top.

Q. That explosion throws the ore out on the floor of the working place?

A. On the foot wall.

Q. Then, when you come to remove all this stuff that is down on the floor or footwall—it is called muck?

A. Yes, sir, that is your muck pile.

Q. That may be, in some places where you haven't any separation of your top and bottom seam—your muck pile will be all iron ore?

A. That is right.

Q. But if you go down into the other part of the county where your seam is divided, you will have in part shale?

A. You will have probably some pieces of your footwall come up and also some pieces of your top, known as draw slate or draw top rock will come with your ore in blasting.

Q. In mining, when you run those headings you don't try to get ore—suppose you have—what did you say was the average thickness of your seam?

A. At Muscoda around ten and a half feet, and up the mountain it varies from about $8\frac{1}{2}$ feet to 8 feet. That is at the Wenonah Division.

Q. Do you try, in mining, to shoot your shots so you come to the very bottom of the ore bed, and also to the very top of the ore bed, or do you leave—

A. There is a cleavage plane which separates the ore known as the roof—in our mine that is, in a great many cases, solid sandstone or a mixture of sandstone and slate, or solid slate. Your foot wall is generally slate. There is a natural parting there—

The Court:

The footwall is what?

The Witness:

Slate. There is a natural parting there from which that ore will separate when you shoot.

Q. That is on the footwall?

A. And your roof also.

Q. Don't you in some of your operations leave a part of the ore deposit in the top?

A. We do in one mine. That is our Number 13 mine.

Q. Why do you do that?

A. Because by having the top bench ore in some places and the bottom bench ore in another, I can get a mixture of that ore that will run a uniform analysis, that is, it won't be jumping all over the yard and getting the furnaces in trouble. Therefore, we have to load a number of cars of bottom bench ore, and a certain number of top bench ore.

Q. You don't leave that ore to support the roof?

A. Oh, no. It is to get a mixture—

The Court:
What mine is that?

The Witness:
Number 13.

The Court:
Where is that?

The Witness:
Ishkooda.

Q. After your ore, your muck is down on the footwall, you have these cables—you say you have your cars over here—you have one or two cars you have your drums on?

A. You mean the drag hoist?

Q. Yes, sir, the drag hoist.

A. Let me try to show you what that drag hoist is, roughly.

Mr. Burr:

Maybe Ed can draw it better than we can, Crampton.

Mr. Harris:

I hope he can. That is something I can't do.

A. This (drawing on blackboard) is one drum of the drag hoist.

Q. Will you come over here where the Judge can see it?

A. Yes, sir. This is one drum of the drag hoist, on which is wound a 7/8 inch rope. This is the other drum on which is wound a 7/8 inch rope. This here represents a 50-horse power motor that is connected to each of these drums by what is known as a clutch,—not a solid clutch but a jaw clutch is the word I want to use.

The Court:

Jaw?

The Witness:

Jaw clutch, yes, sir. That is the word I want to use. That would be one part of the clutch, and when—that is connected by a lever. This piece goes there and makes a solid connection, so the motor can catch it and turn it.

Q. Sort of like a modified cog wheel, is it?

A. Yes, sir. What was your question, Colonel?

Q. Now, I have gotten a picture of how these things work. You call it a rope. Isn't it a steel cable?

A. It is a steel, flexible cable.

Q. As a matter of fact, you don't use hempen rope in the mine at all.

A. No. This cable is a special type and has a steel center—some cable has a hemp center, but the surface of this rope is very hard, and it is an all steel rope.

Q. So that rope goes out and is fastened to a hanger?

A. May I make another sketch?

Q. Yes, sir.

A. (Drawing on blackboard): This is a typical heading. You have pictures of all this, Mr. Burr, in that article I wrote for that magazine.

Mr. Burr:

I haven't got it here.

Mr. Harris:

I have it up at my office.

Mr. Burr:

Milt, get me one of those pictures.

A. This represents roughly as if you had taken a knife and cut right across the working place, the ore seam, and this represents the mechanical loader.

Mr. Burr:

Ed, let me see. Is that an end view?

The Witness:

Yes, sir. Cut through the ore seam.

The Court:

We are facing the seam of ore?

The Witness:

That would be more or less the section right through here, as if you had cut right through that process. This cross hatched part is known as the hanging wall and roof, and this part is the footwall or floor.

This represents the mechanical loader, which is on a track held down by track wedges and track hooks.

This is the end view of your tram car.

This is known as the ramp. That ramp would be supported by braces and so forth.

Mr. Burr:

What is that ramp made out of?

The Witness:

Made out of nine inch ship channels,—about nine of them make one ramp.

Q. I don't know what a ship channel is.
A. It is a section like that (drawing on blackboard.)
Q. Steel?
A. Steel.
Q. All right.
A. These little places I call broken ore. We will assume that ore was thrown out there after these holes were shot in the face of this working place. That ore is all along here.

The miner comes up with a small jackhammer drill,—we have different types that weigh from twenty pounds to forty pounds,—and he holds that in his hand and drills about a twelve-inch hole in the solid wall. Then he takes wedges and what is known as a hanger,—this hanger is about twelve inches long, made out of steel, and pointed. He will drill a hole and put it in there. That hanger has a little bulge on the end. We will consider this solid wall. That is the jackhammer hole. Then the wedges are driven alongside that hanger on each.

The Court:

So it can't come out?

The Witness:

Yes, sir. They put it in there and make a place where you can hang your skidder block.

Your skidder block is nothing more than a wheel about 14 inches in diameter that will hold—it is a sheave, in other words, built like this, in which your wire rope runs.

To operate and drag the ore in this car, he turns on his power and puts in the clutch on the drum which pulls this drag scraper back. Then he releases that drum and puts in the clutch on the other drum, and pulls the drag scraper along here which pulls this ore along and shoves it in the car.

Q. I get you.

The Court:

How long have you been using that system, Mr. Ball?

The Witness:

We started installing it along in 1915 and completed our mechanical loaders and had all the mines equipped about the end of 1925. During that interval we have built more, of course, as we extended our workings.

Q. Now, I had been laboring under a misapprehension. I thought a jackhammer was something like the old fashioned drill where one man held a drill and the other hit it with a sledge hammer.

A. No, sir.

Q. Your jackhammer is also operated by compressed air?

A. By compressed air.

Q But it weighs only 20 to 26 pounds?

A. We have several types,—20 pounds, some of them, up to 40 pounds.

Q. How long a bit or drill part do they use?

A. These holes we drill for that hanger,—those vary from 12 to 14 inches. That steel would be about that long,—about 18 or 20 inches.

Q. What diameter?

A. It is 7 8 inch hexagon steel.

Mr. Burr:
What kind?

The Witness:
7/8 hex.

Q. That just means six sided?

A. Instead of a round piece of steel it has six sides.

Q. That hexagonal drill will weigh how much?

A. Oh, about five pounds—you mean that piece of steel?

Q. Yes, sir.

A. About five pounds, the steel we are using.

Q. That doesn't have a detachable bit?

A. No, sir, not the type we are using. That is a forged bit we are using, just like we use with our larger drills.

Q. The wedges that are used to wedge the hanger in the hanger hole are metallic wedges?

A. Yes, sir, steel—iron, I should say.

Q. How big are those wedges?

A. About an inch wide, 3/8 inch thick, and about 6 inches long.

Q. How many holes for hangers would the drill man have to put in your room 20 to 22 foot on the face?

A. Well, he generally puts in—it is a case of like this: It depends on whether he was pulling around a pillar on that stope. I will turn this around for a minute. These cross hatches here would represent broken ore, and the distance over this center line, about 20 feet with a pillar in here. He would probably put in 4 or 5 of these jackhammer holes so he could get the quickest and easiest route of that ore to come over the ramp to that car.

Q. Would that be—say he had four or five holes,—take four holes; would he drill all four of those holes ordinarily before he started operating the drag, or would he drill one and use what he could with that and then stop and drill another? How is—

A. There has been varying practices on that. A good head miner, I think, would drill all his holes, so, as soon as he quit dragging one portion, he would have a very, very short time to change his block over in the other hanger, you see, to save time.

Q. Then the drill man has as tools that he uses the heavy tripod drill or heavy tripod mechanism?

A. Yes, sir.

Q. Then he has those four pieces of steel,—what do you call them—

A. Drill steel.

Q. —drills that fit into that tripod mechanism?

A. Drill steel.

Q. Then he has a jackhammer, has his drill steel for his jackhammer, and he has his wedges and hammers. What does this hanger weigh?

A. A hanger weighs about—what we know as a C-hook we put in that wedge—Let me explain what a C-hook is.

Q. Yes, sir. I want to learn all I can about it.

A. (Drawing on blackboard.) That is made out of iron or soft steel. It gets its name, C-hook, due to the fact it looks like a "C". This portion is hung over this wedge in that hole, and this portion then is hung over the skidder block, and then the rope passed through the skidder block. I would say that C-hook weighs around 8 or 9 pounds,—maybe more, maybe ten.

Q. Now, in using those tools, is it the drill man who drills the hanger holes, or does the drill helper drill the hanger holes?

A. In our system of mining, with the seven man crew, the drill man would be setting up his large machine— You understand it is very seldom they can drill in the same place they are loading. We do on development work.

Q. I understand.

A. The drill helper may drill that or the head miner may do that. We have no fixed rule.

Q. That is, the head miner in the 7-man crew in the daytime, and 8 at night?

A. The 7-man crew is the standard crew.

Q. In addition to that material, the driller uses, as he moves his tripod he has to bring his air pipe along with him, doesn't he?

A. That is right. That is generally an inch and a half hose up to within 25 or 30 feet of the wall itself when they use the inch hose.

Q. Is that a rubber hose?

A. That is rubber hose.

Q. And the joints, you screw them in like a garden hose?

A. We have what we call a spud type connection on the drill for that hose.

Q. That furnishes air for the jackhammer drill and the tripod arrangement?

A. Yes, sir.

Q. What about the water line?

A. That comes from the water line and that hose is a small hose about like a garden hose, half inch hose.

Q. Where are the drills for the jackhammer kept? Take Ishkooda, Number 13, say, and—

A. They are generally kept at each working place and removed behind a pillar or some other safe place before blasting. They stay right in the working place.

Q. Do those drills get dull every twenty-four hours?

A. You mean the drill steel?

Q. Yes.

A. Oh, the drill steel is collected and taken out on the surface and resharpened.

Q. Who determines whether or not a drill steel needs resharpening?

A. The head miner.

Q. And how is it removed—if the head miner in number 13 in the 28th heading, say, decides his drill steel needs sharpening—

A. Puts it on a car or either the motor takes it to the slope—in 13 mine from the face of the drilling place it is carried to the main slope, and from there carried out of the mine by one of the service crews.

Q. Is that system of it being put on trams and trammed out a system that has been in practice since the first day of May of this year, or was that system in practice since October 24, 1938?

A. Oh, any drill steel —we have used pneumatic drills of one kind or another on Red Mountain for a great many years.

Q. I mean in getting them out—

A. I was going to continue, Colonel.

They always have track up in the working place, and the drill steel is put on an empty car or loaded car in some cases and trammed down,—if it is a tram heading, trammed down to the main slope, and if a locomotive haulage heading, it is hauled down to the main slope and over, Colonel, to what is known as the loading point for material and transported to the surface for re-sharpening.

Q. What is a tram heading?

A. Where you drive your openings on about one or two percent grade where your cars will run by gravity down to the main slope and your cars return to the working place,—your empty cars, by mule haulage.

Q. I thought you didn't have any mule haulage.

A. We have in a few cases.

Q. But in most of your places you have electric haulage?

A. Electric motors.

Q. Electric motors?

A. Twenty-ton locomotives.

Q. Your drill steel is taken to the surface and sharpened there?

A. To the mine openings, and there picked up by truck and brought to the blacksmith shop,—the drill steel shop where they are resharpened and made up in sets of four and wired together.

Q. Do the hangers themselves break and get out of order and have to be taken to the shops for repair?

A. Yes, you have to take them and straighten them out. Sometimes they break. Then you collect those broken parts and use them to make wedges out of.

Q. And the wedges,—what is the life of a wedge?

A. Well, they are pretty easily lost. I would say if you take care of those wedges—properly taken care of,—for two or three days. We make them by the thousand and send in the mines.

Q. Make them by the thousand?

A. Yes, sir.

Q. And the hose pipe for the water and air, where does the head miner and the driller get that when he needs a new joint?

A. Puts in a requisition to the mine foreman or tells him verbally, either one, and that is furnished him at the working place.

The Court:

You mean it is carried down?

The Witness:

Yes, sir, it is carried down like other material and carried in the working place.

The Court:

By the service crews?

The Witness:

Yes, sir.

Q. Well, they haven't been delivered since October 24, 1938, all these sharpened drill steels, these repaired hang ers, and new hangers and new wedges haven't been delivered to the headings at the very face where the men were working?

A. Oh, yes; it has been customary for years to deliver that material to the working face. By so doing we know that the crews could not have the excuse of not having material to work with, and not get their production.

Q. Do you mean to say for years that miners have not carried down any drills or wedges or hangers?

A. Oh,—

Mr. Burr:

Just a minute, if Your Honor please. I haven't objected to all this line of testimony, but I don't see its relevancy after you get away from the face.

The Court:

It is cross examination.

Mr. Burr:

All right, sir. I just want Your Honor to understand our position so there can't be any question by not objecting we are consenting that this is an issue in this case, and that objection is this: That the pretrial agreement, as well as the pleadings—

The Court:

My understanding—I don't know—the purpose hasn't been stated.

Mr. Burr:

Yes, sir.

The Court:

The purpose of those questions. I assume it is a question of how much these that work down there have to do and how much they have to carry back and forth.

Mr. Harris:
That is right.

Mr. Burr:
That is right at the face, but, of course, it wouldn't be a relevant question under these issues as to what they do during transportation.

Mr. Harris:
Oh, no, not at all if the Court pleases. The question is what constitutes worktime.

The Court:
That is right.

Mr. Burr:
Yes, sir, that is it.

Mr. Harris:
There is no use arguing it. Your Honor sees it the way we do, so we will go ahead.

Mr. Burr:
So Your Honor will understand, we are not consenting this testimony is admissible—

The Court:
Do you object.

Mr. Burr:
No, I don't object at this time, but if it is put on as affirmative testimony then I will object and ask to be heard.

Mr. Harris:
What was the question?

(Thereupon the reporter read the question last propounded as above recorded.)

Q. Drills, drill steel, hangers or wedges?

The Court:

Answer the question, Mr. Ball.

A. No, I do not mean to say that. I mean to say the heavy material, like C-hooks, skidder blocks, drill steel,—occasionally a man might pick up a few wedges and put in his pocket as he passes the piles of material that are at the mine mouth as they go in. Sometimes they will stick a piece of drill steel down their pants leg. Miners are peculiar people. They like to have the things with which to work. Materials have been carried down for years.

Q. But the men have been doing it for years?

A. Yes, sir, that is right, occasionally pick them up.

The Court:

We will have a few minutes recess.

(Thereupon proceedings were in recess from 2:45 P. M. to 3:00 P. M., when proceedings were resumed as follows:)

Q. Mr. Ball, those tripod legs get broken or bent and have to be straightened and new ones have to be supplied, do they not?

A. Yes, sir.

Q. And in addition to tripod legs the mechanisms down there require oil, do they not?

A. They do.

Q. And the company furnishes oil for all these various pieces of machinery and equipment that I have asked you about?

A. Yes, sir.

Q. The title to them is in the company?

A. Yes, sir.

Q. The company repairs them?

A. Yes, sir.

Q. The only thing that the miner uses down in the mine which he personally owns is the lamp on his head—

A. That is correct.

Q. —and the carbide in his lamp, the clothes that he wears and the lunch or lunch box he takes with him?

A. That is right.

Q. Now, this system of mining which the Tennessee Company uses here to get the ore out, I believe you said it is what is called the slope system?

A. Modified room and pillar, and those openings are called stopes,—s-t-o-p-e-s.

Q. Now, the passageway leading from the surface of the earth down into the mine is called the slope, isn't it?

A. The mine slope—s-l-o-p-e.

Q. And that passageway ordinarily has been sunk in the ore bed itself, hasn't it?

A. Yes, sir. In a great many cases where the ore body is cut by faults there was probably a little grading done through the rock, the bottom rock to ease out the haulage grade.

Q. And at the present time your mines—Those slopes go such a distance at an angle that when you get to the ore bed where you are actually pulling down the muck, there will be between the men and the surface of the earth a vertical distance of about a thousand or 1200 feet, would there not?

A. The average for the eight of our mines is 1200 feet. We have some mines where the covering is around 1500 feet, and other mines around 1000 or 1200 feet, but the average for the eight ore mines would be approximately 1200 feet vertically.

Q. Have you got a chart or record showing—you are giving from your memory, of course, the average?

A. Yes, sir.

Q. Do you have anything to show the exact vertical depth of each one of your operations?

A. Oh, yes, we have those records.

Q. Could we have a list of it in the morning?

A. I doubt whether we can have them ready by the morning, but I can by Monday.

Q. That will be all right.

Mr. Burr:

Off the record, what is it you want? You want for each mine the depth of the cover?

Mr. Harris:

That is right.

Mr. Burr:

All you want is the figures? Do you want a map?

Mr. Lipscomb:

No, Borden; we want a map, I think.

Mr. Burr:

You just want the figures?

Mr. Harris:

I asked him only for the figures. I haven't looked at the map. You have introduced maps here. I haven't looked at them.

Mr. Burr:

Do they show the vertical cover?

The Witness:

No. Those are horizontal maps.

Mr. Harris:
Have you got a map showing the vertical section?

Mr. Burr:
No. You have asked for so much—

Mr. Harris:
I haven't asked for anything.

Mr. Burr:
Jim is asking. We can't make maps and maps for you. We will get everything that is reasonable.

The Court:
Go ahead.

Q. So, on an average, the men that are working underground in the mines of the Tennessee Company are now working approximately 800 feet below sea level, aren't they?

A. Approximately at sea level. At our Number 6 mine I believe our unloading station is around 100 or 150 feet below sea level. I have not those accurate figures in my mind. That is in general.

Q. Well, are your unloading stations—is that the deepest one you have? Have you tested all of them with reference to sea level at the unloading stations?

A. No. We know that from the elevation. We have our elevations on the survey points at the bottom of our mines. That is all compared and referred to the sea level.

Q. You have that already tabulated?

A. Yes, sir.

Q. You have that already tabulated and calculated?

A. Yes, sir.

Q. There will be no trouble to get that?

A. No, sir.

Q. How far do you travel in your operations in the course of a twelve months period, and by travel I mean how far do you progress into the ore bed?

A. Well, that depends on the differences in the stopes, depends on our development work, and a great many other factors, on the amount of operations, whether they were operating at a normal rate or whether we have to lose time in the mines.

Q. Well, now, during the year 1936, how far did you progress in Number 13 mine that year, say.

A. Well, his working places—You see you progress in ten or twelve working places. Our map shows the yearly progress and the excavation made in each working place.

Q. You don't mean those maps?

A. Not these maps, but we have other maps which show year by year the excavation out of the solid ore for a period of a year.

Q. And you don't carry in your mind how far that distance is year by year?

A. No, because it would vary, Colonel, in each working place,—

Q. Yes.

A. —depending on the overlying cover, how wide our stopes are, how far apart the levels are.

Q. Take the one you moved the fastest in last year?

A. Let's put it this way. I think I can explain by turning this map around. In driving this stope—

The Court:

Just a minute. Haven't you got maps showing the progress you have made each year?

The Witness:

The maps we furnished do not show the yearly progress, but we do have maps that show the progress.

The Court:
It seems to me like that would be better.

Mr. Harris:
We would be glad to have them. I was going to ask them to give me the figures Monday.

Mr. Burr:
Off the record, I don't see it has any irrelevancy, but if we can furnish it without any trouble, we will do it.

The Court:
Go ahead.

Mr. Harris:
You will see in just a minute.

The Court:
Go ahead, Mr. Harris.

Mr. Burr:
We will get anything we can.

Mr. Harris:
He says he has those figures.

The Court:
Go ahead.

Q. Mr. Ball, roughly speaking—

The Witness:
May I interrupt a minute? We can take these same maps we furnished you and put on the progress for the last year.

Mr. Harris:
That will be all right with me, but the government wants it from 1936.

Q. At any rate, the operations underground are a greater distance now from the portal than they were in 1936?

A. Yes, sir.

Q. Roughly speaking, how much further would you say they are from the portal now than in 1936?

A. I wouldn't like to state. The progress is made in so many working places that I wouldn't like to state off hand. By coloring up the portions on those maps where we were in 1936, and where we are now, we can take the shaded area and show the progress.

Q. It takes longer for a man to get from the surface of the mine now to the face than it did in 1936?

A. Oh, yes. As time goes on your working faces will advance further and further from the loading station.

Q. In 1936, you all wrote a letter of reply to the union in which you said it took a man from 6:05 to 6:45 to get to the face?

Mr. Burr:
Wait a minute.—We object to that—

Q. That is right, isn't it?

Mr. Burr:
We object to that question. There is no such letter as that I have seen.

A. I can't answer a question put that way.

Mr. Burr:
The letter speaks for itself.

Mr. Harris:
You know what exhibit—

Mr. Burr:
No, sir. You will not find any letter of that kind.

Mr. Harris:
Exhibit Number 12. Let's see that. There was a reply—

Mr. Burr:
It is in those minutes, and it covers all the men from the first bunch that went in to the last.

Mr. Harris:
That is right. I didn't examine that this morning, but when Mr. Burr read it—I will find the place later,—Exhibit Number 10.

The Court:
Eleven is the proposal of the miners.

Mr. Harris:
Eleven is the proposal and 12 is the answer.

The Court:
It defines the work day, eight hours face to face.

Mr. Burr:
It is on page 15, I think, of those minutes, is what you have been looking for.

Q. Now, in 1936 when the distance was considerably less than it is now, in Exhibit Number 12, introduced by the Tennessee Company, I see on page 15 this statement:

"Our answer to that is no. Our men go in the mines about 6:05 A. M., and they get to their working place about 6:45 A. M."

That is the minutes that were introduced—

A. Yes, sir.

Q. —this morning?

A. Yes, sir.

Q. And if it took that length of time then it takes a longer time each succeeding year, doesn't it?

A. Yes, as the distance to be traveled increases, it takes time to cover that increased distance.

Q. And that is why I want the distance that you have progressed each year from 1936, because we know it took forty minutes for them to get to the face then, and we can take the increased distance—

A. That was in a time statement in there; that was in general.

Q. The statement is there—

A. We have our time—

Q. —and speaks for itself, Mr. Ball. It is for the Court to determine what it means.

The Court:

All right; let's go ahead.

Q. Now, Mr. Ball, when the men, on October 24, 1938, reported for work, the first place that they went to, that is, 98 to 99 percent of the men, was the bath house, wasn't it?

A. Yes, sir.

Q. And then after leaving the bath house the next place in their ordinary trip would be to go to the place where they get on the mantrip?

A. Walk to the mine portal at which is located the check in house or tally house.

Q. That check-in house or tally house is how far from the portal?

A. It is generally just off the slope and back of the mine entrance.

Q. Fifty yards, twenty-five yards?

A. Oh, no; right at it.

Q. Now, when a man comes out of the bath house, how does he know—how did he know in October, 1938, where to go after he got off the man skip?

A. Will you please repeat that?

Q. We will take a miner working at Number 13. Say he reports at six o'clock in the morning. He catches the first man skip down into the mine. How does he know where to go when he gets off that man skip down at the hoodlum?

A. Because he works in a special crew and his working place has been designated by the mine foreman.

Q. And the mine foreman assign all the men that work in a particular mine?

A. Yes. New men are assigned to different work crews. The old crews know their working places and when a working place has to be changed or stopped, the mine foreman assigns that crew to another working place.

Q. So that always, unless the company has changed him, or necessity changes it, throughout a cycle of twelve days the men reporting on a mine crew know where they will go, don't they?

A. Every man knows where he is going in the mine crews. They have their special working places from which they produce ore.

There are occasions when the service men, the so-called company man, do not know whether they are going to work that day on the timber crew or track crew, or whether they will be put in a mining crew to take the place of some miner who has laid off that day.

Q. And that mine foreman, if a man is working with a crew in Number 38 heading, he can change him before he catches the man skip to a different crew in a different heading?

A. He wouldn't know until they get underground. The men wouldn't know until they get underground. After the men get in the mine foreman knows by looking at the check-in board whether the crews are short, and then after he gets underground he would make his arrangements about having his service men fill in for the mine crews.

The Court:
On that, does that trip go back and get the extra man?

The Witness:
No, sir; they are taken on the mine crews.

The Court:
He knows from the board a certain one is absent?

The Witness:
Yes, sir.

The Court:
And then he fills that vacancy from the service crews?

The Witness:
Yes, sir.

The Court:
He knows on the surface, doesn't he, the men he is short?

The Witness:
Yes, by looking at the check board.

Q. And each miner, before he goes down, knows where he is going?

A. Yes, sir, knows his working place.

Q. At the face where he is drilling and blasting?

A. Yes, sir.

Q. Did I understand you to say that cycle lasted about twelve days?

A. No. We said we met the average condition in a stope in about twelve days, but the average cycle in driving the face of the heading averages about 3½ or 4 months.

Q. Then, a crew would operate in the same heading 3½ or 4 months?

A. Unless the mine foreman changed a man from this crew to another crew.

Q. And he can do that at any time he wants to?

A. Yes.

Q. And could from October 24, 1938 up to the present time?

A. It has always been customary for the mine foreman to designate the working places for men or change men from one working place to another.

Q. Suppose a man catches a skip and decides he doesn't like to work in heading Number 58 because that is a long ways, and he will get off and join the closest crew to the unloading place; could he do that?

A. No, sir. The head miner and foreman on that would not allow that. He would be immediately reported to the mine foreman.

Q. If he wanted to move around he would have to apply to the mine foreman or would have to go through the procedure of reemployment?

A. No. If he wants to change his working place, he would ask the mine foreman—he would say, "I am working for John Jones, and I would like to work for Jim Smith if you can arrange it for me." We have made a number of those swaps over a period of time.

Q. So, over a period of three and a half or four months his working place is determine for him?

A. Yes, sir, he knows his working place.

Q. I mean drilling face; his working place where he drills?

A. The drilling face is shown by the sketch to be very close to the working place.

Q. You used the phrase early in your direct examination of company men. What is the difference between a red ore miner and a company man?

A. A company man was the old name for the present service men. The company men are the service men or the men who timber and who lay tracks or do any service that will help the producing crews at the actual working face where the ore is broken and loaded.

Q. Did that phrase originate in the says when the red ore miners were contract miners?

A. Yes. The company men were paid so much per day or shift, and in the old days the miners were paid so much a car or so much a ton, and the reason they call them company men was because he was guaranteed his day's wage as a timber helper or track man or any service man of that type.

Q. Now, at any time since October 24, 1938, has there been any requirement of the company as to the number of tons of ore that a mucker must load on a car during a shift?

A. No. We have had the incentive system in. As each man goes in the mine he is guaranteed his daily occupational rate. If the crew in which he is working loads over a standard base tonnage, they have additional earnings known as incentive earnings.

Q. But suppose—Now, what was the average tons produced per man at Number 13, say?

A. I can't recall just at present what that figure is.

Q. Well, a 7-man crew, how many tons are they supposed to get out ordinarily?

A. Prior to May 1st I believe the 100 percent tonnage was 168 net tons, and the point at which the incentive earnings began was 134 tons for a 7-man crew.

Mr. Burr:

Give me those figures again, Ed. I didn't get them down.

The Witness:

The 100 percent was 168 net tons for a 7-man crew, but the incentive earnings began at 80 percent efficiency—

Mr. Burr:

Yes.

The Witness:

—which made the base tonnage at which the incentive earnings began—

Mr. Burr:

Yes.

The Witness:

—134, and, I believe, 4/10 tons.

Q. Now, during the period from October 24, 1938, to May 1, 1941, was there any requirement as to the number of tons a crew must get out during a shift?

A. There is no requirement except that the men could not go down in the mine and simply sit down. We wouldn't pay them for sitting down. We expect them to give us a fair day's work for the day's pay.

Q. Well, suppose, if 134.4 was the basic 80 percent— Suppose a crew produced 40 tons on Monday, 40 on Tuesday and 40 on Wednesday?

A. There would probably be some good reason for it. There would have to be reason for it. That is why we have supervisory forces.

Q. You say there would be a reason for it. What do you mean—

A. There would have to be a reason for that small tonnage from a 7-man crew. They might have had to handle a lot of rock fall or might have been delayed by the track not being properly arranged or a breakdown in the ramp or mechanical loader.

Q. Now, you speak of a rockfall. That is liable to occur anywhere in a mine, isn't it?

A. Take the draw slate in a working place, and if your top is not properly handled and quarried at the beginning of each mine turn after blasting you are liable to get some very dangerous rock.

Q. And what method is used to safeguard the men against rockfalls?

A. Each man in each working place have quarry bars. there can be no general, large falls between pillars or between headings, but top rock is loosened every time you blast. Now, if a man will start back in a safe place from the working place where the blasting occurs, and test his roof with a quarry bar and bar down loose material, then there is no danger whatever of being caught by a rockfall.

Q. Now, that quarrying bar is another—

A. Tool.

Q. —instrument they use in the mine?

A. Yes, sir.

Q. How big a thing is that?

A. We have some made out of one-inch steel about six feet long, and others made of a lighter type of iron and generally about ten feet long.

Q. Do those bars have to be repaired and sharpened?

A. They have to be sharpened. On one end you have a chisel bit, and in the other a sharp pointed mail bit, so you can get a hold on a rock to break it down.

Q. Assuming all the rock has been quarried down, is anything done in the way of propping the roof?

A. Yes, where timbering is necessary. There is prop timbering and cross timbering.

Q. Tell us how timbering is done.

A. I think I can illustrate by a sketch.

Q. All right. If you have more room on that side you can do it on that side.

A. I am going to illustrate what is known as prop timbering. That is the hanging wall (drawing on blackboard). This is the foot wall. That represents practically the same working place as the one in which I showed the mechanical loader. A hitch is cut in the foot wall and a timber is set known as a prop between the foot wall and the hanging wall, set on different intervals, but on an average around 10 or 12 feet square.

Mr. Burr:
Is that up in the working places?

The Witness:
Sir?

Mr. Burr:
Is that timbering up in the working places?

The Witness:
Yes, sir. Another type of timbering we use is known as cross collars—

The Court:
What?

Mr. Burr:
Cross collars.

The Witness:
Cross collars. This is the opening and we drill holes by jackhammer drill in the ore and put in 2-inch pins

that extend in the ore approximately two feet, and extend out. On top of that is laid a timber. That timber will be wedged up against the roof here by wedges approximately a third, That holds rock.

Q. That cross bar or cross timber in your operations nowadays,—those timbers are creosoted, aren't they?

A. No, very few of those. We use what is known as Douglas Fir and hard pine, 12 by 12.

Q. Do you know of any of your mines where you use creosote—

A. In some of our permanent slopes and main haulage ways we use a creosoted 12 by 12 timber as a cross prop. Most of our timber in our main slopes and haulage ways is steel timber made out of steel I-beams.

Q. Have you noticed in going around through the mines any effect on the atmosphere due to the presence of creosoted timber?

A. Where we use creosoted ties you can naturally smell creosote.

Q. Those other props you mentioned, they are not creosoted, the vertical—

A. No, sir. They are what is known as round timbers and our specifications are 8 to 10 inches at the small end. That is the diameter.

Q. They rot pretty fast, don't they?

A. No, sir, they stand very, very well: I would say the average round timber in our mines stands up very well two or three years.

Q. What happens to them at the end of two or three years?

A. They either break from gradual weight coming on them from the overlying cover, or a gradual dry rot takes place.

Q. Now, if the dry rot—that means that the combustible material in the timber is burned up, oxides?

A. Makes carbon dioxide.

Q. Turns from wood into carbon dioxide?

A. Yes, sir.

Q. And carbon dioxide is a chemical that doesn't help the lungs when you breathe it?

A. Every time you breathe you exhale carbon dioxide.

Q. When I exhale?

A. Yes, sir.

Q. But if I breathe it in—

A. If you find it in large quantities you can't burn a light, so there is no danger of you getting into a large quantity of carbon dioxide.

Q. The aid in a coal mine—I mean in an ore mine is not anything like as pure as the outside air?

A. On our main intake we have practically the same air as the outside, except that the humidity of that air runs very high due to taking up water as it passes through the mine.

Q. You say your main intake?

A. Yes, sir, at our main intake.

Q. You mean you pump the air—

A. No, sir, we exhaust the air with fans. That lowers the pressure in the mines below the atmospheric pressure and the atmospheric pressure forces air in.

Q. When you are running those—

A. It is known as the exhaust system of ventilation.

Q. When you exhaust it the air is being forced out of the mine. Does the fresh air going down to take the place of the bad air go down the same slope your bad air comes out?

A. No, sir, oh, no. Your bad air goes out one place and your good air comes in another. You couldn't take bad air out and put good air in the same place unless there was a partition. There must be a difference in pressure to get the flow.

Q. So, where you have exhaust fans, those fans are pulling the air out—

A. It is pulling it out and exhausting it on the outside, and your fresh air is going down the main slope and from there sent around over the mine by different switches and governed by doors you can regulate.

Q. How far is your exhaust fan from your main slope?

A We generally set them off anywhere from 50 to 100 feet off from the main slope.

Q. Now, the air that the men use in drilling is furnished under what pressure at the compress?

A. Our blow-off valves are set at about 85 and 90 pounds. Taking into consideration your line loss which accumulates by forcing this air through your pipe line, you 6 and 8 inch pipe lines or 12 inch pipe lines, so that at the drill face we have an average of 68 to 70 or 75 pounds of air for each drilling machine.

Q. What is the point of maximum efficiency in your drilling machine, the point of pressure?

A. With our 4 inch machines our maximum drilling—that machine was designed to operate at about 70 pounds of air, and does good work at 60.

Q. But if the pressure drops down to 40, what about your drill machine?

A. Naturally you cannot drill as fast.

Q. That would slow up production?

A. Slow up your drilling, yes, sir. When you slow up your drilling you don't have any ore broken to load.

Q. The man skip that is provided in the mines, are they all the exact size one of the other in your different mines?

A. No. At our limestone mine that skip runs on a standard track gaged 4 feet 6 inches, and—whatever the standard is. On the other slopes the track gage is 5 feet:

Q. Well, a man trip is just simply a box shaped car, isn't it?

A. We have nothing known as a man skip. We use the regular ore skips for man trips, and when men are riding in that it is known as a man skip trip.

Q. All right. Now, how long in feet and inches is that ore car or ore care or ore trip that you use?

A. That skip—we have varying lengths. I would say roughly 14 feet long.

Q. And how wide is that portion of it which can be used by men as they ride down into the mine?

A. Be a little less than five feet wide.

Q. It has no overhead cover to protect the heads of the men, has it?

A. No, sir.

Q. How many men did you say ride in that car of that side?,

A. 38 to 40.

Q. 38 or 40?

A. Yes, sir.

Q. Well, that means when you put 38 to 40 men in an ore skip of that size that those men are packed in there like sardines in a car, didn't it?

A. No, sir, it does not. They ride very comfortably. I have ridden in a great many of them.

Q. You have ridden where there were 38 other men and been very comfortable?

A. Oh, yes.

Q. Has it come to your knowledge since you have been out there that men have been injured merely by the crowding in the man skip?

A. There have been one or two isolated cases. I can't just remember when. I don't know, of course, in recent years. I know of probably one case where a man slipped out of getting out of the skip and injured his foot, something like that, turned his ankle.

Q. And in some of those man skips, some of the men, as they go down, have to get down on their knees to keep from having their heads knocked off as they go down the slope?

Q. How high is the back of the skip above the floor?
A. I would say around 6 feet 6 inches.

The Court:
All of them?

The Witness:
Yes, sir.

Q. So far as you know, and in the years you have been there with them, there have been no skips in the operations of the T. C. I. Company's manskips where the men either had to crouch like this or get down on their knees as if they were in a position of prayer as they went down—

A. It is very easy for them to keep their heads below the top of the skip. We have had a few accidents in the past where a man has violated a rules and stuck his head up above the skip.

Q. The back of a skip is how high?

A. 6 feet 6 inches.

Q. As along as he didn't stick his head above 6 feet 6 inches he would not get hurt?

A. That is right.

Q. At Ishkooda mine the exact measurement of an ore skip, Number 13 mine, the length inside is 12 feet 6 inches, and the width inside is four feet four inches; is that right?

A. I don't know. It sounds about right. I said approximately 13 feet long and less than five feet wide.

Q. Would you say the depth of that skip is not 4 feet 8 inches?

A. No; the skip is lower at the front end than the back.

Q. What is the front end depth?

A. I don't know. I can get those measured for you.

Q. But there isn't any question if the back end of a skip is 6 feet 6 inches above the floor a man would be—

A. I would say it may be more or less. It may be approximately less. I do not have the exact measurements in mind. I can get the exact dimensions, though.

Q. One of the men—Since these hearings came up you had a man injured in one of the T. C. I. mines that happened to raise his head in a man skip and has his face injured; do you know about that?

A. I wouldn't be surprised, yes, sir. I remember an accident of that kind.

Q. Now, have the men during the years '38 to '41,—have they been instructed to keep their heads down as they ride the man skips down?

A. Every man is instructed what safety measures to follow in riding a skip, especially new men.

Q. What are those safety measures?

A. To not push or have any rough play in the skip, and keep your head below the top and not stick your head up suddenly.

Q. Now, when a man gets there every morning, you say that all you required was that there be enough men there to fill a skip at six o'clock?

A. No; I said fill the skip around 6:07,, I believe.

Q. Well, I didn't mean—

A. Roughly around six o'clock.

Q. That is a fault of my memory, 6:07 or whatever it was.

A. Yes, sir.

Q. And you do require and have all during the period from October 24, 1938, up until May 1, 1941, that the men be there in sufficient numbers to fill a skip by 6:07?

A. So we would have enough men present to take the first skip down, and when there is a second trip ready there will be enough to fill that trip. The men have been very good in scheduling themselves. A man may take the first trip today and the second trip tomorrow. That has been done.

Q. But the company did not allocate skip number one to 38 men and skip number 2 to another 38, and skip number 3—

A. No, sir, not any given individuals. We did not require that.

Q. And after the regular three skips had gone down, or if it took six skip loads to get them in, if they had run, suppose a man reported one minute after the last skip had gone down; what happened to him?

A. Every effort was made to get him in the mine.

Q. How did you—

A. I do not remember any case in recent years where a man was turned back from the mine if he was a few minutes late.

Q. How did he get down?

A. On a skip.

Q. Run a trip for just one man?

A. After all the trips were down, and he was a little late, and they had pulled one trip of ore, they would stop and let that man down.

Q. But you rarely had to?

A. Yes, sir. Our men have been very, very good about being on time. We have had very few cases of lateness.

Q. The men had nothing to do with fixing the time when the man skips would go down?

A. No, sir. That was the function of the management to designate the time when they start.

Q. And when they quit?

A. Yes, sir.

Q. After the men have finished their drilling and are coming out of the mine, they have to walk from the place where they have been drilling or mucking to a manloading or unloading station, don't they?

A. Yes, sir; yes, sir.

Q. Now, is that station fenced in or marked off or designated in any physical and material way?

A. Oh, yes. They have seats and benches for the men to sit on while they are waiting to be hoisted out of the mine.

Q. Now, take Ishkooda 13. Did you have more than one manloading station in there, during those three years I am interested primarily in?

A. I do not think so. Just one manloading station there.

Q. How big a place is your unloading station,—loading station?

A. Oh, they will vary at the different mines. I couldn't give you the exact dimensions of those stations.

Q. Just approximately?

A. Oh, probably large enough with benches enough to seat 60 or 70 men, I would say, roughly.

Q. A man walks from his drilling place or his mucking place in the mine to the manloading station at the end of his shift, doesn't he?

A. That is correct.

Q. And how do you determine what men are coming out first? How did you during the three years from October, '38, to May, '41?

A. As a rule your so-called service company men, whose place of beginning work or their work was near the tool house or tool box near the loading station would be the first men to come out. They were the first ones to go in generally in the morning and the first to come out. Then, as these stragglers came in, section helpers and mechanical loading operators, they were hoisted out just as fast as we could get them out, 40 men at the time,—38 to 40 men at a time.

Q. And the company determined when they would be brought out?

A. We had a regular schedule time for hoisting out which was supposed to be three fifteen. Our average for all the mines on Red Mountain showed the first skip left the underground manloading station underground at 3:14.

Q. And the last one left when?

A. That would depend on how many men you were using in there, and how many mantrips you had to operate.

The Court:

I would take about 8 or 9 minutes each?

The Witness:

Roughly, yes, sir.

Q. A man had no say as to when a skip would run, or whether he could get a particular skip? If another man got there ahead of him he had to wait?

A. They generally line up by the entrance to the manloading station. Those that come there first would get on the benches nearer the door of the manloading station, so the first bunch that got there would go out on the first trip, and then the men would move up and the next bunch would go out on the second trip.

Q. You spoke on your direct examination as to surveys that had been made as to the time it took men to walk from the manloading station to the different faces at which they drilled and mucked. Were you present down in the mine at the time those surveys were taken?

A. No. I had my engineers and operating men and industrial engineers make those surveys.

Q. Were those surveys made by men who were carrying drill steel or wedges or hangers or tripod legs or cans of oil, or were they made by men empty handed?

A. They were made by engineers probably carrying tape or something of that type.

Q. And when you figured the time that it took them to walk back from the face to the manloading station, were those men who did that walking men who had already put in six or seven hours in the mines at heavy manual labor, or were they men who had not been doing manual labor at all that did this walking on which you based your calculations?

A. They were men who, instead of walking to some one working place from the man underground unloading station, walked to all the working places at that mine during the term and timed it.

Q. Yes, but at the time they were walking either going out to the face or coming back from the face to the man loading station, they were not men who had already done six or seven hours of manual labor, were they?

A. No, but they were men who had done a lot of walking that day; that is, they took more than one walking place that day.

Q. All they were doing that day was merely walking to test the time from place to place?

A. That is correct; making time studies.

Q. Most of your operations are not on level ground? Your ore bed does not lie level?

A. It varies and rolls and pitches.

Q. In going to one part of the mine a man may be going down hill to his room or drilling face or working face, whatever you call it, and in coming back he may be climbing up a hill?

A. Yes, sir.

Q. So the actual distances from the manloading station to the drilling places is not always an accurate indication of the time it takes to go and return?

A. On these time studies the time was accurately taken at a normal rate of walking.

The Court:

Is that set out on your diagram and maps?

The Witness:

It is in my testimony, I believe, Your Honor.

Mr. Burr:
Yes, sir; it is on the maps also.

The Witness:
Is it put on the maps? I didn't know about this last set that was made up.

Mr. Burr:
Yes, it is on the maps too.

Mr. Harris:
If the Court pleases, I don't know whether I want to pursue the examination as to the physical and material aspects any farther or not. It is pretty close to adjourning time, I imagine, and I thought if it was agreeable with the Court the lawyers on my side might have a conference and determine whether they had any further examination, and then I could take up the contractual and negotiational features in the morning.

Mr. Harris:
Does Your Honor wish to go ahead?

The Court:
I expect we had better adjourn.

We will adjourn until 9:00 o'clock in the morning.

(Whereupon, at 4:10 P. M., July 9, 1941, an adjournment was had to 9:00 A. M., July 10, 1941.)

July 10, 1941, 9:00 A. M.

Court met Pursuant to Adjournment.

The Court:
All right. Are you ready?

Mr. Burr:
Yes, sir.

935 E. M. BALL thereupon resumed the stand, and having been previously sworn, testified as follows:

Cross Examination—Resumed.

(By Mr. Harris):
Q. Mr. Ball,—

Mr. Burr:
All the lawyers are not in yet, Crampton.

Mr. Harris:
Shall I wait a while, Judge, or go ahead? Mr. All and Mr. Brodie are not here.

Mr. Burr:
Mr. All is here.

Mr. Harris:
I will go right ahead.

Q. Mr. Ball, in the classification of company men, a skip tender would be called a company man?
A. Yes, sir; service man.

The Court:
Skip tender?

Mr. Harris:
Yes, sir, skip tender.

Q. Now, what does a skip tender do?

A. I didn't catch that question.

Q. What does a skip tender do?

A. He is in charge of the skip. When the skip is loaded with ore he gives the signal to the engineer. If he is handling a mantrip he gives the mantrip signal and the engineer knows he is handling a mantrip.

Q. Does he ride the skip in and out?

A. Occasionally he rides down to the hoodlum going in and out. Usually he goes in on the last trip and comes out on the last trip.

Q. Are powder men called service men?

A. Yes, sir.

Q. Where do they stay when they are at work?

A. They stay the most of the time at what is known as the underground powder magazine.

Q. How far is the powder magazines from the underground man unloading station?

A. It is different in different mines. We try to get it as close as we can so we will not have any more loss of time than necessary in the men coming to the magazine and getting powder and going back to their working places. That varies in different mines.

Q. You have what is called a pipe man?

A. Yes, sir.

Q. What does he do?

A. He keeps up the pipe line and small pumps and things of that kind.

Q. Where does he get his pipe?

A. He gets it at the underground supply house.

Q. Is that at the powder house?

A. No, sir. The powder house is separate from the other supplies.

Q. Do you keep the underground supply house near the underground man loading station?

A. It is in the vicinity of the underground man loading station.

Q. You have track men?

A. Yes, sir.

Q. They are called track men?

A. Service men.

Q. The same thing?

A. The same thing, yes, sir.

Q. What do the track men do?

A. They lay the track in the mine working places so the tram cars can get up to the ramp or so-called chute, and be loaded with ore.

Q. Suppose you are extending your main slope; the track men would lay the track along that extension?

A. Yes, sir, when we were. We are down in the basin now. We wouldn't extend the main slope, but we would extend the main haulage levels.

Q. If you extend the main haulage level you have to put tracks in, and the track men do that work?

A. Yes, sir.

Q. Where do the track men get their material?

A. They handle their materials. It is loaded on the surface on a tram car and fastened behind the skip and lowered into the mine and then unloaded underground at the material yard, and at that point is loaded on other cars and carried to the designated points by the electric locomotives.

Q. Now, I understood you to say on your direct examination that the time of the service men was counted at the tool house?

A. The tool house or tool box.

Q. And that is near the underground manloading station?

A. Yes, sir, in the near vicinity of it.

Q. Now, service men would get their assignments from the company as to where they would work, wouldn't they?

A. Oh, yes, they mine foremen.

Q. How often would they have those—in the ordinary work, suppose you were extending the main haulage way, —would that take a month or week or two weeks?

A. Might take a week. It depends on how much they were laying. If they were extending it from one working place or stop to another they could probably do that in two or three days or a week.

Q. When they start on a job, their assignment, whether it lasts a week or two weeks, they know where to go until that job is over?

A. Yes, sir, they are assigned to the different jobs by the mine foreman.

Q. And the work begins where they pick up their tools?

A. Yes, sir, begins where they pick up their tools.

Q. And that was true from 1938 on?

A. Yes, sir.

Q. The service man, when he picks up his tools at the tool house, sometimes he will have to walk a quarter of a mile or half a mile or a mile?

A. Depends on where he has to do the work; various distances.

Q. He would be paid for that time walking to those different places?

A. That includes part of his day's work.

Q. Now, then, suppose a service man had reported at the tool house, and just after he reports at the tool house and is checked in his time begins, that the mine foreman had found that he needed somebody on a drill crew, and he switches a service man to a drill crew,—that happens occasionally, doesn't it?

A. Oh, yes, very, very frequently.

Q. Now, when he switches a service man to a drill crew, does the pay of the service man continue from the time he reported at the tool house, or is his pay suspended until he gets to the place where he is needed with the drill crew and then starts?

A. Oh, his pay would start from the time he is underground, and he would be assigned to this crew, and when the turn was over or the shift for that crew, he would leave with the rest of the crew.

Q. So that, under those circumstances, when he walked from the tool house to the working face he would be paid for the time spent in walking, wouldn't he?

A. Yes, sir. He would be probably a little late in getting to the working place because, if he were a regular member of the crew, he would go along with that crew, but not knowing there was a shortage in the crew until the mine foreman got underground and assigned him, he would probably arrive later at the working face than the other men.

Q. Now, then, suppose that member of the service crew as taken off the service crew and put on a drill crew on Monday and then on Tuesday he would still be needed in the same working face on the same drill crew,—do you follow me?

A. Yes, sir.

Q. He is going to continue to work not as a man repairing tracks, but he is going to be in the drill crew. Prior to May 1, 1941, would that man, in walking over the same distance, going to the same place, be paid for the time he was walking, or would his time start when he got to the drill place?

A. His time would start when he got to the regular working face, because he would take the occupational rate either as a section helper or drill helper, whatever it would be, in that working place. He would take that occupational rate for that turn.

Q. So that one day his walking—he is paid for his walking and another day the same man would not be paid for walking over the same identical part of the mine?

A. Oh; no, no. I don't think you quite get the idea. The first day, after he was appointed by the mine foreman to take the place of an absent member of the mining crew, he would no doubt arrive late at the working place, probably five or ten minutes late. The next day, if the mine foreman still knew the man was going to be short on that crew, he would tell that man to take the same job he had on the previous day at the occupational rate, whether it was a section helper or drill man.

Q. But as I understand it, when he started walking from the tool house the first day when he goes to relieve the man, he is paid for that time spent in walking?

A. He is not working. He arrived late.

Q. What about his pay; that is what I am interested in.

A. When they go underground that meant for the beginning he was in the usual place of work, but if we change the place of work, if this man is told by the foreman to change his place of work, that is for our own reasons and conveniences, and, therefore, if he arrives late at the working place he must be paid for that because we have changed his place of work.

Q. But the following day he wouldn't get any pay for that time he was walking?

A. He would report—he would know his time and place of work would be in that certain working place and he would report there at the regular time of work. He would not be late.

Q. That would not cover the time he was walking from the hoodlum or manloading station until he got to the drilling place?

A. No, sir. That would be his regular place of work for that turn.

Q. Now, was I correct in assuming you went to work there in 1902 or was it 1909 you went to work there?

A. 1902.

Q. And from 1902 up until May 1, 1941, both the rates of pay and the lengths of shifts have changed on numerous occasions, haven't they?

A. Oh, yes; changed from the 10-hour day to the 8-hour day, and depending on—during that interval—whether it was mechanical loading or hand loading, the rates of pay have changed for the different occupations.

Q. Now, have those—let's take the year 1902. Have you in your own mind the recollection of the rates of pay at that time?

A. No, sir, I have not.

Q. Have you records which show—

A. I think our records go back that far, yes, sir.

Q. And do your records show the years in which the rates of pay were changed?

A. I believe they could find that.

Q. You don't know those different years where the rates of pay changed?

A. No, sir, I do not.

Q. But there has never been a uniform rate of pay from the time you went there which continued up to May 1, 1941?

A. Oh, no; different economic conditions, different business conditions determine the rate of pay.

Q. Now, then, the length of the shift has never been one and the same from the time you went there to work there until 1941?

A. Up until 1914 our mines ran on the contract system, paying so much a ton. The contractor and his men would load a certain amount of ore, and if he was satisfied he and his men had loaded all the ore they wanted that day, they came out. Our mines were very shallow in those days and they walked out.

Q. Let's develop that a little further.

A. All right, sir.

Q. From 1902 up until 1914, were all the service men under the contract system?

A. No, sir; they were on the day basis, day basis or shift or turn basis.

Q. The muckers and drill men and drill helpers were contract men?

A. Yes, sir.

Q. Did I name them all, the drill men, drill helpers and muckers?

A. Yes, sir, I think you named them all.

Q. The service men up to 1914 were on a day rate?

A. Yes, sir.

Q. What was the length of the shift of the service men up to 1914 when the contract system was abolished?

A. I think we were on the 10-hour day at that time.

Q. How was that 10-hour day at that time computed?

A. In and about the usual working place underground.

Q. And at that time the usual place of work underground was at a very short distance from the mouth of the mine?

A. Compared to the present mine workings, yes, I would call it very short.

Q. Now, in those days, up to 1914, the service men then were paid as they entered the mine, weren't they?

A. Well, they were men on what you might call a turn basis or shift basis.

Q. Well, what do you mean by a turn basis or a shift basis?

A. A certain amount of work to do in and about their usual places of work, and at those dates I believe we were working on what was known as a 10-hour day.

Q. Well, where did you—in those days where was the time of the service men taken?

A. It was always—it has always been customary on Red Mountain when the mine enters—when your mine became what is known as an underground mine, not the outcrop workings, there would be a check-in house or tally house similar to the one in vogue today, and the men would check in at this tally house.

Q. Where was that tally house?

A. At the mine portal.

Q. At the mine portal?

A. Yes, sir.

Q. That continued up until 1914?

A. Yes, sir.

Q. Now, then, the contract men, how were they paid?

A. He was paid—at some of the mines in the early days I believe they had scales, but as a rule they were paid on so much a car. Those cars were generally two-ton cars,—of a capacity large enough to hold two tons.

Q. In those days did a crew consist of seven men or nine men?

A. It varied, depending on the contractor, and how much work he wanted personally to do in drilling.

Q. Up until 1914, was there a task which the company expected and required the contractor to do each day?

A. No, sir. That was one of the reasons why they changed over from the contract system to the so-called day system,—because a lot of these contractors would lay off and not produce ore on the days that it was necessary.

Q. The contractor in those days hired his drill helpers and his muckers, didn't he?

A. The Tennessee Company—they were hired through the employment department. If the man wanted a certain man—if the contractor wanted a certain man to work for him, he would bring that chap and tell the superintendent, "I want to hire this man; he is a good man." He would be written up and employed.

Q. Well, who paid the drill helpers and the muckers? Suppose Bill Smith, for example, up to 1914 was a contract miner in one of your mines?

A. In our system of contracting, when a man worked in the mine with a contractor as a drill helper or drill runner or mucker, he was guaranteed that day's rate, whatever it was, three dollars, four dollars, four dollars and a half, whatever that occupational rate was at that time. Then that time was deducted from the contractor's total earnings. If he was paid 50 cent a car and he ran 100 cars, 50 cents times 100 cars would be his earnings for that period.

Q. Fifty dollars?

A. Yes, sir. Then his labor was deducted from that amount, also his supplies, fuses, caps and so forth.

Q. Let's take Bill Smith's crew, four muckers; he recommends them to the company and the company determines whether they work in the mine or whether they don't, and those four muckers are guaranteed by the company a certain daily rate of pay, a daily wage?

A. Under our contract system, when they went in the mine?

Q. Do you recall how much that was up to 1914?

A. No, sir. The rates have changed over the years so many times I do not recollect what that rate was.

Q. Suppose—there were times when it wasn't more than $3.00 a day, wasn't there?

A. I wouldn't say.

Q. You just don't know?

A. No, sir, I don't recollect.

Q. All right. Suppose his four muckers don't load enough coal the week—I mean enough ore during the week to earn the amount of money that the company has guaranteed them. Then what happens?

A. The contractor would be what is known as "going in the hole" and that would charged up against his account and when he would make more than that he would have to pay for that deficit from one month to the other.

Q. Now, suppose that the four muckers and the drillers got out more than enough to pay them; suppose that 100 tons you mentioned was his task and these men worked hard and got out 150 tons; did they get any more pay or did they get the basic guarantee that the company—

A. They were only paid on the payroll their guaranteed wage. If he was a very smart contractor in those days he would hand his men a little on the side on pay day so he could hold a good crew.

Q. But they didn't get any more money if he was not a smart contractor and did not give them on the side to keep them in a good humor, they didn't get any more—

A. They didn't get any more on the company's payroll because they were working for the contractor, but their day's pay was guaranteed by the company when they entered the mine.

Q. In those days, up to 1914, suppose the men—say a shift went on at 6:00 o'clock in the morning, and by ten o'clock each man had loaded his ten tons of ore. Would they come out of the mine if they wanted to then? Just—

A. Generally 20 tons in those days. If he finished it at any time, yes. I have seen contractors and their men come out on a half day basis, three quarters of a day. Everything being just right, they would go in and hurry up and load a certain amount of ore and then come out of the mine.

Q. Now, suppose they had a situation that slowed them down in getting out the ore and wanted to stay in an hour or two later to make up the shortage they had experienced during the day; would they do that?

A. Miners, as a general rule, don't do that. In those days they were human. I don't think they worked over their regular time at any time that I can remember.

Q. Now, then, at 1914 when you abolished the contract system, the system you called the contract system,—

A. Yes, sir.

Q. What system was instituted?

A. Known as the pay day system,—day pay.

Q. Tell us what that was and how long that lasted.

A. Rates were established for what is known as the section foreman, who would be in charge of the work of the crew. Rates were established for the drill man, drill helpers, and for the muckers.

They would go in there and work on the ten-hour basis —at that time we were on the 10-hour work basis, and we attempted to make a task basis.

In other words, we felt that a man could load his 18 or 20 tons, and as a rule they did.

Q. Now, you said the rates of pay. Who established that rate of pay, the company?

A. They were established by the engineers and the management based on the previous rates of pay that the contractors had made, or a good miner could make under favorable conditions.

Q. How long did that 10-hour task system last? Have you any idea?

A. We went on an 8-hour basis during 1921, I believe, for a very short time, and then went back to the 10-hour day, and that lasted until some time in 1933.

Q. Wasn't—

A. Then we went on the 8-hour day basis.

Q. Wasn't there a time during the first World War on your 10-hour basis, where, if the men were in the mines ten hour you paid them for eleven hours work?

A. I was not here at that time, but I know that was a fact; that during that emergency, instead of a raise in wages, they paid them additional hour.

Q. Who did your work during the year you were in the army?

A. My mine captain.

Q. Do you remember his name?

A. Mr. Jack Tamblyn.

Q. Is he still with the company?

A. No, sir; he died several years ago.

Q. Now, you say in 1933 you went on the 8-hour day?

A. Yes, sometime in 1933.

Q. And from 1933 on up to October, 1938, did you stay on the 8-hour day?

A. Yes, sir.

Q. And then in 1938 did you change or still stay on the 8-hour day?

A. Still stayed on the 8-hour day.

Q. Now, during the years that you have been connected with the Tennessee Coal, Iron & Railroad Company the company has always determined who should and should not enter the mine; isn't that so?

A. Oh, yes, certainly.

Q. And no matter what system was used by which men were selected, the company determined that system and the company made the selection?

A. Oh, yes. You wouldn't want strangers in your mine or non-employees in the mine. Any men entering the mine had a definite working place which was assigned to him by the mine foreman.

Q. And during that whole period different kinds of work got different pay, didn't they?

A. Oh, yes. Different occupations require different rates of pay.

Q. During that whole period the company could assign a man from one kind of work to a different kind of work and thereby change his rate of pay?

A. Certainly.

Q. And did it on many occasions?

A. Oh, yes. We do that now.

Q. What was the first kind of, or the name of the first kind of employees' representation that was had in the mines of the Tennessee Company after you began work there?

A. It was about 1917 and was known as the Mutuality Committee.

The Court:

Mutuality Committee?

The Witness:

Yes, sir.

Q. Now, was that before you had what was known as the Employees Representation Plan?

A. Yes, sir.

Q. How long did your Mutuality Committee function?

A. From about 1917 until about 1933.

Q. Was that Mutuality Committee affiliated with either —was it affiliated with the American Federation of Labor?

A. No, sir.

Q. When did your Employees Representation Plan go into effect?

A. About the spring of 1933 as near as I can remember; 1933, I think, in the spring.

Q. And how long did that last?

A. Until about February, 1934, when certain changes were made in the Employees Representation Plan, and it was called afterwards the plan of Industrial Relations.

Q. Now, when you were working under the Mutuality Committee, how many Mutuality Committees were there, —one from each mine?

A. There was one for each division and as a rule, as I remember, there were three members of that committee for each division.

Q. Did the company select all three of those, or just the head one?

A. To start off with the company picked three men who were employees of long standing and who had a good standing in the community and who the company felt had a wide acquaintance among their fellow employees. These committeemen were appointed for one month or two months or three months, and then when a vacancy occurred, the remaining members of that committee selected another employee to take the place of the one whose term expired.

Q. Then, when your Employees Representation Plan went into effect in '33, did they have committees?

A. Yes, sir.

Q. A committee from each mine?

A. Each division had a committee, and they also had a general committee.

Q. Now, how were the committees from each mine selected to start with when the Employees Representation Plan went in?

A. There was a primary held at which the employees could vote with a secret ballot for some employee whom they wished to represent them. Each committee consisted of three whites and three colored.

Then, after the primary election and six white men and the six high-colored were put on the main ticket for the final election and were voted for, and the winners became the committee.

Q. Now, suppose that a man was up in the first election who was not acceptable to the company; was his name voted on?

A. I just don't get you.

Q. Well, on that selection of those committees for the E. R. P. did the company have anything to do with their selection?

A. No, sir. I just explained how those men were selected in the primary and then in the final election.

Q. I know, but you said—

The Court:

How long did the Employees Representation Plan exist after 1933?

The Witness:

Until about—the Employees Representation Plan, Your Honor, was changed over in February, 1934, and called the Plan of Industrial Relations, and gradually faded out during the summer of 1934.

Q. That was the same thing that was generally used throughout the United States Steel Corporation during that time, wasn't it?

A. Yes, sir.

Q. Then, in 1934, when E. R. P. petered out, what plan—

A. That was—in the early part of February, 1934, the plan was changed over and called the Plan of Industrial Relations. That was in February, 1934.

Q. Did the company notify the men in writing they were changing over from that plan to the other plan?

A. They had regular committee meetings.

Q. What is that?

A. They had regular committee meetings and so forth. It was at the request of the committeemen that certain changes were made in the Employees Representation Plan and the Plan changed over to the Plan of Industrial Relations.

Q. And that also was a general plan in effect by the United States Steel—

A. Yes, sir.

Q. Corporation throughout its operations in America?

A. That is correct.

Q. And that was called the Industrial—

A. The Plan of Industrial Relations.

Q. The Plan of Industrial Relations?

A. Yes, sir.

Q. How long did that last?

A. To use your own words, Colonel, it petered out in about 1934 in the fall.

Q. Now, up until 1933, there had not been any union in the Red Ore Mines of the Tennessee Coal, Iron & Railroad Company in this district which was organized and affiliated with and chartered by the American Federation of Labor, had there?

A. There was no union.

Q. And neither was the employees representation plan or the plan of Industrial Relations chartered by or affiliated with the American Federation of Labor?

A. It was not.

Q. The C. I. O. or the International Union of Mine, Mill & Smelter Workers had not come into the picture of the T. C. I. operations here up until 1933, had it?

A. About the summer of 1933.

Q. When the International Union of Mine, Mill & Smelter Workers came into this district, did you have orders to cooperate with them and help them organize?

A. No. That is a very funny question.

Mr. Burr:

We want to object to that sort of question, Your Honor. The other was probably relevant—

The Court:

I don't see the materiality.

Mr. Burr:

We don't want to try any of those old labor wars we have been over so many years.

The Court:

It is cross examination. I will be liberal with you.

Mr. Burr:

We don't object to them asking Mr. Ball—if they go into those matters, we expect to object, of course.

Mr. Harris:

Here is the reason I am going into that, if Your Honor please: It is on account of the issues in the case that have been framed by the gentlemen on the other side. You see the method he started out on in his pleadings and in his development of the case by his examination of Mr. Ball,—his written claim in his pleadings was that the members of these unions are estopped or have waived their rights in this matter on account of the fact that there has been bargaining back and forth between the employees and the company.

Now, we are asking these questions to show whether or not there had been any genuine collective bargaining between the employees and the employers, and we feel that under the issues in the case—

The Court:

What is your question now?

Mr. Harris:
That when—

The Court:
Just read it.

(Thereupon the question last propounded was read by the reporter as above recorded.)

Mr. Burr:
He has answered that.

The Court:
He has answered no.

Mr. Harris:
I didn't catch that. All I heard was, "a very funny question."

The Court:
All right.

Q. And at no time—

Mr. Burr:
Now, don't answer this question until I get a chance to object.

Q. And at no time since the International Union of Mine, Mill & Smelter Workers came into this district have you had orders, up to May 1, 1941, to cooperate and help them with the organization of independent unions among your employees, have you?

Mr. Burr:
Now, just a minute. If Your Honor please, we object to that question. It is—in the first place it couldn't pos-

sibly be relevant to any issue here under the pleadings in this case.

The attorneys representing the unions here seem to be trying this case on the question of waiver and estoppel. I thought I made that plain to the Court and to the counsel —I triel to,—in the beginning, that that is a matter we are not concerned with at the present time.

The Court:

I sustain the objection.

Mr. Burr:

We will not offer any of this testimony on the question of waiver.

The Court:

I sustain the objection.

Mr. Harris:

If the Court please, we are not offering this evidence merely to rebut a claim of estoppel and waiver, but they are claiming an acquiescence in a custom or tradition, and I think the Court is entitled to a complete picture of the industrial relations existing between the employer and the employees in order to ascertain whether or not there has been any acquiescence. In other words, if the company were in position, absolutely, to dictate all terms of employment and all hours of labor and rates of pay, if the company set up its own union,—for instance, Mr. Ball has introduced documents between a Brotherhood of Miners of Captive Mines.

Now, if the company sets up certain organizations over here and then the company starts dealing with the organizations which it has set up, it seems to us that that fact is a vital fact for the Court to know.

They come in and say as to these unions and these men there has been a tradition and custom, and we say no, that couldn't be true, whatever you did was with unions or organizations which you yourself promoted.

You see the basis of the rights of men under our system now, under the Acts of Congress, they are all guaranteed the right of collective bargaining if they are engaged in the production of goods for interstate commerce.

So, it is my purpose to bring to the Court information that shows that there has been—I think the record already shows it if the Court examines it with that point in the Court's mind,—the record already shows to some extent there had been no collective bargaining, so, instead of having a mere portion or fragment of the picture in the record, I am trying to bring out to the Court a complete picture of that situation of which Mr. Burr gave the Court a glimpse and stopped.

I think it is a very vital matter in the case.

The Court:
Go ahead.

Mr. Burr:
If Your Honor will hear me on my objection—

Mr. Harris:
May it please the Court, I want to reply.

Mr. Burr:
It is my objection. I have the right to reply.

The Court:
Go ahead. Don't argue with each other. Talk to me.

Mr. Burr:
I am going to talk to you.

The Court:
Yes, sir. All right, talk to me.

Mr. Burr:
I don't want to talk to anybody else.

The Court:
All right.

Mr. Burr:
As to the relevancy of the testimony, I offer in this case, it is offered solely for the purpose of bearing on the intent of the Congress in the event there is any ambiguity in the Act. The evidence I offer has no reference to company unions or otherwise. The evidence I offered tended to show, whether it was a so-called company union which existed in 1934, or the other union, which was sufficiently strong to close down our mines in 1934 and close them down in 1936, is at that time the company union made no reference at all to transportation time, and that the other union—we have shown from the beginning what their position on the matter was; we have shown what their position was at all times. They first presented a request for half time which was never thereafter insisted upon.

We traced the bargaining relationship of that union which they now want to show was a hostile union all the way down. We have laid it down. We have given you the facts. If they want to show anything different, they can show anything different they can. We have presented this by what Mr. Ball says are the minutes of the meetings with the committees, by the proposals of the committees and by the contracts which were finally signed.

Certainly we can't go off into any warfare between these two unions. We had a warfare which we spent nine months up at the Court House trying, and then settled and buried it and it ought to stay buried. It can't have any bearing on the question which we have here.

The question is was this custom universal before this law was enacted? If it was universal, we must consider it was universal. It doesn't make any difference how the custom arose.

As far as that is concerned, it is shown it couldn't be against any union, whether it be company or national, because what they presented was all they could present,—that was at arms length across the bargaining table, resulting finally in a contract which they solemnized in writing over the signature of their national president, agreeing that time should be computed on a face to face basis.

Now, we submit, may it please the Court, to go into these questions of how much or how little union support the company extended hasn't got a thing in the world to do with this case. We are proving that both unions, whether they be company unions or what not, took certain action through their committees in their negotiations with the company, and that is all that is relevant here. We have proved that both unions presented their suggestions. I don't care how strong or how weak they were. They represented our employees. That is the only issue on this hearing. The dispute between the parties,—between the two unions,—has nothing to do with it.

Mr. Harris:
Now, if the Court please—.

Mr. Burr:
Now, I want to close.

Mr. Harris:
I just want to say—.

Mr. Burr:
It is my objection and I want the right to close on it. I want to conduct this thing properly. I am through.

The Court:
I will let him say a few words.

Mr. Burr:

Well, I want the right to close on my objection.

Mr. Harris:

If the Court please, it is a far stretch of the principles of reasoning and logic to say I want to show some detail of what went on here in the Birmingham district between some of our employees and the company in order to show the intent of Congress, when there isn't any evidence in this case that this particular plan was known to Congress. Now, he says it was universal. There is no evidence in this case that this plan was universal. The only evidence on that we have is that these things that have been described as the Mutuality Committee and the E. R. P. and Industrial Plan extended throughout the United States Steel Corporation's operations in America.

Congress wasn't legislating merely to cover the United States Steel Corporation. Congress was legislating for the entire industrial picture in America, and that picture covered everybody, high or low, great company or small company, if the company was engaged in interstate commerce and if the employees were engaged in producing good for interstate commerce. It is impossible to segregate and say we will show this picture to show the intent of Congress, and then say we won't let you show the complete picture.

Why is the Congress being presumed to base its intent on a partial knowledge of the situation? If they have any knowledge of it, they have it all. If he brings out part of it, we are entitled to bring out all of it.

I am not going into why they had the strike. I am not asking why they had the strike. I am asking about the nature and character and kind and quality of these organizations that existed and he had dealings with, and I think we are entitled to show it.

Mr. Burr:

If Your Honor please, I am very glad Mr. Harris has said something that I agree with. I think ultimately what he calls the national picture in application to this Act is going to have to come into this case for this reason: Section 7 of the Act doesn't say anything about underground coal mines, it doesn't say anything about underground ore mines—

The Court:

No.

Mr. Burr:

It just says that all employers,—that is the steel plant out here —

The Court:

The lumber companies.

Mr. Burr:

The lumber companies and the textile mills, and it is common knowledge,—I call it that because it has been in the newspapers,—it is common knowledge as soon as this ruling was made by the Administrator, which is bound to come in issue ultimately in this case,—that is what they are standing upon here,—just as soon as the Administrator ruled that irrespective of contract; irrespective of custom; traveling time—not tool carrying time, but traveling time, —was intended by Congress to be a part of the workweek, what happened? Immediately employees of the Textile Mills,—one up here in Huntsvile,—it was in the papers about it,—demanded they be paid from the time they came in the gate until they got to their looms; immediately the limestone mines in Shelby County made the same contention. Those are particular operations. Immediately employees in the Lake Superior district began to file suits for open pit mines and under ground mines on the same theory.

Immediately the question became of national importance way beyond the interest here of these four or five little ore mines out here we are investigating at this time, because immediately, if Your Honor sustains that ruling, it affects the traveling time not only of these four or five ore mines, but it affects the traveling time in the Lake Superior district which produces, under the figures everybody knows about, over 94 percent of the iron ore produced in the United States. Don't think for a minute this will not be before we get through—this will not be a national picture. I don't object to him making a national picture of it; I don't object to him asking if that was the rule and policy of the United States Steel Corporation over the country; we did not object when they went in that field, because I think it will be relevant in this case. We are not only not objecting, but we are going to challenge it to show that the conditions they base their opinion on existed all over the United States. We are going to show after that that the Administrator's opinion is based on a report of a man named Stein; we are going to take issue with that report and show how it couldn't possibly sustain the Administrator's ruling. So much for the national aspect.

What is it this question proposes to show? We haven't objected to any question along the lines he makes his argument on, but what I am objecting to is his showing any dispute between the unions. If he wants the record to show the bare facts, that is all right, but I don't want to go into the details of any dispute between the unions.

The Court:

I didn't understand he is asking about any distinction between unions.

Mr. Burr:

Let's read the question.

The Court:

Mr. Burr, I have given you a good deal of latitude in going into the intent of Congress.

Mr. Burr:

Yes, sir.

The Court:

This is cross examination.

Mr. Burr:

I don't want Your Honor to take any chance on limiting it myself if you have any doubt about it.

The Court:

There isn't any chance: I just want to keep within issues and treat everybody right.

Mr. Burr:

Let's see what this question is. We may be able to decide this by stipulation. There was a bitter row between the company and the Smelters Union.

Read the question.

(Thereupon the reporter read the question last propounded as above recorded.)

Mr. Burr:

Now, if Your Honor please, if that question were answered in the affirmative, we would be subject to a hauling up before the National Labor Relations Board in less than fifteen minutes.

The Court:

Not for the past.

Mr. Burr:

Well, we would have been if they had cooperated in the past, and that is what governed. The company couldn't—this crowd over here on this side of the table would have been on our necks with both feet if we had favored the other crowd, and vice versa if we had favored the other crowd.

Ask him if there were any orders given about it.

We object to it and insist on our objection.

Mr. Harris:

We insist on the question.

The Court:

I overrule the objection.

Mr. Burr:

We respectfully except.

Mr. Harris:

Mr. Ball, do you remember the question?

The Witness:

I would like to have it read.

Mr. Harris:

Will you read the question, please?

(Thereupon the reporter read the question last propounded as above recorded.)

The Witness:

Read that last part again, about the independent unions. I didn't get that. Smelters Union and independent union are all in that same question. I don't get it.

Q. At no time since the International Union of Mine, Mill & Smelters Workers came into this district have you ha dorders from the Tennessee Company to cooperate with them and help them in the organization and formation of unions affiliated with the International Union of Mine, Mill & Smelter Workers?

Mr. Burr:
Now, we want to object, to this renewed question.

The Court:
The same ruling.

Mr. Burr:
Yes, sir, and we except.

A. I have had no such orders.

Q. Now, then, you had another group named,—employees, called the Brotherhood of Miners of Captive Mines, didn't you?

A. We did? Is that—

Q. I mean in your company?

A. Oh, yes, in the company, yes.

The Court:
You mean working for the company?

The Witness:
Yes, sir.

The Court:
Employed by the company?

The Witness:
Yes, sir.

Mr. Harris:

That wasn't a trick question. I didn't mean any trick question to the witness.

Q. When did the Brotherhood of Miners of Captive Mines get organized among your employees?

A. During the fall of 1934, to the best of my recollection.

Q. And when did they pass out of existence?

A. I believe it was in February, 1939, when they became affiliated—they changed their named and became affiliated with the American Federation of Labor.

Q. Did the American Federation of Labor take over the Brotherhood of Miners of Captive Mines?

A. I do not know what the arrangements were with the American Federation of Labor.

Q. Now, in—Mr. Burr said you had a strike in 1934, and that strike began on what day and ended on what day in 1934?

A. On May 4th and ended with the letter of understand which was date, I believe, June 26th or 25th, and we went back to work on July 2nd or 4th,—the 5th, rather, —either the second or the 5th,—I am not certain of those dates,—but it was right after the 1st of July when the strike ended.

Q. So that the strike lasted approximately two months, didn't it?

A. Yes, sir.

Q. The company operated approximately two days after it was settled?

A. I believe it was about a week. I am not certain on that. That is my recollection, about a week.

Q. And they quit operations within a week?

A. That was at one division, at the Muscoda Division, and I would like to say at the Ishkooda Division—I believe there was one mine at that time still in operation, Number 8, at the Wenonah Division.

Q. But the other mines—

A. Were idle. During the depression we operated only one mine in each division.

Q. Now, from the time the International Union of Mine, Mill & Smelter Workers had unions in this district among your employees—

Mr. Burr:

I didn't hear that question. Will you please—

Q. From the time that the International Union of Mine, Mill & Smelter Workers had organizations in this district among the employees up until 1938, those unions were constantly asking the company for contracts?

A. I don't know that you can say constantly. I have previously testified as to the times and dates at which proposals were submitted by the union to the company.

Q. They made a proposal each year up until 1938, didn't they?

A. I have previously testified to the dates when proposals were made for contracts.

Q. Can't you summarize for me and tell me whether they made proposals each year?

A. They only asked for contracts in the years I have testified to.

Q. They asked for a contract in 1934?

A. They asked for one in September, 1933,—I believe it was September,—and I believe in April of 1934.

Q. Then they asked for one in 1935?

A. In 1935.

Q. Then they asked for one in 1936 and 1937, didn't they?

A. I think there was one in 1936.

Q. There wasn't in '37?

A. No, sir.

Q. There were no—

A. There were no—In 1937, a part of that year, we were in the National Labor Relations trial, and we had no contact with the Smelters Union.

Q. The first contract that was ever made with this union or any affiliate of this union in the mines of the Tennessee Company was made only 18 days before the Fair Labor Standards Act was passed, wasn't it?

A. I presume you are excluding the letters of understanding as the—

Q. Well, your letters of understanding were addressed to Madame Perkins or to other people?

A. And to the heads of the Union.

Q. And my recollection is that I asked you yesterday if the only contract that was ever had up to 1938 was the contract of October 6th; that is correct, isn't it?

A. Yes, I think it was in October, 1938.

Q. 1938, I mean.

A. Yes, sir.

Q. October 6, 1938?

A. Yes, sir.

Q. Now, when these various representatives of the union affiliated with the International Union of Mine, Mill & Smelters Workers came in to negotiate with the company about contracts or other matters affecting the employee-employer relationship, the meetings were always held on the premises of the company, were they not?

A. Yes.

Q. You never at any time went to a union hall to conduct your negotiations?

A. No.

Q. And those meetings were held at a place selected by the company, weren't they?

A. Yes.

Q. And frequently they were held here in Birmingham in the general offices of the company?

A. Yes.

Q. And in those meetings you had some employee of the company who took down stenographic notes of the meetings, did you not?

A. Yes, sir.

Q. When was it that you started having a reporter present at those meetings to take down the minutes of the meetings and what happened at the meetings?

A. I think that was in 1933, fall of 1933. I believe our minutes go back to that date.

Q. It was 1933 when the International Union of Mine, Mill & Smelter Workers came into this district?

A. Yes, sir.

Q. So, in all the negotiations between the committees representing the Union and the representatives of the company you have had stenographers present at the meetings taking down in shorthand what happened in the meetings?

A. Where there were—the regular meetings at the divisions or at the general superintendent's office there were minutes kept.

Q. Now, those minutes that were taken down by the stenographers were transcribed, that is, typed, and preserved, were they not?

A. Yes, sir.

Q. Ordinarily, was that stenographer who took them down your private secretary, if you had one, or the president's private secretary, or the vice president's private secretary?

A. It was some stenographer from my office, either my own personal secretary or a stenographer in that office.

Q. Now, where are those minutes now?

A. They would be—I presume copies in the files of the Smelters Union, and copies in the files of the Tennessee Company.

Q. You preserved them in your files?

A. Yes.

Q. Now, in 1933, when the first proposal was made by the International Union of Mine, Mill & Smelter Workers for a contract, was that proposal a verbal or oral proposal on the one hand, or a written proposal on the other, the very first one?

A. I believe that was a—I know it was a written one. It had eight or nine suggestions or proposals in it.

Mr. Harris:

Have you got those exhibits that were introduced on yesterday?

Mr. Burr:

Judge, while they are getting those, isn't now a good time to take that five minute recess?

The Court:

We will take a recess for five minutes.

(Whereupon from 10:10 A. M. to 10:20 A. M., proceedings were in recess, after which proceedings were resumed as follows:)

The Court:

All right; let's proceed.

(By Mr. Harris):

Q. Mr. Ball, the first proposal in 1933,—I notice you didn't introduce that yesterday. Where is that first written proposal?

A. I think all we introduced here was the memorandum of the verbal request which was taken down.

Q. And that was a memorandum of your reply to the verbal request, wasn't it?

A. Yes, sir, and a memorandum stating what the request was.

Q. Where is the original written proposal?

A. There was not an original written proposal at the first meeting. I had reference to the memorandum when I said it was a written request.

Q. Do you recall who was the stenographer that took down the minutes of that very first meeting with this Union?

A. They didn't keep regular minutes for that meeting, but a memorandum of the eight or nine points. I believe that man's name was Mr. John Bowen, the President's secretary.

Q. Is he living?

A. Yes, sir.

Q. And still in the employ of the company?

A. Yes, sir.

Q. Now, yesterday I noticed you introduced a paper or a letter signed by a man named Horn, A. E. Horn, one of your exhibits. Is Mr. Horn still living?

A. Yes, sir.

Q. Is he still a representative of the union or is he in an executive position with the company?

A. He does not work for the Tennessee Company.

Q. Do you know where he works?

A. I believe he works for the government at Sheffield. I saw him the other day. I think he was in the Court room here yesterday for a short time.

Q. Did Mr. Horn continue to be affiliated with the union orr prior to the time he left the employment of the company, or did he become an executive or an administrative officer of the company?

A. Mr. Horn, as far as I know, has never worked for the Tennessee Company.

Q. He worked for the Republic Company, didn't he, or do you know?

A. I do not know. It was either Republic or Woodward Company. I think he was an iron worker, boiler maker.

Mr. Harris:

Will Your Honor indulge me just a moment? I might save some time here.

The Court:

Yes.

Mr. Harris:

During the recess I was having to get suggestions from the associated counsel.

The Court:

Yes.

Mr. Harris:

While I am letting one partner of mine work on that, I will identify some documents, Judge.

The Court:

All right.

Mr. Harris:

This is merely for identification, Mr. Burr.

Mr. Burr:

That is all right, sir.

Q. I show you a book on which is printed "Rule and Regulations Governing the Safety of the Tennessee Coal, Iron & Railroad Company, Ore Mines and Quarries, March 7, 1937," and down underneath, "Workmen".

I will ask you to examine that and tell me whether that is what it purports to be.

A. It was of this date. I believe there have been some later issues of this safety rule book, but I don't recollect what date

Mr. Burr:
May I suggest you mark them for identification?

Mr. Harris:
I am going to have them marked.

This is the latest one I have, Mr. Burr.

Q. Would it be much trouble, Mr. Ball, for you or Mr. Burr to get me copies—

Mr. Burr:
We will be glad to give you any copies we have.

Mr. Harris:
Will you mark that for identification Defendant's Exhibit Number 1?

The Clerk:
Defendants' Exhibit Number 1.

(Thereupon the said document, entitled, "Rules and Regulations Governing Safety, Tennessee Coal, Iron & Riajroad Company, Ore Mines and Quarries, March 7, 1937, Workmen," was marked "Defendants' Exhibit No. 1.")

Q. Mr. Ball, I show you another book similar to the first. On the back of it is printed, "Rules and Regulations Governing the Safety of Employees of the Tennessee Coal, Iron & Railroad Company, Ore Mines and Quarries, January, 1926, Workmen," and both of them have the safety legend, "Safety First—T. C. I.," and ask you if that is what it purports to be?

A. Yes, sir.

The Court:
1926?

The Witness:
Yes, sir.

Mr. Burr:
What was the date of the first one?

Mr. Harris:
1937. 1937 was my first one, and the next one is 1926.

The Court:
What is the exact date?

Mr. Harris:
January, 1926. Will you mark that for identification Exhibit Number 2?

The Clerk:
Yes, sir.

(Thereupon a document entitled "Rules and Regulations Governing the Safety of the Tennessee Coal, Iron & Railroad Company, Ore Mines and Quarries, January, 1926, Workmen," was marked "Defendants' Exhibit No. 2.")

Q. I show you another book on which is printed, "Plan of Industrial Relations in Ishkooda Division of Tennessee Coal, Iron & Railroad Company, adopted by the Employees February 2, 1934, and Accepted by the Management, Ishkooda Division of the Tennessee Coal, Iron & Railroad Company February 2, 1934."

Are you familiar with this book?

A. Yes, sir. This is—

Q. I am not going to ask any questions about it.

A. Yes, sir; this is correct.

Q. I am not going to ask any questions about it. I just want to identify it.

A. Yes, sir. There was one for each division at that time.

Mr. Harris:
Will you mark that for identification?

The Clerk:
Defendants' Exhibit Number 3.

(Thereupon the said document entitled "Plan of Industrial Relations in Ishkooda Division of Tennessee Coal, Iron & Railroad Company, Adopted by the Employees February 2, 1934, and Accepted by the Management of the Ishkooda of the Tennessee Coal, Iron & Railroad Company February 2, 1934," was marked Defendants' Exhibit No. 3.")

Q. Then I show you another one on which is printed "Ore Mines Incentive Plan, Memorandum of Change from Base of Gross Tons (2240 pounds) to Net Tons (2000 pounds) Tennessee Coal, Iron & Railroad Company, Ore Mines and Quarries, January 1, 1939.

A. Yes, sir, I remember this very well. That is what it purports to be, yes.

Mr. Harris:
Will you mark that Defendants' Exhibit Number 4 for identification?

(Thereupon the said document, entitled "Ore Mines Incentive Plan, Memorandum of Change from Base of Gross Tons (2240 pounds) to Net Tons (2000 pounds) Tennessee

Coal, Iron & Railroad Company, Iron Ore Mines and Quarries, January 1, 1939", was marked for identification Defendants' Exhibit Number 4.)

Q. Now, on the—Mr. Lipscomb calls my attention to the fact that in framing my question I didn't use the same identical question. When I said about the industrial plan, I should have asked if it was what it purported to be.
A. Yes, sir, that is right.
Q. Now, when you went on the incentive plan—

Mr. Harris:
Would Your Honor mind if I stood up occasionally?

The Court:
No.

Mr. Harris:
To rest myself?

The Court:
No.

Q. When you went on the incentive plan, who determined whether or not to go on the incentive plan, the employees or the management?
A. In the final analysis the management had to determine that, because the Smelters Union practically refused to try out the plan.
Q. Now, at the time—it was in 1936, I believe it was, Mr. Ball, wasn't it?
A. Yes, sir.
Q. At the time the incentive plan was proposed, how many men constituted a drill crew?
A. You mean a drill crew or a regular mining crew?
Q. Well, thank you. I don't know it anything like as well as you do, and never can, of course. If I use the wrong word, don't hesitate to call my attention to it.

A. The standard mining crew that we had in a working place at that time had eight or nine men. It varies. It had increased from an average of 7 men during the depression period, because we were trying to make as much work available as possible for our employees at that time, and over a period of years, you might say the depression years, the crew gradually increased from 6 or 7 men up to—

Q. Nine men?

A. About 9 men, yes, sir.

Q. Now, when the incentive plan—Will you name those nine men, if you can?

A. Yes, sir. There was what is known first as a section foreman; there were two drill runners, a drag operator, two drill helpers, I believe,—that makes seven, and a haulage engineer where we had auxiliary hoists. Have you counted that for me?

Q. I was checking them. I was listening to them rather than counting them.

A. Yes, sir.

Q. How about the muckers?

A. I should have said one drill helpers, and that would make—

The Court:

Seven.

The Witness:

Yes, and then two—one drill helper and two muckers. I believe that would make the nine men.

Q. Now, then, under the incentive plan—Mr. Brodie has been counting it and he says it makes eight.

A. Just add another mucker there.

Mr. Harris:

See what your count makes.

Mr. All:

Eight. Let me see. A section foreman, two drill men, two helpers,—five—

The Witness:

You add one helper to make up the nine men.

Q. Wasn't it a drill helper as a matter of fact?

A. It may have been; it may have been a drill helper.

Q. It was my understanding there were two drill helpers at that time?

A. Yes.

Q. Then, under your incentive plan that contemplated cutting down a mine crew from nine to seven didn't it?

A. Yes, sir,

Q. And that was one of the things that the Union men objected to, wasn't it?

A. That was part of the proposed plan, and I presume that was one of the things.

Q. When that plan went into effect, I believe you said yesterday you figured the normal production of a crew was about 168 tons?

A. It was for the incentive plan.

Q. That is what I mean, yes, sir.

A. Yes, sir.

Q. And you figured—

A. That was 100 percent performance.

Q. I am coming to that.

A. Oh, yes.

Q. I will get to that.

A. Yes.

Q. Then the 80 percent basis which constituted the task you would expect the men to fulfil before they got the benefit of the incentive plan—

A. Yes..

Q. —it amounted to about 134.8 tons?

A. About 134.4.

Q. 134.4?

A. Yes, sir.

Q. Now, how did you figure what price per ton—How did you arrive at your figures on the number of tons they should be paid for?

A. Can I show that on the blackboard?

Q. Well, I think if it is agreeable with the Court and these gentlemen you can rub off some of that on the blackboard if it has been copied.

Mr. Burr:
He can redraw it and furnish a copy later.

Mr. Harris:
It is satisfactory with me. He can make a better drawing—

Mr. Burr:
On a piece of paper.

Mr. Harris:
—than I can anyhow, and it is satisfactory with me.

Mr. Burr:
It is satisfactory with me.

The Court:
How about Mr. Brodie:

Mr. Brodie:
That is all right.

The Court:
Is that all right with you gentlemen?

Mr. Smith:
Yes, sir.

Mr. Burr:

I think we can give you a picture.

A. I would like to check your question. You want to know the basis on which we figured the 168 tons?

Q. Yes.

A. Our studies made by our mining engineers and industrial engineers show that a fair base to start from would be three tons per man hour. That is the base,—three tons per man hour. There are seven men in the standard crew; seven men such working eight hours being 7 time 8, or 56 man hours. Therefore, 56 times 3 equals,—6 times 3 are 18,—168 tons as perfect performance, or as 100 percent performance.

Eighty percent was the figure adopted at which we would start to pay on the incentive basis. Eighty percent times 168 equals the 134.4 tons as the base tonnage.

Q. Now, then, for that base tonnage 134.4 tons, what were the members of the mining crew paid?

A. They were paid on a percentage basis times their hourly or their daily rate. For instance, if this crew loaded their 168 tons, that would be 20 percent over the base, of which 50 percent went to the company, and 10 percent to the men. Therefore the earnings,—if they average 168 tons over the pay period,—would be 10 percent. Each man's daily earnings—rather, the pay period earnings were increased 10 percent. He had his guaranteed rate plus a 10 percent increase in that rate.

Mr. Burr:

I think he wants to know first how the guaranteed rate was fixed.

Mr. Harris:

That is all right. He answered what I had in mind.

Mr. Burr:

All right.

Q. The way you answered I think was a little confusing; that the men got 10 and the company got 50 percent. What you mean was the company got 50 and the men got 50?

A. Yes.

Q. And that operated to produce a ten percent increase in the men's pay?

A. Yes, sir.

Q. Now, suppose that instead of producing 168 tons they produced 200 tons.

A. Your percentage increases more.

Q. Would you percentage of increase remain the same, or if they produced more would the percentage diminish or would it increase?

A. No; it stays on the same ratio; that is, if they would double that tonnage they would get a corresponding increase. If the tonnage went up this figure of ten percent would go to fifteen or twenty percent, dependent on whether they loaded more than 168 tons.

Q. To express it another way, if they produced 20 tons more they would get the same price per ton for that extra 20 that they would get if they produced 50 tons more at a price per ton?

A. Oh, yes. I think I see what you mean. If they produced, 50 tons more—

Q. Yes.

A. —would the proportionate increase in their wages be the same as if they produced 100 percent more?

Q. That is right.

A. That rate remains the same.

Q. And it wouldn't result in a diminished price per ton of ore produced?

A. Oh, no; that percentage was added on their daily wage.

Q. Yes. There is one other thing, and then I think I am through, Judge.

Somewhere in your testimony, my recollection either as to these tickets,—and if I am wrong, you correct me—

A. Yes, sir.

Q. —or somewhere else, that it always showed eight hours. Do you recall that? I—Was that with reference—

A. No, sir. That was on the underground foreman's distribution sheet where he kept the time of his men, put down their names and check numbers and so forth.

Q. Now, I don't understand that, quite, Mr. Ball. You say it always shows eight hours. Would that mean if he stayed there six hours it would still show eight hours, or if he stayed there 9 it would still show eight hours?

A. Yes. They didn't keep any accurate time at the working face, and as the rates of pay and the day's work was computed on an eight-hour basis, he put down eight hours.

Q. That is all right. Thank you.

A. That was to show he did not leave the mine.

Mr. Harris:

Thank you. I think that is all I care to ask him, Judge.

The Court:

All right, Mr. Brodie.

Mr. Brodie:

I just have a few questions.

(By Mr. Brodie):

Q. Mr. Ball, there were a few things in the history of the mining on Red Mountain I didn't quite understand. I wonder if you will explain to me a little more fully. Can you tell me approximately when iron ore mining started on Red Mountain—

A. Oh, it was—

Q. —on a commercial basis?

A. Well, way back in the Seventies. You will have to check that figure, but it was a great many years ago.

Q. What kind of mines were they? Were they the same type of mines as you have today, or were they strip mines?

A. They were known as outcrop workings in which the overlying cover was stripped off and you had the same thing very much as an open pit mine.

Q. And in those days I assume the men came right up to the pit and started right in working?

A. Yes, sir.

Q. Have you any idea how much the men were paid in those days?

Mr. Burr:

We want to note an objection.

A. No, I haven't.

Mr. Burr:

We might get into the price of flour back in those days.

The Court:

That is too far back, I think, Mr. Brodie.

Q. Can you tell me how they were stripped? Were they stripped by hand?

A. In those days there was very little mechanical apparatus used in doing that work. It was done with pick and shovel and wheel barrows.

Q. Am I right when I say a strip or open pit mining was discontinued when the covering became so deep it was no longer economical to remove it?

A. Yes, sir, that was a general rule.

Q. And approximately at what point, with respect to depth of cover, would determine whether it was economical to remove it?

A. That would depend on how much erosion, which would come back to the question of the depth of cover.

Q. Was it about 28 or 30 feet?

A. The depth of cover varies. I can show by a sketch what I mean by that. This is, say, your surface contour of your Red Mountain Ore seam as a rule, a cross section through Red Mountain in general,—something like that, that being your ore seam. (Illustrating on blackboard.)

Now, when this covering in here got so heavy that it was uneconomical to handle it then—when they took this portion of the cover off this ore seam in here was mined with open pit methods. From that point on they would go underground when the covering got heavy. For a distance down from the outcrop of 300 feet,—that is an average figure,—the ore had been weathered and was what is known as soft ore or semi-hard ore.

Q. Then you struck hard ore?

A. Yes, sir.

Q. That had not been exposed to the elements?

A. That is right.

Q. Did you start going underground when you struck the hard ore?

A. No; there was a good deal of that 300 feet that was mined in underground working, that soft ore, with headings.

The Court:

You mean the hard ore too?

The Witness:

The soft ore and hard ore too.

Q. Approximately when did they begin to sink a slope to go underground?

A. Oh, different slopes on Red Mountain were opened at different times. I do not recollect just what date each slope was opened. I could get those figures from the books.

The Court:

Were you there then, Mr. Ball?

The Witness:

No, sir.

Q. When the mines first began to go underground, if I understand it correctly, they began to sink a slope along the seam?

A. Yes, sir, it followed the ore seam.

Q. And as they sank the slope they removed ore?

A. Oh, yes.

Q. That is, the slope was in the ore?

A. The slope was in the ore itself.

Q. And how far would the slope progress normally, do you know?

A. There would be varying figures on that depending on the conditions of the times, whether they were in a depression or whether the work was going on and so forth.

Q. Do you have any maps which indicate the distances the slopes progressed annually?

A. Yes, I think we have those records going back a number of years.

The Court:

I thought it was understood yesterday he was going to bring them for the past few years, and there was an understanding they would be marked—

Mr. Brodie:

Well, Mr. Harris referred to them since 1936. I want to know if they had them prior to that time.

The Court:

How far back are you going?

Mr. Brodie:

Well, I don't know. I just asked the question for the purpose of information.

Q. Now, from the open cuts, how was the ore removed?

A. By blasting and by handloading into tram cars.

Q. And then when you went underground how was the ore removed?

A. By loading into tram cars.

Q. What is the difference between a tram car and a skip? Is there any—

A. A skip is the mine car or you might call it container which brings all the ore out of the mine through the mine slope. The tram cars are the smaller cars which are in each working place.

Q. Now, when was the first skip installed?

A. In 1902.

Q. I think you were responsible for that, were you not?

A. No, sir. My father was.

Q. Oh. I see. And how far from the entrance had the heading advanced at the time of the installation of the first skip?

A. Well, that would vary for each mine on Red Mountain. The mines in those days were very, very shallow.

Q. And did the men talk down into the mine or did they go down in a skip?

A. In the majority of the cases they walked in the mines, because the mines were very shallow in those days. You could go through and inspect four mines in half a day then whereas now it will take you two days to make a really good inspection of our large iron ore mines.

Q. In going down this ore seam, I take it occasionally you would strike a fault?

A. That is correct.

Q. What would happen when you would hit a fault?

The Court:

Why is that material, Mr. Brodie?

Mr. Brodie:

Well, if Your Honor please, the question here is what happens at these mines, and I would like to—we have gone into the picture to some extent—

The Court:

Has any fault been shown during the period since 1933? We are not going into the whole history of the mining industry here in this district.

Mr. Brodie:

No, I am not endeavoring to go—I just have one or two questions.

The Court:

All right. I don't want to cut you off, but I just want to get down—All right.

A. This occurs in the ore seam, and your ore would run up against a fault plane, a down throw fault. Down throw faults are more general on Red Mountain. Your ore seam looks like this (illustrating on blackboard). There would be a displacement just like you did your hand and did that (indicating).

Q. You would tunnel around your fault?

A. Yes, sir, on a larger scale. What would happen there, you would come back here and put in what is known as a rock slope and go down and hit that ore, connect with the old slope.

Q. Mr. Ball. you have described the various headings and stopes used in mining ore. I understand the technique in planning the headings has changed somewhat in the history of mining and the intervals between the headings have been changed. Is that right?

A. Yes, sir.

Q. Can you tell me what the intervals were when you first went underground approximately?

A. Seven feet.

Q. What are the intervals now?

A. 220.

Q. Have those intervals progressively gotten larger during the years?

A. Yes. When we first went on mechanical loading, we increased the intervals from 70 feet to about 140 feet, and then gradually increased them to 220 feet.

Q. There was one answer you gave to one of Colonel Harris's questions I didn't quite understand. I think your answer was that the rates for the different ocupations are different?

A. Yes.

Q. Now, have the rates for the same occupation always remained the same, or have they changed throughout the years?

A. They have been some adjustments and changes as we went from the handloading to the mechanical mining. Men who were previously known as muckers are called section helpers. There were some little adjustments in those wages, that is, relative adjustments.

Q. Yes, sir. I am not sure that I make myself clear. What I want to know is this: Has a drag operator, for example, ever since the mechanical loader was installed, always been paid at the same price, or have those rates varied throughout the years either up or down?

A. Well, his rate has been—the relative differential between his rate—

Q. No, I am not talking about that. I am talking about his absolute pay, the amount of wages he got.

A. Yes, the scale of wages has changed over the years depending on business conditions.

Mr. Brodie:

Thank you. That is all, thank you, Mr. Ball.

The Court:

Anything further?

Mr. Burr:
Have you anything?

Mr. Burr:
Yes, sir. I don't know whether Judge Smith has anything or not.

The Court:
Judge Smith?

(By Mr. Smith):
Q. Mr. Ball, your company didn't sign but one contract with the A. F. of L.—American Federation of Labor Union, did you?
A. Prior to what time, Judge?
Q. Well, the year 1939 there was a contract signed, on June 29, 1939, with the Red Ore Mine Workers. That was before the contract of 1940. As I understand, there was a contract signed in 1940. That was just before this act went into effect; is that a fact?
A. The first contract with the Red Ore Miners was signed, I believe, in October, 1939.
Q. This—
A. It was during the year 1939.
Q. Well, I will show you this to refresh your recollection. Here seems to be the copy signed by you and Mr.—
A. Vance.
Q. Mr. Vance?
A. Yes, sir.
Q. It gives the date of June 29th.
A. June 29th, yes, sir.
Q. That was signed by the Red Ore Miners. That was before—

The Court:
Is that in 1938 or 1939?

Mr. Smith:
1939.

The Witness:
June 29, 1939. As I remember Sam Roper signed this.

Q. They went under the name at that time of Red Ore Miners Union?

A. Yes, sir.

Q. And Mr. Roper, who is an officer of the A. F. of L. was an officer and signed this on behalf—

A. Yes, sir.

Q. —of the Red Ore Miners?

A. Yes, sir.

Q. Before that contract was signed, Mr. Ball, I believe they had a memorandum of a proposed—proposed changes in the contract. You referred to three discussions that you had with reference to the portal to portal proposition, I believe, in your testimony to Mr. Burr?

A. Yes, sir, with the Smelters Union.

Q. Now, in this proposed contract furnished by the Red Ore Miners Union, I see here this paragraph was in their proposal:

"That the workday shall begin when the workers have checked in at the portal and end when they check out at the portal. The workday shall not include the lunch hour."

A. I do not recognize that paper.

Q. Don't recognize it? The marks I have made on there in pencil are independent of that paper.

Mr. Burr:
We never had any agreement like this.

Q. Do you recall any discussion of putting in the portal to portal in the negotiation of this—

A. No, sir.

Q. —1939 contract?

A. No, sir.

Q. Now, there was another contract negotiated in 1940?

A. I believe so, a renewal.

Q. Just some time before this Wage and Hour Law went into effect; I think the first part of October?

A. I believe that is correct. I do not remember the date.

Q. Did you have any discussion with the Red Ore Miners Union with reference to the portal to portal at that time?

A. No, had no discussion.

Q. But in that contract you did have a provision why, if you had to put in the portal to portal, you made provision for that?

Mr. Burr:

What contract are you asking about?

Mr. Smith:

1940 contract.

A. I don't know which one you are referring to. Show me the contract.

Mr. Burr:

There was a contract made after the ruling.

Mr. Smith:

The contract wasn't made after the ruling. It was made just before the law went into effect, the last one.

The Witness:

There is nothing in that contract about portal to portal.

Q. Nothing in there?

Mr. Burr:

Just for your information, there is something in both the contracts—

The Witness:

The last one.—

Mr. Burr:

—negotiated this year.

Q. That was the last contract, signed in '40?
A. '41.
Q. The early part of '41?

Mr. Burr:

In May.

A. In May.
Q. There is something in there about that?
A. Yes, sir, there is something —

Mr. Burr:

We want the contract to speak for itself. We have the contract here if you want to offer it.

Mr. Smith:

It is in evidence.

Mr. Burr:

No, we didn't offer that. There was one with both unions. We will be glad to give them to them if they want them.

The Court:

I don't see the necessity of going into the '41 contracts.

Mr. Burr:

It will, I think, become relevant later.

The Court:

May be.

Mr. Smith:

Yes, sir. Well, we can get to that later on, if Your Honor please.

Q. So, you don't remember any memorandum when the 1939 contract was negotiated?

A. No, sir.

Q. Now, Mr. Ball, you have other officers or agents of the company that meet with these different unions and discuss their problems?

A. I have all my three superintendents who meet with their local committees at their division.

Q. When you referred to having three discussions with reference to the portal to portal proposition that was when you were present and having the discussion, was it?

A. Just give the time. I don't quite get your question.

Q. Well, at any of those three times you say you had a discussion with them.

A. I had no discussion—I presume you mean with the American Federation of Labor Committees regarding the portal to portal?

Q. Yes, sir.

A. I had no discussion with them regarding the portal to portal proposition.

Q. How about the C. I. O. union?

A. I mentioned the three times that question came up,

Q. And you never at any time mentioned the portal to portal when you were negotiating a contract with the Red Ore Miners in 1939?

A. No, sir. That question never came up. The contract they received at that time was practically the same as the one they had known as the contract with the Brotherhood of Captive Mine Workers. It was the same contract except they changed the name.

Q. Do you know what other officer or agent of your company conferred with or had any discussions with the Red Ore Miners Union?

A. I don't know; I don't know.

Q. You don't know?

A. I don't know who they could have discussed that with.

Q. You don't know whether they discussed it with anybody else that met with them with reference to the portal to portal?

A. Not signing any contract. Any discussion or proposal before signing a contract would be taken up with me and the committee.

Q. Yes, sir. But you don't know—you did have some other people that went out and discussed matters with reference to the contract and the relation between the company—

A. No, no.

Q. And between—

A. When there was a contract to be signed or to discuss the negotiations were between myself and the committee.

Q. And not discussed with anybody else?

A. I don't know what your committeemen—who they discussed it with.

Q. Your agents?

A. My superintendents have no authority to sign contracts.

Q. I am not talking about signing contracts.

A. My superintendents are my agents.

Q. I mean negotiations leading up to the signing of a contract; the proposal they offer and proposal you offer, any preliminary arrangements?

A. No; no preliminary arrangements are made prior to signing a contract—

Q. You don't have a discussion?

A. —except with myself.

Q. Except with yourself? You are the only man? Now, Mr. Ball, with reference to the check-in system, as I understood you to say in your direct examination, that they went to the bath house first?

A. Yes, sir.

Q. And then they went to the check house?

A. Changed clothes and then went to the mine portal and put their brass check in at the tally house.

Q. Brass check?

A. Yes, sir.

Q. Now, after they get their brass check there—

A. They don't get them. They deposit them.

Q. Deposit them. After those checks are hung on the—

A. Work board.

Q. —word board, those men are under the supervision of the company and subject to orders then and there?

A. They are only subject to supervision in regard to their behavior. We couldn't have—

Q. Aren't they—

Mr. Burr:

Let him finish.

A. We couldn't have any crowding and rough stuff in the skip as a safety measure.

Q. I am not talking about rough stuff. I am asking if you have any right to assign them to particular work—

A. The only instructions we—

Mr. Harris:

May I interrupt?

The Witness:

Pardon me.

Mr. Harris:

I think that calls for a conclusion on a point the Court has to decide.

Mr. Smith:

I want to see what it is so the Court can decide it,—give the Court some information.

Mr. Harris:

As far as our client is concerned—as I understand, he is not putting on his evidence, and I am not absolutely sure—

The Court:

In other words, it is a question for the Court to determine whether or not they had supervision—

Mr. Harris.

Supervision of the company.

The Court:

—at any particular time.

Mr. Harris:

Yes, sir. So bring out the facts.

The Court:

Bring out the facts.

Q. Well, I will ask you, suppose after he hung up his check on the hook and was on his way to the man skip or on the way to get his carbide—

Mr. Burr:

He gets his carbide before he catches the skip.

Mr. Smith:

I know, but I am talking about the time he hangs up his check—

The Witness:

He doesn't hang up his own check.

Q. I know you have an officer—a man standing behind who hangs it up.

A. I am just correcting you. He don't hang up his check.

Q. Let's don't get technical. We understand you have a man there and he hands the check to him and the man puts it on the board. That is a fact?

A. Certainly.

Q. Let's get away from that. Any time he goes out after that, after he puts his check on the hook, the company can direct where he should go and what he should do around that mine?

Mr. Harris:

We object to that question. We are not interested in what they can do. We are interested in what they do do.

The Court:

Let's get what they do do.

Q. I will ask you what they do with reference to whether they shall perform duties before they go in the mantrip or after they get in the mantrip they are instructed as to any duties they shall perform?

A. In the mine.

Q. They perform no duties at all before they get in the mines?

A. No.

Mr. Harris:

We object to that question. It involves a conclusion.

Mr. Burr:

We don't object to it.

The Court:

I sustain it.

Mr. Smith:
What is the ruling?

The Court:
I sustain it.

Mr. Burr:
You don't sustain it as to us? We don't object to it.

The Court:
I sustained the objection. You know who made that objection.

Mr. Burr:
All right, sir.

Q. Now, in that rule book that Mr. Harris was asking you about with reference to the conduct of the miners, rules that he has to abide by, your rules cover his conduct after he gets on the company's premises, don't they?

A. We have general plant rules.

Q. They apply to him? If he misbehaves you can fire or penalize him or anything you wish, can't you, before he gets to the skip?

A. It depends on whether he violates the law of the community.

Q. I say the rules of your company.

A. We have plant rules, yes, sir.

Q. Those govern him from the time he comes on your premises?

A. No, sir.

Q. From the time he hangs up—your man hangs up his tag; how about that?

A. No, sir.

Q. No rule?

A. The only rules we have is good conduct before he loads into that skip. That is a safety measure. We will not have any pushing or shoving.

Q. You regulate him until he gets to the mine?

A. He would be refused admittance to the mine if he pulled any of that stuff.

Q. You have a rule in there if he had a fight you can fire him or lay him off?

A. If he had a fight he would probably be arrested by the local officers.

Q. You have a rule, don't you?

A. We have a rule, yes, sir, in the rule book.

Q. Now, let me get this straight and I will be through, Mr. Ball. With reference to the A. F. of L. as to when they came into the picture as a union down there, when did you first deal with them as the A. F. of L. affiliates?

A. I believe they wrote the management a letter stating they wanted a new contract; that they had changed the name of their organization and had become affiliated with the American Federation of Labor. I believe that is a matter of record.

Q. That was some time after they signed the 1939 contract?

A. No, sir, that was prior to signing the 1939 contract.

Q. When the '39 contract was signed, it was signed as the Red Ore Miners Union?

A. The Red Ore Miners Union is an affiliate of the American Federation of Labor.

Q. But before they became an affiliate, did they have any—

A. They were called the Brotherhood of Captive Mine Workers.

Q. You don't know who the A. F. of L. were composed of at the time of their organization, as to what class of labor down there, do you, how they had been affiliated before that time?

A. The same committees who acted in the Brotherhood of Captive Mine Workers informed the management through myself that they had changed the name of their organization and had become affiliated with the American

Federation of Labor. They were the same people, the same committeemen.

Q. Now, in this last—in the '39 contract, it was signed as the Red Ore Miners Union by Mr. Roper, who was in fact president of the Alabama Federation of Labor?

A. I think that was the first contract.

Q. Now, in the next contract—that contract was signed as an A. F. of L. Union?

A. I don't remember whether it was or not. I think they are still known as the Red Ore Miners Local. That is what the understanding is when we have our meetings with them.

Mr. Burr:

You are probably talking about the contract made in May of this year.

Mr. Smith:

The contract made May 9th.

Mr. Burr:

1941?

Mr. Smith:

Yes, sir.

Mr. Burr:

If he wants to offer that contract, we have no objection. We didn't offer it because we didn't think at that time it was material.

Mr. Smith:

We don't offer it. It was after May 1, 1941.

Mr. Burr:

We think it is relevant.

Mr. Smith:

You can introduce it.

Mr. Burr:

Don't ask about it if you are not going to offer it.

Mr. Smith:

Mr. Burr, I am not asking about the contents of the contract. I am trying to fix the status of the A. F. of L. as to which there is some confusion.

Mr. Burr:

I don't think there is any confusion about it at all.

Mr. Smith:

There may not be to you.

Mr. Burr:

I am not bragging.

The Court:

It was formerly the Captive Miners?

The Witness:

Yes, sir, the organization known as the Brotherhood of Captive Ore Mines changed their name to the Red Ore Miners Local and became affiliated with the American Federation of Labor.

Mr. Smith:

That is what I am trying to get straight. My mind may not work as fast as some of these gentlemen's.

That is all.

The Court:

Is that all for Mr. Ball?

Mr. Burr:

I have some questions on re-direct.

The Court:

All right.

Re-Direct Examination.

(By Mr. Burr):

Q. Mr. Ball, in reference to negotiations for contracts with your employees, do all those matters come to you?

A. Yes, sir, they start—

Q. Start with you?

A. Yes, sir.

Q. And after discussing it with them you take them up with the—

A. Manager of Industrial Relations.

Q. —Manager of Industrial Relations, and if necessary, do you go higher to the president of the company?

A. Yes, sir.

Q. And that is the way the policies are determined and worked out?

A. Yes, sir.

Q. Your superintendents don't negotiate them or have anything to do with carrying the negotiations on or reaching the ultimate decision?

A. None whatever.

Q. And you sit in or do you sit in in reference to it from the time it starts until it is concluded?

A. I do.

Q. You referred to—I will run over this as rapidly as I can. In answer to Mr. Harris' question about the plants you have supervision over, you referred to the ore mines and the Number 5 Limestone mine and the dolomite quarry. What kind of mine is the dolomite quarry, and where is it located?

A. An open pit quarry.

Q. An open pit quarry?

A. Yes, sir.

Q. And where is it located?

A. About a mile southeast of Bessemer,—southwest of Bessemer, it is.

Q. You were asked by both Mr. Harris and Mr. Brodie some questions in reference to the way the mines were started back in, I think you said, as far back as in the seventies, probably, when mining first started.

Could you give us the approximate date,—not the exact date of any mine, but the approximate date when the use of mining by the slope and the modified pillar and stope system that you have described,—when did that approximately begin in general use?

A. 1915.

Q. In 1915?

A. Yes, sir.

Q. When did your begin installing in the Tennessee Company's mines the mechanical loading system?

A. 1915.

Q. And when was that entirely completed?

A. 1923.

Q. All right, sir. Now, since that time has the system in mining been substantially the one you described to Colonel Harris yesterday?

A. It has.

Q. That is the one—

A. I rubbed that one out.

The Court:

When did you say that machine mining started? In 1917?

Mr. Burr:

Started in 1915.

The Witness:
'15.

The Court:
And completed in 1923?

Mr. Burr:
Yes, sir.

The Witness:
That is right.

Q. That includes the iron ore mines as well as the limestone mine?

A. Yes, sir.

Q. I see. All right, sir. Now, you were asked yesterday about the various appliances and tools that were used by the miners. As I recall it, you named the tripod drill and the drill steel that operates with that drill which came in the sizes you have told us about, and the jackhammer with the short steel?

A. Yes, sir.

Q. And the wedges, the C-hooks and the hangers?

A. Yes, sir.

Q. And the skidder block?

A. Skidder block.

Q. That is a part of—the air pipe hose and the rubber hose?

A. Yes, sir.

Q. And the quarrying bar?

A. Yes, sir.

Q. That is, as I took them down, what you were asked about?

A. Yes, sir.

Q. Now, I will ask you if all those appliances and tools are the ones that used in the working place in producing the ore?

A. Yes, sir, at the working face.

Q. At the working face?

A. Yes, sir.

Q. And none of them are used anywhere else but the working face?

A. Your quarrying bar is used all over the mine.

Q. I know, but the ones you mentioned and described on yesterday are those that produce the ore?

A. Yes, sir.

Q. The quarry bar is used for testing the roof?

A. Yes, sir, and taking down—

Q. Loose rock?

A. Yes, sir.

Q. Now, I want you to explain to the Court how, prior to May 1, 1941, the company provided those tools for the men who used them. For instance, let's take up the tripod drill. Where was that tool placed and by whom was it placed?

A. It was originally put in the heading by company men. It was lowered down in the mine on a material trip.

Q. All right, sir. Now, in reference to the drill steel.

A. The same way, lowered in the mine on a material trip and carried to the place by locomotive haulage.

Q. The jackhammer and short steel?

A. The same thing.

Q. The wedges, C-hooks and hangers and skidder blocks?

A. The same way as the—

Q. The air pipe—

A. By the material crew.

Q. The air pipe and rubber hose?

A. The same way; all material, timber, rails,—

Q. Timber and rails?

A. Yes, sir.

Q. Were the men required to transport any of that material to the working place?

A. They were not.

Q. Could you name the composition—I mean the number of the crews that handle that? What do you call them?

A. Oh, they are called service crews.

Q. Service crews?

A. Generally six or eight men under one foreman.

Q. Where did the service crew get this material from? Start with the beginning and tell us—

A. At the bottom of the mine. The material was handled into the mine to the mine slope by what are known as material handling crews. After the material reached the bottom and was unloaded at the material handling point, then the service crews—

Q. Let's stop there. I will go back a little further. The material came down the main haulage way?

A. Yes, sir.

Q. Who handled that?

A. The material foreman.

Q. Where did the material foreman get it?

A. Got it at the mine portal. If they were timbers they came from the timber yard, and drill steel from the blacksmith shop by truck, and the other supplies from the supply house by truck.

Q. Would the same crew who had charge of taking it in the mine bring it up to the portal of the mine?

A. No, sir.

Q. What men had charge of bringing it to the mouth of the mine?

A. The surface crews.

Q. The surface crews?

A. S-u-r-f-a-c-e.

Q. They never go in the mine?

A. No, sir.

Q. You have a foreman of the surface crew outside?

A. Yes, sir.

Q. And he looks after delivering all needed material to the mouth of the mine?

A. Yes, sir.

Q. Then it becomes the duty of the service crews to haul it down in the mine?

A. That is right, the material handling crew.

Q. After the material handling crew have delivered it down into the mine, where do they put it?

A. They unload it at the material handling point which is in the vicinity of the man unloading station.

Q. How far from it?

A. From 25 feet to 100 feet. It varies depending on the location of the man unloading station.

Q. After all this material is taken there, how is it distributed?

A. The service—s-e-r-v-i-c-e—foreman and his crew of six or eight men load this material on tram cars and it is hauled to the working places by the electric locomotives and it is there unloaded.

Q. Unloaded there for the use of the men?

A. Yes, sir.

Q. Who is it unloaded by?

A. Service crew.

Q. And taken right into the working place?

A. Yes, sir.

Q. Now, if there is any repairing or resharpening of the steel or equipment that is taken in that way, how is that handled?

A. The miners put it on the car, and then the service crews come and pick that up and carry it back to the material unloading point and it is taken out of the mine on a material handling trip.

Q. You say the mine crew put it on the car?

A. Yes, sir.

Q. What car or whereabouts?

A. On the tram car. They will throw the steel on a tram car.

Q. Where is the tram car?

A. Right there at their working place.

Q. Right there at their working place?

A. Yes, sir.

Q. Is that work done within the eight hours that they are paid for?

A. It is.

Q. All right. After it is carried out, any material that needs resharpening or repairing is carried outside, how does it get back inside? The same way it got in originally?

A. Just reverse the operations. The surface crews take it from the mine entrance to the blacksmith shop and bring it back.

Q. Your service crews handle it getting it out to the mouth of the mine?

A. Yes, sir.

Q. Over what period of years has that custom been in observance in your mines of handling it that way?

A. Oh, a great many years. Whenever you have an underground mine you must take material in at all times. The amount of material we take in now is greater than in previous years due to the fact our mine workings have increased and the number of working places have increased since we went on the system of mechanical loading in 1915. So, I would say our general practice today is similar to what it was in 1915 with reference to handling material.

Q. So that same system, of course, increased, or in times of depression may be decreased, has existed ever since you have been there?

A. Yes, sir.

Q. I believe you said—I think you cleared this up later,—that whenever the mine foreman learns that there is a vacancy in a crew by some man not checking in by depositing his brass check he supplies that from the service crew after he goes down in the mine?

A. Yes, sir.

Q. And, of course, when that man is supplied, the first day he necessarily gets to the working place late?

A. He would have to.

Q. His time runs that day just as if he had been a service crew man?

A. Yes, sir.

Q. But if he stays on the job the next day and succeeding days, he then takes the occupational rate—

A. The occupational rate.

Q. And the time of the other man?

A. That is right.

Q. And he doesn't, on the second day, have to report or go to his place where he would have gone as a service man and wait until he is sent back?

A. No, sir. His foreman or head miner would tell him before the shift was over he would want him for the next day.

Q. I see. Do you recall Exhibit Number 12 there? It is the minutes of the meeting that you held when the objections of the Smelter Union to the incentive plan were under discussion.

A. Yes, sir. I believe that was on June 10, 1936, some time in June.

Mr. Burr:

Will you let me have that exhibit, please, sir?

(Thereupon a paper was handed to Mr. Burr by the Clerk.)

Q. Referring to this exhibit, which is T. C. I. Exhibit Number 12, on page 15, that Mr. Harris referred to on yesterday, the Union's objection to the matter was stated this way:

"Day's work to consist of eight hours, 6:30 A. M. to 2:30 P. M. and 6:30 P. M. to 2:30 A. M., with no time off for lunch."

What had been the hours? Had the hours been different from that or not? If so, in what way had they been different from what the union asked?

A. The first ones get in around 6:30 or 7:00, and the first ones came out about 3:15.

Q. When did the work begin in the mine?

A. 6:45.

Q. 6:30 A. M. to 2:30 P. M. would be how many hours?

A. With the lunch period—

Q. It is eight hours with no time off for lunch?

A. No time off for lunch.

Q. So the only suggestion they made was to allow them to have lunch?

A. Not take lunch.

Q. And your answer is:

"Our answer to that is no. Our men go in the mines about 6:05 A. M., and they get to their working places about 6:45 A. M."

What did that cover?

A. That covered all the men in the mines.

Q. Not one individual at all?

A. No, sir.

Q. In other words, the first skip began at 6:05?

A. Yes, sir.

Q. And the last skip—

A. So all the men were at their working places at 6:45.

Q. That was the arrangement and has always been the arrangement?

A. Yes, sir.

Q. Now, you were asked yesterday in reference to the figures that you have placed there again on the other side of the board this morning. You showed more in detail how the 100 percent or 168 tons, under the incentive plan, was arrived at, and how you took 80 percent of that for the performance part, and that the men's incentive earnings began at that point. You were asked on yesterday what the company would do if, instead of getting the 168 tons or 134.4 tons, if the crew produced only 40 tons. I believe you said you would investigate or your superintendents would investigate to see whether that was due to causes beyond the control of the men?

A. That is right.

Q. I will ask you to state what would be the policy of the company if a 7-man crew had produced only 40 tons without any excuse for the reduced amount?

A. Well, I don't know. I wish you would state that question again.

Q. Well, if anything like that has happened—I will ask you that—if any crew has produced as little as 40 tons a day without there being any excuse beyond their control?

A. There is always some excuse for a mine crew not producing their tonnage.

Q. Suppose they didn't have an excuse and a crew consistently produced a great deal less than the amount at which the incentive earnings start; what would be your policy under those conditions, or what would be the company's policy?

A. Well, we have certain places the men in them are not as good as men in other working places.

The Court:

Mr. Ball, I can't hear you.

Q. We can't hear you.

A. We have certain places in which the men in those working places are not as good miners as men in other working places. We would endeavor to teach those men the proper way to do their work so they could bring their earnings up to a higher point.

Q. That is to the interest of the company and the men?

Mr. Harris:

That is argumentative.

Q. Is it to the interest of the company? Are you interested in getting more production?

A. Yes, sir.

Q. And are you interested in seeing the men earn incentive pay?

A. We are. We are always very glad to see the men earn above the guaranteed wage because we are getting more production.

Q. Do you recall how much the earnings of the men were in 1940 above the guaranteed wage?

A. I think it was an average on Red Mountain of about 5½ percent.

Q. For each man?

A. Yes, sir.

Q. Above the guaranteed wage?

A. Yes, sir.

Q. Has there been any—Since that plan was put on trial under what is referred to as the Governor's agreement, has it been in existence and on trial since then?

A. It has. We have never heard anything about it after the first two or three pay days.

Q. Have there been any requests to go back on the nine man crew plan, or has there been perfect satisfaction?

Mr. Harris:

We object to the perfect satisfaction. He can ask have they objected.

The Court:
I think so.

Mr. Burr:
I will put it that way:

Q. Have they ever objected and complained about the incentive plan as a plan?

A. Not as a plan. There have been some requests for rate changes here and there.

Q. And some changes have been made?

A. Some changes have been made, yes, sir.

Q. How has the incentive plan worked out for production, contrasting the old nine-man crew with the present seven-man crew system? Have the seven men produced more or less or equally as much ore as the former nine-man crew?

A. As a general rule, more.

Q. Sir?

A. As a general rule, more.

Q. As a general rule, more?

A. Yes, sir.

Q. That is what the record shows?

A. Yes, sir.

Q. I believe you said the nine-man crew had grown up during the time of the depression?

A. Yes, sir.

Q. When you were trying to spread the work as much as you could?

A. Yes, sir; that is right.

Q. Was this incentive plan, the final details of it, worked out within a short time, or was it under study and consideration for a long time?

A. It had been under consideration for several years. It started—

Q. During that several years it was being considered, were any tests or surveys made in order to find the base?

A. Oh, yes. Time studies were made of our own individual mines, and other incentive systems in other mines were investigated by myself and by my superintendent.

Q. Did the industrial engineering department of the company make an investigation of it too?

A. Oh, yes.

Q. And the incentive plan was the result of several years of study?

A. Yes, sir.

Q. Do you remember when you began considering that incentive plan?

A. In 1934.

Q. Did you and your superintendents visit other mine fields?

A. Yes, sir.

Q. What fields?

A. The mine fields in the north, Michigan and Wisconsin and Minnesota.

Q. Do you remember who went up there?

A. Mr. George Neal and Mr. Ewing Carter and myself.

Q. And yourself?

A. Yes, sir.

Q. Now, I will ask you to state whether or not under the incentive plan the production per man hour has increased?

A. It has.

Q. I will ask you whether or not under the incentive plan the wages per man hour have increased?

A. Greatly.

Q. Now, you were asked the question if the height, if you call it that, of the covering didn't increase as the slope went further down. Of course, it does increase. That naturally follows, doesn't it?

A. Yes, sir. It increases until you reach the basin, and then in some of our mines—it depends on the contour of the surface,—

Q. That is right, and—

A. —and the dip of the ore and the faults you encounter after you reach the basin.

Q. And I believe you stated to both of these gentlemen on cross examination the deeper the workings, both the main slope and the headings, the distance becomes greater for the men to travel?

A. Yes, sir.

Q. So, as a result of that, if a mine has its workings closer to the top than a mine whose workings are further away from the entrance, why, the latter mine, its men have greater distances to be transported, of course?

A. They do in deeper mines.

Q. Well, does the cost to the latter mine also increase as the mine goes deeper underground in the way of increased trackage and things of that sort?

Mr. Brodie:
I object to that.

The Court:
Sustained.

Mr. Burr:
We except.

Q. As an illustration—are you acquainted with the Spaulding mine of the Republic Company in a general way?

A. In a general way. I have not been in that mine in a great many years.

Q. Well, assume in the Spaulding mine the men only have to travel—I will make proof later on; I am asking him as an expert. Assuming in the Spaulding mine the men have to travel and walk, say, only 100 or 200 feet; that is a much less distance than they have to travel or walk in any of the ore mines of the Tennessee Company; is that true?

A. Yes, sir.

Q. And, of course, the time spent in traveling would be much less?

A. Yes, sir.

Q. The Republic Company is a competitor of the Tennessee Company in the sale of its products, isn't it?

Mr. Brodie:

We object.

The Court:

Sustain the objection.

Mr. Burr:

We except. We will ask Your Honor to hear us on that later in connection with other witnesses.

I might state, however, in trying to find out the intention of Congress, if there is any doubt, the question of unfair competition is not only a base, but the main base.

The Court:

Find out what these folks do and what the other folks do.

Mr. Burr:

I believe Your Honor is right. I can develop that by the Republic witnesses.

The Court:

Do that.

Mr. Burr:

I can do that better by the Republic witnesses. I believe Your Honor is right about that.

The Court:

Go ahead.

Mr. Burr:
Just a minute.

The Court:
I want to ask Mr. Ball one question.

Mr. Burr:
Go ahead, Judge.

The Court:
Mr. Ball, as you go down into these mines do you carry these men to the unloading platform?

The Witness:
Yes, sir.

The Court:
What is the difference between the fartherest distance a man has to go, the fartherest working place,—what is the difference between his time and the time of the nearest working place from that unloading station?

The Witness:
A difference of about 27 minutes and 9 minutes.

The Court:
The nearest is about 9 minutes?

The Witness:
Yes, sir.

The Court:
And the fartherest about 27?

The Witness:
27.

Q. Is that one way or both ways?
A. Each way.

The Court:
That is each way?

The Witness:
Yes, sir.

Mr. Burr:
I want Your Honor to get that.

Q. Of course, that varies; those are averages you gave?
A. Those are average distances?
Q. And yet each individual—
A. No, that is actual.

Mr. Harris:
No; no; the Judge didn't ask you about averages. He asked about actual.

The Witness:
I corrected myself.

The Court:
I asked about the nearest and fartherest.

Mr. Burr:
That appears on the map, Judge.

The Witness:
Yes, sir.

Q. That is marked on each map for each working place?
A. Yes, sir.

Mr. Burr:

Just one or two more questions, Your Honor, and I think I am through with him.

Mr. Smith:

That is each way, Mr. Ball, the answer that you gave to the question of the Court, I believe?

The Court:

One way.

The Witness:

One way.

Mr. Burr:

One way.

Q. In carrying this material into the mine by the material crew—I am talking about when they carry the material from the entrance of the mine down to the material depot near the manloading or unloading station—

A. Yes, sir, I understand.

Q. —is that hauled by those material crews between two regular productive shifts or during the shifts?

A. That is handled between the mine shifts.

Q. While men are not at work?

A. Yes, sir. You might say while we are not hoisting ore.

Q. While you are not hoisting ore?

A. Yes, sir.

Q. You stated to Mr. Harris that the company determines who shall and shall not enter the mines. State whether or not you determine as to what skip each individual miner shall go down on or not, or is that a matter the miners themselves determine and have worked out for themselves?

A. That is a matter of their own choice.

Q. In going down on those skips—take a producing crew for instance a 7-man crew. His boss when he gets to his work,—his boss is who? The head miner?

A. The head miner or timber foreman.

Q. It will be the head miner for the productive crews?

A. Yes, sir.

Q. And for the timber crew it will be the timber man and so on?

A. Yes, sir.

Q. But I am confining it to the productive crew of 7 men. In going down into the mine does the head miner ride down with his crew? Do they assemble in a body?

A. As a rule the head miner and drill man take an earlier skip because it is necessary for those men to go into the working place and inspect it for loosened material on the roof,—rock.

Q. Has that head miner any duties to perform with reference to his crew on the skip?

A. None whatever.

Q. Or while they are walking from the manloading station to the working place?

A. No, sir.

Q. His bossing begins at the working place?

A. Yes, sir.

Q. You said something about, in answer to Judge Smith's question, that you do enforce good conduct rules while riding on the skip?

A. Very necessary.

Q. Is that done all over the plant premises?

A. Yes, sir.

Q. These inspection gentlemen,—of course, I know they wouldn't be guilty of anything like that,—but if there were down there inspecting the mine and did something that was unsafe or improper you would check them on it?

A. Their attention would be called to it.

Q. Mr. Harris asked you about the Mutuality Committee which you say was organized in 1917, and the Employees Representation Plan, which was formed in the spring of 1933, and changed in 1934 to the Industrial Relations. Plan, and then, as the question was put, petered out in the fall of 1934, I believe you said.

A. Yes.

Q. Now, I want to ask you this question: Not did the company hold meetings with reference to how the things were organized, but were meetings for the consideration of grievances and complaints and suggestions on the part of employees held between committees of those three organizations, the Mutuality Committee, and the Employees Representation Plan and Industrial Relations Plan?

A. You mean were meetings held between these committees and the management?

Q. Yes, sir.

A. Yes, sir.

Q. And in the same way you afterwards held them—

Mr. Harris:

We object to him leading the witness.

Q. And in the same way you afterwards held meetings with the committees of the Union?

A. In exactly the same manner.

Q. There were no unions in 1917 or in 1933 when the Mutuality Committee or the Employees Representation Plan were organized?

A. Not on Red Mountain.

Q. Not on Red Mountain. Were minutes kept of those meetings—

A. I didn't catch the question.

Q. Were minutes kept of those meetings just like you did later of the other meetings?

A. I believe so.

Q. I will ask you to state whether or not during that time any member of the Mutuality Committee or Employees Representation Plan or Industrial Relations Plan, —did any of those committees or members ever suggest or ask or request that any change be made in the basic eight-hour working place plan?

A. No.

Q. Wasn't brought up at all?

A. No, sir.

Q. Has any individual employee ever come over this period of time with any request for any change as far as he was concerned? I am talking about a man that may not be represented by either of these unions. Has any individual employee during this period of time ever asked that the basis of computation and payment of pay be changed from the working place to working place plan?

A. I don't see how I can answer that question.

Q. Well, you have got some employees out there that don't belong to any union?

A. I don't know.

Q. You don't know?

A: I don't have a list of the union membership.

Q. Has any individual employee who didn't represent himself to be a member of a committee ever taken this matter up with you on his own behalf?

A. No.

Q. The only time it has been taken up has been the time you have mentioned and in the ways you have mentioned?

A. That is correct.

Q. Now, you were asked as to whether or not you received orders to cooperate with the Smelters Union. You said no. Did you receive any orders from above not to cooperate with the Smelters Union?

A. I did not.

Q. I believe you stated that upon the settlement of the strike of 1934 under the letter of understanding that you testified about, that the mines—most of them remained in operation only for a short time?

A. That is correct.

Q. Do you know whether or not—

A. There was only one mine operated at each division during the depression.

Q. During the depression?

A. Yes, sir.

Q. I will ask you to state was that the time of what we call the acute time of the depression?

A. It was.

Q. Were the furnaces down?

A. A great many furnaces were down.

Q. Was that condition true all over the Mountain and all over the Nation as far as you know?

A. Yes, sir.

Q. Work at that time was down to a minimum?

A. Yes, sir.

Q. And you were trying to scatter it as much as you could?

A. We did that at the request of the government. All industry tried to spread the work.

Q. Well, you were asked by somebody as to whether or not you ever met with your employees in discussing the company's business in the union hall. You didn't, I believe you said?

A. No, we never discussed our business in the union hall.

Q. You meet with everybody in reference to the company's business on the company's property and in the company's offices?

Mr. Harris:

We object; that is going far afield.

Mr. Burr:
I am just traveling with him a little bit.

Q. These meetings were held in the company's offices?
A. Yes, sir.
Q. You hold them there now?
A. Yes, sir.
Q. And expect to hold them there in the future?

Mr. Quinn:
We object to the expectation.

The Court:
Sustain the objection.

Mr. Burr:
All right. I will not go any further.

The Court:
All right. Anything else for Mr. Ball?

Mr. Burr:
Just a minute. I will check with Mr. All.

Mr. All:
He has asked everything I had in mind except possibly one question.

(By Mr. Burr):
Q. I don't know whether I asked you this on yesterday or not, Mr. Ball.

Mr. Burr:
If I have, it is because I have forgotten it, Your Honor.
Q. Do you recall when there came to your notice for the first time any claim on behalf of either of the unions that they were claiming that the company owed back pay

for travel time? Do you know when that question first came up?

A. I do not remember the date.

Q. Do you remember—

A. It was some time after the passage of the Act.

Q. Do you recall whether or not it followed the—do you recall seeing in the papers notice of a decision in what was called the Cornucopia Gold Mines Company case?

Mr. Harris:

We object to that.

Mr. Quinn:

We object to what he saw in the papers.

Mr. Burr:

I am just fixing the date.

The Court:

I think you brought out yesterday when you got the communication.

Mr. Burr:

We allege in the bill, for the purpose of fixing the date, this question was raised after the announcement of the Administrator's Ruling in the Cornucopia Gold Company case.

We think it is going to be important to prove that in this case before we get through.

Mr. Harris:

Are you through?

Mr. Burr:

No.

Mr. Harris:
Excuse me.

Mr. Burr:
I want to ask him if he saw it in the papers without going into the contents of it, and then I want to ask him if a short time after that the union raised this question. It is clearly admissible.

The Court:
I am going to admit it. I will overrule the objection.

Mr. Brodie:
Will Your Honor hear me on that?

The Court:
What?

Mr. Brodie:
Will Your Honor hear me on that?

The Court:
No. I will give you an exception.

Q. Mr. Ball, was it shortly after—

Mr. Harris:
I object to leading him.

Mr. Burr:
I am not trying to lead him.

Q. Was it before or after the announcement of that case appeared in the papers you first heard of this claim of the Union for time and a half for overtime and for the travel time.
A. It was after.

The Court:
Is that all?

Mr. Burr:
Mr. All wants to ask him one question.

Mr. All:
No, sir; I will not ask anything.

Mr. Burr:
That is all, Your Honor, then.

The Court:
Anything else?

Mr. Harris:
There is one question that has come up with us here, and I don't know whether we will want to ask him or not.

Now, is Mr. Ball going to be here this afternoon?

Mr. Burr:
We are going to keep him right here.

The Court:
He is going to be here all the time?

Mr. Burr:
Yes, sir.

Mr. Harris:
I will have to discuss with these gentlemen during the noon hour, or tonight, just one little item, whether I want to go into it.

Mr. Burr:
We would rather know that before we put on our other testimony.

Mr. Harris:
It is not anything new at all. It is a question of whether it is clear.

Mr. Burr:
Can't you find out during the recess?

Mr. Harris:
I don't think I can.

The Court:
Can't the reporter go over it with you?

Mr. Harris:
I think not.

Mr. Brodie:
Your Honor, in connection with the objection I made—

The Court:
I am through with that. I have ruled on that.

Mr. Brodie:
I understand the rules require me to state the grounds of my objection.

The Court:
I think when I rule like that you have the advantage of stating your objections when I tell you I don't care to hear from you.
Anything further?

Mr. Burr:
That is all.

The Court:
It is about adjourning time.

Mr. Burr:

What time?

The Court:

Be back—What time is most convenient for everybody?

Mr. Burr:

I would suggest, if Your Honor please, in order that we may expedite the matter, we have a little extra time,—say two o'clock.

The Court:

We will adjourn until a quarter to two.

Mr. Burr:

Quarter of two, yes, sir.

The Court:

Be here in the Court Room at a quarter of two.

(Whereupon, at 12:00 M., July 10, 1941, a recess was had until 1:45 P. M., of the same day.)

After Recess.

1:45 P. M.

The Court:

Who will you have for the next witness?

Mr. Harris:

I have no further questions for Mr. Ball at this time.

The Court:

I thought we would have a new witness.

Mr. Burr:

Yes, sir. I will take Mr. Cameron.

1031 C. B. CAMERON, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. Mr. Cameron, what are your initials?

A. C. B.

Q. And what is your present position with the Tennessee Coal, Iron & Railroad Company?

A. Superintendent, Ishkooda Division.

Q. How long have you been Superintendent of that Division?

A. Since January 15, 1924.

Q. Now, prior to that time were you connected with the Tennessee Company?

A. I went to work with the Tennessee Company in September, 1910.

Q. Was that the first company you worked for?

A. No, sir. I worked for the Cheno Copper Company in New Mexico a short time after I graduated from college.

Q. What college did you graduate from?

A. Michigan College of Mines.

Q. What degree—

A. B. S. in Industrial Engineering and Engineer of Mines.

Q. After graduating you went to New Mexico?

A. Yes, sir; Cheno Copper Company.

Q. Are they underground mines?

A. Yes, sir.

Q. And came with the Tennessee Company in September of what year?

A. 1910.

Q. 1910?

A. Yes, sir.

Q. In what capacity did you first work for the Tennessee Company?

A. I was division engineer of the brown ore mines.

Q. Brown ore mines?

A. Yes, sir.

Q. Where were they located?

A. At Greeley and Champion.

Q. Champion is in Blount County?

A. Yes, sir.

Q. And Greeley in Tuscaloosa County?

A. Yes, sir.

Q. Were they open pit mines or underground operations?

A. No, sir; open pit mines.

Q. Open pit mines?

A. Yes, sir.

Q. How long were you engineer of those mines?

A. I was engineer there for about four months and the mines shut down in 1911, and I was gone about a year and came back in 1912 as Division Engineer at Wenonah, known then as Fossil.

Q. Came back as Division Engineer at Wenonah?

A. And Ishkooda.

Q. How long did you remain as Division Engineer?

A. Until 1922 when I was made Chief Engineer located at Muscoda.

Q. Having jurisdiction over—

A. All ore mines and quarries.

Q. That was in what year?

A. 1922.

Q. And then you were made Superintendent at Ishkooda?

A. Yes, sir.

Q. And have been there ever since?

A. Yes, sir.

Q. In that period of time have you been familiar in a general way with the ore mine operations on the mountain?

A. Yes, sir.

Q. Those are the operations of Woodward and Sloss and so forth?

A. I have been in the Sloss Mines and Woodward Mines and Republic Mines, but it has been quite a number of years ago.

Q. The situation—you heard Mr. Ball's testimony, I believe?

A. Yes, sir.

Q. You were here when he was on the stand?

A. Yes, sir.

Q. The situation he testified about as to the general locations of the mines on the mountain is correct?

A. Yes, sir.

Q. There is no use going over that again with you?

A. No, sir.

Q. All right. What are the numbers of the mines you had and have supervision over at Ishkooda?

A. Number 11 and Number 13 at the present time.

Q. Well, suppose we take Number 13 as illustrative of the mines under your supervision and take you through that. That seems to have been used in cross examination in some of the questions.

Just about where is 13 located, the entrance of it, in reference to being nearer or further out from the City of Birmingham than any of the other mines?

A. It is closer to Birmingham, about seven miles from Birmingham, about a mile and an eighth from Powderly on the South Bessemer car line.

Q. Then, going down the mountain towards Bessemer you come to the other company mines?

A. Yes, sir, number—

Q. On down until you get to the Muscoda Group?

A. Yes, sir.

Q. And if you went on further you would go from Muscoda to Raimund of the Republic Company?

A. Yes, sir.

Q. This Number 13 mine, can you tell us about how many feet below the surface the main haulage way or slope has been driven, confining my questions for the present, Mr. Cameron, to the date of May 1, 1941? About how deep had that slope been driven at that time?

A. About 4700 feet.

Q. Had it reached the basin?

A. Number 13 has not reached the basin.

Q. Has not reached the basin?

A. No, sir.

Q. Now, I wonder if you could tell us roughly, as well as you can recall it, at what depth that slope was when you went there as Superintendent, just to give us some idea how far it has been driven since you have had charge of it?

A. I don't know exactly, Mr. Burr. I—

Q. Just a general idea?

A. About 3500 feet, I would say, was the bottom of it when I went to Ishkooda.

Q. That is just your recollection? The map will show?

A. The map will show. That is just my best recollection.

Mr. Harris:

When did he say he went to Ishkooda?

Mr. Burr:

In 1924.

The Witness:

Excuse me a minute. You mean when I went to Ishkooda as Superintendent, n Division Engineer?

Q. Yes, sir. Well, could you give us some idea about how deep it was when you were there as Division Engineer?

A. When I went there as Division Engineer they were driving through the fault Mr. Ball explained this morning. I believe the fault of number 13 was about 1800 feet.

Q. From the portal?

A. From the portal.

Q. That was in what year?

A. 1912.

Q. When you went there in 1912 as Divisional Engineer could you give us some idea about the number of headings you had at that time?

A. In '24?

Q. Yes, sir,—no, in 1912?

A. In 1912?

Q. Yes, sir. This is the first time you have been asked these questions?

A. I would have to guess at that, Mr. Burr.

Q. Just as best you can?

A. 25 or 30.

Q. 25 or 30?

A. Yes, sir.

Q. How many headings were in operation and being worked—well, say about May 1, 1941?

A. There were eight in operation at that time.

Q. Eight?

A. Yes, sir.

Q. Those headings, of course, as Mr. Ball explained, turned off at right angles from the main slope; is that right?

A. Yes, sir.

Q. And the stopes or working places turned off at right angles from the headings?

A. Yes, sir.

Q. Could you give us your best or approximate judgment at the same time I have been inquiring about as to how far from the main slope, we will say, the longest heading was? How far was that distance, the one that had been extended the longest at that time, as best you remember?

A. Approximately 4000 feet.

Q. And the shortest, what would be your approximation of that?

A. Somewhere between 500 and 1000 feet. That is from the slope?

Q. Yes, sir.

Mr. Harris:

That is in 1912 you are asking about?

Mr. Burr:

No,—

Mr. Harris:

At present?

Mr. Burr:

May 1, 1941.

Q. Now, where was that—about how far from the portal was the underground man loading station in this mine, Number 13?

A. About 4,000 feet from the portal.

Mr. Burr:

Suppose you let me have, please, sir, the map and we can properly save some time by just using it.

(Thereupon a map of the Ishkooda Division was placed on the blackboard.)

Mr. Harris:
Where was the slope entrance?

Mr. Burr:
We will get t that in a minute.

The Court:
On top, isn't it, or bottom?

Mr. Burr:
On the bottom.

Q. Mr. Cameron, you are familiar with this map, are you?

A. Yes, sir.

Q. And you know it is correct from what you have had to do with it as Superintendent and Division Engineer?

A. Yes, sir.

Q. From what I understand of this map the portal is here at the bottom?

A. Yes, sir.

Q. And what we have been referring to as the slope is shown here going down this way?

A. That is right.

Q. If you will take this and point out to the Court how the headings turn off there—

A. The slope extends down in this direction (indicating).

The Court:
Let the other lawyers see.

Mr. Burr:
Yes.

A. The slope extends in this direction, the headings in this direction and then the slopes perpendicularly to the headings,—

Q. And all these—

A. This is Number 11 mine here (indicating).

Q. Number 11? Where is number 13?

A. This is Number 13.

Q. Where is the boundary line of 13; where does it come to?

A. This is old Number 12 mine, which has been abandoned. This is old Number 14, which is being re-opened. The boundary line on the right hand side of 13—the territory has been mined out. There are no operations there at all.

Q. No operations there at all?

A. No, sir.

Q. What places were being worked on May 1, 1941?

A. 26, 27, 28, 29, 30, 31, 32, 33, 34, 35,—36 was a spare place.

Q. Do those little circles there indicate working places that were being worked at that time?

A. Working faces.

Q. The distance on there is from the portal—is that the man loading station?

A. Yes, sir.

Q. That was January 1, 1941?

A. Yes, sir. It is in the same place.

Q. That is the only distance there—

A. This face is about 4000 feet from the slope.

Q. Suppose you give them the distances; 28—

A. 4770; that is from the man loading station.

Q. That is walking distance?

A. This goes out this way and—

The Court:
That is half a mile?

The Witness:
It is nearly a mile.

The Court:
What did you say?

The Witness:
4770.

The Court:
5280 in a mile.

Q. What is the next working place?
A. 29.
Q. What is the distance?
A. 4350.
Q. 30?
A. 3535 feet.
Q. 31?
A. 3390; 32, 2995; 33, 2035; 34, 2155; 35, 1930 and 36 1845. That is the distance from the man loading station.
Q. Mr. Cameron, your crews in that mine, as well as in Number 12, your other mine—
A. Number 11.
Q. Number 11, I mean. —can be classified, can they not, into the descriptions Mr. Ball gave them? There is one crew that actually works in the working places producing ore; you call that the productive crew?
A. Producing crew.
Q. And the other crew called the service crew?
A. Yes, sir.
Q. Back under the old contract system those men were called company men?

A. Company men; that is, the service men were called company men.

Q. That is what I mean.

A. Yes, sir.

Q. Take the men working in the producing crews in the mines you have jurisdiction over and at the time I have been asking you about. Were those—did you have immediately prior to May 1, 1941—how many men did you have in a producing crew?

A. Seven man crew.

Q. How long has the seven man crew been in operation in the mines?

A. Since in the incentive system was placed in effect.

Q. That was sometime in 1936?

A. '36.

Q. Take a seven man producing crew or, for that matter, an eight man or nine man crew before that time, if they did have that many in a crew, his working place, even if he stays with the same crew, changes from time to time, does it not, over a period of time?

A. Over a period of time it does, the working face.

Q. About how long does it take—in the mine we are in now how long does it take a crew to finish mining in a working place, a stope?

A. In 13 those stopes last from six to ten months.

Q. All right. While they are working the stope during the six to ten months time the distance from the man loading station remains about the same?

A. Yes, sir, it remains about the same.

Q. About the same?

A. It is the same.

Q. The traveling time?

A. Yes, sir.

Q. His work place remains the same distance?

A. Yes, sir; the division place.

Q. What you call the division place is where the division of the stope begins off the heading?

A. Yes, sir.

Q. And the working face is where the ore is actually being taken from?

A. Yes, sir.

Q. That is the way you understand it?

A. Yes, sir.

Q. Those men don't generally stay in the same producing crew all the time?

A. They generally stay in the same producing crew all the time.

Q. You do have changes at various times?

A. Yes, sir, replacements; some of the head miners and their crews have been in those working places since—

Q. Since the incentive plan started?

A. Yes; way back before.

Mr. Harris:

We suggest he let him testify some, Judge.

The Court:

Yes.

Q. I don't care how far back it goes. The further back it goes the better I like it.

A. Some of the men have been in the same working place ever since it started.

Q. Ever since it was started?

A. Yes, sir.

Q. Using these same dates, we will take at mine Number 13, where is what we call the change house? Can you look on the map there and show the Court where the change house is?

A. This black—

Q. Just point it out with this.

A. This is the change house here (indicating on map).

Q. What distance is that from the portal?

A. 550 feet.

The Court:

Is that the bath house?

The Witness:

Yes, sir, change house, dry—some people call it the dry.

Q. The individual miner, that is the first place he goes to before his shift begins?

A. Yes, sir, goes to the bathhouse first and changes his clothes.

Q. Changes his clothes?

A. Yes, sir.

Q. You have heard Mr. Ball testify as to the way that was conducted. Do you have the lockers?

A. We have the lockers.

Q. Each man has a locker where he keeps his clothes?

A. Yes, sir.

Q. And he puts on his working clothes and leaves his other clothes there until he comes back that night and changes?

A. That is right.

Q. Is there a charge there?

A. No charge at the bath house at all.

Q. Was there ever a charge made at Ishkooda for bath house service, and if so, when and what was that charge?

A. There was, my recollection, a 50 cent charge made for each man who used the bath house.

Q. Do you remember about when—

The Court:

That was per month?

The Witness:

That was per month, yes, sir.

Q. Do you remember when that charge was taken off? When was it taken off and the facilities furnished free?

A. I don't remember the exact date, but it has been eight or ten years ago.

Q. I see. Has the use of the bath house always been voluntary or enforced?

A. Voluntary.

Q. The men can or can not use it as they please?

A. That is right. Anybody that wishes to use the bath house does so. I imagine about 95 to 98 per cent. of the men use the bath house.

Q. I imagine you furnish hot and cold water, soap and towels?

A. No soap and towels; hot and cold water.

Q. Hot and cold water?

A. Then we have a man that looks after the bath house and keeps it clean.

Q. Now, I want you to just take first one of these productive miners, we will say a mucker or drill helper. You call them now, I believe—

A. Head miners, drill runners, section helpers, drag operators.

Q. Head miners, drill runners, section helpers, drag operators. Suppose we start with a head miner. After he changes clothes at the bath house where does he go?

A. He goes to the tally house. That is at the portal of the mine.

Q. At the portal of the mine?

A. Yes, sir.

Q. When he gets there does he get anything for his light?

A. Gets some carbide for his lamp.

Q. He owns the lamp?

A. He owns the lamp, yes, sir.

Q. Is the carbide sold to him?

A. The carbide is sold to the employees at cost in containers that hold a pound or a pound and a quarter?

Q. About how many days supply does a container hold?

A. It depends on the man. Some miners get a can almost every day. Most of them get a can every couple or three days.

The Court:

What is that difference? Some of them go frog hunting?

The Witness:

Some of them go frog hunting, yes, sir, and some of them carry their lamps back and forth at night so they can see to get home.

Q. Just that difference in humans that is mighty near in everything?

A. Yes, sir.

Q. All right, sir. Is the purchase of carbide from the company enforced or voluntary?

A. That is voluntary. They can buy the carbide anywhere they want to, but I would say practically 100 per cent. of them buy the carbide from the company.

Q. They get it at cost?

A. Get it at cost, yes, sir.

Q. What length of time, Mr. Cameron, would you say is taken by this man in getting his carbide after he gets up there to the portal, the tipple house?

A. About a minute; just long enough to pass an empty can in the window and get a full can in place of it.

Q. What is the next thing that man does after he gets his carbide?

A. Turns his brass check in.

Q. Who does he turn it in to, the man in the tally house?

A. Generally the mine foreman.

Q. What is that?

A. Generally the mine foreman; sometimes the assistant Mine foreman.

Q. What does the mine foreman do with it?

A. He hangs it up on the board for the working place to which the man has been assigned.

Q. The board has appropriate hooks for each working place?

A. Has a nail without a head on it. There is one nail designated section foreman, two nails for the drill runners, one nail for the drag operator and three or four or five nails for section helpers.

Q. All right, sir. After that what is the next thing this man does?

A. Gets on the skip and goes inside.

Q. All right, sir. Now, in reference to the skip, at this particular mine about how many skips do you operate per shift?

A. Three or four.

Q. Three or four?

A. Generally four on the day turn and four on the night turn.

Q. Is there any scheduling of the miners as to what skip they shall ride on or is that left to their voluntary selection?

A. That is left to the miners; as long as there are men up there to fill the skip there is nothing said about who should ride it.

Q. If a miner or some of them should happen to be too late for the regular, scheduled trip how do they get in the mine?

A. Unless they are too late they go down on an extra trip or go down on the day trip when the foremen go in.

Q. The foremen are the last ones to go in?

A. Yes, sir, on the day shift.

Q. Now, take this productive crew we are working on at the present time. Does the head miner assemble his crew and take them all down together, or do they go as they please?

A. They go down as they please, down to the man loading station. There is some loitering around the man loading station, sometimes wait for a buddy to walk up to his working place with.

They are all supposed to be in their working places at 6:45 when the lights come on. That is when the generator starts; 6:45 when the lights go on.

Q. Before we get to that, give us the schedule of the cars before May 1, 1941. What time did your skip start in the morning?

A. About seven or eight minutes after six in the morning.

Q. How far would they be spaced apart?

A. Just as fast as they could take the men down and come out. At Number 13 it takes about seven minutes, around that.

Q. Was that all figured out so resulting that all the men could get to their working places without reference to which one of those skips they caught at 8:45—6:45, I mean?

A. At number 13 most of the men were able to reach their working places by work time no matter what skip they ride.

Q. How many would you figure couldn't reach their working places by work time?

A. There are a few who work up here in 28 and 29 that might be five or ten minutes late.

Q. You say there are some that loiter around and wait for a buddy. They don't have to be there until 6:45?

A. Until 6:45.

Q. What happens at 6:45 in the way of starting the work. You said something about a generator. What was that?

A. The motor generator starts at 6:45. That lights the lights around the mechanical loader and designates to the men it is work time, and the first thing they do then is to examine and quarry their working face and see everything is safe.

Q. Before you start doing that, can they begin to do any work before that generator starts or is that generator necessary before the work starts?

A. They can't move the mechanical loader until the current is turned on. Of course, they could start any other work if they wanted to.

Q. Do they start any before 6:45 or not?

A. Not supposed to.

Q. Not supposed to?

A. No, sir.

Q. Is that when their pay starts and their work starts, at 6:45?

A. Yes, sir.

Q. Now, take that crew; you say the head miner is in charge of it?

A. Yes, sir.

Q. Who are the next men based on the pay they get, the occupational rate?

A. The two drill runners.

Q. The two drill runners, and who comes next?

A. The drag operator.

Q. That makes four. Who is next to them, the head miner, and you have got—

A. Three section helpers.

Q. They are the ones that have the lowest occupational rates?

A. In the producing crews.

Q. That is the one we are traveling on now.

A. There is another man that works in that crew sometime, the haulage engineer. He is a service man, though. He is not—

Q. I see. Is that crew divided, you might say, into two classes of work—

A. There is a drill crew and a loading crew.

Q. There is a drill crew and a loading crew?

A. Yes, sir.

Q. Suppose we take the drill crew first. When they get there and the generator is turned on at 6:45 what is the first work the drill crew would start doing?

A. Making their work place safe.

Q. What do you mean by that?

A. They would quarry it and test it, and quarry down all loose rock and—

Q. Under—

A. —and such as that and get their place safe.

Q. Who is responsible for that work?

A. The head miner is responsible for it. The drill runner usually does the work.

Q. Usually does the work?

A. In case of bad top the head miner stays right with that crew until it is taken down.

Q. After that work has been done, the loose rock quarried down and the place made safe, what does the drill crew do?

A. They get their hose stretched out and drill set up and start drilling. They have to get their drill from whatever safe place it has been placed in before proceeding with their drilling. The drill has been placed in some safe place by the preceding crew, sometimes behind a pillar or down at the ramp.

Q. Has the drill and hose been left in the working place by the previous crew?

A. Yes, sir. It stays in the working place all the time unless it has to be taken out to be repaired.

Q. Then—

A. Then they begin to drill the holes.

Q. The holes?

A. Yes, sir.

Q. That is done as Mr. Ball illustrated there on the board?

A. Yes, sir.

Q. About when, in the day's work, do they finish that?

A. They finish drilling, I suppose, around two o'clock on the average.

Q. After drilling it are the holes loaded?

A. They send one of the members to the powder man to get the powder and fuse and caps.

Q. They send a man down with a requisition; is that the way it is done?

A. A requisition, yes, sir..

Q. The head miner gives the man a requisition for how much powder and caps and fuses he needs?

A. Yes, sir.

Q. And he goes down during the day's work and gets that?

A. Yes, sir.

Q. Then they load the holes?

A. Yes, sir.

Q. What time would that drill crew do the shooting?

A. The generator stops at 3:10 and that is the signal to light the holes.

Q. That is the latest they can light them or not? I don't know. I am just trying to find out.

A. It depends on what you mean by what time they can light them. They are supposed to light them at 3:10 and get out of the way, get out of the work face before the charge goes off.

Q. That is the rule?

A. Yes, sir.

Q. And would you say they customarily and as a general rule do get out by that time or do they stay later?

A. Occasionally somebody's watch is a little fast and they will shoot a little earlier than 3:10. While they are not supposed to, they might hear somebody else's shots somewhere and think it is time to shoot and they go ahead and shoot.

Q. Is that the end of their day's work?

A. That is the end of their day's work.

Q. Then—and then they go down to the—

A. To the man loading station.

Q. And catch the skip out?

A. Yes, sir.

Q. Let's leave that and go back and get the other part of the crew, the loading part. When they get there in the morning at 6:45 what do they begin to do?

A. They quarry the working face and drill the hanger holes, pull the ropes up into the working place, hang their skidder block, and start loading ore.

Q. In drilling those holes what type of drill do they use?

A. They use a jack hammer drill.

Q. Jack hammer drill?

A. Yes, sir, a small—

Q. That is, the drill Mr. Ball described, the smaller drill?

A. Yes, sir.

Q. As I understand you, the loading part of the crew does that?

A. Loading part, yes, sir.

Q. They drill these hanger holes and put the hanger hooks in, and put the wedges in and C-hook?

A. And attach the ropes to the skidder block.

Q. And the fellow that operates the drag begins to operate the drag and drag ore up to the ramp into the car?

A. Yes, sir.

Q. How long do they continue that work?

A. They are supposed to stay there until 3:10. Some of them leave as early as three o'clock. Some of them have been known to leave as early as 2:30. That is particularly true where the drag crew has loaded all the ore shot down by the preceding crew,—nothing particularly for them to do at the face and they come on down to the man loading station.

Q. Does the loading part of the crew have to be out before the shooting part shoots?

A. They have to be out before they shoot.

Q. They have to leave before 3:10?

A. They have to leave before the drillers.

Q. And usually and quite often they leave a good deal of time before that time?

A. I would say they leave the face about three o'clock.

Q. About three o'clock?

A. On the average.

Q. Who does the actual shooting?

A. The drill runner and head miner.

Q. How many stay back to do the shooting after the others leave?

A. Three, and the drill helper, if necessary.

Q. If necessary?

A. Yes, sir.

Q. All right, sir. Now, if the—if these men—if the loading part of the crew leaves before the shooting part, they get down to the hoodlum or man loading station ahead of the head miner and drill helpers?

A. That is right.

Q. Naturally?

A. Yes, sir?

Q. The first car or trip is supposed to leave at what time to haul them out of the mine?

A. The first trip left the man loading station at an average of 3:14, sometimes 3:13, always an average of before 3:15.

Q. If they got there before 3:13 or 3:14 they waited there for that trip?

A. That is right. The first men that get there go out first.

Q. Is there any arrangement there for seats for them to sit on while they are waiting?

A. The company men, service men generally get there first. They get back to the tool house. They have to be out of the headings before any shooting is done.

Q. They are generally the first ones in and the first ones out; is that the way it is?

A. They are generally the first ones out; not necessarily the first ones in.

Q. And the rest of the men catch the car—

A. Coming out they take their turn. The first one to the hoodlum station is the first one out, and the last ones come out on the last trip.

Q. Are all of them out of the mine or were all of them out of the mine at what time?

A. At number 13, you mean?

Q. Yes, sir.

A. Generally speaking everybody was out of the mine by 3;40.

Q. Now, during the time they were in the mine was there any period for lunch?

A. Thirty minutes, from 11 to 11:30. That is—

Q. Was there any indication of the lunch period?

A. That is indicated by a flashing of the lights, blinking them.

Q. Blinking them at 11·00 o'clock?

A. At 11:00 o'clock and again at 11:30.

Q. Where do they go to get their lunch, Mr. Cameron?

A. They have a place to eat and a place to make coffee and sometimes a table.

Q. Where is that located, Mr. Cameron?

A. That is in the working place,—not exactly in the working place, but back of the first pillar back of the working place. They have an electric grill there where they make coffee if they wish to.

Q. About how long after they—before I get to that, let's take up the service men next. How is the time of the service men going in and out of the mine regulated?

A. The service men go in on any trip they wish and go to the tool box and wait for work time and wait for the foremen to tell them, especially the timber crew, where to go to set timbers. They generally get back to the tool box around three o'clock.

Q. Isn't there some employees there, a trip rider—

A. Skip tender. He has charge of the skip.

Q. Did he go in the mine earlier than the others did?

A. He did prior to May first. He went to work at six o'clock and quit at four. He was paid an hour over time. There were two skip tenders. One went to work at six o'clock and quit at 3:30, and received overtime. They worked nine hours.

Q. What was it necessary for them to go in earlier?

A. They had charge of the skip. It was their duty to take the skip out of the side track.

Q. And get it there ready to start off?

A. Yes, sir, and had to put the skip in the side track at the end of the shift.

Q. They had to work extra time and got extra pay for it?

A. Got extra pay for it.

Q. I will ask you as to when the computation for pay of the productive workers began?

A. At 6:45.

Q. When did it end?

A. 3:15,—thirty minutes out for lunch.

Q. Did it begin at that time and end at that time irrespective of whether the men left their places of work as you have described?

A. That was—that is considered work time, 6:45 and 3:15 and if they didn't get to the face until 7:00 o'clock, or if they left the face at 3:00 o'clock they were still allowed the eight hours.

Q. Whether they worked the eight hours or not?

A. Whether they worked the eight hours or not.

Q. And you have told about the customary time when they left and went in?

A. That is right.

Q. Did the same thing apply to the service crews as well as the productive crews?

A. Yes, sir.

Q. They got paid and their time was computed in the same way?

A. That is right.

Q. Where did the day's work for the service crews begin?

A. At the tool box. That is near the man loading station.

Q. Is that where they report for work?

A. Yes, sir.

Q. And were told by the mine foreman where to go and what to do?

A. That is right.

Q. And time began when they got there and received their instructions?

A. Yes, sir.

Q. They had to wait—their time, of course, didn't begin until the mine foreman came down?

A. The track orews or chute crews, if they were laying up a piece of track, or building chutes at a certain place, they would just go by their tool box and at 6:45 go on to their regular working place. They didn't have to wait for the mine foreman. They knew where to go.

Q. They knew where to go?

A. Yes, sir.

Q. And their time began to be computed at 6:45?

A. Yes, sir.

Q. And ended at 3:15?

A. 3:15.

Q. I will ask you to state, Mr. Cameron, about how long previous to May 1, 1941, had that custom and system been in force in your mines you have testified about?

A. Since the incentive system went in in 1936.

Q. Previous to that what change was there in that system, if any? What was the change in that?

Mr. Harris:

Now, merely to preserve the consistency of our position, Judge, and not to operate as a waiver, of course all testimony prior to—

The Court:

October 24, 1938.

Mr. Harris:

—October 24, 1938, I object to that testimony.

The Court:

We understand your objection is in.

Mr. Harris:

Yes, sir.

The Court:

I will overrule the objection.

Q. Probably I can get the question clear, Mr. Cameron, this way: For how long a period of time had the company, previous to May 1, 1941, been computing and paying the men on eight hours computed from working place to working place?

A. Well, the eight hours went into effect in 1933, I believe it was.

Q. Was the eight hours computed—

A. Face to face, they call it.

Q. That is the same as working place to working place?

A. It has always been computed on face to face or working place to working place.

Q. Was that true when you had ten hours?

A. Mine has always been computed face to face.

Q. Have you ever known of it being computed in any other way?

Mr. Harris:

Oh, we object to that question.

Mr. Burr:

I think that is a proper question.

The Court:

Overruled.

Q. Have you ever known it to be computed any other way?

A. Not where I have worked.

Q. Since you have been working for the Tennessee Company, confining it to them, has it ever been computed or paid for any other basis than the face to face or working place to working place basis?

A. Never; always been computed on the face to face basis.

Q. You say exhibited yesterday the kind of statements furnished them in giving them their account on pay day and their receipt that is at the top of the statement?

A. Yes, sir.

Q. Have those been in use at the Ishkooda Mines?

A. Yes, sir.

Q. During this period of time?

A. Yes, sir.

Q. Each individual man has, since they have been paying four times a month, been given those statements and signed those receipts four times a month; is that right?

A. It is four times a month now. It used to be twice a month.

Q. I mean since it has been four times a month they have been given the statements and signed the receipts four times a month?

A. Yes, sir.

Q. And when it was twice a month they got their statements and signed the receipts twice a month?

A. They have always signed receipts for their money.

Q. That has been true all the time?

A. Yes, sir.

Q. First, in reference to negotiating wage scales or wage contracts, Mr. Cameron, have you ever had any authority to make the wage scales or to make the contracts with the unions or representatives of the employees?

A. None whatever.

Q. Have you sat in on those conferences occasionally or not?

A. Very seldom.

Q. Very seldom?

A. Yes, sir.

Q. During the period of time—first, I will ask you this: Do you remember about the year when the Smelters Union was organized; do you recall the date of it?

A. Sometime in '33.

Q. Sometime in '33?

A. Yes, sir.

Q. Previous to that time had there ever been an International Union of Smelters or American Federation of Labor or any other union of any kind at your workings?

A. No, sir, not on the mountain.

Q. There had been, to your knowledge, at the coal mines and other places around in the District?

A. Yes, sir.

Mr. Harris:

We object, that is immaterial.

The Court:
Yes; that is immaterial.

Mr. Burr:
We except.

Q. But there never had been at your place?

Mr. Harris:
We object.

The Court:
Yes, sir.

Q. But previous to the time—

The Court:
Mr. Burr, confine that to the ore mines.

Mr. Harris:
I didn't object to the ore mines.

The Court:
That is the ruling of the Court.

Mr. Burr:
We think the other is admissible. We take an exception. We want an opportunity to be heard by Your Honor when we get to it. If I am able to convince Your Honor I am right it may be necessary to call some of these witnesses back on that one point.

Mr. Harris:
We will want to be heard too.

Mr. Burr:
We will all be heard. I know he is going to hear us all as long as we are not too unreasonable about it.

Q. Now, excluding the coal mines,—I have left that out and the Court has left it out too for the present. Excluding the coal mines, have you ever been in the ore mines, since you have been connected with them, ever known of the wages being paid or computed on any basis other than the working place to working place plan?

Mr. Harris:
We object.

The Court:
That is repetition.

Mr. Harris:
Yes, sir. We object.

Mr. Burr:
Is it? I didn't know whether I had covered that or not.

The Court:
That has been brought out, Mr. Burr?

Q. Now, previous to 1933, when the Smelters Union was organized at your place, had you, as Superintendent of the Ishkooda Division, held meetings with the representatives under what Mr. Ball described this morning as the Mutuality Committee, and that followed by the Employees Representation Plan?
A. I never held meetings with the Mutuality Committee. A special man came out from town to hold those meetings.

Q. To hold those meetings?

A. I did hold meetings under the Employees Representation Plan, and also the Industrial Relations Plan—

Q. The Industrial Relations Plan?

A. —which meetings pertained to our organization or division.

Q. In those meetings did these representatives, regardless of who appointed them, bring up any grievances they had or not?

A. They did.

Q. Would you try to dispose of them, if you could?

A. If they could be handled satisfactorily in my office, we did so.

Q. And if you couldn't, where did they go to?

A. If we couldn't handle them they went to Mr. Ball's office.

Q. After the Smelters Union was organized did you handle matters of grievances and complaints with the representatives of the Smelters Union?

A. I did. They were handled in the same way.

Q. And when the Brotherhood of Captive Mine Workers was organized, did you handle matters with them?

A. I did. They were handled in the same way.

Q. And after they affiliated with the American Federation of Labor, did you hold meetings with them in the same way?

A. I did. They were handled in the same way.

Q. Did you keep minutes of those meetings?

A. Yes, sir.

Q. Were copies of those meetings—the minutes of those meetings retained by you in your office?

A. Yes, sir.

Q. And copies given to the committees?

A. And copies given to the committees and a copy sent to Mr. Ball's office.

Q. One copy kept in your office and a copy sent to Mr. Ball's office, and a copy kept by what we may call the opposing parties, the employees?

A. They were given any number of copies they wanted.

Q. Who kept those minutes, your secretary?

A. My clerk kept them.

Q. And transcribed them and they were handed out as you have stated?

A. Yes, sir.

Q. Were they signed by anybody?

A. Signed by some member of the committee and myself.

Q. That was the universal custom?

Mr. Harris:

I think Mr. Burr is leading him a little.

The Court:

I think so, Mr. Burr.

Mr. Burr:

I don't think that is leading.

The Court:

Well, it is getting along a little faster.

Q. Was that the universal practice of handling that matter during that time?

A. That was the universal practice of handling that matter during that time; that was the way we handled all committee meetings.

Q. I will ask you to state whether or not—I will change the question. I will ask you to state whether or not at any of those meetings at any time with you any one ever presented a claim that the basis of computing and payment of wages on the face to face basis should be changed so as to include compensation for traveling time?

Mr. Harris:
We object to that, if the Court please.

The Court:
Overruled.

Mr. Harris:
We except.

The Court:
Now, did you say anybody or any employees or members of the committees?

Q. Any of the employees or members of the committees representing the employees?
A. Nobody ever presented that to me.

Mr. Burr:
Right now, before I forget it, the Court will recall—I wasn't here when Your Honor ruled on it, but I think the understanding was pretty definite about it. I filed a motion requiring the production of any of those minutes, and I would like to know if they are available to me.

I will not bother about reading them this afternoon, but I—

The Court:
You gave them notice to produce?

Mr. Burr:
Yes, sir. That was in our notice to produce served on both parties, either these gentlemen or these gentlemen.

Mr. Harris:
They served notice on us to produce.

The Court:
Are they available?

Mr. Harris:
I don't know whether they are or not.

Mr. Burr:
Over the recess can you get them for us?

Mr. Harris:
I think we can.

The Court:
You mean over the week end?

Mr Burr:
Yes, sir.

Mr. Harris:
We will try to get together all those documents.

The Court:
They will be available?

Mr. Harris:
Yes, sir.

Mr. Burr:
That includes Ishkooda, and Wenonah and Muscoda.
That applies to you gentlemen also.

Mr. Smith:
We haven't any minutes. We have the contracts.

Mr. Burr:
If you have no minutes I don't want them.

Mr. Smith:
That is right.

The Court:
All right.

Mr. Burr:
One of my associates is a little bit doubtful whether I asked this question. I think I did, but I will ask it again so I can be certain.

Q. I want to ask you again, Mr. Cameron, if I have asked you, as to whether or not you had any authority at all to consider the question of negotiating or making contracts with reference to wages.

Mr. Harris:
He asked that right at the very first.

Mr. Burr:
I thought I did. I want to be certain.

A. No, I didn't.

Q. I want to be certain. What you handled is local grievances and complaints?

A. Yes, sir.

The Court:
Gentlemen, we might take a recess. I have to answer a telephone call at a quarter of three. We will take seven or eight minutes recess.

(Thereupon proceedings were in recess from 2:46 P. M., to 3:00 P. M., at which time proceedings were resumed as follows:)

The Court:
Proceed with the witness.

Mr. Harris:

Mr. Cameron,—

Mr. Burr:

I hadn't finished with him.

Mr. Harris:

I thought you had.

(By Mr. Burr):

Q. Now, Mr. Cameron, the detailed questions I have asked you relating to Mine 13, without going into the other mine, is the general condition about the same in mine Number 11 as exists in 13 so far as the questions I have asked you about transportation and crews and so forth?

A. Yes, sir.

Q. About the same conditions exist?

A. Generally speaking, yes.

Q. Now, you made some changes, did you not, in 13 and also in 11 on May 1, 1941?

A. We did.

Q. I wish you would tell us what changes you did make and how the mines have been operated since May 1, 1941, down to the present time.

A. On May 1, 1941, what is called the portal to portal time went into effect.

Q. I see.

A. That necessitated changing—

Mr. Harris:

We object to what it necessitated. Just tell us what you did do.

The Court:

Yes; I sustain that.

Q. Just tell us, what you did do; what changes you made and put into effect.

A. The time the first trip left the surface was earlier.

Q. What time does it leave since May first?

A. Since May first it leaves about 6:02.

Q. After that does it go down about as it did before?

A. Yes, sir.

The Court:

You mean the same intervals?

The Witness:

Yes, sir.

Q. Do you or not—

A. It doesn't take quite as long to make the three or four trips as it used to because there are always enough men to fill the skips and we don't have to wait so long.

Q. You mean the men are more prompt in getting there?

A. More prompt in getting there. They are supposed to be at the portal at six o'clock.

Q. That is when they are supposed to be there?

A. Yes, sir.

Q. The time is computed and paid for from six until 2:30?

A. 6:00 until 2:30 with thirty minutes out for lunch.

Q. That is the first change. What other changes?

A. There are other changes. The skip tender used to to go to work at 6:00 o'clock and take the skip off the side track at 6:00 o'clock and make the safety run when it is necessary. Now the skip tender's time starts at 5:45, —fifteen minutes to six,—and he does that before 6:00 o'clock. He gets the skip out of the side track before 6:00 o'clock and examines it and gets it at the loading point ready to go when the men get out after they check in and get their carbide.

Q. The skip tender's time begins at what time?

A. 5:45.

Q. 5:45 and runs until when?

A. 2:45.

Q. There is some over time in there?

A. Yes, sir. From 5:45 to 2:45 in nine hours, and they have no time for lunch. They are paid for a hour over time with the thirty minutes allowance from time and a half for overtime.

Q. The first trip leaves at 6:02 and the others leave at intervals probably a little quicker—

A. They go in quicker than they used to. I don't mean quicker time but at quicker intervals.

Q. Because of the men assembling earlier?

A. Yes, sir.

Mr. Harris:

I would prefer he would tell it. Mr. Burr is doing the testifying, if Your Honor please.

Mr. Burr:

This witness is too intelligent to be led. It might be true if I were examining an ignorant man.

The Court:

Let's go ahead.

Mr. Burr:

I know he wouldn't be led if I would lead him him. I am just trying to get on.

The Court:

Go ahead.

Q. I will ask you, then, so there will not be any leading questions in it, if I can put the question. Are the trips—do the men get in the mine quicker or slower than they did prior to May 1, 1941?

A. They get in the mines quicker.

Q. What is the reason for them being able to get in the mine quicker?

A. Well, the first reason is because the skip leaves the outside five or six minutes earlier than it used to because of the fact the skip tender goes to work earlier than he used to, and is able to do the required work before the man trip is run before six o'clock so that at six o'clock the men can start loading up immediately after checking in and obtaining their carbide.

Q. I see. Now, then, do the men, since May first, proceed to the places of work just the same way they did before May first?

A. Yes, sir, only there is no loitering at the hoodlum station now like there used to be. They get off the skip and immediately go to their working places.

Q. I see. Now, what time do they get to their working places now? That doesn't make any difference now so far as computing the time—

Mr. Harris:
That is argumentative.

Mr. Burr:
Oh, I don't mean to be argumentative. What is the matter with you, Crampton?

Mr. Harris:
You are not usually so bad.

Mr. Burr:
I may be a little dense. I told you I had a headache.

Q. What time do they get to their working places?

A. By 6:45.

Q. When is the generator cut off now?

A. At 1:45 instead of 3:10.

Q. And then they proceed to the hoodlum station?

A. Yes, sir.

Q. What time does the first trip go out?

A. At 1:45.

Q. The shooting time now is what?

A. 1:45. You see the difference there of shooting time from 3:10 and work time was 3:15. A difference of five minutes there was the time that was allowed the head miner and drill runner to load the holes on work time. Now it is all work time and they load the holes at 1:45, shoot the holes, I mean.

Q. Now what, under the present system as contrasted with the system that existed before May 1, 1941,—how much time, if any, is lost of working time at the face, productive time?

Mr. Harris:

We object to that, if the Court please.

Mr. Burr:

We think that question is entirely relevant.

Mr. Harris:

We think that question is irrelevant.

The Court:

The question asked what time is lost?

Mr. Harris:

Yes, sir.

Mr. Burr:

Yes, sir, how much less time.

The Court:

I will overrule the objection.

Q. How much difference is there in the time?

A. There is an hour and thirty minutes difference.

The Court:

An hour and how much?

The Witness:

An hour and thirty minutes. The last one used to leave at 3:10 and now they start at 1:45,—an hour and twenty-five minutes. That is an hour and a half less hoisting time for ore.

Q. Mr. Cameron, you heard Mr. Ball testify as to the figures on the incentive plan on cross examination, in which he stated, as I recall, that the normal production under the incentive plan at the point the incentive earnings began was 134 tons?

A. Yes, sir.

Q. Can you translate that for us in cars at your mines? How many cars did it take to make 134 tons?

A. 134 tons was—134 tons was approximately 20 cars of ore at 6.7 tons to the car, and the incentive earnings under the face to face time was based on three tons per man hour over the entire eight hours,—

Q. Yes.

A. —and that meant that the incentive earnings started roughly at 20 cars. Now, when I say 20 cars, I don't mean actually 20 cars; according to train weights it might be twenty and a half or nineteen and a half, but approximately 20 cars.

Now, under the new portal to portal system the same basis of three tons per man hour is used—

Mr. Brodie:
I object to anything this witness says regarding the new portal to portal system. That wasn't included in the question.

Mr. Burr:
If I had included it they would say I was leading.

Q. I want you to testify to the differences between the old and new.

The Court:
Overrule the objection.

Mr. Harris:
We adopt that objection.

The Court:
Overruled.

Q. Go ahead, Mr. Cameron.
A. Since the portal to portal has been adopted the incentive earnings are based on the same three tons per man hour but on six and a half hours at the face..
Q. Just a minute. Did the company itself make that adjustment when the portal to portal was put in?

Mr. Brodie:
I object to that, Your Honor.

The Court:
Overruled.

A. I think they did, Mr. Burr. I don't know, Mr. Burr.
Q. That was done anyway?

A. That was done.

Q. Go ahead and fiinish your explanation.

A. Then the incentive earnings, being based on six and a half hours at the face, roughly speaking, means their incentive earnings now begin at 16 cars or between 16 and 17 cars.

Q. I see.

A. So that the men know that under the old plan they started earning incentive after they loaded twenty cars, and now they start getting the incentive after they load sixteen cars.

Q. Now, since the plan went into effect, over May and June it has been into effect, have your headings and working places,—I mean stopes,—I mean working places,—have they been producing the approximately 20 cars a day or approximately 20 cars a day?

Mr. Harris:
We object to that, if the Court please.

The Court:
Overruled.

Mr. Harris:
We except.

A. Most of the places are producing sixteen cars now where they used to produce twenty.

Q. Have you got the figures, Mr. Cameron, that show the results in tons during May and June as contrasted with the average production during January, February, March and April, the four months preceding it?

Mr. Harris:
We object to that, if the Court pleases.

The Court:
Mr. Burr, there are so many factors entering into that—

Mr. Burr:
Sir?

The Court:
Wouldn't there be so many factors entering into that difference—

Mr. Burr:
Certainly there couldn't be any factor as big as having an hour and a half cut off the working time. If there are any other factors they have a right to show them. We propose to show when they worked eight hours they got out so many tons, and since they put this in, with everybody striving to do it,—to do the best they can we have this difference in production.

Mr. Harris:
It gets into the question of whether everybody is striving to do the best they can, whether the air is furnished, whether there is delay in getting materials to them. You are going to have to go into a comparative operation of the mine.

The Court:
That is what I was afraid of.

Mr. Harris:
That is the reason I objected to the other question.

Q. I will ask you if during that period the same men worked substantially as they did before, and are conditions with reference to cars and ventilation and air and delay about the same as they were?

Mr. Harris:

We object to that because it calls for a summary conclusion of many factors.

The Court:

Overruled.

A. They are the same except there is an hour and a half less work time.

Q. Can you tell us of the difference in the tonnage, whether it is more or the same or less than the preceding period?

Mr. Harris:

Same objection.

The Court:

Overruled.

A. It is a great deal less.

Q. Do you know the figures?

Mr. Harris:

Same objection.

The Court:

Overruled.

Mr. Harris:

Except.

A. About 500 tons every 24 hours less in the two mines, 11 and 13, Ishkooda.

Q. 500 tons every twenty-four hours. That would amount to—that would be a matter of mathematics.

That is all.

Cross Examination.

(By Mr. Harris):

Q. Mr. Cameron, you say you are a graduate engineer?

A. Yes, sir.

Q. Isn't customary in making a map to make north at the top instead of the bottom?

A. Not necessarily.

Q. That isn't the general rule in map making?

A. It depends on what kind of ~~a~~ map you are making.

Q. I have never seen one with the top of it south and the bottom of it north as I recall.

A. You will find that any engineer that looks at a map of that kind practically always insists on looking down the mine because when you stand at the portal everything on your right,—and look down the mine,—everything on your right hand side is right and everything on your left hand side is left.

Q. So a map is made—

A. When you are looking at it this way, when you speak of the right hand side of the mine, you have everything on your right.

Mr. Burr:

Crampton, do you want us to have those re-made and turn them around?

Q. A map of a mine is different from other maps?

A. Another reason for making it that way, the paper you make it on is limited in size and you have to make it so each end of the working will be on the map and not off the map.

Q. Does this in here indicate it has been worked out? I am referring to old 14 and a space between old 13,—there where my hand is?

A. Everything has been worked out except that area shaded by a black line.

Q. Can you indicate that? I don't know what black line you are talking about.

A. Take this territory right here; here is a black line that surrounds that. That means that area right in there is a pillar. That ore is left in there. It is mined out in between as Mr. Ball indicated.

Q. I don't mean to ask whether you have robbed the pillars in here, but has this territory been mined?

A. Yes, sir.

The Court:

What is that white area where his finger was right there?

The Witness:

This area in here—

The Court:

Unmined?

The Witness:

No; it is an area caused by a fault. There is a 150 or 200 foot fault in there, which, when it drops down, it leaves this area—

The Court:

That has not been mined?

The Witness:

We have mined on this side up to the fault and on the other side up to the fault. There is no ore in there.

The Court:

There is no ore in there?

The Witness:

No, sir. It is a different elevation.

Q. You say you are re-opening 14; old 14 you are re-opening now?

A. Yes, sir.

Q. How long has old 14,—how long has it been since it was worked?

A. October, 1924.

Q. And when you re-open old 14 does that mean the men go down the slope at old 14?

A. It will be a mine in itself the same as number 11 and number 13.

Q. Well, you will use this slope?

A. Yes, sir.

Q. So, if you put 14 in operation, the men over here at this place, whatever its number—I don't see any number there. What is the number of that one?

A. 28.

Q. Well, the men at 28, if you open 14, will save about 95 per cent. of the distance they walk around that way? (Indicating on map.)

A. With this exception: That those crews over there will probably go down here to 13. There will be new crews in 14.

Q. Yes, but to get men from the surface to where they work, the traveling of the men mining this area will be insignificant to what the travel has been—

A. It will be much less.

Q. It will be insignificant?

A. This travel here will be about the same.

Q. After they leave the man loading station it will be insignificant?

A. It is in comparison with these men.

Q. I am asking about these other workings?

A. Yes, sir.

Q. The ones I am asking about are 28—

The Court:

In comparison with the number on the right there?

Mr. Harris:
Yes, sir.

Q. Now, in that travel—take a man going down number 13; when he gets off at the man loading station and walks over there to 28, is the place he walks on level like the top of this table here, or is it up hill and down dale, or how does he walk?

A. There is a slight grade towards the face in 28.

Q. Up hill up here (indicating on map)?

A. Yes, sir.

Q. Is he walking up hill to the next one there?

A. All the headings from the nuck towards the face are up hill.

Q. Are they not only up grade but—

A. There is one and a half to two per cent. grade in their favor of the loads coming to the—

Q. Except for being up grade the ground he walks on or the place he walks on is straight?

A. I—

Q. Do you catch what I mean?

A. No, sir.

Q. A man can be going up grade and climbing—

Mr. Harris—
—Does the Court—

The Court:
You mean on the same plane?

A. From the man loading station—he does walk a grade of 10 or 15 degrees from the man loading station up to 28 up a regular manway and out to his working place he is on a grade of two per cent. but it is a track—a track grade.

The Court:
You mean he walks on ties?

The Witness:
Walks on ties. The ties are filled in.

The Court:
Track?

The Witness:
Just like a railroad track.

The Court:
Filled in?

The Witness:
Standard track.

Q. You stated to Mr. Burr when you went there there were 25 or 30 headings, and now there are eight; is that right?

A. I said 25 or 30. That is my best recollection.

Q. I don't—

A. I said when I went to Ishkooda as Division Engineer there were that many. When I went there as Superintendent there ~~were not~~ that many. You see I was Division Engineer in 1912. At that time they were working in this area up here (indicating on map). They were not working below the fault. They were driving through the rock.

Q. Now, your headings, whether it was 25 or 26 or 30,—it doesn't make any difference,—what I am coming to the number of headings has been cut down most materially, but has the number of men been reduced in like proportion?

A. The number of men working in each heading is practically double what it used to be in those days.

Q. So that although you cut down the number of headings, you haven't cut down the number of men in that proportion at all, but have doubled the number of men? I do not mean in inverse proportion at all mathematically?

A. In those days all the ore from Ishkooda was loaded by hand. Now it is loaded mechanically.

Q. So one heading will have twice as many men in it now as it did in the old days?

A. Well, generally speaking the old hand mucking headings had—let's see—four or five men in them.

Q. Now, did you have—

A. Now they have seven.

Q. Now they have seven?

A. The face of the old headings in the old days was 30 feet wide and now we have stopes—

Q. That run—

A. 220 feet.

Q. Run 220 feet?

A. Yes, sir, and the ore is loaded mechanically as against hand loading in the old days.

Q. Now, you mentioned a man that works with the crew, the drill crew, the mine crew, that I don't know anything about called a haulage engineer. What is he? That is a new one on me?

A. Well, the haulage engineers are used to operate a little hoist where the grade changes in any of the headings. Where the cars will not go over themselves we use a little hoist in tramming—pulling the cars across the hump to the nuck where the locomotive can get at them and take them out.

Mr. Burr:
Is that an auxiliary hoist?

The Witness:
Auxiliary hoist. They are not used at Ishkooda but only at two or three places.

Q. When you said in answer to Mr. Burr's question that the time lost at the face was an hour and a half, what you did to arrive at that figure was to subtract 1:45 from 3:15, and gave the difference in shooting times?

A. That is what I did, but the hour and a half I was thinking of was the hauling time, the hoisting time, and that is what counts with us now, to get the ore out of the mine.

Q. But while the shooting time has changed, there is a difference of an hour and a half in the shooting time, the men actually get to the face more quickly than they did before; isn't that true?

A. Generally speaking, yes, because the head miners keep in behind them and don't let them loiter along the way.

Q. Don't let them loiter along the way, and the company hauls them in faster?

A. Due to the fact that they get to the tally house earlier.

Q. Does the drum that hauls the skip run at the same speed since May first it did for three years prior to May first?

A. Yes, sir. What I meant when I said they got in faster was that the sequence of the trips is faster because there were always men, too, at the tally house to load the skip, whereas we used to have to wait two or three minutes for the men to get out.

Q. No lost motion at all in getting the men down?

A. No, sir.

Q. And when they get down there is no lost motion on the part of the men in getting from the man loading station to the place where they drill and muck the ore?

A. They are supposed to go immediately to their working places.

Q. And if they get there before the juice is turned on at 6:45 they can go right to work on everything except your mechanical loaders, can't they?

A. The juice is turned on just as soon as the substation tender can get there after six o'clock and we make it a point to have him ride the first trip so he can start the generator.

Q. Since May 1, 1941, when does the generator start?

A. As soon as the man can get down there.

Q. But in the old days—

A. It didn't start until 6:45.

Q. Until 6:45?

Q. Where does the man have to go that starts the generator?

A. In the generator room.

Q. Where is that? I don't know where the—

A. In number 13 it is at 28—I mean 26. In number 11 Mine it is at 66.

Q. How far is it from the man loading station?

A. The man loading station is right there and the generator is right there (indicating on map).

Q. How many feet would you say it is from the man unloading station to the generator?

A. Around 1000 feet.

Q. How long does it take him to walk that 1000 feet?

A. Oh, maybe six minutes.

Q. Now, he leaves the portal at 6:02, and he gets down there in three minutes,—

A. Three or four minutes.

Q. That is 6:05. How many minutes would you say it would take him to walk up there?

A. Maybe six or seven.

Q. That is 6:11, so the juice now goes on there about 11 minutes past six?

A. Somewhere about that.

Q. Yes.

A. Make it 6:15.

Q. The juice now goes on at 6:15 whereas before May 1, 1941, it went on at 6:45?

A. That is correct.

Q. Even without the juice being on, after the drill man got to his heading he had a light on his head so he could start to work without the juice, couldn't he?

A. You mean before or after? He doesn't need the juice to go to work. Nobody but the drag operators need the juice.

Q. That is what I am coming to. He can take his quarry bar and check the roof?

A. That is all he has to check it with.

Q. He can check the roof, and he can be setting up his drill, or he can be getting his jack hammer placed ready where he is going to put the holes for the hanger; he can be doing all that without any juice, can't he?

A. You are talking about the period of time now since May first, are you?

Q. Any time? He doesn't need the juice to do that?

A. No, but since May first he is supposed to go to work when he gets there. Under the old system he wasn't supposed to go to work until the juice went on at 6:45, which is just like the whistle blowing on the outside,—signals time to go to work.

Q. So the difference in time—if he entered the portal at 6:00 o'clock your afforded all of them opportunity to work at 6:45; the company gave them all necessary equipment or juice or air, whatever it was, was turned on at 6:45 so they could start work?

A. I said the generator was turned on at 6:45. The air goes on at 6:00 o'clock.

Q. And did it do that in the old days before May 1, 1941?

A. Yes, sir.

Q. Now, I understood you to say that on many occasions the men finished the work before shooting time and 3:10 and would leave the shooting face and go walking—

A. That is the loading crew.

Q. That is the loading crew?

A. Yes, sir.

Q. And go on up to the man loading station?

A. That is right.

Q. And did any of them before May 1, 1941 not only leave before quitting time but did they start to work before 6:45?

A. They were not supposed to start work before 6:45.

Q. But they did?

A. I don't think they did.

Q. Did you go around through the mines?

A. I never saw them working before 6:45.

Q. Did you go around through the mines before 6:45?

A. I have been in the mines at 6:45,—been in the mines before that.

Q. Now, the—what you call the service men or company men, unless their place of work is changed they know where to go to work just the same as what you call the producing men?

A. That is right,—not all the time. They do from day to day. If they are laying up a heading they presume they are going to that place unless the foreman changes them.

Q. How long does it take to lay up a heading?

A. That depends on the distance we have to lay the track; anywhere from a week to two weeks.

Q. A week to two weeks?

A. Yes, sir.

Q. This incentive plan, you didn't have anything to do with devising or figuring this out?

A. Yes, sir.

Q. Before 1936?

A. Yes, sir, before that.

Q. Were you one of the men that went off on a trip to study—

A. No, sir, I did not go off on a trip but I spent some time with the Engineering Department and with Mr. Ball going over the figures.

Q. Did you call in any of the union officials to help you figure out the incentive plan?

A. I didn't.

Q. Now, when the basis was changed on May 1, 1941, for this incentive plan, did you have anything to do with changing that basis?

A. I wasn't present at those negotiations.

Q. How did you learn about it? How did you get your information about the change? Did an order come down from the company to you?

A. I was furnished a copy of the new incentive system by Mr. Ball and told by him in conference what changes would be made in it.

Q. You can't tell what Mr. Ball told you. I just asked you how you got the information about it?

A. That is the way I got it,—from him in a conference.

Q. All right. Now, you have mine number 11 and mine number 13 under you, have you not?

A. Yes, sir.

Q. How many work underground at mine number 13?

A. About 250 or 260.

Q. You mean in the course of 24 hours?

A. Yes, sir.

Q. That means about 125 on a shift?

A. About 125 to 130.

Q. How many work in number 11?

A. About the same number.

Q. About the same number?

A. Yes, sir.

Q. And slip about the same way, about fifty-fifty?

A. About the same.

Q. Now, before May 1, 1941, when these muckers or mechanical loaders left the face before 3:10 or 3:15 they still got paid for eight hours work, didn't they?

A. Yes.

Mr. Harris:

I think that is all.

Re-Direct Examination.

(By Mr. Burr):

Q. Everybody was paid for eight hours work?

A. That was the basis.

Q. Unless they came out?

A. Yes, sir, sickness or something like that.

Q. If they worked over eight hours they got over time?

A. Time and a half for over time.

Q. That over time provision has been in effect there for sometime before the passage of this Act, hasn't it, Mr. Cameron.

A. Yes, sir.

Q. I think Mr. Ball gave the exact date.

One question I neglected to ask you.

Since you began operating under this so-called portal to portal plan, the day's wage has been computed and paid from portal to portal: is that right?

A. That is right.

Q. Has it been paid on the same occupational rate that the man would have got at his working place? For instance, does the head miner get his pay on the head miner's occupational rate and so on down for traveling?

A. Yes, sir.

Q. The same fellow sitting on—in the car going down, he gets paid according to the rate he gets when he gets to his working place?

A. Yes, sir.

Q. One other question Mr. Harris asked you. When this new mine operates some of the men will have less travel distance than they have now?

A. The men working in 14 will.

Q. And if that is true the company will have to pay less time under the portal to portal for traveling time?

A. Yes, sir.

Q. That will be true of any mine—

A. Yes, sir.

Q. In other words, a mine that is shallow will have less traveling time to pay than a mine that is deep?

A. Yes, sir.

Mr. Burr:

That is all.

Re-Cross Examination.

(By Mr. Harris):

Q. That would apply,—that shallow part he was talking about, that would apply to the other mine the further it gets? It would work both ways?

A. With the exception as the mine moves back the man loading station will be moved and increase distances at 13 and 11.

Q. But the men would have to go further from the portal of the mine to get to the working place?

A. It would take longer skip hauls but not any longer walking time.

Q. A new mine opens up from the front and it does not take long to get there, but an older mine, you go further and further all the time, and the distance gets greater from the portal to the working place?

A. Yes, sir.

Mr. Harris:

That is all I want to ask.

Mr. Burr:
The way it works is that the company that has the longest—

Mr. Harris:
We object to the argument.

Mr. Burr:
I will ask you if it is a fact that the company that has the longest traveling time to pay has to pay more wages in traveling time—

Mr. Harris:
We object to that.

The Court:
I think we understand.

Mr. Harris:
That is axiomatic.

Mr. Burr:
I agree it is axiomatic.

Listen to this: Suppose an ore mine is an open pit mine,—well, I will not ask you that question.

Come down. I want to save that question. I want to save that awhile.

(Witness excused.)

Mr. Burr:
Judge, I want to offer in connection with Mr. Ball's testimony, because I think it will preserve all the diagrams we have got, this article he referred to, which gives the pictures—

The Court:

You mean the article by Mr. Ball?

Mr. Burr:

By Mr. Ball, yes, sir. I want to offer it in connection with his testimony.

The Court:

I think it ought to be in the file.

Mr. Harris:

I don't think I would have any objection to the pictures. I would want to study the article.

Mr. Burr:

I can put it in and you can study it later and make your objection.

Mr. Harris:

Of course, my objection to anything prior to 1938 stays in to everything.

The Court:

That will be exhibit what?

Mr. Burr:

22.

The Clerk:

T. C. I. Exhibit 22.

(Thereupon a re-print of an article by E. M. Ball and A. W. Beck, published in "Mining and Engineering Journal" was marked T. C. I. Exhibit No. 22.)

The Court:

Now, are you through with that witness?

Mr. Burr:
Yes, sir, that is all for Mr. Cameron.

The Court:
Now, will we save time by adjourning now and letting you all collect your data and things?

Mr. Burr:
Yes, sir. It is just twenty minutes of adjourning time now, and I took the noon hour to go over this with Mr. Cameron so I would know intelligently how to examine him, and I didn't have an opportunity to go over it with the others.

Mr. Harris:
I don't think we will gain anything by putting a witness on.

Mr. Burr:
I will be ready to go ahead Monday morning.

The Court:
Now, about meeting Monday morning, we will meet at 9:30 and Court is adjourned until Monday morning at 9:30.

(Whereupon, at 3:40 P. M., July 10, 1941, an adjournment was had to 9:30 A. M., July 14, 1941.)

July 14, 1941, 9:30 A. M.

Court met Pursuant to Adjournment.

The Court:
Are you ready, gentlemen?

Mr. Burr:
Yes, sir.

Mr. Harris:

Judge, there is one thing that occurred Thursday afternoon just before we adjourned. I think I must have been so tired my mind had just quit working.

Mr. Burr mentioned he wanted certain documents and minutes of the union meetings, and I stated we hadn't filed any objection, and then when we got downstairs I remembered that was taken up and there was argument before Your Honor and the Court ruled we didn't have to produce them, and an order was issued, and that had completely escaped my mind, and so I want to correct the very last conversation I had with you.

Mr. Burr:

I can't imagine, if the Court pleases, why there should be any rule of the Court against requiring the production of these minutes. We certainly feel we are entitled to that beyond question. I don't understand the other rulings, but I can see some basis for them; but this ruling—

The Court:

This is committee meetings?

Mr. Burr:

Yes, sir.

Mr. Harris:

Of the union.

Mr. Burr:

Yes, sir, the joint meetings.

The Court:

The joint meetings of the union with the management?

Mr. Burr:

Yes, sir.

Mr. Harris:
I thought you meant the union minutes.

Mr. Burr:
No; the joint meetings.

Mr. Harris:
I don't object to that.

Mr. Burr:
Have you got those ready?

Mr. Harris:
I don't know. I haven't checked them this morning.

Mr. Burr:
Well, I thought I would have them this morning. What I wanted them for was to see if I had overlooked any. I wanted a full set of them in the record.

The Court:
Probably they have them.

Mr. Burr:
When can you find out, Crampton?

This may be off the record.

The Court:
As I understood, Mr. Burr, when you had these meetings,—as I understood the testimony of Mr. Ball—

Mr. Burr:
Yes, sir; minutes were kept and furnished to each party.

The Court:
—a secretary was called in and minutes kept and reduced to writing.

Mr. Burr:

Yes, sir. I want to be sure I have them all. I have introduced them all so far as I know, but I want to be sure I have them all.

The Court:

I presume you have a full set.

Mr. Burr:

It has been going on over a long time and some may have been lost.

Mr. Harris:

We will try to find them. I don't know whether we have any he hasn't got or not. Mr. Lipscomb had some files and he was trying to check them.

I think you have introduced about all there ever was.

Mr. Burr:

We have produced all we can find. I was fearful there might be others. They were introduced in the other hearing. I wanted to be sure I hadn't lost any of them.

Mr. Harris:

That is what happened to ours. There have been hearings before the Governor's Board and the National Labor Relations Board and we have about exhausted our supply.

(To Mr. Lipscomb):

Have you found them?

The Court:

Have you found them?

Mr. Lipscomb:

I may have some in my files. They were brought in there for my inspection. It wasn't my duty to keep the files. I will look and see if I have any.

Mr. Burr:

What I want is everything that occurred with reference to this portal to portal proposition.

Your Honor will recall I have introduced three occasions when there was reference to it. Mr. Ball testified he had examined his minutes and no other occasions occurred.

If they have any other occasions, I want to offer them in evidence. If they will tell me there are no others, that is all I want.

The Court:

Maybe you can stipulate that.

Mr. Burr:

That is what I say. If he will tell me that is all there is, I will be satisfied.

Mr. Harris:

We will check and see.

The Court:

When you can, find out.

Mr. Lipscomb:

I have asked the secretaries to bring in all the minutes they had.

The Court:

Today?

Mr. Lipscomb:

No; several days ago; in fact, back at the beginning of the trial. They have brought me some.

I understood at the beginning of the trial Mr. Burr had introduced all the minutes.

Mr. Burr:

All I have got. I want to see there are not any more.

The Court:

The question is how long will it take to see if you have got any more?

Mr. Lipscomb:

I can exhaust my files probably by tomorrow morning, Your Honor. I wouldn't say positively. These minutes continued over several years.

They were present in the Governor's Board hearing and Labor Board hearing and probably there were some of them that were—

The Court:

Would it be possible for the secretaries to go over them before then? They are familiar with the files.

Mr. Lipscomb:

Not my file.

The Court:

The union files.

Mr. Burr:

I don't want just your files, Mr. Lipscomb. I want the union file.

The Court:

What we want is to let the other side know as soon as possible. We have had Friday, Saturday and Sunday. They requested that the other day, I understand.

Mr. Lipscomb:

Well, Your Honor, I can have one of the defendants to run through what I have here. I possibly have all I know of in my file.

Mr. Burr:

I would make this suggestion to save time: Let Mr. Lipscomb hand over to me all he has and all the secretaries of the various locals have, and I will have Mr. Patterson and Mr. Bronaugh here to go over those and see if there is anything in there we want.

Mr. Lipscomb:

I would be glad to do it, but I wouldn't like to be excused from the trial.

Mr. Burr:

I didn't suggest that. We can do it outside Court hours.

The Court:

No, I wouldn't ask you to absent yourself during the trial.

Will you have the secretaries to go over the files?

Mr. Lipscomb:

Those I have here.

Mr. Burr:

Those we can check during a recess.

The Court:

Yes. Ask the secretaries to check during a recess. In other words, you can't be away from the trial,—I realize that.

Mr. Burr:

We wouldn't want him to be away.

The Court:

No.

Mr. Burr:

If the Court please, there is one other matter before we resume the testimony,—just an explanation of how we had in mind to present our case.

Your Honor will recall when we had the settlement of pleadings and pre-trial hearing here, Your Honor made the suggestion that if we could you would like for us to agree on the number of witnesses. Both sides told you that they couldn't very well do that.

What we have decided and tried to do is to prevent putting on cumulative testimony. We are telling you how we expect to do this so Your Honor may know and the other gentlemen too.

We started with Mr. Ball, who was the general superintendent of ore mines and quarries, to give a bird's-eye-view, and as intimate a view as he could of the whole situation.

Now, we have three divisions, Muscoda, Wenonah and Ishkooda. I have started with Mr. Cameron, who is superintendent of Ishkooda and who has a more intimate knowledge of that division than Mr. Ball. After I have finished with Mr. Cameron I expect to put on one or two or more mine foremen and head miners who have a more intimate acquaintanceship with it than either Mr. Ball or Mr. Cameron, so as to give you a top, middle and bottom view.

There may be some discrepancies because some of the mine foremen may know something Mr. Ball or Mr. Cameron may not have known about, but we want Your Honor to have the full facts.

I am going to proceed with Ishkooda and put on the other witnesses, and then take up Wenonah and later Muscoda.

The Court:

Very well.

Mr. Burr:
I am sure Your Honor will indulge us if anything occurs that makes it necessary to put on additional witnesses.

The Court:
Very well.

Mr. Burr:
Mr. Brown, I will take you next, please, sir.

1099 CLARENCE E. BROWN, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. This is Clarence E. Brown, is it, Mr. Brown?

A. Yes, sir.

Q. Mr. Brown, do you mind telling us how old you are, first?

A. 49.

Q. 49?

A. Yes, sir.

Q. And in what business are you engaged at the present time?

A. Mine foreman at Ishkooda.

Q. Whereabouts, please, sir?

A. Ishkooda.

Q. I want you to raise your voice a little bit so we can all hear you.

How long have you been a mine foreman at Ishkooda?

A. I was first made mine foreman in 1924, but I have been set back several times, and I don't know just how long I have been a mine foreman, but off and on since 1924.

Q. Since 1924?

A. Yes, sir.

Q. What do you mean by being set back? Were you demoted?

A. No. It was just a question of some places being shut down and the old men would be moved back.

Q. During the depression you were just running part time?

A. Yes, sir.

Q. And you shared the work as mine foreman?

A. Yes, sir.

Q. Prior to starting at Ishkooda, how long had you been engaged in the mining business? When did you start to begin with, and bring it on down? How old were you when you started?

A. Fourteen years old.

Q. Fourteen years old?

A. Yes, sir.

Q. Where did you start?

A. Brookwood.

Q. Brookwood?

A. Brookwood.

Q. Where was that?

A. A coal mine in Tuscaloosa County.

Q. Do you remember who operated it?

A. I don't remember. I think it was Alabama Consolidated Coal Company.

Q. When did you leave there and go to another mine?

A. I think I left there in 1908.

Q. Just what did you do while you worked in that mine? I don't want to go into the details of it, but the general—

A. I was mining coal, working with my father.

Q. On a contractual basis, contracting?

A. Contracting.

Q. You were working with your father?

A. Yes, sir.

Q. Digging coal?

A. Yes, sir.

Q. You left there, you say, in 1908?

A. I think so.

Q. Where did you come next?

A. Number 4 at Wylam.

Q. Was that a coal mine?

A. Coal mine.

Q. What company was that mine operated by?

A. T. C. I.

Q. Just in a general way what duties did you perform there?

A. I was digging coal and also worked on tracks some there at Number 4.

Q. Working on tracks, were you what is commonly referred to as a company man?

A. Yes, sir.

Q. Digging coal you were a producer?

A. Tonnage basis.

Q. Was that a slope mine?

A. Yes, sir, slope.

Q. How about the mine at Brookwood you worked at first?

A. That was a drift.

Q. Drift?

A. Yes, sir.

Q. What is the difference betweeen a drift and a slope, in a general way, so we—

A. A drift mine goes in on the hill level. In other words, you find the outcrop of the coal and follow the coal in. A slope, you go in from the top through rock or whatever it is.

Q. In other words, a drift mine, you head straight in?

A. Yes, sir.

Q. And drive a tunnel?

A. Yes, sir.

Q. A straight tunnel?

A. Yes, sir.

Q. And after you get in you turn rooms off the heading?

A. Turn rooms off the heading.

Q. You call them stopes in ore mines and rooms in coal mines?

A. Yes, sir.

Q. That is the difference?

A. Yes, sir.

Q. How long were you at number 4?

A. I was there about a year.

Q. Then where did you go?

A. Sango.

Q. Where is it located?

A. It is an ore mine located between Ishkooda and Wenonah, about between 11 and 10.

Q. By what company was Sango operated?

A. I think it was Tutwiler Coal Company at that time.

Q. That is—

A. Bonnyman.

Q. Was that a drift mine or a slope mine?

A. That was a slope.

Q. You worked there about how long?

A. About a year, maybe a little better, about 18 months, I imagine,—12 or 18 months.

Q. Do you recall at that time whether you were working so many hours a day or what?

A. Ten hours a day.

Q. Ten hours a day?

A. Yes, sir.

Q. And how long did you say you worked there?

A. Between 12 and 18 months, something like that.

Q. Was all the work you did at Sango mining coal, or were you at work on the surface crew?

A. I was on the surface crew a while.

Mr. Harris:
I thought that was an ore mine.

Mr. Burr:
It is an ore mine. Did I say coal?

Mr. Harris:
Yes, sir.

Q. You say you worked on the surface there?
A. Yes, sir, as a car repairer.
Q. When you were working at Sango, when did your day's work start?

Mr. Harris:
As I understand, all through the case I have my objection to everything that happened before 1938.

Mr. Burr:
Yes, sir, that is understood.

The Court:
It is understood.

A. It started when we got underground to our working place.
Q. At your working place?
A. Yes, sir.

Mr. Brodie:
Your Honor, may I have a special objection to this?

Mr. Burr.
Yes, sir, he may have any objection he wants as far as I am concerned.

Mr. Brodie:
I am not sure to what extent Mr. Harris' objection goes.

The Court:
You mean you object—

Mr. Brodie:
I object to this question in regard to this witness working at Sango.

The Court:
I overrule the objection.

Q. I will ask you to state whether or not either the miners or the serviced crews at Sango received any pay for the time they spent in traveling to and from their working places?
A. No, sir.

Mr. Brodie:
I object. . .

The Court:
Overruled.

Mr. Burr:
Did Your Honor get the answer?

The Court:
No, I did not.

Q. What was your answer to that, Mr. Brown?
A. Did not.
Q. How did you get to your place of work at Sango?
A. All the men walked the manway at that time.
Q. Do you recall about how far down the manway was at that time when you worked there?
A. Very little work had been done, Mr. Burr, in Sango Mine, and I couldn't say just how far it was.
Q. About how far in your best judgment?

A. I would say the bottom of the slope was about 1200 feet, something like that.

Q. You say you walked down the manway. How did that run with reference to the slope?

A. Right parallel with the slope.

Q. Parallel with the slope?

A. Yes, sir.

Q. The haulage of the ore and material was through the slope?

A. Yes, sir.

Q. And after they got down the manway how did they get to their working places?

A. They walked to their working places.

Q. Was that the practice while you were at Sango?

A. Yes, sir.

Q. Did you have a bath house at Sango?

A. No, sir, didn't have any bath house at all.

Q. Had to bathe at home?

A. Had little shacks around, and bathed in buckets and tubs.

Q. At Sango how did you get your tools you used in your work?

A. Me being outside, Mr. Burr, we carried our tools with us.

Q. Do you know how the miners got their tools at Sango?

Mr. Harris:

He was very seldom down there. Unless he knows himself, we object.

The Court:

He said he worked on the surface?

Mr. Burr:

He said he worked some underground.

Q. How long did you work underground, Mr. Brown?

A. Very little.

Q. Well, a week or a month or what?

A. Not over a month.

Q. While you were working there how did you get your tools?

A. We carried our tools from the outside while we were working underground.

Q. You carried them from the outside tool house?

A. Yes, sir.

Q. Down the manway into the mine?

A. Yes, sir.

The Court:

What is the manway? Is that a passageway parallel with the slope?

Mr. Burr:

Yes, sir, it is parallel with the slope as he explained just now.

The Court:

Yes, sir.

Q. Just about how far is the manway, the mouth of the manway, from the slope at Sango; about how far is it?

A. I imagine it was about a hundred feet.

Q. About a hundred feet?

A. Yes, sir.

Q. Was that manway used for any purpose other than the men walking up and down in?

A. Men and mules.

Q. Men and mules?

A. Yes, sir.

Q. You had mule transportation then?

A. Yes, sir.

Q. You were there; as I understand, about two years—

A. Something like that.

Q. —and did about a month's work underground and the balance outside?

A. Yes, sir.

Q. Where did you go from Sango?

A. Back to Brookwood.

Q. Back to coal mining?

A. Yes, sir.

Q. Were the conditions the same there as when you worked there before?

Mr. Harris:

We object. It doesn't make any difference what the conditions in the coal mines were.

The Court:

I think so.

Mr. Burr:

We are not raising it at this time. I think when we get to it we can show Your Honor it is material in this case, but I will avoid it for the present and respectfully except to Your Honor's ruling.

The Court:

All right.

Q. About when did you leave Brookwood? How long did you stay there the second time?

A. I left Brookwood in 1915.

Q. Where did you go then?

A. The Wenonah Division.

Q. That is the Wenonah Division of the Tennessee Company?

A. Yes, sir.

Q. Do you remember what mine you worked in there then?

A. Number 8.

Q. How long did you stay at Wenonah when you went there in 1915?

A. I think I transferred from Wenonah to Ishkooda about 1916, sometime in 1916.

Q. Were you ever back at Wenonah, or was that the last time?

A. The last time.

Q. When you were at Wenonah at that time—You say about a year?

A. Something like a year.

Q. Where did you work in Wenonah?

A. Number 8.

Q. Was that a slope mine?

A. Yes, sir.

Q. What work did you do there?

A. I worked on a service crew.

Q. Is that an inside crew?

A. Inside crew.

Q. What work did you do on that inside crew?

A. Putting down an electric pump.

Q. What other work did you do there?

A. Drilling.

Q. Anything else you did there?

A. Also section foreman.

Q. Anything else?

A. I think that covers about all of it.

Q. Were you ever a driver there?

A. No, sir.

Q. Never was a driver there?

A. No, sir.

Q. All right, sir. That covers your work in Wenonah. That was 1915 to 1916. It was a slope mine, was it?

A. Yes, sir.

Q. How did you get down to the bottom of the slope in that mine?

A. At Number 8?

Q. Yes, sir, during the time you were there.

A. In a skip.

Q. In a skip?

A. Yes, sir.

Q. Was that skip similar to the ones used now in a general way?

A. The same thing.

Q. Were you hauled down in the skip to what they called the underground loading station?

A. Yes, sir.

Q. Then how did you ~~get to your working~~ place from there?

A. We had to walk from the underground loading station to our working places.

Q. Can you give us any judgment, Mr. Brown, about how far the main slope at Wenonah had been driven when you were working there, or can you give us at present?

A. I can give you the place where I was working.

Q. That is what I mean, the place you were working.

A. I would say somewhere between 2200 and 2500 feet, —about 2200 feet.

Q. About 2200 feet?

A. Something like that.

Q. Do you remember the number of the heading you were working in?

A. 68.

Q. 68?

A. Yes, sir.

Mr. Burr:

Of course, later we can get the exact distance by using the map.

Q. You say you think it was about 2200 feet?

A. Yes, sir.

Q. When you got down to 2200 feet about how far did you have to walk before you got to your stope in the heading?

A. It was quite a little distance; I would say six or seven hundred feet.

Q. All right, sir. How about your tools when you were at Wenonah that first time and you were working as a producer in this mine? Where did you get your tools?

A. Our tools were in the heading.

Q. In the heading?

A. Drilling tools were in the heading.

Q. I see. How about your wedges and things of that sort? Were they delivered—

A. Didn't use any at that time.

Q. Didn't use any at that time?

A. No, sir.

Q. At that time in that operation, I will ask you to tell the Court both while you worked on the service crew and also while you worked as a producer, whether or not your wages were computed and paid on the face to face basis, or on what we call the portal to portal basis?

Mr. Harris:
Same objection, if Your Honor please.

The Court:
Same ruling.

Mr. Burr:
Yes, sir.

A. Face to face.

Q. Did you ever hear of this portal to portal until recently?

Mr. Harris:
We object to that as distinctly leading.

Mr. Burr:
Well, I could do—

Mr. Harris:
I don't think it is material when he heard about it.

The Court:
I think so.

Mr. Burr:
We except and offer to show it was not known as portal to portal when he was mining.

The Court:
There is no use saying that. You have proven that.

Q. Tell the Court in your experience what the entrance of the mine has been called—

Mr. Harris:
Wait a minute. I don't understand that question. May I have it read to me?

Mr. Burr:
I hadn't finished it.

Mr. Harris:
Well, I am sorry.

Mr. Burr:
Just read it. Well, I will ask it again.

Q. Tell the Court what the entrance of the mine was known as by the men who worked there?

A. Mouth of the mine.

Q. Mouth of the mine?

A. Yes, sir.

Q. State whether or not you ever heard it referred to as the portal of the mine?

A. No, sir.

Q. After you left there at Wenonah—You left there in 1916, I believe you said?

A. Yes, sir.

Q. Where did you go next?

A. Ishkooda.

Q. While you were at Wenonah that first time, how many hours per day were the men working?

A. Ten hours.

Q. And did they continue working ten hours all the time you were at Wenonah or not?

A. Yes, sir.

Q. State, Mr. Brown, when did you first begin using carbide lamps, if you remember, where you were working when you first began using carbide lamps.

A. The first carbide lamp I ever used was coal digging, coal mining.

Q. Well, in the ore mines?

A. When I came to the Mountain.

Q. Sir?

A. When I came to the Mountain they were using carbide lamps.

Q. Did the men own their own lamps or did the company furnish the lamps?

A. The men owned their own lamps.

Q. Where did they get their carbide?

A. They had a little house close to the mouth where they got their carbide.

Q. Was the carbide handled differently or practically the same as it is now?

A. Practically the same at Wenonah.

Q. Practically the same at Wenonah?

A. Yes, sir.

Q. All right. Did you have a bath house at Wenonah or not?

A. Yes, sir.

Q. Was the bath house—I will see how it was used at Ishkooda when we get to that. Was the bath house used by you at Wenonah in practically the same way it was used when you went to Ishkooda?

A. Yes, sir.

Q. Did you or not use your brass checks,—that is, deposit them when you came to the mouth of the mine, and take them up when you came out at Wenonah just like you have used it at Ishkooda since?

A. Yes, sir.

Q. Now, did you come to Ishkooda to stay permanently —When?

A. Well, I came back to Ishkooda—

Q. When, after leaving Wenonah?

A. After leaving Wenonah I stayed at Ishkooda until 1918.

Q. And then where did you go?

A. Went back to Brookwood

Q. And stayed at Brookwood until then?

A. '22, I think it was.

Q. What was the occasion of you leaving Brookwood?

Mr. Harris:
We object to that. It doesn't make any difference.

The Court:
It doesn't—

Mr. Burr:
If he objects to it, I withdraw it.

The Court:

All right.

Q. Then you came to Ishkooda again when?

A. I came to Ishkooda in 1922, July, 1922.

Q. And that is the time you say you have been there since then?

A. Yes, sir.

Q. What positions have you held at Ishkooda from the time you went there down until now?

A. Just about everything in the mine.

Q. Name some of them?

A. Well, I have watched, pumped, section foreman, driller, timberman, track man, assistant mine foreman and then mine foreman.

Mr. Harris:

I can't hear him.

Q. Talk louder.

A. And then mine foreman.

The Court:

How long did you say you had been at Ishkooda the last time?

Mr. Burr:

Since 1922.

The Witness:

Since 1922.

Q. And you are still there as mine foreman at the present time?

A. Yes, sir.

Q. During that period of time since 1922—when you went there in 1922, how many hours a day were the men working?

A. Working ten hours.

Q. Was there any change in that ten hours?

A. Yes, sir.

Q. When was the change made and what did it amount to?

A. Not until the Coal Code went into effect, and then they went on eight hours.

Q. When the Coal Code went into effect they went on eight hours?

A. Yes, sir.

Q. Do you recall what year that was, Mr. Brown, about?

A. It was 1933.

Q. 1933?

A. Yes, sir.

Q. Since then have they been on eight hours?

A. Yes, sir.

Q. Has the same method of transportation in getting to the place of work been there at Ishkooda ever since you have been there in a general way?

A. Yes, sir.

Q. What was the difference in going in and coming out of the mine when you had a ten hour day as contracted with the eight hour day? Did you go in the mine at a different time or at the same time?

A. We would go in the mine at the same time.

Q. Go in the mine at the same time?

A. Yes, sir.

Q. Did you come out at a different time?

A. Yes, sir.

Q. Did you come out later when you were on ten hours?

A. We came out later when we were on ten hours.

Q. Let's get it down to eight hours and use that as an illustration of how the thing is worked. What mine at Ishkooda are you foreman of?

A. Number 11.

Q. All right, sir. Suppose we take a miner at Number 11. After he had changed his clothes at the bath house during this period of time where did he go?

A. Go to the tally house.

Q. Go to the tally house?

A. Yes, sir.

Q. That is at the mouth of the mine?

A. At the mouth of the mine, yes, sir.

Q. Did he get any materials or things before he went in the mine?

A. No, sir.

Q. Did he get his carbide?

A. Carbide.

Q. Where did he get the carbide in this mine?

A. At the tally house.

Q. Where did he get it?

Mr. Harris:

What time are you referring to?

Mr. Burr:

Referring to the whole period.

Q. It is practically the same thing practically all the time?

A. Practically the same thing.

Q. How did he get the carbide?

A. He would go to the timekeeper or some man designated to issue carbide and give his number and receive the carbide.

Q. How did he receive it?

A. Pound and a quarter can. I think that is what they were.

Q. How often did he get the carbide?

A. Every day. Sometimes a can would last more than one day.

Q. Depended upon how they used it?

A. Yes, sir.

Q. How much time did it take a man to get his carbide?

A. Just a few seconds.

Q. After he got his carbide, if he needed carbide that day, what did he do then?

A. Wasn't anything more to do except go underground.

Q. What did he do before he went and caught the skip?

A. Deposited his check.

Q. Who was that check turned over to?

A. That check was turned over to the mine foreman.

Q. You are a mine foreman. It was turned over to you when you were on duty; is that right? Just tell me in a general way—

Mr. Harris:

He didn't answer that question.

Mr. Burr:

Yes, he did.

Mr. Harris:

When you asked him who he turned it over to, he didn't answer.

Mr. Burr:

He said to the mine foreman.

Mr. Harris:

Yes, but when you said to him, he didn't answer it.

Q. Well, you were the mine foreman?

A. Yes, sir.

Q. When the check was turned over to you what did you do with it?

A. I placed it on the check board. They have the heading numbered on the board, and these checks were placed on the check board.

Q. How long did you stay there at the tally house when the men went underground?

A. Oh, something like forty-five minutes.

Q. Did you or not stay there until the men had all gone in?

A. Ride the last trip inside.

Q. Did you do anything towards supplying any vacancies the check board showed in the crews?

A. We had to supply the vacancies.

Q. How did you do that?

A. After the men went down, if there were any vacancies, we had to supply the vacancies underground.

Q. How did you do that?

A. There was always an assistant mine foreman underground, and we would give him the vacancies.

Q. How did you give them to him, holler down or what?

A. Usually over the telephone.

Q. And then the assistant mine foreman, when he got below, would send a man to supply this vacancy that he had been told to fill by you?

A. Yes, sir.

Q. Was that the way it was handled all the time?

A. Yes, sir.

Q. And then when you would finish that you would go about your work in the mine?

A. Yes, sir.

Q. How much of the mine did you have supervision over?

A. The whole mine.

Q. The whole mine?

A. Yes, sir.

Q. Did you have an assistant mine foreman?

A. Yes, sir.

Q. How many did you have?

A. Just one.

Q. Just one assistant?

A. Yes, sir.

Q. Did each service crew have a foreman over them?

A. Yes, sir, each service crew had a foreman.

Q. All right. Who—did each producing crew have a foreman over them?

A. A head miner.

Q. When was that foreman designated a head miner?

A. In 1936 when the incentive plan went into effect.

Q. In 1936?

A. Yes, sir.

Q. Previous to that time what did they call that man?

A. Section foreman.

Q. All right. After the miner had deposited his check and got on the skip, where did he go?

A: He went to the unloading station or loading station underground.

Q. Was he or not while going down in the skip riding on the same skip with his foreman or not?

A. Some of them were and some of them were not.

Q. That just depended on how they took the skips?

A. Yes, sir.

Q. Was he subject to any orders or instructions about his place of work from his foreman about—

Mr. Harris:

We object to that question, may it please the Court, calls for a conclusion, hearsay.

Mr. Burr:

I don't think it is hearsay.

The Court:

Overrule it.

Q. Did you understand that question, Mr. Brown?

A. Read it.

Q. I will put it this way: Did or not his foreman have any supervision over him as he rode down in the skip?

Mr. Harris:
We object.

Mr. Quinn:
That calls for a conclusion.

The Court:
I think it is a conclusion.

Q. All right. Did the foreman give any instructions to him as he went down in the skip?

Mr. Harris:
We object.

The Court:
I think the best way is to let him tell what the foreman did.

Q. All right. Tell what the foreman did going down on the skip?
A. That would be a hard matter for me to say. I didn't ride the skip with them.
Q. You didn't ride the skip with them?
A. No, sir.
Q. After they got underground, where did they go to, the producing miners?
A. They went to their working places.
Q. How did they go?
A. Walked.
Q. At what time—Previous to May 1, 1941, at what time did the first skip leave the mouth of the mine at your mine?
A. It would be about 6:09 or [illegible]:10, something like that.
Q. And then about how many skips went in succession after the first one?
A. There were three or four skips.

Q. Three or four skips?

A. Yes, sir.

Q. Was the same skip used going back down and returning, or did you have—

A. Yes, sir.

Q. I see. About what interval of time was there between the leaving times of the three or four trips the skip made from the top?

A. There was about nine or ten minutes between trips.

Q. What time, prior to May 1, 1941, did the work day begin at the place where the ore was produced?

Mr. Harris:

We object to that, if the Court pleases. That is the question the Court is to decide.

Q. What I mean by the workday, at what time did the computation of the man's wages begin?

Mr. Harris:

Well, computation—Of course, we object to everything that happened before 1938.

Mr. Burr:

You have that from now on to the end of the case as far as that is concerned.

Mr. Harris:

Yes.

Mr. Burr:

So there is no use repeating that and interrupting me.

Mr. Harris:

I didn't intend to interrupt you, but the question of computing the time, and who computed the time,—the men had nothing to do with the computation of time.

The Court:
Overruled.

Q. What time did the computation of the time on which the men were paid begin?

A. 6:45.

Q. Was that or not true of both the producing crews and the service crews?

A. The same thing.

Q. Now, the producing crews, at what time did they actually begin work in the working places, in the stopes?

Mr. Harris:
We object to that again, if the Court please, as to what time—

Mr. Burr:
I mean the work in that particular stope.

Mr. Harris:
We object to the question as to what time they actually began work, because in the first place it is impossible for this gentleman to have been all over the mine.

Mr. Burr:
That is true.

The Court:
That is true.

Mr. Harris:
He didn't go down there with them; he didn't walk with them.

The Court:
That is true. I sustain the objection.

Mr. Burr:

We except, if Your Honor please. Of course, the—the major question here involved is whether or not the beginning of the work is at the mouth of the mine or at the working place.

The Court:

Can't you ask that question?

Mr. Burr:

Can't I ask that question?

The Court:

Can't you ask that question so as to obviate—

Mr. Burr:

Yes, sir, I think I can.

Q. When, under the practice there as you know it, up to May 1, 1941,—what was the practice with reference to the computation and payment of wages—

Mr. Harris:

We—

Q. Was it on what you have described as face to face or working place to working place basis or was it from the entrance of the mine back to the entrance of the mine basis?

Mr. Harris:

We object on the ground that any rule or provision the company used to compute the pay could not amount and operate to nullify an act of Congress and change the law.

The Court:

I will overrule the objection to that and admit it for the purpose of whatever bearing it may have—

Mr. Burr:

Yes, sir, for the purpose of showing what the Congress intended.

The Court:

Overrule the objection.

Mr. Burr:

Crampton,—off the record. I have agreed with you you may have an objection—

Mr. Harris:

You mean I am bothering you in the examination by interrupting you?

Mr. Burr:

Yes, sir.

Mr. Harris:

I didn't mean to do that.

The Court:

There are some objections I would rather have.

Mr. Harris:

Here is my position, Judge. Of course, nothing was further from my thought—

The Court:

I know.

Mr. Harris:

—than to object and bother Mr. Burr. That didn't occur to me.

The Court:

Oh, no. I am sure he didn't think of that.

Mr. Burr:

It takes unnecessary time.

Mr. Harris:

Time isn't everything. There is no use hurrying time if we don't try the case right. We are wasting time if we don't try the case properly. If I don't represent my clients properly, I am wasting time.

My theory is when things come up, the agreement, of course, protects me, and I don't have to be repeating my objection because I am assuming my objection appears, and that applies to everybody, but there are matters that come out if I object there it brings it to the Court's attention. I think it is my duty to bring it to the Court's attention then rather rely on a general agreement.

The Court:

There are some objections I would rather have.

Mr. Harris:

That is what I have in mind.

Mr. Burr:

What I mean is this, and I want to know whether it is going to count or not count—

The Court:

What we mean, Mr. Burr,—

Mr. Burr:

He objects to that because it happened before that time. I thought we had an understanding he had an objection on that ground. We have the agreement, and I want to know if it is going to operate. If he is going to object, let him object all the time.

Mr. Harris:

I think you are right on that.

Mr. Burr:

All right. Will you read the question.

(Thereupon the reporter read the question last propounded as above recorded.)

Q. Will you answer that question, please, sir?

A. Face to face.

Q. I will ask you whether or not there has been ever in your experience in the mines any other basis used than the one you have just described?

A. No, sir.

Q. That is true of your whole mining experience?

A. Yes, sir.

Q. When the producing miner got there to his working place in the morning,—we will use the morning shift as an illustration,—was the juice, as you call it, turned on at any time, and if so, at what time was the juice turned on, the regular time for turning it on?

A. At 6:45.

Q. At 6:45?

A. Yes, sir.

Q. Now, what about—was there any lunch period taken out during this period of time?

A. No, sir, not after—prior to May 1, 1941?

Q. Yes, sir.

A. The lunch period was taken out at that time.

Q. Well, how about—

A. After we went on eight hours.

Q. After you went on eight hours?

A. Yes, sir.

Q. How long was taken out for lunch?

A. Thirty minutes.

Q. Was that period of time part of the man's daily work, the thirty minutes, or was that not a part of the man's daily work?

A. It wasn't.

Q. It was not a part?

A. It wasn't, no.

Q. At what time, as part of your daily work, was the shooting?

A. It was at 3:15. The generator would be shut down and the juice turned off at 3:10.

Q. At 3:10?

A. Yes, sir.

Q. Who had charge of doing the shooting in a producing crew?

A. The men in charge would be the head miner or section foreman and the drill runner.

Q. The loading part of the crew had nothing to do with the shooting, is that right?

A. Not unless he was called on to assist in some way.

Q. Assist?

A. Yes, sir.

Q. Usually, did they not leave the place where the work was being done, the stopes, before the shooting occurred?

A. Yes, sir, certainly did.

Q. Where did they go when they left their place of work?

A. To the loading station.

Q. To the loading station?

A. Yes, sir.

Q. Was there any provision made there for them in waiting for the cars at Number 13?

A. Number 11, you mean?

Q. Number 11.

A. We had benches there for them to sit on.

Q. And at what time did the first skip start out?

A. The first skip started out at 3:15.

Q. And continued on as they came in?

A. Yes, sir.

Q. The men getting on them in the order they were lined up there?

A. Yes, sir. The mine foreman or assistant mine foreman counted out the men.

Q. Now, when you went to Ishkooda in 1922,—was that the year?

A. '22, yes, sir.

Q. Do you recall what heading the mine had been extended to at that time, about what heading you first worked in there, the number of it?

A. I believe—49, I think, was the bottom heading at that time.

Mr. Burr:

Mr. Cameron, would you take a ruler and give us the distance 49 is?

Let him do that. Let him give the exact distance rather than have it guessed at.

Q. Was it 49 you worked in when you went to Ishkooda in 1923?

A. That was the bottom of the slope at that time.

Q. That is what I wanted to get, the bottom of the slope.

Mr. C. B. Cameron:

About 3000 feet.

Q. Is that your best recollection?

A. I think that was the bottom of the slope then. I wouldn't be positive.

Q. Where is the bottom of the slope now?

A. Well, it is at the pocket now, as far as that is concerned. That is 67.

Q. Is it right at 67 or below 67?

A. About 200 feet below.

Mr. Burr:

Will you give us the measurement of that, Mr. Cameron, by the map?

Mr. C. B. Cameron:
About 6500 feet.

The Court:
About how far?

Mr. C. B. Cameron:
~~About 6500 feet.~~

Q. During that time have the headings been driven further too?

A. Yes, sir. We have the haulage ways now.

Q. What do you mean by having the haulage way now?

A. We have our central dump place and dump into the pocket, and have the haulage way.

Q. That is ore haulage way and material haulage way?

A. Yes, sir.

Q. The men continue to walk, do they?

A. Still continue to walk the same.

Q. Do you remember about how far from the main slope the furtherest heading was in that mine when you went there in 1922?

A. I think it was 3000 feet,—49.

Q. I understood 3000 feet was the distance from the top.

A. Yes, sir.

Q. What I want to know is how far—at right from the slope the headings had been driven at the time you went there?

A. The furtherest heading?

Q. Yes.

The Court:
What did he say?

Mr. Burr:
He asked me if I meant the furtherest heading, and I told him yes, the furtherest heading.

The Court:
Your question is you want to know laterally?

Mr. Burr:
Yes, sir.

Q. I want to get the walking distance, then, as compared with now.
A. It was about 700 feet.
Q. About 700 feet?
A. Six or seven hundred feet.

Mr. Burr:
Mr. Cameron, will you give us the distance the furtherest one is now?

Mr. Cameron:
You mean the heading?

Mr. Burr:
Yes, sir.

Mr. Cameron:
The furtherest heading?

The Court:
You mean the heading?

Mr. Burr:
Yes, sir; how far the furtherest heading is now.

Mr. Cameron:
About 1750 feet.

Mr. Burr:
I see.

Mr. Harris:
You mean from where, Mr. Cameron?

Mr. Burr:
From the slope.

Mr. Cameron:
From the pocket.

The Court:
You mean from the slope?

Mr. Cameron:
The pocket is at the slope.

Mr. Burr:
The pocket is at the slope.

Mr. Cameron:
The central dump point. That is at this point right here (indicating on map).

The Court:
Do you want Mr. Cameron any more?

Mr. Burr:
No, sir, not right now.

The Court:
Have a seat, Mr. Cameron.

Q. Now, Mr. Brown, we have been talking so far about the place where the producing crews work. Where did the service men, track men and men who perform that sort of work, where did their day's work begin?

A. They got their tools from the underground tool house.

Q. At what time was that done?

A. 6:45.

Q. 6:45?

A. Yes, sir.

Q. The underground tool house was where their time began?

A. Yes, sir.

Q. And when did their time run out in the afternoon the way it was computed and paid?

A. The same, at—

Q. Three—

A. —3:10. Of course, they had to come out of the heading before that time on account of the shooting.

Q. They all had to leave the heading before the shooting?

A. Yes, sir.

Q. What time did they customarily leave the headings, the service crews?

A. I would say some of them would begin to leave at 2:30 to come out of the headings.

Q. Now, I want to ask you, during this period of time, about the tools for the producing crew. The—among the tools you had, so I can ask you about them separately,—each producing crew had a heavy drill, did it not?

A. Yes, sir.

Q. And the drill steel that went with that drill?

A. Yes, sir.

Q. Now, where was that material delivered and by whom was it delivered to the stope?

A. The drills are left in the headings, and then the steel was sent up in the headings to the—

Q. Well, who was it sent by?

A. Well, when we had the drivers they would pick it up at knuck, the trammers, and take them up in the headings.

Q. Were the drivers and trammers company men or members of the producing crew?

A. They were members of the producing crew.

Q. Who did you say the ones that carried the tripod drill and heavy steel—what crews did they belong to?

A. They belonged to the drill crew, heading crew.

Q. Did the heading crew carry its materials up to the working place?

A. They were at the working place.

Q. Who delivered them at the working place; how did they get there?

A. Well, the drill and tripod and hose pipe stayed in the heading all the time.

Q. Do you mean you already put them there? They didn't get there by themselves? Who—

A. The service crews put them there.

Q. That is what I was trying to find out. Is that true of the heavy drill also?

A. Yes, sir.

Q. All right, sir. How about the jackhammer? Was that another tool used by the producing crew?

A. That is another tool used by the producing crew.

Q. How did the jackhammers get into the stopes?

A. The same way; sent in by the service crews.

Q. How about the air pipe and the rubber hose?

A. They were the same way.

Q. Now, then, I want to ask you if these tools were also used in there, and I will call them off so we can remember—you had short steel for the jackhammer?

A. Yes, sir.

Q. And had wedges that were used for the purpose of wedging in the jackhammer?

A. The hanger.

Q. I mean the hanger?

A. Yes, sir.

Q. You had hangers?

A. Yes, sir.

Q. You had C-hooks?

A. Yes, sir.

Q. That was what the rope—skidder rope was fastened on?

A. Skidder block.

Q. I want to ask you about those tools. Where were they kept by the company?

A. They were kept at the tool house, hangers and wedges and C-hooks.

Q. Where was the tool house located?

A. The tool house at the present time is located at 66.

Q. Where was it located prior to May 1, 1941, the same place or a different place?

A. The same place, I think.

Q. How did those tools get to the tool house? Where did they come from to get to the tool house?

A. They were sent underground by the larry. In other words, we made out the requisition and sent it to the warehouse—

Q. You say we did. Who made out the requisitions?

A. I did.

Q. The mine foreman?

A. The mine foreman.

Q. You would send it to the warehouse by whom?

A. The messenger boy.

Q. All right. What did the warehouse do when they got your—requisition for these things?

A. They sent them down to Number 11, on top, by a surface crew.

Q. A surface crew?

A. Yes, sir.

Q. That was an outside crew?

A. Yes, sir.

Q. What did they do with it when they got it to the mouth of Number 11?

A. They would unload it and there was a surface crew that loaded it, and it was hauled underground by the service crew.

Q. Was that a service crew that would haul it underground?

A. A service crew.

Q. Where did they unload it?

A. At 66.

Q. Is there something down there you call a running board?

A. Yes, sir.

Q. What is that running board?

A. That is where you unload material and men walk up and down.

Q. How does it get from the running board to the tool house?

A. Men carry it out there.

Q. What men?

A. Pipe men. There are other men designated sometimes to carry things out.

Q. The men who carry it to the tool house, are they service crews or producing crews?

A. They are service crews.

Q. And when it gets ~~to~~ the tool house how does it get to the stope?

A. Miscellaneous fittings, men get them there at the tool house, such as small miscellaneous fittings, such as—

The Court:
I didn't hear it.

Mr. Burr:
He said small, miscellaneous tools the men got at the tool house.

The Court:
I heard that, but he heard something else.

Mr. Burr:
He was telling what they were.

The Court:

I didn't get that.

Q. Tell what they were.

A. Small miscellaneous tools and fittings. The heavy material is sent to the heading.

Q. By whom?

A. The service crews.

Q. Has that been the practice?

A. Yes, sir.

Q. All along?

A. Yes, sir.

Q. What about the wedges and hangers?

A. Some member of the crew stops and gets them.

Q. Get them where?

A. At 66, at the tool house.

Q. Did the company have provisions for carrying them up in the stope if they needed them up in the stope?

A. They were carried up there by some member of the crew.

Q. By some member of the crew?

A. Yes, sir.

Q. Did all of them carry them or some member of the crew stop by and get them?

A. Some member of the crew stopped by and got them.

Q. What tools were those?

A. Hangers and wedges, short steel.

Q. How long would you say that custom has been in effect there?

A. Ever since I have been there;—ever since drags have been there.

Q. That is since 1922?

A. Yes, sir.

Q. I want to ask you again—wait just one minute before I ask you this final question.

Now, this tool house, Mr. Brown, is it locked or not locked?

A. Yes, sir, it is locked.

Q. Who has charge of locking it after the—

A. The pipe men lock it.

Q. The pipe men?

A. Yes, sir.

Q. And what time is it locked?

A. It is supposed to be locked at 3:15—3:10.

Q. 3:10,—between 3:10 and 3:15 sometimes?

A. Yes, sir.

Q. Before the other shift comes on?

A. Yes, sir.

Q. Is it locked before the other shift comes on?

A. Yes, sir.

Q. Now, is there anyone there—what is at the tool house after the beginning of the shift?

A. Yes, sir; after the beginning of the shift the pipe man stays there and gives out things.

Q. The pipe man stays there?

A. Yes, sir.

Q. Now, what time does the pipe man unlock the tool house?

A. He has instructions to unlock it at 6:45.

Q. Of course, you are not there you are upstairs?

A. Yes, sir.

Q. And one man comes down and gets these small fittings?

A. Yes, sir.

Q. I will ask you if they are up in the stope and run out of tools they send to the tool house?

A. Sometimes they do.

Q. Have they the privilege of doing that whenever they want to?

A. Yes, sir.

Q. In doing that, of course, they come down to the tool house and get the tools and go back to the stope with them?

A. That is right.

Q. Now, about the repairs on these heavy tools, the tripod for the drill, the drill,—when they wear anything of that sort out, the jackhammer and the heavy tools you have described, who handles repairing them or sending in new ones to take the place of the ones that are worn out?

A. Drills are repaired outside.

Q. But who comes and gets them and takes them out?

A. Usually sent out by the service crews, who get the steel—

Q. They go to the stopes to get them?—

A. Go to the sidetrack and get them and take them out to be sharpened.

Q. The steel is all that has to be sharpened?

A. Yes, sir.

Q. How about the tripod for the drill and the drill if that has to be repaired?

A. It is handled in the same way.

Q. Handled in the same way?

A. Yes, sir.

Q. That is true of all the heavy stuff?

A. Yes, sir.

Q. Were any of the tools, light or heavy, within your knowledge, carried down in the skip on the mantrip?

A. No, sir.

Q. Now, what you have told us is the way the thing has been handled ever since you have been there?

A. Yes, sir.

Q. Ever since you have been there, since 1922?

A. Yes, sir.

Q. I will ask you if at any time during that time, within your knowledge, there has ever been any payment of either part of the traveling time or all the traveling time to the men?

A. There has not.

Q. Has there been to your knowledge any request or discussion among the men themselves asking for that to be paid?

Mr. Harris:
We object to that, if the Court please.

Mr. Burr:
It is material.

Mr. Harris:
It is clearly hearsay.

The Court:
Well, if he knows.

Mr. Burr:
I am asking him within his knowledge.

The Court:
You can ask him—

Mr. Burr:
If they had any complaints they would naturally go to the mine foreman.

Mr. Harris:
Mr. Ball said all negotiations were handled with him.

Mr. Burr:
I didn't ask about negotiations.

The Court:
He said whether the men had discussed it with him?

Mr. Harris:
Not with him. He said whether the men had discussed it among themselves.

Mr. Burr:
No; with him.

Q. I will put it this way, Mr. Brown: State whether or not, while you have been connected with these mines, and while you have been mine foreman, any of the underground miners, underground workers have at any time complained to you or discussed with you or presented to you that thought that they ought to be paid for the traveling time or any part of the traveling time?

Mr. Harris:
We object, because he would not be the proper person for them to talk to or complain to or make the request of. The undisputed testimony shows that Mr. Ball—

The Court:
That is true, but I will overrule the objection.

A. Have not.

Mr. Burr:
That is all for Mr. Brown.

Mr. Harris:
Mr. Brown,—

The Court:
Wait a minute. We will take a recess for a few minutes, —ten minutes.

(Whereupon, proceedings were in recess from 10:45 A. M., to 10:55 A. M., when proceedings were resumed as follows:)

The Court:
All right.

Cross Examination.

(By Mr. Harris):

Q. Mr. Brown, what kind of explosive was used in the mine from October, 1938, to May 1, 1941, to break the ore?

A. Stick powder.

Q. Is that what is commonly known as dynamite?

A. Yes, sir.

Q. How big are those sticks?

A. An inch and a fourth.

Q. In diameter?

A. Yes, sir.

Q. And how long are they?

A. About 6 inches.

Q. What will a stick weigh?

A. I couldn't say about that.

Q. How many—how do the sticks of dynamite come?

A. In boxes.

Q. How many sticks to a box?

A. Average about 145.

Q. How much does one of those boxes weigh?

A. 50 pounds.

Q. Where is the dynamite kept, that is, the stick powder, as you call it?

A. It is kept in the powder house underground.

Q. And where is the powder house underground?

A. At 64.

Q. How far is the powder house from the man unloading station or hoodlum?

A. About—I would say 100 to 150 feet.

Q. Now, is there one man—

A. About 100 feet, I imagine.

Q. About 100 feet. Now, is there one man whose duty it is to stay there at the powder house all the time?

A. Yes, sir.

Q. What is that man called?

A. The powder man.

Q. Now, is the powder house the same as the underground supply house, or is that a different thing?

A. The underground supply house where he gets drill supplies and such as that is not.

Q. Now, at the time about which I asked you, was the underground supply house right next to the powder house underground?

A. No, sir.

Q. How far is the supply house from the powder house?

A. About six or seven hundred feet.

Q. The powder man goes down on which man skip? The first one?

A. Well, not necessarily; just whatever trip he wants to ride.

Q. Now, when he goes down he issues powder to the men—

A. No, sir.

Q. —when they ask for it?

A. Not at that particular time; no, sir.

Q. What?

A. Not at that time; not when he goes down.

Q. Who is charged in a drill crew with the responsibility for the powder,—in a mining crew?

A. You mean carrying the powder?

Q. No; isn't it charged against the mining crew?

A. Yes, sir, charged against the mining crew.

Q. And taken out of the pay?

A. Charged against the mining crew.

Q. Who is it charged against, the head miner or drill foreman or all of them together?

A. The entire crew at the present time.

Q. Who was it from 1938 to May 1, 1941?

A. The head miner and the drill runner.

Q. The head miner—

A. The head miner was in charge of the heading crew.

Q. He was charged with the powder, and how long did that situation last that he was charged with the powder?

A. Well, the heading crew was charged with the powder,—the head miner was charged with the powder of that crew, but there was some little change after May 1, 1941.

Q. What was the change?

A. Each member of the crew would share on the powder.

Q. And, before that, they did not?

A. Did not.

Q. Now, you mean by sharing it that they were charged a cost of the powder; that is what you mean? If you nod, I am afraid these gentlemen wouldn't get it.

The Court:

Don't nod. Answer so you can be heard, Mr. Brown.

A. Yes, sir.

Q. Now, then, how many sticks of powder are used in the run of a day by a drill crew or mining crew?

A. Well, that is hard to say of one crew. It would be hard to say what he uses. It depends on the drilling he gets done.

Q. Well, an average day's drilling in the average size stope or heading?

A. I would say around 250 sticks of powder.

Q. Around 250 sticks of powder, so that would mean that it would be about 70 pounds of powder that are used during the run of the day by one drill crew?

A. Something like that, yes, sir.

Q. Now, then, does the head miner pick up his powder at the powder house, or does the head miner and the drill helper pick up the powder at the powder house?

A. The drill helper and usually one of the drill runners are sent back to the powder house during a shift.

Q. Isn't it also a fact that they very frequently, as they go through, stop off at the powder house and pick up the powder and carry it on up to the face with them?

A. No, sir, it is not.

Q. You mean the powder is not even issued at that time of day?

A. Not in the morning, yes, sir.

Q. When does powder begin to be issued?

A. After, I would say, twelve o'clock or one o'clock; powder begins to be issued after, I would say, twelve o'clock or one o'clock.

Q. Twelve or one o'clock?

A. Something like that.

Q. You mean the drill helper or some other man is sent by the head miner down to the powder house for his powder and they start issuing it about one o'clock—

A. Yes, sir.

Q. —and that man carried it back up to the place where the holes have been drilled?

A. To the working place, yes, sir.

Q. Has that been the rule all the time out there? Now, you have been—

The Court:

What is your answer?

The Witness:

Yes, sir.

Q. You have been in this one mine steadily now since 1922, haven't you?

A. No, sir, I have not, not since 1922.

Q. Since 1924?

A. No, sir.

Q. Well, I got a false impression. How long have you been at this one mine now? Let's get that straight.

A. Well, I couldn't say just exactly how long I have been at that one mine, but I have worked at both places in Ishkooda Division.

Q. What do you mean by both places?

A. There are 13 and 11. I have worked at both places.

Q. Well, you are mine foreman at Number 11 now?

A. Yes, sir.

Q. All right. How long have you been mine foreman at Number 11?

A. Let me see. I think it was 1938 when I went there this time.

Q. You went to Number 11 in Ishkooda in 1938 as mine foreman. Have you been mine foreman continually in that mine since 1938 up to the present time?

A. Yes, sir.

Q. Before 1938 where were you working, just before 1938?

A. I was working at 13, I am sure.

Q. All right. How long was it that you worked at 13 before you went over to 11 as mine foreman?

A. I couldn't say just exactly.

Q. Can you give us any idea at all?

A. I imagine I was up there something like a year,—something like that.

Q. What kind of job did you have up at 13 during that year?

A. I was assistant mine foreman.

Q. Who was your mine foreman up there?

A. Mr. Smith.

Q. Is he still working for the company?

A. No, sir.

Q. All right. Then, before that year, where did you work; before you were at 13 as assistant mine foreman, where did you work?

A. I couldn't say. I just swapped from one place to another. I couldn't say just exactly where I was at that time.

Q. You mean you swapped from one company to another company—

A. No, sir.

Q. Or from one place—

A. No, one mine to another.

Q. —to another place in the Tennessee Company?

A. One mine to another. I transferred from one mine to another.

Q. How many different mines of the Tennessee Company have you worked in?

A. Worked in four at Ishkooda.

Q. Four different mines at Ishkooda?

A. Yes, sir.

Q. That is all there are around there?

A. At that time.

Q. What are the numbers of the four mines you worked in at Ishkooda?

A. 11, 12, 13 and 14.

Q. 14 has been abandoned for many years, hasn't it?

A. Yes, sir.

Q. When was the last time you worked in 14?

A. It was in 1924.

Q. Were they using mechanical loaders when you were working in 14?

A. No, sir.

Q. Were they using mechanical loaders in 11 or 12 or 13 in 1924?

A. Not at that time.

Q. When did they start using mechanical loaders at Ishkooda?

A. I think the first came in there in 1925.

Q. When did they get it fixed so all the loading was substantially—substantially all the loading was done by mechanical loaders?

A. It is not altogether done that way now.

Q. It is only when you are doing a little cutting through narrow places you use hand mucking, isn't it, Mr. Brown?

A. Yes, sir.

Q. My question is when did substantially all the loading begin to be done by mechanical loaders?

A. It must have been about '26-or-7.

Q. About '26-or-7. Now, up until the time you had mechanical loaders, you didn't have any need for hangers and C-hooks at all, did you?

A. Not until the loaders were put in.

Q. Not until the loaders were put in?

A. No, sir.

Q. Now, those hangers and wedges and C-hooks break and wear out very rapidly, don't they?

A. Yes, sir.

Q. And do you have an underground repair shop, or is the repair shop out on the surface?

A. The repair shop is out on the surface.

Q. And is that repair shop run by the company?

A. Yes, sir.

Q. And how far is the repair shop from the mouth of the mine at Number 11?

A. It is better than a mile, I imagine.

Q. And the repair shop is opened at what hour?

A. 6:30, I think it is.

Q. Do you know? Do you know?

A. I am sure that is what it is.

Q. Have you ever been down there at the repair shop to see when it opened, or to check up on it?

A. Yes, I have been there.

Q. When was the time you did that?

A. It has been some time since I—

Q. How many times did you check the repair shop to see when it was opened?

A. I never did check it. I have been there when it was opened.

Q. I mean how many times did you check the repair shop to see when they opened up the repair shop in the morning? Have you ever done that?

A. I have been there when they would open it.

Q. You have been there when they would open it?

A. Yes, sir.

Q. How many times have you been at the repair shop in the morning?

A. I couldn't say how many times.

Q. Two or three times in the course of your work there?

A. Yes; more than that.

Q. Your principal place of duty is up at the portal, isn't it, at the place where the slope comes out at the top of the ground?

A. Yes, sir.

Q. Now, up at the mouth of the mine you have a timber station?

A. No, sir.

Q. Supplies of timber? Where are they kept?

A. Timber is kept underground. We have a place outside where timber is loaded and sent underground.

Q. Yes. Where do the timbers come from before they are put on a conveyance to go down into the mine itself? Where is your storage ground—

A. It is about—

Q. —or your storage place for your timbers?

A. About 300 feet from the mouth of the mine.

Q. Is that what you call your timber yard?

A. That is the timber yard.

Q. Is there a man that is kept—that stays there in charge of the timber yard?

A. The surface crew is down there. They load our timbers and such as that.

Q. Well, isn't there one man in charge of the whole timber yard?

A. No, sir.

Q. How many different timber crews did you have there at Number 11 from October, 1938, until May 1, 1941?

A. Two.

Q. And how many men constituted a timber crew?

A. There is a foreman and six men.

Q. And either foreman or any foreman of his crew can go there and get out timbers without any record being kept they are taking timbers out of the timber yard?

A. No, sir.

Q. How are they checked out to them?

A. The hauling crew, when they are hauling down, they are checked to me, and we make a requisition for them into the warehouse.

Q. What time—I will ask you this: Is that timber yard fenced in or under lock and key?

A. No, sir.

Q. What time did the timber crew go to work?

A. 6:45.

Q. They show up there at the same time—

A. Underground at 6:45.

Q. You mean underground or on top?

A. Underground.

Q. I mean what time did the timber crew show up at the top?

A. Well, they began to come up there at six o'clock.

Q. And did they start moving timber then?

A. No, sir.

Q. The timber crew would be the ones that would bring the timber from the timber yard to the mouth of the mine, wouldn't they?

A. No, sir.

Q. Who would bring it from the timber yard to the mouth of the mine?

A. Be loaded on a larry by the surface crew and be pulled up by a hoist engine to the mouth of the mine.

Q. Was the loading crew—was there more than one loading crew there?

A. No, sir.

Q. Did that loading crew just load timber all day long?

A. When we were hauling, it did.

Q. Didn't you have to haul timber all the time?

A. No, sir.

Q. How often did you haul timber into Number 11?

A. Well, we would usually haul about one shift a week, haul timber,—not only timber but any material, ties, rails, such as that.

Q. Did you haul that down into the mine on the same kind of car that the men rode in on?

A. Hauled them on a larry, a timber larry.

Q. Did you haul steel down on a timber larry?

A. Yes, sir.

Q. Is that boxed in or an open, flat car?

A. Flat car.

Q. How many men rode down on the timber larry when you were hauling?

A. Not any on the timber larry.

Q. Just loaded it and lowered it into the mine?

A. Ride on the skip; not any on the larry.

Q. The timber larry would be fastened to a skip, a man skip?

A. Yes, sir.

Q. You didn't run any trips for just hauling material down there?

A. Yes, sir.

Q. How many skips did you run out there from 1938 until May 1, 1941?

A. Run three or four.

Q. You mean when you would lower a man trip into the mine there would be three or four different cars on which they could ride?

A. No, sir; just one skip.

Q. When you were hauling ore out of the mine did you all just haul it up out of the mine one car at a time?

A. Hauled a skip; dropped two cars in the skip.

Q. You just pulled on the cable one skip at a time; you didn't pull two or three skips of ore?

A. No, sir.

Q. And never did do that?

A. No, sir.

Q. The skip holds how many cars of the tram cars, the little tram cars of coal—

A. Holds two.

Q. I mean of ore.

A. Holds two now,—about 12 tons.

Q. And that is the same as the man skip, isn't it?

A. The same skip.

Q. And in this car that is big enough to hold 12 tons of ore, how many men would be crowded when they went down in the mine?

A. Not over thirty.

Q. Thirty men. Now, you have ridden down on those skips, haven't you?

A. Yes, sir.

Q. And you have ridden back on the man skip at the close of the day when the men were coming out?

A. Yes, sir.

Q. Does thirty men crowd those skips?

A. Well, it is crowded, but they have got room to sit down.

Q. Some of them—is it at number 11 you have to kneel over to keep your head from being busted?

A. Yes, sir, you have to get your head below the top of the skip.

Q. Have to keep your head below the top of the skip?

A. Yes, sir.

Q. Now, during the time you have been working for the Tennessee Company, they have—the Tennessee Company has published a magazine caled the "Ore Miner" hasn't it?

A. Yes, sir.

Q. And that is published by the company?

A. Yes, sir.

Q. And distributed to the men who work for the company?

A. Yes, sir.
Q. And how often do they get out that little magazine?
A. It comes quarterly now.
Q. It comes quarterly now?
A. Yes, sir.

Mr. Harris:
Your Honor will indulge me a minute?

The Court:
Yes.

Q. I will ask you to look—

Mr. Burr:
Let me see what you are asking about before you—any particular thing in there?

Mr. Harris:
Yes, sir, there are some articles in there.

Mr. Burr:
What is it you want him—

Mr. Harris:—
To identify them.

Mr. Burr:
I know, but any particular thing in there? What is it you are going to offer?

Mr. Harris:
I am going to identify them. I am not putting in anything now. I am merely getting these for identification.

Mr. Burr:
That is all right. Give the dates of them.

Q. Here is a copy of a magazine headed the "Ore Miner", December, 1938, Issue 26, Tennessee Coal, Iron & Railroad Company, Ore Mines and Quarries.

I will ask you to look at that and state if that is the magazine you had in mind when I was talking to you a moment ago?

A. "Ore Miner", yes, sir.
Q. And is that what it purports on its face to be, a magazine issued by the Tennessee Coal, Iron & Railroad Company?
A. Yes, sir.

Mr. Harris:
We ask—

The Clerk:
It will be Defendants' Exhibit Number 5 for identification.

(Thereupon Issue 26 of the "Ore Miner", December, 1938, was marked for identification Defendants' Exhibit No. 5.)

Q. I will ask you to look at another one, "Ore Miner Safety", February, 1940, Issue Number 19.

Mr. Burr:
What is that date, Crampton? I didn't get it.

Mr. Harris:
February, 1940, Issue Number 19.

Q. Tennessee Coal, Iron & Railroad Company, Ore Mines and Quarries, Muscoda Number 6, a picture there on the back of it. I will ask you if that is what it purports on its face to be, a magazine issued by the Tennessee Coal, Iron & Railroad Company?

A. Yes, sir.

Q. Have you ever been to Muscoda Number 6?

A. Never been in there, no, sir.

Q. Ever been to it?

A. No, sir.

Q. Never seen Muscoda Number 6?

A. Nothing but the tipple.

Q. Is this a part of the tipple? Have you seen that?

A. I have never been there.

Q. You have never been there?

A. No, sir.

Q. All your work for the Tennessee Company has been back and forth between 11, 12, 13 and 14?

A. And Number 8 at Wenonah.

Q. And Number 8 at Wenonah?

A. Yes, sir.

Mr. Harris:

Mark that for identification.

(Thereupon Issue Number 19 of the "Ore Miners", February, 1940, was marked for identification Defendants' Exhibit Number 6.)

Q. There isn't any skip out there, as far as you know that the top of the skip is 6 feet 6 inches from the floor, is there?

A. No, I don't think so.

Q. And you have never seen one where it was—out there at Ishkooda in Mines Number 11, 12, 13 or 14 where the top of the skip was 6 feet 6 inches from the floor?

A. Not on the inside; no, sir.

Q. And every skip you have seen out there, when the men go down in the mines, they have to keep their heads down?

A. They stoop over, yes, sir.

Q. They stoop over or kneel or squat, and they can't have either their heads or arms projecting out?

A. Shouldn't do it, no, sir.

Q. If they do it they will get them knocked off?

A. That is not anything that close.

Q. Ever been anything that close?

A. No, sir.

Q. You know you have had accidents on the man skips where men have gotten hurriedly in the man skip, haven't you?

A. Never have.

Q. Never have?

A. No, sir.

Q. You have never read of such accidents?

Mr. Burr:

We object to whether he has ever read of such accidents.

Q. I mean in the mines of the T. C. I.

Mr. Burr:

We object to that question.

The Court:

Sustained.

Q. Have you ever heard of any accident on a skip in the mines of the T. C. I.?

Mr. Burr:

Object to that question. If he wants to go into that our records on that are available to him and he can get the actual facts.

The Court:

Sustained.

Q. The supply house is how far from the main slope; that is Number 11 I am talking about now? All my questions now are directed to the one you have been working at since 1938.

A. 75 feet, I would say.

Q. And when timber and supplies are carried to the warehouse or supply house from the main slope, they are carried by service crews?

A. Yes, sir.

Q. And during that entire time the supply house has not been more than 75 feet—

A. From the slope.

Q. Now, when Mr. Cameron was measuring up there on the board with a rule, he just put a rule across in a straight line.

When the men, however, are walking from the hoodlum or manloading station to the work face, they can't walk in a straight line, can they?

A. No, sir, not a direct, straight line.

Q. They have to go out to the right a piece, and then turn to the left or turn to the right and dodge a fault—you have a fault there in Number 11?

A. Yes, there is a fault there.

Q. So that a straight line on the map is not a true measure of how far the men had to walk, is it?

A. No, sir, not a straight line, it is not.

Q. Is—excuse me just a moment.

Mr. Cameron measured with a rule up here like this towards the right, and I want to know if there is any mine at all to the left of Number 11 slope?

A. Yes, sir, there is mining to the left of Number 11 slope.

Q. How far does it go over to the left?

Mr. Burr:

At what time?

Mr. Harris:
Now.

A. I don't know; about 1000 feet.

Q. Well, which is the furtherest place that a man would go when he got off at the main slope, go over to the right? Would that be the furtherest stope, or go over to the left to the furtherest heading or stope; which would be the greatest distance?

A. To the right.

Q. Have you ever been down there and walked from the man unloading station to the very furtherest stope or heading to the right?

A. Yes, sir, I have walked it.

Q. Recently?

A. Every shift, just about it.

Q. How far would you say in actual walking it is from that main slope to that furtherest heading?

A. It is not over 1700 feet.

Q. 1700 feet. Now, in that walk, is the walking on level ground or is it up and down?

A. It is, you might say, up and down. There is not any —it is all downgrade.

Q. They are walking downgrade all the time going to the heading or stope?

A. To the furtherest heading, yes, sir.

Q. That means they are walking downhill when they are fresh and they are climbing uphill after they have finished their drilling or mucking, doesn't it?

A. That is right.

Q. How far do they have to climb up or down to escape the fault?

A. They don't go around the faults—they go around the faults, but they do have to climb any.

Q. Don't have to climb any of that at all?

A. No, sir.

Q. In your judgment, how much higher is the man unloading station than the furtherest heading—I mean vertically, 200 feet, 150 feet?

A. I just couldn't say.

Q. Have you any idea at all?

A. I imagine it would be 200 feet, something like that, from where the man unloading station is.

Q. So that a man coming out of the heading to the man loading station, in addition to walking a distance of 1700 feet is climbing the equivalent of a 14 to 18 story skyscraper; is that right?

A. I wouldn't say. That is a 5 percent grade coming out of the heading.

Q. 5 percent grade. Now, I am somewhat confused about what you call and what you were asked about as the quitting time: When you were on a 10-hour day when did you shoot?

A. At 4:20.

Q. At 4:20, and then when you went on an 8-hour day you shot at 3:10?

A: 3:10.

Q. Now, I understood you to tell Mr. Burr that both on a 10-hour day and on an 8-hour day you started in the mine at the same time in the morning?

A. Practically the same time.

Q. Practically the same time? Now, the shooting is the last thing that can be done on that shift down there, isn't it?

A. Yes, sir.

Q. Every body has to get out before the fuses are lit?

A. Out of the heading.

Q. I mean before they explode, before the explosions go off?

A. I say—

Q. How many members of a crew light those fuses?

A. Well, there are two,—two to three or four, maybe.

Q. Do they light them with matches or the lamps?

A. With their lamps.

Q. While the head driller and his helper are there lighting the fuses, the muckers, the men who have been operating the loading machine, they have turned and gone on their way out of the mine, haven't they?

A. Gone on out.

Q. I understood you to tell Mr. Burr there have been times when you knew some of the muckers to get through and leave up in the headings and stopes around two o'clock?

A. No, sir.

Mr. Burr:

No, sir; that was the service men.

The Witness:

That was the service men.

Q. That was the service men?

A. 2:30.

Q. When a mucker left up in the stope or heading at 2:30, then he was through mucking for that day, wasn't he?

A. Yes, sir.

Q. Now, then, did he get pay only up to 2:30, or did he get paid for the full eight hours or the full ten hours?

A. Paid for the full eight hours.

Q. Paid for the full eight hours whether he was up there mucking or whether he got through mucking ahead of time?

A. That is right.

Q. And did that rule obtain when they were on a 10-hour day as well as when they were on an 8-hour day?

A. Same thing.

Q. Now, at your mine at Ishkooda, has the company sped up any the getting of the men into the mine since

May 1st over the way it got them in the mine before May 1st?

A. No more than the men come up there earlier.

Q. The skip doesn't run any faster?

A. No, sir.

Q. The round trip is not any shorter?

A. No, sir.

Q. And as far as you can tell the entry of the men into the mines now since May 1st is just like it was for the three years preceding?

A. No, sir; the men go in faster. They come to the tally house quicker.

Q. They come to the tally house quicker?

A. And deposit their checks and go right on down.

Q. Now, have you got one of those checks with you?

A. No, sir.

Mr. Harris: (To Mr. Burr):

Have you got any here?

Mr. Burr:

I will be glad to get you some.

Mr. Harris:

We would like to have them.

Q. Now, nobody has those checks except an employee of the company, do they? A stranger doesn't get those checks?

A. No, sir, not unless he picks one up somewhere, finds one.

Q. The company issues those checks only to the company's employees?

A. That is right.

Q. And when you are there at the tally house, it is the invariable rule for every man that is going in the mine to hand over his check; isn't it?

A. They put them in a window there. We have a window there. They lay them down in the window.

Q. And just as soon as they put in those checks after you got the men there at the tally house, you can see how many have gone down in the mine?

A. Yes, sir.

Q. And you know, if a work crew is short, what crew needs a man?

A. Yes, sir.

Q. What is a hustling gang?

A. Never heard of it.

Q. You never heard of a hustling gang?

A. No, sir.

Q. Did you ever hear of an extra gang?

A. Yes, sir, I have heard of an extra gang.

Q. What is an extra gang?

A. Well, it is an extra timber crew. We used to have that.

Q. Do you know what an extra board is?

A. No, sir.

Q. Well, as a matter of fact, Mr. Brown, don't you know that men come there, employees of the company come there to the mouth of the mine looking for work before the skips have gone down, and that those men that are there waiting in the event that a miner or a service man doesn't show up are called the extra gang or the hustling gang?

A. No, sir. We haven't any extra men at all.

Q. You have never seen as many as three or four or five men waiting there so if a member of a crew, whether service, or, as you call it, the production crew, didn't show up, he could immediately get a job and be sent down?

A. Not since 1938, I have not.

Q. Not since 1938?

A. No, sir.

Q. Did you ever see it before 1938?

A. I have seen it.

Q. Did you see it at Number 11 or Number 13 or all four of them?

A. Yes, sir, practically the same thing.

Q. And also at Number 8 where you say you worked at Wenonah?

A. I will not say Number 8, because I was drilling or something like that.

Q. You were not a foreman up at Wenonah?

A. No, sir.

Q. You have seen on many occasions the mine foreman or the assistant mine foreman call on those men from the extra gang and tell them to go down and take the place of a man who had not shown up for work, and he would turn in his check and go down on the last trip or next to the last trip?

Mr. Burr:

What time? I am particularly anxious for Mr. Harris to place the time under his view of this case.

Mr. Harris:

I am asking him—

A. It has been some time since it happened.

Q. Tell us when, Mr. Brown. It is—

A. I just couldn't tell you.

Q. How many years ago?

A. I just couldn't say how many years ago.

Q. Well, when did it stop?

A. Oh, I wouldn't say just when it stopped. We haven't had any extra men, I will say, since 1933.

Q. Well, had it been going on all the time while you were working there up until 1933?

A. I couldn't say about that.

Q. When did you first notice that going on?

A. Well, I was foreman at that time.

Q. Where does the head driller or drill helper get the oil to oil their drilling machine?

A. He gets it at the tool house or oil house, rather.

Q. Where is the oil house? Is that underground?

A. Underground, 66 left.

Q. How far is the oil house from the main slope?

A. Fifty feet.

Q. Fifty feet?

A. Something like that.

Q. All right. Then you have a powder house and supply house and oil house?

A. Yes, sir.

Q. All three different houses?

The Court:

Answer out; don't nod.

A. Yes, sir.

Q. When do they get the oil?

A. During the day; at any time they want it.

Q. Any time they want oil there is a man there to issue oil to them?

A. No, sir; they go get it themselves.

Q. Oh, yes. You don't have a man in charge of the oil house?

A. No, sir.

Q. When he gets the oil he walks away with it, doesn't he?

A. Yes, sir.

Q. He is not furnished any ride from the oil house to face, is he?

A. No, sir.

Mr. Harris:

I think that is all, Judge. I was trying to shorten the cross examination by talking to these gentlemen so as to save time.

The Court:
All right.

Mr. Burr:
Any further questions?

The Court:
Judge Smith, any further questions?

Mr. Smith:
No, sir.

Mr. Quinn:
We have none.

Mr. Burr:
Just a few on re-direct, and I think I will be through.

Re-Direct Examination.

(By Mr. Burr):

Q. What do the producing crews get the oil in?
A. Oil cans, gallon cans.
Q. Do you know how much—
A. Gallon oil cans.
Q. How is this oil kept by the company at this oil house?
A. We have an oil drum.
Q. Have what?
A. An oil drum or tank, rather, with a pump in it.
Q. They bring their cans there and pump it out?
A. Yes, sir.
Q. And get it when they want it?
A. Yes, sir.
Q. If they want it in the middle of the shift, they come back and get it?

Mr. Harris:
We object; that is argumentative.

Mr. Burr:
I am asking him if that is a fact.

Q. Is that a fact?
A. Yes, sir.
Q. He asked you about the extra board. You said you hadn't had an extra board there since 1933. Was it during the depression when the men were hunting work?
A. I imagine it was during the depression when they were hunting work.
Q. Were you trying to catch extras yourself then?

Mr. Harris:
We object to that.

Mr. Burr:
No, sir; I want to show the facts.

The Court:
Sustained.

Mr. Quinn:
We object, leading and suggestive.

Mr. Burr:
What is that you are objecting so about?

Mr. Quinn:
Object, leading and suggestive.

Q. I will ask you if it was when the company had the mines down the men were looking for work?
A. Yes, sir, going from one mine to another.
Q. Going from one mine to another?

A. Yes, sir.

Q. And in gangs there was an extra that would catch a day's work?

A. Yes, sir.

Q. Of course, when Mr. Cameron was giving you what has been referred to as the straight line measurements, you understood he was giving the approximate distances?

A. Yes, sir.

Q. As a matter of fact it is longer than that—

A. The haulage way?

Q. —because it is not straight; it goes—

A. Yes, sir.

Q. How far from straight is it now, those headings?

A. Not very far.

Q. I want to get some idea.

A. A few turns.

Q. Have they got any U-curves or turn tables the men have to walk around?

A No, sir. We may have to walk from one side to the other of the man way.

Q. Is it like it was back years past; is it more crooked now or straighter?

A. It is straighter; it has gotten better.

Q. Is it better or worse now than it was then?

Mr. Harris:
We object; it calls for a comparison.

The Court:
I think it calls for a comparison.

Mr. Burr:
I think the witness is entitled to make it.

Mr. Harris:
We object.

The Court:

Ask him whether it has improved, and how.

Q. What I want to know is whether since 1938 the walkways where the men walked going from the unloading station to the places of work, were they straighter then than they are not, or not so straight?

A. They were not so straight then. They are in better shape now.

Q. In better shape now?

A. Yes, sir.

Q. Was it easier to walk then, or walk now?

Mr. Harris:

We object.

A. Easier to do that now.

Q. You have walked them both times?

Mr. Harris:

Same objection.

A. Yes, sir.

Q. I will ask you to state whether or not since your first connection with walking to these working places in these mines you have gone over, conditions have improved or stayed about the same or gotten worse?

Mr. Harris:

We object to that, if Your Honor please.

The Court:

Overruled.

The Witness:

What is that?

Mr. Burr:
Read it to him, Carr.

(Thereupon the reporter read the question last propounded as above recorded.)

A. They have improved.
Q. Now, Mr. Harris asked you as to whether or not you hadn't had some accidents on the skips the men travel in. What was your answer to that question?
A. I said I haven't.
Q. Have not had any?
A. No, sir.
Q. Could you tell the Court how many days you have been running now without any trouble, accidents of any kind, throughout your mine?

Mr. Harris:
I object.

A. I can give it approximately.

Mr. Burr:
If he objects, we are not going into it.

The Court:
Overruled.

A. Something over 530 days.
Q. Without any disabling accident of any kind?
A. Yes, sir.

Mr. Harris:
I think Mr. Burr is leading him along there.

The Court:
Sir?

Mr. Harris:
I think Mr. Burr is leading him along there.

The Court:
I think he is.

Q. All right, sir. If there is any question, state how many disabling accidents there have been in those mines in the last 530 days.
A. Been two.
Q. What were those?

Mr. Harris:
Judge, I don't see—

Mr. Burr:
If he objects, let it alone. I will withdraw the question.

The Court:
The only thing Mr. Harris touched on is on the trip.

Mr. Burr:
On the trip, yes, sir. That is all I want to ask him about, is that.

The Court:
You might confine it to that.

Mr. Burr:
I will confine it to that.

Q. Have you ever had any accidents at all on the mantrips?
A. I don't think I have ever had an accident on the mantrip.

Q. Now, Mr. Harris asked you, and I understood your testimony, you commenced using the wedges and hangers and C-hooks when the mechanical loaders were installed; is that right?

A. We didn't use the C-hooks. We had the straps and bolts.

Q. Before the mechanical loaders came into effect?

A. Yes, sir.

Q. Will you tell me when the mechanical loaders began to be installed over at Wenonah,—Ishkooda, I mean?

A. I think in 1925 was the first one.

Q. When was the whole mine substantially equipped with mechanical loaders?

A. I couldn't say just what year.

Q. What is your best judgment?

A. Must have been '36 or '37.

Q. '26 or '27?

A. I mean '26 or '27.

Q. I knew you didn't mean '36. Those were the articles that you said the head miner or mine foreman, as it used to be before the incentive plan,—not mine foreman,—the section foreman, I believe you called it before then, would have one of his men stop by the tool house and pick up on the way up?

A. Yes, sir.

Q. How did that custom begin out there, do you know?

Mr. Harris:

We object to that, if the Court please,—

Mr. Burr:

I don't—

Mr. Harris:

—how a custom began.

The Court:
I sustain it.

Mr. Burr:
We except.

Q. I will ask you this question then: State whether or not that was done—first, previous to that time were these materials taken up to the stope or not by the company?

Mr. Harris:
We object as leading and suggestive.

Mr. Burr:
It is not leading. I asked him whether or not.

The Court:
He asked him whether or not it was a fact.

Mr. Burr:
Yes, sir.

The Court:
Overrule the objection.

The Witness:
Let's see what that question is again.

Mr. Burr:
Read it to him, please, sir.

(Thereupon the reporter read the question last propounded as above recorded.)

A. All of them were not delivered up to the stope by the company.

Q. I see.

A. Hangers and wedges and such as that were put on the running board, short steel.

Q. What would happen when they were put on the running board?

A. Sometimes the first man going down would go by the running board and pick up hangers and C-hooks and short steel, anything he could get his hands on, and go to the heading with it.

Q. Well, after that—where was it put after it left the running board?

A. In the tool house.

Q. Well, then, did or not the company require the men to get their equipment at the tool house, or did the men get it there voluntarily?

Mr. Harris:
I object to that.

The Court:
Read the question.

(Thereupon the reporter read the question last propounded as above recorded.)

The Court:
Overruled.

A. They were required to get it at the tool house.

Q. When did they first start requiring them to get it at the tool house, about when?

A. To my first knowing, Mr. Burr, they required them to get it at the tool house.

Q. That is how far back, since you have been there?

A. Yes, ever since I have been there.

Mr. Burr:
I think that is all I want to ask him.

Mr. Harris:
There is one question I neglected to ask.

Mr. Burr:
One question.

The Court:
Suppose, Colonel, you ask him now.

Mr. Harris:
I was going to ask him about the pocket in the mine.

(By Mr. Burr):
Q. Where is the pocket in the mine? Is that what you call it?

Mr. Harris:
In Number 11.

Q. What do you mean by the pocket in Number 11?
A. That is our central dumping station. That is where the skip pulls the ore from, from the pocket.
Q. In other words, the ore first is hauled to the pocket underground, and then the skip pulls it out from there?
A. Yes, sir.
Q. Is that pocket at a different place from the underground manloading station?
A. Yes, sir.
Q. Do the skips haul material while they are hauling men? I want to get it clear.
A. No, sir; we do not haul material while we are hauling the men.
Q. I want to make that clear.
A. Not in the skip.
Q. About the powder,—you said there was a powder house. You said the men get powder or dynamite from the powder house on requisitions?

A. Yes, sir.

Q. Who gives that requisition, who asks for it, or who issues it?

A. The head miner gives a requisition to the powder man for the powder.

Q. Is that the only way powder can be obtained, on requisition from the head miner?

A. Yes, sir, from the head miner, unless they get permission from the mine foreman or the assistant.

Q. I see. Now, I didn't exactly understand what your testimony was about that powder being charged against somebody. What did you mean by that? What are the facts about that? I just want to understand that myself. I didn't—

A. Well, each heading is charged with the powder for breaking the ore.

Q. You mean each heading—each productive crew is charged with the powder they use in breaking the ore in that particular heading?

A. Yes, sir.

Q. Is that deducted from the wages or not?

A. No, sir, it is not deducted from the wages.

Q. What is it for, figuring out the incentive?

A. Figuring out the incentive; you might say the powder bonus.

Q. In addition to the incentive wages there is a powder bonus?

A. Yes, sir.

Q. And that is why it is charged against them?

A. Yes, sir.

Q. It is not charged against them and deducted from their wages?

A. No, sir; it is not.

Mr. Burr:

That is what I thought. I was not certain.

I believe that is all I want to ask him, Judge.

Re-Cross Examination.

(By Mr. Harris):

Q. That didn't clear up to my mind the pocket. Is the pocket in Number 11,—you had a fault and had to go down and come up and start again. Is that what you mean in Number 11?

A. Yes, sir, in Number 11 the pocket is at a fault.

Q. In Number 11 how big is that pocket? Is that the one that will hold 23 train car loads?

A. No, sir; it must be some other one.

Q. How much will it hold?

A. Five car loads.

Q. Regular car loads?

A. Yes, sir.

Q. And how many skip loads will fill a regular car load?

A. 5½ to 6.

Q. 5½ to 6 skip loads dumped in a regular railroad car will fill it?

A. Yes, sir.

Q. And the pocket in Number 11 will hold five railroad cars?

A. Yes, sir.

Q. So it will actually hold 26½ or 27 skip loads?

A. Yes, sir.

Q. How deep is it to the bottom of that pocket?

A. Oh, I would say around 6500 feet.

Q. You don't understand what I mean. I don't mean how far it is from the mouth of the mine to the pocket, but I mean from the top of the pocket to the bottom of the pocket.

A. Oh, I beg pardon. It is, I imagine, about 53 feet, something like that, 50 feet.

Q. I see.

The Court:

How is that supported? How is the top supported?

This is not for the record.

Mr. Burr:

Your Honor can ask it. It is all right with us. Put it in the record.

The Court:

How do you support the roof of that pocket?

The Witness:

It is driven straight down, and of course over here we have steel beams.

The Court:

That is all I want to ask.

Mr. Harris:

One of my associated made another suggestion on something I hadn't touched on.

The Court:

Go ahead.

Q. How many men work in the mine at Number 11? You have what you call a day shift and a night shift, haven't you?

A. Approximately 125 or 130.

Q. On each shift?

A. Yes, sir.

Q. So your total is from 250 to 260 men?

A. Yes, sir.

Q. In number 13 how many men—

A. I couldn't say about 13.

Q. How about—well, 14 hasn't been opened up again yet and 12 is not running now either?

A. No, sir.

Q. How long has it been since 12 was running?

Mr. Burr:

Mr. Cameron gave you all these figures.

Mr. Lipscomb:

He gave one.

Mr. Burr:

He gave them both.

Mr. Lipscomb:

13, Mr. Cameron—you gave the figures on the day shift at 13?

Mr. C. B. Cameron:

I gave them both; about the same.

Mr. Burr:

About the same.

Q. Mr. Burr asked you about the walking being easier going into the mine. Just tell the Court not your conclusion about it being easier or harder, but the actual material, physical things that have been done, and when they were done.

A. Well, just general conditions. They are cleaner.

Q. Well, I don't know what you mean is cleaner.

A. The walk,—it is leveler than what it used to be.

Q. They haven't come along and blasted or drilled or leveled the floor of the mine, have they?

A. It is on five percent grade.

Q. That has been that way all the time, hasn't it?

A. No, sir.

Q. Well, when did they change the grade of the mine?

A. Our haulage way is all on five percent grade.

Q. How long has that been on a five percent grade?

A. Oh, two or three years.

Q. And what grade were they on before that?

A. Just whatever the ore was running inside.

Q. How did they change it to get a different grade? What did they change?

A. Run on an angle to get that grade; put it on a five percent grade and let the slope go—the stope go—the haulage way go on that grade.

Q. In other words, they didn't pay any attentio[illegible]o the ore seam, but they ran a course to get a more even grade in the haulage way?

A. Put it on a five percent grade and didn't follow the ore unless we would have a rock fault.

Q. What change did the company—if they followed the ore before and since too, what physical change did they make in it?

A. Well, we had our headings before, just our headings to travel, just general conditions.

Q. Don't you have headings to travel now?

A. Yes, sir.

Q. And you had stopes to work in before and you have stopes to work in now?

A. Yes, sir.

Q. Is that the only change involved,—the only physical change you can call to mind to tell the Court about?

A. Just general conditions are better, air and everything is better.

Q. I am asking particularly about the physical changes. That is all you can tell us about it?

A. Yes, sir.

Mr. Harris:

That is all.

Mr. Burr:
That is all, Mr. Brown.

(Witness excused.)

Mr. Burr:
Does Your Honor want to take another witness, or adjourn now.

The Court:
I think we will adjourn until a quarter to two.

(Whereupon, at 12:00 M., July 14, 1941, a recess was had until 1:45 P. M. of the same day.)

After recess, 1:45 P. M.

The Court:
Who will you have, Mr. Burr?

Mr. Burr:
Mr. J. F. Smith next.

1180 J. F. SMITH, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):
Q. This is Mr. J. F. Smith, is it?
A. Yes, sir.
Q. Mr. Smith, are you working for the Tennessee Company at the present time?
A. No, sir.
Q. When did you quit working for the company?
A. Last day of March of this year.

Q. Last day of March of this year?

A. Yes, sir.

Q. Keep your voice raised a little bit, please, sir. These gentlemen over here all want to hear you too.

A. I will try to. My voice is not very strong.

Q. When you retired from the company, what position did you hold with them?

A. Mine foreman.

Q. What division?

A. Ishkooda division.

Q. And what particular mine?

A. 13.

Q. You knew Mr. Clarence Brown, of course, who testified here this morning?

A. Yes, sir.

Q. Mr. Smith, I want you to give us a sort of history of your business experience.

First, how old are you now?

A. 68 in September.

Q. How old were you when you first began mining?

A. 12 years of age.

Q. 12 years of age? Where did you first begin?

A. Illinois, the State of Illinois.

Q. Whereabouts?

A. The State of Illinois.

Q. The State of Illinois?

A. Yes, sir.

Q. What sort of mines were those?

A. Coal mines.

Q. Slope mines?

A. Shaft mines.

Q. Shaft mines?

A. Yes, sir.

Q. Instead of going down a slope you went down a vertical shaft?

A. Yes, sir.

Q. Like an elevator?

A. Yes, sir.
Q. How long did you work there?
A. Just a few months.
Q. Where did you go from there?
A. Indian Territory.

The Court:
Indian Territory?

The Witness:
Yes, sir.

The Court:
Talk out, Mr. Smith, so we can all hear you. Sit up straight and maybe you can talk louder.

Q. How long—what sort of mines did you work in in Indian Territory?
A. Coal mines.

Mr. Harris:
I didn't hear what he said.

The Witness:
Coal mines.

Mr. Harris:
Coal mines?

The Witness:
Yes, sir.

Q. What sort of work did you do in the mines?

Mr. Harris:
I don't think it is material about the coal mines, Judge.

The Court:
I don't either.

Mr. Harris:
Bring it down to the ore mines.

Q. After you left Oklahoma, where did you go next?
A. Went to the State of Kansas.
Q. About how old were you then?
A. Between 14 and 15.
Q. And were there ore mines or coal mines there?
A. Coal mines.
Q. Were they still underground mines?
A. Yes, sir.
Q. Now, then, after working there where did you go next?
A. For a short time I went back to the Indian Territory, but in a different place.
Q. Still working in mines?
A. Yes, sir.
Q. Still coal mines?
A. Still coal mines.
Q. And after that work in Indian Territory, where did you go then?
A. Came to Alabama.
Q. Came to Alabama?
A. Yes, sir.
Q. Do you remember when that was when you came to Alabama, what year it was?
A. About 1893, as well as I can remember.
Q. And have you been in Alabama ever since that time?
A. Yes, sir.
Q. When you first began to work in Alabama, where did you work?
A. Blue Creek, Summiton,—Blue Creek.
Q. Were they coal mines or ore mines?

A. Coal mines.

Q. Underground coal mines?

A. Yes, sir.

Q. What company did you work for there?

A. The DeBardeleben Coal & Iron Company.

Q. I see. How long did you work at Blue Creek?

A. About 18 months, as well as I remember.

Q. And from there where did you go to?

A. From there to Brookwood.

Q. To Brookwood?

A. Yes, sir.

Q. What county is that in?

A. Tuscaloosa County.

Q. Still underground coal mines?

A. Yes, sir.

Q. I believe Brookwood is a drift mine?

A. A drift mine.

Q. How long did you stay there?

A. I worked there from 1893 to 1899.

Q. Where did you go next in the mining business?

A. Went from there to Cardiff.

Q. Do you remember who operated the Cardiff properties?

A. Yes, sir; the Sloss-Sheffield.

Q. Was that a coal mine or ore mine?

A. Coal mine, drift mine.

Q. And how long did you stay at Cardiff, about?

A. About a year.

Q. And then where did you go to in mining?

A. I was sent by the company from there to America Mines.

Q. Were they coal mines also?

A. Yes, sir.

Q. And after working there—Where was the America Mines?

A. In Walker County; in the edge of Walker County.

Q. At Parrish?
A. Close to Parrish.
Q. How long did you work there?
A. About a year.
Q. Then where did you go?
A. Went from there to Patton.

The Court:
Where?

The Witness:
Patton; about 15 miles from America.

Q. Still working for the same company at Patton?
A. Yes, sir.
Q. What company were you working for there?
A. That was the Virginia and Alabama Company at that time.
Q. Then where did you go?
A. I came back to Jefferson County.
Q. With what company?
A. I believe I worked for the Pratt-Consolidated Company for a while.
Q. And where from there?
A. I went from there back to Walker County and worked for the Annie May Coal Company.
Q. And after that where?
A. There are so many places, I might get mixed up.
Q. You pretty well covered Alabama?

Mr. Harris:
Judge, I don't think this is important. He is still on coal.

The Court:
I don't see the need of going into the coal mines.

Mr. Burr:
All right, sir.

The Court:
I think if the gentleman will give his mining experience—

Mr. Burr:
I would like to have it in because I expect to raise the question later to show his experience with coal mining.

Mr. Harris:
What I think is important is ore mining.

Mr. Burr:
Before we get through I think we will find the coal mining is as important as the ore mining. There are so many more in it.

The Court:
I thought we were going to the ore mines.

Mr. Burr:
I want to show his experience in mining.

The Court:
Well, let's don't take up any more time.

Q. Where did you go to from there?
A. Where did I leave off?
Q. I believe you said last you were at the Annie May Mine.
A. I went from there to Blossburg.
Q. And from Blossburg, where?
A. From Blossburg to Number 4,—Number 4, T. C. I. coal mine.
Q. That is near Wylam, I believe?

A. Yes, sir.

Q. Where next after that?

A. To Lewisburg.

Q. Is that another coal mine?

A. Yes, sir.

Q. From there to where?

A. From there to Aldrich mine.

Q. From there where?

A. To Red Mountain in the ore mines.

Q. All right, sir. Now, whereabouts on Red Mountain did you come to your first ore mining?

A. Number 11.

Q. That is for the Tennessee Company?

A. Yes, sir.

Q. What date was that, Mr. Smith?

A. That was March 31, 1916.

Q. Now, without going into details in your coal mining,—I am just asking that for your experience,—did you work all the way from a boy up to superintendent of some of these mines?

A. Yes, sir.

Q. I just want—And covered all the grades in between there?

A. Yes, sir.

Q. Now, what date did you say you reached Number 11 Mine?

A. March 31, 1916.

Q. 1916. Did you stay there or go somewhere else? How long did you work in that mine or on that division, —it doesn't make any difference?

A. I have worked on that division ever since.

Q. As I understand, you have worked in the Ishkooda Division since that time?

A. Yes, sir.

Q. In what different capacities have you worked on that division?

A. I didn't get the question.

Q. In what positions on that division have you worked?

A. Everything from section foreman to mine foreman.

Q. Did you leave the coal mines and go into the ore mines as a foreman?

A. As a section foreman.

Q. As a section foreman?

A. Yes, sir.

Q. And went from there to mine foreman?

A. No, sir. I went from there to head blaster, something like an assistant.

Q. Name some others you have worked at.

A. That is about the jobs I have worked at. I have done everything in the mines.

Q. How long had you been mine foreman when you retired?

A. I was made mine foreman in 1921,—in '20.

Q. In what mines have you worked?

A. First in Number 11, and Number 13, and Number 11 again, and Number 13.

Q. When you retired you were mine foreman in Number 13?

A. Number 13.

Q. And about how long had you been mine foreman in Number 13 on that occasion?

A. Since '34, I believe.

Q. What?

A. Since '34.

Q. Since '34?

A. Yes, sir.

Q. Were you just backwards and forwards according to what mines were operating there; is that the way you worked it out?

A. Yes, sir.

Q. During that time some mines were operating and some were not?

A. Yes, sir.

Q. First one and then another?

A. Yes, sir.

Q. Was the same general system in use in all those mines so far as the time and transportation and method of work and things of that sort?

A. Yes, sir, about the same.

Q. About the same?

A. Yes, sir.

Q. In every one you worked at?

A. Yes, sir.

Q. Suppose we take Number 13? That was the last one you worked at. I wish you would give us just rapidly, Mr. Smith, without going into too much detail, the course of a miner from the time he left the bath house on down. Could you tell us what he did getting to his work and how he got there and so forth?

A. Yes, sir.

Q. All right, sir.

A. Coming to Number 13, the bath house is about 200 yards from the tally house. He would change clothes at the bath house and went from there to the tally house and deposited his brass check at the tally house and got ready to ride down in the skip.

Q. All right, sir. Did he get any carbide before he rode down?

A. Yes, sir; that is the method of lighting.

Q. The lighting system?

A. Yes, sir.

Q. Where did he get his carbide?

A. At the tally house.

Q. After he had deposited his check, what did he do?

A. Well, after he had his carbide, he stepped outside and waited for the skip.

Q. Do you remember what time the skip left there, the time the skip went down prior to May 1, 1941,—up until the time you left there?

A. Yes, sir.

Q. What was the skip schedule in that mine?

A. The skip was pulled out of the side track when the whistle blew at 6:00 o'clock, and we made the run,—usually went to heading 26.

Q. Was that run a test run?

A. Yes, sir.

Q. What you call a safety run?

A. Yes, sir.

Q. All right.

A. Then the skip was pulled into the tipple and backed back to the loading station where the men loaded.

Q. About how many men would get on the skip at that time?

A. I would say from 27 to 30.

Q. Is that the same skip they use in hauling the trailer with material on it?

A. Yes, sir.

Q. And that you used to haul the ore out of the mine?

A. Yes, sir.

Q. When the men rode it, did you carry any material on the skip?

A. No, sir.

Q. Was there any particular skip the men were to take?

A. No, sir, none whatever.

Q. They rode down to what point in the mine?

A. At the present time they rode down to heading 30.

Q. At the time you left there?

A. To heading 30.

Q. Do you recall—

A. Let me make a correction,—31.

Q. 31?

A. Yes, sir.

Q. Do you remember about how far 31 is below the surface, your best judgment?

A. I would say between 2500 and 3000 feet.

Q. All right, sir. Getting off at the loading station, what did this miner do? I am talking about the producer miner now, the one that worked at the face.

A. He would proceed from there to his working place after he got off the skip.

Q. When was your shooting time?

A. 3:10,—ten minutes after three.

Q. Mr. Smith, how was the time of the men, the underground employees, computed and paid for during the time you were there?

A. Well, when I left there—do you mean how was the time handled?

Q. No, I don't mean the mechanics of it. I mean whether it was on a face to face basis or portal to portal basis.

A. It was on a face to face basis.

Q. What time did the men start in the morning?

A. 6:45.

Q. What time did it end in the afternoon?

A. Ten minutes after three.

Q. When you left there in March, how many hours a day did the men work and get paid for?

A. Eight hours.

Q. Do you recall when the eight-hour day went into effect in those mines?

A. No, sir,—not exactly.

Q. Could you tell us about when it was, give us some idea about when it was?

A. I would be afraid to say.

Q. Previous to the 8-hour day, what was it?

A. Ten hours.

Q. Ten hours?

A. Yes, sir.

Q. When you were on that ten-hour basis did they go down the same time in the morning?

A. No, sir. We started at 6:30.

Q. When did the work day end under that plan?

A. 4:30.

Q. 4:30?

A. But they started shooting at 4:20.

Q. Started shooting at 4:20?

A. Yes, sir.

Q. Since the 8-hour day has been in force, I believe you say they started shooting at 3:10?

A. Yes, sir.

Q. How about—during the time you were working ten hours, did or not the men have 30 minutes for lunch during the 10-hour period?

A. Well, I don't know, because the mine never stopped.

Q. Didn't stop for lunch?

A. No, sir.

Q. Under the 8-hour system they do stop?

A. Yes, sir.

Q. How is that stopping indicated?

A. Indicated by the generator stopping at 11 o'clock.

Q. Blinking?

A. Yes, sir.

Q. What time does the generator start in the morning?

A. 6:45.

Q. And what time does it shut down in the afternoon?

A. 3:10.

Q. And it stopped at 11, you say, for lunch?

A. Yes, sir.

Q. Now, Mr. Smith, during that period, we will say during the 8-hour period to fix the time, how were the —was there a supply house on the outside of the mine for tools and materials and equipment and things of that sort?

A. Yes, sir.

Q. All right, sir. Now; how, and on whose requisition, if a requisition was given, was the material gotten into the mine for the use of the underground miners?

A. The mine foreman issued a requisition for what he wanted and sent it to the supply house or warehouse and it was delivered by truck to the opening of the mine.

Q. Who delivered it?

A. By truck by the surface crew.

Q. By the surface crew?

A. Yes, sir.

Q. After it was delivered to the mouth of the mine, what was done with it then?

A. It was picked up by the slope track crew and delivered in the mine. If it was drill steel, it was delivered on the running board of the different headings. If it was material that had to be locked up, it was delivered at the tool house at the 30th heading.

Q. Who carried the keys of that tool house?

A. Whoever was pipe man.

Q. That was his job?

A. Yes, sir, part of his job.

Q. What time in the morning was that tool box opened?

A. He would get the keys—sometimes he would ride the last trip, and he was given the keys when he got down there, and he had orders not to open the tool house until 6:45.

Q. Did he obey the orders as far as you know?

A. Yes, sir.

Q. When did you say he got the keys?

A. The keys were locked up in the mine foreman's office, and he was given those keys when he called for them.

Q. Was that after he had come from the surface?

A. Yes, sir.

Q. Where was the mine foreman's office?

A. About 80 or 85 feet from the slope.

Q. After he got the keys there at 6:45 he opened his tool box?

A. Yes, sir.

Q. What tools were carried in that particular tool box?

A. Well, there were small drill valves, other small materials, pick handles, hammer handles, pipe fittings and other things needed in the mine, hangers and wedges and C-hooks.

Q. C-hooks?

A. Yes, sir.

Q. Were the drill tripods and big drills carried there?

A. No, sir.

Q. How did they get into the stopes, the working places?

A. They were hauled in by service crews, and the drills and tripods and hose pipe and heavy tools were left in there.

Q. If that needed repairing or swapping out, how was that handled, the heavy material?

A. The head miner kept spare parts, and it was a matter of a few minutes to put a tripod leg on and it was quicker than to send it out to be repaired, and they did that themselves.

Q. Where did they do that?

A. At the working place.

Q. Up in the stope?

A. Yes, sir.

Q. When did they do that, before 8:45, or after 8:45, —before 6:45 or after 6:45?

A. After 6:45.

Q. Was it after or before 3:10 in the afternoon?

A. It would be before 3:10 in the afternoon.

Q. Now, to get back to the smaller tools you have told us about that were kept in this tool box, how were those tools gotten up to the working places?

A. Gotten up—

Q. Tell me first, any changes that were made. Give me the way they were gotten up when you first went there, and then tell me about those changes.

A. The tools that had to be locked up were gotten up there by the pipe man and his helpers. They were service men.

Q. Was any change ever made in that?

A. Yes, sir.

Q. In your place the men didn't come by and get the tools from the box on the way to work?

A. No, sir, not until after work hours.

Q. Not until after work hours?

A. No, sir.

Q. What do you mean by after work hours?

A. After 6:45.

Q. That is the way it was handled in this mine?

A. Yes, sir.

Q. Was that true while you were there?

A. Yes, sir.

Q. How was the powder handled in your mine?

A. We had a regular powder man, and when a heading wanted powder, there was a requisition signed by the head miner and given to whoever he designated to carry the powder from the powder house up to the working place.

Q. Was that powder issued by the powder man?

A. Yes, sir,

Q. When was that done?

A. Usually from one to one thirty, or, I will say, a quarter of two.

Q. Is the powder the same thing as dynamite?

A. Yes, sir.

Q. That is what you are talking about?

A. Yes, sir, all one.

Q. In that mine you worked in there while you had charge of it as mine foreman I believe you said the shooting time was 3:10.

A. Yes, sir.

Q. Was that the universal shooting time in all mines—

A. Yes, sir.

Q. —if you can recall it—

A. Yes, sir.

Q. —since they went on the 8-hour day?

A. Yes, sir.

Q. All right. Did the muckers—I believe you call them now the section helpers?

A. Yes, sir.

Q. Did they or not have to leave the working place before the shooting?

A. Yes, sir, unless they were called on to help in the shooting.

Q. Unless the head miner kept some of them back?

A. Yes, sir.

Q. Did everybody have to leave the working place before the shooting actually occurred?

A. I didn't just understand the question.

Q. Before the explosion?

A. Yes, sir.

Q. You say that occurred at 3:10?

A. Yes, sir.

Q. Did they light the fuses and everybody would have to leave; is that the way it was run?

A. Yes, sir.

Q. And you say the head miner and drill man and his assistant looked after the shooting?

A. Yes, sir.

Q. And on occasion they could call on those other fellows to help them if they needed them?

A. Yes, sir.

Q. Did those muckers leave before the fuse was lit that helped shoot?

A. Sometimes they would help them light.

Q. Those that didn't help with the shooting, when did they leave?

A. When the last car was loaded.

Q. What was the usual time?

A. The men usually ran the drag or what we call the mechanical loader as long as they could, until the lights were cut off. When the lights were cut off, they had to stop then and would go to the slope.

Q. When they got to the slope, what was the first skip out?

A. At what time?

Q. At what time, yes, sir.

A. Usually between 3:15 and 3:18.

Q. Who determined who would ride that skip?

A. There were benches for them to sit on, and they sat in line. The first men that were there were the first men to ride out.

Q. Now, does that, in a general way, detail how the thing was run?

A. Yes, sir.

Q. And does what you have stated applied to 13 applied to the other mines over there in a general way?

A. Yes, sir, very much so.

Q. I will ask you to state whether or not in any of these mines you have worked in the men were ever paid for any portion of the traveling time, the time they spent in going to and from their working places?

Mr. Harris:
Same objection.

The Court:
Overruled.

A. No, sir.

Q. At this mine you worked in or any other mine you worked in, did the men ever make any complaint or any request they should be paid for traveling time as far as you know?

Mr. Harris:
We object to that. He was not the man to whom the complaint would be made.

The Court:
You asked if he knows?

Mr. Burr:
I said as far as he knows.

The Court:
Overruled.

A. No, sir.
Q. Was it the universal custom—

Mr. Harris:
May it please the Court, that is a conclusion, about the universal custom.

The Court:
I sustain the objection.

Mr. Burr:
All right; that is all.

The Court:
Is that all?

Mr. Burr:
Just a minute, Your Honor. I think I am through. I believe that is all, Judge.

Cross Examination.

(By Mr. Harris):

Q. Mr. Smith, Mr. Burr used the word, "retired" from the Tennessee Company. Are you on pension?

A. No, sir.

Q. What mines did you work at, what ore mines of the Tennessee Company did you work at?

A. I worked at 11, Number 12, Number 13 and 14.

Q. Well, that is all, just the Ishkooda Division, isn't it?

A. Yes, sir.

Q. You didn't work in any other division?

A. No, sir.

Q. And while you were working in the Ishkooda Division you didn't have any time to go running around over the Muscoda and Wenonah Divisions, did you?

A. I didn't do it.

Q. You didn't do it and you don't know what went on in the Muscoda and Wenonah Division?

A. No, sir, I didn't know what was customary at the rest of them.

Q. You didn't know anything about it?

A. No, sir.

Q. You say you retired and left the Tennessee Company what day this year?

A. March 31st.

Q. March 31st; what have you been doing since then?

A. Working around the house; fishing.

Q. How many times have you been into Birmingham to talk over the case with Mr. Burr?

A. I have never been in Birmingham to talk the case over with Mr. Burr.

Q. Who have you talked with about the case?

A. I talked to Mr. Burr.

Q. Where did you talk to him?

Mr. Burr:
I went out to see him.

A. Out at Muscoda.

Q. Out at Muscoda?

A. Yes, sir.

Q. How many times have you talked with him about the case?

A. Once.

Q. And you have sat here and heard the testimony since the case started?

A. I did.

Q. Now, during the time you were working with the Tennessee Company, were you a member of the International Union of Mine, Mill & Smelter Workers?

A. No, sir.

Q. Did you ever at any time take any part in organizing these unions?

A. No, sir.

Q. Were you a member of the American Federation of Labor union?

A. No, sir.

Q. Now, was it at Ishkooda where the mountain was skinned and the trees were cut down? Was that out at Ishkooda?

A. Yes, sir.

Q. Was that done while you were a mine foreman out there?

A. I was.

Q. What year was that done?

A. I don't remember exactly.

Q. Have you any idea?

A. In '34 or '5, along there somewhere.

Q. Wasn't it along in 1936?

A. I don't know just what year it was.

Q. Don't know what year it was?

A. I wouldn't be positive about that.

Q. How many men were working in Number 13 when you quit work there in March?

A. I had about 120 on my shift.

Q. 120 on a shift, and two shifts a day?

A. Two shifts of work.

Q. That was all that was in the mine, two shifts?

A. There were more men working on the other shift than mine.

Q. Did you have a night shift?

A. Alternately.

Q. One week be on day shift and the next on night shift?

A. Yes, sir.

Q. How many men did they have on the other shift?

A. It varied. Sometimes they would put on an extra crew of men to catch up with the work. Sometimes they had extra work, some timber or track work to do, and they would put on another crew.

Q. And they worked under the other mine foreman?

A. Yes, sir; he was the senior foreman.

Q. Who was that foreman?

A. W. O. Brown.

Q. That wasn't the Brown who was here on the stand this morning?

A. No, sir.

Q. Still another Brown?

A. Yes, sir.

Q. Were those two Browns any kin?

A. They were.

Q. What?

A. Brothers.

Q. Brothers?

A. Yes, sir.

Q. How long was Brown foreman out there, all the time you were there?

A. Yes, sir.

Q. Would you say one extra crew was the difference between his shift and yours, or was there more than one?

A. Sometimes maybe more. Sometimes they would put on an extra timber crew and extra track crew.

Q. You spoke of development work. What did you mean by development work, Mr. Smith?

A. That would be pretty hard to explain.

Q. Well, do the best you can.

A. Take in Number 13, for instance, 26 left, we had to abandon the haulage way at 26 and go way around and get the ore from a different direction, and it required several hundred feet of track to be laid and timbers to be set, such as that.

Q. Why did you have to abandon that haulage way; what is the reason?

A. Well, that was evidently where the main part of the work was going to be, and they brought it around in that way.

Q. I don't follow you. You mean the development crew was running a course, a heading, or laying track to the place where the main part of the work would be thereafter? Is that what you mean?

A. No, sir. To be more explicit, they had worked everything out but two stopes and there was very bad top in the roadway and the company decided to abandon that part of it and go around and bring it out from another direction, from Number 26.

Q. What do you mean by very bad top? What does that mean in mining language in this district?

A. Well, it meant top that had to be timbered later on, timbers began to rot on and so on.

Q. So, all the work of getting away from that bad top and going around—how many feet did that embrace?

A. I wouldn't know. Possibly a thousand feet.

Q. Possibly a thousand feet?

A. Approximately.

Q. And all that was development work?

A. We call it development work. We had to lay new track. That is part of the development work, I figure.

Q. Who works on the development work?

A. There is no particular one that works on the development work. There is a crew that does steel timbering in places like I have explained.

Q. Yes. Now, did the—now, in doing this development work does that involve taking the ore out of the way?

A. No, sir, not that I spoke of.

Q. The kind of development work you are talking about didn't embrace running the slope or a heading?

A. No, sir, did not.

Q. Did the head drill man and his drill helpers and his muckers do development work, or did a service crew do development work?

A. No, sir; that was done by a regular crew, operating crew.

Q. Well, were they service men?

A. No, sir.

Q. Were they company men?

A. No, sir.

Q. Were they called company men?

A. No, sir.

Q. Did they have a special name for them?

A. The development crew is about all—

Q. So, in the mine you worked at you had three types of men,—four types; a drill crew, a service crew and a development crew down underground—

A. Well, it was for years we didn't have any development crew at all because there wasn't any development work being done.

Q. Well, when did the development work start?

A. I couldn't say; possibly—

Q. Can you give us any idea?

A. It went on several different times, and I couldn't tell you what date we started.

Q. Where did they get the development crews? Did they have to hire special people to form the development crew?

A. No, sir.

Q. Who formed the development crew; the mine foreman or mine superintendent?

A. The mine superintendent.

Q. Who was your mine superintendent when you were out there?

A. Mr. Cameron.

Q. Did he come and hand you a list and say, "These men will be a development crew"?

A. Not in that particular way. I would go to the office and he would go over and pick out—there were men that have done that kind of work and made a specialty of it. When they were not working in the development work they would be working out in the headings, and we would make a crew up from these men.

Q. What were they doing out in the heading?

A. The head man would be a head miner.

Q. Head miner?

A. The other men would be section helpers and such as that.

Q. When you took a head miner off his crew and put him on a development crew, did you change the way he was paid?

A. No, sir.

Q. Kept on being paid the same way?

A. Yes, sir.

Q Did that go on in 1938 and '39 and '40?

A. We didn't have any development work at that time.

Q. When was the last time you did have a development crew?

A. Several years ago.

Q. How many?

A. Several years ago; I don't know just how long.

Q. Can't remember?

A. No, sir.

Q. When was the development work you were talking about where the top got bad? When was it you did that particular work?

A. That is a different kind of work.

Q. I am not asking about the kind. I am asking about the time, when you did it?

A. That was about two years ago, two or three years ago.

Q. That is where you ran a thousand feet or more?

A. That is where we laid the track.

Q. I understand that kind of development work—what is this other kind of development work you have brought up?

A. As you advance in the ore.

Q. As you advance in the ore that requires development work?

A. That is in the slope and manway.

Q. The company pays for that development work?

A. Yes, sir.

Q. Who does that?

A. I told you we have special men to do that, men that have been working at development work for a number of years. That is the kind of men we put at that work when we had to do it.

Q. Now, then, when those men finished the work, the development work, what did they do afterwards?

A. They were put in these headings—

Q. And whom—

A. —working in the same capacity they were working in the development work at the same rates.

Q. In other words, they would go back to whatever their old jobs were?

A. Yes, sir. It might not be in the same heading. It might be in another heading, but the rates were just the same. The rate wasn't changed.

Q. I didn't ask you about the rate they got. I asked you if they went back to the old jobs, not that they went back to the old rates. Did they go back to the old jobs they had before?

A. Yes, sir.

Q. Out at 13 you never did maintain a tool house on the top?

A. No, sir.

Q. And you didn't maintain a blacksmith shop on top?

A. Yes, sir, they had a blacksmith shop.

Q. He didn't have anything to do with the tools used down in the mine, did he?

A. He repaired some of them.

Q. What tools did the blacksmith out at Number 13 repair?

A. Sharpened the steel, repaired the skips—

Q. What about C-hooks.

A. He didn't have anything to do with C-hooks.

Q. What about wedges?

A. Or wedges either.

Q. Or hangers?

A. Nor with hangers.

Q. He didn't have anything to do with making—

A. I beg your pardon. Just a minute. Sometimes we sent bent hangers back to the outside and he straightened them and sent them back to the mine.

Q. Wedges were always being lost?

A. Yes, sir.

Q. Didn't the blacksmith make wedges?

A. No, sir.

Q. Didn't make them or sharpen them or have anything to do with them at 13?

A. No, sir.

Q. Now, practically all the work that the blacksmith did was on stuff that was used by men working down in the mine, wasn't it?

A. Not altogether.

Q. Well, the greater portion of his work was on equipment and materials that were used down in the mine, wasn't it?

A. He had to take care of the work on the outside too for the mechanical department.

Q. What outside work did he take care of?

A. Anything that needed to be done. He was under the supervision of the master mechanic.

Q. Now, the supplies used at 13,—did you all have any supply house on top?

A. Yes, sir.

Q. And did you have a powder house on top?

A. Yes, sir.

Q. Did you have an oil place on top?

A. Oil was kept—Yes, we had an oil house. It was kept in the supply house.

Q. On top?

A. Yes, sir.

Q. Now, how did the men get their oil for their drill machines?

A. Well, we had the oil sent into the mines in 55 gallon drums and unloaded in tanks with pumps in them in the oil house adjacent to the tool house at 30 heading.

Then, when the men came out—we supplied the men with gallon cans. They had two of them. Each heading had two. As they came out to ride the skip car out of the mine they would leave their cans at a certain point and the other shift would come on and get those cans and fill them and carry them on into the heading for their use.

Q. So, each shift as they got off the—left the hoodlum, would get their oil and carry it from the oil place to the heading?

A. That is right.

Q. Now, at 13 when a man wanted dynamite or stick powder, did he get that, as he got off the man skip or came out of the hoodlum? Did he or not get his stick powder and take that on up into the heading with him?

A. No, sir.

Q. Was there any time he could do that while you were mine foreman out there?

A. No, sir.

Q. Now, this carbide that the men used and brought into the mines with them, without that carbide they couldn't have worked in the mines at all, could they?

A. Not unless they were equipped with other kind of lighting system.

Q. But that was the only lighting system there was there so that every man as he went to work in the mine had already gotten his individual lighting system complete when he started on the man skip?

A. Yes, sir.

Q. And the company didn't have them stop and pay for it with cash when they did get it, but they charged it to them, didn't they?

A. Right.

Q. And every employee of the company had him one of these brass checks with his number on it?

A. Yes, sir.

Q. And he would come up and say, "Give me a can of carbide," or did he ask for it by the can? How did they call for it?

A. A can of carbide.

Q. And called out his number?

A. Yes, sir.

Q. Was there just one man back there handing it out and writing down the numbers, or two?

A. One man.

Q. Did he have to write the man's name or his check number?

A. His check number.

Q. Did you supply that man in the carbide place with a list of all the numbers of the men working in the mine so all he had to do was to put a check mark after it, or did he have to write the number there and a check mark to show a particular man had gotten carbide at a particular time?

A. I didn't quite exactly understand that question, Mr. Harris.

Q. Suppose 38 came up and said, "Give me a can of carbide." You handed it out?

A. Yes, sir.

Q. When he handed it out, what did he do?

A. He had a regular carbide book and put his number down in the book.

Q. Did that carbide book have every man in the mine listed?

A. Yes, sir.

Q. Numerically?

A. Yes, sir.

Q. Did he just turn the pages of the book—

A. He didn't have to turn the pages. He had his numbers written out from 58 on up as far as the numbers went and had them all on one page. If my number was 6125, he looked at the 61 column and put 25 by it.

Q. That is what I want.

A. Yes.

Q. One of those books would last how long?

A. I don't know. They had to send them in to the office twice a month.

Q. When you send them—they were just duplicate books? The next book would be arranged in the same fashion?

A. He arranged the book himself. He arranged the numbers himself.

Q. Who was the man that stayed at that place and handed out the carbide?

A. The time taker.

Q. Who?

A. The time taker.

Q. Wasn't it the mine foreman?

A. No, sir.

Q. Wasn't it customary for the mine foreman to be the one who handed out the carbide?

A. No, sir.

Q. The time taker did it?

A. The time taker.

Q. How far was the carbide place from the tally house?

A. In the tally house.

Q. In the tally house?

A. Yes, sir.

Q. Was that the same man they handed the brass checks to when they reported?

A. Not on my shift.

Q. Did you have another man they handed the brass checks to?

A. Not at my place. I took them myself.

Q. At your place did you have a hustling gang or extra gang out there waiting to work if a man didn't show up?

A. At times I have had two or three extra men.

Q. As a matter of fact, there were times when there were men waiting there every morning for a chance to get a regular job when somebody didn't show up?

A. At times there were, and at times we didn't have enough men.

Q. When you needed an extra man and there were extra men waiting there, you would call him over and say, "Put in your check," and he would start down, and he didn't have to go see the superintendent or an employment agent—

A. This man was already an employee of the Tennessee Company. I didn't have the right to put a new man to work. This man had already been written up.

Q. That is right; he was an employee in the sense he had been already investigated and written up and given a brass check?

A. Yes, sir.

Q. But he couldn't go to work until you motioned him over and he threw in that brass check?

A. No, sir.

The Court:

Are you through?

Mr. Harris:

I am trying to shorten it, Judge.

Q. Were the miners at the mine where you were working ever paid on a tonnage basis?

A. No, sir.

Q. While you were there?

A. No, sir.

Q. Did they ever have a task basis while you were there where they were supposed to get out so many cars on a shift?

A. They were.

Q. How many cars were they supposed to get out on a shift?

A. I think it was ten tons.

Q. Ten tons or ten cars?

A. Ten tons a man.

Q. Ten tons per man?

A. Ten tons per man.

Q. And if they got out that amount did they have to stay there until quitting time, or could they leave early?

A. They could leave any time they wanted to after they got that amount of ore loaded.

Q. What years was that system in operation out there?

A. I don't know how long but it was several years after I started with the company.

Q. Can you tell us what years they were?

A. I would say from 1916 to 1924 or '5.

Q. And did that stop when they got the mechanical loaders installed? Was that when the tonnage basis was dropped?

A. Yes, sir.

Mr. Harris:

I think that is all I care to ask.

Mr. Burr:

Anything else, Judge Smith?

Mr. Smith:

No.

Re-Direct Examination.

(By Mr. Burr):

Q. Mr. Smith, these extra men that were there at the entrance to the mine, was that a matter of—first, I will ask you what years did that happen in principally, do you recall?

A. No, sir.

Q. Do you know what years we refer to as the depression years?

A. Well, along about 29 to 31.

Q. Was that largely during the depression years or not?

A. Well, I have had a few men, a very few men, up until the time I quit.

Q. Well, was it frequent or infrequent you had these—

A. Infrequent.

Q. Would they be men you knew?

A. Beg pardon?

Q. Would they be men you knew?

A. Yes, sir.

Q. And knew what work they could do?

A. Yes, sir.

Q. Or had been doing?

A. Yes, sir.

Q. When you didn't—as a usual proposition, how did you supply vacancies in 13?. He didn't ask you about that.

A. Well, if there was a drill runner absent from a working place and I didn't have an extra drill runner or a man that could drill—I will not say an extra drill runner, because didn't have any extra drill runners, but a man that could run a drill, I would try to supply him with a man from another heading if I could spare him and supply him with a man from the service crew.

Q. How did you arrange that? Did you go down in the mine?

A. I usually did that by telephone before I left the tally house if I could.

Q. Would that be done before or after the men went in the mine?

A. It would be done before the last trip ran.

Q. What trip did you do it on?

A. Usually the last trip.

Q. Usually the last trip?

A. Yes, sir, usually the last trip.

Mr. Burr:

That is all for Mr. Smith.

(Witness excused.).

The Court:
We will take about a ten-minute recess.

(Thereupon proceedings were in recess from 2:45 P. M. to 3:00 P. M., at which time proceedings were resumed as follows:)

The Court:
Next witness.

Mr. Burr:
If the Court pleases, I had intended, as I stated this morning, after examining a couple of the mine foremen here, to go over to Wenonah, and Mr. George Neal, who is superintendent of that division, was here this morning. He had to go home sick and the doctor has got him in bed. He has had a little heart attack.

I am going to try to proceed in this way—

The Court:
Can't you skip down lower?

Mr. Burr:
No, sir. Mr. Carter is also sick.

I will put on another mine foreman at Wenonah. I will put him on and then let Sloss intervene and let them put on their testimony while Mr. Carter and Mr. Neal are getting well.

The Court:
All right.

Mr. Burr:
Mr. Scott.

The Court:
What are his initials?

Mr. Burr:

It is Pete, and I will have to see what his initials are.

What are your initials, Mr. Scott?

Mr. Scott:

E. C.

1220 E. C. SCOTT, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. Mr. Scott, are you employed by the Tennessee Company at the present time?

A. Yes, sir.

Q. And what position do you hold with them?

A. Mine foreman.

Q. And what mine—what division first, are you employed in?

A. Wenonah Division.

Q. In what mine are you one of the mine foremen?

A. Number 9.

The Court:

Number what?

The Witness:

Number 9.

Q. Who is your superintendent of that division?

A. G. B. Neal, Jr.

Q. Has he been superintendent ever since you came there or not?

A. No, sir. I was working there before he came.

Q. Do you recall about when Mr. Neal came there as superintendent?

A. I think he came somewhere around about 1922.

Q. What time did you first go to the Wenonah Division?

A. 1913.

Q. 1913?

A. Yes, sir.

Q. Previous to that time, and I will run over it briefly and hastily, had you any other mining experience before you went to—

A. No, sir.

Q. You first started at Wenonah?

A. Yes, sir.

Q. How old were you then?

A. Between 19 and 20 years old.

Q. Between 19 and 20 years old?

A. Yes, sir.

Q. Have you been at Wenonah since that time?

A. No, sir, I have worked at other places.

Q. How long did you stay there the first time?

A. I think four or five months.

Q. What mine did you work in then?

A. I went to Acmar.

Q. I mean in what mine at Wenonah did you work?

A. Number 9.

Q. Number 9?

A. Yes, sir.

Q. What did you do?

A. I run a sinking hoist engine.

Q. Is that underground?

A. Underground.

Q. Is that a sinking auxiliary hoist?

A. Yes, sir.

Q. What does it handle?

A. It handles ore from narrow places and places off the main slope.

Q. Is that all you did at Wenonah at Number 9 the first time you were there?

A. Yes, sir.

Q. Then you worked at Acmar?

A. Yes, sir.

Q. That is a coal mine over in St. Clair county?

A. Yes, sir.

Q. How long did you work there?

A. About four or five months.

Q. Work inside or outside?

A. Inside.

Q. Then where did you go?

A. Went back to Wenonah.

Q. How long did you stay there at that time?

A. I don't recall exactly, but I was pumping on the night shift. I must have stayed there five or six months.

Q. During all that period were you a pumper and was that inside or outside?

A. Inside.

Q. What were the duties, just generally, of a pumper?

A. That was to keep the water out of the mine.

Q. I see. Was that the same mine, Number nine?

A. Yes, sir.

Q. After that did you leave there again?

A. Yes, sir; I left and was away something like a month and came back and went to work at Number 7 mine.

Q. Is that in the same division?

A. Yes, sir.

Q. What kind of work did you do in Number 7 mine?

A. I had an extra timber crew over there. That was a crew in addition to the regular mine crew, doing the square timbering and other timbering the other crew didn't have a chance to do.

Q. Were you foreman of that crew or not?

A. Yes, sir.

Q. How long did you work as the foreman of that timber crew in this mine?

A. About—close to a year, I think.

Q. What was your next employment in the mine?

A. Skip tender.

Q. Skip tender?

A. Yes, sir.

Q. In the same mine?

A. Yes, sir.

Q. What were the duties of the skip tender? What did you have to do when you were skip tender?

A. I gave signals to the engineer in hoisting the ore and attended to dumping the ore.

Q. Did you have charge of the mantrip?

A. Yes, sir, I gave the signals on the mantrip.

Q. After that experience what did you do next in the way of mining?

A. Well, I worked at Number 7 on that skip tending job and then I went to running a sinking hoist engine again in Number 7, over in $6\frac{1}{2}$ slope, and transferred from there to Number 6, Muscoda, and worked with the carpenters while they were concreting Number 6 slope.

Q. Was that underground?

A. Yes, sir.

Q. The carpenters were what you call a service crew?

A. Yes, sir. They were concreting the gangway in Number 6.

Q. How long did you work there?

A. About two months.

Q. Then where did you go?

A. I transferred back to Wenonah.

Q. As what?

A. Sinking hoist engineer.

Q. Sinking hoist engineer?

A. Yes, sir.

Q. After that what did you do?

A. I worked at Number 7 up until about May, 1917.

Q. What different capacities did you work in during that time?

A. Pipe man and hanger drill hole runner, and drill runner.

Q. In 1917 where did you go?

A. I went to Parrish with the Railway Fuel Company.

Q. Is that a coal mine?

A. Yes, sir.

Q. Underground mine?

A. Yes, sir.

Q. What kind of work did you do over there?

A. I drove the slope.

Q. How long did you stay over there?

A. Seven months.

Q. Then where did you go?

A. I went to Gayoso. That was a drift mine between Parish and Oakman.

Q. How long did you stay at Gayoso?

A. About three weeks. I was pulling pillars in a coal mine.

Q. That was what you call robbing pillars?

A. Yes, sir.

Q. After you left that coal mine where did you go?

A. I went to number 3 Woodward.

Q. Is that an ore mine?

A. Yes, sir.

Q. How long did you work at Number 3 Woodward?

A. About a month.

Q. What job did you have over there?

A. I was drilling for a contractor that was driving a sump.

Q. Driving what?

A. Driving a sump.

Q. What is a sump?

A. A sump is a place that is made to hold water.

Q. When you left there where did you go?

A. Went back to Wenonah.

Q. What mine?

A. Number 9.

Q. What time did you get back to Wenonah?

A. Must have been about January, 1918.

Q. Have you been continually at Wenonah—

A. With the exception of the time I spent in the army in the World War.

Q. How long were you away?

A. That was from May, 1918, to about—somewhere around September, 1919.

Q. With the exception of that time you have been at Wenonah all the time?

A. Yes, sir.

Q. What positions have you held since you have been there continuously since 1917?

A. Well, I was pump man and shaker repairman, drill runner, section foreman, head blaster, assistant mine foreman and mine foreman.

Mr. Harris:

I didn't hear the third from the last there,—head what?

The Witness:

Head blaster.

Q. What were the duties of the head blaster?

A. At that time the head blaster laid out the holes for the men to drill and looked after the quarrying in the working places, and then he came around in the afternoon and told them how much powder to put in the holes to shoot, and gave them requisitions for it.

Q. Have you been in the same mine all that period of time?

A. No, sir.

Q What mines have you worked in in these various capacities since you came back to Wenonah in 1917 to be there permanently?

A. 7, 8, 9, and 10.

Q. Worked in all four mines?

A. Yes, sir.

Q. In how many have you been assistant mine foreman and mine foreman?

A. In all four of them.

Q. You have been mine foreman how long now?

A. When they were running, since 1929.

Q. Those mines, during what we call the depression, some of them ran and some didn't?

A. Yes, sir.

Q. You went about from place to place serving at different mines?

A. Yes, sir.

Q. As I understand you served as foreman during that time—

A. No. There were times when I was assistant mine foreman on account of only one mine running, and the—

Q. Senior foreman would take precedence?

A. —senior foreman who would take precedence.

Q. I see. Now, it is my fault because I don't remember it, but what mine is it you say you have been foreman at and you are foreman there now and have been—

A. Number 9.

Q. Number 9. When did you first commence working in Number 9, if you remember about when? When did you first know it?

A. You mean in a foreman's capacity?

Q. No; in any capacity.

A. About 1913.

Q. Do you recall back there about how far the slope in that mine had been driven at that time?

A. Yes, sir.

Q. About how far down?

A. Down to 70 heading.

Q. 70?

A. 70, yes, sir.
Q. Do you know how far that is down from the top?
A. No. It is approximately 3000 feet, I think.

Mr. Burr:
Would you mind putting the Wenonah map on the wall for me? Put it over that one if you want to.

(Thereupon a map of the Wenonah Division was placed on the blackboard.)

Mr. Burr:
Mr. Cameron, have you got your ruler? Will you come here and give these straight lines for me, if you can? Mr. Cameron, I want to get the approximate measurements. Of course, you can't follow the curves, if there are any curves.

Q. What was the name of the heading you say the slope was down to when you first went in there?
A. Number 70 heading.
Q. Number 70 heading?
A. Yes, sir.

Mr. Burr:
How far, in a straight line, was that from the mouth of the mine, Mr. Cameron?

Mr. C. B. Cameron:
(After scaling the map.) About 2400 feet.

Q. Your estimate was it was about 2500 feet?
A. Yes, sir.
Q. All right, sir. Now, about how far down, Mr. Scott, in your judgment, has that slope been driven down to, say, May 1, 1941, using that as a date?
A. Well, it has been driven about 3500 feet further.

Mr. Burr:
I see. Now, give me the straight line measurement.

Q. To what heading was it driven to?
A. It has been driven down to an ore pocket.
Q. Ore pocket?

Mr. C. B. Cameron:
About 6400 feet.

Q. Now, Mr. Scott, have the headings also been extended, or some of them, since you were first there?

A. Well, since all the headings that were there at that time have been worked out, and there have been new ones turned off the slope there, and worked out, and in the present workings, where we are working now, the headings extend about—the longest is probably about 1500 feet and the shortest four or five hundred feet.

Q. And, of course, they will be extended until you strike the property lines or the ore gives out?

A. Yes, sir.

The Court:
Don't they run into other slope workings?

The Witness:
Yes, sir; there are mines on each side. We work out to each other's territory.

Q. On the slope territory—
A. It is between Number 8 and Number 10 slopes.
Q. Are they already through or not?
A. Beg pardon?
Q. Are they through or not to the other—

A. There are none of the Number 9 headings through to Number 10, but on the Number 8 side it is all finished but about two or three working places.

Q. About how many men were you working on your shift about May 1, 1941?

A. Well, about a hundred and thirty to a hundred and thirty-six men on the day shift and about ninety-five to one hundred and five on the night shift. We worked more on the day shift than on the night shift.

Q. Do you have one shift all the time, or do you alternate?

A. We alternate.

Q. Who was your switch partner as mine foreman?

A. R. R. Barfield.

Q. Who?

A. R. R. Barfield.

Q. R. R. Barfield?

A. Yes, sir.

Q. Mr. Scott, using May 1, 1941, as a date line,—as a date,—I wish you would please take a member of a production crew and start him at the bath house and put him through what he does from that time on until he comes back to the bath house at night? Can you do that for me, you think?

A. If that prior to May 1st?

Q. Prior to May 1st. I know there have been some changes since then.

Mr. Harris:

How far prior?

Mr. Burr:

Immediately prior, and then I will show how long that same course has been in existence.

A. Well, he would get to the bath house and change clothes, and it is about 250 yards to the tally house, somewhere between six and six-thirty, and he would deposit his check number and secure his carbide, if he needed it, from the timekeeper or man there in the tally house, and he would get on the mantrip and ride—

Q. Let's stop right there. How did he secure his carbide?

A. He would deposit his check, and if he wanted carbide he would ask for carbide.

Q. Would the same man who received the check give him carbide?

A. Yes, sir.

Q. You didn't receive the checks yourself?

A. Yes, sir, I received the check myself and gave him the carbide and the timekeeper hung the check on the board.

The Court:

Did he return an empty can?

The Witness:

Yes, sir, if he had it.

Q. You say "if he needed it"?

A. Yes, sir.

Q. Did he get carbide every day?

A. Some will use more than others. Some, a can will last them two shifts, and some will get it every shift.

Q. They would get it as they needed it?

A. Yes, sir.

Q. Is it obligatory to get it there, or can they get it where they please?

A. I don't believe I ever heard of a rule telling them to buy it from the company.

Q. Most of them get it there?

A. Yes, sir, it is more convenient to get it there, and cheaper too.

Q. After he deposits his check and gets his carbide, say, he catches the first trip, what time would he leave?

A. We used to pull the first skip prior to May 1st when the six o'clock whistle blew, and run a test trip down to the loading station, and that took from six to nine minutes to do that.

Q. I see.

A. And when the skip came back from the test run, the first mantrip was loaded up and sent to the man loading station.

Q. Was there any particular order in which they rode? I mean by that were the men scheduled to go on any particular trip or did they get on any trip they wanted to?

A. They went on any trip they wanted to.

Q. What you are telling me about your understanding is prior to May 1, 1941?

A. Yes.

Q. That is when the change was made to portal-to-portal, was it not?

A. Yes, sir.

Q. I think either you or I used the day May 31, and we meant May 1st.

All right, sir. If a man gets on a mantrip at the Wenonah Division does he necessarily go down with his headminer or not?

A. No, sir.

Q. What would be the usual rule whether he was on the same trip with his head miner or wouldn't be with him as a rule?

A. It would be hard to get every man on there with his head miner because they come up there at different times, and we hold the head miners out to see if his men get there.

Q. In other words, the crews are not assembled on top at all?

A. No, sir.

Q. All right, sir. He rode down to what point?

A. Rode down to a loading station about 100 feet above the ore pocket.

Q. Did they normally carry any tools down on the mantrip?

A. No, sir.

Q. After he got down to the unloading station, what did he do?

A. He would go on to his working place.

Q. When he got to his working place—At what time did the juice come on?

A. At 6:45.

Q. What time did his pay time start?

A. At 6:45.

Q. What time did his pay time end?

A. 3:15.

Q. At what time did you shoot ore in those mines?

A. Well, we blink the lights—flash the lights at 3:10, and that was the signal for the men to light their holes, and then the current was cut off at 3:15. That gave them five minutes of current there so they could move their drag scrape or anything they might need to move out of the way before they shot their holes off.

Q. Was there at this time any lunch period?

A. Yes, sir.

Q. How much was the lunch period?

A. Thirty minutes.

Q. Was any signal given for that thirty minutes?

A. Yes, sir.

Q. What was that signal and when was it given?

A. The lights were flashed at 11:30 to begin the lunch period and flashed again at 12:00 o'clock to resume work.

Q. Was that lunch period on—were they paid for the lunch period or was that—

A. No, sir; it was on the men's time.

Q. On the men's time?

A. Yes, sir.

Q. All right, sir. What was the usual practice in reference to lighting the fuses? Who did that? Whose responsibility was that and who did it in actual practice?

A. The drill runner and the man that helped him would do the lighting. The head miner would stay there with them. If there were two drill men, we usually let the drill helper go ahead and the two drill men and the head miner stayed there. If there was one drill runner they kept the helper there.

Q. In other words, they kept the drill helper to set the fuses?

A. Yes, sir.

Q. What did the muckers do?

A. Come on to the loading station.

Q. What would you say was the time of the muckers leaving the working place?

A. I gave them orders not to leave until 3:10, but some of them left a little earlier. They left at various times from three o'clock to 3:10.

Q. And walked out just like they walked—

A. Yes, sir.

Q. How was the grade in your mine; was it downgrade or upgrade from the manloading station to the working places?

A. Going from the loading station to the working places where they turn off the manway, it is practically level, but in the working places there are some places that are upgrade and some downgrade. We have a minimum grade of five percent—I mean a maximum grade of 5 percent. We try not to have more than that, and in some places it is less than that.

Q. All right. Now, Mr. Scott, how about the—how are the tools handled at your place? First, have you got a tool house or not on the outside,—a supply house, I mean?

A. Outside?

Q. Yes, sir.

A. The division supply house is on the outside that supplies all four of the mines.

Q. Where is that division supply house located?

A. It is located down near Number 8 mine near the shops.

Q. Is it shown on that map?

A. No, sir; it would not be; it is an underground map.

Q. I am talking about the outside supply house; that is not shown on the map?

A. No, sir.

Q. What supplies are kept in that outside division supply house?

A. Pipe fittings, hammer handles, pick handles,—everything they need for the operation of the work over there.

Q. Inside and out?

A. Yes, sir.

Q. Do you know what time in the morning that supply house opens?

A. No, sir, I don't. Sometimes I have called there at 6:30 over the phone and there would be a man to answer it.

Q. Have you ever been able to get anybody there before 6:30 or not?

A. I don't believe I have been.

Q. You have got phone connection down there from where?

A. From the tally house.

Q. From the tally house?

A. Yes, sir.

Q. Mr. Scott, how did yours and these other Wenonah mines that you know of,—how did they get supplies that went inside the mine delivered? What were the steps in that?

A. Well, the mine foreman would write a requisition, and the truck driver usually picked the requisitions up and carried them to the supply house—

Q. Now, is that truck driver an outside employee?

A. He is an outside man, and he would come up to the different mines in the morning to deliver the drill steel, and when he did he would take his requisitions back.

Q. Where and by whom would the requisitions be delivered at the mouth of the mine?

A. He would bring the material back.

Q. The truck driver?

A. Yes, sir.

Q. Where would he put it, when he brought it back?

A. He would put it on the yard, or if he had some heavy pieces he might put it on the larry, just transfer it.

Q. Where did that larry stay when it wasn't in use?

A. Stayed on the sidetrack on the surface.

Q. What is that car?

A. It is a flatcar with stakes and a back on it, and has a sling rope to couple it—

The Court:

Has what?

The Witness:

Has a sling rope about eight or ten feet long to couple to the ore skip.

Q. And the material is carried down in the mine in that way?

A. Yes, sir.

Q. Was that larry material ever used or hauled in the mine when the mantrips were going down or not?

A. No, sir, not the regular man skips when we were hauling the men down to work.

Q. When you were hauling the men down to work was anything hauled except the men?

A. No, sir.

Q. If the truck driver didn't put the material on the larry, who did that?

A. The men that hauled the material down.

Q. That was an inside service crew?

A. It is an inside service crew.

Q. What do you call that crew?

A. It is a service crew. It works a split shift. They come on when the day's work of the mining crews is over, and they work until the next crew comes in, and their work is over until the next morning.

Q. Where would that material be hauled in the mine?

A. To the material way. We have a place where material is unloaded and then we take it by motor to the various parts of the mine.

Q. This material way, where is it located?

A. It is located about fifty feet above the man loading station.

Q. Is it located at the same place in all the mines, or at different places?

A. No, sir; at different places.

Q. Can you tell us where it is located at the other mines?

A. Well, Number 8 has a double slope, in other words, it has an auxiliary slope in addition to the main slope, and the material way in Number 8 is approximately 700 feet below the manloading station and they unload material there and it has to be transferred by other crews back into the workings when the shift comes on.

Q. When this material is hauled down and deposited at the material way—is there any house there?

A. No, sir, just a level place there.

Q. Just a level place there?

A. Yes, sir.

Q. Where is it delivered from there, and by whom?

A. The drill steel is carried out to the headings by the service crews. The service crews take the dynamite around to the powder house; the service crews unload it and put it in the magazine.

Q. You have a regular magazine?

A. Yes, sir.

Q. What else?

A. The service crew takes the small supplies and puts them in the tool house.

Q. What do you include in your designation of small supplies?

A. Pipe fittings, drill valves, pick handles, hammer handles, hangers, wedges, short drill steel and C-hooks.

Q. C-hooks?

A. Yes, sir.

Q. That covers it?

A. Yes, sir.

Q. Is that tool house locked or not?

A. It is kept locked except when the shift is in operation.

Q. Who has charge of the keys of it?

A. We have a powder man that looks after the powder house and looks after the tool house also.

Q. In your mines, the powder man handles both the powder house and tool house?

A. Yes, sir.

Q. How close are they together?

A. The magazine is about 70 feet from the tool house.

Q. Do you know what time, in reference to the shift, using the morning shift as an illustration, the tool house is unlocked?

A. We usually open the tool house about 6:45.

Q. 6:45. How is this small material you told us about gotten up into the working stopes?

A. Some men, if they need hangers or something like that, would stop by the tool house as they went to the stope,—hangers or wedges, or sometimes they would send back and get them.

Q. Either way?

A. Yes, sir.

Q. Sometimes you said they would get it on the way up?

A. Yes, sir.

Q. I believe you said they didn't open the tool house until 6:45?

A. Yes, sir.

Q. The heavy drill steel, is that put in the tool house?

A. No, sir.

Q. How is that taken to the working places?

A. It is delivered by the service crew with a motor on either cars or a larry.

Q. If that heavy steel needs sharpening or repairing or anything of that sort, how is that handled?

A. The head miner loads the dull steel on his loaded tram cars and the motor brings it out of the working place, and it is thrown off and picked up by the service crew and taken to the material way and unloaded where this hauling crew can get it.

Q. And then it is carried outside?

A. Carried outside by the hauling crew or service crew.

Q. During what period of time does the head miner have this dull steel loaded on a car?

A. Sometimes during the working time. Usually the drill runner gets done about an hour before shooting time, and they bring the dull steel down and load it on the loaded cars.

Q. Where is that car with reference to his working place where he is working?

A. Right there at it. It is a car they are loading at that time.

Q. They put it on top of the ore?

A. Yes, sir.

Q. About the powder, how is the powder handled at your division?

A. How do they secure the powder?

Q. Yes, sir, how do they secure it and through whom do they secure it?

A. They send a requisition by the drill man or maybe two men to the powder man, and he issues the powder something like an hour before shooting time.

Q. Is that powder ever delivered on requisition before 6:45 or after 3:15?

A. No, sir.

Q. The powder you refer to as powder is what an ordinary layman like me would call dynamite?

A. Yes, sir.

Q. Now, I believe I have asked you about all your tools over there except oil. I don't know how you handle your oil. Tell us about that.

A. Sometimes a man will get his oil in the morning when he is going in the working place, and sometimes send back for it, and a good many of them, when a man comes to get his powder, he will bring an oil can and take it back to the other shift.

Q. That is the way they handle it?

A. Yes, sir.

Q. How is the oil kept?

A. It is kept in a tank with a pump on it, and anyone can go there and get it.

Q. There is no one there guarding the oil?

A. No, sir.

Q. They can come and get it when they want to?

A. Yes, sir.

Q. What do they get it in?

A. Some of them have gallon cans and some of them half gallon cans.

The Court:

What is that oil for, to lubricate those machines?

Q. Tell him about that, Mr. Scott.

A. To lubricate the drills.

Q. Now, you have hose pipe?

A. Yes, sir.

Q. Where is that obtained from?

A. It is obtained from the supply house originally, but the hose pipes stay in the working place. The only time they need extra hose is when the place is extended, and in that case the pipe man carried them a section and puts it on for them.

Q. Do they have any duties to perform in connection with the air hose or water hose outside the working place?

A. No, sir, not the heading crews.

Q. That is what I mean; I am talking about the heading crews.

A. No, sir.

Q. I believe that gets the heading crew's tools. Tell me about the slope track crew and timber crew and carpenters and so forth. Where does their pay time begin?

A. It starts at 6:45.

Q. At what place?

A. At the tool box where they get their tools.

Q. That is where they go first?

A. Yes, sir.

Q. After they get off at the unloading station they go to their tool box?

A. Yes, sir.

Q. And that is where their time starts?

A. Yes, sir.

Q. Where does it end?

A. It ends at 3:15. They usually have their tools put away either by or before that time.

Q. What time do they usually have their tools put away and their work is through for the day?

A. A few minutes after three o'clock.

Q. A few minutes after three o'clock?

A. Yes, sir.

Q. Do they usually catch the first trip out by doing that or not?

A. Yes, sir.

Q. They are ahead of the production crews?

A. Yes, sir.

Q. Did I ask you what time the first skip goes out in the afternoon?

A. No, sir.

Q. What time does it go out?

A. It would be 3:15 or as soon after 3:15 as we can get the skip. It might have just gone out with a trip of ore, and it will have to come back,—about two or three minutes.

Q. And then would it go out at regular intervals?

A. Yes, sir, about every eight or nine minutes.

Q. How many trips did it take to get your men out?

A. About three trips on the night shift, and about four on the day shift.

Q. About the same number coming in?

A. Yes, sir.

Q. I want to ask you, Mr. Scott, whether, prior to May 1, 1941,—whether any of these mines or any other mines you have ever worked in in this country,—in this state, the men were ever paid for any part of the traveling time?

Mr. Harris:

We object to that; involves both ore and coal mines, as I understand.

The Court:

You had better ask as to ore mines.

Q. Well, confine it to the ore mines.

Mr. Harris:

The same general objection we have raised.

The Court:

As to ore mines too?

Mr. Harris:
Yes, sir.

Q. What has been the universal custom in the mines—

Mr. Harris:
We object to the universal custom.

Mr. Burr:
I am asking about the mines he worked in.

The Court:
Those he worked in?

Mr. Burr:
Yes, sir. I never asked about any except the ones in which he worked.

Q. Has that been the universal custom in the mines in which you have worked up until May 1, 1941?
A. Yes, sir.
Q. During that entire period of time while you were mine foreman or assistant mine foreman, I will ask you to state whether or not any underground workers ever complained to you about the traveling being on their own time?
A. No, sir.

Mr. Harris:
We object on the ground the testimony shows he is not the man who negotiated contracts.

The Court:
Overruled.

Q. Did they ever request of you they be paid for any part of that time at any time?

A. No, sir.

Q. Has it been customary in those mines, Mr. Scott, down there for the last several years, and I will get you to tell me when that started, if you know, for all employees to receive a statement of their account and sign a receipt on each payday?

A. It seems to me like ever since I can remember you always got a statement, but I don't remember whether they used to always sign it or not.

Q. Well, how long, within your recollection, have they all been signed? How far back does that go, within your recollection, of signing these pay statements?

A. Back about 1920, I believe.

Q. About 1920?

A. Yes, sir.

Q. Now, since they have been issuing those statements, have they always been issued four times a month or a less number of times per month back further back?

A. They used to have two-weeks paydays, and issued them twice a month.

Q. Do you remember when the four week paydays went in effect out there; do you recall that?

A. I remember it, but I couldn't recall the date.

Q. You don't know? Have you got any judgment about it at all? Has it been a few years or several years? That is what I—

A. It has been just a few years.

Q. I see. Do you recall about when what has been called the incentive plan,—about when the incentive plan went into effect?

A. Yes, sir.

Q. About when was that?

A. That was sometime in '36.

Q. Well, under the incentive plan, what has been the standard crew on the incentive plan basis in the productive part of the mine?

A. Well, we have a crew—are you talking about stoping crews?

Q. Yes, that is right, about stoping crews.

A. We have a seven-man stoping crew. That included two drill men, a head miner, a drag operator, and three section helpers. We had some stoping crews where there were just one drill man. That was a six man crew. There are some stoping crews in narrow work that were five men crews.

Q. Previous to the incentive plan going into effect, what was the procedure in reference to the men being paid? In other words, did they get a guaranteed wage and bonus above that, or was it on a task basis or what was it at these mines?

A. Well, prior to the incentive plan, they got a certain wage rate per day, per eight hours.

Q. Per eight hours?

A. After that incentive plan they got their guaranteed wage plus what percentage they might earn.

Q. That was based on a certain standard amount, and above that amount they commenced to get a percentage bonus, incentive earnings?

A. Yes, sir.

Q. Do you recall about when the eight-hour day went into effect out there in the Wenonah Division, what time it was?

A. It must have been sometime in '36, I believe.

Q. The 8-hour day?

A. I don't remember exactly. It might have been earlier than that. I think it was when this Code business was in effect.

Q. When this Bituminous Coal Code went into effect; it followed that?

A. I think it did.

Q. Now, when you had the 10-hour day before that, what was your time for the workday beginning in the mines under the 10-hour day?

A. Well, the men had to be checked in before 6:30, and we went to putting them underground at 6 o'clock and got them down there as soon as we could.

Q. Had to be at their working places by 6:30?

A. No; they had to be all checked in by 6:30. Their quitting time was 4:30.

Q. When did the pay time start, and where?

A. The pay time was supposed to start at their working places. They were supposed to put in ten hours at their working places.

Q. Was the lunch hour included in that? Did they take lunch on their own time or the company's time?

A. They had lunch whenever they got an opportunity to do so.

Q. It was all company time back in the old days?

A. Yes, sir.

Q. Was this task plan in effect in those days?

The Court:

What period?

Mr. Burr:

Task.

A. When are you speaking of?

Q: At any time.

A. When I started working at the mines and when I came back in 1919 the men were on a task basis of ten 2-ton cars per shift.

Q. And when they finished the shift, could they leave the mines?

A. Yes, sir, they could leave at any time they wanted to after they loaded their cars.

Q. About what time did they finish loading their cars?

A. Some loaded them by 10:30 or 11:00 o'clock and walked out. Some of them would be 2 or 3 o'clock. Some of them loaded them all day.

Q. It depended on the men themselves?

A. Yes, sir.

Q. Now, on May 1, 1941, what changes were made in reference to the men's transportation in the mines, the time they went in and the time they came out and things of that sort?

A. Well,—

Q. That is when you changed to the portal-to-portal plan?

A. Yes, sir. Before that time we didn't pull the skip out of the side track until 6 o'clock, and now we run this test trip and have the skip waiting at 6 o'clock.

Q. I see.

A. And the men were all ready to check in and immediately the 6 o'clock whistle blows they go to checking in and as soon as we can get a skip loaded we send it on down.

Q. Is that since this portal-to-portal plan started?

A. Yes, sir.

Q. Do they go down any quicker in the skip now or about the same?

A. Just about the same.

Q. When they get down do they go any quicker to their places of work?

A. They are supposed to go immediately to work when they get there.

Q. Under the old system what time were they supposed to start work?

A. 6:45.

Q. Now, when they get there they are supposed to start to work?

A. Yes, sir.

Q. What is the shooting time under the present system?

A. 1:45.

Q. What is the leaving time of the car going out?

A. 1:45.

Q. 1:45?

A. Yes, sir.

Q. And they go out the same way they used to, as you estimate, about nine minutes apart?

A. Yes, sir.

Q. So they are in the mine an hour and a half less time than they used to be; that is about the way it figures out, isn't it?

A. Yes, sir.

Q. What time does the last car get out? What time is the last man in the mine out, the last mantrip?

A. That would be around 2:20 or 2:25.

Q. Is that when they get to the entrance of the mine?

A. Yes, sir.

Q. What we have been calling the portal?

A. Yes, sir.

Q. State whether or not everybody is out of the mine under the present system by or before 2:30 at your mines?

A. Sir?

Q. Are they out of the mine by or before 2:30?

A. Yes, sir, they are out by or before 2:30.

Q. Have you been working substantially the same crew since May 1st that you did before?

A Yes, sir.

Q. Same personnel?

A. Yes, sir.

Q. And they have been working in the same stopes substantially?

A. Practically the same thing.

Q. The same head miners with the same crews?

A. Yes, sir.

Q. Been using substantially the same sort of equipment they used before?

A. Yes, sir.

Q. Been riding down in the same skips?

A. Yes, sir.

Q. The only difference is what you have told us with reference to the time?

A. Yes, sir.

Q. Have you observed whether the production has fallen off or stayed about the same?

Mr. Harris:
We object to that.

The Court:
I don't think it is material.

Mr. Burr:
Your Honor has allowed us to show it with other witnesses.

Mr. Harris:
We objected to it all along.

Mr. Burr:
There certainly couldn't be any doubt about it.

The Court:
I will let you—

Mr. Burr:
I don't want to get the details. I want to get the figures.

Mr. Harris:
He gives it by a summary.

Mr. Burr:
If he knows fewer cars come out now than there did before, it is certainly material.

Mr. Harris:
We say it is not material.

Mr. Burr:
It is the highest kind of materiality.

The Court:
What is your question.

Mr. Burr:
Whether or not under this new regime, portal-to-portal, as they call it,—whether or not production has increased or decreased to his own knowledge.

Mr. Harris:
We object.

The Court:
I will overrule it.

Q. What about that?
A. It has decreased.
Q. Can you tell me what the decrease is in correct figures?

Mr. Harris:
Same objection.

The Court:
Same ruling.

A. I can tell you approximately.
Q. Well, tell me approximately.

Mr. Harris:
Same objection.

The Court:
Same ruling.

A. It is approximately 150 tons per shift.

Q. I didn't understand you.

A. It is approximately 150 tons per shift.

Q. That is for each workday?

A. For each shift.

Q. It would be double that for a day?

A. Yes, sir.

Mr. Burr:

That is all.

Cross Examination.

(By Mr. Harris):

Q. Does the Tennessee Coal, Iron & Railroad Company have an employment office?

A. Yes, sir.

Q. Do you have charge of it?

A. No, sir.

Q. In the employment office do they determine who they shall hire, what men shall go to work?

A. I suppose they do.

Q. Do they determine the rate of pay at the employment office? When they hire a man do they tell him the rate of pay he will get?

A. No, sir.

Q. When a man comes to you and reports to you for work, does he ask you what he is going to get paid?

A. No, sir.

Q. If a service man comes to work for you, does he come up and ask you, "Mr. Scott, what am I going to get paid?"

A. No, sir.

Q. You don't have anything to do with his pay and never have?

A. The only time I would have anything to do with his pay would be on the job I would put him on.

Q. Yes. If the necessities of the job under your supervision demands, you could move him from one type of work to another, and that type of work might carry a different rate of pay; that is what you mean?

A. Yes.

Q. But you had nothing to do with fixing his rate of pay or his classification when he was employed?

A. No, sir.

Q. And you couldn't change it after he started could you?

A. No, sir.

Q. And you didn't sit in on the negotiations for an increase in the rate of pay, did you?

A. No, sir.

Q. And you were not one of those on the company's staff that figured out the incentive plan, were you?

A. No, sir.

Q. You don't know whether the men had anything to do with figuring out that incentive plan or not, do you?

A. No, sir.

Q. Now, what do you mean by a split shift?

A. That is a shift that makes part of the shift in the morning and part of it in the afternoon.

Q. Well, you don't mean to tell me that you have men that can actually be working in the mines after the shots are fired and before another shift comes on?

A. No, sir; they are not in the mines where the shots are fired.

Q. They are underground, are they?

A. They are on the slope.

Q. How far underground would that be?

A. As far as the slope goes.

Q. In your mind it would be 6000 feet?

A. Possibly sometimes.

Q. Is it as far down as the pocket?

A. It could be down as far as the pocket.

Q. Well, the air is all right down there while they are working between shifts, isn't it?

A. Yes, sir.

Q. And how long has it been you have had men working out there at Number 9—I believe yours is Number 9, isn't it?

A. Yes, sir.

Q. How long have you had men working down there on those slopes 6000 feet underground betwen shifts?

A. I don't remember when they started using this split crew.

Q. What is your best judgment?

A. Four or five years.

Q. What kind of pocket is it you have there at Number 9, how much ore will it hold?

A. Holds a railroad car.

Q. Just one railroad car?

A. One railroad car.

Mr. Burr:

Talk a little louder, Mr. Scott.

A. One railroad car.

Q. When you haul the ore out of the mine, or hoist it out, whatever phrase you use, do you hoist just one skip of ore at the time?

A. Yes, sir.

Q. And that goes on all the time; you bring it up one skip at the time?

A. Yes, sir.

Q. Now, the mine itself has little tracks running all around through it underground, doesn't it?

A. Yes, sir.

Q. What is the side rail those tracks have?

A. 60 pounds.

Q. And the little cars are pulled with electric motors?

A. Yes, sir.

Q. And how many cars at a time are pulled by one locomotive?

A. Four cars.

Q. Do they go faster than a man walks?

A. Yes, sir.

Q. What is the speed with which they travel down under there?

A. About twelve miles an hour.

Q. Twelve miles an hour?

A. Yes, sir.

Q. And do those tracks with those electric locomotives run not only all over the mine, but up close to the working stopes?

A. Yes, sir.

Q. What would you say was the average where those tracks came to the working stopes?

A. They come immediately by the working stopes.

Q. Immediately by them?

A. Yes, sir.

Q. And that has been in that condition for the last three years, hasn't it?

A. Yes, sir.

Q. And those electric locomotives stay down in there all the time; you don't bring them out at night?

A. They stay underground, but the electric locomotives don't go in the immediate workings where they are loading the cars.

Q. That is what I know; that is what I asked you,— How close they came to it.

A. You said the tracks.

Q. How close do the electric locomotives come?

A. It comes to the sidetrack.

Q. How far is that?

A. It would be about 75 or 100 feet from the place where they are loading the ore.

Q. Where the mechanical loader is working?

A. Yes, sir.

Q. And it backs the cars in on the side track and cuts loose and goes on and hauls them to some other heading, is that right?

A. Yes, sir.

Q. You say the average speed throughout the mine those locomotives can make is 12 miles an hour?

A. Something like that. It might be a little more and it might be less.

The Court:

Excuse me a minute. All right; go ahead.

Mr. Harris:

We are through.

The Court:

You are through? Anything for you, Mr. Burr?

Mr. Burr:

Just a minute. I don't think there is anything else. Just one question.

Re-Direct Examination.

(By Mr. Burr):

Q. Under the 10-hour system, what time did the man's pay work begin, that they paid him for?

Mr. Harris:

He asked him that once.

Mr. Burr:

I will ask him again. The gentleman didn't understand that.

A. He is supposed to be paid from 6:30.

The Court:
Anything else?

Mr. Burr:
That is all. Come down.

(Witness excused.)

Mr. Burr:
Judge, that is as far as I can go this afternoon on account of the matter I mentioned to you.

The Court:
It seems to me, gentlemen, we go a little bit into detail on some things that are not very material to this case the way I view it. We will try to make a little better time beginning tomorrow morning.

Mr. Burr:
All right. We will try to do that.
Of course, it will get shorter as we get through with each division.

The Court:
I don't see the necessity of going into a man's long history about mining coal.

Mr. Burr:
Well, I don't think that takes over five or ten minutes, and as I stated to Your Honor, as quick as I can get my authorities together, I am going to convince you the coal mines are as important in this case as the ore mines, and I want to save these fellows coming back, if I could.

The Court:
Well, I—

Mr. Burr:

With reference to these minutes, these gentlemen have given us a list of the minutes they have, but they haven't let us see the minutes yet. That is the minutes of conferences with the T. C. I. officials.

The Court:

Have you got the minutes they gave the dates of?

Mr. Burr:

I don't know.

Mr. Harris:

That is why I gave them to him.

The Court:

If you have the dates you can check the minutes.

Mr. Burr:

I don't know until I check them whether they are the same minutes.

Mr. Harris:

I gave him a list of them. They were kept in their offices by their stenographers, who wrote them down. I have given him a list of them—

Mr. Burr:

Now I—

Mr. Harris:

He can look at those and tell whether any of those are missing from their files.

Mr. Burr:

I can look at these minutes and in five minutes tell whether I want them or not. I don't see why I should be called upon to check a stack of minutes that high—

The Court:

Wouldn't it be easier for you to look at that and see whether you want them?

Mr. Burr:

No, sir. I would have to go through a stack that high (indicating).

The Court:

Let him see them.

Mr. Harris:

Judge, all he wants to do—

Mr. Burr:

I want to see if they are the same as mine.

Mr. Harris:

His secretary kept minutes and typed them—

Mr. Burr:

I haven't—

The Court:

Just a minute, Mr. Burr.

Mr. Harris:

His secretary kept minutes and typed them, and then after typing them they handed them over to us. He wanted to know what minutes we had. We have given him a list of the minutes we have. Now, he says he wants to take our files and go to his office and check them over with his minutes to see if our minutes which they gave us read like his minutes which he kept.

I say he is not entitled to do that.

The Court:
The other day, my recollection is—

Mr. Burr:
Will Your Honor hear me on that?

The Court:
Yes, sir.

Mr. Burr:
We turned these minutes over to them and haven't had them since we gave them to them. In other words, the undisputed evidence is that the secretary made minutes and they were signed by both factions and one copy turned over to them—

The Court:
Mr. Burr, I will permit you to check the minutes you have against the dates and any dates you haven't on hand I will require them to produce them.

Mr. Harris:
Very well.

Mr. Burr:
Your Honor is going to put the burden on me to read through all the minutes?

The Court:
No.

Mr. Burr:
That is what it will make me do.

The Court:
No, I don't see it that way. As testified by Mr. Ball—he named the man who took the minutes and wrote them off.

Mr. Burr:
Judge, my minutes are here open for everybody to see, and then I am going to subpoena those minutes, and if they are not produced I will see what action I shall take.

The Court:
I have told you what I am going to do.

Mr. Burr:
Well, we take an exception.
If there is any reason why we can't see the minutes, which are not confidential, I don't see what it can be.

The Court:
You can check your list, and if you haven't got them they will be required to produce them.

Mr. All:
Judge, if the minutes bear the same date is there any presumption they are the same minutes?

Mr. Harris:
You don't have to argue that.

The Court:
He has given you the dates of the minutes. Any you don't have, they will be required to produce them.

Mr. Burr:
If those minutes are relevant testimony, they are supposed to be produced in the Court. If they are not relevant they are not required to be produced.

The Court:
That is the Court's ruling.

Mr. Burr:
Yes, sir. We will subpoena them.

The Court:
Court is adjourned until 9:30 tomorrow morning.

(Whereupon, at 4:10 P. M., July 14, 1941, an adjournment was had to 9:30 A. M., July 15, 1941.)

July 15, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:
Who will you have?

Mr. All:
Your Honor, we are going to put on some of the testimony with respect to the Sloss operations beginning this morning.

The Court:
Proceed.

Mr. All:
Mr. Harper.

1264 A. F. HARPER, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. All):
Q. Your initials, Mr. Harper?
A. A. F.
Q. A. F. Harper?
A. Yes, sir.
Q. Mr. Harper, how old are you?
A. How old am I?

Q. Yes, sir.

A. 48.

Q. Will you outline briefly your mining experience and training?

A. I am a graduate of Alabama Polytechnic Institute and went to work for the Woodward Iron Company in their engineering department in 1911. I left them about nine years later and went with the Sloss people and was with them twelve years, and back with the Woodward Iron Company again three years ago.

Q. Now, what was your—your initial experience was in engineering?

A. That is right.

Q. Was that in connection with the mining operations?

A. Yes, sir.

Q. And how much experience briefly, did you have in that?

A. In engineering work?

Q. Yes, sir.

A. Nine years.

Q. Did that have to do with the laying out of underground operations?

A. Yes, sir.

Q. Then after that nine years experience what did you do?

A. I went with the Sloss-Sheffield Company, and in 1920 I was made superintendent at their Irondale mine.

Q. At their Irondale mine?

A. Yes, sir.

Q. How long did you remain there?

A. One year.

Q. From there where did you go?

A. Back in the engineering department.

Q. Sloss engineering department?

A. Yes, sir.

Q. Mining engineer?

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A. Yes, sir.

Q. Then what next?

A. I went with the Woodward as superintendent at the Mulga coal mine.

Q. Then where did you go?

A. I went back with the Sloss Company as superintendent at their coal mines.

Q. And from there where?

A. I went to the Lewisburg coal mines as superintendent.

Q. And from there?

A. I was there five years, and then went to Lessie Mine as superintendent.

Q. How long were you there?

A. Three years.

Q. Then where did you go?

A. To the Sloss ore mines.

Q. As what?

A. Superintendent.

Q. You remained there how long?

A. Five years.

Q. As superintendent?

A. Yes, sir.

Q. Of the Sloss ore mines?

A. Yes, sir.

Q. And from there you went back to Woodward?

A. Yes, sir.

Q. And since then you have been superintendent of one of their coal mines?

A. Yes, sir.

Q. Mr. Harper, were their coal mine and ore mine operations both underground operations?

A. Sir?

Q. Was their coal mines and ore mines both underground?

A. Yes, sir.

Q. Now, Mr. Harper, were you familiar with the custom and usage and practice during those years with respect to the computation of work time and the payment for work time in the mines?

Mr. Brodie:
I object.

Mr. Harris:
We object, if the Court please. The question is too general, not confined to ore mines.

Mr. All:
I will restrict it to ore mines for the present, with the same reservation Mr. Burr made.

The Court:
All right.

A. Yes, sir.

Q. What was that?

A. The men were paid for the time they spent at their working places.

Q. At their working places?

A. Yes, sir.

Q. Generally speaking, what classes of men work in the ore mines underground?

A. Well, you might divide it into production men or so-called tonnage men who actually drill and load the ore, and another group would be the haulage crew who handle the ore to the surface; another group would be the maintenance men or service men.

Q. Maintenance men or service men?

A. Yes, sir.

Q. Where were the working places of the production crews?

A. Where was it?

Q. Yes, where was their working place?

A. Well, it was in the location of the mines where they worked, where the mined ore.

Q. Was it in the headings?

A. Headings or stopes.

Q. That is at the working face?

A. Working face.

Q. With respect to the service men, does their time start at a different place in the mine from the production men?

A. Yes, sir.

Q. Where was that?

A. Well, a service man laying track or setting timbers, his time would start where he left off the day before.

Q. If he had finished a job did he have—

A. His place would start where he was going to work.

Q. Did they have any assembly place? If they had finished a job, where would they report the next morning?

A. Why, the mine foreman would see him at the yard at the bottom of the slope.

Q. At the bottom of the slope?

A. Yes, sir.

Q. Were the service men—was their work all over the mine?

A. They worked all over it.

Q. Worked all over it?

A. Yes, sir.

Q. Was that true throughout your mining experience?

A. Yes, sir. That is, unless you had something like a hoist engineer, and he worked in one place.

Q. He worked in one place?

A. Yes, sir.

Q. And his work would be where he got his hoist engine?

A. Where his hoist engine was.

Q. During your experience in the mines, has the travel time of the men going from the mouth of the mines to the working places ever been considered or computed as a part of the work time?

Mr. Brodie:
We object.

Mr. Harris:
The word "considered"—

Mr. All:
I mean computed and reckoned under time worked.

Mr. Brodie:
I interpose an objection to that.

The Court:
On what grounds?

Mr. Brodie:
The custom is not binding—

The Court:
As I understand by that you mean the practice and custom of the company he was working for?—

Mr. All:
Yes, sir, the practice of the company he was working for.

The Court:
With that understanding I will admit it.

Mr. Brodie:
May I have my objection and exception?

The Court:

Yes, sir.

Q. All right, Mr. Harper.

A. The traveling time has never been considered.

Q. It has never been considered throughout your experience as a part of the work time?

A. No, sir.

Q. Mr. Harper, we will interrogate you with respect particularly to your experience in the ore mines of the Sloss Company, of which I believe you say you were superintendent from 1933 to 1938; is that right?

A. That is right.

Q. Is that the ore mines the Sloss Company is presently operating?

A. Yes, sir.

Q. How many openings or slopes did the Sloss Company have on Red Mountain?

A. Two.

Q. How many were operating during your day?

A. One.

Q. That was number—

A. Number 2 mine.

Q. Number 2?

The Court:

Where is that mine?

The Witness:

That is right on the edge of Bessemer, on Red Mountain.

The Court:

It is near the Tennessee Company's—

The Witness:

Right between the Tennessee Company's Number 6 and Woodward Iron Company's Number 1.

The Court:

Yes, sir.

Q. It is practically right opposite Bessemer?

A. That is right.

Q. Practically opposite the City of Bessemer?

A. Yes, sir.

Q. That is the one they are operating now?

A. Yes, sir.

Q. Mr. Harper, can you tell us briefly about the general method of mining that was employed by the Sloss Company, the way the mine was laid out? I will ask you, first, is that a slope operation?

A. Yes, sir, it was a slope mine.

Q. A slope mine. And, now, tell the Court what you mean by a slope mine.

A. By a slope mine we mean the entrance to the mine was driven in the ore which pitches about thirty degrees with the horizontal. The mine goes right down in the ore, making the mine set on an angle of about 30 degrees with the horizontal approximately.

Q. Whatever that degree is?

A. Yes, sir.

Q. And the slope was driven in the ore?

A. Yes, sir.

Q. Can you tell us approximately what the depth or thickness of the ore seam or vein in your mine was?

A. It varied from, say, eight to ten feet.

Q. Eight to ten feet this way (indicating)?

A. Yes, sir.

Q. Running this way along Red Mountain it ran for some miles?

A. Yes, sir.

Q. I mean the ore vein?

A. Yes, sir.

Q. And the ore properties of the several companies were all just along the mountain?

A. That is right.

Q. With the Sloss operations you say they first drove a slope?

A. Yes, sir.

Q. And that was right in the ore?

A. Yes, sir.

Q. Now, how far down was that slope driven at the time you went to Sloss in 1933?

A. Well, the ore is not continuous all the way to the end of the workings, not one continuous seam. It goes down and breaks. There were faults.

Q. I mean by that what—what was the last heading down the slope when you got there in 1933?

A. The last heading when I got there was possibly 73 or 74 right.

Q. That is when you got there?

A. Yes.

Q. Now, I will ask you this: As you drive the slope down, as I understand, there are headings driven at right angles to the slope at intervals?

A. Yes, sir.

Q. And can you tell us what distance, approximately, in the Sloss operations, they drove those headings?

A. Approximately 300 feet.

Q. Apart?

A. Yes, sir.

Q. 300 feet apart?

A. Yes, sir.

Q. And when you drove those headings, what did you do?

A. You drive stopes off the heading.

Q. That is, you work out into the ore?

A. Back up to the next heading.

Q. Back up to the next heading?

A. Yes, sir.

Q. And then you drive out at right angles to the slope?

A. Yes, sir.

Q. When you left there in 1938, what was the last heading? How far down the slope—how much further had the slope been driven, according to your recollection?

A. As well as I remember it would be about 84 or 85, maybe. There were some discrepancies in those numbers on account of faults we encountered on the slope.

Q. What was your general method of handling the faults?

A. Drive through them.

Q. Drive through them?

A. Yes.

Q. Now, you say that the production crew work at what is called the face. About how many men constitute a production crew?

A. Well, there are two classes. One would be a hand loading crew, loading by hand with shovels, and another class would be a mechanical loading crew who loaded with a drag.

Q. You mean the drag was operated mechanically?

A. Yes, sir.

Q. And the other way the men picked up the ore with shovels?

A. Yes, sir.

Q. And put it where?

A. In the car.

Q. Put it in the car?

A. The drag crew would be comprised of about eight men on an average, possibly ten sometimes.

Q. In the drag crew who were those men? How would you constitute a drag crew? What did they consist of?

A. The crew was in charge of a head miner. Under him were two drill men, a drill helper, drag engineer and tram engineer, and possibly two muckers.

Q. Now, what about the hand loading crew?

A. The hand loading crew would average five men. That would be a head miner who also drilled. He would have a drill helper and then three muckers.

Q. And three muckers?

A. Yes; sir.

Q. Now, at the time you went there and throughout the time you were there, did the men change clothes for work before or after they got to the mine?

A. They changed clothes before they got to the mine.

Q. Well, you mean before they got to the opening of the mine?

A. Yes.

Q. All right. Now, where did they change?

A. Some of them in the bath houses around the mine, and some of them at home.

Q. The bath house—what bath house facilities did they have?

A. We had a bath house in the basement of the power house and another in the basement of the engine room.

Q. Were there other places there that were used for changing purposes?

A. Yes, sir.

Q. Other buildings?

A. Yes, sir.

Q. Were there facilities to bathe?

A. Yes, sir.

Q. At that time you did not have, if I understand you, a general bath house?

A. No.

Q. Where all the men reported?

A. No, they did not.

Q. Would you say that more of the men had changed clothes before they came or after they came?

A. I couldn't say for sure; approximately half and half.

Q. About half and half?

A. Yes, sir.

Q. Now, when the men got through at the changing—the clothes changing place or bath house or wherever they changed, then where did they go?

A. Going in or coming out of the mine?

Q. I mean going in first.

A. Going in the mine?

Q. Yes.

A. They would go up to the top of the mine and catch a mantrip there and go inside.

Q. Now, before—what time did the first mantrip leave going in?

A. Well, approximately, as well as I remember, about 6:10 or 6:15 in the morning.

Q. Was the mantrip a regular mantrip, or did they use the ore skip to haul the men?

A. It was a regular mantrip.

Q. A regular mantrip?

A. Six cars.

Q. Six cars?

A. Yes, sir.

Q. Have you any idea about what size those cars were?

A. Yes, sir.

Q. What size?

A. Well, they were about 8 feet long, I guess, had a partition down the middle. The men sat on either side facing out. The men sat back to back on the cars, five men on each side of the car, making ten men to the car.

Q. Ten men to each car?

A. Yes, sir.

Q. Was that crowded or was it comfortable—as far as crowding was concerned, was there room comfortably for the men that rode in it?

A. Yes, sir.

Q. And that was true of each one of the cars?

A. Yes.

Q. How many mantrips were ordinarily operated for each trip?

A. Three trips each way.

Q. Three trips each way?

A. Yes, sir.

Q. And what were the intervals between the leaving times of those trips?

A. Be approximately ten minutes, or close to it.

Q. Apart?

A. Yes.

Q. Now, was there a regular starting place for the underground men,—time for them to report and start work at their usual working places?

A. Yes, sir.

Q. Do you recollect what time that was?

A. It was seven o'clock in the morning.

Q. Seven o'clock in the morning?

A. Yes, sir.

Q. Now, what time—What was their quitting time?

A. Well, at first it was 3:30 in the afternoon. Well, let me back up a minute. When I first went to Sloss we were working nine hours.

Q. Nine hours?

A. Yes, sir. That was later changed to eight. On the eight hour basis they went to work at seven, took a half hour for lunch and quit at 3:30. That 30 minutes lunch period was later reduced to 15 minutes, which made the quitting time 3:15.

Q. 3:15?

A. Yes, sir.

Q. What time did the man trips begin to come out?

A. They started out immediately after quitting time, about 3:15 or 3:20.

Q. Yes, sir. Now, Mr. Harper, what did the men, from the time they went to the mine mouth, or what we call here the portal,—did the men take anything in the mine with them?

A. Yes.

Q. In the way of equipment?

A. Yes.

Q. Tell us what they took in? What about their carbide?

A. A man would carry a can of carbide. Everybody carried carbide.

Q. Carried carbide?

A. Yes, sir.

Q. Did he have—each man had a lamp, as I understand it?

A. Yes, sir.

Q. Where was that lamp?

A. On his cap.

Q. On his head, his cap?

A. Yes, sir.

Q. Each man carried his own carbide?

A. Yes, sir.

Q. Where did they get the carbide?

A. They could buy it anywhere they wanted to, at the company's store or some little private stores around sold it.

Q. Were they required to buy it from the company?

A. No, sir.

Q. They could buy it anywhere they wanted to?

A. Yes, sir.

Q. Do you know how the company sold the carbide in the cases they sold it?

A. The price?

Q. Yes.

A. I think it sold a little sack of about a pound for ten cents.

Q. Ten cents?

A. Yes, sir.

Q. Well, was it sold at cost or approximately cost?

Mr. Harris:

We object. He couldn't possibly know whether it was sold at cost unless he was the purchasing agent.

Mr. Alt:

I mean the understanding, Judge. I don't think it does have much to do with it.

The Court:

Overruled.

A. My understanding, it was sold at cost plus a handling charge.

Q. Where was the commissary? Was it near the mouth?

A. No, sir, it wasn't near the mouth. It was near the Ida mine.

Q. They would bring the carbide with them?

A. Yes, sir, they would bring it with them.

Q. When they catch the man trip, was there anything else the production men—I am talking about the production crews now,—take with them in the mine from the top besides the carbide?

A. They are not allowed to carry anything on the man trips unless it is something they can carry in their pockets.

Q. Yes, sir. All right. Well, where else on that trip did the men pick up anything to take down, if they did?

A. He didn't pick up anything on the mantrip.

Q. He didn't pick up anything on the mantrip?

A. No.

Q. Do you recollect at that time how far that mantrip ran, where it stopped?

A. Yes, sir, I remember. About 3800 or 4000 feet from the surface.

Q. From the surface?

A. Yes, sir.

Q. From the top down?

A. Yes, sir.

Q. Do you remember about what heading that was?

A. The heading was called 48 right.

Q. 48 right?

A. Yes, sir.

Q. Then the men got off?

A. Yes, sir.

Q. Then did they walk or ride from that place on to the working place?

A. They walked the rest of the way.

Q. They walked the rest of the way?

A. Yes, sir.

Q. That is when you first went to Sloss?

A. Yes, sir.

Q. What, if anything, did those men pick up on the way from that point to their working places to take to their working places?

A. Occasionally there might be a man that—a drill man might take in a drill needle or some small repair part for a drill.

Q. Where did he get it if he did do that?

A. Get it at the machine shop.

Q. Where was the machine shop?

A. Down near Number 1 mine.

Q. Where?

A. Down near Number 1 mine.

Q. Is that at the top?

A. Yes, sir, that is on the surface.

Q. That is on the surface?

A. Yes, sir.

Q. And—

A. And then there was—

Q. How big is a drill needle?

A. A drill needle is about a quarter of an inch in diameter, and about 16 inches long.

Q. How much would it weigh?

A. Oh, probably an ounce or two.

Q. Was that the rule—How often would the drill bit be taken into the working place?

A. There wasn't any drill bit—

Q. I mean the drill needle.

A. Oh, that happened very seldom, probably once a week.

Q. What was the method of sending those needles into the working places?

A. All supplies were sent in by the service crews.

Q. How were they sent in?

A. They were brought up to the mouth of the mine—

Q. By whom?

A. By a truck.

Q. By truck?

A. Yes, sir, and put on a car and sent in.

Q. Who did the work of taking them in the mine?

A. On this upper slope no one rode the cars. They were taken in by the hoist engine.

Q. Who took them in, who got them in the mine?

A. They were taken in by company chainers?

Q. By company chainers?

A. Yes, sir.

Q. On their time or the company's time?

A. Yes, sir.

Q. On the company's time?

A. Yes, sir.

Q. How often did it happen they took in a drill needle?

A. It didn't happen often.

Q. It didn't happen often?

A. No, sir.

Q. You say that was an unusual case, and they were taken in by other men working in other capacities for the company?

Mr. Harris:

We object. He has asked that twice, Judge.

The Court:

What is the size of those needles?

The Witness:

It is a little metal tube about a quarter of an inch in diameter, larger at one end than the other, and about 16 inches long.

The Court:

Weighing about how much?

The Witness:

Oh, I would say an ounce or two.

Q. Did the company pay the men who usually took those supplies in the mine? Did the company pay those men?

A. Yes, sir.

Q. Was it done on time for which the company paid?

A. Yes, sir.

Q. Now, after the men got off the man trip, the point from which you say they walked, did they get anything else on the way to their working places? For instance, I will take the question of powder.

A. A few of them did, not all of them. There would be possibly 15 men in the morning that would get powder.

Q. Well, I am taking each crew now?

A. Oh, there would be one man out of each crew.

Q. One man out of a crew?

A. That is right.

Q. Where was that powder kept and where did he get the power?

A. The powder was kept underground in an underground powder magazine located at approximately 62 left, I believe.

Q. That man would get off at 48?

A. Yes, sir.

Q. And he would go down to about 62?

A. Yes, sir.

Q. And that is where the powder house is?

A. Yes, sir.

Q. And you say one man out of each crew would get powder there?

A. Not every day. It wouldn't be necessary to get it each day.

Q. But when he got it, one man out of the crew would get it?

A. Yes, sir.

Q. Did you have a man there in charge of the powder house or the issuing of the powder?

A. Yes, sir.

Q. What time was that powder issued?

A. Oh, about 7 o'clock in the morning.

Q. About 7 o'clock?

A. Yes, sir.

Q. I will ask you, Mr. Harper, was it at any time or at some time issued before 7, or was it issued at 7, or what was the rule on that?

A. Well, he possibly might have opened up before 7 o'clock, and it took him 15 or 20 or 30 minutes to issue powder, and some of that time would go over 7 o'clock.

Q. So the powder was issued at or around 7 o'clock?

A. Right close to it.

Mr. Harris:

We object. He leads the witness to a different conclusion.

Mr. All:

Oh, no.

Q. What about the oil, Mr. Harper, the lubricating oil?

A. The oil was kept at 48 right in an oil house.

Q. In an oil house?

A. Yes, sir.

Q. Did you have a man in charge of that oil house?

A. No, we didn't.

Q. How was it kept?

A. A drum of 50 gallons of oil was taken in the mine on the man trip.

Q. By whom?

A. These company chainers.

Q. On the company's time?

A. Yes, sir.

The Court:

What do you call them; chainers?

The Witness:

Chainers.

The Court:

Were they service men?

The Witness:

Yes, sir.

Q. Were they service men?

A. Yes, sir.

Q. Did they take it down on company time?

A. Yes, sir.

Q. And then it was—

A. It was emptied into a tank and pumped out by anybody that wanted to get it.

Q. By anybody that wanted to get it?

A. Yes, sir.

Q. Now, these men getting the oil would get it in what sort of vessel?

A. In a regular standard one gallon can.

Q. One gallon can?

A. Yes, sir.

Q. The men would go there and pump it out?

A. Yes, sir.

Q. And one man would take it down?

A. Yes, sir.

Q. Now, how many members of a crew would do that when that was done?

A. One.

Q. You mean one man out of a service crew?

A. No,—

Q. You mean one man out of a production crew?

A. Yes, sir.

Q. Now, what time did that happen?

A. That would happen right after the man got off the slope man trip.

Q. That would happen before he got to a working place?

A. Yes, sir.

Q. You mean he would do that on his way down?

A. Yes, sir.

Q. Now what about the empty bucket he used?

A. It was customary for the man who got the oil to bring his empty can back with him in the afternoon and hide it somewhere around this oil house and pick it up the next morning.

Q. Now, what member of the crew would usually carry oil?

A. Usually the drill man.

Q. Usually the drill man?

A. Yes, sir.

Q. All right. Did you have any hangers and wedges and things of that sort for use in your operations?

A. Yes, sir, we did.

Q. Where were they usually kept?

A. There was a supply of them kept in a tool supply box at this 48 right yard, and usually some laying around the blacksmith shop on the surface.

Q. Where were the rest of them?

A. There were two or three in each working place.

Q. All right. What was the rule with respect to how the—that material got to the working places?

A. It was brought up from the blacksmith shop to the mouth of the mine and sent in on a trip.

Q. To what point?

A. 48 right.

Q. 48 right?

A. Yes, sir.

Q. Did the company deliver any of that—any of those things to the working places?

A. Practically all of them.

Q. I mean to the working places?

A. Practically all of them.

Q. Practically all of them delivered to the working places?

A. Yes, sir.

Q. By whom? By what men?

A. By these chainers who operated the trip.

Q. On the company's time?

A. Yes, sir.

Q. You stated some of them were kept at 48 left?

A. 48 right.

Q. Did any of the men in the production crews ever get any of them and take them down themselves?

A. Oh, yes.

Q. Under what circumstances?

A. Well, he might need one and pick it up and carry it with him to avoid the delay of waiting on this company chainer to deliver it later on.

Q. What was the size and weight of those wedges?

A. The wedge would be about five or six inches long, maybe two inches wide and about half an inch thick at one end, and taper down to a point.

Q. How much would that weigh?

A. Ten or twelve ounces. Maybe a pound.

Q. Maybe a pound?

A. Yes, sir.

Q. When the men did take those out, how did they take them?

A. In their pockets.

Q. Where were the hangers usually delivered by the company?

A. The same way.

Q. Where?

A. They were delivered to the knuck or working place.

Q. Did the men ever take a hanger to the working place?

A. Yes, sir, it has been done.

Q. It has been done?

A. Yes, sir.

Q. Well, was that frequent or infrequent?

A. Infrequent.

Q. Infrequent?

A. Yes, sir.

Q. What was the size of the hanger?

A. A hanger would be an inch and a half square at the big end, about 12 or 14 inches long, and flatten out at the other end, with a hole in it.

Q. How big—

A. It would weigh, I should say, about 5 or 6 or 7 pounds, maybe.

Q. Would you say the rule was that was delivered at the knuck or at the working place?

A. Yes, sir. All supplies were ordered either over the telephone or by word of mouth, and they would be brought to a man by these chainers who rode back and both on the trip.

Q. Delivered all the way to the working place?

A. Yes, sir.

Q. Now, where was this material or machinery the production men used kept between shifts or after the shift?

A. Left at their working places.

Q. Left at their working places?

A. Yes, sir.

Q. All right. What was done with the drills and the drags?

A. The drags were left—probably moved up to the next stope on the heading for the next shift.

Q. Why were they moved out?

A. The customary practice was to load in one stope while the drill men drilled in the one next to it.

Q. Was all the material moved out of a particular working place when shooting commenced?

A. Yes, sir.

Q. It was?

A. Out of the way of danger from the shooting.

Q. Now, Mr. Harper, did they have a regular time for shooting?

A. Yes, sir.

Q. What time did the—we are dealing here with the day shift. What time did the shooting commence?

A. 2:30.

Q. 2:30?

A. No, wait a minute. 3:30. I have gotten this coal working hours on my mine.

Q. That was some time before the work would stop?

A. Well, 2:30 was quitting time.

Q. 2:30?

A. I mean 3:30.

Q. 3:30 was quitting time?

A. Yes, sir.

Q. What time did the shooting commence?

A. The shooting commenced then.

Q. Who did the shooting?

A. The drill men.

Q. What did the other men do when the drill men began to shoot?

A. They left.

Q. They left, they got out of the headings?

A. Yes, sir.

Q. Was that the safe thing to do?

A. Yes.

Q. What did you say?

A. I said yes.

Q. That was one of the reasons they left, on account of safety?

Mr. Harris:
We object to that, if the Court please.

The Court:
I sustain it.

Mr. All:
We except.

Q. Now, did the company operate the same number of outcoming man trips that they did ingoing trips?

A. Yes, sir.

Q. And they started about when?

A. Possibly five minutes after quitting time. We had to take the regular ore trip off the rope, and put on the man trip. It would take about five minutes.

Q. About five minutes?

A. Yes, sir.

Q. And then they started?

A. Yes, sir.

Q. And you used the same trip?

A. Same cars.

Q. And they would come out in rotation,—come out in rotation until you got the men out?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Now, you left Sloss in 1938, Mr. Harper?

A. Yes, sir.

Q. Do you remember what time in—I mean 1933, wasn't it? I mean you left Sloss in 1938?

A. I left Sloss the first of June, '38.

Q. First of June, '38?

A. Yes, sir.

Q. Now, Mr. Harper, was the Sloss Company operating under a union contract when you got there in 1933?

A. No.

Q. It was not? Do you recollect when the union was organized, the ore miners?

A. In the summer of '33.

Q. Summer of '33?

A. Yes, sir.

Q. Do you remember what union that was?

A. International Union of Mine, Mill & Smelter Workers.

Q. Yes, sir. When did the company, to your knowledge, have any dealings with the union? Do you remember whether you did in 1933 or not?

A. My recollection is we had a few meetings with the mine committee in the fall and winter of '33.

Q. Did you enter into any agreement or contract with them, or any sort of working arrangement of any sort in 1933?

A. No.

Q. Did not?

A. No.

Q. But you did begin talking with them?

A. Yes.

Q. Did you personally talk to them?

A. Yes.

Q. Did they meet with you?

A. Yes.

Q. Now, in '34 did you have any dealings with them with respect to a contract or to an agreement?

A. Yes, we had meetings all through '34.

The Court:

What was your position at that time?

The Witness:

Superintendent.

The Court:

General superintendent of ore mines?

The Witness:

No, just superintendent, one mine.

Q. Now, Mr. Harper, do you—do you recollect this instrument which I hand you, which is directed to Sloss-Sheffield Steel & Iron Company, attention Mr. Marshall, Vice President, Bessemer, Alabama? It is dated Bessemer, Alabama, April 13, 1934.

A. Yes, sir, I remember it.

Q. What is that, Mr. Harper?

A. I would say it is a request by the union to enter into negotiations with—

Mr. Harris:

Has it got the date, Mr. All? If it has, it would speak for itself, instead of him explaining it.

Mr. All:

Let me read what it say:

"We, the duly chosen representatives of more than 90 percent of your employees, who were working for you on the 1st day of April, 1934, submit—"

Mr. Harris:

You are offering it in evidence now, are you?

Mr. All:
I am going to offer it.

Mr. Harris:
All right.

Mr. All:
—"the following demands in working agreements and wage scales."

A. Yes, sir.

Mr. Harris:
May I see it?

The Court:
Is that a similar instrument to what the Tennessee Company's witnesses called a proposal?

Mr. All:
Yes, sir.

Mr. Burr:
I don't know whether it is exactly the same. It is the same, I take it.

The Court:
It is a proposal?

Mr. Burr:
Yes, sir.

The Court:
I don't know whether it would be the same.

Mr. Burr:
Probably is the same,—I don't know.

The Court:
That was in 1934?

Mr. All:
Yes, sir.

The Witness:
Yes, sir.

Mr. All:
1934, April 13th.

Mr. Burr:
Let me see that, just a minute.

Mr. All:
Now, we offer that in evidence as—

The Clerk:
Sloss Exhibit Number 1.

Mr. All:
Sloss Exhibit Number 1.

The Court:
Have you seen it?

Mr. Harris:
Yes, sir.

Mr. Burr:
Just a minute. It seems to be an exact copy of the Tennessee Company proposal.

Mr. Harris:
I imagine they are the same.

Mr. All:
What they did was submit identical copies to each of the four companies.

Mr. Burr:
They can put it in and we can eliminate it later.

The Court:
Just let it be introduced.

Mr. All:
We might be able to agree on that later and eliminate it if that is a fact.

Mr. Burr:
Let it go in.

Mr. All:
Let it go in as Sloss Exhibit Number 1, and we will substitute a copy.

The Court:
Is it all right to substitute a copy?

Mr. Harris:
Yes, sir, with the understanding—

The Court:
It will be compared later?

Mr. Harris:
Yes, sir. Of course, I am not objecting because I have, as I understand, my objection to everything prior to 1938.

The Court:
Yes, sir.

(Thereupon the said document, being dated Bessemer, Alabama, April 13, 1934, and addressed to Sloss-Sheffield Steel & Iron Company, Attention, Mr. Marshall, Vice President, and entitled "In re: Sloss Mines Division, Bessemer," and signed John Hill, was marked Sloss Exhibit No. 1.)

Q. Now, Mr. Harper, did you discuss this proposal with the Union Committee or with a committee representing the union?

A. I did, but my recollection is that copy there went into the Birmingham office.

Q. You mean this copy went in to the Birmingham office, but I mean did you discuss the subject matter in a meeting with the representatives of the Union?

A. Yes, sir, I did.

Q. You did?

A. Yes, sir.

Q. Now, I will ask you if any discussion was had of these demands in which the question of traveling time or the method of computing work time as face to face or—

The Court:

Doesn't that speak for itself?

Mr. Ali:

I think it does, but I want to call attention to the fact and read for the record that this proposal contains the following item:

"Eighth: In view of the fact that the company can force the men to enter and leave the mines at any time stated by the company, we ask the right to enter on our own time and leave on the company's time."

That is just the same as the other proposals were.

Q. Mr. Harper, who represented the Union in your discussions with them of those proposals?

A. They had a regular mine committee.

Q. Do you remember who was present representing the miners?

A. Oh, we had a number of meetings. Mr. John Hill was present at most of them, Mr. O'Neal, Jessee Gaines. At one meeting there was a Mr. Finch present.

Q. Do you remember whether that was the meeting of April 13, 1934, whether you had a meeting with them on April 13, 1934?

A. I believe that is right.

Q. '34?

A. Yes, sir.

Q. Mr. Virgil C. Finch?

A. Yes, sir.

Q. What organization did he belong to?

A. He told me that he represented the American Federation of Labor.

Q. Was there any mention made in that meeting of the question of the face to face working basis or the face to face method of computing work time?

A. Yes, there was.

Q. Could you tell us briefly what was said about that?

A. Mr. Finch acted as chairman of the committee, and he brought that up as one of his requests, that the men—he made this statement: That we were only paying the men for eight hours time, and we were keeping them in the mine around nine and a half hours.

Q. Did you reply to that?

A. Yes, I did.

Q. What reply did you make to it?

A. I told him we couldn't grant it.

Q. What else did you say, if anything?

A. I told him it had never been heard of before here, and nobody else was doing it and had never been done before and we couldn't do it.

Q. Now, did anything come of that matter?

A. No.

Q. Now, what happened later, Mr Harper, during that year?

A. In May of that year we had a strike.

Q. Had a strike? Do you remember that strike was May 4th? Just to refresh your recollection, did the men go out on May 4th?

A. I believe that is the right date.

Q. All right. Now Mr. Harper, what demands were being made at the time the strike occurred?

Mr. Harris:

We—That question is so general, Judge, that we—

The Court:

I think so too, Mr. All.

Q. Did they assign a reason for the strike?

Mr. Harris:

I object to that. I don't see that the reasons for the strike are material. We are not going into the strike.

The Court:

You might—I think you ought to confine it to if demands were made, what peculiar demands were made.

Q. I will ask it this way: Was this matter of transportation time or traveling time the cause of the strike?

A. No.

Mr. Harris:

That calls for a conclusion. He summarizes everything as the cause of the strike.

Q. Did the Union committee present that as a reason for the strike?

A. No.

Q. Now, what happened after the strike, Mr. Harper?
A. With regard to what?
Q. I mean with respect to the men going back to work.
A. You mean during the strike?
Q. During the strike.
A. Well, we—

Mr. Harris:
I don't understand the question. He asked what happened—

Q. What other negotiations took place after the strike, if anything?

Mr. Harris:
I would like to know who they negotiated with.

Mr. All:
I can't lead him. I am going to ask him, and with whom.

The Court:
Were the negotiations taken up after the strike?

Mr. All:
I didn't want to lead, Judge.

Q. Were the negotiations—was that a general strike?
A. Yes, sir.
Q. All the miners on Red Mountain struck?
A. Yes, sir.
Q. Do you know when negotiations began looking to a reopening of the mines?
A. There were none I know of until a meeting held in Birmingham along the latter part of May, sometime, between the company officials and the mine committee, and I think Mr.—With General Persons acting as chairman of the meeting.

Q. That is General Persons here of the First National Bank?

A. Yes.

Q. Did you attend that meeting, Mr. Harper?

A. Yes, sir.

Q. Where was it held?

A. In the Webb Crawford Building.

Q. Was the question of traveling time brought up at that meeting?

A. I don't recall that it was.

Q. Did anything come of that meeting directly?

Mr. Harris:

We object to that form of question,—did anything come of the meeting. That is a bald conclusion, Judge.

The Court:

I think it is a conclusion.

Q. Well, did they settle the strike at that meeting?

Mr. Harris:

That is a conclusion, if the Court please.

Q. Well, did the men go back to work immediately after that meeting?

A. No.

Q. Was it agreed at that meeting the men would go back to work?

A. No.

Q. Well, what happened next, Mr. Harper, that you recollect?

A. I don't know of anything until a Mr. Richardson came to this district representing the Department of Labor, and had some meetings which finally resulted in a settlement of the strike.

Q. Resulted in a settlement of the strike?

A. Yes, sir.

Q. Now, how was that evidenced?

A. There was a meeting held in the general offices of the Sloss Company, is my understanding.

Mr. Harris:
Weren't you there?

The Witness:
No, I wasn't there.

Mr. Harris:
Well, we object to all that, if the Court pleases.

The Court:
That would be hearsay.

Q. They held some meetings when Mr. Richardson came here?

A. Yes, sir.

Q. Do you recollect whether or not there was a letter of understanding written by the company to Mr. Richardson?

Mr. Harris:
We object unless he knows something about it or helped write it or was present when it was written.

They evidently have somebody that could testify first hand.

The Court:
Do you know about it, Mr. Harper?

The Witness:
Yes, sir, I know about it.

Q. I will ask you if this is a letter on behalf of the company to Mr. Richardson?

A. Yes, that is a copy of it.

Q. Now, Mr. Harper, do you recollect whether there was an increase of wages given at that time?

A. There were some adjustments made, yes.

Q. Do you remember whether it involved an increase in wages?

A. Yes, sir.

Mr. All:

I want to introduce this instrument—

The Clerk:

It will be Sloss Exhibit Number 2.

Mr. All:

—as Sloss Exhibit Number 2.

Mr. Harris:

Well, specifically, we object, in addition to the usual objection, on the ground that this letter appears to have been written by a man named R. M. Marshall, Vice President and General Manager, and Mr. Marshall would be the proper one to identify the letter.

This witness wasn't present when it was written; he doesn't know it was mailed; he didn't see it mailed; he didn't have anything to do with the mailing of it; All he knows, he has heard general rumor or report a letter was written.

Mr. All:

Now, if the Court please, I don't—It is not necessary for this witness to have written this letter or for him to have been there when it was written. That is the letter that we have, and it is the copy of a letter that was written to Mr. Richardson, the original of which they have, and the Union knows about it.

Mr. Bronaugh:
It is not denied—

Mr. All:
It is not denied—

Mr. Bronaugh:
What is his point?

Mr. All:
If it were denied that letter had been written, that would be a different proposition. They went back to work when that letter was written.

Q. Mr. Harper, when did they go back to work?

The Court:
He has not identified the letter.

Mr. All:
I think he has.

Mr. Harris:
There are certain rules of evidence that have grown up over the years in common law Courts, and American Courts that are not common law, and it is a prctect measure that a witness should only be allowed to testify to that which they do know, and this witness doesn't know, and they can lay the predicate and put on witnesses who had the information, but just to bring a man in here and give us his conclusion,—if they keep on going as they have started with this witness, we will wind up without any rules of evidence at all.

The Court:
I will sustain the objection.

Mr. All:
We except.

Q. Mr. Harper, have you seen this letter?
A. I have seen a copy of it.
Q. Have you seen that copy of it?
A. Yes, sir.
Q. When did the men go back to work?
A. July 10th.
Q. July 10th?
A. Yes, sir.
Q. Did they go back to work practically immediately after this letter was written?

Mr. Harris:
That is a conclusion, Judge.

The Court:
I don't think that proves the execution of it at all.

Mr. Burr:
Why don't you demand the original.

Mr. All:
I would like to demand the original.

The Court:
Did you see the original of that executed?

The Witness:
No, sir, I did not.

Mr. All:
Have you the original of this letter? Do you know that letter was written?

I don't want to make an issue of this unless they deny the letter was written.

Mr. Harris:
It is not a question of denying. It is a question of putting on evidence. He can't come to me and say what part of this case will you agree on—

The Court:
I will sustain the objection.

Mr. All:
We except.

Q. Now, Mr. Harper, when the men went back to work, as you say, on July 10th, how were they paid when they went back with respect to travel time and face to face—

Mr. Harris:
We object to that, if the Court please.

The Court:
Overruled.

A. There was no change made.

Q. No change made in the method of computing time on face to face?

A. No.

Q. Now, when, Mr. Harper, was the next negotiation or the next meeting with the men or the union with respect to a change in or another arrangement for an agreement for the men to work?

A. The next year, '35.

Q. The next year, in 1935?

A. Yes, sir.

Mr. Harris:
May I see that?

(Mr. All hands paper to Mr. Harris.)

Mr. Harris:
May I show it to them?

Mr. All:
Yes, sir.

The Court:
We will take a few minutes recess.

Mr. Harris:
The reason we are taking so much time, Judge, that is an unsigned document.

The Court:
I imagine the men want a recess anyway.

Mr. Harris:
All right.

(Thereupon proceedings were in recess from 10:25 A. M., to 10:45 A. M., when proceedings were resumed as follows:)

The Court:
Go ahead.

Mr. All:
All right.

Q. Mr. Harper, have you—can you identify that as the Union's proposal in the year 1935?

Mr. Harris:
Now, I wish Mr. All would quit leading him. He said—

Mr. All:
Well, I—

Mr. Harris:
—"Will you identify it as the Union proposal?"

Mr. All:
I didn't mean to lead him.

Mr. Harris:
It is unsigned.

Mr. All:
I didn't mean to lead him.

Q. What is that, Mr. Harper?

Mr. Harris:
It speaks for itself. I object to him saying what that is.

Q. Did you see it, Mr. Harper?
A. Yes, sir.
Q. What is this?

Mr. Harris:
We object; it is a written memorandum.

The Court:
Sustained.

Q. What was the occasion of you seeing it?

Mr. Harris:
We object; it is immaterial when he saw it.

The Court:
I will overrule the objection.

A. That was presented by the Union to the company as an outline for a proposed contract.
Q. Proposed contract?
A. Yes.

Mr. All:
I want to identify this as Sloss Exhibit Number—

The Clerk:
Two.

Mr. Burr:
I thought 2 was the one you offered before that.

The Clerk:
It wasn't marked for identification. I will take it and mark it for identification.

Mr. All:
We will give you a copy of it.

The Court:
This will be Exhibit Number 3?

The Clerk:
Three. The other will be Number 2 for identification.

(Thereupon a document dated July 7, 1934, addressed "Commissioner C. L. Richardson, Representative of Secretary of Labor, United States Department of Labor, Birmingham, Alabama," and signed "R. M. Marshall, Vice

President and General Manager," consisting of two pages, and attached to which were three pages, the first entitled, "Insides rates," the second, "Outside rates," and the third, "Hand loading entries," was marked for identification Sloss Exhibit Number 2.)

(Thereupon, a document consisting of three pages, and beginning, "This agreement made and entered into by and between the Sloss-Sheffield Steel & Iron Company, hereinafter called the company, and the Sloss Local Union Number 109, International Union of Mine, Mill & Smelter Workers, hereinafter called the local," and ending, "In witness whereof, the parties hereto have executed this agreement on the .... day of ...., 1935," was marked Sloss Exhibit No. 3.)

Q. Do you remember about when this was presented, Mr. Harper?

A. About June, I would say, 1935.

Q. June, '35?

A. Yes, sir.

Mr. All:

Now, I want to read this into the record, if the Court please. Section 11 of this proposal for agreement—

Mr. Harris:

I don't think he has laid a proper predicate for its introduction in evidence.

Mr. All:

I offered it in evidence as Sloss Exhibit Number 3.

Mr. Harris:

There has been no proper predicate laid. This man hasn't said it was presented to him or by whom it was presented, or anything else.

The Court:
Well, he identifies it as the proposal.

Mr. Harris:
Yes, sir, but he doesn't say who presented it or to whom they presented it.

I am not being technical, but it is important to us to know what person received and what person presented it if he is going into this thing.

The Court:
Go ahead, Mr. All, and qualify it.

Q. Do you know to whom that was presented, Mr. Harper, and what was done with it after it was presented?
A. I was given a copy of it at the mine, and it was—
Q. By whom?
A. By the committee.
Q. What committee: Who composed that committee?
A. Mr. Hill and Mr. O'Neal.
Q. Who else, if you remember?
A. I don't recall—

The Court:
Well, who were they?

The Witness:
They were on the mine committee, Sloss ore mine committee.

Q. Sloss ore mine committee? That was for the union?
A. Yes.
Q. Union committee?
A. Yes, sir.
Q. What did you do with the copy?
A. I think I kept it. There was also a copy went in to the general office.

Q. Went in to the general office?
A. Yes, sir.

The Court:
And that is a copy?

The Witness:
This is a copy.

Mr. All:
I offer this in evidence—

The Court:
All right.

Mr. All:
—if the Court please, as Sloss Exhibit Number 3, and I want to substitute a copy.

I want to call attention to two sections of that, if the Court please, just for facility in later consideration. I call attention to section or paragraph 11.

"It is agreed that the employees shall enter the mines on their own time and come out of the mines on the company's time."

They proposed that.
You have a copy then, have you, Mr. Clerk?

The Clerk:
Yes, I have a copy.

Mr. Harris:
Will you mark this original so we will know what it is we are comparing?

The Clerk:

Yes, sir. I am marking the original and substituting a copy. They will keep the original.

Mr. Harris:

Yes, sir, but we want to compare all documents.

(By Mr. All):

Q. Mr. Harper, did you afterwards have any meeting with any committee representing the union or any committee representing the miners after that proposal was made?

A. Yes, sir, I did.

Q. All right, sir. Can you tell me who was present as representing the union?

A. The meetings we had down at the Sloss mines at which I was present, the regular union committee was present also.

Q. Did you have any meetings yourself with Mr. Horn, the president of District Number 5?

A. Yes, sir.

Q. Or were you present at any meetings at that time?

A. Yes, sir.

Q. Who else—are those the meetings you spoke of?

A. Yes.

Q. Who else—who was present with Mr. Horn?

A. The mine committee.

Q. Who was—just name those, if you don't mine.

A. Mr. Hill, Mr. O'Neal, Jesse Gaines.

Q. Do you remember Sam Knox, to refresh your recollection?

A. Yes.

Q. Do you remember whether he was present at any of the times?

A. Yes, he was present at some of the meetings.

Q. Do you recollect whether you made a contract with them for 1935?

A. No, we didn't make a formal contract.

Q. Didn't make a formal contract? Do you remember how the negotiations closed?

A. They closed with a meeting in the general offices with Mr. Marshall, Mr. Davis and—

Q. Who was—

A. —it was agreed—this is my understanding, that it was agreed—

Mr. Harris:
Was he there?

The Witness:
No, I was not present at that meeting.

Mr. Harris:
Judge, will you instruct this man not to tell about meetings he didn't attend?

The Court:
You were not there?

The Witness:
No.

The Court:
Don't testify to anything you don't know. If you don't know of your own knowledge, don't testify to it.

Q. Do you know whether any contracts were made—did you know when contracts were made, or did you have—if memoranda of agreements were made, did you, as superintendent of the mine, get that information?

A. Yes, sir.

Q. Get whatever information there was?

A. Yes, sir.

Q. Do you recollect whether or not there was any contract for that year,—in that year?

A. There was no contract made.

Q. Do you remember what arrangement was made for a continuation of work following this proposal?

A. Yes.

Q. What was that?

A. The first step was the posting of a notice which confirmed the company's agreement or willingness to continue the present agreement—

Mr. Harris:

The notice would be the best evidence, if the Court pleases.

The Court:

Well, if he knows there was a posted notice—

Mr. Harris:

I didn't object to that, but I think the notice would be the best evidence of its contents.

Q. Did you post the notice yourself?

A. Yes, sir.

The Court:

Of course, the notice would be the best evidence of its contents, but you posted the notice?

The Witness:

Yes, sir.

Q. You signed the notice?

A. I did.

Q. I will ask you if the matter of negotiations was closed with that notice and with that instrument?

A. Yes, sir, this letter closed it.

Q. For that year?
A. For that year.
Q. All right, sir.

Mr. All:
Now, Crampton, I want you to look at this. (Handing paper to Mr. Harris.)

Mr. All:
If the Court please, may I read this?

Mr. Harris:
You are going to offer it in evidence?

Mr. All:
I am going to offer it in evidence, and then I want to re-offer the other one.

It is dated August 4, 1935, and addressed to Mr. A. E. Horn, President, District Number 5, Mr. John Hill, Representative of Sloss Ore Employees, Mr. W. A. O'Neal, Representative of Sloss Ore Employees, and Mr. Sam Knox, Representative of Sloss Ore Employees.

"Gentlemen: Confirming statements made to you in conference with Mr. A. F. Harper and Mr. Osborne on August 3, 1935 relative to the notice given to you and posted at Sloss Mine on July 6, 1935. This notice reads as follows:

" 'The present hourly tonnage and yardage rates and working conditions will be continued in effect until further notice." Signed: A. F. Harper, Superintendent.'

"Hours and rates of pay paid on this date for all classes of work will be continued in effect until further notice.

"Working conditions includes the letter of understanding under date of July 7, 1934, written by the Sloss Company to Mr. C. L. Richardson, Representative of Secretary of Labor. All provisions of this understanding will be continued in effect until such time as this arrangement is no longer practicable."

I want to call your attention to the fact that that is the letter identified as Sloss Exhibit Number 2,—that letter of July 7th.

The Court:
The letter referred to?

Mr. All:
The letter referred to here for 1935 refers to the other letter.

The Court:
Well, is that a copy of that letter?

Mr. All:
No, sir; this is not a copy of the letter.

The Court:
I mean letter Number 2, is that a copy—

Mr. All:
It is our copy. The original was sent to Mr. Richardson. You see what I am driving at—

The Court:
Yes, sir, I see.

Mr. All:
The letter referred to in this is the letter referred to by Mr. Harper.

The Court:
Written by Mr. Harper?

Mr. All:
No, sir, this was not written by Mr. Harper, but the letter referred to as containing the understanding is the other letter which I sought to introduce for 1934.

The Court:
All right.

Mr. All:
Now, I want to offer—make that—

The Clerk:
Sloss Number 4.

(Thereupon the letter dated August 4, 1935, addressed to Mr. A. E. Horn, Vice President, District Number 5, and Mr. John Hill, Mr. W. A. O'Neal and Mr. Sam Knox, Representatives of Sloss Ore Employees, was marked Sloss Exhibit No. 4.)

The Court:
Who prepared that?

Mr. All:
Mr. Davis signed that letter.

The Court:
But Mr. Harper's name is referred to in here as the one who negotiated it?

Mr. All:
Yes, sir, and he posted the notice.

The Court:
Posted the notice?

Mr. All:
Yes, sir.

Now, I want to re-offer the letter I offered as Sloss Exhibit Number 2, being the letter prepared by the Sloss Company and signed by Mr. R. M. Marshall to the Department of Labor. I want to re-offer that as Exhibit Number 2.

Mr. Harris:
I don't think that is a sufficient predicate, if the Court please.

Mr. All:
I want to substitute this copy.

Mr. Harris:
We renew our objection.

The Court:
That exhibit Number 2 is a copy. There is no signature on it. No one identifies it as the instrument that was executed.

Mr. All:
All right, sir. Now, I am making a demand on these gentlemen to know whether or not they received that letter. I am making a demand for the original letter. I make the demand on the Union and Mr. Hill over there particularly for that Richardson letters.

Mr. Harris:
Well, I understood the original was addressed to a man named Richardson.

Mr. Bronaugh:
You got a copy of it, though, Mr. Harris—

Mr. Harris:
There is no evidence whether a copy was mailed to us or not.

Mr. Bronaugh:
That is what we are asking you to tell us.

Mr. All:
I want you to find out whether you got a copy.

Mr. Harris:
I will find out during the noon hour, and if they got a copy I will tell you.

Mr. All:
You might also ascertain whether they received this last one referred to here.

Now, you have the substitute copy, haven't you?

The Clerk:
Yes, sir, I have the substitute copy.

Q. Now, after that letter was written, Mr. Harper, will you tell me how the men worked from that point on with respect to the computation of working time on face to face, whether there was any change made in it?
A. There was no change.
Q. You continued the computation of work time on face to face?

Mr. Harris:
We object; it is leading.

Mr. All:
That is just former testimony.

The Court:
It is leading and it is just repetition. It is repeating.

Q. Now, Mr. Harper, I hand you two papers—

Mr. Harris:
May I see those two, please, sir?

(Thereupon Mr. All handed papers to Mr. Harris.)

Mr. Harris:
I think we might—

Mr. All:
There may be some pencil memorandum on there that probably don't belong on there.

Mr. Harris:
Yes, I see one on the firstline.

Mr. All:
That is probably a correction and a proper correction.

The Court:
Mr. All, I didn't admit Exhibit 2. I don't know whether you understood that.

Mr. All:
I understood—

The Court:
I sustained the objection.

Mr. All:
On my re-offer to introduce?

The Court:
Yes, sir.

Mr. All:
Well, we take an exception.

The Court:
I don't think there is any showing that it was ever executed. There is nothing to show, it being a copy, it was ever executed.

Mr. All:
I just strike what I have just said, and I want to make another offer.

I want to introduce here a letter to Mr. Ben. Davis, General Manager of Sloss Company, signed by A. E. Horn, President, copy to the United States Department of Labor and the State Department of Labor, dated May 5, 1936, to Mr. Davis, and I will ask Mr. Harper if he saw that letter.

Mr. Harris:
Well, is Mr. Davis alive?

Mr. All:
We can't examine but one witness at a time, Mr. Harris.

Mr. Harris:
I know, but here is a letter addressed to a man named Davis and you are proving by a man named Harper he saw it.

The Court:
The fact he saw it is no evidence of execution.

Mr. Burr:
It is signed by the president of the union.

The Court:
It is signed by the president of the Union?

Mr. All:
I am making a demand on them for the original letter. It is a letter to the Sloss Company, who received it.

The Court:
Who is it addressed to?

Mr. All:
Mr. Ben Davis.

The Court:
Is he available?

Mr. All:
Yes, sir. It was in the Sloss file.

I want to ask this witness if it came to his attention.

The Witness:
Yes, sir, I have seen it.

Mr. All:
I want to offer it in evidence, if the Court please.

Mr. Harris:
I object.

The Court:
Sustained.

The Clerk:
Do you want to offer it for identification?

Mr. All:
Yes, sir.

The Clerk:
Sloss Exhibit Number 5 for identification.

(Thereupon the document dated May 5, 1936, addressed to Mr. Ben Davis, General Manager, Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama, and signed A. E. Horn, President, was marked for identification, Sloss Exhibit No. 5.)

Mr. Burr:
Did you call attention it was signed by the President of the district?

Mr. All:
I call attention to the fact it is signed by the president of the district—

Mr. Burr:
And on the district's stationery.

Mr. All:
And on the district's stationery.

Mr. Harris:
He can't prove it that way, if the Court please.

The Court:
I think not.

Mr. All:
I want to offer Mr. Davis' reply——

Mr. Harris:
This is just a blank document, Judge.

The Court:
I sustain the objection.

Mr. All:
I want to make a demand on—

Mr. Bronaugh:
Just identify it first and go on.

Mr. All:
I want to identify it as the next exhibit.

The Clerk:
Six.

(Thereupon a document dated May 8, 1936, addressed to Mr. A. E. Horn, President, International Union of Mine, Mill & Smelter Workers, District Number 5, Bessemer, Alabama, was marked for identification, Sloss Exhibit No. 6.)

Mr. All:
That purports to be a carbon copy, if the Court please. We are substituting a copy for that.

Have you all looked over this? Is there any objection to this?

Mr. Harris:
That little old interlineation up on top there—This seems to be addressed to Mr. Harper. Of course, all the objections and so forth don't apply to that, the predicate and so on, if the Court please, because it is addressed to Mr. Harper.

Mr. All:
Let me call your attention to this, Mr. Harris. We have got this other letter in. This says, "On June 24, 1936."

This—those other letters were written on July 7th and this purports to be a correction of that erroneous date.

Mr. Harris:
That doesn't matter.

Mr. All:
I want to put that in as the next exhibit number.

Mr. Harris:
You have some marks on this—I don't know what this means.

Mr. All:
They don't mean anything. The copies haven't got those marks on them.

Mr. Harris:
I don't object to that on the predicate theory, but the original objection goes entirely through the case. I don't object on the predicate theory.

The Court:
You mean prior to 1938?

Mr. Harris:
Yes, sir.

The Court:
Overruled.

Q. Mr. Harper, I am showing you two instruments, which we will identify as Exhibit Number—

The Clerk:
Be Sloss Exhibit Number 7.

(Thereupon a document on the stationery of District Five, International Union of Mine, Mill & Smelter Workers, dated May 26, 1936, addressed to Mr. A. F. Harper, Superintendent, Sloss Mines Division, Sloss-Sheffield Steel & Iron Company, Bessemer, Alabama, and signed A. E. Horn, President District Number 5, International Union of Mine, Mill & Smelter Workers, to which is attached an unexecuted form of agreement entitled, "Working Agreement between the Sloss-Sheffield Steel & Iron Company and their Employees, Members of the International Union of Mine, Mill & Smelter Workers," was marked "Sloss Exhibit No. 7.")

Q. —Sloss Exhibit Number 7, consisting of a letter addressed to you with an instrument attached. I will ask you if you received that letter and that instrument?

A. I received that.

Q. All right, sir. Did you receive that?

A. Yes, sir.

Mr. All:

We mark—

The Court:

That is Exhibit 7?

The Clerk:

Exhibit 7.

Mr. All:

Exhibit 7 consists of the letter and the instrument.

The Court:

What is that letter, Mr. All?

Mr. All:

It is a letter—the letter encloses a copy of a proposed agreement, and it has one or two other features to which

I will call Your Honor's attention. The date of the letter is May 26, 1935.

The Court:
May?

Mr. Harris:
No,—

Mr. All;
May 26,—

Mr. Harris:
No, no.

Mr. All:
No, May 26, 1936, is the date of the letter.

Mr. Burr:
Who is that letter signed by?

Mr. All:
The letter is addressed to Mr. Harper, Superintendent, Sloss Mines Division, Bessemer, Alabama, and is signed by Mr. A. E. Horn, President of District Number Five of the International Union of Mine, Mill & Smelter Workers, I want to call particular attention to this part of the agreement—

The Court:
Paragraph?

Mr. All;
The paragraphs are not numbered, but it is under the heading of "Maximum Hours", and this is the way that reads:

"An eight-hour day and five-day week, (forty hours per week) shall prevail, exclusive of the 30-minute lunch period, with option to run through without suspension, if agreed to between the company and the mine committee."

Mind, this is a proposed agreement.

"The eight-hour day means eight hours in or about the mines, at the usual working places for all classes of work, (other than those excepted from this agreement)".

And a reading of the agreement will show it does not except the underground employees.

The Court:
What page is that on?

Mr. All:
This is on page 3. What we have just read is at the bottom of page 2 and the top of page 3 of the proposal.

Mr. Harris:
The copies are not paged the same.

Mr. Bronaugh:
The copy you will have will be. Page 3, Judge.

Mr. All:
Page 3 on the copies.

The Court:
All right.

Mr. All:
Substitute that.

Q. Mr. Harper, was a contract later executed?

A. Yes, sir.

Q. Do you recollect the date of the contract?

A. I don't recall the exact date.

Q. Was there some intermediate discussion between then and the date of the contract?

A. Yes.

Q. Did you participate in some or all of those negotiations?

A. Some.

Q. Some, and you don't remember the date of the execution of the final contract?

A. No, I don't.

Mr. Harris:

May I see that, Mr. All?

(Thereupon Mr. All handed a paper to Mr. Harris.)

Mr. Harris:

Mr. All, I call your attention to the fact you have been talking to the witness about union negotiations and union representatives, and this instrument that I am looking at does not purport to be signed by any representative of any union whatever. It has got a heading, "Employees' Representatives".

Mr. All:

Well, whatever it is; it doesn't make any difference.

Mr. Harris:

It is apparently not a union contract at all.

Mr. All:

I am not introducing it—I am introducing it as a contract.

Mr. Harris:
We object to it as a contract. Of course, the thing would speak for itself, whatever it is.

Mr. All:
Well, whatever it is; that is all right.

The Court:
You mean the instrument has no kind of—

Mr. All:
Oh, yes. He is just—here is the instrument.

(Mr. All hands paper to the Court.)

Mr. Harris:
No,—

Mr. All:
I think we will not have any trouble showing that was the union committee. I don't imagine we will have.

Mr. Burr:
It doesn't make any difference.

Mr. All:
It doesn't make any difference.

The Court:
That is true.

Mr. Burr:
If it is any of your employees, it is evidence.

The Court:
Employee representatives.

Mr. All:
Yes, sir.

The Court:
And they signed themselves under it as such?

Mr. Harris:
I just called your honor's attention and his attention to the fact he has been talking to this witness about union contracts and so forth, and this doesn't purport to be a union contract.

Mr. All:
Well, I don't think—I am not going to argue with him on that. It doesn't make any difference—

The Court:
It hasn't been shown all the employees belong to the union.

Mr. All:
Oh, no.

Mr. Bronaugh:
The only thing, the exhibit prior to this was the proposed contract sent in by the International Union of Mine, Mill & Smelter Workers, and the contract was later signed. Whether that was a union or not, we are not arguing with Mr. Harris. It was the only contract we had with the employees this year.

The Court:
He has been discussion union negotiations.

Mr. Harris:
Yes, sir. Union negotiations, and the document,—look at it,—doesn't purport to be a contract between the union,

but when looked at appears to be a contract between some employee representatives.

The Court:

Mr. All, I think it would be up to you to show who these representatives were.

Q. Mr. Harper, were these representatives of the employees?

The Court:

Were they union employees?

Q. Read those employees off there, Mr. Harper.

The Court:

Is there anything in the heading of the instrument, in the preamble—

Mr. All:

"This is to confirm the understandings reached at conference between representatives of employees of our Red Ore Mine and the management, regarding the position of this company as to its Red Ore Mining operations."

And the testimony is this followed the conference in which these gentlemen, this District Number 5, represented by Mr. Horn, and those gentlemen, sat in—

Mr. Harris:

We—

Mr. All:

And signed by the committee.

We just want to introduce the contract for what it is worth.

The Clerk:
Be Sloss Exhibit Number 8.

Mr. All:
It will be Sloss Exhibit Number 8.

The Court:
It is admitted.

(Thereupon a document headed "Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama," and directed "To the Employees of Sloss Red Ore Mine," and containing seventeen numbered paragraphs, and signed "Sloss-Sheffield Steel & Iron Company, Ben Davis, and Employees Representatives John Hill; Jesse Gaines, W. A. O'Neal and W. H. Gunter, and dated July 21, 1936, attached to which were sheets headed as follows, one sheet headed, "Outside Rates", one sheet headed "Inside Rates," one sheet headed, "Hand Loading Entries 18 Feet or Less in Width", one sheet headed "Entry Yardage Rates", one sheet headed "Hand Loading Entries or Stopes Over 18 Feet in Width," and one sheet headed "Drag Loading", was marked Sloss Exhibit No. 8.)

Mr. All:
You have got the substitute copy?

The Clerk:
Yes, sir.

Q. Mr. Harper, did the company and the men pursue their business under this contract—

Mr. Harris:
We—

Q. That has just been introduced, under that agreement?

Mr. Harris;

We object to that if the Court please. He can tell what they did. It is a conclusion whether they pursued it under that contract. It calls for a mental operation of the men and a mental operation of the company, if the Court please.

The Court:

Sustain the objection.

Mr. All:

All right.

Q. Mr. Harper, these men, the same men that met you, —I will as you whether or not those men are the same men that met you as the members of the Smelters Committee on several former occasions?

A. Yes, sir.

Q. And what did you mean by Smelters Committee when you answered that question that way?

A. That was the union.

Q. And these were the same identical men?

A. Same men.

Q. Well, after—did the company continue or not to work on the face to face method of computing work time—

Mr. Harris:

We object—

Q. —after that contract?

Mr. Harris:

We object to that if the Court please, because it calls for a conclusion, and when all the evidence is in Your Honor will see that has nothing to do with it.

The Court:
Well, he asks the question—

Mr. Harris:
We object on the ground it is—

The Court:
—that those that were working, did they continue to work on the face to face basis.

Mr. Harris:
We object as calling—

The Court:
Is that subsequent to the execution of this paper?

Mr. All:
Yes, sir.

Mr. Harris:
We object.

The Court:
I overrule the objection.

Q. Did the company pay—what was the answer to that?
A. There was still no change.
Q. Still no change?
A. We worked on a face to face basis.
Q. Did you work on a face to face basis with respect to all your employees?
A. Yes, sir.
Q. With respect to the service crews and production crews?
A. Yes, sir.

Mr. All:

Now, I want to read into the record and call the Court's particular attention to Section 11 (a) on what is marked Sheet 2 of that—

The Court:

The service crews, do you mean to answer they worked from face to face?

Mr. All:

No, sir.

The Court:

You said face to face.

Mr. All:

I mean working place to working place. That distinction is drawn all the way through here.

The Court:

What are you speaking of?

Mr. All:

The service crews worked on the working place to working place basis, and the production crews on the face to face basis.

The Court:

All right.

Mr. All:

I want to read in the record paragraph 11 (a). It is on page 2 of this contract.

The Court:

Is that Exhibit Number—

Mr. All:
Exhibit Number 8.

"An eight-hour day and five days per week per employee shall prevail, exclusive of the lunch period. The eight-hour day means eight hours of work in the usual working places, exclusive of the lunch period."

That is in this executed contract.

P The Court:
7 That is paragraph—

Mr. All:
That is Paragraph 11 (a). It is on what is called sheet 2 or page 2 of that contract.

Have you a substitute copy there?

Mr. Bronaugh:
Yes, sir.

Mr. Harris:
Let me see that.

(Mr. All hands paper to Mr. Harris.)

Q. Now, after that contract in 1936 when were the next meetings had looking towards another arrangement or a new contract?

A. In the summer of '37.

Q. In the summer of '37?

A. Yes, sir.

Q. Now, do you recollect—you say the negotiations commenced in the summer of 1937?

A. Yes, sir.

Q. Now, who was present as representing the company at those meetings?

A. Mr. Roy Ratliff and Mr. Costner and myself.

Q. All three of you?

A. Yes, sir.

Q. What gentlemen—

The Court:

Who were they?

The Witness:

Mr. Ratliff was general manager of the Sloss Company, and Mr. Costner was general superintendent.

The Court:

All right. I wish you would identify them.

Mr. All:

I did not think of that, Judge. I think it is well to identify them.

The Court:

Yes.

Mr. All:

Now, who represented the miners in those meetings.

A. The same mine committee was in office. At the first series of meetings, as I recall, there was no one present but the committee. Later on there was a Mr. Barco, who was a Federal Labor Conciliator, came in.

Q. Who was Barco?

A. He was a Federal Labor Conciliator.

Q. How does he spell that, B-a-r-c-o?

A. His first name was Newcombe or Newsome.

Q. Newcombe B-a-r-c-o?

A. Yes, sir.

Q. N-e-w-c-o-m-b-e?

A. I think so.

Q. You say he was a conciliator for what department?

A. Labor.

Q. Did he state how he happened to be in the meetings and who he was sent by?

Mr. Harris:

We object to that. Here is a statement of a man as to why he came to a meeting.

Q. Were the union representative there with him?

A. Yes, sir.

The Court:

Overruled.

Q. Were there where they could hear?

A. Yes, sir.

Q. What statement did he make with respect to who sent him or why he was there? What statement of that kind, if any, did he make in the presence and hearing of the committee—

Mr. Harris:

Same objection, if the Court please.

Q. —of the men.

The Court:

Overruled. The representatives were there—

A. He introduced himself—

Mr. All:

Wait a minute. The Judge is asking something.

The Court:

The representatives of the men were there at that time?

The Witness:

Yes, sir.

Q. Go ahead.

A. Mr. Barco stated he had been called by the union to help settle their differences and negotiate a new contract.

Q. Do you recollect who he said had sent him?

A. I don't recollect hearing him say who sent him. He said he had been called in and sent for.

Q. Did he say whether or not he was a representative of the Department of Labor?

Mr. Harris:

As I understand, when we object to the first question along that line, we don't have to bother the Court with other objections to testimony along that line?

The Court:

That is right.

Q. Who else was present besides the committee and Mr. Barco in those meetings?

A. Mr. Reid Robinson.

Q. Do you know who Mr. Reid Robinson was?

A. He was president of the Smelters Union.

Q. You mean the International Union of Mine, Mill & Smelter Workers; he was president of the whole organization?

A. He was national president.

Q. Do you recollect how many meetings he was present at?

7

A. He was at at least one at Sloss Mines, and he might have been in another at the Birmingham office,—I wouldn't say.

Mr. Harris:
We object to him stating what might have happened some place.

The Court:
That part is sustained.

Q. You mean by might have happened, speaking from your recollection—

The Court:
You don't know?

The Witness:
No, I don't know. I know of one meeting I was in with him.

The Court:
That is the one you are testifying positively about?

The Witness:
That is right.

The Court:
That is admitted as evidence.

Q. Now, in these meetings, including the meetings in which the local committee or local representatives were present, and the meetings in which Barco and Robinson,—Reid Robinson, one or both were present, was there any discussion or suggestion with reference to the face to face policy which was in effect at the Sloss Mine?

A. I don't recall it being discussed at all.

Q. Do you remember in a general way what some of the major bones of contention were?

Mr. Harris:
I object to the question of what is a major and a minor bone of contention, Judge. Who knows but what is major to him would be minor to the Court?

The Court:
Were there any other contentions taken up?

Mr. All:
Sir?

The Court:
I just asked him if there were any other contentions taken up.

Q. Was the contract taken up?
A. Yes, sir.
Q. But your recollection is the face to face matter was not discussed?
A. Was not.

The Court:
You have been over that.

Q. Was an agreement or contract finally executed after those discussions, in which Mr. Barco and Mr. Robinson participated?
A. Yes, sir.

Mr. Harris:
May I see that?

(Mr. All hands paper to Mr. Harris.)

Mr. Harris:

I again call Your Honor's attention to the fact this does not purport to be a contract between the union and the company, the International Union of Mine, Mill & Smelter Workers, parties defendant in this case.

It is a letter addressed, or whatever you might call it, to the employees of Sloss Red Ore Mine. It has got typed, "Employees Representatives", and three signatures, and then it has "Sloss-Sheffield Steel & Iron Company," and the signature of Ben Davis, just as the one a while ago had the signature of Ben Davis and not the signature of Mr. Harper.

Mr. All:

I don't want to get into any discussion about that, if the Court please, because I don't think that makes any difference.

Q. I hand you this—

The Court:

Well, who were they? Let him tell who they were.

Mr. Bronaugh:

That is what he is going to do now.

Mr. All:

What is the next exhibit?

The Clerk:

Sloss Exhibit Number 9.

Mr. All:

I am going to identify this as Sloss Exhibit Number 9.

(Thereupon a document addressed "To the Employees of Sloss Red Ore Mine," and consisting of seventeen numbered paragraphs, and signed "Employees Representatives, John Hill, W. A. O'Neal and Jesse Gaines," and "Sloss-Sheffield Steel & Iron Company, Ben Davis," and dated the 13th day of September, 1937, to which was attached one sheet entitled "Outside Rates", one sheet entitled, "Inside Rates", one sheet entitled "Entry Yardage Rates," and one sheet entitled "Division of Tonnage Rate to Men of Crews, Hand Loaded Ore," was thereupon marked Sloss Exhibit Number 9.)

Q. I will ask you if those negotiations resulted in the execution and delivery of this instrument by the parties?

Mr. Harris:

We object to whether it resulted or not. He can tell what they did.

The Court:

I think that is objectionable, Mr. All. In other words, it is a conclusion as to whether it resulted from the negotiations.

Q. Were these men, whose signatures appear on this original instrument, John Hill, W. A. O'Neal and Jesse Gaines, were they men who had—with whom you had been dealing?

A. Yes.

Q. Were they present with Reid Robinson and Barco at those meetings that Barco and Reid Robinson attended?

A. Yes.

Q. And do you recollect—are those the same men that met with you as the committee of the union on former occasions?

A. Yes, sir.

Q. These same men?

A. Yes, sir.

Q. And this contract was executed on September 13, 1937, was it not?

A. Yes.

Q. You saw that date on there?

A. Yes, sir.

~~Mr. All:~~

I want to call the Court's attention to Section 11 (a) of this instrument.

The Court:

You are introducing that?

Mr. All:

I am introducing this here, yes, sir, as Sloss Exhibit Number 9.

The Court:

I overrule the objection to it. I asusme he has the objection.

Mr. Brodie:

Sir?

The Court:

The objection is overruled. I think you objected.

Mr. Brodie:

Yes, sir.

The Court:

Paragraph 11?

Mr. Brodie:

I understand I have an objection to all these documents.

The Court:
I understand.

Mr. All:
Section 11 (a), which I desire to read into the record, if the Court please,—

The Court:
Section 11 (a)?

Mr. All:
Section 11 (a). "An eight-hour day and five days per week per employee shall prevail, exclusive of the lunch period. The eight-hour day means eight hours of work in the usual working places, exclusive of the lunch period.

"The Sloss Company shall have the right—" This paragraph is not pertinent to this. "The Sloss Company shall have the right during the entire period of this understanding to operate the mine one, two or three eight-hour shifts by different crews of men within each 24-hour period."

I want to identify that and substitute a copy.

Mr. Brodie:
What is the date of that, Mr. All?

The Court:
That was September, 1937, wasn't it?

The Witness:
13th.

Mr. All:
Yes, sir. September 13, 1937.

Q. After the execution of this contract state whether or not the company and the employees of the company continued on the face to face or working place to working place policy?

Mr. Harris:
The same objection I assigned to that same question before.

The Court:
Overruled.

A. They did.

Mr. Harris:
Except.

Q. Mr. Harper, do you know or can you—Do you know whether or not there was an increase in wages?

The Court:
What was your question?

Mr. All:
I am asking him whether or not he knows in this contract there was an increase of wages granted, and I am just asking if he knows. If he doesn't know, I will get it somewhere else.

The Court:
Well, does he have to read it to tell?

Mr. All:
He may refresh his recollection by looking at it.

The Court:
You are asking him if there was an increase?

Mr. All:

Yes, sir, an increase.

A. There were.

Q. There were increases in pay?

A. Yes, sir.

Q. Now, Mr. Harper, you have testified that you left the Sloss Company in 1938?

A. Yes, sir.

Q. Consequently you didn't deal with the Committee or representatives—with any committee of Sloss for the miners or any union Committee for the following year, did you?

A. No, sir.

Q. You did not?

A. That is as far as I go.

Q. In other words, that 1937 agreement ends your participation in the negotiations?

A. Yes, sir.

Mr. All:

Your Honor, that is all for the present, unless something is brought to my attention.

The Court:

Do any of the rest of them over there want to ask anything? Mr. Burr?

Mr. Burr:

No, sir, not anything.

The Court:

All right; take the witness.

Cross Examination.

(By Mr. Harris):

Q. Mr. Harper, up until you left the Sloss Company in 1938, you never saw any contract between the Sloss

Company and the International Union of Mine, Mill & Smelter Workers beginning or ending this contract made and entered into between the Sloss-Sheffield Steel & Iron Company and the International Union of Mine, Mill & Smelter Workers, did you?

A. The contracts were not headed up that way, no.

Q. And when you first started dealing with the men that you have called the Union representatives, you informed them that the company wouldn't recognize the union, didn't you?

A. No, sir.

Q. In the agreements that have been offered in evidence here for 1937 and for 1936—the union was still in existence in '37 and '36, wasn't it?

A. Yes, sir.

Q. They still had locals there at the Sloss Company's mines, didn't they?

A. Yes, sir.

Q. And in those agreements you told them that "We won't deal with you as representatives of the union; but you will have to sign these papers as representatives of the employees," didn't you?

A. No.

Q. Who was it told them that?

A. I don't know.

Q. And you knew at the time the agreement was signed that these men who had to sign as employee representatives were officers of the local union, didn't you?

A. Yes, sir.

Q. And the man who signed it was not Mr. Harper, who is testifying, but a man named Ben Davis, wasn't it?

A. I didn't sign the contract.

Q. You didn't sign anything?

A. No, sir.

Q. Where is Mr. Ben Davis?

A. I don't know.

Q. Does he work for the Sloss-Sheffield Steel & Iron Company?

A. I presume so.

Q. Was he in any conferences with you and these men?

A. In some, yes.

Q. You didn't name him in naming them, did you?

A. No, I don't believe I did.

Q. All right. Then, you would conduct negotiations with these men and when the time came to sign another man did the signing; is that right?

A. Not altogether.

Q. Well, is there any instrument between the company and employee representatives or union representatives covering agreements which bears your signature as the official of the Sloss Company?

A. Only one.

Q. What instrument was that?

A. That is the notice that was posted up.

Q. The only thing you—And that is the one Mr. All introduced in evidence a while ago where you just posted a notice?

A. That is all.

Q. And you worked with the Sloss Company when the first instrument recognizing the union as a union was signed, were you?

A. When was that?

Q. 1940, wasn't it?

A. I wasn't with them then.

Q. You don't know? Now, Mr. Harper, the whole time that you worked for the Sloss-Sheffield Steel & Iron Company every ore miner in that mine was on a tonnage basis, wasn't he?

A. All those who loaded ore were.

Q. The head drill man, his helpers, the muckers, the operators of that machine there at the heading, all of them,—the drag,—all of them were on a tonnage basis weren't they?

A. Either tonnage or something similar. For instance—

Q. Yes, and it didn't make a particle of difference about travel time or walking or riding or anything else in the pay they got, did it?

A. They were not paid for traveling.

Q. What?

A. They were not paid for traveling.

Q. They were not paid on a time basis either, were they?

A. Yes.

Q. They were paid by the ton, weren't they?

A. Yes, but they worked a certain number of hours.

Q. But if they got their tonnage it didn't matter whether they got it in three hours or whether it took them six hours or eight hours?

A. They worked all day.

Q. My question was if they got their tonnage it didn't make any difference whether they worked three hours or six hours or nine hours, did it?

A. They didn't have a fixed time.

Q. How did the tonnage enter into their consideration?

A. An estimate of what they should do.

Q. How did that work?

A. From previous experience.

Q. When did they start out their previous experience to estimate what they should get? When did that start?

A. I don't know.

Q. Was that peculiar method in operation when you went with them in 1933?

A. No. Part of them were on tonnage then and part of them on task.

Q. What was the difference between being on tonnage and being on task when you went with them in 1933?

A. There is not much difference.

Q. Tell us what it is.

A. Well, a task was what one of these mechanical loading crews was supposed to produce in tonnage to get their standard wages.

Q. All right. Then what was a flat tonnage basis? What was that?

A. You mean the amount of money?

Q. No. You said some men were on a task basis and some were on a tonnage basis. What was the tonnage basis? How was that computed?

A. The tonnage basis was a flat rate per ton.

Q. When you went to the Sloss Mine in 1933, it was on what is known as a contract system, wasn't it?

A. Yes, sir.

Q. Now, tell the Court what the contract system of mining was as operated in the Sloss Company when you went there in 1933?

A. The system then in effect was that the head miner, who was then call the contractor, was credited with the tonnage that all the men loaded, and their earnings were deducted on the payroll from the tonnage he produced.

Q. And how was that contractor's men—How were their wages figured then? How did they know what to deduct from what the contractor had coming to him?

A. Each man had a rate.

Q. Each man had a rate?

A. Yes, sir.

Q. What kind of rate?

A. A rate per ton.

Q. A rate per ton, and if one man got out 25 tons and another man got out 15 tons a day, the 25 ton man got more pay, didn't he?

A. Yes, sir.

Q. And how long did that tonnage rate continue with your contractor system in the mine of the Sloss Company after you got there in 1933?

A. Not very long. I think it was changed early in 1934.

Q. There haven't been any contractors in the Sloss mines since early in 1934?

A. No.

Q. You didn't have any contract men operating there,—didn't in 1935, '6, '7 and '8 up until the time you left?

A. Not by that title. They all worked on tonnage.

Q. There never had been a time while you were there from 1933 until you left in 1938 but what the production crews worked on tonnage?

A. That is right.

Q. That is right?

A. Yes, sir.

Q. This mine of the Sloss Company had how many men working in it when you first went there in 1933; how many in number, and counting in the day shift and how many in the night shift?

A. About 550 in all. They were just about evenly divided.

Q. And those men, as they went down into the mine, rode on specially fixed little cars that had the seats slanting so that the men would be sitting level as they went down the slope, didn't they? The seat wasn't exactly like the seat in a street car, but as the little car started down in the mine the men would still be sitting on a horizontal plane, wouldn't they?

A. Not exactly. The seat sloped.

Q. The seat sloped? Whereabouts in the mine was it it was so steep you had to have your seats fixed at an angle so that when you started down this slope or manway the men would be sitting on a horizontal plane; where is that?

A. I don't know where that is.

Q. How far is it from the mouth of that mine to where you get to the place where there is a fault and a tremendously high hill in the ore?

A. It is about 3800 feet.

Q. About 3800 feet?

A. Yes, sir.

Q. They hadn't mined that out when you got there?

A. No, sir; it was still there.

Q. It was still there?

A. Still there.

Q. That place was then and is now so steep in walking up or down it a man would have to catch hold of an ore car that happened to be there, or anything else available?

A. You didn't have to walk up that hill.

Q. They got around that hill by walking a distance of 1200 feet, wasn't it?

A. No, sir, it wasn't that far.

Q. How far did the men have to walk in going to the face of the different rooms or headings in going around that hill?

A. We are not thinking about the same hill.

Q. Well, we are thinking about the same hill, aren't we?

A. You are talking about the hill where they had to climb up on the cars. That is where the men got on the mantrip.

Q. Let's take the very first one. You mean on the mantrip coming out the main slope?

A. Yes.

Q. Don't you know in the Sloss mine at that steep hill I am talking about, that the company has put in little cars for the men to ride down that place?

A. That is where the man trip started from when I was there.

Q. That is where the man trip started from and they came on down that steep hill and got out and went up the main slope, those same cars?

A. It started from that high point going out.

Q. Did they ride the same cars down that hill and up the slope, or did they switch to other cars?

A. Yes, sir.

Q. How high is that hill?

A. It is 3800 feet out to the surface. It is on 30 degree pitch.

Q. That is the slope, but take here, down in the mine, how high is it?

A. It is just a short hill, about 300 feet.

Q. About 300 feet?

A. Yes, sir.

Q. Do you know what degree slope it is?

A. About 40.

Q. About a forty degree slope?

A. Yes, sir.

Q. Did the men have to walk up that 40 degree slope going to their places of work while you were there?

A. No, sir.

Q. How did they avoid it?

A. The man trip stopped on that hill and they got out and went through an opening in the ore and walked around to the foot of the hill.

Q. Walked around to the foot of the hill, but the ore was brought around and hauled up that steep place?

A. The ore was hauled up the hill, yes, sir.

Q. I don't recall hearing you say, when I said they had to walk 1200 feet,—I don't recall hearing you say—

The Court:
300 feet.

Mr. Harris:
It is 300 feet straight up.

The Witness:
300 feet on the pitch.

Q. But the distance they had to walk around horizontally to get around it, what was that distance?

A. Oh, between three and four hundred feet, I would think.

Q. Mr. Harper, the mine of the Sloss-Sheffield Steel & Iron Company has so many places where it is uphill and down dale and up hill and down dale that the ore cars, when they start from the face where they are loaded at the face, have to be handled seven different times before they get to the mouth of the mine, don't they?

A. I don't know.

Q. Tell this Court how many different times the ore cars of the Sloss Company had to be handled while you were there as superintendent from the time those cars left the loading place near the face until they got to the mouth of the mine?

A. All of them were handled at least twice, and I would say a maximum of five times.

Q. A maximum of five times?

A. Yes, sir.

Q. What was the occasion of them being handled a maximum of five times?

A. Different steps in the haulage. They couldn't be handled all out at one shot. They had to be relayed.

Q. What were those different steps? Were they vertical steps or horizontal steps?

A. Vertical.

Q. Vertical?

A. Pulled up one side of a hill and down the other side with a hoist engine.

The Court:

What was that?

The Witness:

Pulled up one side of a hill and down the other with a hoisting engine.

Q. The hoist engine—those hills were so steep the hoist engine couldn't go up the hill and come down, but you pulled them over the hills by cables,—is that right? You didn't have any electrical locomotives going up and down those hills?

A. Yes, sir, we had three locomotives.

Q. On this steep hill did the electric motor go up and down the hill? You had what you called a tuggle hoist there?

A. No, it wasn't a tuggle hoist.

Q. What kind of a hoist was it?

A. An electric hoist.

Q. Where was the cable you wound up to pull them? Was it at the top of the hill or over on the other side?

A. The top of the hill.

Q. How many places did you have that were so steep you had to use things like that?

A. My recollection three, maybe four.

Q. Had they divided the mine off in sectors, that is, cut it off in four different groups, and figured out the average traveling time to group A, group B, C, and D, while you were there?

A. No.

Q. You didn't make any computation of the time the men were walking while you were there?

A. No.

Q. When you left there—what month or day was it you left there in '38?

A. The last day in May, 1938.

Q. The last day in May, 1938. At that time what was the greatest distance that a man walked when he got off the man trip here to the face where his drills would be?

A. I couldn't say anywhere near accurately.

Q. Well, you have been through the mine, haven't you?

A. Yes.

Q. Although you didn't go down every day, of course, you still have been there once a week or once a month while you were a superintendent, haven't you?

A. I would make a rough guess of somewhere around a half a mile, between half a mile and three quarters.

Q. Between half a mile and three quarters?

A. Yes, sir.

Q. How fast were you getting straight into the ore in 1937? At that time how far was your furtherest heading from the man unloading station as compared with the furtherest heading in 1936? Do you get what I mean?

A. Yes Probably advanced a half mile, maybe—

Q. In a year?

A. Not a year.

Q. Did you average—What?

A. No, not in a year.

Q. How far did it advance from the time you first went there in 1933 until you left there in 1938?

A. Maybe three or four thousand feet.

Q. Did you go faster some years than you did other years—

A. Yes, sir.

Q. —due to business conditions and—

A. That would be due to the regularity with which the mine operated.

Q. Now, the Sloss Company, in maintaining those bath houses while you were there, charged the men for the use of the bath houses, didn't they?

A. No, sir.

Q. You mean to say there wasn't a bath house charge of forty or fifty cents a month?

A. No, sir.

Q. As to each man?

A. No, sir.

Q. If there was, you don't know anything about it?

A. I don't know anything about it.

Q. Where were the places where the drill bits were sharpened; down in the mines or up on the surface?

A. On the surface.

Q. And where were the tripod legs repaired, down in the mine or up on the surface?

A. Up on the surface.

Q. How about the hangers and C-hooks, where were they repaired?

A. All repair work was done on the surface.

Q. Did you have a blacksmith shop up there on the surface?

A. Yes.

Q. How far was the blacksmith shop from the opening to Number 2 mine? That was the mine you were superintendent of, wasn't it?

A. I would say three-eighths of a miles, something like that.

Q. Now, at the Sloss mine did—1933 to 1938, did you have a Number 2 mine a board where, when a man checked in he would toss you a brass check and you would put it up on the board, every man when he went to work?

A. No, sir.

Q. Did you, in 1933 up to 1938,—did your men have brass checks?

A. No, sir.

Q. What kind of checks did they have?

A. The only checks we had were small brass discs they put on their mine cars to identify them when they were brought out.

Q. I beg your pardon. Put on what?

A. On their mine cars which they loaded.

Q. Oh, the ore cars?

A. Yes, sir.

The Court:
To show whose ore it was?

The Witness:
To show whose ore it was.

Q. To show what man was to get paid for mining the ore that was in that car?

A. That is right.

Q. That is right, and you didn't have any record at all whereby, while you were there, where the men, as they came in, turned in a brass check or other check before they went down in the mine?

A. No.

Q. And you were there from 1933 up until the last day of May, 1938?

A. Yes, sir.

Q. Now, these men who were putting their little brass checks on the cars showing that they were to get pay for the cars did other work besides loading cars with ore, didn't they? Didn't they?

A. I don't know.

Q. Well,—

Mr. All:

Mr. Harper, will you talk out a little louder?

Q. —what do you mean by dead work?

A. Dead work?

Q. Yes.

A. Dead work means some sort of maintenance work like cleaning up rock falls and things like that.

Q. Does it mean laying track?

A. No, I wouldn't call laying track dead work.

Q. Does it mean laying pipe line?

A. No, sir.

Q. All right. These men who were on tonnage basis had to clear up rock falls, if there were any rock falls around in their stope or heading or wherever they were drilling?

A. They pulled down any loose rock it wasn't safe to work under.

Q. All right, but suppose it wasn't merely a loose rock that might fall and injure their head or back or break an arm or leg; but the rock had already fallen; who had to move that?

A. If it was right up in their working place they were due to move it.

Q. All right. Suppose they had to have—They had to have air for their drills, didn't they?

A. Yes, sir.

Q. And somebody had to lay pipe lines to get that air up there?

A. Yes, sir.

Q. These men on tonnage basis had to do that, didn't they?

A. They extended the line. The line was already there.

Q. They also extended the track at times?

A. Yes, sir.

Q. These men on these tonnage bases?

A. That was all part of their tonnage rate.

Q. Was all part of their tonnage rate, so that there were days when these men on these crews would be so busy doing dead work they didn't draw a single penny for that day's work?

A. Shouldn't have been.

Q. You have seen those men so busy down there doing dead work there would be only one car come out of that mine with a brass check on it, or an entire crew of five men would be so busy doing dead work there would be not more than one car come out with a brass check on it?

A. Anything that bad, the company would pay for it.

Q. I didn't ask you whether the company paid for it. I asked you if you had seen it when the entire crew was so busy only one car came out? Have you seen that?

A. Yes, sir, I have seen that. I have seen it when they didn't work any.

Q. When you went on a task basis, how many tons did you assign as a task for a man?

A. On the old handloading basis I think the old task was 35 tons for five men.

Q. When you put in the mechanical loaders, what was the task for the men?

A. How many tons?

Q. Yes.

A. It was variable; around 125 tons.

Q. How many men on a crew then?

A. About 8 or 9.

Q. Did you ever go through the period while you were there of using shakers instead of mechanical loaders?

A. No, sir.

Q. You didn't have that system where you had those beams there and just shook it down like—

A. No, sir.

Q. When did they install mechanical loaders in Number 2 mine of the Sloss Company?

A. I couldn't say.

Q. Were they already there when you went there in 1923,—I mean 1933?

A. Yes, sir.

Q. Was there much hand loading in the mine after you got there?

A. The hand loading and mechanical loading ran about 50-50.

Q. Did that continue the whole time you were there?

A. Approximately.

Q. And then the task, about 50 percent of the drill crews was on a 7-ton basis per man, and where they had a mechanical loader it went up to twice that per man, practically speaking?

A. Roughly, yes.

Q. Yes, sir. Is that hand loading in the Sloss Company made necessary on account of the steepness of the different hills in the ore and the narrow places where you have to work on that account? Why is it that the Sloss Company—I mean is there any physical reason in the mine why you couldn't have mechanical loaders throughout the entire Number 2 mine of the Sloss Company?

A. I couldn't say about that. Narrow places and headings were driven by hand.

Q. Yes, and about half of the ore loaded was in the hand places?

A. Yes, sir.

The Court:

They don't have any drills—I mean machines?

The Witness:

Yes, sir.

The Court:

I thought you said the ore was drilled by hand.

The Witness:

Loaded. All the ore is drilled.

Mr. Harris:

Just a question or two. That will save these gentlemen having to cross examine the witness.

The Court:

All right, sir.

Q. You used the expression on your direct examination of "working face" and Mr. All used the expression "working place". Now, what is meant by you by the phrase "working face"?

A. The working face is where a production man works. That is where the ore is actually mined.

Q. You mean—

A. Blasted down and loaded.

Q. Let's suppose that a stope comes right up to here, and this mahogany desk is underground and is a solid mass of ore and that we are going to get that ore out and haul it up to the top. Is that the face of that ore? What did you understand by the working face?

A. That would be the face, yes, where it is mined.

Q. Where it is actually mined?

A. Correct.

Q. Now, then, is there any area around that, or was there any area around that that was marked off as a working place where you were at the Sloss Company?

A. It wasn't marked off, but working the stope, the whole stope was considered as a working place.

Q. Not merely there in the face, but—

A. All the way out to the engine that loaded the ore.

Q. Well, by all the way out to the engine—your stopes were never more than 200 feet? That mechanical loader didn't operate more than 200 feet?

A. 300 feet.

Q. It operated 300 feet? So, what you understood by the working place would not be at any time more than 300 feet of the ore that was to be blasted out?

A. Approximately that, but—

Q. Now,—

Mr. All:

Let him finish.

A. What I was going to say, under our system the ore was not only loaded, but it was brought out to the slope, and the fellow who transported this ore, that was his working place in this heading.

Q. The man who transported the ore out to the main slope wasn't a part of the drill crew, was he?

A. Yes.

Q. Who did you say constituted a drill crew? Let's get that. Let's see if you had a drill crew like they had at the Tennessee Company. Start at the top of your drill crew?

A. The ordinary drill crew had one head miner—

Q. All right; who next?

A. Two drill runners.

Q. Who next?

A. One drill helper.

Q. Who next?

A. The drag engineer.

Q. He is the man who operates the mechanical loader?

A. Yes, sir.

Q. Who else?

A. One tram engineer.

Q. What did he do?

A. He operated, as a general rule, the little engine that handled the cars back and forth between the slope and the side track where the drag loader was.

Q. How many muckers?

A. Sometimes three.

Q. After the drag loader had loaded these little cars, the tram engineer would haul them out to a side track?

A. Yes, sir.

Q. Ordinarily, how far would that side track be from the place where he pulled out—that is, where they were loaded?

A. That distance would run up to—from nothing in a new place just starting on up to say 1500 feet.

Q. Did he haul them all the way to the main slope, or did he haul them to a side track where somebody else would pick them up?

A. Somebody else would pick them up.

Q. What do you call that track where someboy else picked them up and hauled them to the main slope? What do you call that track?

A. Call that a nuck.

Q. N-u-c-k?

A. Yes, sir.

Q. And from that track how far would they have to be hauled?

A. Out to the surface.

Q. They would be hauled to the main slope and each one—

A. That was by another crew, not the drag crew.

Q. And it was in that hauling operation you had as many as five operations in the mine to get the tram cars out?

A. Yes, sir, after the company took charge of the hauling.

Q. When did the company take charge of the haulage?

A. At this nuck.

Q. You considered the man had not finished his connection with the ore, or had not completed loading the ore until it got to the nuck?

A. Part of his consideration was that he deliver it to this nuck or side track.

Q. That was part of the consideration on which he was paid?

A. That is right.

Q. Suppose a crew got out all the tonnage they wanted to get out that day on a contract basis; could they pick up and leave the mine any time they wanted to?

A. No, sir.

Q. Suppose they got out their full task, and got out that much ore, and the drillers had drilled all the holes and they were ready to shoot; did they have to sit around —if they finished by twelve o'clock did they have to sit around until shooting time before they could leave?

A. They couldn't leave by twelve.

Q. Didn't you have in your mine where some of the men could get out a full task in three hours?

A. No, sir.

Q. You never saw that happen?

A. No, sir.

Q. You never did go down in the T. C. I. mine Number 13 and those other mines, did you? Have you ever been down in their mines?

A. Never been in 13.

Q. Now, suppose, while you were out there as superintendent of this mine that they have cleaned up all the ore that was shot down by the previous shift, and they have finished, the muckers have finished by twelve o'clock; was there ever a time out there with you where those muckers had to then stay from twelve o'clock until the man loading skip went out before they could leave the mine?

A. I don't believe I ever saw them stay that long. They frequently came over to the yard early sometimes. If the drill man hadn't drilled enough ore to last all day, they might get through a little early.

Q. That frequently happened, didn't it?

A. Sometimes; not so frequently.

Q. Did you ever devote any thought or attention to the ventilation in Sloss Mine Number 2 while you were out there?

A. Yes, sir.

Q. When you left there in May, 1938,—

Mr. Harris:

Judge, do you want to adjourn for lunch? I only have two or three more questions.

The Court:

Go ahead.

Q. When you left there in May, 1938, what arrangement was there for any air through these mine to the men? How did you work it to get air to the men who were working a mile or more from the surface?

A. We had a fan about a mile and a half from the surface.

Q. You had a fan?

A. Yes, sir.

Q. Way back down in the mine?

A. Yes, sir.

Q. And did you have brattices back down in there?

A. A few.

Q. Did you have any other arrangements for shifting the air in the direction you wanted it to go so the men would get fresh air besides a few brattices?

A. That is about all.

Q. Was the air of the same quality from the time you entered the mine until you got to the most distant working face?

A. No, sir, it was not.

Q. What was the difference in the air as you went deeper into the mine? Did it get better or did it get worse?

A. It got warmer.

Q. How about moisture? Did it pick up more moisture—

A. Yes, sir.

Q. —as you went down in there?

A. Yes, sir.

Mr. Harris:

I think that is all from our cross examination.

Mr. All:

Just one or two questions, Judge.

Re-Direct Examination.

(By Mr. All):

Q. Mr. Harper, Mr. Harris asked you about signing any of these contracts, asked you if you ever signed any of these contracts, and I believe you stated that you didn't?

A. Yes, sir.

Q. Were you an official of the company?

A. No.

Q. Was Mr. Davis an official of the company?

A. Yes, sir.

Q. What was he?

A. He is—he is vice president and general manager.

Q. Vice president and general manager. And the company was signed—I mean whatever agreements were signed were signed by the company by an official of the company, which you were not?

A. That is right.

Q. That is right. Was it the policy of the company, with respect to the negotiations at Red Ore Mine at Bessemer that you should represent the company in those negotiations?

Mr. Harris:

We object to what the policy was.

Q. Were you designated by Mr. Davis to do that, or by the company?

A. Part of the time, yes.

Q. Yes.

A. He came down frequently to the meetings.

Q. Now, he—Mr. Harris asked you some questions about the—whether or not you or the company refused to deal with the union or did you recognize the union.

I will ask you if you did not, in the negotiations that you had—if you did not freely discuss the matter of the working conditions and whatever matters Mr. Horn—

Mr. Harris:

We object to what he—

Q. —brought up or presented for discussion with you: if you didn't freely discuss those matters with him or not—

Mr. Harris:

We object to that as leading and argumentative and—

Q. —and negotiate with him?

The Court:
I overrule the objection.

Mr. Harris:
We except.

A. We always discuss questions with the committee or also Mr. Horn or Mr. Richardson or anybody that came in representing the employees at any time.

Q. All right. You discussed them with anybody that came in representing the Department of Labor?

A. Yes, sir.

Mr. Harris:
We object to that.

Q. Did you discuss the matters freely with Mr. Reid Robinson?

A. Yes.

Q. Now, Mr. Harris asked you about these little cars that were used in these man trips, employed in the man trip to carry the men down.

You have stated approximately the dimensions of those cars, haven't you?

A. Yes, sir.

Mr. All:
Mr. Burr, is there anything else you want or you have to ask him?

Mr Burr:
No, sir.

Mr. All:
I believe that is all.

Mr. Monaghan:
Wait just a minute.

Mr. Hall:
Wait just a minute. Just one second.

The Court:
Just a minute.

Mr. All:
I think that is all.

(Witness excused.)

The Court:
Court is adjourned until two o'clock.

(Whereupon, at 12:25 P. M., July 15, 1941, a recess was had until 2:00 P. M. of the same day.)

After Recess, 2:00 P. M.

The Court:
Who will you have?

Mr. All:
Mr. Costner.

1364 T. E. COSTNER, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Clerk:
What is your name?

The Witness:
T. E. Costner.

(By Mr. All):

Q. Mr. Costner, your initials are T. E.?

A. Right.

Q. T. E. Costner?

A. Yes, sir.

Q. How old are you, Mr. Costner?

A. Forty-one.

Q. Forty-one?

A. Yes, sir.

Q. Are you now general superintendent of the mines of the Sloss Company?

A. I am.

Q. Mr. Costner, will you tell the Court what your experience has been in mining, particularly in mining, and your training for that work?

A. I have lived around mines all my life. I have worked in open pit mines and coal mines while I was going to school from 1911 to 1919.

In 1919 I entered the employment of the Alabama Company as rodman in the engineering department. I went through the various stages of engineering and was an engineer for that company at the time it was acquired by the Sloss Company in 1924.

I remained an engineer for them until 1929. I was then mine foreman for the Sloss Company at the Lewisburg Coal Mine until 1930. From 1930 until 1935 I was superintendent of the Lewisburg coal mines. From 1935 until the present time I have been general superintendent of the mines of the Sloss Company .

Q. Were you born in this district, Mr. Costner?

A. I was born in Talladega County, this state.

Q. Where did you take your engineering?

A. At Alabama Polytechnic Institute.

Q. That is Auburn?

A. Yes, sir.

Q. Now, to break that up again, just to get a picture of it, what were the inclusive years when your duties had to do with ore mines as distinguished from coal mines?

A. From 1919 until 1924 I was in ore and coal together.

Q. All right.

A. Then I was out of ore until 1935.

Q. Yes.

A. Since 1935 until the present time I have been in ore and coal.

Q. Now, during the time that you were in ore and prior to 1935 when you became general superintendent, I believe you stated—

A. Right.

Q. —your connection with ore—you had a combination of connections with ore and coal as engineer?

A. Right.

Q. Now, what connection—what did you have to do as engineer with respect to the mine layout and the methods of mining and the methods of driving slopes and headings, the general underground layout?

A. I—

Mr. Harris:

We object except as confined to ore. The method of coal mining hasn't anything to do with it at the present time.

The Court:

Well, if it is similar to ore that is all right. I think I will let him answer.

Mr. All:

With the statement the coal is pertinent—

The Court:

I can't hear you.

Mr. All:

We make the statement at this time that Mr. Burr did—that the coal is perinent, but at this time it will be confined to ore.

The Court:

All right.

Q. Go ahead.

A. I helped plan and arrange the layout for the mine operations; I helped make the surveys and made the surveys after the work was done, and I set the level and made inspections to see that the plan was carried out for the underground work.

Q. Were you in charge and consulted on the layout for the underground mines?

A. I was so far as our own organization was concerned.

Q. What do you mean by that?

A. You said was I consultant.

Q. Yes.

A. I was as far as our superintendent and officials were concerned.

Q. You mean of the Sloss Company?

A. Yes, sir.

Q. Now, the coal mines were underground places too, weren't they?

A. Right.

Q. And without going into details, the Alabama Coal Mines are slope mines?

Mr. All:

I don't care to go into it to any further detail than that except to show his experience.

Mr. Harris:

We don't see the materiality—

The Court:

All of them are not slope mines.

Mr. All:

The larger ones are.

Mr. Harris:

We object to the coal mines. We don't see the need to tell his coal mine experience.

The Court:

Well, leave that off for the present.

Mr. All:

All right.

Q. Then, Mr. Costner, where is the Sloss Company now mining iron ore?

A. We have open pit operations in Franklin County and in Talladega County. We have underground operations at Ruffner near Irondale, and at Sloss Red Ore adjacent to Bessemer.

Q. Those open pit mines you mentioned, do those undergo travel time to any substantial—

Mr. Harris:

We object. There is no underground operations—Pit mines are not in this case. One is up in Russellville and the other in Talladega. Then, to say it involves travel time, that is entirely beside the question.

The Court:

Suppose it did involve a great deal of travel time?

Mr. Harris:

That hasn't anything to do with this case.

The Court:

Does the mine have to have a roof over it?

Mr. Harris:

No. As a matter of fact, if they go into the brown ores they mine those in an entirely different operation than what the Court is concerned with here.

Back in the days when I was familiar with the brown ore operations, they mined them with steam shovels, surface operations, where they would strip off the cover.

The Court:

I sustain the objection on that point.

Mr. All:

If the Court please, who is going to make a statement about how that is to be done, the lawyer or the witness?

The Court:

We are not going into strip mining.

Q. Are they strip mines?

A. They are.

Mr. All:

I was after eliminating them to start with unless they have some materiality bearing on the case.

Q. Now, with respect—you say they operate how many mines?

A. Underground mines?

Q. Yes.

A. They operate two.

Q. What are their names?

The Court:

He has mentioned them; Ruffner and Red Ore.

Q. We will take the one on Red Mountain at Bessemer. Are you familiar with the method of mining that is followed there?

A. I am.

Q. And the custom of mining?

A. I am.

Q. Yes, sir. Mr. Costner, where is that mine?

Mr. All:

Crampton, do you want to look at this map?

Mr. Harris:

No, that is all right. I will move around over there if I may.

Q. Will you put this map on the board?

A. Yes, sir.

(Thereupon a map was placed on the blackboard.)

Q. Which way are you going to look at it?

A. This is the entrance at this point here (indicating on map).

Q. That is all right.

A. You will be looking down into the mine from the top.

The Clerk:

Do you want that marked as an exhibit, Mr. All?

Mr. All:

Yes, sir.

The Clerk:

It will be Number 10.

Mr. All:

Sloss Exhibit Number 10.

(Thereupon a map bearing the title, "Map of Sloss Ore Mine, Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama, Scale 1 inch equals 200 feet," was marked Sloss Exhibit Number 10.)

Q. Mr. Costner, how many slopes or openings are shown on this map?

A. Two; the Number 1 slope, which is idle, and the Number 2 slope, which is now operating.

Q. How long has Number 1 been idle?

A. Since 1932, I believe.

Q. This is the one now operating?

A. Yes, sir.

Q. Is the method of mining employed in the two similar?—

A. They were—they are similar.

Q. I am talking about the general method of driving slopes and headings and stopes, are they general?

A. Yes, sir.

Q. We will take Mine Number 2. You are looking at that exhibit as if you were standing here at the top of the map?

A. Right.

Q. Is that right?

A. Yes, sir.

Q. Can you tell the Court what the various things are here on this map? That network, what does that indicate?

A. These are pillars left following original mining off the main slope. These places here are called headings and they were driven out there.

Q. Your are pointing. Give directions. At what direction, with respect to the slope, are the headings driven?

A. Approximately 90 degrees to right and left.

Q. All right. Now, how far had that slope been driven at the time you became superintendent in 1935?

A. It was approximately to 85, right here, right at this —right along here (indicating on map).

Q. You mean that slope had been driven from the top down to—

A. To about there.

Q. Down to about a place indicated there as 85?

A. Yes, sir.

Q. I notice here just above the point where you indicated there is an apparent change of direction. What is that?

A. This vacant space there is the property of the Tennessee Company.

Q. You mean the vacant space on the outside of your line?

A. Right. This line here indicates the extent of the Sloss ownership. This—

Q. Wait just a minute. You mean the heavier black lines indicate the outlines—

A. That is right. That is the land, and also the outline of the ore limit of the map, or the extent of the workings of the Sloss Mine all along that line there.

Q. The black line that borders the workings?

A. Yes, sir.

The Court:
That is on what side of the compass.

The Witness:
Of the compass?

The Court:
Is that the west side?

The Witness:
Yes, sir. This is the east side. Up and down this line here is north and south; that is, north is the top of the map.

The Court:

I want to ask you a question. Does your slope go practically the same direction as the Tennessee Company's slopes?

The Witness:

Generally speaking, for the first few thousand feet it does, but after that I am not sure, but they all enter from the outcrop and are driven approximately the same direction. They may vary at the bottom.

Q. The place you pointed out on the border of this map as being the property of the Tennessee Company, is that property of the Tennessee Company further—as you go from Birmingham to Bessemer, is that Tennessee Company property beyond the Sloss property; or is it shorter?

A. It is beyond the Sloss property.

Q. It is beyond Bessemer; that Tennessee Company property there is beyond Bessemer?

A. It is opposite Bessemer. It is the Muscoda property.

Q. All right. Go on.

A. This heavy line there represents the boundary line between the Woodward Iron Company's workings beginning there and our own workings here, so, on the original course this heading would have been driven, it would have gotten so close to the Tennessee Company's line that all our workings would be on one side of the property, so, in order to keep the workings divided to the right and left of the slope, this slope was turned in this direction shown here, and it is now in the center of the property we are mining.

Q. Mr. Costner, when you changed your capacity from engineer having to do with both ore and coal properties to become connected with coal properties exclusively, I will ask you when that was and how far that slope had been driven at that time?

A. I have done very little engineering work in this particular mine so I wouldn't know just where the face was in 1930.

Q. You wouldn't know?

A. No, sir.

Q. All right. At 1934, the latter part of 1934, say October, or for some months—a number of months prior thereto, how far had the slope been driven?

A. They were somewhere near here, because in 1935 when I went there I found the face of the main slope at approximately this point, and so they were somewhere in the immediate vicinity of this point.

Mr. Bronaugh:

Identify that point, please, sir.

Q. At what entries, near what entries?

A. Well, in 1935 it was approximately at 85; 1934 say approximately 200 feet less than that; say 82 to 83.

Q. Now, at October, 1934, and for a period before that time did you have a bath house or change facilities at this mine?

A. Not designated as the bath house in the common sense that one bath house serves the whole plant, but we had bath house facilities—

Q. When I said 1934, I meant 1938, and I wanted to ask you another question on that. I was getting at the date of the passage of this act. I am asking you about the facilities there for the change in the latter part of 1938 and prior to that time.

A. There was no common bath house at which all the men changed in the same building. There were facilities available, however, for a large part of the men in the basement of the engine room, basement of the compressor house, and an abandoned hoisting house at Number 1 slope over there, and one or two other buildings not in use.

Q. Now, can you tell us to what extent the men used those facilities for changing clothes?

A. All the white men, I believe, used them, and I would say approximately 50 percent of the colored employees used them.

Q. That is in 1938?

A. Yes.

Q. And for how long prior to that time had that existed?

A. Well, that condition was there in 1935 when I went there. I don't know how long it went on before 1935. During—

Q. But from 1935 to 1938 it existed?

A. Yes, sir.

Q. And since 1938?

A. Up until recently, when other facilities have been provided.

Q. You mean you have a central bath house now?

A. We do.

The Court:
What is your answer?

The Witness:
Yes.

The Court:
Since when?

The Witness:
Put into operation the first of the month.

The Court:
All right.

Q. Now, how far were those change facilities from the mouth of the mine?

A. Well, the nearest was directly under the hoist house, which would be a couple of hundred feet away, and the furtherest was at the Number 1 hoist house, which would be approximately a half a mile away.

Q. All right.

The Court:

You mean away from two—away from—

The Witness:

Away from the entrance to Number 2 slope.

Q. Now, when the men came to the entrance of the mine to go down—prior to—I am asking you around 1938, —what was the practice with respect to taking the men down?

A. You say taking the men down or checking them—

Q. Yes, down into the mine, taking them—

A. When the men came to the pit mouth, they call it, the man trips were lowered to the 48 yard and from 48 yard, prior to 1938, they walked to their working places.

Q. They walked to their working places, wherever that was?

A. Yes, sir.

The Court:

From the 48 yard?

The Witness:

Yes, sir, the foot of the main slope.

Q. Now, can you point out the 48 yard there and state how far that was down?

A. It was approximately 4000 feet from the pit mouth, and it was at this point here, right there. (Indicating on

Sloss Exhibit No. 10.) They rode from this point to this point here.

Q. And from that point they walked to wherever their working place was?

A. Yes, sir.

Q. Now, what sort of facilities did you have for taking them down? What sort of trip did you take them in?

A. Prior to 1938 we had designated man cars, which were built on the same undercarriage on which the ore cars are built, but they were built longer and seats were provided—were provided on there on which five men sat on each side of the bench and faced outward with their backs against five men on the opposite side. Each car held ten men.

Q. How many cars in the trip?

A. At that time there were six.

Q. So, as I understand, you did not use the ore skip for carrying men?

A. We did not use the ore cars. There were no skips employed at these mines.

Q. You did not use the ore cars?

A. No, sir.

Q. Those cars were made for the men to ride in?

The Court:

How many of those did you say you carried at the time?

The Witness:

Had six cars; ten men.

The Court:

Six cars, ten men to the car, each trip?

The Witness:

Yes, sir.

Q. Mr. Costner, can you give us some idea about the dimensions of those cars?

A. They are approximately 10 feet long and they were mounted on 14-inch wheels, and the overall height of them would be approximately 38 inches. The width would be approximately 38 inches—36 to 38 inches.

Q. The width—I am walking about your floor surface, how much was that, your width and your length? I want to get that particularly, the width and length?

A. I say the width would be nearer 48 inches instead of 38 inches, and the length would be approximately ten feet.

Q. Ten feet?

A. Each man would have space approximately of two feet on which to sit.

Q. Would that car seat, as far as crowding is concerned,—I am not talking about whether the seats were soft or hard, but so far as crowding was concerned, would it take care of ten men comfortably?

A. Yes.

Q. Now, you spoke of the height. You mean the body of the car?

A. I meant from the top of the rail to the top of the seat support or seat back.

Q. Seat back?

A. Yes, sir.

Q. So the men could sit down to ride?

A. Yes, sir, they did.

Q. Now, with respect to that ride, Mr. Costner, something has been said here about changing those seats to accommodate some steep places in the mine.

A. There was no change made to accommodate any mine condition. We did, however, about sometime in the early part of 1939 redesign those cars due to the fact that the cars were getting in condition they required extensive repairs, so we built a better and more comfortable car for the men at that time. The capacity of the car remained the same.

Q. All right. Was there any difference in the pitch to take care of any grade or anything of that sort?

A. The original car was built on—As I am holding this rule here on the pitch of the slope, the new car has seats cut out and built on the pitch of it so each man sits in a horizontal position riding down on the slope, as he did prior to the installation of these particular cars, but these cars were not added as the result of any condition in the mine that made it necessary to install some cars to take care of those conditions.

Q. Now, where in this mine have you got a hill here that the men go around instead of walking over the incline?

A. At the present time the men do not go around—

Q. Where is that point in the mine?

A. It is known as 55 hill. It is a point 500 feet in by the return trip from the surface on the main slope.

Q. Where is that now; opposite what heading is that?

A. Opposite 55 left heading, and here is the peak of top of the hill. You notice here these entries are driven around the side of the hill.

Q. From where to where? Indicate it.

A. From the bottom here, which would be at 48 yard to some point beyond 55 hill, which would be on down as low as 62, the ore is humped, so to speak, in the middle, and if you can imagine, say, an orange—you had to travel over—if you had an orange or ball you had to travel over, rather than go over this hump and come back over on the other side, you can follow around this thing and come back on the other side.

That condition was present right in this particular area before man trips were operated on this slope, where the men would walk around this side rather than climb over this steeper point right here.

Q. Now, did you have occasion—was it necessary for you to haul ore and for your ore cars to pass that identical point?

A. Yes, sir. The haulage road for ore is driven on the shortest, most direct route regardless of grade, and for that reason the slope came straight on over this bank or high point here.

Q. Yes.

A. We had a hoist set up on top of this bank that picked cars up on the low side and pulled cars around here and dropped them into a wye at the foot of this hill where another engine took them to the surface.

Q. Referring to a question asked on cross examination of Mr. Harper with respect to the process of haulage of ore from the nuck to the top, inquiry was made about how many changes were made from a direction—whether that was a direct trip or whether there were several operations involved. Can you answer that question?

A. Yes, there are several operations involved, due to the hilly, rolling nature of the ore seam; the grades are undulating; you go down and up like this. It is necessary to handle some ore as many as five times,—ore cars, I mean, from the time it is loaded until it reaches the surface.

Q. I will ask you, Mr. Costner, with respect to these indulations you find in the Sloss Mine, is that greater in degree than it is in other ore mines or rather in the ones you have been in and know?

Mr. Harris:
We object.

The Court:
I don't know that is material, Mr. All.

Mr. All:
I didn't know—

The Court:

It doesn't make any difference.

Q. That is due to the natural dip of the ore, is it?

A. Right.

Q. Now, you have stated here that you came—when you came over there in 1935 and prior to 1938, that your man trip ran down to about 48?

A. Right.

Q. Now, I will ask you whether or not at the present time and for some time in the past, whether or not there is another interval of haulage of the men?

A. Yes. The men get off this top slope at 48 yard, the same point at which they have unloaded for a long, long time, and now walk approximately 500 feet to the 55 nuck or 55 wye, we call it. There they board another man trip at this point and ride down to 74 yard, approximately 2000 feet.

Q. That is a 2000 feet ride?

A. Right.

Q. Now, what was the occasion for the installation of the second man haul?

A. That was put in at the request of representatives of the employees, who asked that we haul the men this additional distance, which we agreed to do so.

Q. Was that in process of negotiation?

Mr. Harris:

We object to what it was in process of, if the Court please.

Q. When was it asked, the occasion of the request you spoke of?

Mr. Harris:

We object. He has stated there was a request.

The Court:

Just a minute. When was that change made?

The Witness:

1939.

Q. I will ask you in what form the request was made and by whom it was made.

Mr. Harris:

We—he said the request of the men, I believe, a moment ago, and we object to who made the request, if the Court please.

The Court:

Your question is not specific, Mr. All.

Mr. All:

I am trying to avoid leading.

Q. I will ask you was it made by any committee or anybody representing the men,—

Mr. Harris:

We object.

The Court:

Overruled.

Q. —and if so, what committee was it?

A. It was made by the regular plant committee in the form of regular negotiation at the Sloss plant office.

Q. At the Sloss plant office?

A. Yes, sir.

Q. What organization was that mine committee representing? Who did it consist of?

A. They were the committee of the Local 109, International Union of Mine, Mill & Smelter Workers.

Q. That is all right. Now, Mr. Costner, when the men went to what you call the pit mouth—I want to ask you this question: In connection with your extension of your haulage there, when you say that was done at the request of the committee of the men, committee of the—

The Court:
You have been over that.

Mr. All:
Well, I am introducing another question.

Q. Did they ask to be paid for the travel time at that meeting?

Mr. Harris:
We object to that, if the Court please.

The Court:
Overruled.

A. They did not.
Q. They did not?
A. No, sir.
Q. All right. Mr. Costner, all your underground men used carbide, didn't they?
A. Yes.
Q. Used carbide lights?
A. Yes.
Q. Now, at 1938,—I am getting at the time and you give the inclusive dates,—at 1938 and prior to that time and since that time through 1938 where was that carbide secured by the men?
A. Usually at the company commissary but also at any point the miners desired to purchase it.

Q. Did they bring it with them in the morning, wherever they got it?

A. They did.

Q. Were they required to get it at the company commissary or from the company at all?

A. They were not.

Q. And they took that with them on the trip down, the carbide?

A. Right.

Q. Now, was there anything else that the men took down from the pit mouth where they caught the trip down to the point where they were unloaded?

A. As a general rule, no.

Q. As a general rule, no. Now, where were the supplies that the production men used at their places of work?

A. They would be delivered to the working face at their request.

Q. How did they make that request?

A. They would ask the section foreman or probably notify the chainer they did need some particular item or supply. That was the general rule. There would be some exceptions to that rule.

Q. All right. When that requisition or request was honored, what employee or employees did the work of delivering it at the working place?

A. Some member of the service crew, usually the chainer?

Q. Where were the supplies kept, first?

A. Well, at the slope bottom there was a box of—

Q. I am talking about before they were delivered down in the mine. Did you have a surface supply house?

A. Yes.

Q. Where was that?

A. It was nearer Number 1 slope than it was Number 2 on the surface.

Q. How were these supplies taken from the supply house to the pit mouth?

A. By truck.

Q. By truck. Now, what men took them there? Were they surface men or men whose business was underground?

A. Always surface men.

Q. Always surface men?

A. Yes, sir.

Q. When it was taken to the pit mouth what was done with it?

A. They were loaded in the ore car by the tipple surface crew and sent underground, and it might be they would be sent to the particular place that requested them without being unloaded at the bottom. If that particular trip was not going to the particular place where the supplies were needed, the chainer would unload it and load it into other cars that would be going into the section where the supplies were needed.

Q. What supplies are you speaking of? Are you speaking of all the supplies and appliances the miners used?

A. Appliances, yes. I am not speaking of explosives.

Q. I am speaking of tools.

A. It includes tools.

Q. And you include all tools they use?

A. Right.

Q. Now, with respect to powder, where would—where was the powder kept?

A. The powder was delivered to the surface by the explosive company from whom it was purchased, and placed into regular powder cars. These cars were locked and kept on a spur track on the surface until the evening shift, at which time it was carried underground to the magazine and by service men placed within the magazine in the mine.

Q. Now, where was that magazine, at what point in the mine?

A. There are two of them. One is at 62 left, which has not been used for several years, and the present magazine is at 78 right, both on Number 2 slope.

Q. Now, where—how does that powder—how does that powder get to the working place of the production crew?

A. One member of the crew is designated for the purpose of transporting the powder from the magazine to the working place. This man is the drill helper. He gets the powder at the magazine and puts it in a bag or sack and carries it into the working place.

Q. Now, what kind—Is that powder sticks of dynamite?

A. Yes, sir.

Q. It is in sticks, is it?

A. Yes, sir.

Q. Now, how much is taken at once,—at a time?

A. Nearly always a 50-pound case; in rare instances there might be two cases.

Q. But ordinarily one case?

A. And at times two.

Q. Now, what times does that man get the powder from the powder house?

A. At seven o'clock. At work time.

Q. In the morning?

A. Yes.

Q. Is seven o'clock work time?

A. It isn't now.

Q. That is when work commences?

A. It isn't now.

Q. I mean was it work time in 1938, prior to that time and since that date—

A. Yes, sir.

Q. Up to May 1, 1941?

A. Yes, sir.

Mr. Harris:
We object to what was work time. He might tell what happened at seven o'clock, but what is work time is a conclusion.

The Court:
Let him state when they started and ended.

Q. What is the time when the production man went to work?

Mr. Harris:
That is the same question. The question is when he went to the mine and when he went down.

The Court:
No; confine it to when he worked.

Q. Where and when did his work day commence?

Mr. Harris:
We object to that, if the Court please.

The Court:
Overruled.

A. For the day shift at 7 o'clock. Did you say where?
Q. Yes, sir.
A. At his place of work at the face.
Q. That is the production men?
A. Right.
Q. What about the underground service man; where did his work commence?
A. At his place of work also, which might vary from day to day, depending on what work he was performing, but always at his place of work.
Q. But always at his place of work?

A. Yes, sir.

Q. What time did he commence his work?

A. Seven o'clock.

Q. You say the man got to the powder magazine at 7 o'clock?

A. The man that got the powder.

Q. Got the powder at seven o'clock?

A. He might have gotten there a few minutes before, but the powder was issued at seven.

Q. State whether or not the man got the powder usually on his way down to work?

A. Always.

Q. What if that man got late to his working place?

A. He was always late.

Q. Always late?

A. He got his powder, and it would time sometimes twenty or thirty minutes possibly after he got his powder to get to the place where the rest of the crew was at work.

Q. Well, he got the powder, as I understand you, then, after the shift began working?

A. Right.

Q. And within his work time?

A. Right.

Q. Yes, sir. Now, about the oil—

A. The oil—prior to 1938—

Q. Prior to 1938 and up to 1938 and since that time up to May 1, 1941?

A. Well,—

Q. If there is a difference in the custom from the time you got there in 1935, you can indicate the time and change.

A. There is no difference in the method of dispensing oil to the men that use it. There is a difference in the point at which they get it as compared to a few years ago.

Q. All right. When you say now you mean prior to May 1, 1941?

A. Right.

Q. All right. Well, just tell us when and where they got it and how they got it.

A. Several years ago there was oil stationed on the 48 yard that—to which drums of oil were brought from the surface and emptied into the oil tank.

Drill men coming out of their place on the preceding afternoon would leave an oil container at that point; and on the way back to work the next morning they would pick up a can of oil that they filled and carry it in to their working place.

Q. How many men in a crew would get the oil for the crew?

A. One man.

Q. One man? What size container did they take that oil in?

A. Usually a one-gallon oil can.

Q. Did you state he got the oil himself out of the tank?

A. Yes, sir.

Q. And took it—

A. Yes, sir.

Q. —to the working place?

A. Yes, sir.

Q. What time would that be done; what time did he get that oil?

A. He would get that after he unloaded from the man trip and on his way to the working place.

Q. And on his way to the working place?

A. Right.

Q. That was a gallon of oil?

A. Never over that; lots of times less.

Q. How long would a gallon of oil ordinarily last a crew?

A. That would depend primarily on the condition of the machine he was using, but normally possibly an ordinary hand crew would require oil every other day or twice a week.

Q. Twice a week, so that process of a man getting oil was not daily?

A. No, not for any individual man. Somebody got oil every day.

Q. I know, but I mean take it for the crew, was it daily for the crew, even? Did every crew get as much as a gallon of oil evey day?

A. No. They would get oil every other day, or possibly twice a week.

Q. What you mean to say, maybe somebody in one crew would get a gallon of oil today and somebody in another crew would get oil the next day, so there was hardly a day somebody didn't get oil?

A. Correct.

Q. Is that what you meant to say?

A. Yes, sir.

Q. Now, did you use in your drilling hangers or in your loading?

A. Machine loading crews required them.

Q. Who used a hanger? Sir?

A. Machine loading crews required hangers. The others did not.

Q. The others did not?

A. No.

Q. What about the wedges?

A. Wedges are required where hangers are used.

Q. And not required where hangers are not used?

A. No.

Q. So the hand loading crews did not require wedges?

A. No.

Q. Or hangers?

A. No.

Q. What would be the size of the wedges?

A. They would be approximately five or six inches long and possibly a half an inch thick at one end, and taper to nothing at the other end, and approximately an inch and a half wide.

Q. How much would a wedge weigh?

A. I would say half a pound.

Q. How many wedges were used to a hanger?

A. I would say two.

Q. How many hangers—in those mechanical loading places how many hangers were ordinarily used?

A. Only one is used at a time, but for convenience the men might put up as many as three or four for their own personal convenience.

Q. You mean as a matter of reserve?

A. No, just for the convenience to the operators. You might locate one here and move over six or seven feet and put another one up if he wanted to and if he had the hangers. Otherwise, he would have to take the hanger down and shift over if he was using the same hanger.

Q. So, while one was being used the others were idle?

A. Only one at a time could be used.

Q. Now, when were these hangers and wedges taken to the working place ordinarily?

A. When the man who needed it would request delivery of one.

Q. Who was it delivered at the working place by?

A. By service crews.

Q. By service crews?

A. Usually chainers.

Q. On company time?

A. Yes.

Q. Do you know whether or not at times the man would take such a thing as a wedge down himself while he was going into the mine?

A. Yes, they have done that.

Q. They have done that?

A. Yes.

Q. How do they take them?

A. Put it in their pocket.

Q. Put it in their pocket?

A. Yes, sir.

Q. Is it burdensome?

A. No; small piece of iron about that long (indicating).

Q. What about the hanger?

A. Well, he wouldn't put that in his pocket. That is about, maybe, as long as this rule, not hardly so long, made out of one and one-half inch square steel at one end and tapered to the other end. It would weigh probably a couple of pounds, two or three pounds.

Q. How long would a hanger last ordinarily?

A. It would depend on the particular crew and the location where it was being used. Normally one would last a week or ten days before it would become bent or lost or broken. On the other hand, some other crew might require one every other day possibly.

Q. What about the wedges?

A. About the same relationship as to the hangers.

Q. About the same thing?

A. He would probably use more wedges than he would hangers, probably would.

Q. Did you use in drilling at Sloss detachable bits?

A. Not as a common custom. We have experimented with detachable bits in that mine, but never in more than just one place.

Q. You have never used them consistently—

A. No, sir.

Q. In the mine?

A. No, sir.

Q. Where are your—ordinarily when the tools are first taken to a working place—when originally taken to the working place, how are they taken there and by whom?

A. They are taken in on empty ore cars by service men and unloaded in that place by these men—

Q. All right.

A. —or, if the car goes directly into the face without being handled anywhere else, the man that is using it would probably unload it at his place.

Q. At his place?

A. Yes, sir.

Q. Besides what you have mentioned, is there anything else that the men take down themselves on occasion besides what you have mentioned?

A. As a common thing I know of nothing else. Of course, there might be some instances where a man might take something else like an electric light grobe or something of that sort, and he can have delivered, though, to his place anything that is needed for the operation of his place.

Q He can do what?

Mr. Harris:

We object to that. That was a voluntary statement, not responsive to the question.

The Court:

Sustained.

Mr. All:

Judge, did you rule on that?

The Court:

Sustained.

Q. I will ask you if a man cannot have, by request, anything he needs at his working place delivered by the company through service men or other men working on company time?

Mr. Harris:
We object to that.

The Court:
Overruled.

Mr. Harris:
Time of delivery and delay involved—

A. He can.

Q. All right. I will ask you whether or not any of these things such as you have spoken of that you say the man on occasion may take down, if that is voluntary on their part?

Mr. Harris:
We object to that, if the Court please.

The Court:
Well, you mean carry things?

Mr. All:
Yes, sir.

The Court:
You mean supply them?

Mr. All:
The question is whether they are required or whether they do it voluntarily on their own part.

Mr. Harris:
We object.

The Court:
Ask him if they are required to do it.

Q. Are they required to take any of these tools or appliances into their working places?
A. They are not.

The Court:
Are they required to take oil?

The Witness:
No, sir. They could have that delivered if they wanted to wait for it. It is the usual custom, though, they do carry it.

The Court:
We will take just a few minutes recess.

(Thereupon proceedings were in recess from 3:00 P. M. to 3:10 P. M., when proceedings were resumed as follows:)

Mr. All:
If the Court please, I don't know whether I finally introduced this map, but I want to introduce it.

The Clerk:
Yes, you offered it, Sloss Exhibit 10.

The Court:
The map is in.

Q. Will you put up this map of the Ruffner mine, please?
A. Yes, sir.

(Thereupon witness places map on blackboard.)

The Clerk:

Do you want to introduce that at the time?

Mr. All:

Let's see. Mark that—

The Clerk:

That will be Sloss Exhibit 11.

Mr. All:

—Sloss Exhibit 11.

(Thereupon a map entitled "Map of Ruffner Ore Mine, Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama, scale 1 inch equal 100 feet," was marked Sloss Exhibit No. 11.)

Q. Mr. Costner, do you know something of the history of the Ruffner Mine of the Sloss Company?

A. Yes, sir.

Q. When it was operated and when it was closed down and when there was a resumption of operations?

A. Yes, sir.

Q. Well, tell us.

A. The mine was originally—Ruffner Number 2, the mine which is in operation there now, was originally opened in 1910 and worked until 1929, at which time operations were discontinued. The mine remained idle until 1940. In July of last year production was again resumed in that mine.

Q. All right, sir.

A. That followed a period of approximately one year in rehabilitating the property and making it ready for operation.

Q. And covering a part of what time, what year?

A. '39 and '40 the mine was being put in shape to operate.

Q. Do you know when—

A. It actually began operations in 1940, in July.

Q. July, 1940, is when production began?

A. Yes, sir.

Q. Actual production?

A. Yes, sir.

Q. You say Ruffner Number 2. Does that map show any other opening?

A. No, sir.

Q. Will you point out the slope?

A. That is the entrance to the mine slope, which is driven about a 10 percent slope approximately 4000 feet. The slope is stopped at approximately this point (indicating on Sloss. Exhibit Number 11.)

Q. Will you indicate by some word, or point out where is the mouth of the slope of the mine?

A. There it is right there opposite the word "Portal".

The Court:
What word?

The Witness:
Portal.

Mr. All:
Opposite the word "Portal".

Q. Now, how far had that slope been driven when operation of that mine was discontinued in 1929?

A. As shown on the map here just a little bit below 49 left. The slope has not been driven since—

Q. Has the slope been extended any since the work has been resumed?

A. No, sir.

Q. Now, the property beyond where the slope has been driven,—does that below to the Sloss Company?

The Court:

What difference does it make?

Mr. All:

Well, I just wanted to show—to get at the picture. I want to show whether they have or have not any prospect of operations there.

The Court:

Well, I don't think that has anything to do with the case.

Q. Now, where—now, will you point out the present workings of Ruffner, Mr. Costner?

A. All the places colored in red.

Q. Are working places?

A. Are working places now.

Q. All the places colored in red?

A. Yes, sir.

Q. I notice there are some diagonal lines here in red starting near the pit mouth and running diagonally. What are these?

A. That indicates a haulage route that is driven across the old headings, the old workings. The old workings were driven years ago, but this colored in red has been driven since July of last year for the purpose of concentrating your haulage system to one central haulage engine on top.

Q. Are those haulage ways yet in use?

A. They are.

Q. The red indications on those haulage ways, what do they indicate?

A. The point indicated in red is a pillar of ore. This point colored in red indicates the haulage ways have been cut through those pillars and we have robbed out the ore to get the haulage ways.

Q. You have cut through those pillars?

A. We cut through them, yes.

Q. When operations were resumed, at what points did you run a mantrip if you ran a mantrip?

A. You mean after operations were resumed?

Q. After operations were resumed, yes.

A. The lowest point we ran a mantrip was 21 left, but we stopped that mantrip at 14 right and the men working there—

Q. Let's get that so we can indicate it. You had a stop for the mantrip at what heading?

A. The first point was 14 right.

Q. The men that got off there--why did some of the men get off at that point?

A. These were the men that worked at some of the places shown in red at that point.

Q. Shown in red to the right going down the slope?

A. Right.

Q. Looking down the slope?

A. Yes, sir.

The Court:

How far was it from the landing place to the points where they worked?

The Witness:

About a thousand feet.

The Court:

Walked?

The Witness:

Yes, sir, walked about a thousand feet.

Q. How far is that place where they unloaded from the pit mouth?

A. Around 13 or 14 hundred feet.

Q. Now, your next stop is where?

A. At 21 left,—there (indicating on Sloss Exhibit No. 11).

Q. Now, what men got off at 21 left?

A. Those men working in this section here shown in red.

Q. How do you indicate those sections in red you have just pointed to? Are they to the left of the slope?

A. They are to the left and are called the 21 slope places.

Q. They are to the left and are called 21 slope places?

A. Yes, sir.

Q. I notice to the right of the slope some working places about opposite 24 and 25 right. Where do the men get off who go to those places?

A. Until a few months ago those men got off at 21, but now the trips run further down the main slope and they unload at the mouth of 26 right.

Q. Right here?

A. Yes, sir.

Q. How far is it from the unloading point for the men who worked in these left working places,—in these working places to the left of the slope from the place where they unload?

A. The maximum, 1100 feet.

Q. Now, that is the largest concentration of working places you have over there as indicated by the map, is that true?

A. Absolutely true.

Q. Now, how far is it from that unloading point to these working places about opposite 24 and 25 to the right?

A. About 500 feet.

Q. About 500 feet. All right. Now, where did the men get off the man trips who worked in these working places down near the bottom of the slope?

A. At the present time they get off at 37 left,—this point there. Prior to a few months ago they got off at 21 and walked to there.

Q. All right. When they got off at 21 and walked to their working places approximately how far did they have to walk?

A. 1200 feet.

Q. How far do they have to walk now?

A. To the face of each place is approximately four—not over 500 feet.

Q. Now, you testified, Mr. Costner, about the layout and method of mining employed at Sloss at Bessemer. Could you point out the differences, if any, in the general mine plans at Ruffner and Sloss?

A. This mine here has only been in production part of—well, one year exactly now, and none of the places are driven to the property line and no pillaring is done in this mine. All the work in this mine is development work, practically all of it, with the exception of winding up some of the old work that was left when the mine was closed down, so there is very little stopping done in this Ruffner mine at the present time. Most of it is development work, driving headings and so forth. At Sloss practically all the work is stoping or pillaring with some heading driving.

Q. Now, where are the changing facilities at that mine? I mean changing clothes facilities, corresponding to what has been spoken of in this hearing as a bath house?

A. It is shown on the map at this point right there, which is approximately five or six hundred feet from the mine entrance on the surface.

Q. On the surface?

A. Yes, sir.

Q. How many men are working in that mine?

A. About 165—no, 165 work at that plant. Only about 120 odd of them work underground.

Q. 120 of them work underground. Of that number, how many are production men and how many service men?

A. Production, approximately 90 men, and service men would run around thirty or forty.

Q. What sort of lights do the men use at Ruffner?

A. Electric battery lamps.

The Court:

What kind? Electric?

The Witness:

Electric, yes, sir.

Q. Where do the men get their lighting facilities that they use there?

A. There is a lamp house built immediately adjacent to the portal, the mouth of the mine. They are issued a lamp there as they go in the mine.

Q. Well, what does that consist of, what they deliver to them?

A. What does the lamp consist of?

Q. Yes.

A. There is a battery with a rubber cable approximately three feet long connecting the battery to the head lamp in which there is a globe; looks like a miniature automobile headlight.

Q. How are they carried?

A. It has a hook for attaching to the cap just like a carbide light.

Q. So, instead of the men carrying a carbide light as they do at Sloss, at Ruffner they have different lighting facilities?

A. Yes, sir.

Q. Who furnishes that light?

A. The company furnishes the light. The men pay a rental for the use of it.

Q. Now, what about the supply house at Ruffner, and I am speaking for the entire period now, up until May 1st, that that mine has been in operation the last time?

A. The supply house is located on the surface approximately halfway between the bath house and the portal, and would be approximately 300 feet from the mine entrance.

Q. Is there any difference in the tools that are used in the working places of the production men from those used at Sloss?

A. Yes. Drilling at the Ruffner mine is off of columns, whereas at Sloss it is off of tripods, and at Ruffner the men use detachable bits, and smaller drill steel. Those are the major differences.

Q. All right. Do you have mechanical loading there?

A. Yes, sir.

Q. To what extent?

A. We have five sets—small sets in comparison with those found at Sloss.

Q. How do you—the number of handloading crews compared with the number of mechanical loading crews—

A. We have five mechanical crews and at the present time we have about maybe 15 handloading crews at the present time. Those have been increased.

Q. Do you use the same sort of hangers and wedges in the working places where you use the drag?

A. Yes, except the hanger may be a little longer than the one used at the other mine.

Q. What about the wedges?

A. The same.

Q. All right, sir. Now, who moves or takes the drilling apparatus and the tools that the production men use to their working places at Ruffner?

A. With the exception of the bits, all the stuff is delivered to the men. The driller gets his own detachable bits.

Q. The driller gets his own detachable bits?

A. Yes, sir.

Q. How long does a bit last?

A. One bit might last him a week, depending on what kind of conditions he is drilling in. On the other hand, he may want to change his bit every day for a while.

Q. What is the size of those bits, and the weights?

A. A set of five, which is the number used, would weigh approximately two pounds.

Q. What size are they?

A. In actual size they are an inch and a half.

Q. How are they carried by the men?

A. He has a wire, and they are strung on a wire, and he carries this by a loop the same as you would a bucket of water.

Q. Where does he get those bits from?

A. You mean now?

Q. From the time the company started operating, prior to May 1st?

A. Prior to May 1st he got them off a board at the shop approximately 300 feet from the pit mouth. Since May 1st he gets them off a board at the pit mouth.

Q. At the pit mouth?

A. In the lamp house.

Q. Are those bits brought out; are they repaired or sharpened or anything down to them, or are they discarded?

A. Both. If they are in such shape they cannot be used, they are discarded, otherwise, they are sharpened and fixed so they can be used again.

Q. You say with that exception all the other tools are taken to the working places by the company?

A. Right.

Q. Is that through other men on company time?

A. Right.

Q. That is correct, is it?

A. Yes, sir.

Q. Now, what about the powder? How is the powder gotten to the working places there?

A. The drill man or head miner tells the clerk on the surface what powder or the amount of powder he needs.

This powder then is delivered at the—upon the instruction of the clerk by the truck to the pit mouth and is loaded by company men or service men into mine cars and delivered at the face where the man uses the powder.

Q. So, then, all the powder is delivered at the working place there?

A. Right.

Q. Yes, sir. Now, what about the oil?

A. We have a system similar to Sloss in what we have a tank located adjacent to the pit mouth. The miner gets his oil on the way into the mine and carried it down with him.

Q. Now, what time does he get it?

A. What time?

Q. Yes, sir.

A. He gets it on his way to the portal, which would be before seven o'clock.

Q. Before seven o'clock?

A. Yes, sir.

Q. What time—what is your time for beginning work for the production men and the inside service men at Ruffner?

A. Prior to May 1st it was 7 o'clock at the working face or place.

Q. Wherever that was?

A. Yes, sir.

Q. What time do these production met get the oil?

A. He would get it between 6:30 and 7:00 o'clock on his way to catch the man trip.

Q. No, is it or not true that one man does that, one man in a crew?

A. That is the proper proceeding.

Q I mean it doesn't take but one man in a crew to do that?

Mr. Quinn:

We object, if the Court please. Let him state how they do it.

The Court:
Overruled. He had already answered it.

Mr. All:
Well, I think he probably had.

Q. Now, is there anything that the service men, the inside service men take to their working places from the surface except the light or lighting system, carbide at Sloss and the lamps such as you have described, at Ruffner?

A. No.

Q. Nothing at all?

A. No.

Q. How many—going back to Sloss for the moment, how many men do the company employ as inside men at Sloss Mine?

A. There are approximately 230 men on production, and approximately 130 or 135 on service.

Q. You mean inside service?

A. Underground.

Q. Whose working time starts underground?

A. Right.

Q. Is that right?

A. Yes, sir.

Q. Is it or not true at Sloss, as you have just stated with respect to Ruffner, that the underground service men at Sloss never take anything into the mire except the carbide?

A. Possibly some pocket tools, something that will go into the pocket.

Mr. Harris:
I thought he went into that.

Mr. All:
I just left that one out. I just asked about the service crews and carbide.

Q. Is that occasional or with any regularity?
A. Occasional.
Q. Mr. Costner, I am—

Mr. Harris:
Let's see it.

(Mr. All hands paper to Mr. Harris.)

The Court:
How is the surface in the Sloss Mine where these men work and walk?

The Witness:
You mean the walking surface?

The Court:
Yes, sir, from where they get off the trip and go to where they work.

The Witness:
You mean is it slippery or rough?

The Court:
Yes, is it slippery or smooth?

The Witness:
It isn't in the sense it is slippery or unbroken.

The Court:
Is it like a railroad?

The Witness:
That is what it is, a small, narrow gage railroad.

The Court:
Between the rails have you got anything in there that— have to got the cross ties?

The Witness:

We have got the cross ties and there is an accumulation of ore dust over these things so there is no difficulty for a man to maintain his footing at any point on there.

The Court:

What is the grade outside of where you go around that hill you talked about?

The Witness:

They vary from 20 degrees to flat.

The Court:

What about Ruffner, with reference to the condition of the track?

The Witness:

There are no man ways open for travel at Ruffner. They are there, but the mine was filled with water until a year ago, and these old workings are more or less muddy and filled with silt deposited by the water, but the part the men travel is not slippery and very good walking. There is no difficulty in walking at any point in the mine.

The Court:

What degree of incline?

The Witness:

About ten percent.

The Court:

Is that going to work or coming from work?

The Witness:

It is downhill to work. I would like to add this: That where these men unload in the mantrip they walk out on a horizontal plane almost. They get off at the slope and walk out on a water level, the majority of them. Some few of them do walk on this pitch.

The Court:
Are you ready?

Mr. All:
Yes, sir.

The Court:
Go ahead.

(By Mr. All):
Q. Mr. Costner, I am handing you here three sheets that are fastened together. The first two seem to have been fastened, and then the third sheet fastened to the other two. I will first ask you about what the first two pages are—

Mr. Harris:
Now, Mr. All—

Q. —or the long sheets?

Mr. Harris:
—I notice he has made a memorandum, or somebody has made a pencil memorandum on the first sheet, and on the last sheet, if that is the one you showed me.

Mr. All:
Yes.

Mr. Harris:
Of course, they were not handed to him with the memorandum on them.

Mr. All:
No.

Mr. Harris:
The memorandum would be a self-serving declaration.

Mr. All:
It couldn't be a self-serving declaration unless it were in his favor.

The Court:
You are not insisting on it?

Mr. All:
I am not insisting on it at all.

Q. What are these first two pages?

The Court:
Not shown he made the memorandum?

Mr. Harris:
They speak for themselves.

Mr. All:
I can't show it yet. There are two—

Q. Did you make this memorandum on this first page and on this lower sheet, the next one?
A. I did.
Q. I will ask you about these first two pages in typewriting, the long pages typewritten, what is that?

Mr. Harris:
Wait a minute. It speaks for itself.

Q. Was that given to you or handed to you by anybody?

A. It was.

Q. When?

A. On August 3, 1938.

Q. By whom?

A. By the Mine Committee at the Sloss Ore Mine.

Q. Who was that committee, do you remember?

A. The members of the committee?

Q. Yes.

A. There was John Hill, O'Neal, Jesse Gaines,—that is all I remember now.

Q. Do you know whether they were—they were the Mine Committee; do you know whether they were connected with any union or not?

A. They were the local representatives of Local 109, International Union of Mine, Mill & Smelter Workers who handled relations between the Union and the company as representatives of the Union.

Q. You say they handed you these first two sheets?

A. They did.

Q. Now, how many paragraphs are on that sheet?

A. Thirty, I believe.

Q. Are they numbered?

A. They are.

Q. Thirty?

A. Yes, sir.

Q. Now, was that signed when it was handed to you, or is this the identical paper that was handed to you?

A. That is the identical paper.

Q. It has got thirty paragraphs in it?

A. Yes.

Q. Now, the other on this sheet, in typewriter at the top, paragraph Number 31, and the memorandum, when was that handed to you?

A. On August 18th by Mr. O'Neal at the Sloss Blacksmith shop.

Q. All right, sir. Did he say anything to you when he handed you that later paragraph?

A. He asked me to affix this to the original paper that had been given me before August 18th and informed me that this item 31 had been left off the original proposal, and they wanted to include it for consideration.

Q. All right. The other thirty being the paragraphs on the first two pages you had before you?

A. Right.

Q. Is that right?

A. Yes, sir.

Mr. Harris:

I couldn't hear that question. You were in a foot and a half of the witness and he talked a little low.

Mr. All:

I asked him if the other thirty grounds he wanted this added to was this paper.

We offer that in evidence and substitute a copy.

The Clerk:

Sloss Exhibit 12.

(Thereupon a document consisting of 31 numbered paragraphs, the first being "That all employees of Sloss Red Ore Mines be given a 10 percent increase in pay," and the last, or 31, being "That the company shall deduct from all employees on contract labor a nominal sum, the same to be paid to the check weighman," was marked Sloss Exhibit Number 12.)

Mr. Brodie:

Is he offering that in evidence?

The Clerk:

He has.

Mr. Brodie:
May I interpose an objection to that, Your Honor?

The Court:
Yes, but it is overruled.

Mr. Smith:
Mr. All, just what does it purport to be?

Mr. All:
I am going to let you read it.

The Court:
It speaks for itself.

Mr. All:
I am going to give you a copy. If I asked that question somebody would object.

Mr. Harris:
I would.

Mr. All:
Mr. Harris would, and I think the best way out of it is to give you a copy.

Mr. Smith:
All right.

Q. Following the presentation of these papers, Mr. Costner, did you have any negotiations with these men?

A. We did.

Q. Do you remember how many times you met them?

A. We met them twice before we signed a contract.

Q. Now, what—did you reach an agreement with them?

A. Yes, sir.

Q. Who was with you as representing the Sloss Company in those negotiations?

A. Mr. Roy Ratliff, and Mr. Russell was present,—Joe Russell.

Q. Who was—I mean—you say you reached an agreement?

A. We did after about two other meetings.

Q. Now, in those meetings, Mr. Costner, were the matters that were set forth in this Sloss Exhibit 12 the subject matter of discussion?

A. They were.

Q. They were, and you say after two or three meetings or two meetings, whatever you said, you reached an agreement?

A. Two meetings; I believe we signed on the third meeting.

Q. All right, sir. Now, in the—in those discussions was there any mention made or any suggestion made by the representatives of the employees or the representatives of the union with respect to the matter of worktime commencing at the usual place of work or at the pit mouth or anything about that?

A. No, sir.

Q. Anything about the computation of time so as to include travel time discussed or mentioned?

A. No, sir.

Q. What agreement did you reach after those negotiations?

Mr. Harris:

He said they signed an agreement, and if they signed an agreement—

Mr. All:

That is all right. This is it. I just wanted to show—

Mr. Harris:
May I see it.

Mr. All:
That expresses the agreement.

The Court:
That is signed by representatives of the company?

Mr. All:
Yes, sir, and the union.

Mr. Harris:
No, sir; it is signed by representatives of the company, but not by the union, by representatives—

Mr. All:
They call it that, but I am still contending probably they had something to do with the union.

The Court:
All right; let's proceed.

Q. Is this the agreement as arrived at?
A. Yes, sir.
Q. Is that the original instrument?
A. Yes, sir.

Mr. All:
I want to read this to Your Honor, read this into the record.

"Continuation of Sloss Red Ore Mine Working Agreement.

"Confirming understanding reached at conference between representatives of employees of our Sloss Red Ore

Mine and the management with reference to Working Agreement dated September 13, 1937, and which expires September 13, 1938, it is hereby agreed to extend this agreement for twelve months and expiration date is hereby changed to September 13, 1939."

And it is signed by Sloss-Sheffield Steel & Iron Company by Ben Davis, and Employees Committee by John Hill, Jesse Gaines,—I can't read the rest of them.

A. J. W. Gilbert and W. A. O'Neal.

Q. J. W. Gilbert and W. A. O'Neal; dated the 3rd of September, 1938.

That is Sloss Exhibit Number 13.

The Clerk:

Number 13.

(Thereupon the said document just described and read into the record was marked Sloss Exhibit No. 13.)

Mr. Harris:

The reason I didn't object to this, Judge, was on account of the date. That is dated September 3rd or 13th, 1938. That is the reason I didn't get up and interpose a special objection.

Mr. All:

I want to substitute this copy for the original.

The Court:

Are you through?

Mr. All:

No, sir. I have another year or two here.

Mr. Harris:

May we see it?

Mr. All:
I will hand it to you in just a minute.

Q. Mr. Costner, I want to hand you that and ask you if you know what that is.
A. That is a proposal—

Mr. Harris:
No, no, we object. He asked you if you knew what that is. He didn't ask you—

Q. Did that come into your possession?

The Court:
Do you know what it is?

Q. Do you know what that is?
A. Yes, sir.
Q. Did that come into your possession?
A. It did.
Q. When did it come into your possession?
A. In August, I believe, of 1939.
Q. August of 1939?
A. I am sure it was that time.
Q. Who delivered it to you?

The Court:
Who gave it to you?

The Witness:
The local committee at the Sloss Red Ore Mine.

The Court:
Committee of whom?

Q. Consisting of whom?

A. A committee of employee representatives, Mr. Hill, Mr. O'Neal, Jesse Gaines and probably one or two others.

Q. Do you know what connection they had with the International Union of Mine, Mill & Smelter Workers or any local of that organization?

A. They were the local officials of the union, Local Number 109. Designated as the Sloss Red Ore Local, International Union of Mine, Mill & Smelter Workers.

The Court:

What is the date of that?

Mr. Bronaugh:

This is undated, this thing here is. I don't know what date he got it.

Q. Mr. Costner, you stated you got this about when?

A. I think in August of 1939.

Q. August of 1939? You mean by you think—you mean that is your best recollection?

A. Yes, sir.

Mr. All:

All right, sir.

If the Court please, I want to call attention to the fact and read this into the record just to—with respect to its bearing on this proposal; that this proposal—

Mr. Harris:

Just a minute. If I may object before you read anything into evidence—

The Court:

Have you introduced that in evidence?

Mr. All:
I thought I had.

Mr. Harris:
No, he hasn't. I had been waiting to object.

Mr. All:
Identify this.

The Clerk:
Exhibit 14.

The Court:
I will hear your objection.

Mr. Harris:
The gentleman on the stand says that was handed to him in 1939, so our agreement with which we began the case to save time, my regular objection started in October 24, 1938, as your Honor will recall, and therefore, I have to object to this to preserve my theory of the case.

I object to the introduction of that paper for the reason that no private agreement, no effort to negotiate, no employee representative, whether he represents the union with his authority, or whether he represents a union that was recognized or not recognized, that individual cannot by private agreement nullify a solemn act of Congress, and it is wholly irrelevant and immaterial and has no bearing in this case, and it is immaterial what documents we passed back and forth to each other either before October 24, 1938, or after October 24, 1938; that the Act of Congress governs; that the question in the case is a question of fact and that question of fact is for this Court to determine when did men working in underground ore mines actually start work, and it doesn't matter what that document says or anybody else on earth says. It is a question of fact for the Court to determine. Once that question of fact is determined, the Act of Congress controls, so we submit that is not admissible.

The Court:

I am going to overrule your motion,—I mean your objection.

Mr. Harris:

We except.

The Court:

It is true the sole question for me to determine, for the Court to determine in this case is what constitutes a workday or a work week, but I must admit there have been a lot of things that have come into this case from both sides I didn't see in the beginning where they had any relevancy in this case.

Mr. Harris:

I think it has spread out a lot, Judge.

The Court:

You take the investigation of the mines, the dust count and those kind of things,—it has gone into a sociological proposition. There were many things that have come into this case that were not apparent to me before the case started, and I am not prepared to say what bearing they will have in the case before it is over.

Mr. Burr:

Will Your Honor permit me to state our ideas of that kind of evidence?

The Court:
I think it has some bearing.

Mr. Burr:
We think if there is any ambiguity in the Act, one thing, in passing on hor to construe the act is how the parties themselves construed it.

The Court:
That is my idea on the evidence.

Mr. All:
I want to call the Court's attention to the fact this contract hasn't in it the same definition of the workday.

The Court:
What paragraph are you going to refer to? Let's get to that.

Mr. All:
Section 22 (a).

The Court:
Is it section or paragraph?

Mr. All:
Well, it is designated section.

The Court:
Section 22 (a)?

Mr. Quinn:
Of the contract?

Mr. All:
This proposal.

The Court:
Sloss Exhibit 14.

Mr. All:
"The day shift shall begin hoisting ore at 7 A. M. and quit at 3:15 P. M., and the night shift shall begin hoisting ore at 6 P. M., and quit at 2:15 A. M."

Now, that is the proposal.
I want to substitute a copy.

Mr. Harris:
Have you marked it as an exhibit?

The Clerk:
I have marked it, yes, sir.

The Court:
That is Exhibit 14.

(Thereupon a document entitled "Agreement" and consisting of 28 numbered sections, and not executed, was marked Sloss Exhibit No. 14.)

Q. Now, Mr. Costner, did you have any negotiations or discussions with the committee of the union or the committee of the employees after that proposal was submitted to you?

Mr. Harris:
Now, in order that I don't have to repeat, may I have that objection that I stated to Your Honor on all these questions after October, 1938?

Mr. All:
That is perfectly satisfactory.

The Court:

All right.

A. Yes, we had several meetings.

Q. And was the question of the portal to portal policy or the face to face policy discussed?

A. It was never mentioned.

Q. Never mentioned. The question of when work time commenced was not mentioned, you say?

A. No.

Q. Then later did you reach an agreement?

A. We did.

Q. Was that evidenced by writing or was it an oral agreement?

A. By writing.

Mr. All:

Here you are, Mr. Harris.

(Mr. All hands paper to Mr. Harris.)

Q. Did you negotiate the agreement, Mr. Costner?

A. I did.

Mr. Harris:

Well haven't you—You had one on September, 1939, just a minute ago. Wasn't that the last one we were talking about?

Mr. All:

It is to expire September 13, 1939. The other one was 1938 to 1939, and this one is '39 to '40.

Mr. Harris:

Well, the same objection as to the other one.

The Court:
Same ruling.

Mr. All:
There is no use to have him identify that. I introduce this in evidence as Sloss Exhibit—

The Clerk:
Sloss Exhibit 15.

Mr. All:
Sloss Exhibit 15, and I will substitute a copy.

The Clerk:
Yes, sir.

(Thereupon a document entitled "Agreement" dated September 9, 1939, and signed Sloss-Sheffield Steel & Iron Company, by Ben Davis; Sloss Red Ore Local No. 109, I. U. of M. M. & S. W., by John Hill, President, Jesse Gaines, Vice President, W. H. Gunter, Chairman Executive Board, and Van D. Jones, Board Member District Number 5, I. U. of M. M. & S. W., attached to which was one sheet entitled "Outside Rates", a second sheet entitled "Inside Rates," a third sheet entitled "Yardage Rates", and a fourth sheet entitled "Division of Tonnage Rate to Men of Crews, Hand Loaded Ore," was thereupon marked Sloss Exhibit No. 15.)

Mr. All:
I want to call the Court's attention in this connection 5 (a) of this contract contains this provision:

"Eight hours work per day shall constitute a day's work, and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period."

The Court:
That was the agreement as reached?

Mr. All:
That was the agreement as reached and signed.

Mr. Burr:
What is the date of that?

Mr. Bronaugh:
September 9, 1939, and runs to 1940.

Mr. All:
Yes, sir.

Mr. Burr:
It has a special clause for termination?

Mr. All:
It has a special clause for termination, yes, sir.

Q. Mr. Costner, I hand you this paper which—I believe I will present it—

The Clerk:
Sloss Exhibit 16.

Mr. All:
As Sloss Exhibit Number 16.

(Thereupon a document entitled "Agreement", and consisting of 23 numbered sections, and unexecuted, was marked Sloss Exhibit No. 16.)

Q. I will ask you if that was presented to the company through you or if you are familiar with that?
A. It was presented to me by the—

Q. By whom?

A. By the Committee at Sloss Ore Mines representing the International Union of Mine, Mill & Smelter Workers.

Q. Do you remember who composed that committee at that time?

A. The same men that had been on the Committee for several years, Mr. Hill, Mr. O'Neal and Jesse Gaines

Q. Do you know whether all of them were the same, or whether there were any changes at all or not?

A. Those three are the same. There may be some others in addition to those that might have been present.

Q. When was that presented to you?

A. August 30, 1940.

Mr. All:

I offer in evidence this instrument as evidencing the Union's proposal presented on August 30, 1940.

Q. Did you discuss the matter of a contract with the Committee?

A. I did.

Mr. All:

I want to call attention to this, if Your Honor please. It is Section 5,—the latter part of Section 5, after treating the eight hour day and the forty hour week, it has got this provision:

"Provided further, a day's work shall mean eight hours including the time entering and leaving the mines and exclusive of lunch period."

Q. In negotiating following that proposal, was that matter of work time discussed?

A. It was.

Q. Will you tell the Court what was said about it and to what effect it was discussed and with what results?

A. This request, with two other requests, were the major items that the union was insisting on being incorporated in the 1940 agreement.

Mr. Ratliff and I handled the matter for the company, and after several meetings we agreed upon all the major issues except this so-called collar to collar provision, and the company refused to accept the Union's proposal on collar to collar, and after the other items that they were insisting upon had been mutually agreed upon, they went back to their local and took some action there as to whether or not they would accept the proposal as submitted by the company.

In the meantime, we had submitted a counter proposal to theirs and—

Mr. All:

I want—I don't think I have offered in evidence this exhibit 16. I want to introduce this in evidence and substitute a copy. You have it marked?

The Clerk:

Yes, sir, I marked it all right. I understood you had introduced it.

The Court:

All right, where are we?

Mr. All:

I have shown them—There was a counter proposal, Judge, made by the company, and I am letting them read it.

Mr. Harris:
I don't understand exactly what this is. You will identify it?

Mr. All:
A sort of proposed contract.

Mr. Harris:
From whom to whom?

Mr. All:
Back to them from the Sloss Company.

The Court:
Let's get along, Mr. All.

Q. I will ask you—to save time, Crampton, at the expense of leading him,—if that is the company's proposal?

A. Yes, sir.

Mr. All:
I want to read—

The Court:
Is that exhibit 17?

Mr. All:
Sloss Exhibit 17.

The Clerk:
I haven't marked it yet.

Mr. All:
I will give it to you in a minute. I want to call your attention to Section 5 (a):

"Eight hours work per day shall constitute a day's work, and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period."

Mr. All:

That is the counter proposal.
Mark that—is it 17 or 18?

The Clerk:

17.

The Court:

That is the counter proposal referred to by the witness a few minutes ago?

Mr. All:

Yes, sir.

(Thereupon a document, the front page of which read as follows: "This agreement originally given to committee as a proposal from the company for the 1940-1941 agreement. It was taken up on 9/11/40, when a substitute contract was proposed and accepted. T. E. C.," and the second sheet of which was headed 1939-40 contract, which form of contract was unexecuted, and to which was attached one sheet entitled, "Outside Rates", a second sheet entitled, "Inside Rates", a third sheet entitled, "Hand Loaded Ore, places 18 feet or less in width, basic tonnage—35 tons per shift," a fourth sheet entitled, "Hand Loaded Ore, places over 18 feet in width, basic tonnage—43 tons per shift," a fifth sheet entitled, "Drag Loaded Ore, basic tonnage—100 tons per shift, 15-man crew," a sixth sheet entitled, "Drag Loaded Ore, headings only, basic tonnage—75 tons per shift, 7-man crew," and a seventh sheet entitled, "Sloss Red Ore Mine—Yardage Rates," was marked Sloss Exhibit No. 17.)

Q. Now, was there an agreement between—arrived at between you gentlemen representing the company and these men representing the employees?

A. There was.

Q. And I will ask you if this is the agreement as finally arrived at?

A. It is.

Mr. All:
All right, sir. I offer this agreement—

The Court:
Dated—

Mr. All:
—dated September 11, 1940, and signed by the—

The Court:
Well, that is Exhibit 18.

Mr. All:
Yes, sir. It doesn't make any difference—

The Clerk:
That is Exhibit 18.

(Thereupon a document entitled "Agreement", dated September 11, 1940, and signed by Sloss-Sheffield Steel & Iron Company, By Roy Ratliff, General Manager, and Sloss Red Ore Local Number 109, I. U. of M. M. & S. W., By John Hill, President, Jesse Gaines, Vice President, W. A. O'Neal, Chairman of the Executive Board, and Van D. Jones, Board Member, District Number 5, I. U. of M. M. & S. W., attached to which were sheets entitled, "Outside Rates", "Inside Rates," "Hand Loaded Ore, Places 18 Feet of Less in Width, Basic Tonnage 35 Tons per Shift, 5-man Crew," "Hand Loaded Ore, Places Over 18

Feet in Width, Basic Tonnage 43 Tons per Shift, 5-Man Crew," "Drag Loaded Ore," Basic Tonnage 100 Tons per Shift, 15-man Crew, 8 Men one Shift, 7 Men Opposite Shift," "Drag Loaded Ore, Headings Only, Basic Tonnage 75 Tons Per Shift, 8-Man Crew," and "Yardage Rates," was thereupon marked Sloss Exhibit No. 18.)

Mr. All:

And I want to call the Court's attention to the fact in that contract as finally signed there is this provision:

"Eight hours of work per day—" found on page 2, paragraph (a) under Section 4, reading, "Hours of Work:"

"Eight Hours of work per day shall constitute a day's work, and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period."

Now, I want to mark this as an exhibit.

The Clerk:

It will be Number 19.

(Thereupon a document dated Bessemer, Alabama, October 12, 1940, and entitled, "In Re: Sloss Red Ore Local No. 109, of International Union of Mine; Mill & Smelter Workers, District No. 5, and Affiliate of the Bessemer Smelters Council," being a resolution of said Local No. 109, with reference to the workday controversy, was thereupon marked Sloss Exhibit No. 19.)

Q. Mr. Costner, I hand you a paper here consisting of two pages that is marked Sloss Exhibit Number 19, and ask you if that came into your possession?

A. It did. This came through the mail to the company.

Q. It came through the mails?
A. Yes, sir.
Q. Did you get it?
A. Yes, sir.
Q. Do you remember about when you received it?
A. October 21, 1940.

Mr. All:

Now, Your Honor, would you like for me to read this? It is the resolution—

Mr. Harris:

Isn't that the resolution attached to the original bill of complaint?

Mr. All:

It is the same thing as attached as an exhibit to the original bill of complaint.

The Court:

Just introduce it.

Mr. All:

I want to offer this in evidence as Exhibit 19.

The Court:

Is that a resolution in printed matter?

Mr. All:

No, this is a union resolution demanding this back time.

Mr. Harris:

But that was attached to the original bill of complaint.

Mr. All:

Yes, sir; we set it up as an exhibit.

The Court:

That is described in the bill of complaint?

Mr. Burr:

Bill of complaint, yes, sir, as an exhibit.

Mr. All:

Have you got the substitute for that?

The Clerk:

Yes, sir.

The Court:

Is that all?

Mr. All:

Just two more exhibits Judge, and I am through.

The Court:

Hand over your next to these gentlemen and let some of them be looking them over. It is taking too much time.

Mr. All:

I want to offer this, Judge. I don't see it is necessary to identify it:

Q. Have you seen that, Sloss Exhibit 20?

The Clerk:

Sloss Exhibit 20.

Q. Being a letter from Mr. Van D. Jones, International Board member to Mr. Davis dated September 12, 1940.

A. Yes, sir, I received it.

Mr. All:

I want to offer this in evidence.

(Thereupon a letter dated Bessemer, Alabama, September 12, 1940, addressed to Mr. Ben Davis, General Manager, Sloss-Sheffield Steel & Iron Company, 3131 First Avenue North, Birmingham, Alabama, and signed Van D. Jones, International Board Member, was marked Sloss Exhibit No. 20.)

Mr. All:

Judge, do you want me to tell you what this is?

The Court:

No, sir. You can tell me the substance of it.

Mr. All:

That is what I mean. It is a letter stating by signing the contract they could not be precluded from claiming a collar to collar basis.

Here is Exhibit 21 which we want to introduce, which is Mr. Davis' reply to it.

The Clerk:

Sloss Exhibit No. 21.

(Thereupon a document dated September 14, 1940, addressed to Mr. Van D. Jones, International Board Member, I. U. M. M. & S. W., Bessemer, Alabama, and signed Ben Davis, Vice President, was marked Sloss Exhibit No. 21.)

The Court:

Mr. Ben Davis represents the company?

Mr. All:

He is the vice president of the company.

Judge, in replying to that proposition—I think I can read it quicker than I can tell you what it is.

Acknowledging receipt of it, he says, "As you, of course, realize, the agreement was arrived at through the process of collective bargaining, and was signed by both parties in good faith after fully threshing out the matter you now refer to.

"The company expects to carry out the agreement and believes that the union will carry it out as made."

That is Mr. Davis' letter. I want to introduce that in evidence.

The Court:

Read that exhibit 20 while we are on it.

Mr. All:

"Dear Mr. Davis:

"This is to advise, that although the working agreement, or contract by and between the Sloss-Sheffield, Steel & Iron Company and the Sloss Red Ore Local Union Number 109, International Union of Mine, Mill & Smelter Workers, has been signed by the committee representing the Union, which provides among other things, 'that eight hours means eight hours work in and around the usual working places,' the signing of this agreement does not preclude the right of the organization to continue in its request for pay for travel time spent by the employees in going to and from their working places, nor does it in any way waive the contentions of the Local Union that said travel time should be treated as hours worked.

"As you know, this matter of travel time is now before the Wage and Hour Division of the U. S. Department of Labor and a decision is still pending.

"Very truly yours, Van D. Jones, International Board Member."

The Court:

Yes, sir.

Mr. All:
I want to introduce this letter. Is that 21?

The Clerk:
Yes, sir.

Mr. All:
I offer that in evidence.

Mr. Harris:
On 21, I waived the laying of a predicate, but did not waive any objections, so you would not have to lay a predicate.

Mr. All:
That is the copy of the letter. You have the original, I presume.

Mr. Harris:
That is right.

Mr. All:
I believe that is all.

Mr. Harris:
Judge, do you want me to start a cross examination?

The Court:
I would like for you to finish this afternoon.

Mr. Harris:
Finish this afternoon?

The Court:
Yes, sir.

Mr. Harris:

For that reason, if you will let me think just a moment, I will see if I can't shorten it very much very quickly then.

Cross Examination.

(By Mr. Harris):

Q. Mr. Costner, the service ~~men as well~~ as what you call the production men in the Red Ore Mines use carbide lights, don't they?

A. They do in Sloss Mine, but not in Ruffner Mine.

Q. Well, I thought you called the Sloss Mine the Red Ore Mine, and called the other Ruffner.

Now, then, at Ruffner, the service men as well as what you call the production men use the electric battery with the light like an automobile headlight attached to a cord about 30 inches long?

A. Yes.

Q. And all the time that you have been working out there with them this carbide light was used by both service men and production men?

A. At Bessemer?

Q. Yes, at Bessemer.

A. Yes.

Q. And that light is absolutely indispensable to their work in the mine, isn't it?

A. Either that light or a substitute light one.

Q. That is right, and all the time that light was the light you relied on, that the men used?

A. Right.

Q. Now, then, these cars the men went down on at the Number 2 Mine up until May 1st, those cars just carried six men, didn't they?

A. No, sir.

Q. Well, there were just six cars, weren't there?

A. Right.

Q. And then immediately on May 1st when you went on a portal to portal basis you speeded up by hauling eight cars down instead of six, didn't you?

A. Approximately May 1st. I don't know the exact date.

Q. Yes. Now, in this mine where you say you started hauling the men—you had had a map skip that went down to one place, and then you extended it and put in another haulage,—that was at the instance and request of the men, wasn't it?

A. Yes, sir.

Q. They kept insisting on that?

A. Yes, sir.

Q. Now, at this mine out here—I am now talking about the Ruffner Mine,—what is this thing up here?

The Court:

The question you asked just now is the Ruffner Mine?

Mr. Harris:

The question I asked just now was with reference to Sloss.

The Court:

Red Ore?

Mr. Harris:

Yes, sir.

Q. That is the way you understood it, wasn't it?

A. Yes, sir.

Q. You say this mine just started a year ago?

A. Yes, sir.

The Court:

Yes, but they haul further down now than they did before?

Mr. Harris:

I will ask about that.

Q. What is this red stuff up here in the right hand corner of this Ruffner map the way you have it arranged?

A. These are workings in what is known as the Roebuck opening.

Q. Then almost directly under that you find other red marks. Don't the men come down this slope right along here and walk down to these places?

A. There is no slope there. This is a projection laid out along the lines on which a slope will be driven. No workings extend beyond the part marked in red.

Q. How would the men walk from the mouth of the mine when they don't ride on your mantrip? How do they walk to their working places out at Ruffner?

A. They all ride—in this section here they all ride to the designated unloading stations, which are 21, 37, 14. Men working in here would unload at 21 and walk across the pitch, which is practically level, over to this section here.

Q. What is the total number of your unloading stations you are now preparing or using in your Ruffner Mine?

A. Three.

Q. Three unloading stations?

A. Four. Excuse me. There are four.

Q. Four unloading stations?

A. Yes, sir.

Q. You don't drop off the cars, but the men get off the cars? Is that the way they do? As you come down do you unhook cars or do the cars go to the end?

A. The same trip of cars is used for handling all the men.

Q. You just made one trip to take them in and out at Ruffner?

A. No, we run two trips.

Q. Now, in this other map down here of Sloss Number 2, have you got any contour markings on that map to show the elevations in the mines?

A. We have no contour lines on that map. There are some points on there to show the elevation.

Q. Have you got them marked to show on that one?

A. There is one right there that shows a cover of 1340 feet, and here is another at this point.

Q. Shows the cover?

A. Yes, sir.

Q. Does it show the height of the different hills the men have to walk over and up and down, and have to walk over?

A. No, sir. This is not a profile map. It is a map of the mine workings, and the profiles are not shown on this map.

Q. Which mine was it there was an accident on a mantrip and 11 men killed and 28 injured? Was it in Ruffner or this one here?

A. The accident did not occur on a trip. The accident occurred on Number 1 slope over here, according to the records in my office, in 1923, at which time I believe eight men were killed.

Q. It happened on a man trip, didn't it?

A. Yes, sir.

Q. Hauling men in or out of the mine?

A. I think they were going in. I don't know of my own knowledge.

Q. One other question.

A. One other answer. You asked where the accident occurred.

Q. Yes.

A. My understanding the accident occurred on a trip used for hoisting ore, but at the time men were being handled on it. It was not a regular designated or set man trip.

Q. Whether it was a regular man trip or ore car, it was a trip where men were being hauled by the company? That is what I was getting at.

A. That is my understanding, yes.

Q. Now, don't those mechanical loaders use dope or grease? You don't use that oil that the men carry in on those machines, those mechanical loaders? Don't you use something like the dope you put in automobiles sometimes?

A. They used some cup grease.

Q. Where do they get that grease, and who carries it in?

A. It comes in normally on the cars the same as the other supplies.

Q. I understood you to draw a distinction between Ruffner and the other mine, that the supplies were up close to the mouth of the mine, and the men could get them there and take them in; you don't know that distance?

A. It is true at Ruffner the supply house and shops are much nearer the opening than at Sloss.

Q. You don't have a supply house at Ruffner down in the mine?

A. No, not designated as a supply house.

Q. You do have a tool house and supply house and powder magazine down under the ground at Sloss Number 2?

A. We have a powder magazine and have a place where some supplies are kept, but not a supply house in the same sense you would speak of a surface supply house.

Q. Now, is it at all unusual for one crew to break as many as three hangers in a day?

A. That would be possible. I have never heard of it occurring, however.

Q. Do they use quarry bars at both of those mines?

A. Yes, sir.

Q. Would the men carry the quarry bars down with them?

A. No, sir.

Q. You never knew that to happen?

A. No, sir.

Q. And the powder man—weren't you mistaken about the time the powder man got there? Didn't he get there a full half hour earlier than the average men in the mine?

A. No, sir. He went down with some of the other men.

Q. But he always went on the first trip, didn't he?

A. Not necessarily. He was required to be there at 7 o'clock.

Q. But it wasn't true, as testified to by Mr. Harper, that the powder man would start issuing powder sometimes at 6:45, fifteen minutes before the 7 o'clock point?

A. There might be conditions where he issued some powder a few minutes before seven. However, as a general rule, though, he would not issue powder until seven o'clock.

Q. About how often do you go down in the mine at Number 2?

A. Right now I don't get down as regularly as I have in years prior to the present year. I now go in that mine once or twice a month. Prior—

Q. Well, from October, 1938, up until the present time, has your average been about the same?

A. No. Up to about a year ago,—maybe not so long ago,—I was in the mine approximately once a week or at least three times a month.

Q. When you were in the mine did you have any certain route to travel, or any certain place to go, or did you go in one part of the mine on one trip and another part of the mine a week or two later?

A. That was the usual procedure, but if there was some condition that I felt that I should see that I had seen on my last trip, I might one place in succession.

Q. Did you go on your night shift or your day shift?

A. I was usually on the day shift. I have been in there on the night shift.

Q. Out at Ruffner you have both a night shift and a day shift out there?

A. We do not operate a night shift there.

Mr. Harris:

One other question.

Q. When you went down into the mine, did you go on the first man trip of the second man trip or did you go down at later hours?

A. I usually went down at a later hour.

Q. Later hour?

A. Yes, sir.

Mr. Harris:

That is all, Judge.

Re-Direct Examination.

(By Mr. All):

Q. Mr. Costner, I don't know whether you covered this or not, but Mr. Harris asked you if this second Sloss—if this second ride in Sloss Mine was not continually brought up by the men. I believe you stated on your direct examination—if you haven't I will ask you if they asked for pay for travel time?

Mr. Harris:

I think he has gone into that.

Mr. All:
If I haven't asked it, I want to ask it.

The Court:
What is your question?

Mr. All:
He asked him if they didn't put it in because the men wanted it, the second riding interval on their entry into the mine. I am just asking him—I think I did—

The Court:
Ask your question.

Q. I will ask you if they asked for pay for traveling time?
A. They did not.

The Court:
Is that all?

Mr. All:
That is all.

(Witness excused.)

The Court:
We will adjourn until 9:30 in the morning.

(Whereupon, at 4:30 P. M., July 15, 1941, an adjournment was had to 9:30 A. M., July 16, 1941.)

July 16, 1941, 9:20 A. M.

Court met pursuant to adjournment.

The Court:

All right, Mr. All.

Mr. Burr:

Before Mr. All starts there is one matter I would like to take up briefly with the Court.

Your Honor will recall the other day we had filed a motion to produce minutes that were in the possession of the Smelter's Union of the negotiation meetings kept with the Tennessee Company since 1933.

There has been given me—I didn't know how difficult it would be to do this until we endeavored to do it. They have given me a list of the minutes they say they have,—it is just a list of dates beginning with July, 1933, and down to July 13, 1935,—just dates.

I turned this over to Mr. Shook, took him off everything else and turned them over to him to check them.

This is the situation: There were four sets of minutes kept, and we have introduced those which we have, which we hope are all the minutes unless they have gotten misplaced in some of these hearings we have had. First, there are the general minutes that were kept of the meetings with Mr. Ball.

The Court:

Yes, sir.

Mr. Burr:

Then there were the minutes kept of the meetings with the superintendents of the different divisions, Muscoda, Wenonah and Ishkooda.

We can't tell from these dates to which of these divisions each of these minutes apply.

Mr. Harris:

I will be glad to give it to them. I thought that was sufficient.

Mr. Burr:
You can see how difficult it is.

The Court:
It will save time—

Mr. Harris:
We will be glad to do it.

Mr. Burr:
What we will have to do, we will have to go through all four sets of them to find one.

Mr. Harris:
We will try to have this ready tomorrow morning.

The Court:
Will that be agreeable, Mr. Burr?

Mr. Burr:
Yes, sir; we will do the best we can.

The Court:
All right; by tomorrow morning.

Mr. Burr:
I would like to know what meeting it was so we will be able to do our checking.

The Court:
All right. Who will you have?

Mr. All:
Mr. Russell.

1441 J. W. RUSSELL, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Court:
What is your name, please, sir?

The Witness:
Russell, J. W. Russell.

The Court:
J. W. Russell?

The Witness:
J. W. Russell.

(By Mr. All):

Q. Mr. Russell, how old are you, sir?

A. 41.

Q. What is your business?

A. Mine superintendent.

Q. Where?

A. Sloss Red Ore Mine, Sloss-Sheffield Steel & Iron Company.

Q. Bessemer?

A. At Bessemer.

Q. Will you tell us briefly what time you have been engaged in the mining business or been connected with the mining business?

A. Well, I have been connected with the mining business for about 19 or 20 years. Since 1926 I have been at Sloss Red Ore with the Sloss-Sheffield.

Q. Prior to that time where did you commence your mining business?

A. I commenced in the coal mines around 1921.

Q. Where?

A. I worked for a firm of engineers as a rodman, consultant, consulting engineers, that had coal mining contracts.

Q. All right.

A. In 1923 I went with a coal mine.

Q. And then where?

A. In 1926 I went with Sloss Red Ore at Bessemer.

Q. And have been with them since?

A. Yes, sir.

Q. In what capacities have you been with Sloss since 1924?

A. I started with them in 1926.

Q. Well, since 1926.

A. I started with them as rodman, and have been with them as safety man and mine foreman—

Q. Your assistant started with them when?

A. 1926.

Q. What was your capacity?

A. I was instrumentman.

Q. You had to do with the mining of red ore?

A. Yes, sir.

Q. Then when were you safety man?

A. That was in 1934.

Q. From 1926 to 1934 you were engineer?

A. Yes, sir.

Q. How much contact did you have with the ore mine during the time you were engineer from 1926 to 1934?

A. I had very close contact. I went underground two or three times a week any way.

Q. What did your work consist of?

A. My work as engineer consisted of making maps, laying out work, checking up on the work to see if it was performed in accordance with the plans laid out, general layout work of the mine, consultation.

Q. In the general layout of the workings of the mine?

A. Yes, sir.

Q. Mr. Russell, can you tell us what has been the work time through the custom and practice in the ore mine since you first became acquainted with the ore mines with respect—

Mr. Harris:
We object to that.

Q. —to when work time commenced and when it stopped?

Mr. Harris:
We object to that as calling for a conclusion.

The Court:
Sustain it as to the form of that question.

Q. What has been the custom with respect to the measurement of time in the work time in the ore mines—

Mr. Harris:
We object to that, if Your Honor please.

The Court:
I sustained that, Mr. All.

Q. With respect to the measurement of wage or computation of compensation?

Mr. Harris:
We object to that.

The Court:
Confine it to his company, Mr. All. You say what is the custom all over the country.

Mr. All:
No, sir, I have only asked him within his experience. He has had experience only here.

Q. With the company you have been connected with?

Mr. Harris:
Same objection.

The Court:
Overruled.

A. The companies I have been connected with, the time started at the working place.

Q. When did it stop?

A. At a certain specified time?

Q. Where did it stop?

A. Stopped at his working place, either eight or nine or ten hours.

Q. In other words, it began and closed at his working place?

A. Began and closed at his working place.

Q. Mr. Russell, from 1926,—in 1926 and until some time thereafter, do you recollect what the work period was, whether it was eight hours or not?

Mr. Harris:
May I have an objection to all those questions, Judge, without repeating them?

The Court:
Yes; that is all right.

A. For some time—in 1926 the men were working in the Red Ore Mine for ten hours.

Q. Ten hours?

A. Yes, sir.

Q. Was that changed?

A. Yes, sir.

Q. When?

A. About 1930.

Q. What was it changed to?

A. Nine hours.

Q. Was it changed again?

A. Yes. In 1934 it was changed, I believe, to eight hours, and has been eight hours since then.

Q. During the ten hour regime was it ten hours at the working place?

A. Yes, sir.

Q. And changed to nine hours at the working place?

A. Yes, sir.

Q. And then when it was changed to eight hours it was eight hours at the working place?

A. Yes, sir.

Q. Now, 1924 when you first went there—

Mr. Harris:
1926, Mr. All.

Q. 1926,—I beg pardon,—what bath house facilities did Sloss have at Red Ore Mine?

A. At that time they had about four different places that they bathed. They had no regular bath house.

Q. No central bath house?

A. No central bath house. There were bathing facilities under each engine room, and there were also two buildings not otherwise in use that were used as bath houses.

Q. Was there water?

A. Yes, we had hot and cold water.

Q. Were there places where their clothes were kept while they were working?

A. Yes, sir.

Q. Where their change was made?

A. Yes, sir.

Q. How was that, lockers or hangers or what?

A. They had lockers.

Q. Lockers?

A. Yes, sir.

Q. Do you recollect about how far those places were from the pit mouth?

A. One was about 250 feet in the hoist engine room—under the hoist engine room, and the others were close to Number 1 mine and varied from 1500 to 2500 feet from Number 2, but rather close to Number 1. Number 1 was working at that time.

Q. How long has Number 1 been down?

A. Number 1 has been down about eight years.

Q. I will ask you particularly with respect to Number 2. Did the men go from the bath house to the pit mouth at Number 2?

A. Yes, sir.

Q. What sort of lighting system did the underground men use?

A. Used carbide lights.

Q. Carbide lights?

A. Yes, sir.

Q. Where at that time was the carbide picked up?

A. Why, I don't know. The man was free to get carbide at any place he wanted to get it. I don't know exactly where he got it. It just all depended on his own free will.

Q. Did the company keep it?

A. The company kept carbide at the commissary.

Q. And you mean the men could buy carbide anywhere they wished to buy it?

A. Anywhere they pleased.

Q. Did they bring their carbide with them?

A. Yes, sir.

Q. How did the men go down in the mine in 1924 and for some time thereafter?

A. They went down on man cars.

Mr. All:

May I have the Sloss Number 2 map?

Mr. Harris:

You keep saying 1924. When you say '24, you mean '26, I guess.

Mr. All:

Yes.

(Thereupon Sloss Exhibit Number 10, being a map of Sloss Mine Number 2, was placed on the blackboard.)

Mr. All:

This map is put on the board just like it was yesterday.

The Clerk:

No, sir; it is opposite to what it was yesterday.

Mr. All:

All right.

Q. Now, this map, Sloss Exhibit Number 10, a map of the Sloss workings, Mr. Russell, as you see it on the board, how many openings does that map show?

A. Shows two slopes.

Q. And the workings from those two slopes?

A. Yes, sir.

Q. Are you familiar with that?

A. Yes, sir.

Q. From your experience as Engineer

A. Yes, sir.

Q. In connection with those mines?

A. Yes, sir.

Q. Will you point out there the mouth,—the slope mouth or pit mouth of Number 2?

A. It is right there (indicating on Sloss Exhibit Number 10).

Q. It is rather at the bottom of the map?

A. At the bottom of the map.

Q. Sort of to the left?

A. Yes, sir.

Q. And then that slope is driven in this direction?

A. Yes, sir.

Q. Now, when you went there in 1926, how far down had that Number 2 slope been driven?

A. The number 2 slope, when I first went down, was at 64—approximately right there (indicating).

Q. Right there?

A. Yes, sir.

Q. Now, you have referred to the man trip. How far did the man trip go at that time?

A. The man trip went to 48 yard, or 48 right heading.

Q. That was somewhat shorter than the mine?

A. Shorter than tne mine.

Mr. Harris:

Would you all mind talking a little louder?

Q. At that time how far had those headings been driven, at the time you went there in 1926?

A. The headings at this point had been practically worked out. There was no work down here.

Q. That was what point?

A. About 38.

Q. The headings had been practically worked out to that point?

A. Yes, sir.

Q. When the men reached the pit mouth they went down in the man trip; did they?

A. Yes, sir.

Q. Besides the carbide did they pick up anything to take down with them at the pit mouth?

A. No.

Q. And they went to the point where they got off the man trip?

A. Yes, sir.

Q. From that point how did they get to their several working places, the production men?

A. Walked.

Q. Could you give us some idea about the furtherest—How far was it from the pit mouth to where the cars discharged the men?

A. From the pit mouth to 48 is about 4,000 feet.

Q. 4,000 feet?

A. Yes, sir.

Q. Can you give us some idea as to about how far the men had to walk to their furtherest working places, the furtherest man, after they were discharged?

A. At what time?

Q. At the time you went there.

A. When I first went there the furtherest working place was about 1200 feet.

Q. From what point?

A. From 48.

Q. From 48?

A. Yes, sir.

Q. What else did the men pick up, if anything, before reaching their working places at the face? I am speaking of the production men.

A. Before—after they went down they would pick up oil and that is probably all they picked up.

Q. Where did they pick up oil?

A. At the bottom of the slope, 48 yard.

Q. At the bottom of the slope, 48 yard?

A. Yes, sir.

Q. Where and how was that oil kept?

A. That oil was kept in a tank right close to the landing place, within 100 feet of it, and the man would bring his can out and gob it or hide it and get it the next morning and take oil into his working place.

Q. Mr. Russell, talk a little louder, please, sir.

A. Yes, sir.

Q. How many men in the production crew had to do with taking oil in?

A. One.

Q. One?

A. Yes, sir.

Q. What particular man was that?

A. Usually a drill man.

Q. Usually a drill man?

A. Yes, sir.

Q. Then he took it from that point to the working place?

A. Yes, sir.

Q. How much oil was generally taken?

A. A gallon.

Q. A gallon?

A. Usually a gallon.

Q. In what sort of vessel?

A. Why, he carried it in an oil can, a regular can for carrying oil.

Q. Have a handle on it?

A. Yes, sir.

Q. At that time where was the powder?

A. In 1926 the—I don't quite recollect where the powder magazine was at that time.

Q. Do you recollect whether it was on top or underground?

A. No, it was underground.

Q. It was underground; you mean you don't remember the point?

A. I don't remember the exact point.

Q: What did that powder consist of?

A. The powder is commonly called dynamite, and it comes in 50-pound cases.

Q. But they had a powder magazine underground?

A. Yes, sir, they had a powder magazine underground, the best of my knowledge.

Q. How was that powder gotten to the working place?

A. The drill helper usually secured the powder in the morning or afternoon, as the case might be, and carried it to his working place.

Q. Do you know when he secured that with respect to his work time?

A. No, sir, I do not in 1926.

Q. You don't remember in 1926?

A. No, sir.

Q. Did you use over there detachable bits?

A. No, sir.

Q. You didn't use detachable bits?

A. No, sir, we have never used the detachable bits regularly. We have just experimented with them.

The Court:

I can't hear you.

The Witness:

I say we have never used the detachable bits regularly. We have just experimented with them.

The Court:

Talk louder.

Q. Do you—was there anything else the men took to their working places besides the powder and oil,—I mean the carbide and the oil?

A. No, sir.

Q. Now, did the company have a supply house over there?

A. There is a plant supply house on the surface.

Q. That is what I mean.

A. And at that time there was a rock house at 48, and a good many supplies, such as pipe fittings and things like that, were kept in that supply house underground,—the rock house, they called it.

Q. What supplies were kept at ~~each~~ place?

A. The supply house on the surface, all supplies required for the plant were kept there.

Q. All right; at the place you spoke of as 48?

A. The place at 48, they kept small supplies, such as pipe fittings, such as that, valves, many small things.

Q. How were those supplies, the needed supplies for the workmen in the production crews taken to the working places?

A. Do you mean in 1926?

Q. In 1924 and trace it—

A. In 1926 it has been—

Q. 1926, I mean.

A. In 1926—it has always been customary for the foreman to order his supplies in the morning and they are carried to the pit mouth by a truck,—in 1926 by a wagon.

Q. Is that an outside crew?

A. An outside crew, and those supplies were sent down and distributed during the day.

Q. To what point were those supplies sent out?

A. They were sent out from the supply house to the pit mouth and then taken down to the 48 yard and distributed from there.

Q. Who took them from the pit mouth to the 48 yard or supply house?

A. They were not taken by any one man. They were taken to the pit mouth and lowered underground.

Q. Who put them on the cars to lower them underground?

A. The tipple crew.

Q. Who took them off?

A. The chainer at the bottom.

Q. To what crews did the chainers belong?

A. They belonged to the haulage crew.

Q. Service crews?

A. Yes, sir.

Q. They did not belong to the production crews?

A. No, sir.

Q. From that point at 48, how were they gotten to the working places of the production crews?

A. In 1926 the working places were pretty close to 48 there, in just a few minutes, and a man could come in there and get anything he wanted, but they were also sent out by the service crews.

Q. You mean to crews working some distance away from there?

A. Yes, sir.

Q. Do you recollect about how many trips were run about that time, and how many trips—man trips have been run since that time up until 1938, we will say?

A. Three or four; they varied as to the number of working places.

Q. Do you remember about what time those trips began?

A. They started in about six o'clock in 1926.

Q. That was during the 10-hour regime?

A. During the 10-hour regime.

Q. Do you know what time they were run during the 8-hour period?

A. During the 8-hour period they started down at 7:15.

Q. 7:15?

A. 6:15.

Q. 6:15?

A. Yes, sir.

Q. What time were the men required to be at their working places under the 8-hour regime?

A. Under the 8-hour regime they were required to be at their working places at seven o'clock.

Q. Do you know how often the trips were run?

A. No, I do not.

Q. Do you know what determined it?

A. The trip started at about 6:15, and they would go down and come back as fast as possible.

Q. Where were the working places of the production crews they had to report to at seven?

A. Their working place is inside the stope where the ore is removed,—being removed.

Q. Where the ore is being shot?

A. Yes, sir.

Q. Where is the working place of the underground service crews?

A. The underground service crews began work at any designated place. It is not a fixed place. It is where they are needed. If they are working on a job one day and do not finish, they report back there the next morning. They may be there three or four days.

Q. Suppose they finish a job one day. Where is their working place,—where is their working place or where does their time start the next morning?

A. Wherever they are ordered to by the foreman.

Q. Was that true during the year 1938?

A. Yes, sir.

Q. Prior to October and after October?

A. Yes, sir.

Q. Was that true from that time on up until May 1, 1941?

A. Yes, sir.

Q. Now, after October, 1938, and for some time prior to that time and since that time, how have these supplies that the production men used at their working places been gotten to them?

A. Well, as I said before, the mine foreman at the beginning of the shift in the morning will make an order to the supply house, and the supply men will get up the supplies and deliver them to the pit mouth in the truck, and at that point they are loaded on the trip and are sent down to 48, and are distributed out from that point.

Q. Distributed to the working place?

A. Yes, sir.

Q. What supplies does that include that were distributed in that way?

A. That would include everything except powder and drill oil.

Q. Powder and drill oil?

A. Yes, sir.

Q. And the carbide?

A. Yes, sir, the carbide. Of course, I wouldn't consider that supplies. That is purchased by the men.

Q. Now, from October, 1938, and prior to that time and through the period to May 1, 1941, where was the powder house?

A. The powder house is now at 67 right heading. Prior to that time it was at 62 left.

Q. How long has the powder house been at 67 right heading?

A. Several years.

Q. Prior to that time how long had it been at 62 heading?

A. For several years; I don't know just how long.

Q. The powder during that time was distributed from those powder houses?

A. Yes, sir.

Q. What time was the powder distributed usually to the day shift?

A. The powder to the day shift was distributed at the beginning of the shift.

Q. At what time?

A. Seven o'clock.

Q. Seven o'clock?

A. Yes, sir.

Q. Did you have a powder man there to issue powder?

A. We had a magazine attendant. He would open the powder house at seven o'clock and start issuing powder.

Q. Mr. Russell, at October, 1938, and sometime prior to that time and through 1938 and up to May 1, 1941, you say the powder was issued?

A. Yes, sir.

Q. And I believe you stated that the work started at 7 o'clock?

A. Yes, sir.

Q. Now, as applied to that period, can you tell us about the number of drag crews there were among the production men, and how many hand loading crews?

A. At what time?

Q. October, 1938,—October, 1938, and prior to that time, and up to May 1, 1941.

A. In October, 1938, there were eight drag crews, and the hand crews varied from 18 to 25 as the case might be.

Q. All right. How long back of October, 1938, had that existed?

A. There had been eight drag crews for approximately eight years.

Q. And the rest of them were hand crews?

A. The rest of them were hand crews.

Q. Now, about how many men were there in the drag crews?

A. There are 15 men in a drag crew, double shift.

Q. I am talking about one shift.

A. One shift would be eight or seven.

Q. How about the hand crews?

A. Hand crews, there were five men.

Q. How are the men in the drag crews divided as to their working assignments?

A. A drag crew consists of two drill men, one drill helper, one drag runner and a tram engineer. That does not include the head miner who works on one shift. There are no head miners on the opposite shift. The head miner works on one shift only.

Q. How about the hand loading crews?

A. The hand loading crews consist of a drill man, drill helper and three muckers.

Q. Now, all of the underground men, of course, use the carbide?

A. Yes, sir.

Q. Was there anything that the service crews got before reaching their working places except the carbide?

A. No.

Q. Was there anything that the service crews needed to get—

A. No.

Q. —except the carbide before reaching their working places?

A. No, sir.

Q. Now, you stated that when you went there in 1926 that the man trip stopped at 48?

A. Yes, sir.

Q. About 48?

A. Yes, sir.

Q. Has there been—has there been any additional travel interval for men since that time? Have you added any riding interval in there?

A. Yes, we—

Q. Where is that?

A. In 1940 we added the travel from 55 left to 74.

Q. Do you remember when that was?

A. That was in October of 1940.

Q. In October of 1940?

A. Yes, sir.

Q. In 1938 where had the slope reached?

A. In 1938 the slope had reached approximately this point right here, at 85 right.

Q. At 85 right?

A. Yes, sir

Q. Now, at that point, could you point out where, at that time, the furtherest working places were on that map from the slope?

A. At that time the bottom of the slope was about the furtherest working place.

Q. The bottom of the slope?

A. Yes, sir, furtherest place.

Q. At that time how far was the bottom of the slope from where the man trip ran in 1928?

A. It was around 4800 or 5000 feet.

Q. Where were the more remote and deeper headings that were still being worked in 1938?

A. These headings here were being worked.

Q. That is on the right side of the map?

A. Yes, sir, the right side, and on the left side these headings were being worked but had not been driven to the present slope.

Q. That is on the left of the map?

A. That is on the left of the map.

Q. Do those points shown in red on this map indicate working places?

A. Yes, sir.

Q. As of what time?

A. I should say as of the last year or two.

Q. As of the last year or two?

A. Yes, sir.

Q. Would that indicate—How far has that slope been driven—

Mr. Harris:

I can't hear you, Mr. All.

Q. I mean how far is the bottom of the slope from the property line?

A. The bottom of the slope at this time is approximately 200 feet from the property line.

Q. From the Sloss property line?

A. Yes, sir.

Q. Is it still being driven further?

A. No, sir; it is being mined.

Q. What do you mean by being mined?

A. There is a difference between driving a slope and mining ore. If you are mining ore you are using a drag.

Q. Are you or not driving the slope or mining the slope?

A. That is somewhat confusing. We are mining on our property line. The slope will not be driven any further.

Q. The mining you are doing will not extend the slope?

A. No, sir, it will not extend the slope.

Q. Is the mining you are doing on the side of the slope?

A. No, sir, directly in front of it.

Q. Directly in front of it?

A. Well, not exactly; we are working to the side and front.

Q. You are working around the end of the slope?

A. Yes, sir, through stopes.

Q. Are those stopes to the right or left of the slope?

A. They are to the left of the slope at the present time.

Q. Any to the right?

A. No, sir.

Q. Mr. Russell, at Sloss, how many men, employees, workmen, work underground, and how many above ground?

A. There about 375 underground and about 75 surface, something like that. That number varies from time to time.

Q. But approximately 1938, and at the present time, about how many employees of Sloss Company at Sloss Mine?

A. That varied from 425 to 500.

Q. Can you divide that, say about how many were underground and about how many above ground?

A. Well, at the present time there are about 400 underground and 100 on the surface.

Q. About 1938 how did that run?

A. 1938 there were considerably less than that. I should say there were about 75 on the surface, and about 300 underground, 350 or 75, I don't remember those figures exactly.

The Court:

Does that include both shifts?

The Witness:

Yes, sir, that includes both shifts.

Q. Mr. Russell, at May 1, 1941, was the time at the ~~face—~~how did you change your time of work?

A. How was that?

Q. How did you change your time of work at May 1, 1941?

A. At May 1, 1941, we installed a clock system at the pit mouth, and each man at the pit mouth punched a clock when he went in and also punched it when he went out, and the time, being portal to portal, we paid for.

Q. In other words, you put in a portal to portal system on May 1, 1941?

A. Yes, sir.

Q. Do you know when the work time of the men started May 1, 1941?

A. Yes, sir, the time started at 6:30 and ended at three o'clock with thirty minutes lunch period.

Q. Started at 6:30?

A. That is the first shift. We have three shifts.

Q. You have some men that start at three o'clock?

A. Yes, sir.

Q. And the other men go down—

A. Somewhat later. The third trip would be the same way.

Q. You have them eight hours over all?

A. Yes, eight hours over all, yes, sir.

Q. Including travel time?

A. Including travel time.

Q. Mr. Russell, will you tell us whether or not that reduction in work time has resulted in reduction in the production of the ore?

Mr. Harris:

We object to that, if the Court pleases; calls for a conclusion.

Mr. All:

I am not asking him for figures. I am just asking if it has.

Mr. Harris:

Same objection.

Mr. Bronaugh:

It has been shown, I think, Your Honor.

The Court:

I will overrule the objection.

Mr. Harris:

We except.

A. Yes, sir, we have had a reduction.

Q. Has it shortened the work time?

Mr. Harris:

Just a minute. In reference to the Sloss Company, if the Court pleases, they amended their complaint, and my recollection is they took out by amendment all allegations there had been any decrease in production. They expressly removed that from their case, and if I am mistaken about the amendment, I would be glad to be corrected by the gentlemen on the other side, but my recollection is they completely removed any claims as to loss of production.

Mr. All:

This is a general question, and I am not going into figures just here. I am not undertaking to go into the figures, but I am just asking this question. I think the Court wants the picture. I think this is admissible in evidence regardless of any allegation.

Mr. Harris:

But he framed the issues by his complaint, and after considerable study he comes into Court and amends his complaint and strikes out all allegations about production.

Now, having taken it out of the case in that way, he comes in in an indirect way and asks a witness about it, and we think it is not in the issues in the case.

The Court:

I don't think it is proper.

Mr. All:

As I say, if the Court please, it is a part of the general picture of the case. I am not going into any figures. I am just giving the Court the general picture.

Mr. Harris:

We object.

The Court:

I sustain the objection.

Mr. All:

We except.

Now, if the Court pleases, I might say in that connection I think that has a bearing on the intent of Congress. I am talking about—it isn't always necessary to make a particular averment in, but I think this question has a bearing on the intent of Congress as to the inevitable effect of the act, and the requirement to carry that Act into effect would reduce production, and therefore, I think that would have some bearing on the question of intent. I think it is certainly a debatable question whether Congress contemplated a change which would result in a decreased production, and I think it is competent on the ground and on the general ground, and I would like for the witness to answer just the question whether it has decreased production.

The Court:

I sustain the objection.

Mr. All:

We except.

Q. Now, Mr. Russell, I show you a bunch of papers here which purport to be statements and receipts. I will ask you to state to the Court what they are.

A. They are pay receeipts,

Q. State what—fully explain them.

A. They are statements of money owed in wages by the company, and they are signed by the employees and turned back into the office on payday, and he is paid on these receipts.

Q. How are those used in connection with the payment of the man for his work?

A. This statement here—these are purely a receipt to the company to show the man has been paid.

Q. Is there a statement of the work which he did and a statement of what they owe him?

Mr. Harris:

We object; the receipt would be the best evidence.

The Court:

What is the materiality?

Mr. All:

Judge, I am introducing those for the same purpose for which Mr. Burr introduced his, to show these are confirmatory of the contract. It is the same purpose for which those Tennessee Company receipts were introduced. It is not a defense to any claim on the part of any particular man, but to show the system and this is a typical receipt.

The Court:

The idea is to show they worked that length of time a day and accepted the money?

Mr. All:

Yes, sir, and understood—

The Court:

And understood it?

Mr. All:

And understood it; that is all.

Mr. Harris:

Of course, that is an argument. If he says they understood it it is an argument as to the particular man.

The Court:

The purpose is to show the man worked there eight hours or nine hours?

Mr. All:

And knew they were being paid for that amount.

Mr. Harris:

Of course, we object to each one separately and severally on all the grounds.

The Court:

I will admit it.

Mr. Harris:

We except.

The Clerk:

It will be Sloss Exhibit Number 22.

(Thereupon a number of pay statements and pay receipts of the Sloss-Sheffield Steel & Iron Company issued to and signed by John Hill were marked Sloss Exhibit No. 22.)

Q. Mr. Russell, I notice here—are these separate slips all the same?

A. No, sir.

Q. I don't mean for the same period, but are they all for the same purpose?

A. Yes, sir, all for the same purpose.

Q. I notice these long yellow—what are the long yellow slips?

Mr. Harris:

They speak for themselves, Judge, if he introduces them.

The Court:

Go ahead.

Q. What is the purpose?

A. They are all for the same purpose, but the long yellow slips were established after October, 1938.

The Court:

After what?

The Witness:

They were put in effect after October, 1938.

Q. You mean after the Wage & Hour law went into effect?

A. Yes, sir.

Q. I notice some of these are like this for a month or two and then change—

A. Yes, sir, it took some time to make a change.

Q. Who was the typical employee who we—

Mr. Harris:

I object to saying who is a typical employee.

The Court:

I sustain the objection, Mr. All.

Q. Was this man whose name appears on here, John Hill, an employee of the company?

A. Yes, sir.

Q. And those are actual papers?

A. Yes, sir.

Mr. All:

That is all.

Mr. Bronaugh:

Wait just a minute.

Q. Mr. Russell, were similar receipts taken for all employees?

A. Yes, sir.

Q. During that period?

A. Yes, sir.

Q. Had that been the practice before that period?

A. Yes, sir.

Q. And for some time prior to that time?

A. Yes, sir.

Q. A number of years?

A. Yes, sir, quite a few years.

Mr. All:

That is all.

Mr. Harris:

Mr. Russell—

Mr. Burr:

I have one or two questions I would like to ask this witness, if Your Honor please.

The Court:

Yes, sir.

(By Mr. Burr):

Q. Mr. Russell, you said you worked at Wenonah at one time?

A. Yes, sir.

Q. When was that?

A. 1923 to 1926.

Q. What position did you hold there?

A. I was an instrumentman in the engineering department.

Q. That was employment directly by the company?

A. Yes, sir.

Q. Was your work underground work?

A. Yes, sir.

Q. In the department you belonged to, did you have general charge of laying out the mine plans and extensions?

A. Yes, sir.

Q. Where the tracks should be located and things of that sort?

A. It was.

Q. It was general engineering inside you were doing?

A. Yes, sir.

Q. While you were there did you become familiar with their working practices, whether they were working eight hours or ten hours a day?

A. Yes, sir. I was familiar with the system.

Q. What hour system were they on while you were there?

A. At that time they were working ten hours.

Q. Did the computation of the pay of the men—did that include service men and production men also?

A. Yes, sir.

Q. Did that include the traveling time?

A. I couldn't say about that. I didn't have anything to do with the computation of the time.

Q. You don't know about that?

A. No, sir.

Q. One other thing or two. I believe you said over at your Sloss operations from May 1, 1941,—I believe you say you started the new plan you have described on that date?

A. Yes, sir.

Q. Have you told all the changes you made? Did you work the same crew and the same system?

A. Yes, sir, same crew and same system.

Q. The only change you made was cutting the time over all in the mine?

A. Yes, sir.

Mr. Burr:
I want to ask the same question to which you sustained objection when Mr. All asked it. I want to ask him for the Tennessee Company and Republic Company whether there has been a decrease in production as contrasted with the old—

Mr. Harris:
We object.

The Court:
I think I will admit it.

Mr. Harris:
We except.

Q. Has there been a reduction in production?
A. Yes, sir.
Q. Can you give it to us in cars?
A. No, sir, I can't give it in cars because we don't compute it that way.
Q. Could you give it in percentages?
A. It is about five percent.
Q. It is about five percent?
A. Yes, sir.
Q. Contrasted with what period?
A. Prior to May 1st.
Q. Over what length period?
A. About six months.
Q. Contrasted with the prior six months there has been a reduction in production?
A. Yes, sir.

Mr. Burr:
That is all.

Cross Examination.

(By Mr. Harris):

Q. Mr. Russell, are you superior to Mr. Costner or is he your superior?

A. Mr. Costner is my superior.

Q. Are you next in rank below him?

A. I am next in rank below him.

Q. I am not clear as to the periods, after you went with the Sloss Company, you served in different capacities. In 1926 you were a member of an engineering crew, weren't you?

A. Yes, sir.

Q. How long after you went with the Sloss Company did you continue a member of an engineering crew?

A. Until 1936.

Q. You were a member of that crew which was engaged in running surveys and drawing maps and making measurements, wasn't you?

A. Yes, sir.

Q. You had nothing to do with the employment of the men?

A. No, sir.

Q. And you had nothing to do with the discharge of the men?

A. No, sir.

Q. You didn't assign the service men to their tasks, or the production crews to their tasks for those ten years?

A. No, sir.

Q. Now, when your went with the Sloss Company, how many crews, that is, how many mining crews would you say there were in the mine?

A. I couldn't say exactly.

Q. Could you give us a rough estimate?

A. No, sir. At that time you see both slopes were running, both Number 1 and Number 2 mines were in operation.

Q. You didn't have anything to do with Number 1, did you?

A. Yes, sir.

Q. You worked in both of them?

A. Worked in both of them.

Q. And your work didn't require you to get to the mines at the time the men went down so you could go down the mantrips with them?

A. No, sir, not as a rule.

Q. And your work didn't require you to familiarize yourself with what the service crews were doing and what the production crews were doing, did it?

A. No, sir.

Q. In 1936, what did you start doing?

A. In 1936 I was safety inspector.

Q. How long did you stay safety inspector?

A. For approximately two years.

Q. And what did you do after you quit being safety inspector?

A. I became superintendent.

Q. Do you remember what month and what year?

A. Yes, sir.

Q. What month?

A. June 1, 1938.

Q. June 1st?

A. Yes, sir.

Q. Now, when you went to work out there do you know how many contractors they had working in the mines?

A. I can't tell you offhand—

Q. Can you—

A. —exactly how many at that time. I can tell you approximately how many.

Q. How many were there?

A. There were about 25 or 28.

Q. In 1936 how many contractors were working in the mine?

A. Probably the same number.

Q. And 1938 when you became superintendent of Number 2,—that is the one you are superintendent of, isn't it?

A. Yes, sir.

Q. How many contractors did you have in the mine?

A. Twenty-five.

Q. That meant there were 25 drill crews or mining crews in the mine, or did it mean there were less or more mining crews than that?

A. It meant there were more crews.

Q. What was the nature of the work that a contractor's crew did?

A. Well, in calling the men a contractor, I presume you mean a head miner.

Q. Yes.

A. Well, it depended on his duties. A drill man, of course, ran a drill. The drill helper assisted the drill man. The muckers loaded the ore.

Q. Now, the first time you recall ever putting a clock to check on the men out at Number 2 mine was around May 1, 1941, wasn't it?

A. Yes, sir.

Q. Prior to May 1, 1941, there was no clock either at the mouth of the mine or down in the mine that any man had to punch, either going in or coming out, was there?

A. No, sir.

Q. And you did not have at Number 2 mine any system whereby the man turned in a check and it was put on a rack to show when he went to work, did you?

A. No, sir.

Q. And during the period from 1936 to May 1, 1941 all the mining in the Sloss Mine by the production crews was done on a tonnage or contract basis, wasn't it?

A. Yes, sir, it was done on a tonnage basis.

Q. Done on a tonnage basis?

A. Yes, sir.

Q. And the men were paid according to the number of tons they produced?

A. Yes, sir.

Q. And you had no way of determining up until May 1, 1941, how many hours a man actually worked and how many hours he didn't work, did you?

A. The only way of determining that, we could determine how many hours the men were underground.

Q. All you knew was that he was underground, and you merely knew that because you knew your skip, went down approximately for 45 minutes in the morning shift, and then you knew that on the night shift the skip went down for a period of 45 minutes, and you knew when the skips the man trips started down?

A. Yes, sir.

Q. Now, the mining crews, when they were put in a heading or a stope, the head miner, the contractor, contracts with the company and say he goes in heading 72 and he starts mining that heading and he has to mine out stopes. About how many months or weeks would that man be working in Number 2 heading—Number 72 heading in the normal course of things before he exhausted it and had to be assigned to a different heading?

A. You could hardly say an exact period of time. He would stay in there until the place was worked out.

Q. That would run anywhere from two months to six months?

A. It would run anywhere from six months to several years.

Q. Six months to several years?

A. Yes, sir.

Q. Then the service men didn't have a place they would go to for from six months to several years, did they?

A. No, sir.

Q. They were moved and shifted about the mine constantly from day to day and week to week and month to month, weren't they?

A. Yes, sir.

Q. So there was no way of fixing any particular location at any particular time on the records of the company and saying at that particular time in this particular place a service crew was working here?

A. Well, you could hardly do that.

Q. Hardly do that?

A. No, sir.

Q. Now, did you ever yourself ride one of those man trips and see how long it took to go from the mouth of the mine to the first man unloading station?

A. Yes, sir.

Q. What was the actual length of time on the man trip from the mouth to the first unloading station?

A. Six minutes.

Q. And then the total time of the ride to the second unloading station?

A. Ten minutes.

Q. And the total time of riding to the third unloading station?

A. There weren't three unloading stations.

Q. You have never had but two unloading stations out there?

A. Two, yes, sir.

Q. Have you ever, either while you were an engineer or since you became superintendent, made any check back in the stopes of the mine to see how much air was coming in any particular room or stope a minute?

A. Yes, sir.

Q. When did you make that check?

A. I didn't make any check personally, but it was made about six months ago by one of the company's safety engineers.

Q. Who was that man that made that check?

A. He was Mr. Burgess.

Q. Mr. Burgess?

A. Yes, sir.

Q. And so far as you know about six months ago,—that was the first check that was ever made?

A. No, sir; those checks are made from time to time. That was the last one.

Q. Did they make dust counts to test the purity and quality of the air?

A. I presume so. I am not certain.

Q. You don't know?

A. No, sir.

Q. As superintendent of the mine you didn't get any report from this other engineer to show the condition of your mine?

A. Yes, sir. I have the reports. I haven't them with me, however.

Q. You haven't what?

A. I haven't them with me, I say.

Q. I know, but you got reports every six months showing—

A. No, not every six months. These inspections were not made at any regular periods.

Q. Did you keep those reports?

A. Yes, sir.

Q. You say you haven't got them with you?

A. Yes, sir.

Q. And those reports show the dust count and amount of air coming in the different stopes and headings and the amount going out?

A. They would show the amount of air. I am not positive about the dust counts.

Q. This bath house you described up at Number 2 portal as being only 200 feet away from the portal, that only had accommodations or was large enough only to take care of about fifteen or twenty white men?.

A. I believe so. I believe there are about 15 or 20 white men in there.

Q. As I recall, I believe you told the Judge or Mr. All a while ago there were about 500 men working there?

A. Yes, sir.

Q. So the actual bath houses where these men had to bathe, except the 15 or 20, was not there at Number 2 but was at Number 1 bath house about three-quarters of a mile away?

A. No, sir, it wasn't three-quarters of a mile away.

Q. How far away was it?

A. I would say about half a mile.

Q. About half a mile?

A. Yes, sir.

The Court:
When did the men stop working on the tonnage basis?

The Witness:
You mean when did they stop or start?

The Court:
Stop.

The Witness:
They are still working on the tonnage basis.

The Court:
I don't understand how a man works eight hours a day and then is paid on a tonnage basis. Is he paid on the tonnage basis or by the day?

The Witness:
It would be rather complicated to explain to you.

The Court:
I don't understand it.

The Witness:
He is paid on the tonnage basis and then guaranteed so much a day for eight hours.

The Court:
Can you explain it?

The Witness:
No, sir, not right off, I can't.

Mr. Harris:
Could I interrupt Your Honor and ask one question?

The Court:
Yes, sir.

Q. Even this guaranteed minimum you are talking about, that just started in the last few years, didn't it?
A. Yes, sir.
Q. When was it these men who have always been paid on a tonnage basis started getting a guarantee from the Sloss Company for a minimum wage?
A. Are you asking me?
Q. Yes. I am not asking the Judge.
A. 1940.
Q. And up until that time they didn't even have a guarantee?
A. No, sir.

The Court:
Is that called the incentive plan?

The Witness:
It is something similar to that.

Mr. Harris:

Well, I might find out—I will switch back, if Your Honor is through. I didn't mean to interrupt you.

The Court:

I am through.

Q. Now, then, when the men walk that half mile, you say, from that Number 1 mine bath house up to Number 2, is that walk on level ground or is it uphill and downhill?

A. It is partly on level ground and partly uphill and downhill. Of course, the—

Q. Any hills in between?

A. You are speaking of the present time, or—

Q. I mean—I am speaking of the people who had to do the walking. You have changed all that since May 1st?

A. We have changed that.

Q. When you mentioned to Mr. All the changes you had made, you didn't mention the bath house?

A. I didn't bring in the bath house.

Q. Well, you think it over and see if there are any other changes you made on May 1st you didn't call to Mr. All's attention?

A. I don't recall any at the present time.

Q. Now, you testified that production had fallen off?

A. Yes, sir.

Q. And you know enough about the operations of your company to know that they keep accurate records from month to month and year to year showing what their production was and is, don't you?

A. Yes, sir.

Q. And those records are available showing—here in Birmingham—showing what the production has been month by month and year by year?

A. Yes, sir.

Q. And neither you nor anybody else has to rely on just an estimated percentage? You estimated it at 5 percent, but you haven't been to those records and taken those figures and a pencil and made the mathematical calculation to determine accurately whether it was 5 percent or 4.1 percent or 3.72 percent?

A. No, sir.

Q. Now, the Sloss Company doesn't make steel. All it does is, so far as the iron ore is concerned, it mines the ore and manufactures pig iron?

A. Yes, sir.

Q. And you have records not merely of the amount of raw ore that you get out of the ground, but the amount of pig iron that is made out of that ore, don't you?

A. I wouldn't know about that. I am not connected with the furnace department. All I would know about would be the iron ore.

Q. You don't know whether they have furnace records or not?

A. I don't know; I presume they have.

Q. That is your understanding, isn't it?

A. Yes, sir, it is my understanding they do have.

Q. The same kind of weekly and monthly and yearly records I asked about about the ore?

A. Yes, sir.

Q. The Sloss Company doesn't mine iron ore and load iron ore on cars and ship those cars of ore to other states or other companies, does it?

A. I couldn't answer that question positively. It is my opinion they do not do that, but I couldn't say.

Q. In other words, the Sloss Company, according to your recollection and judgment, mines the ore in order to put that ore in the furnaces of the Sloss Company and make pig iron out of it?

A. Yes, sir.

Q. Well, now, to refresh your recollection, on May 1st another change that you made was that instead of having six-man cars hauling the men down in the mine you increased the trips to eight-man cars, didn't you?

A. That was made somewhat prior to May 1st.

Q. Well, within a week or two?

A. I will say a month.

Q. You made that change yourself, didn't you?

A. Yes, sir.

Q. Under your supervision?

A. Yes, sir.

Q. And you started making that change at the time you got orders to get ready to go on portal to portal?

A. Yes, sir.

Q. Then you made another change, didn't you, up at the tipple along about that time?

A. I don't recall anything at the tipple.

Q. You don't recall? You don't recall putting a new helper on the hoist, or a new hoist in about May 1st?

A. No, I don't believe I do.

Q. An automatic hoist? You don't remember changing to an automatic hoist?

A. Oh, you are speaking of remodeling the tipple. That has been done this month, in July.

Q. Yes.

A. That wasn't done prior to May 1st.

Q. But it has been done since you went on the portal to portal?

A. Yes, sir, it has been done since we went on the portal to portal.

Q. And that change you have made speeds up production, doesn't it?

A. Yes, sir.

Q. And you have got a new dump—you have put in a new dump for dumping cars at the top, haven't you?

A. Yes, sir.

Q. And that has been done since May 1st?

A. Yes, sir.

Q. And that speeds up production, doesn't it?

A. Yes, sir.

Q. And before you used to have four man trips going down to the—going down the slope, and now you only have three man trips going down the slope?

A. That is right.

Q. You have cut out one entire man trip? That one thing alone has saved ten minutes time, hasn't it?

A. I couldn't say. I presume it has saved some time.

Q. That is ten minutes time each way, going down into the mine and coming out of the mine?

A. I presume there has been some time changed—time saved.

Q. Now, all this talk—this evidence you have given about the operations, going down and coming out, and the time it took, that testimony on your direct examination apparently applied primarily to the day shift, but the same thing would apply as to time elements on the night shift, wouldn't it?

A. Yes, sir.

Q. Actually the—there is no substantial difference in mining underground between a night shift and a day shift?

A. No, sir, there isn't any.

Q. There is some doubt on our part as to whether you have already testified, and you may have,—if you have, pardon me,—that is, how many times per month you go down into the mine?

A. Why, I usually average about four days a week.

Q. About how many?

A. Four days a week.

Q. Four days a week?

A. Yes, sir.

Q. Have you been doing that ever since you were superintendent?

A. Yes, sir.

Q. And then back during those ten years you were on the engineering—

A. Well, I would hardly go underground as regular as that.

Q. I imagine there were times when you didn't go underground for two or three weeks at a stretch?

A. No, sir, I wouldn't think so. I would think I would be underground once or twice a week anyway.

Q. As an engineer?

A. As an engineer.

Q. Do you have any regular time when you go underground out there?

A. Yes, sir. As a usual rule I go in the morning.

Q. What time?

A. About 7:30.

Q. What?

A. About 7:30.

Q. 7:30?

A. Yes, sir.

Q. And you have been following that practice how long?

A. Several years.

Q. Since 1938?

A. Yes, sir.

Q. Now, how do you get down underground?

A. I ride down on the ore car by myself.

Q. You ride down on an ore car and do not ride the man trips?

A. Except in exceptional cases.

Mr. Harris:

I believe that is all.

Re-Direct Examination.

(By Mr. All):

Q. Mr. Russell, Mr. Harris asked you about the matter of remodeling the tipple, which has occurred since May, 1941, and putting in a new dump and making some additions to the man trip or something of that sort, which you said, in answer to his question, would speed up production.

A. Yes, sir.

Q. I will ask you if those things had not been done would the loss of production, in your opinion, have been greater?

Mr. Harris:
We object to the argument.

The Court:
I sustain the objection.

Mr. All:
We except. That is all, Mr. Russell.

The Court:
Mr. Russell, just a minute. I want to see if I skipped anything.
That is all.

(Witness excused.)

The Court:
We will take a recess.

(Thereupon proceedings were in recess from 10:45 to 11:05 A. M., at which time proceedings were resumed as follows):

The Court:
Who will you have, Mr. All.

Mr. All:
Mr. DeSollar.

1486 T. C. DeSOLLAR, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. All):

Q. What are your initials, Mr. DeSollar?

A. T. C.

Q. T. C. How do you spell your name?

A. D-e-S-o-l-l-a-r.

Q. Mr. DeSollar, what is your—who are you with at the present time?

A. I am with the Woodward Iron Company.

Q. How long have you been with the Woodward Iron Company?

A. Since May, 1924.

Q. Where were you prior to that time, Mr. DeSollar?

A. I was with the Quincy Mining Company at Hancock, ~~Michigan, from 1908 until 1924.~~

Q. What did the Quincy Mining Company mine?

A. Copper.

Mr. Harris:

We object to that, if the Court please.

The Court:

Overruled.

The Witness:

Copper.

Q. You came here in 1924?

A. Yes, sir.

Q. In what capacity did you first go with the Woodward Iron Company?

A. Superintendent of the Red Ore Division of the Woodward Iron Company.

Q. How long did you remain superintendent of their Red Ore Division?

A. I remained superintendent until about the 1st of May, 1940.

Q. What have you been doing since that time, Mr. DeSollar?

A. I have been getting to open up the new Woodward Iron Company ore mine.

Q. Where is that?

A. That is here at Pyne.

Mr. Burr:
At where?

The Witness:
At Pyne.

Mr. Burr:
Where is that?

The Witness:
Right back of Muscoda.

Q. Is it in Jefferson County?

A. Jefferson County.

Q. Is it nearer the Woodward mine—who is the nearest mine?

A. It is closer to Bessemer, right back of Muscoda.

The Court:
When were you superintendent of the Woodward Iron Company?

The Witness:
Until May 1st, about that time. I was injured and I was in the hospital. I take it about that time.

Q. You say you were injured?

A. Yes, sir, I was injured in an accident in March, 1940.

Q. And you were in the hospital?

A. Yes, sir.

Q. Mr. DeSollar, have you a map which shows the Woodward workings?

A. Yes, sir.

(Thereupon the map was placed upon the blackboard.)

Q. Mr. DeSollar, looking at that map as it hangs—is that the way you preferably hang that map for the purpose—

A. That is the way I usually look at the map. I usually reverse—

Q. Looking at the map, where is the pit mouth?

A. The pit mouth is right here.

Q. How many workings—

Mr. Harris:

Mr. All, may I interrupt?

If the Court pleases, the Woodward Iron Company didn't join in this series of bills. The Woodward Iron Company is not a party to the suit, and it seems to be that detailed operations of the Woodward Iron Company, what they have been doing, would not be material in this case.

What we would get into, if they go into that, then we would have to introduce evidence as to all the Woodward operations and the discussions between the parties, and yet they are not parties to the suit, so I think all this effort to try the Woodward Iron Company in this case without the Woodward Company being a party goes into matters that are immaterial and irrelevant, and transactions between other parties, and so I object to it.

The Court:

It is a question, Mr. Harris, of going in—I assume he is going to show their mode of operation as to time and so forth.

Mr. All:

Yes, sir, to show they are similarly situated.

The Court:

A similar mine?

Mr. All:

A similar mine, and it is introduced on behalf of all the plaintiffs.

Mr. Harris:

Then we will have to try—I will state to the Court I haven't interviewed Woodward Iron Company witnesses because they are not a party to the case, so that means we will just have to try the Woodward Iron Company as though they were actually in the case.

The Court:

I overrule the objection.

Q. Mr. DeSollar—

Mr. Harris:

We except, and also all the general objections about the time element.

Q. Looking at that map the pit mouth is right here at the top of the Board?

A. Yes, sir, Number 3.

Q. Does this map show any other slopes?

A. Yes, here is Number 1 slope, which was closed in December, 1931, and here is Number 2 slope, which was closed in 1928.

Q. Number 1 and Number 2 slopes are designated on this map?

A. Yes, sir.

Q. You are operating Number 3?

A. Number 3.

Q. Now, Mr. DeSollar, when you came with the Woodward Iron Company in 1924, how far down had that slope been driven?

A. Number 3 at that particular time was about here.

Q. Can you designate that by headings?

A. It was on one left. The pitch of the new slope was about 60 feet below, I should say, one right.

Q. And that point is about where, here?

A. It is approximately at this point right here (indicating on map).

Q. Now, in 1938, about October, 1938, and for some, say, six or eight months prior to that time, about how far—say the first of 1938, how far had that slope been driven?

A. Well, I would say about right in here.

Q. Now, what heading is that?

A. That is too small for me to see.

Q. Will you mark on this where, or let me mark on there, in 1938, where this slope had been driven?

A. Just put a line across here.

Q. Just put a line across here?

A. Yes, sir.

Q. That is where it was in 1938?

A. Yes, sir.

Q. Now, in 1934, from the pit mouth down, were there any headings driven off the slope?

A. Off the top slope?

Q. Yes, sir.

A. Up to 1934 they were all abandoned up to this top slope.

Q. Had they been mined out?

A. Yes, sir.

Q. What do you mean by top slope and lower slope in that mine?

A. This mine went down to about this point here and encountered a fault. Then we were compelled to drive a tunnel through to get to the ore body on the other side. Then we had what we term the middle slope down to another fault right here.

Q. Will you point out that fault?

A. That fault is right here (indicating on map).

Q. Draw it out to the edge.

A. (Witness draws on map.) Then we went up, drove an incline pioneer heading or man way to try to prospect to find where the ore was, and we found out going up on about a 25 degree pitch that the ore body pitched down.

Then we found the best way to handle this haulage was driving this haulage tunnel 2,058 feet through this rock, and we lowered all this ore by gravity, and all the trips down to where the slope is, and where we had a wye, and the haulage picked the cars up.

Q. Will you put a wye there at that wye?

A. Yes, sir.

Q. From that point on how did the work proceed?

A. About 1938 we acquired from the Tennessee Company—the old property line was along this line, coming right down here. We acquired by trade with the Tennessee Company—we acquired this area in here, and then—

Q. Does that area in there appear at the bottom of the map?

A. It is right here.

Q. The bottom of the map as the map is hung?

A. Yes, sir; that is right there.

Q. Now go ahead.

A. At that time we started up an intensive development work. We drove this Number 1 man way here; we drove what we call the main southeast heading, which was designed primarily to divide this ground in about two equal halves.

Q. So you could drive in both directions?

A. So we would arrive in both directions, and then to augment that we drove what we call the right 20 cross to the booster.

Q. In a general way, Mr. DeSollar, will you explain the method of mining employed over there?

A. Well,—

Q. I mean driving the slopes and headings and things of that sort?

A. The slope was driven, and then approximately at right angles headings are driven, and when those headings are driven out to the property line our system has been to start stopes, which are driven at approximately right angles to the heading.

Q. I see.

A. And extract the tonnage from the stopes, the ore being loaded in tram cars.

Q. All sir. Now, in which direction are you moving in that extraction of the ore?

A. We are moving from the face down over the ramp into a mine car.

Q. Now, in driving a slope are you mining ore?

A. No, sir. That is development work.

Q. That is development work?

A. There is a certain amount of ore obtained, but we call that development work.

Q. I know, but you utilize the ore?

A. Yes, sir.

Q. In driving a heading, are you mining ore?

A. Well, it is the same thing.

Q. The same thing, you utilize the ore but you are driving a heading?

A. Yes, sir.

Q. You say your general plan is to drive your headings out in various directions?

A. Yes, sir.

Q. Then to begin stoping at the property line and come back to the heading and to the slope?

A. Yes, sir.

Q. Where did you start?

A. We started at the property line if it were possible. There have been times we couldn't stick to that plan, but that was the plan.

Q. Then which way did you drive?

A. Back towards the nuck.

Q. What is the nuck?

A. The nuck is the place where the company chain or company motor picks up the trips.

Q. Picks up the trips?

A. Yes, sir.

Q. Mr. DeSollar, can you tell us about what your—did you have change facilities there when you came in 1924?

A Yes, sir, we had a bath house. We had at that time—we had two bath houses.

Q. Two bath houses?

A. Yes, sir.

Q. And later on did you have two or more or less?

A. One bath house—we removed everything from Number 2 and removed everything down to Number 3, and then we built an addition onto an already existing building and added another bath house, so we always had two bath houses.

Q. You still have two bath houses?

A. Yes, sir.

Q. What is a bath house used for?

A. A bath house is used for a man to take off his street clothes and get into his mining clothes.

Q. What percentage of the men used the bath houses?

A. I would say about 90 or 95 percent.

Q. Use the bath houses for changing?

A. Yes, sir.

Q. Where do the others change?

A. Change around—among the negroes they change around—sometimes in their own homes.

Q. In their own homes?

A. Yes, sir.

Q. And come over there already changed?

A. Yes, sir.

Q. Now,—

The Court:

Is there any charge for bath house facilities?

The Witness:

No charge whatever?

Q. Has that always been true?

A. Always—

Q. Never has been any charge at all since you have been there?

A. Not since I have been there.

Q. Now, can you point out for the Court the pit mouth on this map?

A. Here is the pit mouth of Number 3. The pit mouth of Number 2 is right here, and the pit mouth of Number 1 is right here (indicating on map).

Q. Now, we will confine the questions—the testimony to Number 2.

A. Number 2 or Number 3?

Q. Number 3, the one presently operated. Do you have a supply house over there?

A. Not at the pit mouth. We had a supply house about twenty—well, it is part of the bath house, the same building.

Q. The same building as the bath house?

A. Yes, sir.

Q. What do you keep at the supply house?

A. Tools of all sorts, steel, ropes, skidder blocks, hangers, picks, shovels,—

Q. Every kind of tool used in the mine?

A. Yes, sir.

Q. Mr. DeSollar, what sort of lighting system did the men employ to see in the mines?

A. Carbide lights.

Q. Lamps on their caps?

A. Lamps on their caps.

Q. Where did the men get their carbide?

A. They got their carbide out of small steel lockers at the pit mouth. They are about fifty feet from the pit mouth.

Q. Was that issued to them by the company?

A. No. The head miners or the contractors bought the carbide and it was issued and taken by the men—each contractor or head miner had a little locker.

Q. Had his own carbide?

A. Yes, sir.

Q. Where did they acquire the carbide?

A. They acquired that by purchase at one time through the store, or at another time through the supply house, or at any place they wanted to get it.

Q. At any place they wanted to get it?

A. Yes, sir.

Q. How long did that exist?

A. I would say all the time I was at Woodward.

Q. Up to the present time?

A. Yes, sir.

Q. The men got their carbide before starting down into the mine?

A. Yes.

Q. In 1934, how did the men get from the pit mouth to their working places?

A. 1934—

Q. 1924 when you came there?

A. '24,—confining it to Number 3?

Q. Confining it to Number 3.

A. They rode to 38 and walked through the tunnel, and they were practically at the face right then and there. There was a little walking in 1924 in the upper part—in the lower part of the top slope.

Q. You mean the travel time was not great at that time?

A. No, not great.

Q. Not great at that time?

A. No, sir.

Q. How were the men taken down from the pit mouth to that point?

A. Up until about 1928 there was a man car that was lowered from the surface to 38. That was a man car trip. It consisted of five cars that would hold ten men on each car.

Q. All right. Were those cars used for ore skips—

A. No, sir.

Q. —or were they specially—

A. There were specially—

Q. —for the men?

A. Yes, sir, with safety ropes on them.

Q. That was back as far as 1924?

A. That was 1924 to 1928 when we put in the skip haulage.

The Court:

Put what?

The Witness:

Skip haulage on the top slope.

Q. Now, that was in 1928?

A. I think it was 1928; sometime around that, I don't remember exactly.

Q. Now, what change did that bring about?

A. In that year we put in a new hoist engine, we revamped out tipple and we put on ten-ton skips and we widened the slope so we now hoist in balance; that is, when there is a skip at the top there is another skip at the bottom, and to augment getting the men in we built man cars, one man car to be attached to each skip in handling the men.

Q. So at that time you took some of the men on the skip?

A. We took some in the skip and some in the man car.

Q. But the skip and man car were part of the same train?

A. Yes, sir, part of the same skip.

Q. That just increased the number of men that could go on that skip?

A. Yes, sir.

Q. Did you haul ore or anything else on the skip when the men were being hauled?

A. No, sir.

Q. Was any change made at that time with respect to the riding distance of the men?

A. Well, as we developed from 1924 on we installed a large hoist in what we term the middle slope, and after we had gotten down a sufficient distance we put a man car on there, but most of the time the men walked.

Q. All right, sir. Now, with the exception of the carbide which the men got at the top before going down, what else, if anything, did members of the production crew take with them on the way to their working places?

A. Coming from the surface?

Q. Coming from the surface.

A. About the only thing that a man would ever take down,—maybe once or twice or three times a year he might take a Stillson wrench.

Q. What would be the occasion for doing that?

A. The old wrench wearing out.

Q. Well, what was the usual method of supplying a wrench in that case?

A. He would go to the supply office and purchase them.

Q. Then, did the company have any means to deliver it to the working place?

A. If the man wished it to be delivered, it would be delivered. As a general rule the man—it was his own property, and he liked to see it got there.

Q. Where did he carry it?

A. He would carry it to the mouth of the mine. Then, after he got on, if it was a small tool like a Stiilson wrench,—

Q. I did say how did he carry it?

A. In his hand.

Q. In his hand?

A. Yes, sir.

Q. Now, we get to 1938, Mr. DeSollar, and sometime prior to that and through 1938 up to May 1, 1941.

Did the company have a supply house near the top?

A. Yes, we—

Q. Or at the top?

A. We had a supply room for hangers, bolts and wedges, hose pipe, and things like that in a little building about fifty feet from the portal. We had a steel box right up close which was kept locked.

Q. Yes.

A. We found if we didn't those things would disappear that were sent up. That box was put in as a protection.

Q. How did the mine tools—how did they reach the working places of the working crews?

A. If it was a crew engine or drag scraper, or shovel loader, anything like that, that would be taken in with a regular crew between shifts or on a Sunday or Saturday night, usually, with a mechanic or electrician in charge of the party.

Q. What crew was that?

A. That might be a haulage crew or a rough crew.

Q. Was that done on company time?

A. That was done on company time.

Q. Men the company paid for doing that work?

A. Yes, sir.

Q. What about the other tools that were necessary and required?

A. Drill steel—we have an underground drill steel shop. We have an underground blacksmith shop. We have an underground drill sharpening shop and there are regular trips run on drill steel. The drill steel is taken at the—either at the end or beginning,—I am a little hazy to be exact,—that overlapping of the shifts.

There is a powder trip—

Q. Taken where?

A. Taken to the various crews.

Q. Of the working places?

A. Of the working places.

Q. How long had that existed prior to 1938 and since 1938?

A. Ever since I have been there after we put the underground shops in which was probably 1928 or 1929. I don't remember exactly about that.

Q. Now, what about the powder, Mr. DeSollar?

A. We have an underground powder magazine, and the powder was delivered on a Sunday morning, and the men, the haulage men or rock crew, under the supervision of a foreman, would take the powder and put it into the powder magazine.

Q. Where was that powder magazine?

A. That powder magazine was about 300 feet off the tunnel on one right—one left.

Q. 300 feet off the tunnel?

A. Yes, sir.

Q. Where—

A. There is a tunnel that goes through the fault right here, and that powder magazine is about right there (indicating on map).

Q. That is the first fault as you go down?

A. That is the first fault as you go down, yes, sir.

Q. How long has that powder magazine been at that place?

A. I would say about 1928.

Q. Since that time up to now?

A. Yes, sir.

Q. How did the production men get the powder at their working places?

A. As the head miners or contractors would come to the pit mouth he would issue a—give a requisition for so many boxes of powder. Everything was sold by boxes. Then, at 9:30, these boxes—this order would be filled by a company crew and taken over to the slope and carried down by the chainers plus a foreman, and taken to the various nucks.

Q. When you say nuck—you mean by nuck—

A. At the working faces.

Q. At the working faces?

A. Yes, sir.

Q. Did the men ever carry powder to their working places?

A. No, sir, because the motorman—everything we do—practically all the haulage is by motor,—90 percent is motor, and we would put the powder on a car going up to the heading and the powder would be delivered there in a small powder box.

Q. Has that been the consistent practice since you have been there?

A. It has been the consistent practice all the time, yes, sir.

Q. You say 9:30; you mean 9:30 in the morning?

A. Every morning.

Q. That is for the day shift?

A. Two shifts.

Q. When is it delivered for the other shift?

A. We don't make any night deliveries.

Q. You don't make any night deliveries?

A. No, sir.

Q. That was delivered at each place that wanted powder?

A. At each place that wanted powder, and asked for a requisition, signed a requisition.

Q. Now, from a period 1938 and since then up to May 1, 1941, what has been the working time for the underground men to commence work?

A. 6:30 in the morning until blasting time, which was 2:30.

Q. That is the production men?

A. Yes, sir.

Q. 6:30 in the morning to blasting time at 2:30?

A. 2:30.

Q. Where was the working place for the production crews?

A. The working place for the production crew was in close proximity to where they were drilling, blasting and dragging.

Q. That was at the face?

A. Yes, sir, that was at the face.

Q. So their work time started at 6:30?

A. 6:30, yes, sir.

Q. What time did the service crews—underground service crews—what time did their work time start?

A. 6:30.

Q. What time did it end?

A. Three.

Q. You have one ending at 2:30 and one at three; what was the difference?

A. The service men always took 30 minutes for lunch.

Q. What about the production men—did they have a lunch period?

A. No, sir. They carried lunch with them and ate whenever they wanted to. Sometime they ate while they were working or waited until they got through drilling.

Q. You say they start at 6:30. What time would the first man trip go down? We will continue this to the day shift?

A. 5:30 when the first man trip went down.

Q. How many men would take the first man trip?

A. Sixty men.

Q. Sixty men?

A. Yes, sir.

Q. And each other trip took sixty men?

A. Until the men were all in.

Q. How many trips did it take to take the men in? How many trips did you run?

A. With the present working force, about five trips.

Q. Say about 1938?

A. Yes, sir.

Q. Shortly prior to and about October—

A. About the same thing, about five trips.

Q. Will you tell us how long it takes—

A. It takes about seven minutes to lower a trip from the top of the slope.

Q. What do you mean by loading a skip?

A. Lowering.

Q. What about the intervals at which they would start?

A. It would be about nine minutes. You can lower them pretty rapidly, because everything is lined up in alignment. It is one, two, three, order.

Q. At that time, 1938, and for a period prior to that time and immediately following up to May 1, 1941, what was the riding—can you give us where the men—what intervals of that travel was involved in riding?

A. From here to 38 it was riding on the top man trips.

Q. On what?

A. On the man trips.

Q. All right.

A. The man trips and skips. They were all hooked together.

Mr. Burr:

Give that distance, will you, please, sir?

The Witness:

It is 3000 feet.

Mr. Burr:

3000 feet.

The Witness:

Then, from this point here, around the tunnel, 1035 to the loading point on the middle slope.

Q. Now, is that 1035 feet walking distance?

A. That is walking distance.

The Court:

You mean they walk that distance?

The Witness:

They walked that distance, yes, sir.

Then it was optional whether a man wanted to ride or walk. We had work over here and we had work close by and the men—

Q. What you are pointing out is the heading sites?

A. Yes, sir, where work was going on at that time.

Q. Yes, sir.

A. Now, we have made this ride compulsory—

Q. We are talking about around 1938?

A. Well, there were a few places where the men got off and would walk,—a few places.

Q. They got of where?

A. They got off at this heading right here. We had some work up here. When they got off at ten,—ten right here, you see a travel line in red and some work.

Q. The travel line in red, is that at the right of the slope, looking down the slope?

A. That is to the right of the slope looking down the slope, yes, sir.

Q. You have two stopping places for that second slope trip?

A. Yes, sir.

Q. The first one is about how far from the starting point?

A. About 600 feet from the starting point. Most of the time the men preferred to walk.

Q. Preferred to walk?

A. Yes, sir. The next place was 10, almost to the end of the ride, and they rode there, those that wanted to, and those that didn't walked.

Q. That is how far from the commencement—

A. 2200 feet from this point to eleven right here. Then they walked the rest of the way into the various working places.

Q. Wherever their working places were?

A. Wherever their working places were.

Q. At that time did you have—at that time what was the remotest place from the place where the men would get off?

A. I imagine—

Q. The furtherest working place.

A. I imagine the furtherest working place was right over here in six right.

Q. Now, how far would that be from the nearest unloading point?

A. I will have to take a scale.

Mr. All:

Has anybody got a rule?

The Witness:

I have.

Q. All rght.

A. About 3600 feet.

Q. About 3600 feet?

A. 3600 feet to 4000 feet.

Q. That is the remotest place?

A. Yes, sir.

Q. Now, can you give me an idea—

The Court:

That is from where the men unloaded to where they worked?

The Witness:

Yes, sir.

Q. How far is that now?

A. Between 3500 and 4000 feet.

Q. Now, what would you say would be the shortest place to that unloading point? I am getting at around 1938, now, during the year 1938 and shortly following that, and prior to that time.

A. There were some working places up—there were some working places up in here about five or six hundred feet.

Q. Five or six hundred feet?

A. Yes, sir.

Q. From there?

A. Yes, sir.

Q. That is 1938 now?

A. Yes, sir.

Q. Now, at what time did you—you say this second trip was optional?

A. Yes, sir.

Q. And that remained optional until when?

A. Until May 1, 1941.

Q. It remained optional until May 1, 1941?

A. Yes, sir.

Q. About what percentage of the men prior to that time used the ride, the trip, instead of walking?

A. Well, I would say 99 percent walked.

Q. 99 percent walked?

A. They all rode up.

The Court:
Was it down grade?

The Witness:
It was down grade walking down.

The Court:
Going to work?

The Witness:
Going to work, yes, sir.

Q. It had some grade coming back?

A. Coming up, yes, sir.

Q. Can you give us about the degree of that grade?

A. Oh, I would say about twelve percent.

Q. Did it vary?

A. No, it was fairly constant. I might say—that is not a correct statement. It started steep, and then as it got down into the flat, it was just like the bowl of a saucer, rght flat.

Q. Now, the service men, I presume, got off at the nearest point to where—to their working places?

A. To where they do work.

Q. With respect to the service men, Mr. DeSollar, did they have any occasion to take any tools or implements or anything in the mine from the top except the carbide?

A. No, sir. Picks and shovels and wrenches, everything like that would be furnished inside.

Q. Furnished them inside?

A. Yes, sir.

Q. With respect to the production men, did they use oil?

A. Yes, sir.

Q. What was the—what has been the method of getting oil to the working places?

A. We have an underground storage house at seven right. Seven right is right in here (indicating on map). And the men from the—coming off of work would bring their empty cans there, and in going back to work, going to their working places the next day, the cans would be filled after seven o'clock and a drill man or a drill helper or mucker would carry the oil up to the working place.

Q. When—did you have a regular time for issuing that oil or when the men—

A. Yes, sir, seven o'clock.

Q. Seven o'clock?

A. Yes, sir.

Q. That was the same time—that was the work time?

A. No, that was after work time.

Q. After what?

A. After work time.

Q. Did you use the detachable bits on the drills?

A. We have about nine places, nine development places, or did have. We only have got one place now using the detachable bits.

Q. What did you have in 1938 and for a time prior to that and since?

A. That was the regular drill steel.

Q. That was the regular drill steel?

A. Yes, sir.

Q. You had no detachable bits at that time?

A. No detachable bits.

Q. Had you had detachable bits prior to that time?

A. We had a few we were trying out. They were in an experimental nature, an experiment.

Q. What have you had in the way of detachable bits since that time?

A. All our development places are on the detachable bits.

Q. And the number of development places, as you stated, varies from time to time?

A. They vary, yes, sir.

Q. Mr. DeSollar, will you outline the supplies which are needed by the production crews?

A. I didn't get that question.

Q. The supplies which are needed by the production crews and state where they are kept, and how they get to the working places, those supplies.

A. A contract crew or head miner crew will need a water hose and an air hose, maybe two water hose and an air hose. The water pipe is sent up to the pit mouth by the truck, carried down to the drill repair shop at the end of the first top tunnel where we have a machine that clamps the nipple on the hose pipe.

Q. Yes, sir.

A. It is then loaded in a car and sent to the working face, sent to the nuck, and then the—the contractors' motor trip will carry it on into the face.

The same thing is true with a drill machine.

The same thing is true with skidder blocks.

Drill steel I have explained.

Wrenches, or anything like that, as I stated, the men may carry them down, but if they don't want to they will be sent into the place.

Q. Are any of the heavier implements or heavier parts taken down by the men?

A. No. Drag ropes, scrapers and things like that are all delivered.

Q. Drills, what about drills?

A. Drills are put on a car and sent into the place.

Q. Put on a car? What kind of car are you talking about?

A. Regular mine car.

Q. Who has charge of that hauling, that transportation?

A. Either the motorman or chainer or the haulage men, depending when the work is being done.

Q. Do the production men have anything to do with that movement?

A. No, except pick it up at the nuck and carry it in by motor to the working place.

Q. And you say the nuck is part of their working place?

A. Yes, sir.

Mr. Harris:

We object to him leading him, Judge.

Mr. All:

He had stated it before.

The Court:

He had stated it before.

Mr. Harris:

I didn't catch it before. Mr. All led him before.

The Court:

What did you say the nuck is?

The Witness:

The nuck is where the company workers pick up the cars of ore loaded by the head miner or the contractor.

The Court:
That is how far from the working place?

The Witness:
That may be 300 to a thousand feet.

The Court:
Then when you say it is carried to the nuck, it is not necessarily carried to the working place?

The Witness:
No, sir, if we define the working place as the working face. The miner is responsible for it from the nuck.

The Court:
When you carry it to the nuck the production men pick it up and carry it to the working place?

The Witness:
Yes, sir.

Q. What do the production men have to do with the nuck? Do they have to bring anything to the nuck?
A. They bring the cars of loaded ore to the nuck and take the empty cars—
Q. That is a part of the producing crew's work, as I understand; that is, to bring what they produce to the nuck?
A. Yes, sir.
Q. They bring it after the shift—

Mr. Harris:
We object to him leading him.

Mr. All:
I am just asking him. I don't know.

Q. When do the men bring the ore to the nuck?

A. Whenever the trip is loaded.

Q. Whenever the trip is loaded?

A. Yes, sir.

Q. Is that a part of the production men's work, to bring the ore to the nuck?

A. Yes, sir.

Q. Who takes the empty cars up to the face from the nuck?

A. The—

Q. Up to the face?

A. The production men.

Q. The production men?

A. Yes, sir.

Q. In other words, the movement of the empty and loaded cars in the working place from the nuck to the face is conducted by whom?

A. By the production men.

Q. By the production crews?

A. Yes, sir.

Q. What about the drill bits? How do they get—

The Court:

Mr. All, I think we are going into too great detail. You have been over that once.

Mr. All:

That is all right is we have.

The Court:

I think you could refer to all that in one question and let him state—

Q. You say they are all delivered there except—What exceptions are there to the practice and the rule that these tools and supplies are delivered to the working places or the nucks?

A. I don't understand that question.

Q. What is there taken—what is taken down by the men, the production crews?

A. The drill bit, a needle, drill needle, and possibly—an occasional wrench. The needles will be occasional,—the needles will be occasional. The bits are every day by one man.

Q. By one man in the crew?

A. Yes, sir.

Q. How big are those drill bits?

A. About 2⅛ inches in diameter, about 2½ inches long, weight about three-quarters of a pound.

Q. How do they take them?

A. Take them looped on a little wire.

Q. Where are they taken from?

A. There is a place outside the drill shop and they are hung there. The man deposits his dull bits the night before and the next morning he takes sharp ones.

Q. Mr. DeSollar, beginning with May 1, 1940, did you make any changes—1941?

A. Yes, sir. Time clocks were put in in a little building right outside of the—about 50 feet from the portal.

The top man car was lengthened ten feet.

We added one additional man car on the middle slope.

We built six man cars to transport men in the tunnel, through the tunnel.

Q. Well, what about where the men check in and check out now?

A. A man now comes to the building; he takes his card and he checks in and he gets his carbide and he goes on through.

Q. Well, from the time you have been up there until May 1, 1941, how was work time computed?

Mr. Harris:

The same objection we have made heretofore to that question, if Your Honor please.

Mr. All:
You mean as to prior to 1938?

Mr. Harris:
Yes.

The Court:
Overruled.

A. From abstracts signed—

Q. I say how was the time computed; was it face to face or portal to portal?

A. Face to face.

Q. How has it been since May 1, 1940?

A. 1941?

Q. 1941.

A. It has been portal to portal.

Q. Portal to portal?

A. Yes, sir.

Q. Go ahead with your method of checking in now since May 1, 1941.

A. Then he arrives over at a little aisle ready to get on the man trip.

Q. Is that when his time starts?

A. No, sir, his time starts immediately he punches the clock.

Q. When does it end?

A. When he punches the clock. It is just the reverse. He gets off the man trip and punches the card and goes on out the door.

Q. As I understand you have an 8-hour day now including traveling time?

A. Yes, sir.

Q. And before you had an 8-hour day excluding traveling time?

Mr. Harris:
We object to that.

The Court:
Overruled.

A. Yes, sir.

Mr. All:
That is all.

(To Mr. Burr):
Do you have any questions?

Mr. Burr:
Just a few.

Mr. All:
You go ahead.

(By Mr. Burr):
Q. Where were these copper mines you worked in before you came here?
A. Hancock, Michigan.
Q. Do you know the name of the company?
A. Quincy Mining Company.
Q. I don't know whether I quite understood you.
A. Quincy Mining Company.
Q. You say back prior to May 1, 1941,—I wanted to try to get the longest distance the men traveled as near as I could. As I understand they went down the first slope to the first fault?
A. Yes, sir.
Q. That was how far?
A. About 3,000 feet.
Q. Then they went through a tunnel?
A. Yes, sir.

Q. That was about a thousand feet?

A. Yes, sir.

Q. All right.

A. Then they walked to ten.

Q. That was about how far?

A. About 1900 feet.

Q. The furtherest was, you told us, between 3500 and 4,000 feet?

A. Yes, sir.

Q. And the shortest one about four or five hundred feet?

A. No; it was a longer distance than that.

Q. Where was the place the men, 95 percent of them, preferred to walk rather than ride?

A. Right there (indicating on map).

Q. At the first fault?

A. Where we got into the ore body on the other side of the fault.

Q. What was that distance they preferred to walk?

A. The majority of the work was over in this area (indicating on map).

Q. What was the furtherest distance?

A. I would say the distance I gave you there was about correct.

Q. About correct?

A. Yes, sir.

Q. At Woodward, I believe, your business is making pig iron?

A. Pig iron.

Q. Don't make manufactured products?

A. No, sir.

Q. Is the Sloss Company a competitor of yours?

A. I can only say from hearsay. I can't answer you directly.

Q. Is that your understanding?

A. Yes, sir.

Q. They both sell pig iron in the open market?

A. Yes, sir.

Q. One other question. This new mine you say you are engaged in opening for the Woodward Company is just immediately behind Muscoda?

A. Yes, sir.

Q. Are you building a new slope there?

A. No, sir, it is a vertical shaft. It was put down a good many years ago.

Q. It is a vertical shaft?

A. Yes, sir.

Q. How far will that shaft go down before you strike the ore?

A. The ore is down about 1250 feet.

Q. When you get to the bottom of the vertical shaft will you have to turn headings off?

A. Yes, sir.

Q. Will there be more than one level?

A. We think it will be right down in the flat.

Q. Just one level?

A. Yes, sir.

Q. You are familiar with the mines in Michigan?

A. Yes, sir.

Q. And they run a series of levels?

A. Yes, sir.

Q. Is yours going to be of the vertical character—

Mr. Harris:

I don't see where all that has anything to do with this case, a mine they are going to open up here entirely—a mine entirely different from this system.

Mr. Burr:

If Your Honor please, you haven't got the Tennessee Company named in this law; you have not got the Woodward Company named. This is the same territory—

The Court:
I—

Mr. Burr:
It is competitive conditions we are interested in. We haven't any question here of sweat shop wages. That is out of the question.

Mr. Harris:
Talking about a competitive industry, if there were ever an industry since I have lived here, since 1912, if there were ever an industry in which there was no competition it is the steel industry. If that argument is to be made we have a right to go into the Federal Trade Commission investigation, their holding on Pittsburgh plus, their basing point system, how they say Birmingham will be a basing point for those items, and Youngstown for those items, and Pittsburgh for those items, so when you get into a question of competitive conditions, it carries us into a problem of higher mathematics to say whether there are any competitive conditions at all.

Mr. Burr:
That is no reason why you should interrupt me in the middle of a sentence:

Mr. Harris:
I don't have to sit here and let him put stuff like that in the record. If I heeded him, I would never object.

Mr. Burr:
That is not the kind of competitive condition I am talking about. A high school boy, anyone above a moron would know if the Woodward people were starting an operation that didn't involve any traveling time, and Sloss Company has two or three miles of traveling time, and Woodward none at all, that would place Sloss at a com-

petitive disadvantage, and you don't have to go into Pittsburgh plus at all.

What I have been developing here and expect to continue to develop in this case is that when you take the ruling announced, the interpretation of the Administrator, —and they have traveled the world over,—it doesn't apply to Tennessee Company's mines, it doesn't apply to Woodward Company's mines, it doesn't apply to Sloss Company's mines, but applies to all underground mines.

What I am seeking to show by this very witness is that right here on this very same ore seam in this very same territory there are differences in traveling time. If that is not evidence why have they—they have been running all over the country. They have taken us from Minneapolis to Denver to see conditions out there. I think that eventually that may come into it.

What I am seeking to do here is to show conditions on Red Mountain, and it does have a significant bearing in this case.

Mr. Harris:

Now, if the Court pleases, I am not representing the Wage & Hour Administrator,—

The Court:

They are parties.

Mr. Burr:

They are parties here in this case.

Mr. Harris:

I know, but I am the man that objected and I am not representing the Administrator, and I haven't taken any depositions at Denver or Minneapolis or anywhere else. I haven't appeared in the taking of any depositions.

In all fairness to the Court, how can you say it is a competitive condition when you know, if they dig a vertical shaft, if takes money to dig a vertical shaft. It takes time to dig a vertical shaft; it takes money to bring men out of the vertical shaft. We don't know how much money the Woodward Company has put into that vertical shaft.

The Court:
We are not going into that.

Mr. Harris:
They are using an anticipated condition that hasn't arisen in the Birmingham district. We haven't any vertical shaft proposition.

The Court:
You have the Gulf States Steel down at—the Republic at Shannon.

Mr. Harris:
They are not operating.

The Court:
They were several years ago.

Mr. Burr:
They have quit operatng there. Of course, at the other mine they are operating a shaft that is very short.

The Court:
I will overrule the objection. We are not going into detail.

Q. You are proposing a vertical shaft?
A. It is a vertical shaft.
Q. When you get down to the bottom of that shaft, you strike ore?

A. Yes, sir.

Q. Will you have to drive headings like you do in the old operations?

A. We will have to leave a property sufficiently pillared, and by the time we get that first pillaring we will have determined which is the best course to follow in development work.

Q. And your travel time will be determined by how you follow it?

A. Yes, sir.

Q. When you first strike the ore there will be no travel time at all?

A. It will be right there.

Mr. Burr:

That is all I want to ask.

Mr. All:

I overlooked one question.

(By Mr. All):

Q. You have stated how many trips you made and the intervals. What is the total time?

A. I would say from about 40 to 45 minutes from the time we start on the basis of five—

Q. So your last trip was run a sufficient length of time to let all the men get to their working places?

A. Yes, sir.

The Court:

Is this map in evidence?

Mr. All:

I want to put it in evidence. We will introduce this on behalf of the plaintiffs.

Mr. Burr:
All this is on behalf of the plaintiffs.

Mr. All:
Suppose we put that Woodward map in as Exhibit W-1.

Mr. Harris:
We object to that map on all the grounds stated when I objected to going into the Woodward operations.

The Court:
You are not objecting because it is not identified by the proper party?

Mr. Harris:
No, sir. He says it is correct.

Mr. All:
Put that P-W-1. It is for all the plaintiffs.

Mr. Harris:
Call it Joint Exhibit 1.

Mr. All:
Just put it Joint Exhibit 1.—Plaintiff's Joint Exhibit Number 1.

Mr. Burr:
Off the record.

(Here followed an off-the-record discussion.)

Mr. All:
Go ahead and put it a Sloss Exhibit.

The Clerk:
Sloss Exhibit Number 23.

Vol. III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 409

TENNESSEE COAL, IRON & RAILROAD COMPANY, SLOSS-SHEFFIELD STEEL & IRON COMPANY AND REPUBLIC STEEL CORPORATION, PETITIONERS,

vs.

MUSCODA LOCAL No. 123, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 1, 1943.

CERTIORARI GRANTED NOVEMBER 15, 1943.

VOLUME III

TRANSCRIPT OF RECORD

UNITED STATES

CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Appellant,

versus

MUSCODA LOCAL No. 123, ETC., ET AL.,
Appellees.

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
Appellant,

versus

SLOSS RED ORE LOCAL No. 109, ETC., ET AL.,
Appellees.

REPUBLIC STEEL CORPORATION,
Appellant,

versus

RAIMUND LOCAL No. 121, ETC., ET AL.,
Appellees.

Appeals from the District Court of the United States for
the Northern District of Alabama

ORIGINAL RECORD RECEIVED APR 1 1942

The Court:
Number what?

The Clerk:
23.

(Thereupon a map entitled "Woodward Iron Company, Office of Chief Mining Engineer, Red Ore Mines, Slopes 1, 2 and 3," was marked Sloss Exhibit No. 23.)

Mr. Harris:
If the Court pleases, we didn't anticipate we would get any Woodward witnesses this morning. I don't think I could complete my cross examination by 12:30.

The Court:
I think we will adjourn until a quarter of two.

Mr. Harris:
All right, sir.

The Court:
Court is adjourned until fifteen minutes of two o'clock.

(Whereupon at 12:10 P. M., July 16, 1941, a recess was had until 1:45 P. M. of the same day.)

After Recess—1:45 P. M.

The Court:
The witness will come around.

1524 T. C. DeSOLLAR thereupon resumed the stand and having been previously sworn, testified further as follows:

Cross Examination.

(By Mr. Harris):

Q. Mr. DeSollar, were you born in this country?

A. I was; Denver, Colorado.

Q. Denver, Colorado?

A. Yes, sir.

Q. You have made a general study of the iron ore situation in the Birmingham district, haven't you?

A. Well, in a general way, yes, sir.

Q. And the ore beds that the Sloss, the Woodward, The Republic and the Tennessee Companies are mining are all part of one general ore bed, aren't they?

A. Yes, sir.

Q. And that ore bed extends for about seventy miles in length and about ten miles in width, doesn't it?

A. Approximately so.

Q. And the conditions in the Birmingham district with reference to the production of steel, so far as the natural resources are concerned, are the most favorable of any location in America, aren't they?

A. Considered very favorable.

Q. And when it comes to competition with other steel producing districts in America, the Birmingham district is in the fortunate position, and it alone is in the fortunate position, of having the ore, the coal and the limestone rock all deposited by nature so that there is practically no transportation, isn't it?

A. That is correct.

Q. In the other iron ore districts, such as the Lake Superior District, they have to haul the ore a distance of a thousand miles from the place where they take it out of the earth to the furnaces?

A I couldn't tell you the distances, but they have to transport it some distance by boat.

Q. Yes. You stated that the Woodward Company was digging a vertical shaft?

A. They have a vertical shaft.

Q. They have a vertical shaft?

A. Yes, sir.

Q. Well, there have been two vertical shafts in the Birmingham district for some years, haven't there?

A. That is correct.

Q. And in addition to two vertical shafts, there has been a very steep shaft, different from the slope mines you have discussed this morning?

A. That is correct.

Q. Now, is there anything in the formation of the earth that would prevent the Tennessee Company from digging a vertical shaft or the Sloss Company from digging a vertical shaft?

A. That is a question I can't answer about some other company. I don't know what it is about.

Q. I say the nature of the formation of the earth.

A. Yes.

Q. Here on this—they are all mining out of one ore bed?

A. Yes, sir.

Q. You said that?

A. Yes, sir.

Q. Now, is there any geological reason why, in the holdings of the Tennessee Company or of the Sloss Company or of the Republic Company that their engineers couldn't sink a vertical shaft just the same as the Woodward Company is able to do or has done?

A. They may have considerable resources right ahead of their present workings, and, therefore, it is a different problem.

Q. Therefore, it would be more economical to them to go ahead than it would be to sink a vertical shaft; that is what you mean?

A. Approximately so, yes.

Q. Yes. Now, I understood you were hurt and quit work. When was it you got hurt?

A. On March 14, 1940.

Q. Were you in an automobile accident?

A. No, sir. I was hurt in the mine.

Q. You weren't at the face drilling, were you?

A. No, but I was in the process of an inspection trip.

Q. That is—Were you making a safety inspection, and while making a safety inspection you were hurt in an ore mine?

A. In one sense of the word: We had a tight place. We called ahead to find out if it was safe to go ahead, and we were told it was. I went ahead, and due to a human error, I was crushed between a car and a rib.

Q. Well, it was a human error because—

Mr. All:

We don't object, but I don't see its materiality.

The Court:

He hasn't asked his question yet.

Q. It was a human error plus the physical conditions in an ore mine that joined to give you your injury, wasn't it?

A. No, sir.

Q. What was the physical thing that hurt you?

A. I was on the narrow side of a trip of cars that was in the rib—by the rib. It was a squeeze. If I hadn't had quite as much avoirdupois I would have made it O. K. I had plenty of room had the trip not been moving, but it so happened I was caught in a tight squeeze and I didn't have a chance to move and I was caught and injured.

Q. As a matter of fact, Mr. DeSollar, due to the slate formation of the top in the Birmingham district, there is an ever present danger of falling rock to men in mining, isn't there?

A. That is correct.

Q. And the mines, three years ago, some of them extended back as far as 14,000 feet underground, didn't they?

A. Something like that, yes, sir.

Q. Did any of them go back as far as 19,000 feet, or do you recall?

A. Yes, sir. You have an article I wrote a number of years ago.— Shannon was something like that.

The Court:

What is that?

The Witness:

That was Shannon.

Mr. Burr:

That is the vertical mine on the mountain.

Q. Is that the one that went back 14,000 feet from the outcrop?

A. I wouldn't answer you at this time definitely on that. I just don't know.

Q. How far did the Woodward mine go, the furtherest distance underground?

A. I would say around 8700 feet. You understand I am answering approximately. I don't remember exactly. I don't remember the year I wrote that.

Q. Now, due to the formation, the geological formation, the ore deposits and the top over them in the Birmingham District, water seeps from the sandstone or bed—sandstone band above the ore deposit down in the mines, doesn't it?

A. Up at the old workings, the upper workings where the top has been crushed or mined through extensively.

Q. Are the old workings above or below the present workings?

A. They are decidedly above in the horizontal scale, but in the same ore body.

Q. And three years ago there has been, or maybe more than three years ago when you wrote your article, for every ton of ore that was taken out of the mine they would average pumping out from 2.3 to 6 tons of water, wouldn't they?

A. I think that is in the article. At that time it was approximately correct.

Q. Well, I will read the article:

"From 2.3 to 6 tons of water is pumped for every ton of ore that is hoisted in the district."

A. If I put that in that article it was true.

Q. And the old workings are higher than the later workings in the horizontal plane?

A. Yes, sir.

Q. Now, during the time you have been in the Birmingham district there have been many changes in ore mining, haven't there?

A. Many changes in ore mining?

Q. Yes.

A. Not many changes. They have had changes.

Q. One of the greatest changes was the introduction of mechanical loaders, wasn't it?

A. Yes, sir.

Q. And as a result of changes and improvements in ore mining operations the production of tons of ore per man hour has increased from year to year, hasn't it?

A. Yes, sir.

Q. So that, in the old days before you had these mechanical loaders a man hour would produce about three quarters of a ton of ore, wouldn't it?

A. Well, I couldn't answer you right off-hand on that.

Q. Well, approximately? Is that about right?

A. If it is stated in that article, it is correct. To hear you state it, I don't remember it.

Q. You mean you don't know whether I am reading it correctly, do you, or not?

A. I do not, no, sir.

Q. Well, you can count on it that I am.

And with the use of the mechanical loaders the production per man hour has increased many times, hasn't it?

A. That is correct, yes, sir.

Q. Now, what mine was it, at the time that you wrote this article, that had the two vertical shafts?

A. The Woodward Iron Company.

Q. Where were they?

A. One is at Redding or Sango, and the other is the Pyne shaft.

Q. And this article bears the notation down at the bottom, "Mining and Metallurgy, 1937." Was the Pyne shaft operating then?

A. No, sr, the Pyne shaft was not operating, and the Redding shaft, I think, was closed in 1936 or 1937.

Q. Now, do you know whether the Tennessee Company is sinking a vertical shaft anywhere else?

A. No, sir, I know nothing about it.

Q. Do you know anything about the cost of sinking a vertical shaft?

A. Only in a general way.

Q. Are you—have you been out of work since you were injured in 1940?

A. No, sir. I went back to work—I think I returned to work on the first of July.

Q. 1940?

A. 1940, yes, sir.

Q. As superintendent of mines?

A. I am superintendent of mines, but I have been engaged exclusively in getting ready to open up the new Pyne property.

Q. As superintendent of mines of the Woodward Iron Company, did you have anything to do with the contracts that the Woodward Iron Company entered into with the union?

A. No, sir, only as a relay agent.

Q. As a relay agent, were those original contracts turned over to you?

A. I saw the original—I saw what the union proposed and I transmitted that on through.

Q. You haven't a copy of the Woodward contracts with you?

A. No, sir.

Q. And you—Could you tell the Court whether or not the Woodward contract that has been in force since the Fair Labor Standards Act went into effect contains any clause that the working place or face to face work shall determine the time?

A. I don't recall of anything where face to face was brought into it until 19—the contract in late 1940. That was the first time that was ever introduced.

Q. Neither was the words "working place" used in the contract, was there?

A. I think in one contract proposed several years ago it stated—

Q. I am talking about the contracts entered into, not proposed.

A. No, sir, nothing about the face to face.

Q. That is right. Now, is the Woodward Iron Company the smallest of these four companies from the standpoint of magnitude of ore operations, or does it come next to the Tennessee Company?

A. Well, I am of the opinion that we are about second.

Q. How would you rank them in amount of ore production and the number of men employed? The Tennessee Company is the bell weather of the flock, and then the Woodward is next, and then which is next, Republic or Sloss?

A. I couldn't answer you that now. I would refer you to the United States Minerals published by the Bureau of Mines. They can give you that information.

Q. What—you mean you refer to the Bureau of Mines?

A. They have that, the iron produced. They have the tonnage of ore actually produced.

Q. Do they issue a year book?

A. You can buy it.

Q. Sir?

A. You can buy it.

Q. Do they tabulate each year—

A. Yes, sir.

Q. —in the yearbook—

A. Yes, sir.

Q. —the production of iron ore in this district?

A. Well, by companies, not by mines.

Q. Do you know whether those books are usually kept in the public library?

A. I couldn't answer you that.

Q. You couldn't answer that?

A. I sent to the superintendent of documents.

Q. Now, the Woodward Company didn't have three different groups of mines as the Tennessee Company has; the Tennessee Company had the Wenonah Division, the Ishkooda Division and the Muscoda Division, but the Woodward Iron Company had just one mine, didn't it?

A. When I went to work for Woodward in 1924 the Sango mine was operating.

Q. Yes, sir.

A. That was the Sango Division.

Q. Did they have the reputation then of being the greatest single individual producing ore mine in the world?

A. I couldn't answer that.

Q. You don't know how it ranked?

A. I couldn't answer on Sango.

Q. Now, I noticed you used the words "pit mouth" three or four times in response to Mr. All's questions. Pit mouth is not the word commonly and generally used in this district?

A. No, sir.

Q. What was the occasion of you constantly saying pit mouth in this district?

A. I can answer you that. The nomenclature in ore mining in Alabama is very closely allied with coal mining. Being associated with coal miners all my life, I hear the word pit mouth, and I unconsciously go into that language. It is the collar of the mine.

Q. The mouth of the mine is the word used here?

A. Yes, sir.

Q. It is also called the portal?

A. That is right.

Q. The map you put on the board, or which was put up there for you, is that the way iron ore maps are usually made?

A. Yes. That is reproduced. Our scale is around 100 feet to the inch.

Q. Well, I notice that map starts in from the top and goes to the bottom—

A. No.

Q. And some other maps that were put up started in at the bottom and went to the top. Now, which is the way that maps of iron ore operations are made; which is the standard way?

Mr. Burr:

We object to that question. We don't see the use of trying in this case questions of that sort of encumbering the record with them.

The Court:
Overruled.

Q. The Court says you may answer.

Mr. Burr:
Mr. Harris and Mr. Cameron—Did Your Honor overrule the objection?

The Court:
Yes, sir.

Mr. Burr:
We except.

A. I think I can explain that. I think that is a more or less little idiosyncrasy of my own.

Q. I didn't ask that. I just want to know what is the way they are usually made?

A. It doesn't make a particle of difference.

Q. At the Woodward mine when you lower the men into the mine and hoist them out of the mine you have two skips—

A. Yes, sir.

Q. —loaded with men?

A. No, sir. We have one skip going down and one coming up, and they hoist in balance.

Q. You have a double track slope?

A. That is true.

Q. It is like the old fashioned well pulley where you had two buckets over a pulley and when one went down the other came up?

A. That is essentially correct.

Q. Nobody has described yet the condition of the skip that the men rode in at Woodward Iron Company. How long is the skip, the part the men occupy?

A. The skip is 12 feet long and 4 feet wide, inside dimensions.

Q. How high is it?

A. It is five feet nine inches in the front, and four feet eight inches in the back. It has a little shoulder on the back about eighteen inches high.

Q. How do the men get in? Does it have a door in the side like an automobile, or do the men have to jump down in the skip?

A. Where the men get on there is a little raised platform and they step from there to the bail of the skip and throw their leg over and jump down in the skip.

Q. That skip at Woodward is not used for anything but hauling the men?

A. No. When the men are in the mine then the man car attached to the skip is removed and then we use the same skip for handling ore.

Q. But the man car is not used for handling ore?

A. No, sir.

Q. The ore car used for hauling ore makes one trip or three trips hauling men, and then goes back to work hauling ore?

A. That is correct.

Q. I am talking about the skip hauling men. They put their foot over the bail?

A. Yes, sir.

Q. And then leap down in there?

A. Throw their leg over.

Q. Well, when they get down in there, is there anything for them to sit on?

A. No, sir.

Q. Do you have any sort of cushions or place for them to kneel on?

A. No, sir.

Q. Is the floor level from one end of the skip to the other?

A. It is on the incline or the pitch of the slope.

Q. Well, when you get the floor out on the ground or horizontal earth, does the track—

A. The back end would be up just a little bit. It practically takes a position parallel to the particular track at that particular place.

Q. Yes. Now, when those men get in this skip that is four feet five inches in front, and four feet nine inches, I believe you said, at the back—

A. That is right.

Q. How many men get in that skip?

A. 16.

Q. What?

A. 16.

Q. 60?

A. 16.

Q. 16?

A. Yes, sir.

Q. Well, those men, in riding down into the mine in that skip and in being hauled out of the mine in that skip have to assume a crouching position to keep their heads from being knocked off, don't they?

A. The first—about the first hundred and fifty feet there are some steel timbers that were put in to protect the roof overhead, and after that a man can stand up on top of a skip and not be touched. There is plenty of room.

Q. Have you ever ridden down on a man trip with them?

A. Thousands of times.

Q. It is customary for the men to stand erect?

A. Sometimes they stand erect and sometimes they sit down. It just depends on how many are in the skip.

Q. You used the phrase this morning in response to a question of Mr. All, "The contractors' motor trip."

What do you mean by the phrase "contractors'"—

A. I mean the contractor or the head miner.

Q. Well, what do you mean by a contractor? What did a contractor do at the Woodward Iron Company?

A. Up to 1939 we had the contract system.

Q. You did? What was it?

A. The men—the contractors got so much per ton for the ore.

Q. You mean— We will take Contractor Number 1 and Contractor Number 2. Say one is working in 72 right and one is working in 72 left,—did you have them numbered that way?

A. Well, we don't go by our numbers—

Q. Suppose the contractor in 72 right produced during a shift 168 tons of ore, and the contractor right across the slope in the same horizontal plane produced 128 tons of ore. Up to 1939 did the contractor who produced the 128 tons of ore get as much pay as the contractor who produced 168 tons?

A. No, sir. He got paid by the tons that he ran,—that he ran.

Q. Well, did the men who worked under the contractor who produced 128 tons get as much pay as the men who worked under the contractor who produced the 168 tons?

A. Absolutely, yes.

Q. Over what period of time?

A. From 1924 on, I know, and prior to that time I know nothing.

Q. How was their pay computed from the standpoint of tonnage?

A. By the day and hour.

Q. From 1924 up until 1939?

A. Correct.

Q. So that it didn't make any difference—didn't make any difference to a man's earnings from 1924 to 1939 whether he produced more ore or less ore then?

A. Are you talking of the contractors or are you talking of the individual man?

Q. I am talking of the individual men in the contractors' crews?

A. Didn't make a particle of difference. The chances are if there was that big a discrepancy and there wasn't any reason for it there would be a change. It might be due to the conditions underground—

Q. How did the Woodward Iron Company know how much ore each miner produced?

A. Everything was hoisted across the scales for each contractor,—head miner.

Q. How did the Woodward Iron Company identify his ore so they knew where it came from?

A. It came from a certain place, 9 right or 10 right. Usually the marked their cars, and to corroborate that, the chainer bringing it up would say, "Nine right," or "Ten right".

Q. Where was that?

A. Down underground.

Q. How far was that from the unloading station?

A. Are you talking of the top unloading station?

Q. Well,—

A. You heard me say something about going under the tunnel, 1035 feet?

Q. Yes.

A. Well, about 75 feet above there is where the scales were located.

Q. Well, when was it that the Woodward Iron Company put in a clock so the men punched a clock when they went in and punched it when they came out?

A. Around May 1, 1941.

Q. What method did the Woodward Iron Company have of keeping track of the actual time that the miners were in the mine prior to the time they put in the clock?

A. Each head miner prepared daily, of the men he had working for him,—he prepared an abstract and signed it, and that in turn was taken up by the section foreman or the mine foreman, and he O. K'd it, and from then on it was relayed to the time office. If it was a service crew it would be a track foreman or timber foreman, or whatever it was.

Q. So, then, the matter of keeping the time of the men who were in a production crew was a matter that affected the independent contractor? He was the one that was responsible for keeping the time and seeing how much time the men got paid for, wasn't he?

A. Yes, sir, but when he turned in an abstract it was always eight hours unless a man was sick or taken out of the mine, and then it would be noted.

Q. You said when he turned in an abstract it was always eight hours?

A. After—I will qualify that. Sometime after May, 1931, we went on the eight hour system, and any time after May, 1931 it was always eight hours.

Q. He always turned in eight hours?

A. Yes, sir.

Q. Suppose a man wasn't there but seven hours; did he turn in eight?

A. He would get his eight.

Q. Suppose he was there nine and a half hours; did he get eight hours?

A. They didn't happen.

Q. Whether he was there eight hours or not the contractor turned in eight?

A. Yes.

Q. How many years did that go on?

A. All the years I have been there these abstracts have been turned in.

Q. That was from 1926 until—down until the present time. Now, the contractor—you used the phrase this morning, "Everything was sold by boxes".

A. Boxes of dynamite; cases of dynamite if you want to call it, cases.

Q. Now, the Woodward Company sold the carbide to the men if they wanted to buy it?

A. Yes, sir.

Q. And then—or did it sell it then—sell the carbide to the contractors?

A. They sold the carbide to the contractors and the contractors issued the carbide to the men.

Q. So you didn't have any system for a number of years whereby the man would come up and get a can of carbide from the Woodward Iron Company just before he entered the man skip?

A. No, sir.

Q. Do you have that system now?

A. I understand that they do, yes, sir.

Q. Well, don't you know?

A. Well, I haven't been up on—that is an operating detail, and I haven't been in it.

Q. How long has it been since you have been up on the operations we are talking about?

A. In a general way all the time. I do know they are issuing carbide in cans up there.

Q. All right. Have they now started the system of giving each miner—every employee a brass check he turns in, or do you use entirely the clock system?

A. We use the clock system.

Q. You don't have any brass checks?

A. We had the brass check up until the time we started using the clock system, but that brass check was not to identify the man's time or anything like that. That was a safety measure.

Q. You never had, until the clock was put in on May 1st,—you never had any system which the Woodward Iron Company itself operated whereby you checked in the men?

A. Yes, there was a check-in man from 1904 until the depression.

Q. Then—

A. At the beginning of the depression.

Q. You were not with them from 1904 up to the depression?

A. 1924. I went with them in '24.

Q. You didn't go with them until 1926?

A. I went with them in '24.

Mr. Burr:

You have him confused with Scott.

Q. You quit the system sometime about 1933?

A. Somewhere along there.

Q. You didn't issue them until you started the clock system?

A. No, sir. We had a system in 1939 as the men came by they would deposit the checks in what I will call a milk can, and those checks were put on a board numerically numbered, and then in the afternoon when the men came out of the mine they took their checks off the board and went home.

Q. From 1933 to 1939 you did have the milk can system of checking in?

A. No, sir.

Q. The agitation for the eight hour day—rather, the Union men in the Woodward Company in 1938 and 1939 were agitating a portal to portal arrangement, weren't they?

A. No, sir.

Q. Did you have any discussion with them along in 1933 and '34 about any portal to portal?

A. No, sir. They came in with a proposed contract consisting of 22 demands in 1934 and there in that case—in those demands they wanted seven hours,—35 hours a week.

Q. And then when the company refused to give them seven hours and 35 hours a week they brought up the question—a counter proposition of entering on their time and leaving on the company's time?

A. Not at that time.

Q. When was the time in the negotiations they brought up the question of entering on their time and leaving on the company's time?

A. I think that was 1939. I wouldn't make a positive statement.

Q. You wouldn't be positive?

A. No.

Q. And you know that the check-in system was instituted after the Wage and Hour Law went into effect, this placing checks in the milk can?

A. Yes, but it wasn't—it never was considered a check in system. It was a safety system.

Q. It wasn't a system to determine the time of the men, but a mere system to determine, if there was an accident—

A. If a man—

Q. —whether any particular man was cut off—

A. Correct.

Q. —down at these workings?

A. Correct.

Q. Now, the Woodward Company has its repair shops down underground, haven't it?

A. The car repair shop, the blacksmith shop, the drill repair shop, the drill sharpening shop are underground.

Q. Now, that is not the case as to the other mines in this district, is it?

A. Not that I know of.

Q. Yes. In 1933, was the time when the union was organized in this district, isn't it?

A. Well, it was shortly after the N. R. A. Article 7, clause 7. I think it was, in the fall of 1933.

Q. Yes. And in 1934 you were familiar with the discussions going on between the Woodward Iron Company and its employees, weren't you? You acted as intermediary, you say?

A. Yes, sir.

Q. Well, in 1934, the company did not sign a contract with them, did it?

A. No, sir.

Q. But it did use the device of writing a letter to Madam Perkins, the Secretary of Labor?

Mr. Burr:

Wait just a minute. We object to that form of question. If he answers that in the affirmative you have a witness saying they adopted a device by writing to them. I object to the form of the question.

The Court:

Sustained.

Mr. Burr:

All three parties used it.

The Court:

Sustained.

Q. Did they write a letter to Madam Perkins, Secretary of Labor?

A. It is my remembrance they wrote a letter to a Mr. Richardson, who was a Labor Conciliator.

Q. Then in 1935 the union again asked for a contract, didn't it?

A. Yes, sir.

Q. And the company refused to enter into a contract with them?

A. That is my understanding.

Q. Then in 1936 the union again demanded a contract, didn't it?

A. They requested a revision.

Q. And the company did not sign a contract with them, did it?

A. No, sir.
Q. And in that year did they again write a letter to Mr. Richardson or Madam Perkins in Washington?

Mr. All:
If the Court please, we have those minutes here. There is no use in going into that. We are going to introduce the negotiations by the next witness.

The Court:
Well, he wants to know something about it.

Mr. Harris:
How do I know what they are going to do?

Mr. All:
I don't want oral testimony of the contents of written instruments.

The Court:
He is just asking if it was done. He is not asking for the contents.

Answer the question.

The Witness:
What was the question?

The Court:
Read that question.

(Thereupon the reporter read the question last propounded as above recorded.)

A. No, sir.
Q. In 1936?
A. No, sir.

Q. Did they sign—

A. I think that they asked for a revision, and I think the letter was addressed, confirming the formal letter to Mr. Richardson, but was addressed to the—I think the Chairman of the Negotiations Committee.

Q. All right. Then, in 1937, did the Union ask for a contract with the Woodward Iron Company?

A. They asked for a revision of the existing—

Q. Well, did they submit a form of contract?

A. Yes, sir, the Union did.

Q. The Union did?

A. Yes, sir.

Q. Well, did the company sign that form of contract that was submitted?

A. No, sir.

Q. Did they sign any contract at all with them in 1937?

A. I would not make a positive statement. 1937 or '38, they did, but I am not sure what year.

Q. Not sure whether it was '37 or '38?

A. '37 or '38.

Q. You don't recall that the Woodward Company eighteen years before the Fair Labor Standards Act went into effect them for the first time entered into a contract with the Union?

A. I do not know anything about the time element, because if there was anything on, there was no thought—

Q. What is that?

A. If anything was entered into, nothing was ever thought or considered about it was a violation of the—

Q. I didn't ask you that. I just asked you as to the time.

A. I do not know—

Q. I never asked you what you thought.

A. I do not know what the date was.

Q. One question, and I think I will be through, to develop some information on the Bureau of Mines you brought out. Do you know whether the Bureau of Mines of the United States made studies of the operations in the Birmingham district?

A. There have been a number of reports by men connected with the Bureau of Mines covering a period of twenty odd years from, I think, 1912 on, and those bulletins would be available at the Bureau I am almost sure—at the Superintendent of Documents.

Q. Superintendent of Documents?

A. Yes, sir.

Q. Of the Government at Washington, D. C.?

A. Washington, D. C.

Mr. Harris:

All right, I believe that is all, Your Honor.

Re-Direct Examination.

(By Mr. All):

Q. Mr. DeSollar, just a question or two. Mr. Harris asked you about the contract system, and I believe you stated that when you came there they had a contract system?

A. Yes, sir.

Q. And they had it up to when?

A. They had the contract system until 1939.

Q. Until 1939?

A. Yes, sir.

Q. Well, what—You say the contractor was paid on a tonnage basis?

A. Yes, sir.

Q. Was there any guaranteed compensation for the men working for the contractor?

A. Yes, sir, there was the base pay.

Q. The base pay?

A. Yes, sir.

Q. That was for the men working for the contractor?

A. For the men working for the contractor.

Q. All right. Now, with respect to the service crews, how were they worked?

A. They worked on straight base pay.

Q. Straight base pay?

A. Yes, sir.

Q. You mean by the hour or by the day?

A. Well, hour and day,—hour rate.

Q. Hour and day, but it was a base pay?

A. It was a base pay.

Q. At that time particularly you say there was no premium paid the men beyond that—the men working for the contractor based on the tonnage?

A. Not in 1924.

Q. Not in 1924?

A. No, sir.

Q. When did the men get some addition, based on tonnage, if such a change was made?

A. In 1934 we revised our wages, and we made that distribution. The contractors were beginning to make pretty good money, and we made a redistribution of which the men all participated in that, and they usually jumped 2 cents per hour per man.

Q. Was that 2 cents per hour they got translated into the added rate on the guarantee?

A. Yes, sir.

Q. Because—Added onto the hourly rate on the guarantee?

A. Yes, sir.

Q. How long did that exist?

A. That existed—That existed right up through until 1939.

Q. 1939?

A. Yes, sir.

Q. What change, if any, was made at that time in that respect?

A. The contract system, as called, was changed and made over to the—the contractor is now called the head miner.

Q. All right, sir. Was that matter of premium based on tonnage treated further?

A. Yes.

Q. And that—

A. Twenty percent goes to the head miner, and 80 per cent is divided among the men.

Q. What I mean by that, was there a fund distributed of the premium as between the contractor and the men?

A. I don't quite understand it.

Q. I will ask it this way. I will let you state it in your own way. What change was made in 1929 as to the participation in the excess tonnage over the base?

A. In 1939 the head miner—

The Court:

Is that what you mean, 1939?

Mr. All:

Yes, sir.

The Court:

You said 1929.

Mr. All:

What I mean is 1939 when the change was made.

A. The head miner gets twenty percent of the profit over the base rate, and 80 percent goes to the men, and it is divided among the men in proportion to their rates.

Q. Was that an additional premium given to the head miner, raised the premium pay?

A. Yes, sir, it raised the premium pay.

Q. Raised his participation in premium tonnage?

A. That is correct.

Q. When was the incentive system or any sort of incentive system put in at Woodward, Mr. DeSollar?

A. I would say the incentive system went in in 1934 when we began stepping up the base pay of the individual contractor's men.

Q. All right. Now, Mr. DeSollar, can you tell us,—I would like for you to do so if you can,—what was taken into consideration in arriving at your eight hour day, we will say. I mean in—I am pretermitting any consideration of the change from ten hours to nine and from nine to eight, but the eight hour day, what relation did that have to the base tonnage involved in the incentive?

Mr. Harris:

Of course, we objected to that before, and I believe Mr. Ball put the figures up there on the board showing that. My idea, Judge, the factors which one side takes into account in their own manipulations and calculations—

The Court:

Sustain the objection.

Mr. Harris:

Yes, sir.

Mr. All:

What did you say?

The Court:

Sustained.

Q. I will ask you how—what relation your base tonnage has to your policy of eight hours a day?

Mr. Harris:

Oh, we object to that, if the Court pleases.

The Court:
Sustained.

Mr. All:
We except. Your Honor, I am going to ask this question. I want to state what I have in mind, if the Court pleases, and that is that the eight hours per day for these crews was based on the normal tonnage which an average good crew should produce in the course of the eight hours,—

Mr. Harris:
And we—

Mr. All:
And that was the basis of the fixing of the eight hour day.

The Court:
All right.

Mr. Harris:
And we object to it, if the Court pleases.

The Court:
Overruled.

Q. I want to ask you that. How did you arrve at your eight hour day in connection with your base tonnage?

Mr. Harris:
We object to that, if the Court pleases.

The Court:
Overruled.

A. I don't know that I can answer you that question direct.

Mr. Harris:

I object to him speculating, Judge, if he can't answer it.

The Court:

If he can't answer it, that is the end of that.

Q. What do you mean by 'direct?

A. From one ton to 180 was our first group.

Q. Was what?

A. Our first group of tonnage that they paid a certain rate per ton.

Mr. Harris:

We object to that.

The Court:

What is that?

Mr. Harris:

We object to that.

The Court:

Can you answer the question" If you can, answer it.

The Witness:

I can't tell you how it was arrived at.

Mr. All:

He is answering my question.

Mr. Harris:

He just said he couldn't.

Mr. All:

He is answering it.

A. I can't state how we arrived at the 180 tons other than it was experience.

Mr. Harris:
We—

Mr. All:
That is what I am askng for, his experience; that is the very—

Mr. Harris:
If the Court pleases, he indicates all he knows is they based on experience—what that experience is, what those elements were, I judge he doesn't know. He just says using experience as a guide they fixed that number of tons.

The Court:
I thought he—.

Mr. All:
Well, experience is about the best guide that any of us have got in anything.
While he said he didn't know, he does know, and his answer indicates he does.

The Court:
I will let him answer it.

Mr. Harris:
We except.

A. One ton to 180 tons—

The Court:
Sir?

The Witness:

Then, from 181 tons to 210 tons we stepped up that rate per ton.

One ton to 180 tons we had a certain, rate per ton.

Then, from 211 to 240, and then from 241 to 270, and from 271 to 300 tons, and then from 301 on there were corresponding rising rates per ton.

Q. Well, how did you arrive at the 180 tons as your first base?

A. Well, that 180 was—

Mr. Harris:

The same objection, if the Court please.

The Court:

I understand you object.

Mr. Harris:

To all these.

The Court:

The same ruling.

Mr. Harris:

Yes, sir.

A. —was about forty tons under the normal production, so we had to establish a minimum.

Q. What do you mean by under normal production?

A. Well, our average drag tonnage for the large drags was around 210 tons.

Q. For what period?

A. Per day.

Q. What hour day?

A. Eight hours.

Q. All right. Now, go ahead.

A. With that for a basis we knew we could not put it on top, and we cut that down to 180 tons.

Q. And that is also the way you have arrived at your eight hours a day?

Mr. Harris:

We object.

A. No, that was the tonnage we produced. We had produced several years on eight hours, so we had a chance to get several years experience.

Q. On eight hours?

A. Yes, sir.

Q. Mr. DeSollar, you said that under—in some of these earlier years you knew something about the negotiations in your answers to Colonel Harris.

With respect to 1934, you said that the negotiations that year were concluded by a letter written to a man named Richardson?

A. Yes, sir.

Q. I will ask you if that is a copy of the letter you referred to in answering that question?

A. Yes, sir, it is a copy of the letter?

Q. That is a copy of the letter?

A. Yes, sir.

Mr. All:

Have you seen this?

Mr. Harris:

I don't know whether I have or not. Probably I haven't.

Mr. All:

I want to introduce it in evidence as an exhibit and mark it the proper exhibit.

The Clerk:
24.

Mr. Harris:
You see, I haven't studied the Woodward witnesses or the Woodward documents or anything about Woodward.

The Court:
That is 24?

The Clerk:
Sloss Exhibit 24, yes, sir.

(Thereupon a document dated Woodward, Alabama, July 6, 1934, addressed to Commissioner C. L. Richardson, Representative of Secretary of Labor, United States Department of Labor, Birmingham, Alabama, and signed H. A. Berg, President, attached to which is a sheet listing various occupations in the Red Ore Division of the Woodward Iron Company, with "Present Hourly Rates," "Proposed Hourly Rates", and "Hours," was marked Sloss Exhibit No. 24.)

The Court:
What was that?

The Witness:
That was the letter sent to Mr. Richardson.

The Court:
That is a letter, is it?

Mr. All:
Yes, sir.

Mr. Harris:

That is the letter of understanding, you call them, and Your Honor will recall I objected to similar documents yesterday or the day before.

The Court:

Yes, sir.

Mr. Harris:

And I assume I still have the objection and exception to all these.

The Court:

Yes, sir.

Mr. All:

You have the copy there to substitute, have you?

The Clerk:

Yes, sir.

Q. Mr. DeSollar, do you recollect that time was the time of the general strike on Red Mountain?

A. In 1934 all the Red Ore Mines on Red Mountain were out on strike.

Q. Do you remember about what time they went out,—about what time?

A. Redding ore mine went out on May 4th and returned to work on July 6th.

I think the T. C. I.—I think they all went back the same time. I think T. C. I. went back the first one. I will not say about Sloss.

Q. They all went back the same time?

A. No, there were several weeks elapsed.

Q. Several weeks between them?

A. Yes, sir.

Q. Do you remember who this man Richardson was and where he came from down here?

A. He was a representative of the Government and came down from Washington.

Q. Do you remember whether or not shortly after these letters were written the men went back to work?

A. I am of the opinion that there was a week or two that elapsed before they went back to work, before it was thoroughly agreed, but I can't make you a positive statement with reference to that. I had nothing to do with that.

The Court:
What year was that?

The Witness:
1934.

The Clerk:
July 6, 1934, this letter was dated.

Q. Mr. DeSollar, you said something about being an intermediary receiving proposals in 1934, didn't you?

A. Yes, sir.

Q. I hand you a paper here that is dated April 13, 1934,—

Mr. Burr:
What is the date of it?

Mr. All:
April 13, 1934, dated at Bessemer, Alabama.

Q. It seems to have been addressed to Woodward Iron Company. Woodward, Iron Company, it looks like to me is in original type, and the other looks like it is a typed copy.

What is that, and state whether or not that is what you referred to in your answer to Mr. Harris' question?

A. Yes, sir, 22 requests. This was given to me, or a copy of that was given to me by a man by the name of Pat McGraw, who was president of the Local Union at that time, and I had thirty minutes to read it and had to get it over to the main office.

Q. You did get it over—

A. I just glanced through it.

Q. Do you know whether or not that proposal was the same proposal that had been presented to the other ore mining companies in the district?

Mr. Harris:

We object to that; he can't know.

Mr. All:

I am asking him if he does know.

The Court:

They will speak for themselves, Mr. All.

Mr. All:

Well, I introduce this as—

The Clerk:

Sloss Exhibit Number 25.

Mr. All:

Sloss Exhibit 25.

(Thereupon a document dated at Bessemer, Alabama, April 13, 1934, addressed to Woodward Iron Company, attention Mr. H. A. Berg, President, in re Woodward Red Ore Mine Division, and signed J. B. McGray, Ben Winston and G. R. Vines, and bearing the seal of Lipscomb Red Ore Local No. 103 of the International Union of Mine, Mill & Smelter Workers, was marked Sloss Exhibit No. 25.)

Q. Mr. DeSollar, just to see if I am correct, you stated with respect to the man trip—did you give the dimensions of the cars that the men went down in at Woodward, both the dimensions of the skip part of the trip and the specially made—specially built man car part of the trip?

A. I didn't, but I can give it.

Q. If you will do that, I will appreciate it.

A. The man car in use prior to May 1, 1941, was 21 feet long, 63 inches wide and had 11 seats.

Q. Eleven what?

A. Eleven seats.

Q. How many men rode in that car?

A. Forty-four men.

Q. Did they sit down or stand up?

A. Sat down.

Q. I will ask you, Mr. DeSollar, have you made any sketch or calculation or test from which you can say whether or not that so far as the crowding was concerned, it would accomodate the men comfortably?

A. It is not crowded at all.

Q. It is not crowded at all?

A. The floor,—there is about 7/10 square foot per man.

Q. You didn't give us the dimensions of the skip.

A. The skip is 4 feet inside dimension, and 12 feet long.

Q. Did you state how many men ride in that?

A. Sixteen.

Q. Sixteen?

A. Yes, sir.

Q. Is that comfortable in so far as being crowded is concerned?

A. Yes, sir. That is even more so than the other.

Q. To be sure we cover the ground, am I correct in stating from your examination you say there was a part of that trip where the men were forced to stoop over?

A. Yes, sir, about—between 100 and 150 feet is what we call the low bridge.

Q. Is that where they leave the collar of the mine?

A. Yes, sir.

Q. That is about 150 feet?

A. Yes, sir.

Q. Can you make any estimate of the time it requires that car to go that distance?

A. Oh, I will say between 30 seconds and a minute,—a very short interval of time.

Q. With respect to the brass check, the check in going to work, you say, was put in a milk bucket and then put on the board?

A. Yes, sir.

Q. You said that had no reference to work time, but was some sort of a safety proposition?

A. Yes, sir.

Q. In what respect—how did it work out as a safety proposition?

A. Well, when a man came out of the mine he was supposed to take that check off the hook, and then the last foreman coming out of the mine examined this board, and if there was some checks on the board, and he didn't have the understanding there was some track crew or timber crew working over time, it was his duty to investigate it or report it.

Q. When the last man to report had come out, what was indicated by these checks being left on the board?

A. That there were men left in the mine.

Q. Then what would be done?

A. The chances are they would notify the next shift, which was going on simultaneously there were certain men missing, and they would check up.

Mr. All:

Yes, sir. (To Mr. Burr): Mr. Burr, do you want to ask him anything?

Mr. Burr:

Yes, sir, there are one or two questions I want to ask him.

(By Mr. Burr):

Q. Mr. DeSollar, you spoke of the head miner keeping a daily abstract of time that was turned in and finally reached the office, and you told Mr. Harris that was kept on an eight hour basis.

A. Yes, sir.

Q. If a man was there at his working place or in the mine, not counting transportation, of course, less than eight hours, he still got the eight hour pay or not?

A. He got his eight hour pay unless it was a case when he was injured or of sickness.

Q. He did if he was there at work?

A. Yes, sir.

Q. If he worked overtime did he get his overtime?

A. Yes, sir.

Q. How was that paid?

A. Time and a half.

Q. Time and a half?

A. That might be a supplementary abstract would come in on the next day—

Q. That is what I was going to ask you. Did you have a form for a supplementary abstract?

A. Yes, sir.

Q. I don't know whether I understood you or not with reference to Sloss Exhibit 25. That is the one you identified as having 22 requests handed in to you.

Did you sit in with the negotiations committee on those requests?

A. I was there but once.

Q. I will ask you the time you were there did anyone bring up in the meeting you attended—bring up the request they be given transportation time?

A. To tell you the truth, Mr. Burr, I couldn't answer that.

Q. Don't remember whether it was or wasn't?

A. No, sir.

Q. Now, the Sloss Exhibit 24, which I think you referred to as the letter to Mr. Richardson, did you sit in on the negotiations—

A. No, sir.

Q. Then, I won't bother you about that one, then. You referred to Mr. Harris to an incentive—an additional incentive that the Woodward Company added to the wages, the compensation of the men in April, 1939—is that the correct date?

A. What?

Q. When you changed the plan and added an additional incentive or bonus?

A. We changed the incentive.

Q. That was in 1939?

A. 1939.

Q. Was that following negotiations between the company and the union?

A. That was following negotiations, yes, sir.

Q. Was there a strike just before those negotiations?

A. There was a strike at that time.

Q. And these negotiations, and with respect of that plan, they went back to work on the plan?

A. That is true.

Q. As the result of negotiations?

Mr. Harris:

We object to the "result of negotiations".

Mr. Burr:

Well, that is apparent.

Mr. Harris:

Not apparent to me.

Q. The Union and company negotiated this strike and settled and agreed on it?

Mr. Harris:
We object to that.

The Court:
If he knows.

A. Yes, the Union and the company negotiated this agreement.

Q. And the strike was over?

A. Yes, sir.

Q. Mr. Harris asked you some questions about a general study of ore mining you had made all over the United States—

Mr. Harris:
I didn't say that. I asked him about a general study of ore mining in the district.

Mr. Burr:
Let's see if you didn't. I took it down at the time.

Q. I will ask you if he didn't ask you and you answered the question herein Birmingham was the only place in the world where the coal and iron ore and limestone lay side by side; do you recall him asking you that question?

A. Yes, sir.

Q. And he asked you in other parts of the country if they didn't have to haul it a great many miles?

A. Yes, sir.

Q. And you answered they had to handle it by boat?

A. Yes, sir.

Q. And then he asked was the Sango mine the greatest ore producing mine in the world?

A. Yes, sir.

Q. And you couldn't answer that one?

A. No, sir.

Q. Now, I will ask you some he asked you about. The haulage by boat you referred to, was that in the Lake Superior district?

A. Yes, sir.

Q. Were you familiar with that?

A. Only by seeing the boats going up and down the Lake.

Q. Have you seen the mines?

A. Yes, sir.

Q. I will ask you if your studies didn't show that over 94% of the iron ore produced in the United States was produced in the Lake Superior district.

Mr. Harris:

We object to that question.

The Court:

Overruled.

A. That is true.

Q. I will ask you if it was not also true that your study showed that of the 94% produced there approximately all but 16% was produced in the open pit operations?

Mr. Harris:

I object.

The Court:

Overruled.

A. I couldn't answer that.

Q. Well,—

A. There is a tremendous proportion produced in the open pit; how much, I can't say.

Q. Those open pits haven't a cover over them—

Mr. Harris:

We object to Mr. Burr testifying.

Q. Just describe those open pit mines, the length and distance.

A. They may be three quarters of a mile across. They go down with benches. They load the ore with steam shovels, and they will load more ore in one day than we can in fifteen days.

Q. They can mine more ore, using steam shovel, in one day than you can mine all over this district?

A. Yes, sir.

Q. I will ask you if this isn't true: If you will tell us, down here in this district, about how many tons of the ore we produce here that God Almighty has given us next to coal and limestone,—about how many tons of that ore does it take to make a ton of pig iron?

A. About 2.7.

Q. And how many tons of the Lake Superior ore will it take to make a ton of pig iron?

A. It will take one plus,—almost two tons.

The Court:

Almost two tons?

The Witness:

Yes, sir.

The Court:

Out of the Lake Superior ore?

The Witness:

Yes, sir.

The Court:

And two and what here?

The Witness:

2.7, about.

Q. Do you know about how much production per man —well, I will not ask that. You probably haven't got those statistics.

A. No, I couldn't tell you that.

Q. Now, to get down to your Birmingham conditions a little bit, are you familiar with the Spaulding mine, for instance, out here at Republic?

A. Yes, sir.

Q. Is there any transportation or any great amount of time in that mine?

A. Practically—

Mr. Harris:

We object to that, if the Court please.

Mr. Burr:

My friend went all over the United States. I am right here at Spaulding.

Mr. Harris:

Here is the proposition, Judge: I didn't ask him if he had made studies all over the United States. I asked him if he had made studies of the Birmingham district; I asked him as to the geology or geological formation.

There is but one thing that counts. These companies are mining ore and turning it into pig iron or steel for one purpose and one purpose only, and that is to make a profit, so the question is not how much a mine can do or how much a man can do, or how much a mine or man can't do, but what is the actual cost of producing a ton, and what is the actual cost of producing a ton of pig iron here, and this man doesn't know anything about producing a ton of pig iron in Pittsburgh as compared with the cost of producing it here, and that is the ultimate test of what counts in the economic phase.

The Court:

What is the question?

Mr. Burr:

The question is this, and evidently he doesn't understand the question I am fixing to ask. I am fixing to ask about the mine right over here on Red Mountain in comparison with the other mines—

The Court:

In this district?

Mr. Burr:

In this district. I am not interested in cost at all, but I am interested in this proposition: I know as a matter of common sense if the Woodward competes with the Republic, if they have a mine out here that doesn't have travel time, if a man comes along here and construes a law to include transportation cost, that mine is at an advantage over a mine out at Woodward that has two or three miles of travel.

Right here in this suit the underground mines at Spaulding are involved as much as at Raimund and just as much as at Sloss and just as much as they would be at the Tennessee Company mines, and just as much as they would be at other places, and the fact that Woodward doesn't have a suit here doesn't change that at all. If this suit were lost, Woodward would have to abide the results of this suit the same as the companies who are parties to it.

The questions Mr. Harris asked—I took them down—

The Court:

I overrule the objection.

Mr. Burr:

Yes, sir.

Q. Are you familiar with the conditions at Spaulding?

A. I made a trip there two or three years ago.

Q. How far is it the men have to walk?

A. About two or three hundred feet.

Q. You have investigated?

A. I walked down.

Q. You have told us the furtherest distance at Woodward?

A. Yes, sir.

Q. You don't know about the Tennessee Company mines?

A. No, sir.

Mr. Burr:

That is all.

Mr Harris:

They have gone into it so deeply I will have to ask one or two questions.

Mr. All:

I want to ask one question.

The Court:

All right.

(By Mr. All):

Q. They have asked you about water. Do the men in walking in the Woodward mine have to walk in water?

A. No, sir.

Q. Have they got a good pumping system?

A. Yes, sir,—I will not say it is a good pumping system; it is an average.

Mr. Harris:

We object to that.

The Court:

He has answered it.

Q. Do you have much accidents from a roof fall?

A. Not very much.

Q. In any mine there is a substantial danger of a roof fall if it isn't taken care of properly?

A. Yes, sir.

Q. And that hazard exists in all underground mines?

A. Yes, sir.

Q. Have you had any accidents on the travel slope? Do you keep that well propped?

Mr. Harris:

We object. Judge, he always puts in an adjective or adverb telling a man what to say.

Mr. All:

I am not telling him what to say. You probably—

The Court:

Don't tell him what to say.

A. I think we have had one accident in skips—in men traveling in skips since the skips went on in 1928, and we had one man killed at the bottom of the pocket where he worked in the handling of the skip.

Q. In what length of time?

A. Covering about 13 years.

The Court:

He said '28.

Mr. All:

I didn't know he said '28.

The Court:

Let's get on. Let's don't ask so many questions.

Mr. All:

Judge, I thought he said in 20 years. I am not trying to ask so many questions.

The Witness:

I do not recall about any other accidents.

Mr. All:

All right; that is all.

Re-Cross Examination.

(By Mr. Harris):

Q. You stated all the miners went out on strike about the same time in 1934, and they all came back to work the same time in 1934?

A. No, sir; there was an interval in their coming back to work.

Q. An interval in their coming back to work?

A. They all went out at the same time.

Q. The Tennessee Company opened up and ran two days and stopped. How long did the Woodward Company run after it opened up after that strike?

A. Until today.

Q. What?

A. Until today.

Q. You didn't just open up and run—

A. No, sir, we haven't shut down since that time. We might be down one day for an accident.

Q. You haven't shut down since 1934?

A. When I say shut down—We haven't worked full time.

Q. Yes.

A. There are times that we have not worked full time at full production, depending on what the furnaces were doing.

Q. I thought Mr. All asked you about a strike in 1938 or 1939?

A. There was a strike. We didn't operate during the strike in 1939. I thought that would be naturally understood.

Q. Well, how many times has the Woodward Company been shut down with a strike since you have been out there?

A. Twice.

Q. One was in 1934?

A. One was in 1934 and one in 1939.

Q. How long was the one in '39?

A. Sometime in October until about the middle of November.

Q. Not more than thirty days, was it?

A. No, sir.

Mr. Harris:

Judge, there may be some questions on some statistical stuff,—if it is time for a recess,—I want to go over it with Mr. Brodie.

The Court:

I want to ask a question before we recess.

Mr. Harris:

All right.

The Court:

You spoke of this motor car. What does it do in the mines?

The Witness:

It transports the empty cars into the working place, and it carries the loaded cars back to the nuck where they are picked up by the company motor or company chainer.

Q. How far is the furtherest distance that motor runs?

A. I would say around a thousand feet. I might be off on that a few feet.

The Court:

Does it go to all the working places?

The Witness:

Every place has its own motor, and it just makes trips in that one place, and if that motor—if there are not enough motors it may be transferred—

The Court:

I can't hear you.

The Witness:

If that motor is not sufficient we may transfer that one at another shift to another place.

The Court:

But all cars are shifted from the working face or near the working face to the nuck?

The Witness:

Yes, sir.

The Court:

By this motor?

The Witness:

By a motor.

Q. And that nuck may be as far as 1,000 feet or 1200 feet from the face where the men are actually drilling?

A. Yes, sir.

The Court:

We will take a recess for ten minutes.

(Thereupon proceedings were in recess from 3:10 P. M., to 3:20 P. M., at which time proceedings were resumed as follows:)

Mr. Harris:

I want to ask Mr. DeSollar a few more questions.

The Court:

Come back to the stand, Mr. DeSollar.

(Witness T. C. DeSollar thereupon resumed the stand.)

(By Mr. Harris):

Q. Mr. DeSollar, I am in confusion on one little item, and before I get into the things I wanted to ask you about primarily, I will ask you about that, and that is this:

Is the man skip that goes down into that mine since May 1st hauling the same number of men per trip that it hauled for, say, six months prior to May 1st?

A. No, sir.

Q. What changes did you make—

A. You say the man skip?

Q. Yes.

A. No change at all.

Q. What changes have you made as to the number of men you take into the mine at one time since May 1st as compared with prior to May 1st?

A. We lengthened the man car which goes on behind the skip in which we lower the men, and now, instead of putting 44 men on that man car, we are putting 64 in the car, and we are still putting sixteen men in the skip.

Q. And you are hauling—

A. We are hauling 80 men to the trip where we only hauled 60.

Q. You did that since you went on portal to portal?

A. Yes, sir.

Q. How many—I am not clear how many men you have working out at Woodward?

A. We have working in the underground mine about 540 men.

Q. What proportion are what you call productive men, and what proportion are service men?

A. We have approximately 325 production men, and the rest are service men. That varies from time to time.

Q. Mr. Burr asked you about the number of tons of ore from Superior it took to make a ton of pig iron and you said almost two?

A. Almost two.

Q. And in Birmingham almost three?

A. 2.7.

Q. 2.7?

A. Approximately.

Q. The ore that goes to Pittsburgh has to be transported on railroad cars before it gets to the boat a distance of 100 miles or more?

A. It has to be transported; how far I don't know.

Q. Then it is transported six or seven hundred miles on a boat?

A. Yes, sir.

Q. And then it is transported 200 more miles on a train?

A. Not necessarily.

Q. I mean if it is going to Pittsburgh?

A. I can't answer that.

Q. As a matter of fact, the cost of ore per gross ton of pig iron in 1939 in Alabama was $4.07, wasn't it?

A. I can't answer that.

Mr. Burr:

Just a minute. We want to object to that. He is going into costs.

Mr. All:

We object.

Mr. Burr:

We haven't gone into costs.

The Court:

I understand you didn't.

Mr. Harris:

I hadn't gone into it until Mr. Burr brought up the question of Pittsburgh,—

Mr. All:

You brought that up.

Mr. Harris:

—and the amount of ore they had to put into a furnace at Pittsburgh to make a ton of pig iron. Now, if you are going into a competitive basis between Pittsburgh and Birmingham—

The Court:

I am not going into that.

Mr. Harris:

I want to give Your Honor the competitive picture as we go along, because Mr. Burr, as we go along, slips in an edge of the picture.

The Court:

I feel like if I go into this I will have to go into all the costs.

Mr. Burr:

Will the Court permit me to state my position?

Mr. Harris:

The Court has ruled with you.

Mr. Burr:

He says I am slipping in a picture. It is a picture that has some business here. It is not a question of costs at all.

The Court:

Mr. Burr, isn't it a fact when you talk about competition that means competition in price?

Mr. Burr:

No, sir. I am not talking about that at all. Here is the competition. If Your Honor will listen to me, you will see what I mean.

The Court:

What kind of competition?

Mr. Burr:

I am trying to tell you now. It may be we have the advantages here in having the iron and limestone and coal located close together. It might be we have an advantage in cost. We may have—I am not inclined to think we have, but say you admit it. Here is the proposition: You haven't the right to take away an advantage that has been providentially given to us by minimizing it by interpreting a statute in a way to add to our costs unless—it don't make any difference what the costs are, big, high, low or in the middle, you can't add to our costs unless the statute does it by including or adding the traveling time. It isn't a question of cost. They have a right to do it but they haven't done it.

Mr. Harris:

I could talk a week and I couldn't condense what I have in mind into as few words as Your Honor did. When you come to competition, the only kind of competition that counts is competition in price. Now, that operates to our detriment in another way.

If Your Honor doesn't want to go into it, we will reserve our exception and go ahead, and I want to ask him a couple more questions on a different line of competition.

The Court:

I believe I will let you go into it. We may be here a week or two longer, I don't know.

Mr. All:

We except.

Q. As a matter of fact, Mr. DeSollar, the United States Steel Corporation, of which the T. C. I. is a subsidiary, is one of the largest operators in the Superior region, isn't it?

A. It is a large one, yes, sir.

Q. A large operator?

A. Yes, sir.

Q. And the Republic Company, which has mines here, is also an operator in the Superior Region, isn't it?

A. I have no positive knowledge, but I think yes.

Q. Yes. So they would be competing with themselves?

Mr. Burr:

We object to that statement.

The Court:
I think so.

Mr. Burr:
It is a statement and an argument.

Mr. Lipscomb:
It is a fact.

The Court:
It is a statement.

Mr. Burr:
It is a statement and an argument.

The Court:
It is a statement, whether it is a fact or not.

Mr. Burr:
We don't know.

Q. In 1939 the cost of pig iron in Alabama was $4.07?
A. I don't know.

Mr. Burr:
We take a exception.

Mr. Harris:
He says he doesn't know.

Mr. Burr:
I don't care. I want to reserve the exception.

The Court:
You have your exception.

Q. The cost of pig iron in Minnesota in 1939 was $5.24?

A. I don't know.

Q. And in Michigan $5.28?

A. I do not know.

Q. And in Wisconsin, $4.81?

A. I do not know.

Q. And the average daily earnings in the ore mines in Minnesota,—the average hourly earnings of the ore miners in Minnesota in 1939 was 78 cents, wasn't it?

A. I do not know.

Q. And the average earnings of Alabama ore miners in 1939 was 63 cents?

A. I do not know.

Q. Do you know, after all your experience in these years in the Birmingham District, what the average hourly earnings of ore miners was at any time?

A. I do not.

Mr. Harris:

That is all.

The Court:

All right; that is all. Come down.

(Witness excused.)

The Court:

Next witness.

Mr. All:

Mr. Urquhart.

1578 J. E. URQUHART, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Court:
What are your initials?

The Witness:
J. E.

The Court:
How do you spell your name?

The Witness:
U-r-q-u-h-a-r-t.

The Court:
How?

The Witness:
U-r-q-u-h-a-r-t.

The Court:
How do you pronounce it?

The Witness:
Erkert.

(By Mr. All):

Q. Mr. Urquhart, what is your business?

A. General Superintendent of the Woodward Iron Company.

Q. Does that include their coal and ore divisions?

A. Yes.

Q. How old are you, Mr. Urquhart?

A. Fifty-two.

Q. How long have you been with the Woodward Iron Company?

A. Since 1933.

Q. How long have you been with them as general superintendent?

A. Since July, 1934.

Q. Since July, 1934?

A. Yes.

Mr. All:

If the Court please, I might state to avoid—

The Court:

You have been general superintendent since then?

The Witness:

I was general superintendent of transportation, blast furnaces and coke ovens up until July, 1934, and in July, 1934, I was made general superintendent of the ore mines as well.

Q. What had been your experience prior to the time you came with Woodward?

A. I was with the Semet-Solvay from 1912—1913 until I came with Woodward.

Q. In 1933?

A. 1933.

Q. What was the nature of your experience during those years?

A. I was in the operating department of the Semet Solvay Company, whch is a by-product coke operation, and held all positions from foreman through vice president in charge of operations in charge of plants all over the country east of the Mississippi River.

Q. Then you got in the mining business first when?

A. When I came to Woodward.

Q. When you came to Woodward?

A. Yes, sir.

Q. You say you came to Woodward in 1933?

A. Yes, sir.

Q. Since you have been at Woodward, have you had to do with the dealings with employees with respect to working conditions—

A. Yes.

Q. —wages and so forth?

A. Yes, sir.

Q. Ever since you came?

A. Practically ever since I came.

Q. Do you recollect whether or not there were any negotiations in 1933?

A. No, I don't think there were any negotiations in '33 at all.

Q. Now, do you recollect when the ore mines became unionized?

A. It was either in the latter part of 1933 or early in 1934.

Q. Did you have any negotiations with any committee of employees or any committee of the union in 1934?

A. Yes.

Mr. Harris:

Am I correct in assuming, Judge, that my general objection to everything that happened at Woodward goes in?

The Court:

Yes, sir.

Mr. Harris:

With all witnesses?

The Court:

Correct.

Q. All right, sir.

A. Yes, in the early part of 1934 the company was presented with a proposed contract, and following that presentation there were meetings and negotiations.

Q. All right, sir. Now, I am going to hand you—is this the proposal you spoke of, 1934? This is Sloss Exhibit Number 25.

A. Yes, that is the one.

Q. After that proposal, did you have any meetings with the union committee?

A. I sat in meetings.

Q. Did you participate?

A. Yes.

Q. All right, sir. Was there any—in those negotiations what was said and done with respect to the matter of computation of work time on the face to face theory?

A. In the presentation—in the contract which was presented—

Q. You mean in that instrument?

A. Yes.

Q. In those demands?

A. There were 22 demands, among which there was one for the men to go one way on their time and come out on company time.

Q. Was that matter treated at the negotiations between the company—

A. It was discussed in a general meeting.

Q. What happened to it?

A. It was dropped.

Q. What was the attitude of the company to it as it expressed its attitude to the committee?

A. The company's attitude towards it was that it was—that it had been the prevailing practice for years and years, and they were unwilling to depart from what had been done.

Q. Was that stated to the union committee?

A. Yes, sir.

Q. All right, sir. Now, do you recollect whether or not there was a strike that year?

A. Yes, there was.

Q. Do you remember the inclusive dates—

A. It began—

Q. —when the men were out at Woodward?

A. It began on May 4th and ended on July 6th.

Q. What do you mean by ended on July 6th?

A. It was terminated by our coming to an agreement, a verbal agreement before representatives of the men and the Commissioner of Labor Richardson representing Mrs. Perkins, and the agreement was confirmed in a letter written to Commissioner Richardson by Mr. Berg, the President of Woodward Iron Company.

Q. Is this the letter you refer to marked Sloss Exhibit 24?

A. That is it.

Q. Is that the letter that you refer to?

A. Yes, sir.

Q. And that letter is dated July 6, 1934?

A. Yes, sir.

Q. Mr. Urquhart, can you tell us when the men, after that, after this letter was written to Mr. Richardson, when, with reference to that, the miners went back to work at the Woodward mine?

A. I don't recall exactly, but it is my recollection that they went back to work almost immediately.

Q. Almost immediately?

A. Almost immediately; within a day or two.

Q. And you say this letter was confirmatory of an agreement?

A. Yes, it was.

Q. Were you in the conference—

A. Yes.

Q. At which that agreement was made?

A. I was.

Q. Now, Mr. Urquhart, do you remember how long that agreement as such remained in effect?

A. It remained in effect for one year.

Q. Now, after that agreement, after that letter was written and when the men went back to work, what was done with the face to face policy as a method of computing work time?

A. There was no change made in what it had been for the years preceding.

Q. There was no change of the—

A. There was no change in what the practice had been—

Q. In what the practice had been—

A. —in computing time on face to face.

Q. Now, what happened in 1935, do you recollect?

A. Well, about a year from the signing of the 1934 contract, there was some discussion as to changes in the agreement for the year 1935, which were finally terminated with a letter written by Mr. Berg to the representatives of the men which continued the agreement which had been put into effect in July, 1934.

Q. Was—in the negotiations in 1935, was the question of face to face method of computing work time discussed or mentioned?

A. I have no recollection of it having been discussed whatsoever.

Q. How were the negotiations in that year consummated?

A. By a letter written by Mr. Berg to the—I believe to Mr. Norred who represented the men, and simply confirming our verbal understanding and referring back to the letter of 1934 and continuing that in efect.

Q. Who was Mr. Norred?

A. He was the representative—Chairman of the negotiations committee, I believe.

Q. All right. I will ask you if this is the letter to Mr. Norred to which you referred?

A. That is it?

Q. That is it?

A. Yes, sir.

Q. What is that paper attached to that letter?

A. Well, this is the letter that was written to Commissioner Richardson in 1934 to which the letter of 1935 referred.

Q. So that the letter and the copy of the Richardson agreement, which was confirmed, is the culmination of the negotiations in that year?

A. That was the end of the negotiations in 1935.

Mr. All:
The date of the letter is July 3, 1935.

The Court:
Has that been introduced as an exhibit?

Mr. All:
I want to introduce that as an exhibit.

The Clerk:
Sloss Exhibit Number 26.

Mr. All:
The Norred letter, I want it to include the Richardson letter of the previous year.

The Clerk:
All Exhibit 26?

The Clerk:
Sloss Exhibit 26.

(Thereupon a document dated July 3, 1939, addressed to Mr. H. H. Norred, Chairman of Negotiations Committee, Woodward Red Ore Mines, and signed "Yours very truly, President," to which is attached the document described in connection with Sloss Exhibit Number 24, was marked Sloss Exhibit No. 26.)

Q. Now, Mr. Urquhart, we come to 1936. Do you recall the course of negotiations if there were any that year?

A. I think approximately one year from the signing of the 1935 agreement we were again presented with a proposed contract in 1936.

Q. I hand you this paper, and I will identify it later, if the Court please, and I will ask you if that is the proposed contract?

A. Yes, that is the one proposed for 1936.

Q. Do you recollect whether the matter of face to face computation of working time was involved in the negotiations in 1936?

A. In the proposed contract it was specified that eight hours a day meant eight hours at the working face.

Q. Were there any negotiations before a contract was reached in that year?

A. Yes.—

Mr. Harris:

That assumes one was reached.

Q. Well, if there was one—

The Court:

Yes, that assumes it was reached.

Mr. All:

I didn't mean to assume it was.

A. Yes there were a number of meetings held, but finally terminated by another letter of understanding, being written to the chairman of the negotiations committee for the Red Ore Local, and signed by Mr. Berg.

Q. Do you remember what that agreement was?

Mr. Harris:
We object. It would speak for itself.

Q. What the character of that letter or agreement was in a general way?

Mr. Harris:
Oh, Judge, it speaks for itself.

The Court:
Sustain the objection. It speaks for itself.

Q. To refresh your recollection, examine that paper.
A. That is the letter that was written in 1936.
Q. June 26, 1936?
A. Yes.
Q. All right. Now what had happened in the negotiations prior to the date of that letter?
A. We had some meetings and points that had been raised in their proposed contract had been discussed, and we had verbally agreed, and the letter of June 26th simply confirmed the discussion reached at the meeting—the agreement reached at the meeting—I should say confirmed the agreement reached at the meeting, and referred back to the agreement of 1935, and also to the agreement of 1934 as shown by the letter to Commissioner Richardson.
Q. Did the agreement arrived at, not talking about what the instrument shows,—did the agreement arrived at have reference to the Richardson letter, the original Richardson letter of 1934?
A. Yes.
Q. And did it incorporate that agreement—

A. It did.

Q. In your agreement?

A. Yes.

Q. And this letter purports to be confirmatory of the agreement reached orally?

A. That is right.

Q. Well, I show you another letter here also dated the 26th. Do you remember that?

A. Yes. That simply refers to some adjustment in the individual wage rate of three positions which we agreed to in the discussion and meetings and also referred to the amount of time that was to be allowed a miner for going into the mine whether he worked or not. We allowed a miner two hours time—if he went in the mine and due to power delay or something else, couldn't work, he was allowed two hours time.

Q. Was your agreement as shown here—

The Court:

Mr. All, why go into that?

Mr. All:

This is preliminary. I have my reasons for it, but it would take me longer to explain them than to leave it out. I want to introduce these letters as one exhibit.

The Court:

Mr. All, you are trying to go into everything in this case.

Mr. Ali:

No, I am not trying to—

The Court:

I am not going into everything in this case. I am telling everybody.

The Clerk:
This will be Sloss Exhibit Number 27.

The Court:
I have been sitting here and letting you go on. Let's get on to the wages.

Mr. All:
Mark the proposal before the other two, and follow that with those letters.

The Clerk:
You want this ahead of the two letters?

Mr. All:
Yes.

The Clerk:
Make it 27, and the letters 28.

Mr. All:
Yes.

The Clerk:
27 and 28.

(Thereupon a document entitled, "Working Agreement between the Woodward Iron Company and Their Employees, Members of the International Union of Mine, Mill & Smelter Workers," which said document was unexecuted, was marked "Sloss Exhibit No. 27.)

(Thereupon copies of two letters, each dated June 26, 1936, and addressed to Mr. H. H. Norred, Chairman of Negotiations Committee, Woodward Red Ore Mines, were marked Sloss Exhibit No. 28.)

Q. Mr. Urquhart, I hand you this paper here—

Mr. All:

Mark this, please.

The Clerk:

It will be Sloss Exhibit Number 29.

The Court:

Have you already got one numbered 28?

The Clerk:

Yes, sir, the two letters were 28, Judge, and the proposal was 27.

(Thereupon a document entitled "Copy of Agreement Presented by Red Ore Committee to Company May 31, 1937," was marked Sloss Exhibit No. 29.)

Q. Mr. Urquhart, I hand you Sloss Exhibit Number 29, and ask you what that is?

A. This is the proposal that was made to the company—presented to the company in May, 1937, by the Union.

Q. And what—did any negotiations follow the presentation of that proposal?

A. Yes.

Q. Do you recollect what they were?

A. Well, the proposal asked for sole collective bargaining rights and check off and other things, and in the discussions—

The Court:

Don't they show for themselves, speak for themselves?

Mr. All:

Judge, I could do that, but—

The Court:

Let's don't go into that.

Mr. All:

What I am going to show is this:

Q. Was there any discussion of the portal to portal or face to face policy?

A. There was no discussion of the portal to portal at all.

Q. How was that matter wound up?

A. It was wound up first by another letter from Mr. Berg, President of the Company, to Mr. Norred, and later, I believe it was in October, and the matter had become final after Mr. Berg had written his letter,—for some months, when the union claimed they didn't have an agreement, because they had signed nothing, so, after Mr. Berg, trying to convince them it was just as binding whether they signed it or not—

The Court:

Let's don't go into all that detail, will you, Mr. All?

A. —we finally signed an agreement.

Q. Now, will you look at this paper here and tell me what this is? I will have it marked.

A. This is the final—the copy of the final agreement signed October 2nd by the Union and the management.

Mr. All:

Mark that as an exhibit.

The Clerk:

Sloss Number 30.

The Court:

Dated when?

The Witness:

October 2, 1937.

(Thereupon a document entitled "This Agreement, Dated October 2, 1937, between The Woodward Iron Company, Hereinafter Referred to as the Company, and Lipscomb Red Ore Local Union Number 103, for Members of the International Union of Mine, Mill & Smelter Workers or its successor, hereinafter referred to as the Union," was marked "Sloss Exhibit No. 30.")

Mr. All:
If I haven't; I want to formally offer the proposal.

The Court:
That is 29, isn't it?

Mr. All:
And then agreement as signed on October 2, 1937.

The Court:
That is for the Woodward Company?

Mr. All:
Sloss Exhibit for the Woodward Company.

The Court:
I mean it is the Woodward Company agreement?

Mr. All:
Yes, sir.

Q. Now, do you recollect what happened in 1938?
A. There was a presentation of a proposed agreement and after some discussion the contract which terminated in October of 1937 was simply continued in effect through the year 1938.
Q. All right. I want to hand you this paper and a letter attached,—copy of letter attached, and ask you if that

is the proposal and copy of the letter which expressed the agreement reached at that time?

A. That is right.

Q. I want—was there—during the negotiations was the matter of computation of work time on face to face or portal to portal—

A. It wasn't discussed at all.

Q. That matter was not discussed?

A. No.

Q. The matter of work time was not discussed?

A. No.

The Clerk:

It will be Sloss Exhibit 31.

Mr. All:

There are two exhibits in there.

The Clerk:

Make it 31 and 31-A, if you want it that way.

Mr. All:

31 and 31-A is probably better.

(Thereupon a document entitled "Copy of Agreement presented to Company Red Ore Committee, 1938," was marked Sloss Exhibit No. 31, and copy of letter from Company to Red Ore Local Number 103, dated September 29, 1938, was marked Sloss Exhibit No. 31-A.)

Q. Now, Mr. Urquhart, do you remember how long that agreement remained in effect?

A. Well, that remained in effect until the early part of 1939, when we were notified by the union that they wished to negotiate changes in their existing contract.

Q. All right. After the 1938 negotiations were closed in the way you have stated, what method of computation of work time did you follow?

A. The work time was considered just the same as it always had been, face to face.

Q. And did you continue to pay on that basis?

A. We continued to pay on that basis.

Q. Now, you say for the next year—I will ask you what this instrument is?

A. That is the proposal submitted to the company in March of 1939 by the Union.

Q. Do you recollect what immediately followed that in the way of negotiations, if any?

A. Shortly following that presentation there was a meeting and at that meeting the union then asked for something which they had not presented in the proposal which was sole collective bargaining rights.

Q. The proposal did not contain a provision for sole, exclusive bargaining rights?

A. It did not.

Mr. Burr:
What is the number of that exhibit?

The Clerk:
32.

The Court:
Let's not go into that.

(Thereupon a document entitled "Copy of Agreement presented by Red Ore Local to Company, March 10, 1939," which was not signed, and attached to which were two sheets containing various proposed wage schedules, was marked Sloss Exhibit No. 32.)

Q. Then when you met with them what happened?

A. We refused to give sole collective bargaining rights without an election certified to by the National Labor Relations Board.

Q. Did a hearing and an election follow?

The Court:
We are not going into that.

Mr. All:
Judge, I just want to state this in the record—

The Court:
I don't think it belongs in the record.

Q. Did you have a second proposal later?

A. We had a proposal following—sometime following the election which was held in July, 1939.

Q. I will ask you if that is a copy of the proposal, and what is the date of it, the date on which you received this proposal?

A. This was received on the 1st of September, 1939. It is a proposal that was made to the company by the union.

Mr. All:
Mark this as the next exhibit, please.

The Clerk:
Sloss Exhibit No. 33.

(Thereupon a document entitled "Copy of Agreement presented by Red Ore Committee to Company after election conducted by N. L. R. B. to determine bargaining agency,—presented 9/1/39," was marked Sloss Exhibit No. 33.)

Q. Now, did you have negotiations after this proposal?

The Court:
Exhibit 32, was it just as to the right of bargaining?

Mr. All:
No, sir. That didn't have that in it. They afterwards made that claim orally.

The Court:
Well, what—

Mr. All:
Judge, if I might state this for the record: I don't mean to be—I think I can explain it to you.

The written proposal did not have exclusive representation in the contract, bargaining on behalf of the members—

The Court:
I don't see that is material.

Mr. All:
I thought you said you wanted to know.

Later they asked orally—said they wanted to incorporate that in it. Later, we had an election and they presented this second proposal after the election on September 1, 1939.

The Court:
When was it, September what?

Mr. All:
September 1, 1939, was when it was presented.

Q. Now, what followed the presentation of this second proposal?

A. Well, there was a long series of meetings, probably eight or nine, and no agreement was reached, and finally resulted in a strike on October 16th, which ended in November, about the 13th—

Q. 1939?

A. 1939.

Q. In those negotiations, both before and after the strike, was the matter of work time a subject matter of discussion?

A. No, that was not one of the points at issue, and was not discussed.

Q. And did a contract finally result?

A. A contract resulted which was, I believe, signed on the 16th of November, 1939.

Q. Is this that contract or a copy of it? Is it one of the duplicate originals of not?

A. That is right.

Q. That is a copy of that contract?

A. That is a copy of that contract.

Q. Now, Mr. Urquhart, I will ask you if in those negotiations leading up to that contract, and in the contract, if there was any discussion of the matter of incentive for the production men?

Mr. Harris:

Well, he is asking what is in the contract, and that would speak for itself.

Mr. All:

The contract wouldn't speak for what the other contract was.

Q. But were the rates discussed?

A. Yes, sir. There was a claim there was not a proper distribution of the contractor's earnings. In the contract we signed November 13th there was redistribution of earnings given the miners, and incentive scale of earnings based on the tonnage.

Q. Based on the tonnage?
A. Yes, sir.

The Court:
Is that in the contract?

The Witnes:
Yes, sir.

The Court:
That provision?

The Witness:
A. Yes, sir.

The Court:
That is in evidence.

Mr. All:
What they got is in evidence, and what they got before isn't.

The Court:
You have gone into it.

Q. When you say a distribution of earnings, you mean a distribution of earnings of the production men?
A. That is right.
Q. And what you did in that contract was to redistribute—a matter of redistribution of the premium earnings?
A. Yes, sir.

Mr. All:
Now, I want to introduce this in evidence.

The Clerk:
It will be Sloss Exhibit 34.

The Court:
That is the contract dated November 13, 1939?

Mr. All:
Yes, sir.

Mr. Harris:
And I assume my general objection to all contracts is in, Judge.

The Court:
Yes.

Mr. Harris:
On the theory I stated earlier?

The Court:
Yes.

Mr. Harris:
That is all right.

(Thereupon an agreement dated November 13, 1939, between the Woodward Iron Company and Lipscomb Red Ore Local No. 103 of the International Union of Mine, Mill & Smelter Workers, signed by H. A. Berg, President, and Van D. Jones, J. L. Robinson, John Crumpton, Oliver Johnson and Will Rencher, and attached to which were five pages of various wage schedules and rates, was marked Sloss Exhibit No. 34.)

Q. Now, Mr. Urquhart, what about the 1940—the next year?

A. Well, the next year about the expiration date of out 1939 contract we were notified they wished to negotiate further changes, and a proposal was made, following which there were negotiations and discussions which finally terminated in a contract being signed in—December, 1931, I believe it was,—in the latter part—almost the end of December, 1940.

Q. What is this instrument here that I hand you?

A. Well, this is the proposed amendment and changes that were presented to the Woodward Iron Company by the Red Ore Local on—changes they wanted made in the contract which was in effect.

Q. When was the date of presentation of that proposal of changes?

A. It was presented on the 6th of November, 1940.

Q. 1940?

A. Yes, sir.

Q. Now, did negotiations follow that?

A. Yes.

Q. What was said and done with respect to the matter of the face to face or portal to portal method of computation of work time?

A. Well, in that proposal, they made one of the proposed amendments was that the men be paid on a collar basis,—portal to portal basis.

Q. That was in the negotiations?

A. That was in the proposed amendment they made and discussed in our negotiations.

Q. All right. What position did you—who else was in the conference? What position did the company take with respect to the portal to portal change?

Mr. Harris:

What did they announce to the men? I don't like the way he asks it. What did they tell the men?

The Court:

Yes, what did they tell the men? What did they reply?

The Witness:

I was carrying on the negotiations for the company, and refused to change the practice that was in effect, and had been in effect for years past,

Q. Did you give your reasons for it? Is what you have expressed the reason you gave?

A. I said it had been the prevailing practice for years, and I was unwilling to change it.

Q. What was their reply to you, if any?

A. They did not press the point after that, and said the matter was in the hands of the Wage and Hour Division at that time.

Q. Was a contract—let me introduce this proposal.

The Court:

What is that, Exhibit 34 or 35?

The Clerk:

He hasn't introduced it yet. It will be 35.

The Court:

What is the date of it, November—

Mr. Bronaugh:

It was presented on November 6th.

Q. Mr. Urquhart, you said—

A. Presented on November 6th, and finally signed December 31st, I believe.

Q. That is the contract?

A. Yes.

Q. We haven't got to the contract yet. When was that presented?

A. Presented by the Union on the 6th of November.

The Clerk:

That will be Sloss Exhibit Number 35.

Mr. All:

Mark this the proper exhibit.

The Clerk:
Sloss Exhibit 35.

(Thereupon a document entitled, "Proposed Amendments and Changes in the Present Contract by and between Woodward Iron Company and Lipscomb Red Ore Local No. 103, of International Union of Mine, Mill & Smelter Workers, All of Which is to Supercede The Existing Contract, Including the Parts Retained to be Incorporated In the New Contract," was marked Sloss Exhibit No. 35.)

Q. Then is this the contract as executed?
A. Yes, that is the contract as executed.

The Court:
What is the date of that, 31st of December, 1940?

Mr. All:
December 30, 1940.

Q. Attached to this original here, Mr. Urquhart, appears to be two letters—
A. One of those is simply a letter to Mr. Jones correcting an error which had been made—

Mr. Harris:
Doesn't the letter speak for itself?

The Court:
It speaks for itself.

Mr. Harris:
If you are introducing it—

Mr. All:
Well, I didn't know whether—well, we will introduce all this.

The Clerk:

Exhibit 36.

(Thereupon a document dated September 30, 1940, being an agreement between the Woodward Iron Company and Lipscomb Red Ore Local Number 103 of the International Union of Mine, Mill & Smelter Workers, attached to which were five sheets of various wage schedules and rates, and also attached to which were two letters, the first being dated December 30, 1940, and addressed to Mr. Van D. Jones, Executive Board Member, I. U. M. M. & S. W., Bessemer, Alabama, and signed by Woodward Iron Company, by J. E. Urquhart, General Superintendent, and the second being dated December 30, 1940, addressed to Mr. J. L. Robinson, President, Lipscomb Red Ore Local Number 103, I. U. M. M. and S. W., and signed Woodward Iron Company by J. E. Urquhart, General Superintendent, was marked Sloss Exhibit No. 36.)

The Court:

Didn't you go into these letters before you came into the Court room? There are three lawyers here.

Mr. All:

Judge, I went into the details on the other two. We have gone through this a great deal more rapidly than the other two.

Now, if the Court please, if there are any exhibits which have been marked and identified, which have not been introduced, I want to formally offer them.

The Clerk:

You have three Sloss Exhibits marked for identification, Numbers 2, 5 and 6.

The Court:

They are in evidence. Of course, the defendant objects and excepts.

Mr. Harris:

I didn't understand him, Judge. He said if he had ever offered any for identification—

Mr. All:

No. I said if I had missed formally offering any one or two or three in there—

Mr. Harris:

Oh, all right.

Mr. All:

I want it understood I offered all of them.

Mr. Harris:

Shall I go ahead with the witness?

The Court:

Are you through with the witness?

Mr. All:

Yes, sir.

The Court:

Have you any questions?

Mr. Burr:

Just one or two questions.

(By Mr. Burr):

Q. Mr. Urquhart, I believe the first Sloss Exhibit you identified was Sloss Exhibit 25, which proposed 22 requests. Do you remember that one in 1934?

A. Yes, sir.

Q. Then the next one, 26, was the letter to Mr. Richardson?

A. Yes.

Q. Now, was there any wage increase granted at that time?

A. There was.

Q. The wage increase was granted at that time?

A. Yes.

Q. Now, the next one was when the extension of 26 was given in 1936. Was any wage increase granted then, —the first extension of Richardson agreement?

A. No, there was no general increase as was given in 1934. There might have been one or two individual wage rates that were adjusted.

Q. 1934 was a general increase?

A. Yes, sir.

Q. Respecting everybody?

A. Yes, sir.

Q. '35 was just a few separate—

A. Yes.

Q. And in '27,—'26—'36,—

A. No, there was no general wage increase there at all.

Q. Well, was there one in '39,—in '37?

A. In '37?

Q. Yes, sir.

A. There was no wage increase as a result of these negotiations.

Mr. Harris:

We object to whether there was an increase as a result of negotiations.

Q. Did the wage increase follow or not?

The Court:

He just asked if there was a wage increase.

A. There was a wage increase in 1937 prior to this negotiation.

Q. Now, in 1937, you continued the former agreement in effect, I believe?

A. '38, did you say?

Q. '38, yes, sir.

A. Yes, sir.

Q. Was there any increase granted then?

A. No.

Q. Now, in the early part of '39—I don't believe you made any agreement until the latter part of September, 1939?

A. That is right,—November.

Q. November, 1939, is that when the incentive increases were granted?

A. Yes, sir.

Q. Were there other increases besides that or not?

A. Yes, there were some other increases.

Q. That was the last one until you signed the contract of 1940, I believe?

A. That is right.

Mr. Burr:

That is all.

The Court:

All right, Mr. Harris.

Cross Examination.

(By Mr. Harris):

Q. Did you ever study law?

A. No, sir.

Q. Who were the men that you first started dealing with in 1933?

A. I didn't deal with anybody in 1933. In 1934 there was a committee—

Q. I just asked their names. Who were they? That is what I want to know.

A. Well, there was Mr. Norred. I don't know that I can recall them all. I can name some of them. Mr. Norred, I think Mr. Long, Mr. Stringfellow and there were two or three negroes.

Q. Do you remember their names?

A. I think one of them was Oliver Johnson, one of them, I believe, was named Rencher, and Woodly.

Q. All right. In 1935, give the names of the men you dealt with.

A. Well, I—1935, Mr. Norred was one, I believe Mr. Crumpton was one, John Crumpton, Albert Horn, and I think Mr. Long, and also two or three negroes.

Q. Can you give us the names of any of the negroes?

A. I think Oliver Johnson was one.

Q. And was John White a white man or a negro?

A. I don't remember whether he was a member of the committee at that time or not.

Q. All right. In 1936, what men did you deal with?

A. Norred was the principal one. His committee, I think, at that time was—

(Here the lights in the Court room went out.)

Mr. Harris:

Can the Court reporters see to take this down? If they can't, we will have to suspend, I judge.

The Court:

Have to suspend.

(Here the lights in the Court room came back on.)

Q. You were giving the names of the men with whom you dealt in 1936, and you started off with Mr. Norred, stating he was the principal one. What I wanted were the names—

A. I don't know that I could give the names of all the committee members. It was constantly changing at each year, and I do know Norred was one of the members. I don't have it in my mind.

Q. I noticed you had a very remarkable memory for the documents—

Mr. All:
I object.

A. They had a changing committee from year to year.

Mr. Burr:
The letters are signed by the committee.

Q. You can't tell me, in 1937 who were the men you dealt with?

A. Well, I know Mr. Norred was still one.

Q. Do you remember ever having any conversation with anybody besides Mr. Norred during these negotiations?

A. Oh, yes, the members of the committee, but the committee was changing all the time.

Q. Tell us the name of some men that actually did some talking to you besides Mr. Norred.

A. Well, I suppose every member of the committee did some talking.

Q. Was there a man named McGraw that was on the committee?

A. I don't think so at that time. McGraw was on one of the original committees in 1934, but I have no recollection of his being on there in 1937.

Q. Well, the very first thing the union asked for in 1934 was union recognition, wasn't it?

A. That was one of the things they asked for.

Q. All right. And they never did get it as a union until 1939, did they?

A. Yes, I think so.

Q. What year did they get the first contract,—this contract made and entered into between the Sloss-Sheffield and this union,—starting off anything like that,—Woodward, I mean, and this union,—I beg your pardon.

A. 1936,—certainly in 1937.

Q. If they had it it was in these instruments you have talked to Mr. All about and which he has shown you and which have been introduced in evidence?

A. That is right.

Q. There were no other instruments?

A. No.

Q. Now, I notice practically all those instruments were signed by Mr. Berg, and none of them were signed by you.

A. That is right.

Q. What year was it that the union demanded a 6-hour day?

A. I have no recollection of their having demanded a 6-hour day at any time.

Q. What year was it they demanded a 7-hour day?

A. 1934.

Q. They demanded a 7-hour day in 1934?

A. Yes, sir.

Q. And what did you tell them? Were you the man that acted as intermediary when they asked for a 7-hour day?

A. No. I was present at the negotiations.

Q. Well, who made the reply to them?

A. It may have been by me or may have been made by Mr. Berg.

Q. Who was present representing the union at all these negotiations? Was Mr. Berg at all of them? I mean representing the Woodward Iron Company. Was Mr. Berg at all of them?

A. I think so.

Q. Were you there?

A. Yes, sir.

Q. Who else was there representing the Woodward Iron Company?

A. Nobody—probably Mr. DeSollar. Mr. DeSollar was present at one meeting.

Q. Which year and which meeting?

A. 1934, and I don't know which meeting.

Q. When they asked for a 7-hour day, what did you tell them?

A. I told them we could not grant it.

Q. Could not grant it?

A. No.

Q. Immediately upon the refusal to give them a 7-hour day, didn't they ask for time either going in the mine or coming out?

A. That was—one or either both of them were in the demand as they presented them to the company.

Q. In 1934?

A. In 1934.

Q. You kept track of the general progress of the union membership at the Woodward Iron Company, didn't you?

A. I had no way of keeping track of it at all.

Q. You didn't know what years they were strong and what years they were weak?

A. No, I would have no way of knowing.

Q. Now, all this testimony that you have given with reference to dealings with union men had reference, I assume to the representatives of the International Union of Mine, Mill & Smelter Workers?

A. That was—the presentation was made as the Red Ore Local of the International Union of Mine, Mill & Smelter Workers.

Q. You haven't confused any dealings and negotiations with the American Federation of Labor—

A. No.

Q. —in this testimony here during all—

A. No.

Q. —the evidence you have given in reply to his questions?

A. No.

Q. Well, when did the American Federation of Labor enter the picture at the Woodward Iron Company?

A. I don't know for a fact, but I think it was in 1939.

Q. 1939?

A. 1939.

Q. Well, during the time that this union of the International Union of Mine, Mill & Smelter Workers were asking for recognition, was there any kind of company union at the Woodward Iron Company?

A. No.

Q. Did you have any kind of employees representation plan?

A. No.

Q. Did you have any Brotherhood of Miners of—

A. No.

Q. —Captive Mines?

A. No.

Q. You never had any kind of union organization, either company or international, until the local of the International Union of Mine, Mill & Smelter Workers?

A. I don't know. There might have been—there might possibly have been and probably was in 1939 a split between the employees themselves between the A. F. of L. and the International Union of Mine, Mill & Smelter Workers, but how the split was, or the details of it, I have no way of knowing.

Q. Didn't you have an employees representation plan—

A. No.

Q. —in 1933?

A. If they did I didn't know anything about it, because I had nothing to do with the Red Ore Mines at that time.

Q. When did you start with the Red Ore Mines?

A. July, 1934.

Q. Did you have an employees representation plan in 1934?

A. No.

Q. This system of putting the brass check at the mouth of the mine was instituted after the union had demanded it, wasn't it?

A. They made a request in our negotiations in 1939 that as a matter of safety that the brass check system be installed.

Q. Yes. They put it on a basis of safety to ask you to put it there?

A. Yes.

Q. Did they ask for it without limiting it to a safety measure, and you refused, and then when you refused to do it they put it on a safety basis, and then you granted the request?

A. I have no recollection of that.

Q. You don't recall it?

A. I have no recollection of it being refused.

Mr. Harris:

Some of those documents, Your Honor, I have never seen, and I haven't talked to any Woodward representatives, and if something occurs in our conversations tonight, I might want to ask him, I would like to have the privilege to do so.

The Court:

You have the privilege when we resume tomorrow.

Mr. Harris:

I will not ask him very much, I will assure you.

There is one question—I assume you are not going to call another witness this afternoon. There is one question about going down into the Republic Mines tomorrow.

Did they speak to you about it, Mr. Burr?

Mr. Burr:

Yes, sir, I am perfectly willing for them to go tomorrow, but I am afraid I will run out of witnesses. That is the trouble, the same ones that have to go down there have to be here.

Mr. Lipscomb:

That is the first one we asked to go in.

Mr. Burr:

What is the use of raising that, Judge? I can use them after they come back.

Mr. Harris:

I don't want to stop the Court while they are going down in the mines.

Mr. Burr:

Off the record.

(Here followed an off-the-record discussion.)

Mr. Burr:

I want this understanding: I want them to go in both of Republic's mines. There are two mines, and I want the benefit of cross examination as to both of them, at least.

The Court:

Can you go to the other one tomorrow?

Mr. Burr:

We don't care when they go.

The Court:

Well, we will be back—we will convene tomorrow morning at 9:30.

Court is adjourned for the day.

(Whereupon, at 4:35 P. M., July 26, 1941, an adjournment was had to 9:30 A. M., July 17, 1941.)

July 17, 1941, 9:30 A. M.

Court met Pursuant to Adjournment.

The Court:
Who will you have?

Mr. Burr:
Mr. Neal, whom I expected—hoped to be able to take up and finish with Wenonah this morning is still sick, so I will take Mr. Carter so as not to waste any time, and go on with that.

The Court:
All right.

Mr. Burr:
Wait a minute. Mr. Urquhart's examination had not finished.

Mr. Harris:
I don't want to ask him anything more.

Mr. Burr:
Did you have anything else?

Mr. All:
I have this evidence, these pay statements and receipts. I want to separate them by years and put them in.

Mr. Harris:
The same objection we have had—

The Court:
You mean you have already introduced them?

Mr. All:
It is a similar receipt. I didn't introduce them. They are similar to the receipts I introduced as to Sloss. I want to put them in.

The Court:
I will overrule the objection. What exhibit are those?

The Clerk:
They are not marked yet.

Mr. Bronaugh:
We will fix them and give them to the clerk. What exhibit of Sloss will they be?

The Court:
Be 37.

(Thereupon a number of pay receipts of employees of Woodward Iron Company were later furnished to the clerk and were marked Sloss Exhibit No. 37.)

1612 EWING CARTER, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):
Q. Mr. Carter, what are your initials, please, sir?
A. Ewing,—E-w-i-n-g.
Q. How old are you?
A. Fifty.

Q. Are you a graduate of any universities or colleges?

A. Finished Alabama and didn't graduate and took post graduate work,—in 1910. I took post graduate work, a special course..

Mr. Harris:

We can't hear him, Judge.

A. I say in 1910 I came out of Alabama and didn't get a degree because I was taking special work, taking post graduate work.

Q. Where did you go from there?

A. I came out and went to work on Red Mountain and worked there a few months and was laid off and worked around two or three places in the Southwest, in the Chattanooga district, and then went to Mexico.

Q. Was that mining there?

A. Yes, sir.

Q. What kind of work did you do in Mexico?

A. Mining and railroad work.

Q. What kind of work in Chattanooga?

A. Coal and some little iron mines.

Q. Were they open mines or underground mines?

A. Underground.

Q. What sort of mines did you work in in Mexico?

A. Copper.

Q. What kind of course did you take at the University of Alabama?

A. Mining.

Q. Mining engineering?

A. Yes, sir.

Q. And when you came back and came to Red Mountain, what year was that?

A. 1910.

Q. And what sort of work did you go to work at on Red Mountain?

A. I went to work at the Fossil Division, now called Wenonah.

Q. What kind of work?

A. Rodman on the underground engineering crew.

Q. Who was superintendent of Wenonah?

A. At that time McDaniel, I believe.

Q. Was that before George Neal came to Wenonah?

A. Yes, sir.

Q. About how long did you work as a rodman on the underground engineering force?

A. Six months.

Q. Then were did you go?

A. I spent five years in Mexico and South America mining down there.

Q. When was that?

A. Between 1910 and '17.

Q. Those were copper mines, I believe you said?

A. Gold mines in Colombia, South American, and Copper Mines in Peru.

Q. Then you came back to the Mountain?

A. Came back to the mountain.

Q. What time did you get back?

A. In August, 1917.

Q. Where did you go to work at that time?

A. Had headquarters at Muscoda Division for a short time and then in the Ishkooda Division,—engineering, and I was in the army a little while and discharged, and came back, and then division engineer, Ishkooda Division, and then made mine inspector for the entire mountain.

Q. What were your duties at Muscoda when you were division engineer?

A. Mine work.

Q. Underground?

A. On the surface and underground.

Q. Was the major part underground or on the surface?

A. Yes, sir.

Q. Which, underground or on the surface?

A. Underground.

Q. Then you were made safety inspector for the entire mountain?

A. Yes, sir.

Q. Muscoda and Ishkooda and Wenonah?

A. Yes, sir.

Q. What did you do?

A. Made safety inspections.

Q. Was that underground or surface?

A. Underground.

Q. How long did you serve as safety inspector?

A. Three years, and I left the company.

Q. That brought you down to when?

A. July of 1921.

Q. Then you say you left the company?

A. I went to North Carolina and operated a Feldspar mine for about a year.

The Court:

Feldspar?

The Witness:

Yes, sir.

Q. Was that an underground operation or a pit?

A. Partly underground and partly a pit.

Q. And you say you stayed there about a year?

A. About a year.

Q. Then what did you do?

A. I came to the Tennessee Company as construction engineer.

Q. What were your duties?

A. Construction work.

Q. Underground?

A. No, sir, on the surface. We were doing some work out at Vann's Quarry at Ketona, and we were figuring on other operations which later developed. Very little of that was underground.

Q. What period does that cover?

A. 1922 to '24.

Q. Then what kind of work did you take up?

A. I was made chief engineer of iron ore mines and quarries.

Q. What were your duties as chief engineer? What properties did you have charge of?

A. All three divisions and the limestone mine, which we were developing, and before we changed over from Vann's Quarry—

Q. You say the limestone mine was developed during that time?

A. Yes, sir.

Q. You refer to the mine known as Number 5?

A. Number 5 limestone mine.

Q. That mine is between what mines?

A. Four and Six mines.

Q. What slope did you use—did you have to sink a slope for your limestone mine, or did you use a slope which had been used before?

A. We used old Number 5 slope which had been abandoned.

Q. As I understand, the limestone lies above the ore?

A. 320 feet above the ore seam. We used the old slope and drove raises up to the limestone deposit and dropped the ore into the old workings through chutes and drops.

Q. When did your services as construction engineer—

A. This was when I was chief engineer.

Q. I mean as chief engineer, when did your duties cease?

A. May, 1931.

Q. May, 1931?

A. Yes, sir.

Q. Then where did you go?

A. I was made superintendent at Muscoda.

Q. Have you been superintendent since that time at Muscoda?

A. Yes, sir.

Q. As superintendent at Muscoda, what mines have you been in charge of?

A. Four and Six and the Limestone mine.

Q. Have any other mines over there been in operation during that period of time?

A. No, not since I have been there.

Q. Well, referring to those mines, Mr. Carter, about how often did you go underground as superintendent?

A. Well, unless there is some unusual occasion to present, I try to go underground two or three days a week.

Q. Two or three days a week?

A. Yes, sir.

Q. And have during that entire period of time?

A. Yes, sir, unless something exceptional—

Q. Something like this case keeps you out?

A. Yes, sir.

Q. But on ordinary occasions you go underground three or four times a week?

A. Yes, sir.

Q. And did you have meetings with your underground mine foremen?

A. Practically every day. I talk to the foremen every day, have meetings in my office every afternoon, and the men on the night shift will come by during the day.

Q. Have you been pretty well acquainted with the personnel in your mines during that period of time?

A. Fairly well, yes, sir.

Q. All right, sir. I will ask you, please, sir, to look at this map over here which has been introduced in evidence as Defendant's Exhibit—T. C. I. Exhibit Number 1.

Where is the entrance to—we will take—since I have got a mine foreman, what mine is Wilson Goodwin mine foreman in?

A. Number 4.

Q. Then I will ask you to take Number 6 as illustrative of your testimony, and I will take up Number 4 with Wilson. We can save time probably. Where is Number 6?

A. Right there (indicating on map, T. C. I. Exhibit Number 1).

Q. All right, sir. Do you recall about how far they had gone down in the workings of that mine when you reached there as superintendent?

A. 1932?

Q. I think that will be back far enough.

A. We had reached the basin. The slope hasn't been driven any further.

Mr. Harris:

Had reached what?

The Witness:

The basin. In other words, there is a basin in here. The pocket is at the bottom of the basin, and all our workings slope up from there, and the pocket was put in there while I was chief engineer.

Q. The pocket?

A. Yes, sir.

Q. What does that pocket do?

A. In building that pocket, we dropped down about 75 feet below the seam, and a raise was put up to the ore.

The Court:

A fault?

The Witness:

No, to get the haulage room in there. The haulage system runs in the ore 75 feet below the pocket.

The Court:

I see.

The Witness:

It gives us a chance to dump that ore. We have a rotary dump that handles the ore into the skip and we haul it out to the surface.

Q. You have a rotary dump?

A. One central rotary dump.

Q. How is that ore brought to the pocket, to the dump?

A. By electric haulage, locomotive haulage.

Q. Who operates the locomotive haulage?

A. The locomotive engineers, the service crews.

Q. Where do they pick up the cars?

A. Picks up the cars—we push all our empties out and pull our loads back. In other words we keep the motor on the downhill side.

Q. Where do they take the loads from?

A. They come from the different working headings.

Q. Who loads those cars?

A. The mining crews, production crews.

Q. Where does he leave them when he loads them?

A. On the side track right by the stope or working place.

Q. Is that part of the production crews' job, to put those cars on the side track at the end of the shift?

A. During the shift. The head miner calls the dispatcher, who operates the haulage system, and he brings in empties and takes out the loaded cars.

Q. Your slope, when you went there as superintendent, was how far down?

A. Well, it is 6,250 feet to the pocket.

The Court:
How far?

The Witness:
6,250 to the pocket.

Q. 6,250 feet to the pocket?

A. Yes, sir.

Q. What way from that pocket do the workings extend?

A. All this dotted—this will answer it. All this dotted area, this stope system has been done since I was made superintendent; the workings extend to the north, east and south.

Q. And since you have been superintendent, the progress marked on the map here with the round dots,—

A. Practically answers it.

Q. And all above—

A. All this dotted stuff was done since 1932.

Q. Since 1932?

A. Since May, 1933.

Q. Now, do these dots here, Mr. Carter, show the distances—first, do these little lines, the little dots show the working stopes you were working prior to May 1, 1941?

A. Yes, sir.

Q. Do you recall about how many production crews or stopes you were working at that time?

A. Fifteen.

Q. Fifteen?

A. Yes, sir.

Q. Was that double shift or single shift?

A. Fifteen on each shift.

Q. Fifteen on each shift?

A. Yes, sir.

Q. That made 30 in 24—

A. Thirty in a day.

Q. Thirty in a 24 hour period?

A. Yes, sir.

Q. Has your work been done, since you have been with the company, on a two shift basis? Has the mine work been done on a two shift basis?

A. Yes, sir, except during the depression, 1932 or '33, we had short time or single shifts, and even closed down at times.

Q. You were trying to spread the work during the depression?

A. Yes, sir.

Q. And during that time you worked less than two shifts?

A. One single shift.

Q. Operated a single shift?

A. Yes, sir, trying to give as many men employment as we could.

Q. Take on this map for an illustration, what is this place on the extreme left of the map?

A. That is the main north.

Q. It is marked there 4900 feet.

A. That is the hauling distance, the travel distance back to the loading station, which is 400 feet up from the pocket.

Q. Was that distance measured straight across—

A. Along the line of travel.

Q. Along the line of travel?

A. Yes, sir. The men travel the haulage way.

The Court:

The men travel that haulage way?

The Witness:

Yes, sir.

The Court:

4900 feet?

The Witness:
Yes, sir.

Q. And the men working here would ride down—

A. 5800 feet.

Q. And then walk 4900 feet?

A. Yes, sir.

Q. The next is 6,050 feet.

A. That is the longest place in the mine; that is 6,050 feet.

Q. What is the name of that place?

A. Sixth west northwest.

Q. And this one here is what?

A. 54 left north.

Q. And the one above marked 5500?

A. Eighth east.

Q. And going around with the map and in a circle kind of—

A. Third right southeast.

Q. Third right southeast is 4950 feet?

A. Beg pardon. That is the Eighth right southeast.

Q. 4950 feet?

A. Yes, sir.

Q. All right, sir.

A. The third right southeast is 5350 feet; second right southeast is 5550 feet; first right southeast is 5750 feet.

Q. All right, sir.

A. Over on the south we had one back here in the south right that is 3500 feet, fourth right east.

Q. All right, sir.

A. Over here on the south, third right south, 5500 feet

Q. Is that from Number 6?

A. All number 6.

Q. That is from the same mine?

A. No, sir,—

Q. Give us those too.

A. Sixth right south, 3300 feet; fourth right south—fifth right south auxiliary 2800 feet, and fifth right south main was 3000 feet and the fourth right south was 1550 feet.

Q. Is that all the working places you have in Number 6?

A. That is all.

Q. Have they continued since then to add working places?

A. Yes, sir, we have made a few changes by shifting one crew to another, but generally—

Q. Generally that is the payout?

A. Yes, sir.

Q. All right, sir. Without going over all those, I will take one as illustrative, to show the others. Take the one that is the longest, 6050 feet. There appears on that 28 minutes. What is that?

A. That was the average walking time determined by the engineers.

Q. Determined by the test Mr. Ball testified about?

A. Yes, sir, the usual time of walking.

Q. I believe there were two of those tests made, do you recall?

A. Yes, sir.

Q. By two different sets of engineers?

A. By two different sets of engineers.

Q. And checked, one against the other?

A. Yes, sir, and averaged it up.

Q. So that time as shown on the other places on that map shows the walking time to the different places?

A. Yes, sir.

Q. Let's see the shortest one?

A. Right here, fourth right east—

Q. Is 1700?

A. 1700.

Q. Now, I wish you would explain to the Court—during that period of time the haulage system of the ore. You have already explained how it gets from the stopes to the rotary dump or pocket. How does it get from there to the surface?

A. Go back to the stope?

Q. Yes, go back to the stope.

A. It is loaded over these chutes or ramps into the cars.

Q. Yes.

A. That car is dropped by an auxiliary hoist or a drum,—got drums places on the mechanical loaders, and lowered or pulled, depending on the pitch going to his side track just as close as it can be located to the loading place. The motor crew comes in there with a load of empties and switches the empties into the side track and pulls the load out and takes them to the pocket. They run in parallel so the motor is always headed in with the loads on it. He drops the loads in the pocket and picks up the empties that a previous motor trip has left there to be passed through the rotary dump, and then he goes on out to the next heading where he is directed by the dispatcher.

The pocket has a capacity of about 500 tons. That ore is hauled to the surface. A couple of skip tenders load that ore through measuring gates into the skips, and it is hauled to the surface by the skips.

Q. What pulls the skips?

A. Double drums, 4 and a half foot face,—Nunburg hoist.

Q. What kind of power is used to operate the hoist? Steam or electricity or what?

A. Electricity.

Q. Electrical hoist?

A. Yes, sir.

Q. What sort of a skip is that the ore is hauled on?

A. Steel skip weighing about 10 tons.

Q. Do you know the dimensions? I don't want the dimensions from the ground to the top—

A. The inside dimensions?

Q. Yes, sir. The others have been given that way.

A. Our general pattern of skip there at Muscoda will average from four feet three inches to four feet seven inches in the back and five feet three inches to five feet seven inches in the front in depth, and they are not quite five feet wide. They are about fourteen feet long.

Q. Did or not the men use the same skip in riding down underground to the manloading station that they use in hauling ore?

A. Yes, sir.

Q. Were the ore and men ever handled at the same time?

A. No, sir, the men were handled alone.

Q. After the men had been hauled, were those same skips put to work in hauling ore?

A. Hauling ore.

Q. Were those skips used for any purpose between the two eight hour shifts?

A. No, sir, except hauling men and ore. Wait a minute. You say between shifts?

Q. Yes, sir.

A. I was thinking about during the shift. We have at Muscoda what is known and called a hauling down crew. They use the skip to haul materials and supplies in the mine. That crew goes on when one crew goes off and works until the other crew comes on.

Q. Is that a split shift?

A. Yes, sir.

Q. Do they work eight hours?

A. They don't quite work eight hours.

Q. In getting the material up in the stopes, is there any time required for the clearing of the stopes, working places, on account of the shooting?

A. Yes, sir. There is a four hour period in there to give time to clear the mine of dust and smoke and powder fumes.

Q. The remaining part of that period is used for putting material in the mine?

A. No, we didn't haul anything out in the mine between shifts. All we hauled was to the timber yard near the bottom of the slope where the motor transportation system could reach it.

Q. All right, sir. Now, then, when and how and by whom was any material, in the general course of business and practice, carried from the timber yard or the place down in the mine where it was stored up to the headings and stopes, anything that was needed up there?

A. Well, it has always been a practice to handle timbers, all heavy material by service crews and haulage crews carrying it into the respective headings. Any heavy material is carried to each individual crew as they need it,

Q. What time of day was that hauled up in the headings?

A. Usually at the beginning of the shift, as a general thing.

Q. At the beginning of the shift?

A. While the men are going to their working places, we get out the material.

Q. All right, sir. Now, I want to get you to conduct us on a tour of the mine that the usual miner takes, and we will take a production man. I am not talking about exceptional cases. I will ask you about those later, but I want the one that is most universally in use by all the men.

Where would that miner come from first when he gets on the company's property?

A. He would come from his home, wherever it might be, and he would first go to the wash house and change.

Q. What kind of wash house is that?

A. It is a central wash house in Muscoda. All three mines change there.

Q. Where is it located?

A. In front of and between 4 and 5 slopes.

Q. Is it indicated on the map there?

A. Yes, sir.

Q. Point out to the judge where it is.

A. Right there (indicating on T. C. I. Exhibit Number 1).

Q. About how far is that from the entrance to Number 6?

A. 2325 feet.

Q. 2325 feet?

A. Yes, sir.

Q. And how far is it from Number 4?

A. It is 750 feet from Number 4.

Q. And how far from Number 5?

A. 730 feet.

Q. How long has that wash house been in that particular place and about when was it built, do you know?

A. Oh, it was built way back in the teens somewhere.

Q. All right, sir.

A. It was rebuilt and enlarged sometime back about 1926 or '27.

Q. All right, sir. You can sit back there.

Now, I wish you would describe that bath house just in a general way.

A. We use the hanger system.

Q. Yes.

A. The men are provided with hangers which they can put their mine clothes on; take their mine clothes off and put their clean clothes on, and they pull them up in the top of the bath house.

Q. On pulleys?

A. Yes, sir, clear of everything on both sides. We have showers adjacent to that on each side. We have separate sides for white and colored.

Q. When the man comes back from the mine he lets his clothes down—

A. Pulls his mine clothes off, lets his clean clothes down and puts them on, and puts his muckers, mine clothes, on the hanger, and pulls them up.

Q. Has there been any charge made for that service?

A. Now since I have been superintendent.

Q. Are the men compelled to use the bath houses or can they use them or not as they see fit?

A. They can use them or not as they see fit.

Q. I will ask you what proportion uses them.

A. 99 percent, maybe more.

Q. 99 percent, maybe more?

A. At Muscoda. I am talking about underground crews.

Q. The underground crews?

A. Yes, sir.

Q. All right. Now, if you don't mind telling me, what was the number of the underground crews, if you can give it to me, at Number 6, the normal crew? Of course, I know it varies.

A. The normal crew at Number 6 is about 550 men, double shift.

Q. Underground?

A. Underground.

Q. And at Number 4?

A. About 450 men.

Q. And the limestone mine?

A. We use about 75 men on day shift only.

Q. On day shift only?

A. Sometimes a few men went in there at night.

Q. You work a day shift only?

A. Yes, sir.

Q. Can you tell us what proportion of the men at Number 6 are service crews as distinguished from what you call production crews?

A. About 60 percent.

Q. About 60 percent?

A. Only about 40 percent of the men are actual producing men.

Q. What is the proportion at Number 4?

A. About the same.

Q. About the same, and what is it at Number 5?

A. Five is altogether difference. Five has only—there are about only 16 percent of service men there.

Q. At Five?

A. Yes, sir.

Q. Those proportions have been pretty well prevailing over this period?

A. Yes, sir.

Q. That is about the proportion?

A. Good, average figure.

Q. Now, then, this miner we are talking about, the usual miner, after he gets his clothes changed, where does he go next?

A. Gets carbide there at the carbide house at the wash house.

Q. Was the carbide house at Muscoda located at the wash house?

A. We built it in 1937 at the wash house at a central place where the men could get their carbide.

Q. Where was it prior to 1937?

A. We issued carbide at each slope before 1937.

Q. Before 1937?

A. Yes, sir.

Q. In 1937 you put one place—did you build a building?

A. Built a building, yes, sir.

Q. Does it adjoin the bath house?

A. About thirty feet from it.

Q. All right. Explain to the Court how that man gets his carbide and how it is paid for?

A. He puts an empty can in the window, and this carbide man issues a full can, and it is checked off on his sheet by his number.

Q. How does he get the number?

A. It is furnished by the accounting department—

Q. I know, but—

A. The man calls his number to him.

Q. The man calls his number to him when he gets the carbide?

A. Yes, sir.

Q. And he checks it on his list?

A. Yes, sir.

Q. What size can is that at Muscoda?

A. Pound can; holds a pint.

Q. Does the average miner get carbide every day?

A. No. A few men get it every day, but the average miner would get it every two or three days.

Q. Every two or three days?

A. That is the average.

Q. Average?—

A. Yes, sir.

Q. You know by checking the requisitions and watching it and checking it that is the average?

A. That is the average.

Q. What amount of time, Mr. Carter, would you say is consumed by this individual miner in getting his carbide?

A. Well, it shouldn't take him more than half a minute. He puts a can in the window and he shoves him a full one.

Q. Who pays for the carbide?

A. This man does.

Q. How is the payment handled?

A. It is charged through the office against his account.

Q. Is it charged for profit? If so, how much?

A. It is sold at cost.

Q. Sold at cost?

A. Yes, sir.

Q. Is there any obligation on the man as far as the company is concerned to buy it from the company?

A. None at all. He can get it where he pleases.

Q. He can get it where he pleases?

A. Yes, sir.

Q. Do commissaries and stores there in the district sell it?

A. I don't know.

Q. Is it true, like the bath houses, most of the men get their carbide at the mine?

A. I presume most of them get it there.

Q. What percentage of the men?

A. What percentage of the men?

Q. Yes, going underground.

A. Practically all of them except the haulage crews that are in lights all the time.

Q. What they do with that can?

A. Put it in their pocket. A great number wear a scabbard—

Q. Wear what?

A. A scabbard on their belt and put it in it.

Q. Carry it with them all the time?

A. Yes, sir.

Q. Some of them carry it—

A. Put it in their pocket.

Q. You are not talking about this big pocket in the mine?

A. No, sir, their pants pocket.

The Court:

Is that can round?

The Witness:
Yes, sir,—oval.

The Court:
Oval?

The Witness:
Yes, sir.

Q. Has that been the custom with reference to carbide so long as you have been working around the mines?

A. Carbide?

Q. Yes.

A. Yes, except before we moved it to the carbide house we issued it at the slopes.

Q. I know, but the method of issuing has been the same?

A. Yes, sir.

Q. The man is the judge of how much he wants and how much he uses?

A. Yes, sir.

Q. Some of them use it more sparingly than the others?

A. I would say so.

Q. After the man has gotten the carbide, this individual miner, what does he do next?

A. He goes to the slope and puts his brass check in.

Q. What is this brass check?

A. It is a check with his badge number on it.

Q. Is that assigned to him when he is employed?

A. Well, it is given to him for identification.

Q. Is it given to him when he is employed?

A. Yes, sir.

Q. Is he carried on the rolls by name and badge number?

A. Carried on the rolls by name and badge number. Everything has his name and badge number on it.

Q. The time keeping books and everything show both his badge number and his name?

A. Yes, sir.

Q. When he hands in his check when he starts to go down in the mine, what is done with it and when?

A. It is hung on the board. He is checked in generally by the mine foreman, and his brass check is hung on the board by the mine foreman or timekeeper in there. It is lined up opposite his crew.

Q. It is hung up at the minute he hands it in, or at some later time, or is there a variance in there?

A. He puts it in and it is hung up as quickly as it can be hung.

Q. Where is it hung on the board?

A. Our board is marked off in crews, fifth right northeast, seven right northeast. The man comes in and hands in his badge and it is put on his crew. Our service men—

Q. If some particular individual does not show up who is in a particular crew, then there would be a vacant place left on the board?

A. Yes, sir.

Q. Is that checked by the mine foreman?

A. Yes, sir.

Q. How would he supply that vacancy?

A. He would take a man off the service crew and send him to fill up that man's place in the heading crew.

Q. How would he do that, phone down or what?

A. When he got to the bottom he usually filled the crews out.

Q. When he got to the bottom he usually filled the crews out?

A. Yes, sir.

Q. Was that the general practice?

A. Yes, sir, or if a man knew he was going to be off and told the foreman, and he would say I know so and so, he would say get him and put him on the board.

Q. That would be where they knew a man was going to be off?

A. Yes, sir. He would get this man and put him on the board.

Q. All right, sir. Now, in addition to keeping—supplying vacancies in the crews, what other reason was there for keeping a record this way of who was in the mine?

Mr. Harris:

We object to that, if the Court please.

Mr. Burr:

I don't see—

A. Well, it is used in the distribution system. The accounting department would know—we would know where to charge this work to, what proportion of men were out on certain work, whether it was a service or production crew.

Q. Is it used to check up who is in the mine in cases of emergency?

A. Yes, sir. When the man checks out and fails to pull his check, we would investigate.

Q. To see if he was left in the mine?

A. Yes, sir.

Q. And if a man comes out of the mine on account of sickness or anything—

A. He would get his tag.

Q. And check out in that way?

A. Yes, sir.

Q. All right, sir. When this man has handed his check in the next thing he does is to get on this skip, is it?

A. Yes, sir.

Q. Prior to May 1, 1941, I wish you would give the Court the way the skip was handled. Was there or not first, any trial trip made of the skip before the men are put down?

A. Not with us. We had this material handling crew and slope track crew working between shifts. It wasn't a case with us we had to run a safety test.

Q. You didn't have to run a safety test?

A. No, sir.

Q. What time did your first trip go down for the men?

A. Six o'clock.

Q. Six o'clock?

A. Both shifts.

Q. About how many runs did you have to make to get the men in the mine?

A. About six.

Q. How long did it take?

A. Six is a double track. When one skip is going down the other is coming out. We would run about every six minutes.

Q. What time would you say the last skip started down?

A. About 35 or 40 minutes after the first one. We got the men in generally in 35 to 40 minutes.

Q. Did the men get down in the mine or not in time to reach their working places where they worked,—talking about the production men first,—by 6:45 or not?

A. Nearly all of them. It depended on how far they had to go. The average we tried to figure would get there around 6:45.

Q. Did some of them get to their working places before 6:45?

A. They might have and some afterwards.

Q. And some afterwards?

A. Yes, sir.

Q. At what time did their pay begin?

A. Well, they were supposed—it was an eight hour job. They were to be at their working places, an average—start work,—that is the heading crews,—around 6:45.

Q. When is the juice cut on there?

A. Our generator sets are set automatically and come on at 6:30.

Q. They come on at 6:30?

A. Yes, sir.

Q. You say it is automatically set. Explain what you mean by that.

A. By a time clock. It turns it on automatically.

Q. What time does it cut off?

A. About 3:10 or 3:15, after the shift is over.

Q. All right. When the crew gets up there, say around 6:45, what do they do? What do they begin to do?

A. The drill crew?

Q. I am talking about the producing crew, the average producing crew.

A. The drill crew starts to quarrying out and setting up, and starting to drill.

Q. By quarrying out you mean to see if there is any loose material?

A. Any loose material where they are going to drill, and get their pipe lines up, their hose arranged, and get their drill outfit set up.

Q. That is the drill crew?

A. The drill crew.

Q. The drilling part of it?

A. The other part of the crew starts to move the mechanical loader into position where they are going to drag that day, and drag the ropes up in the stope or face, and stick their hangers and hang up the skidder blocks.

Q. All right. How does the work progress from there on until quitting time?

A. Well, the drill crew drills out its round during the day. At the end of the drilling round, or near it, the drill helper,—usually after they have finished,—goes to the nearest powder magazine and gets powder and brings it back and loads the holes, and at 3:10 they shoot.

Q. Let's stop right there at the powder. Where do they get the powder from?

A. Nearest powder magazine.

Q. You have more than one powder magazine at Number 6?

A. Have two main magazines and two sub-magazines. By sub-magazines I mean a magazine that serves one place alone.

Q. Are those magazines moved from time to time?

A. They all are moved. As the work progresses we shove the magazines up to get them as near the men as we can.

Q. Who gets the powder

A. The drill man or drill helper.

Q. How does he get it?

A. He has a requisition from the head miner. He goes to the powder house and the powder man issues him the powder and caps and fuse.

Q. How does he carry it?

A. In a leather or fabricoid bag.

Q. Does the head miner send one man or two men to get the powder?

A. If he has a good deal of powder to shoot he sends two men.

Q. Is that requisition sent down to get the powder on the company's time or the men's time?

A. It is during the working hours.

Q. How does that powder get down to these magazines?

A. Brought down from the surface to the timber tunnel and set out and hauled to the magazines by the motors and put in the magazines.

Q. Is there a man at the powder house to issue it?

A. We have two powder men on each shift. One goes over to these sub-magazines at a certain time and issues it.

Q. Has a regular time to go to that substation?

A. Yes, sir.

Q. Is that powder kept locked?

A. Kept locked.

Q. How is that powder magazine built?

A. We take an old heading and wall it up with stone walls in back and leave the ventilation open and put a section in front of that with a heavy door. Inside that we have a separate compartment where we stack the powder.

Q. What is that separate compartment made of?

A. Tin or galvanized iron.

Q. Tin or galvanized iron?

A. We have made them of rock, but we prefer tin or galvanized iron.

Q. You say the drill men do the shooting. That is what part of this crew?

A. The drill man and drill helper, and the head miner stays with them until they blast.

Q. What time did you say they shoot?

A. Shoot at 3:10.

Q. During that time what has the loading part of that crew been doing?

A. Been handling ore, dragging ore, loading cars,—dragging ore and loading it into the cars.

Q. The ore they loaded, what shift is that shot down?

A. The previous shift.

Q. The previous shift?

A. Except where we have a change day, and then that shift comes back on there on ore they have shot down.

Q. That is where you change shifts from day to night?

A. Yes, sir.

Q. You say, though, the last thing a crew does is shoot?

A. Yes, sir, and the succeeding crew loads that ore that they have blasted.

Q. Does the loading part of the crew—do they stay in the stope during the time the shooting is done?

A. No. They leave at three or before.

Q. They leave before the shooting is done?

A. Yes.

Q. How long would you say usually on an average the loading crew would leave the stope before the shooting is done at 3:10?

A. Generally they always leave before three or around three.

Q. Before three or around three?

A. Yes, sir.

Q. Is that the last work they do; do they have any more work to do?

A. Nothing except to go out.

Q. No work to do except to go out?

A. No, sir.

Q. You say their work stops when they leave the stope?

Mr. Harris:

We object.

Q. Do they have any more work to do at all?

A. Not a thing.

Q. After leaving the stope, where does the loading crew go?

A. Goes to the loading station.

Q. What do they do when they get to the loading station?

A. Catch the skip and go out.

Q. What time does the first skip run?

A. Starts about 3:15, maybe a little before that, but the usual time is about 3:15.

Q. Did it go out at the same intervals it came in?

A. Yes, sir.

Q. How was it decided what skip the men would ride on?

A. We took them as they came, except in certain instances were we had a hoisting crew, they were allowed to go out first, because they came in and started work near the loading station and got to work about 6:30 or 6:35. We allowed them to catch the first trip out.

Q. That was a loading crew?

A. Hauling crew.

Q. What time did they stop work?

A. Three o'clock or before.

Q. Was there any rule or custom as to what time that crew had to have the motors ready?

A. No, sir; they were supposed to start at 6:45, but they were at their motors and started between 6:30 and 6:45 without any objection being made. They finished their work by three and we let them on some occasions catch the first skip out.

Q. What I was asking was this: Was there any set hour they had to bring their motors out at the end of the shift?

A. They all had to bring them back around the pocket.

Q. What time are they there?

A. Around three o'clock.

Q. When they—they put them in for what purpose?

A. When they put them in they are through. When they check the motors in they are through.

Q. What I asked you, what happens to the motors when they put them in there?

A. They stay there until the next shift.

Q. They stay there until the next shift?

A. And in one mine they will come in and be checked the first thing in the morning,—both mines, as a matter of fact. We send two motors out handling steel and material. The others check in and go over to the pit for doping, oiling and preliminary checks.

Q. Then, after a man rides the skip out he goes to the change house and changes his clothes and goes through the same procedure the next day, and that is how it is handled?

A. He goes to the tally house and gets his check and goes to the wash house and changes clothes.

Q. Now, Mr. Carter, I wish you would tell me there at Number 6 during the period of time I have been asking you about,—I wish you would give me first the list of the supplies that we group as heavy materials, you might say, that remain in the working places all the time.

A. You mean supplies and equipment?

Q. Yes, supplies and equipment.

A. All right. Machine loader—

Q. Now, wait a minute. What is the mechanical loader?

A. That is the double drum hoist or triple drum, in some cases, hoist for moving ore from the broken ore into the cars.

Q. Up over that ramp and into the cars?

A. Up over that ramp and into the cars.

Q. When was the mechanical loaders, the installation of them at the Muscoda mine—

A. In 19[illegible]

Q. Do you know whether they were installed there before—.

A. They started at Muscoda before they installed Ishkooda and Wenonah.

Q. Have you been using mechanical loaders at Muscoda since 1923?

A. Yes, sir.

Q. All right. What other equipment stays in the stopes?

A. The drag ropes that go on this mechanical loader. We call it a drag. The skidder blocks—

Q. Wait a minute. You are getting too fast for me. Muscoda is different from these other mines in some instances, and I want the Court to get it all. What are the ropes?

A. Seven-eighths inch steel cables placed on these drums on the mechanical loader, and placed through the skidder blocks and one end attached to the front end of the scrape and the other end to the back end of the scrape.

Q. What is the skidder block?

A. It is a big pulley, and weighs about 120 pounds.

Q. What are they made of?

A. Steel.

Q. How many to each crew?

A. One.

Q. What is next—

A. You are talking about the heavy material?

Q. Nothing but that.

A. The next would be an auxiliary fan used in some places, depending on the working place.

Q. What is this auxiliary fan, what is it made out of?

A. Four horse power fan, blows 2800 feet a minute at 400 feet. I think that is the capacity. We hang a tube along the wall and blow fresh air into the face.

Q. Where it is needed?

A. Where it is needed.

Q. In what proportion of the stopes do you use those fans?

A. We use them intermittently at all places, but where the stope is driven ahead of the ventilation, we use it.

Q. You use the fan to act as an auxiliary ventilation?

A. Yes, sir.

Q. Where the ventilation has not advanced with the stope?

A. Yes, sir.

Q. What is the next thing?

A. There is tubing that goes with it, it is flexible tubing.

Q. What is that made out of?

A. Fabricoid or rubberoid substance. We have used two or three different makes of it.

Mr. Harris:

What is that? I couldn't hear you.

The Witness:

We have used two or three different makes of it. It is supposed to be noninflammable.

Q. What is the next material used?

A. We have an auxiliary hoist that is left back at the heading.

Q. Is that in all of them?

A. Nearly all of them.

Q. What is this auxiliary hoist?

A. Well, in nearly all those stopes in Number 6 it is flat enough the cars will not run back. On these mechanical loaders we have a third drum and hang the cable to that and pull the cars back. Sometimes we don't use the third drum, just use the hoist engine.

Q. Is that used by the production crew?

A. No, sir. The hoisting engineer is a service man.

Q. The production crew has nothing to do with that hoist?

A. He is in there with them, but he is not carried as a part of the 7-man crew.

Q. Anything else the production crew has to use in the way of heavy material?

A. Drills.

Q. What are those drills?

A: You mean about the size?

Q. Yes.

A. In Number 6 they are Denver 17s, 4-inch, weigh about 186 pounds.

Q. They are on tripods?

A. On tripods.

Q. They are operated by whom?

A. By the drill crew. They are pneumatic drills with steel attachments.

Q. For what purpose are they used?

A. Drilling the rounds.

Q. Drilling the holes?

A. Yes, sir.

Q. What do you use in the drills?

A. Inch and a quarter hollow round steel.

Q. Is that steel always in the heading?

A. It is delivered there every day, every morning.

Q. Now, you have already mentioned about the air and water hose. Is that connected with the heavy drill?

A. Yes, sir.

Q. All right. Is there anything else you use that stays there in the headings?

A. You have quarrying bars which are changed out as they get dull by the miners themselves. They go to the magazine and swap a dull one for a sharp one.

Q. Anything else? How about your jackhammer, drag scraper?

A. There is a small jackhammer in the place for drilling hanger holes, or if we have to pop a hole, we can do it.

Q. How about the drag scraper?

A. I thought I mentioned that a while ago.

Q. I don't know whether you did or not.

A. The drag scraper loads the ore.

Q. That is your heavy stuff?

A. Heavy stuff, more or less permanent. I wouldn't call a quarrying bar permanent. They swap that out occasionally.

Q. Let's leave the quarrying bar out, then. This other equipment is what you call heavy equipment?

A. Yes, sir.

Q. In the average stope?

A. Yes, sir.

Q. And heavy equipment?

A. Yes.

Q. I haven't asked you yet. What is the crew of the average stope, we will say, first, since the incentive plan went into effect?

A. Head miner, one drill man, drill helper, drag operator and two section helpers.

Q. That is a 7-man crew?

A. Yes, sir.

Q. Previous to going into the incentive plan, what had been the crew?

A. It had been a nine-man crew with two drill helpers and three section helpers or muckers.

Q. I might ask you right there, what has been the amount of production, comparing the seven-man crew with the previous nine-man crew for eight hours work; has it been greater under the incentive plan, or less or about the same?

A. It has been greater.

Q. Now, I want you to explain to the Court, Mr. Carter, how all this permanent equipment you have mentioned, that is, the mechanical loader and skidder block, ropes, auxiliary fan and the tube that goes with the fan, the drag scraper, the drills, the drill steel and the air and water hose, how you ordinarily—the things that I have mentioned to you, got into the mine?

A. They were delivered in by—carried to the slope by service trucks and carried into the mine by material handling crews and carried out to the headings by one or another service crews, the haulage crews, usually.

Q. Have the production crews ever had anything to do with getting that material I have just mentioned to you up to the working places, or is that done altogether by the service crews?

A. Done by the service crews unless they take a heading crew on an off day and make a service crew out of them.

Q. I understand that. Of course, when you do that, that is a service crew.

A. Yes, sir.

Q. Where is that material kept outside at Muscoda?

A. At the warehouse, electric shop, blacksmith shop, machine shop.

Q. How is it issued outside from those various places, the various shops and the warehouse?

A. Issued on the requisition of the mine foreman to the warehouse or shop.

Q. The mine foreman makes out a requisition to the warehouse or shop, and how is that filled?

A. The warehouse takes it and passes out whatever the order calls for and delivers it on the truck.

Q. Delivers it on the truck to where?

A. To the slope.

Q. Who handles it to the slope?

A. The surface crew.

Q. That is a service crew?

A. Yes, sir.

Q. Where do they deliver it at the slope?

A. At the mouth of the mine.

Q. And then what is done with it?

A. The haulage crew hauls it down in the mine.

Q. Then what?

A. It is taken out to the various headings by the service crews.

Q. I have been asking you about Six, but the same thing applies to Five and Four?

A. Well, Five has a little different material.

Q. I know you have different material, but the—

A. The same system applies.

Q. You have some other material—First, let me see if I understand this: Of the heavy material which you have mentioned, I will ask you to state what part of the production crew uses the following items: Drills, drill steel, the air and water hose,—who uses that?

A. The drill crew.

Q. The drill crew?

A. Yes, sir.

Q. Who uses the drag scraper, the skidder blocks and ropes attached to them?

A. That is the other part; that is the drag—

Q. That is the loading part of the crew?

A. Loading part of the crew.

Q. Of course, the auxiliary fan furnishes air for everybody?

A. Yes, sir.

Q. Now, then, what other material other than that—

A. Wedges, hangers—

Q. —is used in the stopes, in the working place?

A. Wedges,—we have hangers, wedges, C-hooks, oil and dope.

Q. Anything else?

A. Quarrying bars. I mentioned that a while ago.

Q. Does that cover the—

A. I think that covers it.

Q. These hangers, tell the Court what a hanger is and how it is used at Muscoda.

A. Well, a hanger is, I should say, about a foot long, and will weigh ten or eleven pounds, tapered on the end, put in a hole drilled with a jackhammer and wedges in place by steel wedges, hammered in so it will pull back and lock. It is hung in the rib at convenient intervals so the C-nook can be hung in it. That is a hook shaped like a "C".

Q. I understand that—

A. And the skidder block hangs in that.

Q. What is this hanger made of?

A. Steel.

Q. What is this C-hook made out of?

A. Steel.

Q. What size are the wedges?

A. I would say about four or five inches long, about an inch and a half wide, and taper from a quarter of an inch to down to a point.

Q. The C-hook, what is that made of?

A. It is made of steel. We have had two or three different sizes and it is getting heavier all the time. The one we are using now weighs about 18 pounds. I would say it is about 18 inches long, 7/8 inch wide at the widest part, possibly an inch and a quarter of an inch and a half in diameter,—in thickness.

Q. What part of the crew are these hangers, wedges and C-hooks used by?

A. By the drag crew.

Q. By the loading part of it?

A. Yes, sir.

Q. Now, Mr. Carter, during the time you have been there at Muscoda, has, at different times, different customs prevailed as to how these hangers and wedges and C-hooks are handled about getting them to the working place?

A. Yes.

Q. Now, let's take the first custom.

A. We originally had the hangers and wedges and C-hooks sent into the mine and delivered to the timber tunnel.

Mr. Harris:

I couldn't hear you.

Mr. Burr:

Delivered to the timber tunnel.

The Witness:

Delivered to the timber tunnel at the bottom of the slope.

Q. What was done with them from there?

A. From there they could be sent to a heading, and if a head miner wanted some he could, which they frequently did, come by there and get them and take them out. We had that system through 19—after we put the incentive plan in,—

Q. Wait a minute. You are going a little too fast for me. How long did that system exist? Was it changed before—.

A. Before and a short time afterwards.

Q. A short time after the incentive plan went into effect?

A. Yes, sir.

Q. What happened in reference—withdraw that question. Where is this place where you say they were taken down, this timber tunnel?

A. The timber tunnel? It is about 150 or 200 feet below where the men get off and where they all passed going to work.

Q. They were brought down to that point by what crew?

A. By the haulage crew or timber handling crew.

Q. How did they bring it down?

A. On a larry attached to the skip.

Q. Was there a platform or running board there where you unloaded them?

A. It wasn't exactly a platform. There was a wide space there where the drag can come alongside. It is in a timber storage space. It is a wide space there alongside the slope.

Q. Was that or not the general place where all the other material was delivered?

A. Usually.

Q. That includes heavy material and everything else?

A. Yes, sir.

Q. From there, then, during the period I first asked you about, and until a change was made, it was carried by whom from there up to the working places?

A. Well, if a head miner called for it, it was sent out to him by motor, or he could send and get it.

Q. Send from his place and get it?

A. Yes, sir.

Q. Did they do that?

A. Did that, and also came by and got it.

Q. When they came by on the way to their work they came by and got it?

A. Yes, sir.

Q. After the incentive plan was put into operation, state whether or not the habit and custom of the men to stop by and get it increased or diminished?

A. It did.

Q. Which did it do?

Mr. Harris:

Which did it do?

A. It increased. We had a good deal of trouble keeping supplies of that kind, wedges and C-hooks over there after the fall of 1936. It got so when this material crew would bring it down one shift would get all of it.

Q. The first shift there—

A. The first shift there got it.

Q. And would take it up to their working places?

A. The next shift wouldn't have any. We had continual kicking and complaints about it by the men, and the mine foremen put the pressure on me to do something about it. That continued through 1936 and 1937, and we finally decided, at the request of the mine foreman, and the men asked him to do it,—we started issuing—

Q. Did the mine foremen ask you to change the system?

Mr. Harris:

Wait a minute. I don't think a conversation between him and the mine foremen is admissible.

The Court:
I will let it go in.

Mr. Burr:
I am trying to get what happened.

The Court:
Yes.

Q. Go ahead, Mr. Carter.
A. The mine foremen asked me to find some central place—
Q. The mine foremen—

Mr. Harris:
We still object.

The Court:
He is not telling what they said.

Mr. Harris:
Mr. Burr puts in his mouth what they said.

Mr. Burr:
You are objecting to that? That speech might be all right before a jury. It is not necessary for me—

The Court:
In a way it expedites the trial.

Mr. Burr:
If I tried to put it in this man's mouth, he would spit it out, if I tried to put it there.

Mr. Harris:
The point I am making, a conversation between a mine foreman and him wouldn't be admissible unless these men were present.

The Court:

He was not asking what the mine foreman said.

Mr. Harris:

I understood he did.

Mr. Burr:

I haven't asked it yet. I am going to put the mine foreman on the stand.

Q. The mine foreman had a conversation with you and asked you to make the change?

A. Asked me to make the change.

Q. When was the change made?

A. I made the change in the first part of 1938. I started issuing wedges and hangers and C-hooks from the carbide house on a requisition. The carbide man could not issue any of them except on a requisition from the mine foreman.

Q. What were those items you issued there beginning in the first part of 1938?

A. Hangers and wedges and C-hooks.

Q. Is that all?

A. That was all.

Q. That was all. That would be done, you say, on a requisition given by whom?

A. The mine foreman to the head miner.

Q. And what did the head miner do with that requisition?

A. He would either go by there or let one of his crew go by there and fill it and take it to the slope and carry it down.

The Court:

I think we will take a little recess.

Mr. Burr:
Yes, sir.

(Thereupon proceedings were in recess from 10:50 A. M. to 11:05 A. M., at which time proceedings were resumed as follows:)

Mr. Burr:
Shall I go ahead, Your Honor?

The Court:
Yes, sir.

Q. Mr. Carter, when we took the recess you were on what—you were telling us that in 1938 the men were allowed to get this material on requisition at the carbide house—

A. Yes, sir.

Q. —That you have named?

A. Yes, sir.

Q. After they turned in those requisitions, what became of those requisitions; who did they come to?

A. They were filed in the carbide house; and the wash house foreman, the surface foreman would get those requisitions and bring them to my office, or I would go up there and get them.

Q. Did they come to you?

A. Yes, sir.

Q. Did you check them?

A. I did check them.

Q. Did you preserve them any length of time?

A. We did not. What I was checking them for was to see if we were saving money.

Q. In checking those requisitions, I will ask you to state to the Court whether or not those requisitions would show—the same requisitions would cover hangers, wedges and C-hooks, or did they cover any part of those?

A. The average requisition—the general requisition issued by a mine foreman called for about four hangers and 25 wedges.

Q. About four hangers and 25 wedges?

A. That is a general requisition. Sometimes there might be more, six hangers and 35 or 40 wedges. The general requisition would be four hangers and 25 wedges.

Q. Would there be C-hooks on those requisitions?

A. They came separately and asked for one or two.

Q. How often would a requisition come in for hangers and wedges?

A. The average crew got requisitions for hangers and wedges two or three times a month.

Q. Two or three times a month?

A. Yes, sir.

Q. Now, do you know whether or not when those requisitions were presented there and honored at the carbide house for wedges and hangers; would they be presented by the entire crew or part of the crew?

A. One man would put it in and get them.

Q. Where did he take them when he got them?

A. They took them to the mine. Maybe one man or two or three men would carry them. One man would have the requisition.

Q. He would be helped by other members of his crew?

A. Yes, sir.

Q. About how many would take them?

A. I don't know. A hanger would weigh about eleven pounds. They might divide them up among two or three men, or one man would take them.

Q. I am trying to find out if the entire crew ever took them?

A. I don't know about that.

Q. You don't know?

A. No.

Q. Now, about the C-hooks, how often were they requisitioned?

A. Once or twice a month.

Q. And for one or two?

A. Yes, sir.

Q. And did one man carry them, or two?

A. I don't know. They were issued there.

Q. Did you check those requisitions,—you said you did it,—to see whether or not the requisitions were saving money for the company? Can you state, from checking those requisitions, about how much reduction you found in this material that was being used down below?

A. I don't remember how much it was. I didn't keep checking on them. For the first few months I found we were cutting our cost about 50 percent on hangers and C-hooks and satisfying the crews. I didn't pay any more attention to it.

Q. You said you cut the cost. You mean by reducing the amount that was used?

A. Reducing the amount that was used.

Q. That is what you found out?

A. Yes, sir.

Q. How did these men, after this central method of handling these C-hooks and wedges and hangers was put in,—how were they carried down to the unloading station?

A. We started out by putting a pail or bucket,—a tray, rather, under the bail of the skip.

Q. Describe that tray.

A. It was about three feet long, about one foot wide, and about a foot deep, made of 3/8 inch iron with straps to hang on the bail of the skip.

Q. Where is the bail on the skip?

A. There are two side members that attach in the middle on the back end of the skip and come around here. It holds the door of the skip, which is on top, in position while the ore is being hauled.

Q. You fastened this bucket or tray on top—

A. Underneath the bail.

Q. This material was hauled in this basket?

A. Yes, sir. Not only put in this basket, but could be carried on the bail. If the basket was missing, they could put them on the bail. They were not supposed to carry any heavy material in the skip.

Q. I am talking about these three articles.

A. Carried on the bail or in the basket.

Q. Where were they taken off the skip?

A. At the man unloading station.

Q. Who took it off?

A. The man that put it in there.

Q. Did that man, with the help of his crew, carry it to his working place?

A. Yes, sir.

Q. From there?

A. Yes, sir.

Q. That was the way it was handled from then on?

A. Yes, sir.

Q. Has there ever been a time at any time—did you have just one pail or one bucket, or did you have one for each crew? Did all of them handle it in that same way?

A. All of them handled it in that same way.

Q. That was big enough to carry it for all the crews?

A. Yes, sir.

Q. Did all the crews get this material on the same day?

A. No.

Q. Just get it as the head miner needed it and issued requisitions for it?

A. Yes, sir.

Q. Mr. Carter, has there ever been a time when any material, light or heavy or any kind of material, would be sent by you to the working place if the head miner requested it be sent there?

Mr. Harris:
We object as calling for a mental operation, what would have been done if they had requested it.

The Court:
Yes.

Q. Did you send it to them when they requested it?
A. Yes, sir.
Q. And after this system was put in it was often requested?

Mr. Harris:
We object.

Q. Was it sent to them or not? I don't want to lead you.
A. They would get it or we would send it there. It was optional with the crew.
Q. I see. Now, I believe I have asked you about all the methods—the method of handling all the material that went into the production stope, except I passed temporarily the jackhammer.
A. The jackhammer steel.
Q. Well, first, the jackhammer.
A. The jackhammer is part of the heading equipment. It doesn't come out except when it needs repairing when it is taken out by the service crew and sent back the same way.
Q. The jackhammer stays there except when it needs repairing, and then it is handled by the service crew?
A. Yes, sir.
Q. Now, about the jackhammer steel—I know that is different and I want you to tell us about that.
A. Once, twice or three times a month, this jackhammer steel, which is about 18 inches long,—I suppose a bunch of five would weigh about 15 pounds. We had

trouble with the men getting them just like we did the others. We started the practice of one member of this heading crew bringing out at the end of the shift this bunch of jackhammer steel, and he would hide them somewhere about the mouth of the mine, and the next morning take them to the blacksmith shop at 6:30,—the blacksmith shop was not open until that hour,—and swap them out. If he didn't have them to swap out, the mine foreman would give him a requisition.

Q. What time could the man exchange that jackhammer steel?

A. At 6:30.

Q. That is when that shop opened?

A. Yes, sir.

Q. Then what did he do?

A. He generally waited and caught the truck to the slope and that made him late.

Q. What happened?

A. He just got to his working place late. He quit at three o'clock.

Q. How did the jackhammer steel get down, Mr. Patterson suggests, in the mine?

A. This man would bring it back.

Q. The one that swapped it in would take the new steel back?

A. Yes, sir.

Q. How did they get it down the skip?

A. Put it on the bucket.

Q. Put it on that same tray you were talking about?

A. Yes, sir.

Q. There is just one other thing I haven't asked you about that you said was used down in the mine. That is the oil, as I recall. How was that handled, and were any changes made in the way that was handled?

A. Number 4 and 6 were operated differently on oil. Number 6—I suppose you want both of them?

Q. Yes.

A. Number 4 keeps a barrel of oil—

Q. I can't hear you, Ewing.

A. Number 4 keeps a barrel of oil and a barrel of dope scattered out in the headings, two or three barrels at every heading at a central point. The crews go and get it whenever they need it.

Q. That is Number 6 or Number 4?

A. Four. Number 6 keeps a barrel at every heading,—one barrel at ~~every~~ entry heading, but keeps the dope at a central point near the timber tunnel. About once a week the drag man—he is the one that wants dope,—takes a container and fills it and carries it to the dispatcher and has it sent to his heading.

Q. On a motor?

A. On a motor.

Q. The oil, they get it during the working hours as they need it?

A. It is there fairly close. He goes down to that barrel with a one-gallon can and gets what he needs.

Q. I see. Now, up until—how long has that system of handling the oil been in effect there?

A. I don't know; for some time.

Q. Ever since you have been there or not?

Mr. Harris:

We object to him leading.

Mr. Burr:

I am not. I said, "Ever since you have been there or not?" I am not trying to lead him at all.

A. It has been for three or four years anyway.

Q. Was it handled differently for three or four years where the men got the oil?

A. We tried to keep enough barrels and keep them scattered. We may have had more or less barrels.

Q. Was the same general system in effect all the time?

A. Yes, it was.

Q. When did the eight hour system go into effect at Muscoda?

A. '33.

Q. '33?

A. Yes, sir.

Q. Do you know whether that went into effect the same time the Coal Code went into effect, about that time?

A. Went in when the N. R. A. went in. We had been down and Muscoda opened up on the eight hours.

Q. All right. Since that time tell the Court whether or not the computation of time for the men's pay, both production and service crews, has been on eight hours, the computation and payment of wages from that time on?

A. Yes, sir.

Q. Until May 1st?

A. Yes, sir.

Q. Was there included in the pay or the computation during that period of time any time spent in traveling, either down the main slope or going to their working places?

A. No, sir.

Q. Now, prior to the eight hour day what hours were worked?

A. Ten hours.

Q. Now, when the ten hour system was in effect, was there any time spent in traveling included in the computation of the day's work and payment of wages?

A. Supposed to be ten hours of work.

Q. Whereabouts?

A. At the working place.

Q. I will ask you to state whether or not since your connection with the Iron Ore mines, from the time you went there until May 1, 1941, if the computation of wages has always been on the face to face basis or portal to portal?

A. Ten hours are the working face.

Q. Has it ever included any traveling time?

A. No, it has not.

Q. During the period of time that you have been there as superintendent, have the employees both individually and through committees presented their complaints or grievances to you as superintendent—

A. Yes, sir.

Q. Freely?

A. Yes, sir.

Q. Not leading you, but just to expedite the case, as I understand the Smelters Union was organized in 1933. Is that right?

A. That is right.

Q. And then when did the Brotherhood come in, if you recall?

A. 1934, I believe.

Q. 1934, and do you recall about when the Brotherhood affiliated with or was absorbed by the Red Ore Local affiliated with the American Federation of Labor?

A. 1939 or the first part of 1940.

Q. I see. First, I will ask you did any committees of either the Smelters Union or the Brotherhood or American Federation of Labor,—did any of their representatives or committees ever submit to you or take up with you or request from you any payment for traveling time or any change in the face to face method?

A. No.

Q. Now, behind the Smelters Union you had what was called for a while the Employees Representation Plan, didn't you?

A. We did, yes, sir.

Q. And that became the Industrial Relations Plan?

A. Yes, sir.

Q. Did any of the committees of any of those organizations ever present any request to you of any complaint about being paid or not being paid for traveling time?

A. No.

Q. Did any individual miner, whether connected with the Union or not, during that period of time since you have been there, ever raise the question of being paid for traveling time?

A. They did not.

Q. Now, the negotiation of contracts with the Union, did you handle those or sit in on the negotiations?

A. I did not except at the last meeting they had here in town. That was the only one I ever sat at.

Mr. Harris:

When did he say that was?

Q. When was that one you sat in on?

A. The last one in 1941 with the C. I. O.

Q. When the last contract was made?

A. I wasn't with the A. F. of L.

Q. At that conference with the C. I. O. did their representatives make any suggestion of the portal to portal time?

A. The portal to portal, if I am not mistaken, was in effect.

Q. You are talking about—

A. I am talking about this one a few months ago.

Q. That is the one you meant?

A. That is the only one I had anything to do with.

Q. I thought you meant the one behind that. Mr. Carter, you made some changes in operations on May 1, 1941 at Muscoda,—you made some changes in operations?

A. Yes, sir.

Q. I wish you would tell the Court what those were?

A. We started putting the men down at six o'clock.

We started pulling them out at 1:45 instead of 3:15. We shot at 1:45. We put—Number 4, in February, we had already started a tool house in there to eliminate material on the outside, but we hadn't in 6. We put it in six on May 1st.

Q. On May 1st?

A. Yes, sir.

Q. Now, were those the only changes you made?

A. Those were the only changes we made.

Q. Since May 1st have you been working over there at Muscoda in all three of the mines,—have you been working substantially the same crews at the same places?

A. Yes, sir.

Q. Same number of crews working at the same places?

A. Yes, sir.

Q. Same method of mining?

A. Same method.

Q. And the change in method of getting men in and out of the mines was the only change as far as method is concerned?

A. Yes, sir.

Mr. Harris:

We object. He has answered that.

Mr. Burr:

No, he hasn't. I haven't asked it before.

Q. That resulted in shortening the time the men were in the mines?

A. Yes, sir.

Mr. Harris:

We object.

The Court:

Overruled.

Q. Will you tell me what has been the result on the production contracted with the last four months?

Mr. Harris:

We object to what has been the result.

Mr. Burr:

I will get it to suit you.

Q. ~~Has there been~~ a change in the production, or has it been about the same?

A. Number 6, the month of June against the preceding four months, there has been a loss of production of about 200 tons per shift of 400 tons per day. At Number 6 mine, about 150 tons a shift, or 300 tons a day.

Mr. Brodie:

Your Honor, it is understood I have an objection?

The Court:

Yes.

Mr. Harris:

I thought I did too, Judge.

The Court:

Yes, sir. What did you say was the difference in Number 4?

The Witness:

About 300 tons.

The Court:

And the other 400 tons?

The Witness:

Yes, sir, that is right.

Q. I don't know whether I asked you—I don't think I did. How was the time underground of your underground workers kept?

A. By the foreman—the head miner in each crew turns in a time abstract every day.

Q. Every day?

A. The foreman of each individual service crew also turns in a time abstract, and the other men, like the pumpers and pipe men and haulage crews, miscellaneous and dump men and the rest of it are handled on a sheet by the assistant mine foreman at the dispatcher's office. They are O. K.'d by the mine foreman and come across my desk.

Mr. Burr:

Will you let me see the Tennessee exhibit that shows the receipts signed by the men? I will ask one general question.

(Thereupon the clerk handed papers to Mr. Burr.)

Q. Mr. Carter, are you familiar with the method that was in force by which statements were given to the men showing the computation of time similar to Exhibits T. C. I. V and Y; are you familiar with that or not?

A. I am not. I know that is a statement, but I have nothing to do with it.

Q. You have nothing to do with handling that?

A. No, sir.

Mr. Burr:

All right. I will have to show that by somebody else. That is all for Mr. Carter.

The Court:

Mr. All?

Mr. All:
No, sir, Judge.

The Court:
All right.

Mr. Burr:
There may be something I overlooked. If there is you will let me ask it later.

Mr. All:
Yes, sir, there is one question.

The Court:
Mr. All.

(By Mr. All):
Q. Mr. Carter, the witnesses and you too have referred to these hangers being placed on the rib, and I don't know whether anybody—describe what the rib is.
A. The rib is the face of the wall between the shooting wall and the hanger wall. We call it the breast or rib. The rib is in the side.
Q. The rib is in the side?
A. Yes, sir.

Mr. All:
All right.

The Court:
All right, Mr. Harris.

Cross Examination.

(By Mr. Harris):
Q. How many men ordinarily rode down in this skip, the first skip that went down on the morning shift?

A. We rode as high as forty, but we tried to hold it around 35 to 38.

Q. That skip had no seats for the men to sit on, did it?

A. No, except those that sat on the bail on the outside.

Q. Oh, did you have men riding on the outside? How many men did you have riding on the outside?

A. Two men usually, sometimes three.

Q. Going down?

A. We have a chair on the front, as well as two or three men on the bail in front.

Q. The skip tender sat in the chair in front, didn't he?

A. Part of the time.

Q. And then these men that sat on the bail outside, were they men whose work was confined to riding up and down on the skip during the shift, or were they production men or service men, or was it left to chance as to who should get there?

A. Left to chance.

Q. Then, as to these men who were riding inside the skip, these 38 to 40 odd men, the top of the skip, you said, I believe, was in front 4 feet 3 inches?

A. Four feet 3 inches in one mine and 3 feet 7 inches in the other.

Q. The men would go down at Muscoda Number 6—forty men would be tightly packed in there, wouldn't they?

A. They would.

Q. And did those men have to crouch forward or have to ride on their knees, or could they stand erect as they rode down?

A. Stood erect and crouched, they leaned forward, as a rule.

Q. They stood erect instead of on their knees, but standing on their feet they leaned forward and crouched?

A. Yes, sir.

Q. You mean spoon fashion, one man being forward and the other man behind him bending forward spoon fashion behind him and so on throughout the entire load?

A. That is right.

Q. On July 15, 1941, in the skip at Muscoda going in a man named Payne had his head busted, didn't he, or injured?

A. Yes, sir.

Q. Now, was Payne riding on the outside with the skip tender or was he riding in the skip?

A. He was in the skip.

Q. And in going down in the skip during the last year, either in riding in or riding out, you had a man named Sam Pharr injured, didn't you,—riding in?

A. Mr. Harris, I don't know exactly the nature. We have had a dozen men injured in the skip in the last ten years, only one a lost time accident, from striking his head, and that was last Monday night. The others have been ankles, feet and hands getting in and out.

Q. Ankles, feet and hands; in other words, they jump down in the skip and turn and twist their ankles or hurt their hands?

A. Climb out and injure their ankles getting out or someone steps on a man's hand.

Q. And you have a man injured?

A. Yes, sir.

Q. And you have had men packed in so their ribs were injured?

A. Yes.

Q. During the past—not going back ten years, but during the past year, and not counting Payne, who has been hurt this week while we have been here trying the case, during the past year you have had the following head injuries, not counting those feet, hands and ribs,—you have had Sam Pharr, D. C. Lee, Jesse McElroy, and Mack Daniel?

Mr. Burr:

Not so fast; read them over again.

Mr. Harris:

Sam Pharr, D. C. Lee,—

Mr. Burr:

All right.

Mr. Harris:

—Jesse McElroy and Mack Daniel, all injured in the head in riding ~~down~~ in Mine Number 6?

A. I don't recall. There were none of those lost time accidents.

Q. You got a report?

A. I got a report, but I don't remember just who they were.

Q. Do they report to you non-lost time accidents?

A. Yes, we keep check—we got a copy of the report on each man. The report is set down and it is turned over to the mine inspector's office, and we follow up an injury.

Q. Whether he lost time or not?

A. But I do not keep that record myself.

Q. You do not keep the record yourself?

A. No, sir.

Q. Who keeps it?

A. The mine inspector.

Q. Now, when a man was employed by the Tennessee Coal, Iron & Railroad Company at Muscoda, he was given a brass check with a number on it?

A. Yes, sir.

Q. And the company required that he deposit that brass check at the tally house?

A. Yes, sir.

Q. Before he went down into the mine, didn't it?

A. Yes.

Q. And that requirement was in effect continually from the time they issued the brass checks down there up until the present moment, or did it stop on May 1st?

A. No, we still have the brass checks.

Q. You still have the brass checks?

A. Yes, sir.

Q. Now, then, if a miner, that is, an underground worker, knew on yesterday afternoon that he would not be able to come to work today with the morning shift, would the company require or expect him to notify him that he wouldn't be there that day?

A. We have warned them to do that, but they sometimes did—

Q. All right.

A. —and sometimes didn't.

Q. All right. Now, then, if that man notified somebody he wouldn't be there today, who would he notify?

A. We want him to notify his foreman.

Q. Notify his foreman so that when the foreman came to the mine this morning he would know that certain men wouldn't be there because they had told him between the time they had left the shift yesterday and the time he had gotten there this morning?

A. Yes.

Q. And he wouldn't have to wait until the last skip had gone down into the mine to know he needed extra men, would he?

A. Not extra men. We don't carry extra men. We simply take a man off the service crew and put him on the other crew.

Q. He wouldn't have to wait to look at that board to see he needed men in the production crews; he would have that information—

A. If he knew it he wouldn't.

Q. Because the men called him?

A. Yes, sir.

Q. Now, do you know what a hustling gang is?

A. Hustling gang?

Q. Yes, extra gang.

A. We haven't got one.

Q. Have you had, ~~during~~ the time you have been there at Muscoda, employees to report and stand around the tally house and wait for a chance to be substituted for a man who did not show up?

A. No, sir, not since 1933. Every man who went to the slope has worked if he wanted to.

Q. What?

A. Not since 1933, when we put in the 8-hour day. Every man that has gone to the slope, he could work at something if he wanted to.

Q. You didn't have any extra board at Muscoda?

A. Not since 1933.

Q. Not since 1933?

A. You mean by that if we didn't have a vacancy he would turn around and go home?

Q. Yes, sir, that is what I mean.

A. No, sir.

Q. In Number 6, in the ore bed, is the ground pretty level,—I mean the ore deposit pretty level, or does it undulate?

A. It undulates to a certain extent, but it is not too steep for locomotive haulage.

Q. Have you been through the other mines of the Tennessee Company, like Ishkooda?

A. It has been some years, yes, but I have been through all of them.

Q. And Wenonah; you have been through all the mines they have?

A. Not since they started hauling by locomotive haulage in Ishkooda and Wenonah.

Q. Would you mind talking a little louder?

A. Not since they started installing locomotive haulage at the other two divisions. In other words, it has been some several years since I went through them.

The Court:

That is at Wenonah and Ishkooda?

The Witness:

That is at Wenonah and Ishkooda.

Q. These auxiliary hoists you have used at Muscoda Number 6, is that where you have a hoist stationed permanently, and instead of using electric locomotives, you have a cable pull them?

A. No; it is on fairly flat ground. To use an illustration, it is on comparatively flat ground, and it handles the cars from the loading track to the side track from whence they are moved by motor.

Q. How many of those auxiliary hoists have you used at Muscoda?

A. Fifteen,—one for each crew.

Q. One for each crew?

A. That doesn't hold always, but it has been the situation now for some several months.

Q. How far is that hoist from the working face or where the crew is drilling?

A. That depends on the topography of the ground. If the ground is sloping away from your working place it is close to the mechanical loader. If it is pitching the other way,—you see that is to let the cars down to the side track. If it is pitching the other way it would be located on the other side.

Q. In some of your headings the miners are working up a slope or up a grade?

A. Yes, sir.

Q. And in other headings they are working down a grade?

A. Yes, sir.

Q. Now, how many of those fans do you have you spoke about?

A. There is a fan for each heading.

Q. That is all fifteen headings?

A. Of course, we don't run them all the time, but it depends on the location,—depends on the location of the break through for air as to whether they would be run or not..

Q. In Number 6 you have a system of brattices and various devices to send the air around to the different places you want it?

A. We brattice off these stopes after they break through. As we advance it to the next one, we set the fan up behind it with that flexible tube to blow the air into the face of the working place.

Q. Then how do you get it out of the mine itself?

A. It is served by an auxiliary fan on the surface. The whole mine is ventilated by an auxiliary fan on the surface.

Q. Do they pump the air out of the main slope?

A. It is pumped out through an air course, which was originally a manway. We went in and turned it into an air course by doing a lot of stone brattice work in there.

Q. Do you have an air course in Number 4?

A. Yes, sir. We have just gotten a fan installed in there and are still completing some of the brattice work.

Q. Last fall—

A. We started it last year. We have been doing that work since. The fan is in operation, but all the brattices are not completed.

Q. Before last fall what was the ventilation system in Number 4?

A. We operated on the same fan, serving 6 and 4, and it took care of both. Now, by putting a fan in old Number 2 manway we have separated the two.

Q. Is Number 2 between 4 and 6?

A. No, Number 2 is south of Number 4.

Q. Now, I know you answered this, but I didn't make a note of it, and if the Court will pardon the repetition on two or three little items, I just want to get it clear in my own mind.

What did you say a hanger weighed?

A. About 10 or 11 pounds.

Q. And a wedge?

A. A little less than half a pound.

Q. And a C-hook?

A. 18 pounds.

Q. And a skidder block?

A. 120.

Q. You said something about—I thought you said to Mr. Burr a drill weighed about 96 pounds, but that is wrong, isn't it? A complete drill with tripod and all arrangements weighs nearly 200 pounds?

A. No, the drill itself will weigh 186, and the tripod will weigh 212.

Q. And the whole mechanism—.

A. 186 plus 212, which puts you right at 400 pounds.

Q. When the hanger is driven in this hole it is wedged in by a wedge or two on the side, isn't it?

A. Yes, sir.

Q. Now, how do you get them out? When you have finished with that hanger and you want to move it, how do you get the hanger and wedges out of that hole?

A. It is tapered, the butt larger than the neck near the eye. You stick your wedges in there and tighten up with your hammer, and when you get through you hit the thing and loosten it and pull the wedges out and take it out.

Q. Is the wear and tear on those wedges pretty heavy? What is the life of a wedge?

A. It is very short. It is not from being worn out, but being lost.

Q. About how many days?

A. The average crew uses 25 to 50 or 75 a month.

Q. What is the life of a hanger?

A. Hangers go about, maybe, ten or twelve a month.

Q. A C-hook?

A. One or two a month.

Q. Now, that place where you started issuing the hangers, wedges and C-hooks in 1938 was a distance of 2300 feet from the mouth of the mine, wasn't it?

A. Yes, sir.

Q. And the miners had to carry in their hands or on their shoulders these wedges, hangers and C-hooks that distance to the mouth of the mine?

A. They did.

Q. They were not furnished with any truck or hand car or anything of that sort, push car, or anything else to get them up there?

A. No.

Q. Where was your blacksmith shop where you repaired hangers and C-hooks at Muscoda Number 6?

A. It is about 200 feet from the wash house.

Q. And the wash house is about 200 feet from the—

A. I said 200 feet. I mean 200 yards. The wash house is about 200 yards from Number 5 slope.

Q. Was the blacksmith shop closer to the mouth of the mine or further away?

A. Further away.

Q. So they had to walk a greater distance from the blacksmith shop to the mouth of the mine?

A. Yes, sir.

Q. Now, the men brought out hangers and wedges and C-hooks for repairs, didn't they?

A. No, sir.

Q. They never did do that?

A. Never did.

Q. They brought out drills for repairs, didn't they—

A. Yes,—jackhammer steel.

Q. Jackhammer steel?

A. Yes, sir.

Q. Now, down in that particular mine were the production crews the only people underground who used carbide?

A. No. All of them use carbide practically.

Q. Service men, timber men, track men, line men, electricians, all use carbide lights?

A. Yes.

Q. That was absolutely necessary in order for them to be able to see to work, wasn't it?

A. Unless they happened to be under electric lights. They should have them because they might get out of the zone of the electric lights.

Q. But where they happened to be under electric lights would be a very small part of the operations underground?

A. A small number of men, but in a large amount of our operations because all our haulage is lit up from end to end.

Q. But the operating part,—the production part, that would be very small?

A. Yes, sir.

Q. Now, you said when the head miner put in his requisition that you turned it over to the accounting department for cost, distribution?

A. No, sir. You mean—

Q. A requisition for C-hooks, hangers, wedges—

A. No, no. They went simply to the carbide house where that man issued them. I checked it to start with to see whether we were making money or not. If we were not, we would change it again, but we were. The accounting department had nothing to do with it.

Q. Now, you had that brass check system on the board?

A. Yes.

Q. Did the record of those brass checks go to the accounting department to make distribution of pay?

A. I don't want to get too deep into the accounting department, because I might slip, but as far as I can tell you, the board was checked up there—the time keeper checked that board to get a distribution on the places which those crews went in as showing the man was there and what he was assigned to. That had to tie up with that head miner or service foreman's time abstract which had been checked by the mine foreman and which he had turned in the time for that crew.

Q. That is the foremen underground?

A. Yes, sir, the individual foreman of each crew, each production crew, or head timber man or head track man.

Q. That timber man or track man would get his time abstract up early in the day?

A. Yes, sir.

Q. He didn't wait until the end of the shift to make his time abstract?

A. No, he carried it out with him and kept it out with him.

Q. And when you were keeping these time abstracts, the rule was to show eight hours? They got credit for eight hours?

A. Unless a man had gone out from injury or sickness during a shift it showed eight hours.

Q. If a man was there seven and a half hours his time abstract showed eight hours?

A. Unless he was sent away.

Q. Suppose he was there nine hours, what would it show?

A. That would come on a supplemental sheet. You see that crew would leave after eight hours. That extra time would come in on a supplemental sheet, and the man would be paid time and a half for that extra hour.

Q. You mean the production men would be paid for that extra hour?

A. Any man that worked overtime would be paid for that overtime.

Q. When did that start? What year did that start?

A. 1936,—let me see,—1936, I believe.

Q. You mentioned that the C-hooks—

A. It might have started before that. I will not be positive.

Q. You mentioned the fact the C-hook was getting heavier all the time?

A. We have had three different types of C-hooks. This last one, I imagine, which we have had in use about a year, is about 30 percent heavier than the previous one.

Q. Does that mean you are putting a greater and greater strain on the C-hooks?

A. The same strain is on there. We are trying to make them last longer.

Q. It doesn't mean your drag scraper is different from what it was before?

A. The same drag scraper,—the same mechanical loader. We are trying to make that material heavier to last longer.

Q. These mechanical loaders were in the mine when you went there?

A. Yes, sir.

Q. You were not there at any time when they had the old shaker system?

A. Yes, sir, I was, but that was back in—I don't believe I worked there under the shaker system,—yes, I did, in 1917. They still had them. Number 4 had them. They were shifting over. Number 6 had them too. Yes, sir, I worked with them.

Q. During the time you have been there as superintendent,—that was a promotion over your job as engineer?

A. Yes, sir.

Q. You are under Mr. Ball, aren't you?

A. Yes, sir.

Q. And all the contract negotiations for pay were handled by Mr. Ball?

A. Handled by Mr. Ball, yes, sir.

Q. That is not a part of your work and your duties?

A. No, sir.

Q. And never has been?

A. And never has been, no.

Q. Now, there is one mechanical detail about that checking in at the tally house that nobody has cleared up. When a man hands the check in does he tell the man at the tally house number so and so going to such and such a place?

A. No.

Q. Well, how does the man in the tally house know where to put a check when he picks it up?

A. A new man—most of those men are old men; they know whose crew he belongs to. The foreman hangs it on the board. He has assigned that man to that crew previously.

Q. The man that puts it on the board has already assigned that man to a crew?

A. The mine foreman, who generally puts it on the board, has assigned that man previously to a crew. Lots of those crews have been intact for years.

Q. The vast majority of them have been there two or three months so they need no instructions as to where they were going to work and the tally man needed no instructions as to where to put the brass checks?

A. I don't suppose he did.

Mr. Harris:

May I have my exhibits for identification, please.

(Thereupon the clerk handed certain papers to Mr. Harris.)

Q. I have a rule book dated March, 1937, and another one dated January, 1926. Are there any rule books in between those years?

A. I don't believe there are. I am not positive. I don't think so.

Q. Now then, I have a Plan of Industrial Relations in the Ishkooda Division. That one you wouldn't know anything about that?

Mr. Burr:

It was the same in each division.

A. It is the same in each division.

Q. It is?

A. Yes, sir.

Mr. Burr:

The same thing in each division.

Q. Now, then, this is dated February 2, 1934. Were there any others published by the company besides that?

A. They changed the plan—E. R. P.,—I have forgotten which was first, the Employees Representation Plan or Industrial Relations,—E. R. P. preceded that.

Q. On that is E. R. P.

A. No, that is the Employees Incentive Plan.

Q. There was another book that deals with the E. R. P. published by the company?

A. Yes, sir.

Q. This one dated January 1, 1939, Ore Mine Incentive Plan, was published by the company?

A. Yes, sir.

Q. Wasn't there an earlier publication about the ore mines incentive plan published before 1939?

A. Yes, sir.

Q. What was the date of the earlier one?

A. I will say sometime about—we went on it around—it was before the strike in 1936. It may have been published afterwards. I believe it was published before the strike, published sometime in April, 1936.

Mr. Burr:

Is that the incentive plan you are asking about?

Mr. Harris:

Yes, that was the incentive plan I was asking about.

Mr. Burr:

For your information, I think the first print of the incentive plan was on a mimeograph form.

The Witness:

There was a book issued for the men.

Mr. Burr:

Probably mimeograph.

The Witness:

The foremen got a different type,—a larger book.

Q. I thought my question covered it, but evidently it didn't. Is that the latest rule book, the 1937 rule book?

A. I think the 1937 is the latest rule book. It may be wrong, but I think it is right.

Mr. Harris:

I think that is all.

Mr. Smith:

I would like to ask some questions.

The Court:
Yes, sir.

(By Mr. Smith):
Q. This mine you have been talking about and describing, that is the biggest producing mine on the mountain?
A. Yes, sir, it is.

Mr. Smith:
That is all, sir.

The Court:
What is the condition of the railroad tracks in there, this passage way where the men walk?

The Witness:
We keep them clean.

The Court:
Clean?

The Witness:
Periodically put men on there and clean them up.

The Court:
Are they smooth?

The Witness:
Smooth,—standard gauge track kept in good condition.

The Court:
No soggy, wet, slippery places?

The Witness:
No.

The Court:

All right.

(By Mr. Smith):

Q. Mr. Carter, there are two mines there; that is called a division?

A. It would be four like at Wenonah, but with us the Muscoda Division is 4, 6 and Number 5 limestone mine.

Q. That is the one you are the superintendent of?

A. Yes, sir.

Q. And that is the largest producing division on the mountain?

A. Yes, sir.

Mr. Harris:

I forgot to ask, if you are through, Judge,—

Mr. Smith:

Yes, sir.

Mr. Harris:

I forgot to ask how far under the ground,—I don't mean horizontally, your operations are vertically.

The Witness:

Our operations in Number 4 are under about 1500 feet of cover; most of our operations are under about 13 to 14 hundred feet of cover.

Mr. Harris:

That is 4?

The Witness:

In the face where six of our crews over ten over there operate, the cover is from thirteen to fourteen hundred feet.

Mr. Harris:

It may be you brought this out; that was the distances to the different headings in Number 4. Did you go into that with him?

Mr. Burr:

No, but I will by Goodwin.

Mr. Harris:

By Goodwin?

Mr. Burr:

Yes, sir.

Mr. Harris:

Then I will not ask him about that.

Mr. Burr:

I will go with him in Number 4 like I did with Mr. Carter in Number 6. I am giving you the distances to every point.

Q. In Number 6 the greatest distance from the portal to the furtherest heading is at which heading?

A. Sixth left northeast.

Mr. Burr:

I gave you all that.

Mr. Harris:

I thought you did.

Mr. Lipscomb:

You mean from the manloading station?

The Witness:

That is the loading station at this time. It is 6050 feet.

Q. Is that from the man unloading station?

A. That is from the man unloading station, where the men walk.

Q. How far is the man unloading station from the top?

A. About 5800 feet.

Mr. Lipscomb:

That is what we want.

Mr. Burr:

It is on the map.

Mr. Harris:

It is all right if it is on the map. I believe that is all.

Mr. Burr:

Judge, I have a few questions, but if I can read over my notes, I am sure it will not be over five minutes. I think I can save time by doing it during the adjournment.

The Court:

Do it after lunch?

Mr. Burr:

Yes, sir. I promise to take not over five or ten minutes. I can usually shorten the time by reading my notes, and I will read them over during the lunch period.

The Court:

All right. Court is adjourned until 1:30.

(Whereupon, at 12:10 P. M., July 17, 1941, a recess was had until 1:45 P. M. of the same day.)

After Recess.

1:45 P. M.

The Court:
Do you want Mr. Carter back?

Mr. Burr:
No, sir. I have checked my notes and I don't think there is anything else.
I will take Mr. Wilson Goodwin next.

1691 WILSON B. GOODWIN, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):
Q. Mr. Goodwin, how old are you, please, sir?
A. 47.
Q. And what is your present occupation or business?
A. Mine foreman, Tennessee Company, Muscoda, Mine Number 4.

The Court:
What is it?

The Witness:
Mine foreman, Tennessee Company, Muscoda, Number 4 mine.

Q. When did you first begin your mining experience? Start back at the beginning and run through it hurriedly.

A. The first time I ever worked in the mines was back in 1907 when I was about 14 years old, after school.

Q. What mines did you work in then?

A. The old Alfretta Mine owned by the Republic people out beyond East Lake.

Q. Was that an underground mine?

A. Underground mine. There was one pit mine there, but I never worked in the pit mine.

Q. How long did you work there?

A. About three months.

Q. When did you go back to working in the mines?

A. I worked there in 1908 again after the school was out.

Q. Then where did you work?

A. In 1909 I worked at Ruffner Number 3, owned by the Sloss people.

Q. How long did you work there?

A. About six months.

Q. Did you work underground?

A. They were sinking the slope, grading out.

Q. You never worked underground?

A. No, sir.

Q. What kind of work did you do when you worked for the Republic Company during vacation?

A. Driving a mule.

Q. In the headings?

A. In the headings.

Q. Underground?

A. Yes, sir.

Q. After you left Ruffner, where did you go next to work?

A. Went to Raimund.

Q. That is the Republic Steel Company?

A. Republic Iron & Steel Company.

Q. How long did you work there?

A. I worked there until 1913. I went to work there in 1910.

Q. When did you leave there?

A. I left there and went to work at Muscoda on the 10th day of January, 1913.

Q. What sort of work did you do at Raimund when you went there?

A. When I first went there I drove a mule a short period of time.

Q. What else did you do?

A. I pumped a while and came out on the outside and ran a hoist until I went to Muscoda.

Q. Have you been at Muscoda since then?

A. Yes, sir, with the exception of about six weeks when they transferred me to Wenonah.

Q. You have been at Muscoda since then except—

A. About the six weeks I was at Wenonah.

Q. What mine were you in there?

A. Number 7, Wenonah.

Q. I wish you would tell what jobs you have held at Muscoda since you went there in 1913.

A. I have done practically everything from driving a mule up to the job I am now holding, head miner, section foreman, track foreman, worked on various and several different jobs.

Q. You said you were a section foreman?

A. Yes, sir; I was.

Q. Section foreman was changed to head miner with the incentive?

A. The section foreman, started, I believe, at Muscoda in 1916.

Q. When did the head miner come on to take the place of the section foreman?

A. The head miner came on in 1913 when they inaugurated the incentive plan.

Q. How long have you been a mine foreman over there, Wilson?

A. I was mine foreman in 1923 from February until in April, 1924, when they shut down old Number 2 mine.

I came back to Number 4 from there and went on as head miner, head blaster, or assistant mine foreman, whatever you call it. Head blaster was what the occupation carried.

Q. You mentioned some occupations you had. You said you had most all of them. You drove a mule, did you?

A. Yes, sir.

Q. And then I thought you said—I don't know whether you mentioned rapping.

A. I used to rap at Number 4. I went to work at that in—

Q. What is rapping?

A. Commonly called the skip tender.

Q. What is a car knocker?

A. Back in the old days when they used two ton cars, there was a man that kept those cars up and replaced them with new trucks or any repairs they needed.

Q. What is a slate picker?

A. That was back when they run these old shakers. There was a man that attended to these old shakers and kept the slate picked out as it came across the pan in the car.

Q. When was it they used those old shakers?

A. That was 1914 and 1915.

Q. And you served in those jobs?

A. Yes, sir.

Q. You said you had served as driller and drill helper. As driller and drill helper, did you do the work Mr. Carter has described here with reference to drilling the holes and setting them off?

A. Yes, sir.

Q. Did you also do any work during this period of time with what we call the production part of the crew?

A. I have.

Q. What have you done with that part of the crew?

A. I have done everything from loading ore with a shovel up until the present system of mining.

Q. That was before the days of mechanical loaders?

A. Yes, sir.

Q. Do you know when the mechanical loaders came in?

A. They commenced putting them in in Number 4 in 1924. They had some few prior to that. They began changing them in 4 in 1924.

Q. Have you ever, during this period of time, had any service on what we call the service crews?

A. Yes, sir, chute building and timbering.

Q. Have you ever served as foreman of that crew?

A. Yes, sir.

Q. What crews?

A. I have served as foreman of track crews, a timber crew, square timber crew, carpenter's crew, we call them.

Q. And you have been assistant mine foreman?

A. I went on as assistant mine foreman in 1927.

Q. Has all your work been at Number 4, or did you work any in Number 6?

A. I worked at Number 6 a while back in 1918, and I didn't work at Number 6 any more except a few days in 1937, I believe it was, Mr. Burr. Number 4 was down and I worked there three or four shifts. I don't recall—they removed me to Number 5—

Q. Did you open that mine?

A. No, sir. They were driving that new air course and I came there to open up that and stayed there—I don't know how long.

Q. Most of your work had been at Number 4?

A. Yes, sir.

Q. And you have stayed there how long continually?

A. Since the first of January, 1938.

Q. Have you ever been Assistant mine foreman in Number 4?

A. I went on as assistant mine foreman there in 1937.

Q. I wish you would look over here at this map and see if you can help me find—Have you seen this map, Mr. Goodwin, or not?

A. Yes, sir.

Q. This is Number 4 mine here?

A. Number 4 there.

Q. Here is the entrance down here?

A. Yes, sir.

Q. Can you recall about how far the slope was when you first went to Work in Number 4?

A. The slope was at 86.

Q. Was at 86?

A. Yes, sir.

Mr. Burr:

Where is Carter? Come here and measure for me.

Q. Where was the head of the slope,—where was it, to what point, say, in May, 1941?

A. Well, the number of those headings go down to a hundred and nineteen and twenty, I believe it was, and then they fixed to put in that pocket system down there, and then they went under the ore and there wasn't any more ore headings with the exception that all ore that came out of a hundred and nineteen and twenty there went to the pocket, and that was the last.

Mr. Burr:

All right; measure that.

Mr. Carter:

2500 feet to the surface.

Mr. Burr:

How far is it down to the pocket?

Mr. Carter:
5850.

Mr. Burr:
5850?

The Witness:
2500 to the surface.

Q. Since you have been there you have seen the slope driven from 86 down to the pocket?

A. Yes, sir.

Q. The working places in that Number 4 mine, going into the mine, are they to the right or left?

A. Well, the most of our working places now is to the right of the slope. We have some working places that is directly, you might say—if the slope was driven on it would go right to it—

Q. Kind of in front of it?

A. Yes, sir, right straight in front of it.

Q. This—

A. That is right there (indicating on map).

Q. Which is the furtherest working place from the slope May 1, 1941?

A. Ninth right Number 2, would be the furtherest working place.

Q. Show me where Ninth right Number 2 is.

Mr. Carter:
Here it is.

Q. That is 4550 feet from the pocket; is that about right, you think?

A. About right.

Q. I see. Now, here is one here that is—third left southwest that is 4600 feet, according to the map. Is that about right according to your judgment?

A. That is about where they have to walk to get there.

Q. That is what I mean, the usual walkway.

A. Yes, sir.

Q. The next heading you have in that mine is third left southwest. What about the—

A. The same distance, because they come up the haulage and turn off and have to turn back to the working place.

Q. This is 4,550 feet according to the map?

A. There isn't very much difference.

Q. What is the heading being operated over here to the left of that?

A. Third left and fourth left too.

Q. One is 2730 and the other 2600 feet; is that about right?

A. Yes, sir.

Q. Any of these up here operating?

A. That main south haulage is operating up there.

Q. That is 3850 feet. There seems to be one up here. What is this?

A. That is not working.

Q. That is not working?

A. No, sir.

Q. Was that working prior to May 1st?

A. No, sir. That hasn't worked since sometime last year.

Q. It was working last year?

A. Yes, sir, we worked that.

Q. The next one over here to the left is—that is Number 6. All right. Back on the right—further on the right hand side appears one. What heading is this?

A. Seventh right.

Q. That is 4000 feet; eighth right, 3150.

A. There is a fault between that.

Q. What is this?

A. 112.

Q. That is marked 3150 feet. Is that about the right distance?

A. That is the right distance.

Q. And below that is 89, 2950 feet.

A. Yes, sir.

Q. And another one.

A. Yes, sir.

Q. 3450 feet?

A. Yes, sir.

Q. Is that all your working places?

A. Working ten places.

Q. Ten places?

A. Yes, sir.

Q. How many crews did you work normally, underground stoping crews did you work normally in Number 4?

A: We worked ten producing crews.

Q. Do you remember about how many composed that ten?

A. Well, now, there is—there are two or three of these places, Mr. Burr, that is on what we call development work. They are just driving main haulages and they don't use but a six man crew. The rest of them use seven, some eight.

Q. How many men at Number 4 work normally underground?

A. About a hundred and eighty, and then there is about 22 or 24 that work on the slope track crew, hauling down crew, material shift. They work between shifts.

Q. You heard Mr. Carter describe that this morning, these men that work between shifts?

A. That has been the system ever since we have been operating double shifts.

Q. What is the proportion between the service crews and the underground crews in that mine, about the proportion?

A. The crews?

Q. Yes. Are there more on the producing crews or on the service crews?

A. You take the service men—

Q. That is what I mean.

A. —such as your trip riders and motor runners and company men—

Q. That is what I want.

A. —our company men will run a little higher than the producing crews.

Q. I see. I believe you are the first one that I have run across that had worked back as far as the shaker system. What was that? I am sort of interested in finding out about that antiquated system.

A. When I went to work there back in 1913 these headings were turned off closer. You can see by the map they were turned off closer. The company tried to widen out these headings and get as much percentage of this ore out as they could with as little driving as possible. They installed what they called a shaker system. It consisted of an iron beam about 15 inches wide, and about 7 feet long. You coupled those beams together. You had a water pipe and it had a lever, and that lever coupled to the beams. It shook the ore down the slope over these beams into the cars.

Q. When did that system begin to play out?

A. It played out—along about 1919 or '20 it had practically played out. They used some of it in Number 3 in 1924 but not at Number 2.

Q. Since you put the mechanical loaders in there, I believe you said in 1924, has the system been the same or not?

A. There have been some changed.

Q. I mean the general system.

A. The general system has been about practically the same.

Q. How many entrances have you to Number 4 mine?

A. From the outside?

Q. Yes.

A. There is only one entrance coming down the slope, and then we have a pipe way that goes to 61, and then the manway is on either side. There is an old manway coming to the back of the mine, but after the mule days, when they quit using the mules, that was abandoned and not in use.

Q. How long have you been having one entrance and exit from the mine for hauling ore on the main haulage?

A. Never had but one.

Q. Never had but one?

A. That is on the main slope.

Q. You had only one?

A. That is all we had.

Q. Do the men who work in that mine come into that mine on the main haulage way?

A. Yes, sir.

Q. Is all the ore hauled out of that haulage way or not?

A. Yes, sir.

Q. All the material and supplies hauled down on it?

A. Between shifts.

Q. Between shifts?

A. Yes, sir.

Q. Have you got a pocket at that mine?

A Yes, sir.

Q. Just what is that pocket and how does it work there?

A. Well, that pocket will hold between a railroad and a half—scarcely two railroad cars, and the slope is driven under the pocket, and your cars are dumped into the pocket, and the skip runs under the pocket where we have measuring gate, that fill the skip, and the ore is hauled out to the top. The ore is dumped by means of a rotary dump.

Q. Does all the ore go through that pocket?

A. No, sir. We have some places up here on the hill—that ore comes out and is dumped directly on the skip.

Q. At 112 and those three places there the ore is brought to the main slope and dumped directly on the skip?

A. Dumped directly on the skip.

Q. And the other ore—.

A. Dumped into the skip through the pocket.

Q. Brought from the working places?

A. Yes, sir.

Q. And goes through the rotary dump—

A. And into the skip.

Q. —and into the skip there?

A. Yes, sir.

Q. How is that ore—that ore is produced right at the stope, isn't it, the face of the stope?

A. The face of the stope and heading together.

Q. And the heading?

A. Yes, sir.

Q. Of course, when you are driving a heading the production is in the face of the heading?

A. In the heading.

Q. The headings extend at right angles from the slope and the stopes are driven along at right angles from the headings, I suppose?

A. Yes, sir.

Q. When and how does the transportation crew handling the ore get hold of the ore for transportation after it is shot down?

A. Well, the producing crew loads the ore into the cars. We keep our sidetrack—that is where the motor could come after cars,—we keep our sidetrack as close to the working place as possible. I would say we move our sidetracks up about every 200 feet. The motor comes in there and he set in his empty cars. He pulls five or six cars at a trip. He takes a load of empties in there and picks up the loads and carries them out.

Then one of the muckers—he pulls anywhere from one car to the whole trip. He will hook it to the hoist rope and pull it up to the place where he is loading, and when he gets them loaded he drops it or pulls it, whatever the condition of the ground is, down to where the motor can get it, and he calls the dispatcher and he has the motor pick it up on the side track.

Q. Is it or not part of the duty of the producing crews to load the cars and bring them down to where the motor can get them?

A. Yes, sir.

Q. About how far do those cars have to be brought?

A. It varies on the condition of the ground.

Q. About what would be the average?

A. I would say the furtherest distance from your shooting face to the side track wouldn't be over 200 feet.

Q. After it is carried down, of course, it is put on the skip and it is hauled out by the main slope haulage?

A. Yes, sir.

Q. Do you use the same skip in hauling the men like you do—

A. We do—well, the skip is never taken off unless it is to be repaired. We have a larry we hitch on the back when we are hauling material.

Q. Do you use that when you are hauling the men?

A. No, sir.

Q. Do you haul any ore or material when you are hauling the men?

A. No, sir.

Q. That haulage slope and the haulage way that goes out to the headings, how is that haulage way with reference to—Well, I will ask you first,—there have been some questions about ventilation. Is that main slope on an intake or not?

A: We are on an intake.

Q. On what?

A. On an intake.

Q. What does that mean, that the air is better or worse there?

A. The air comes down—

Q. That means it is where the air is fresh?

A. Yes, sir.

Q. If the air gets stagnant at all, where does it get stagnant, in the main haulage ways or the haulage ways away from the main haulage ways, or in the places where you work?

A. It would be more inclined to get stagnant in the places where we work if it gets stagnant anywhere, than on your main haulage way.

Q. Has the ventilation in that mine been all right?

A. Yes, sir, at the present time it is.

Q. Especially on the haulage ways; that is all I am interested in.

A. On the haulage ways.

Q. That is the only place I am interested in, in the haulage ways.

A. Yes, sir.

Q. Now, I want to ask you about the condition of the places where the men work in that mine. Do they walk, in going to their work, upgrade or downgrade on hills and levels or is it changeable? How is it?

A. Well, it is kind of what you might say, betwixt and between. There are some places you would be going downgrade, I would say, 5 to 6 or 8 percent, and some places it would be going upgrade some.

Q. Now, is that—the way the men walk up to the stopes, do they walk along the same track ways or headings where the tracks are laid or not?

A. Walk the haulage ways.

Q. Walk the haulage ways?

A. Yes, sir.

Q. How are those haulage ways? Are they kept smooth and clean or they rough? Just describe them to the Court.

A. We take a service crew and a trip runner and motor and train of cars and go over it and scrap it at least once a week.

The Court:

Do what?

The Witness:

Scrap it; go over it and clean off all the material that has fallen off the cars. We do that once a week.

Q. Is that haulage way rough or smooth or betwixt and between; is it like walking out in a field?

A. I wouldn't think there would be any trouble. I have been walking it a good long time. The track is level. There isn't holes between the tops of the ties.

Q. How long have you been walking that haulage way?

A. I have been walking it at Muscoda about 28 years.

Q. What part of that main slope way—is there any part of it,—I don't know whether I am getting the right word or not,—steel timbered?

A. Yes, sir, a few places.

Q. How is the rest of it?

A. It is concreted down between five and six hundred feet, I think,—I wouldn't be positive—somewhere in that neighborhood, something like 500 feet.

Q. That is concrete?

A. Yes, sir.

Q. From there on down—

A. From there on down we have it timbered with square timbers standing up from the foot wall to the roof. In some few cases we have steel sets across there.

Q. Now, Wilson, I want you to take yourself and anyone in like occupation, say a section helper on one of these crews, or a mucker or drill helper, going down into that mine. Where does he go to first before he goes to work?

A. Well, the first thing he does, he comes to the bath house and changes—

Q. Is that bath house the same way Mr. Carter described this morning?

A. Well, the bath house is like he said. It has been changed, I think, two or three different times since I have been there.

Q. I see. Since you have been there has there always been a bath house or not?

A. Yes, sir.

Q. Has that bath house been always about the same vicinity as it is now?

A. The same place.

Q. The same place?

A. Yes, sir.

Q. It has just been remodeled and enlarged during that time?

A. Yes, sir.

Q. During that time has the company made any charge or not to the miners for use of the bath house?

A. They did when I went there for three or four year —I wouldn't say just how long, but a charge after I went there.

Q. They made a charge then?

A. Yes, sir.

Q. How much?

A. Fifty cents a month.

Q. Fifty cents a month?

A. Yes, sir.

Q. And since that time there hasn't been any charge?

A. Hasn't been any charge. I think they cut it out probably in 1926. I wouldn't say positively.

Q. All right. After the miner has changed his clothes where does he go if he goes anywhere?

A. He goes to the carbide house and gets his carbide if he needs it.

Q. This carbide comes in one-pound cans?

A. Yes, sir.

Q. How often during a week does he get his carbide?

A. It depends. Some will use more than others. I would say on an average a can will last a man two days.

Q. Does he take the carbide with him?

A. Yes, sir.

Q. When he comes to the tally house after he has gotten his carbide, what, if anything, does he do?

A. Well, when he comes to the tally house—after he gets to the tally house he lays his brass, his check—his brass, we call it, up in the window.

Q. Do you handle it there if it is on your shift?

A. Yes, sir.

Q. What do you do with those checks?

A. I generally let them pile up there until they all practically get in and then I go and hang them up on the board at the places where the men work.

Q. Are you familiar with where they are working?

A. I have 180 men, and they can pile all their numbers in the pile and I can hang them up where they work.

Q. Hang them up in how long?

A. Take about ten minutes to pick them up and hang them up where they work.

Q. When night comes, what do they do?

A. When evening comes and they come out, they take up their checks and keep them until the next shift.

Q. Does an occasion occur when the men come out there are some checks that are left?

A. Yes, sir, I have had that happen.

Q. What do you do then?

A. Go back inside and find out where they are at, or what the trouble is.

Q If a man comes out on account of sickness or accident or any other reason before his shift is over,—before the shift is over, how is that handled so far as the check is concerned?

A Well, if he comes out before the shift is over with he checks his number out when he comes out.

Q. How do you supply vacancies in crews, Wilson, at your mine?

A. Well, it—

Q. If a vacancy occurs, if you have more than one way of doing it, tell the Court all of them.

A. The way we handle ours, we let the men bring their numbers up and lay them down in the check window—

Q. Yes, sir.

A. —and then they catch whatever skip they want to, whichever one comes most convenient, and they go inside.

After we hang the check numbers on the board,—each man's heading is numbered, and a place for the head miner, the drill runner, the drill helper, motor runner and section helpers,—a nail for each of them. Then when we see a man is missing, we pull a man off the service crew and send him to that place.

Q. How do you call them?

A. Call over the telephone and tell the assistant mine foreman to tell that man to go to a certain place.

Q. Does that enable—

A. Enables him to get to his working place by work time.

Q. By work time?

A. I might say there where we have men off for two or three days the man I have put in his place will ask me, "Do you want me to go to the same place?" or stope, and I will tell him I did.

Q. At your mine, do you sometimes get notice in advance from a head miner he would have a vacancy in his crew?

A. We do have that in some cases.

Q. How would you fill that?

A. On pay days and Sunday nights we run very short. You have to be particularly careful until you get your board checked in because you are going to fill the vacancy with a man that can do the work.

Q. You have got to handle your personnel in accordance with the kind of work they do?

A. You have got to keep in line with the work they are capable of doing, yes, sir.

Q. You make it a habit not to fill your vacancies until you have your entire board under consideration?

Mr. Harris:

We object to him leading.

Q. Is that the way you handle it or not?

A. I generally wait until I get all the board checked in.

Q. Different ones handle it in different ways, of course?

A. Yes, sir.

Q. What time in your mine over there previous to May 1, 1941,—at what time and how is the juice let on?

A. Inside?

Q. Yes, inside.

A. It is turned on by an automatic switch timed by a clock.

Q. What time is it turned on? Take the morning shift, for instance, what time is it turned on?

A. 6:30.

Q. 6:30 in your mine?

A. That is at the bottom, this generator, in this 112 place. A man had to walk from the bottom of the slope back up about 1200 feet, I will say, to where that generator is and start it.

Q. What time would that generator be started?

A. It would be after the second drag went on.

Q. What time, Mr. Goodwin, did the first car start down with the men in the morning at your place?

A. Around six o'clock.

Q. Did you have to run a test run there?

A. No, sir.

Q. Why not?

A. We had what we called the split shift doing the hauling between shifts, and it would be always right around the time to send them in when they got out.

Q. When they got out?

A. Yes, sir.

Q. There would be a continuous running of the skip there?

A. Yes, sir.

Q. The men started in at that time, and at about what intervals did they continue to go down?

A. I would say it takes a skip around about nine minutes—nine or ten minutes to make a round trip.

Q. And about how many skips did you have to have at your place?

A. Four to five, generally about five skips.

Q. How many men did you generally carry on a skip at your place?

A. We generally carried around 35 to 38. We have carried as high as 40. We can put 37 in the skip and three on the bail.

Q. At what time during this period of time you have been talking about—at what time did the pay computation of the underground miners start?

A. 6:45.

Q. 6:45?

A. Yes, sir.

Q. Now, did you ever—I will ask you this question first: Did the men all get to their places of work by 6:45 or not?

A. No, sir, they did not.

Q. Did you make, in your mine, sometime back,—make a check and keep a record that you turned over to Mr. Carter—who did you turn it over to?

A. I sent it to the superintendent's office?

Q. To the superintendent's office?

A. Yes, sir.

Q. Did you make a check and keep a record, with the assistance of anyone else, and if so, I will ask who in a minute, showing the time that these men actually got to the places of work and actually began working in your mine?

A. I did.

Q. When was that check made, if you recall?

A. I think it was back in December. I wouldn't be positive. Somewhere back there.

Q. And about how long a period did it cover?

A. I would say possibly two or three weeks.

Q. How did you do it, Mr. Goodwin?

A. By going down or sending one of the assistants. I made one or two trips myself and the assistants made trips. We would ride the first skip and as quick as we would get off the skip we would go to the working places.

Q. And take the time of the men?

A. When each individual got to his place.

Q. Do you remember who were your assistant mine foremen that assisted you in making that—

A. Mr. Parsons and Mr. Luke Wesson.

Q. Was Mr. Hallman one of those?

A. Mr. Hallman at that time was on Mr. Jones' shift.

Q. The same mine?

A. Yes, sir.

Q. Did you name Mr. Parsons' name as being on yours?

A. Yes, sir, Mr. Parsons was on my shift.

Q. Now, these records were made and turned into the superintendent's office, I believe.

A. Yes, sir.

Q. Do you recall, independent of the records, as to what that check showed, the ones you checked, as to what time—about what time the men actually got to the working places and started to work?

A. Well, it showed men at work from around 6:30 to 7:05. There were producing crews and some of the service crews that ran up as high as, I will say, 7:15. I wouldn't be positive.

Q. Did you also check the leaving time in the afternoon?

A. I did.

Q. What time—before we get to leaving time, what time was the juice shut off in the afternoon by this automatic clock?

A. Well, it was set to kick off at 3:10, but lots of times we would get through with our pulling before then, and we would shut it off about three o'clock.

Q. Did you, on this check you made, keep the time of the leaving of the men from these places of work?

A. We did.

Q. Without reference to the record, at that time the leaving time was about what time?

A. Well, it varied with the service crews. We had more trouble keeping the service crews away from the hoodlum, we call it, than the producing crews.

Q. What did your check show as to the range of time these service men left their working places?

A. I would say anywhere from twenty minutes to three to three o'clock. Some of them might have stayed up until three o'clock.

Q. What time did the producing crews—

A. They left at different intervals kind of smiliar to the service crews. They would all leave by three o'clock.

Q. All leave by three o'clock?

A. Yes, sir.

Q. Some leave before three or not?

A. Well, there were some, yes, sir, left before three.

Q. Now, is that check you made of that period of time—I will ask you to state whether or not from your knowledge of what had occurred there during the years previous, was that about what, in your judgment, it had been all the time as to the time the men get through and leave the working place?

A. Well, sir, I didn't realize until I did check on it that they wasn't getting to the place as soon as they was.

Q. In other words, you have no way of checking back behind that?

A. Have no way of checking.

Q. What, if anything, happened among these employees when they found out you all were making this check? Did they slow up their going or speed it up or what?

Mr. Harris:

We object to that, if the Court please.

The Court:

Overruled.

A. Well, they did show some signs of getting there earlier and staying there later.

Q. Staying there later?

A. Yes, sir.

Q. Now, I am going to show you here the—what I have marked for identification at this time—

The Clerk:

T. C. I. 23.

Mr. Burr:

Just mark it on this one page.

The Clerk:

Just this one page?

Mr. Burr:

Yes, sir. I will introduce the whole thing, probably later, if I can find the ones that put it together. I am going to use this one as an illustration at the present time.

(Thereupon a sheet headed "#4 Mine, Heading: 3-L #2; Shift: Day; Date: December 14, 1940," was marked T. C. I. Exhibit No. 23.)

Q. I am showing you, Mr. Goodwin, what has been marked T. C. I. Exhibit Number 23, which is a typewritten sheet, apparently with the notation at the bottom, "Timed by Wilson Goodwin, Mine Foreman."

A. That is true. That crew is still in that place.

Q. Whose crew is that?

A. Jim Simmons'.

Q. In making this, did you put down the names of the individuals?

A. Yes, sir. That is the closest place we have to the loading station.

Q. You put down the name of each individual?

A. Yes, sir.

Q. And his badge number?

A. Yes, sir.

Q. And the time of arrival and the time he left?

A. Yes, sir.

Q. For instance, Jim Simmons arrived there at 6:15 and left at 3:12?

A. Yes, sir.

Q. Well, Rich Moss arrived at 7:00 and left at 3:12?

A. Yes, sir.

Q. And so on with the rest of them?

A. Yes, sir.

Q. With respect to how the men were paid, irrespective of what time they got there and when they left, how were they paid?

A. Paid for eight hours work.

Q. What time were they supposed to start?

A. At 6:45.

Q. And supposed to end at what time?

A. 3:15.

Q. At what time?

A. 3:15; 30 minutes lunch period.

Q. If a man got there a few minutes before 6:45 and went to work a few minutes before, that is the way his pay was sent in?

A. Eight hours.

Q. And if he got there after that time, what did he get?

A. Eight hours.

Q. If he left before it was out, what did he get?

A. It is according to how long he left before hand.

Q. I mean if he—

A. In case of sickness or something he had to go out for—

Q. I am talking about how you worked them there.

A. If he stayed in the mine all day he got eight hours.

Q. Now, you have been a head miner, a section foreman, an assistant mine foreman and mine foreman. With your total experience, what would you say would be the average time of the underground employees,—first, the productive crews at their productive work?

Mr. Harris:

We object to that if the Court please.

The Court:
Overruled.

A. I would say taking the whole and averaging every man, it wouldn't run over seven and a half hours.

Q. How about your service crews?

A. The service crews wouldn't run—between six and a half and seven hours.

Q. Now, one question has been suggested to me. The schedule of trips you testified about, I will ask you to state whether or not the last trip got down to the underground loading station in ample time for the men to get to their working places at work time.

Mr. Harris:
We object to that.

A. No, sir.

Q. Which one didn't do that?

A. The last trip.

Q. What time did that last trip get down?

A. It generally got down from 6:40 to 6:50, and it depended on how the men got down.

Q. The ones that rode that trip, it wasn't possible for them to get to their working places by 6:45?

A. No.

Q. But the time began at 6:45 irrespective of that?

A. Yes, sir.

Q. What crews at your place are usually first in just by habit and custom there?

A. Well, up until 1941—

Q. That is what I am talking about, all my questions are prior to May 1, 1941.

A. Just any crew that got the skip.

Q. I see.

A. Sometimes it might be the timber crew, haulage crew, head miners, just whoever got there first.

Q. Going out was the same thing too?

A. The same thing, unless a man was sick or had something he wanted to get out specially to see about.

Q. In coming out of the mine, with respect to when the men left their work and got down to the hoodlum, how did they decide who would first ride the skip out, or did anybody decide that?

A. There were benches in the loading station where they could sit down and take them in rotation.

Q. When this underground miner got down in the morning, talking about not the exception but the usual man, where did he go from the hoodlum, and how did he go?

A. He would start on to whichever place or haulage he was working in, and probably there would be one or two or his crew or somebody in the crew next to him with him.

Q. And walk with him to his working place?

A. Yes, sir.

Q. When they got up there, the crew would get up to the working place, what work would they begin doing? Take first the drilling part of the crew, what did they begin doing?

A. Well, when the drill crew got there the first thing they did they would generally get their quarry bars and they would start to make the place safe to proceed with their drilling.

Q. And what did the loading part of the crew do?

A. The loading crew would get up there and one of them would go to quarrying the face and get it ready for drilling his hanger holes, and the other would go to installing his hose and getting ready to drill the hanger hose.

The drag operator, with the assistance of the engineer,—he would move his motor to whatever place he was going to drag, and fasten his motor down.

Q. Did that work continue until the day's work was over?

A. Well, it continued until they got through with the work.

Q. Got through with the work?

A. Yes, sir.

Q. Did you have any lunch time down in that mine?

A. What was your question?

Q. Did you have any lunch time or not?

A. Yes, sir; thirty minutes.

Q. How was the signal given for that?

A. Well, we used to allow them the privilege to take it at any time they wanted. Some of them would want to eat at different intervals during the run of the shift.

Q. And after that did it come on at a regular time?

A. Yes, sir.

Q. What time was that?

A. Well, I would say the average rule is the lunch period would run from ten o'clock on up until 11:00.

Q. Was any signal given in your mine for the taking of the lunch period by blinking the lights, anything like that?

A. We used to do that, but we quit it about a year ago.

Q. How much time was given out for the lunch period?

A. Thirty minutes.

Q. Was that part of the day's eight hours work or not?

A. No, sir.

Q. Has it ever been a part of the day's eight hours work down in your mine?

A. No, sir.

Q. In the afternoon who are the last men out of your stopes there?

A. The drill men, drill helper, head miner.

Q. And the others, do they or not usually leave before the shooting occurs?

A. The others may leave—they may leave and start walking on down eight or ten or fifteen minutes prior to the shooting.

Q. What is the shooting time at your place?

A. Prior to May 1st we shot at any time after three o'clock.

Q. Was there any other work to be done by the loading part of the producing crews after they left the stopes so far as producing ore was concerned?

A. No, sir, unless they just wanted to, within themselves, help the drill man. They could tamp his holes.

Q. They could stay back and help him?

A. Yes, sir.

Q. And after the drill men got the holes loaded and tamped and the fuse set and shot, was that the end of their work?

A. Yes, sir.

Q. Now, have there been any changes there, Mr. Goodwin,—first, I will ask you if you would tell the Court,—give me a list of the permanent supplies, we have been calling them, the heavy stuff that stays in the headings all the time?

A. You have the mechanical loader, the auxiliary hoist, auxiliary fan, the drills, the hose pipe, jackhammer, skidder block.

Q. How about the drill steel?

A. It don't stay there all the time.

Q. All right, sir. Anything else you recall now? Did you give the air and water hose? I believe you did.

A. I mentioned the hose pipe. I didn't fool with the difference between air and water.

Q. How about the jackhammer?

A. It stays there the same as the big drill.

Q. Auxiliary hoist, auxiliary fan, mechanical loader, drag scraper, the drills, air and water hose, jackhammer, —that covers it as far as you can recall?

A. Yes, sir.

Q. How is that stuff I have just asked about, confining my questions to that for the present,—how does that get in the mine, and after it gets in the mine how does it get to the particular stopes?

A. It is brought down by the material hauling down crew. They bring it from the surface.

Q. How does it get to the mouth of the mine?

A. It comes from the shops or warehouse by truck by the service crews.

Q. Is there any requisitions given for it?

A. I write the requisitions, me or one of my assistants.

Q. How do you figure out—how do you decide how much to requisition?

A. Well, I do that by keeping up with what I have on hand.

Q. You know how much is needed for each place?

A. I know the average run it probably takes to operate through the week or through the day.

Q. All right, sir. That is brought from the blacksmith shop or supply house or warehouse to the mouth of the mine?

A. Yes, sir.

Q. It is unloaded there?

A. It is unloaded on the yard and the material crew load it there from the yard and it is taken inside.

Q. Who picks it up there?

A. The service crew unloads it and takes it to the various places.

Q. Is there any of that particular material carried by the producing crews?

A. Yes, sir, it may be sometimes, but then it is carried by that producing crew it is timed as service crews.

Q. They are paid as service crews at that time?

A. Yes, sir.

Q. And timed as service crews?

A. Yes, sir.

Q. I mean when they are working as producing crews, do they handle that material?

A. No, sir.

Q. If it gets out of repair or has to be replaced, how is that handled?

A. If a drag scraper has to come out sometime during the shift, the motor runner will pull that over into an empty car and tram it down to the side track, and the motor hauler picks it up and carries it to the material way. It is loaded by the material crew and picked up and carried to the outside by the haulage crew and taken outside where it is repaired.

Q. How does it get back?

A. The same way.

Q. Aside from that, I wish you would give the Court a list of the standard material in one of these producing places other than what we have referred to as the material that stays there all the time.

A. Well, we have jackhammer steel. We have to swap them out. We use the hangers and wedges and E-hooks.

Q. Is the E-hook the same as the C-hook?

A. Some of them call them C-hooks.

Q. As a matter of fact, what I have seen are the shape of an E. You call them an E-hook?

A. C-hook or E-hook, whatever you call them.

Q. We will call them C-hooks because that is what everybody has been calling them.

Have the weight of those been changed since you have been using them?

A. Yes, sir, those E-hooks have been changed two or three times.

Q. Are they smaller or heavier?

A. They are heavier.

Q. You heard Mr. Carter this morning describe the C-hooks and wedges and hangers, and without going over it, is that description accurate—

A. It is.

Q. —as you recall it?

A. It is.

Q. Now, Mr. Goodwin, back when you first went out there at Muscoda, first began working there, even before you were mine foreman or assistant mine foreman, back when you were working at these various occupations, what was the method at that time of getting these articles you have just mentioned, the hangers and wedges and C-hooks into the mine?

A. Well, when we first began using the mechanical loaders—

Q. Yes, sir.

A. —the mine foreman would write a requisition for them each morning before he went down.

Q. Yes.

A. Then sometime before the morning shift went down when the office boy came by picking up mail or anything that needed to go to the supply house or office he would take that requisition and turn it in to the shop and they would fill that requisition and send it back to the mine by the truck, the surface crew, and they would unload it there. When the hauling down crew came on in the evening they would load it up and haul it down in the mine.

Q. How did it get back to the working places?

A. When I was stoping, if I got there in the evening, I would get what was there and carry it back in. That was the system we had then.

Q. Did all of them do that when you were stoping?

A. Yes, sir, while it lasted.

Q. Did you take all you needed or what you thought you might need in the future?

Mr. Harris:
I don't think we need to go into that.

The Court:
No, I don't think we need to go into that.

Mr. Burr:
All right.

Q. Did you go on that way for quite a while or not?
A. It went on—
Q. Until when?
A. —the last part of 1937 or first part of 1938.
Q. Was that before or after the incentive plan?
A. That was after the incentive plan.
Q. Did this practice you have just described of the men getting there first, taking what they wanted and taking it with them,—did that increase or diminish or what after the incentive plan went into effect?
A. Well, prior to the incentive plan we wasn't as bad as we were after the incentive plan went on, because, after the incentive plan we didn't want anything to hurt our work or slow it down.
Q. The more you worked the more you got paid?
A. The more we worked the more we got paid.
Q. Did that habit increase of grabbing that stuff and taking it on?
A. I would say it did.
Q. Did it increase with you; you were a head miner at that time?
A. I would say it did.
Q. Was a change made after that?
A. Yes, sir.
Q. With reference to that stuff?
A. Yes, sir.
Q. Just tell what that change was.

A. Along about the last part of '37 or first part of 1938, we had a lot of trouble keeping things like wedges, hangers and C-hooks to work with, and through the request of some of the head miners—

Q. Some of them mentioned it to you?

A. Yes, sir, some of them mentioned we have a regular place established where they could get this material when they needed it, and I took it up with Mr. Carter about establishing a place where they could get this material on either the night shift or day shift when they needed it.

Q. Did any of the head miners take it up with Mr. Carter? Were they present when you took it up?

A. No, sir.

Q. Did any of the other mine foremen take it up?

A. I think Mr. Stone was present when we discussed it.

Q. After that was it issued on requisition?

A. Yes, sir. I usually wrote the requisitions underground.

Q. Did they come to you to get the requisitions for what they needed or did you go hunt them?

A. Lots of times they would come to me, and sometimes the head miner would come, a head miner or drill man or drag man or first one or the other.

Q. Those requisitions covering those three articles, about how many would a requisition cover? What was the usual—what was the usual number specified? What was that usual number?

A. We generally wrote a requisition for around four hangers and twenty-five wedges; sometimes we would give them six hangers and thirty wedges. I have wrote them for as high as forty wedges.

Q. What was the usual number?

A. Four hangers and twenty-five wedges.

Q. About how often would a particular crew get that requisition?

A. Well, two or three times—

Q. A what?

A. —a month.

Q. A month?

A. Yes, sir.

Q. Where did they take that requisition to be filled and where did they get that material?

A. They would get that requisition on, usually—like you give that requisition to them this morning, they would carry it out and leave it in their muckers—

Q. Where?

A. In their muckers, their work clothes, and the next morning they would go out to the carbide boy and he would fill the requisition.

Q. That is where you kept these particular supplies?

A. Yes, sir.

Q. When that particular requisition would be filled, how would they carry these particular supplies to the working place?

A. Sometimes another member of the crew would be along and help carry them. I have seen a man bring two hangers along in his hand, and they would lay them on the slope.

Then, whenever we began to run drags in, we had a steel bucket between 2½ and 3 feet long, and about a foot or 15 inches wide, and about a foot deep, and we hung that on the bail of the skip, and then we would load that small stuff or he would load it in there and carry it to the loading station, and when he would get there he would take it out of the basket.

Q. Ordinarily about how many men out of a crew would handle that stuff from the carbide house to the place where they put it in the skip?

A. I couldn't say positively.

Q. What would be your—

A. I have noticed two men out of the same crew, and I have seen men where you could give requisitions to them maybe get some fellow that worked next to him that would come along—

Q. And help him carry it?

A. —and he would take one or two in his hands and bring them along.

Q. I see. And has there been a time there, Mr. Goodwin,—I will put it this way: State whether or not there has ever been a time when a head miner can't send—either phone—over the phone or send his men down and get any supplies he wanted at any time delivered to him at his working place?

A. We do that in lots of cases.

Q. You always do that when they request it?

A. Yes, sir.

Q. Always have?

A. Yes, sir.

Q. Now, at Number 4, I don't believe I have asked you the dimensions of the skip you use for carrying the men down into the man loading station. Can you give me those dimensions? The inside dimensions are what I am after, not the overall dimensions from the track.

A. Around 1[illegible] feet long, I imagine off hand, and around four and a half feet wide and better than four and a half feet deep.

Q. When you were head miner, and also while you were mine foreman, how did the head miners keep the time of the men in the mine?

A. Well, he was furnished with a distribution sheet and the occupation was on that sheet, and he put his name and check number down, and put down the names and check numbers of his men. Then, on the producing crews, we would put down the amount of explosives, dynamite we used, the number of caps, the feet of fuse, and the number of trams we loaded. Then over on the other side of that sheet if we had any delays which throwed us off, on account of moving slate or the motor haulage not pulling us, we would make that up. That went in with the service time.

When I was timbering, we didn't use that kind of sheet. They had a different form which carried what they called the company rate sheet, company-man sheet. They were all classed as underground timber men, carpenters, and so on, and the rates were classed as underground helpers rates.

Q. Without going into much of those details, did or not each section foreman or foreman of each crew keep a daily time sheet of his crew?

A. Yes, sir; made it out some time during the shift and turned it in at the end of the shift.

Q. Turned it in at the end of the shift?

A. Yes, sir.

Q. And each man was given the eight hours—

A. If he stayed inside the mine.

Q. —if he stayed inside the mine?

A. Yes, sir.

Q. What happened if he worked over eight hours?

A. He was paid for it.

Q. On what basis, straight basis or overtime basis?

A. Paid him time and a half.

Q. Did you have a special form for that you used?

A. Yes, sir. We had a special form we made out, and the mine foreman O. K.'d it.

Q. When these head miners and foremen made out these abstracts, were they turned in by them directly to the office or turned over to the mine foreman?

A. Mine foreman.

Q. Did you check them as mine foreman?

A. Yes, sir, the assistant or I, one approved each sheet.

Q. And from there that went into the office?

A. Yes, sir.

Q. Now, Mr. Goodwin, I want to ask you this: I want to ask you, up until May 1, 1941,—I will ask you to state whether or not at any time prior to that time within your knowledge and all your experience you had in the ore mines out there, was—were the men ever—was their pay ever computed or paid on any other plan other than the working place to working place plan?

A. Never has been.

Q. Did they ever receive any pay during that period of time for the time spent in going to and from the working places?

A. Not that I ever heard of.

Q. Did you ever hear of anything of that sort—

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
We except.

The Court:
As a matter of fact, Mr. Burr, I have been letting you go into things that are immaterial on this accounting.

Mr. Burr:
Your Honor will recall I took the position when this was gone into with Mr. Ball on cross examination I thought very little of this was material but Your Honor wanted to get the picture.

The Court:
I don't care about so much of it.

Mr. Burr:
I think I am about through. I will keep the rest of it positive.

Q. You heard Mr. Carter testify this morning. Were the same changes testified to by him made at your mine, on May 1, 1941?

Mr. Harris:
Judge, that calls for his recollection.

Mr. Burr:
I was trying to save time.

Mr. Harris:
He can ask what changes were made.

The Court:
You can ask him what changes were made.

Mr. Burr:
I would prefer to do it that way.

Q. Just tell us what changes were made at your mine.
A. The men started going in on portal to portal, paid from the time they checked in until they checked out.
Q. What time do they check in?
A. Six o'clock.
Q. What time do they come out?
A. We run our first drag around a quarter of two.
Q. What time is everybody out of the mine?
A. About 2:25 to 2:27.

Mr. Burr:
I believe that is all, Your Honor.

The Court:
I want to ask you a question. What is the height of the roof in the slope going down?

The Witness:
In the slope?

The Court:
Where they ride down.

The Witness:
It varies.

The Court:
It varies?

The Witness:
Yes, sir. There are some places—we have one place that runs—five or six hundred feet, it is, I imagine, around 15 or 18 feet.

The Court:
High?

The Witness:
Yes, sir.

The Court:
Above the track?

The Witness:
Yes, sir, above the track. Then, after we pass under that it runs around 8 foot; $8\frac{1}{2}$ is the closest place—

The Court:
Well, do you have any places where the men on the trip going in or coming out, that they have to stoop or duck?

The Witness:
Yes, sir, there is one or two places.

The Court:
What is the height there at those places?

The Witness:
I would say around—somewhere in the neighborhood of eight feet.

The Court:
Eight feet?

The Witness:
Yes, sir.

The Court:
How high above the top of the cars, the seats—I believe you seat them?

The Witness:
No, sir.

The Court:
You don't have any seats?

The Witness:
No, sir, we haven't got seats.

The Court:
How high above the floor is the roof?

The Witness:
Well, above the floor, I would say it is five and a half to six feet. I wouldn't be positive, because I haven't measured it.

The Court:
We will take a recess of about eight minutes.

(Whereupon proceedings were in recess from 2:50 P. M. to 3:00 P. M., at which time proceedings were resumed as follows:)

Mr. Harris:
Shall I proceed, Your Honor.

The Court:
Proceed, yes, sir.

Cross Examination.

(By Mr. Harris):

Q. Mr. Goodwin, the Judge asked you about the height of that roof above the floor of the mine in the main slope. Now, regardless of how high it is in feet and inches, the men going down in the skip, after they travel that first five hundred feet, have to bend over in a crouching position?

A. They ride in a crouched position.

Q. And they have to ride in a crouching position from the time they traverse that 500 feet that has been concreted until they get to the man unloadng station, don't they?

A. No, sir.

Q. Mr. Goodwin, do you lower that skip with a cable?

A. We do.

Q. And how big a cable is it?

A. I think it is an inch and seven-eighths. I wouldn't be positive.

Q. Steel, a steel cable?

A. Yes, sir.

Q. Now, that cable as it goes—as the skip goes down in the mine, you have to have rollers from time to time for that cable to run on, don't you?

A. Ye[illegible]sir.

Q. And you have those rollers up in the roof of the main slope?

A. No, sir, not in the roof.

Q. They are up over it?

A. Up over it.

Q. Up over the skip?

A. Yes, sir.

Q. And that rope passes over those rollers?

A. Yes, sir.

Q. And those rollers that are hanging down in the roof of that mine probably are 18 inches in diameter?

A. I couldn't say. I haven't measured them.

Q. Illustrate with your hands how large they are.

A. I would say off hand about 18 inches.

Q. And the skip runs under them?

A. Yes.

Q. And the cable runs over them?

A. Runs over them.

Q. And how many of those different rollers hanging down over the path that the skip followers in taking those men down in the mine are there in Mine Number 4?

A. I would say there are seven or eight. I don't know.

Q. Seven or eight?

A. Yes, sir.

Q. Those rollers are made of steel, aren't they? If a man's head—they are not made of wood or any light material? They are made of metal?

A. They are.

Q. And those rollers have been there ever since you have been out there?

A. Yes, sir.

Q. You said you had 180 men underground and 20 on top. Do you mean in your day shift or night shift?

A. I mean on the night shift.

Q. Do you act as foreman on a day shift all the time?

A. No, sir. I swap week about.

Q. You swap week about?

A. Yes, sir.

Q. So, in addition to there being 200 in the mine there are 400 on both shifts?

A. Yes, sir.

Q. You say the men turn in a brass check when they start in and take it out when they come out?

A. Yes, sir.

Q. And if they lose one they have to buy another one?

A. No, sir.

Q. You give them that?

A. Yes, sir.

Mr. Burr:

Judge, I don't see what we are trying here.

Mr. Harris:

I have been confused myself at times.

Mr. Burr:

I don't see why anyone wants to ask that question when there is not a jury around here.

The Court:

That is over now.

Mr. Burr:

All right, sir.

Q. How much would you say is the distance between the top of the skip and the closest part of those rollers as the skip went under them?

A. Six inches or better.

Q. What?

A. Six inches or better.

Q. And the skip is four feet three inches high to four feet seven inches?

A. Four feet seven inches.

Q. What?

A. Four feet seven inches.

Q. Four feet seven inches; is that right?

A. Right.

Q. Now, the men—on your day shift when you get there at the mouth of the mine—you are there before the skip starts down, aren't you?

A. Yes, sir.

Q. Who decides when a skip is full so that it can go down and who gives the order for it to go down, you?

A. If I am there, I do. If I am not, one of the assistant mine foremen is always out there.

Q. The skip tender doesn't do that, does he?

A. No, sir.

Q. But either the mine foreman himself or an assistant mine foreman is there, and whatever order they scramble on the skip in, the mine foreman tells the skip tender to pull out and they pull out, or if it is an assistant mine foreman he tells him and he pulls out; that is right, isn't it?

A. Yes, sir.

Q. And those men in that skip are packed in and bent over just like you had spoons racked up together, aren't they?

A. Well, not necessarily.

Q. Well, are they; not necessarily, but usually and generally?

A. Sometimes; it is according to how many is in the skip.

Q. You carried 37 in the skip and three on the outside?

A. 35 to 37.

Q. And three on the outside?

A. And three on the outside.

Q. 37 men in the skip fixed it so they are crouched and bent over like a row of spoons stacked in there?

A. They are stacked in there.

Q. Bent over like spoons, in spoon fashion?

A. They are in a crouched position all right.

Q. You say for the last year you have given no lunch light signal; that is right, isn't it?

A. Yes, sir.

Q. That means that there is no fixed time either by lights or otherwise to notify the men to stop and eat their lunch, doesn't it?

A. The foremen were all told to take their lunch period any time from ten to eleven, whichever suits the crew.

Q. Whichever suits the crew?

A. Whichever suits the crew, yes, sir.

Q. Now, then, before this last year you gave a signal for them to stop for lunch?

A. We used to, yes, sir.

Q. How long was it that you gave a signal for them to stop for lunch?

A. I don't know how long it lasted.

Q. What years was it you had that signal?

A. 1938 I believe, and '39 we used it some.

Q. 1938 and '9. Now, I understood you to say that they blasted up until you went on the portal to portal plan,—that they blasted at any time after three o'clock?

A. From 3:00 to 3:15,—3:10.

Q. Now, did you give any signal for them to blast?

A. No, sir.

Q. Did not. Do you give any signal now for them to blast?

A. Nothing more than shutting the generator down.

Q. And before you did not shut the generator down?

A. Not until the motors all got in around three o'clock.

Q. Not until all the motors all got in?

Mr. Burr:

Talk a little louder.

A. I said not until the motors all got in,—the traveling motors.

Q. You have ten headings in that mine?

A. Yes, sir.

Q. How many electric motors have you got in that mine?

A. We only have two in the bottom, and one at Number 112, and then we have a little six ton motor in what we call ups.

Q. That is four electric motors?

A. Yes, sir.

Q. Is there room in the mine for any more electric motors?

A. That is not for me to say.

Q. Do those electric locomotives occupy all the track, or could you have more?

A. You could have 25 in there.

Q. You could have an electric locomotive for each heading, couldn't you?

A. I guess we could.

Q. The track that comes up to one heading, up to two or three hundred feet, does it split and serve another heading and another stope? You spoke on your direct examination of men walking together after they picked up their stuff, that they would walk up towards the working stopes or faces together. Does that mean that the distance of crew Number 1 from crew Number 2, if they were the closest together, would be only a couple of hundred feet?

A. Approximately 200 feet to where they would turn off to leave the haulage.

Q. Does the ore that comes from the stope that crew number 1 is working in, is that loaded on the same identical track as the ore from the stope crew number 2 is working in?

A. No, sir.

Q. How long would those two tracks be before they ever came together, or would they ever come together until they got to the haulage way?

A. They never come together until they got to the haulage.

Q. That would be about 1200 feet?

A. It depends on how many headings you are working off that haulage.

Q. How many haulages have you?

A. We have a haulage at 112; we have the southeast haulage and southwest haulage and number 10 haulage and number 2 haulage.

Q. That gives you five haulages?

A. Yes, sir.

Q. And you have ten headings in that mine?

A. We have about 25 headings in there. We are only working ten though.

Q. You are not operating that mine at full capacity?

A. Can't operate it—not the amount of headings we could put on if we could handle the material.

Q. You have got 25 stopes and headings and mine ten of them only?

A. Mine 10.

Q. How many were you mining in 1940?

A. Ten.

Q. How many in 1939?

A. Ten.

Q. 1938?

A. Ten.

Q. 1937?

A. We started up in 1937 and only started about three or four, I think it was, when we started.

Q. Now, you were assistant mine foreman in 1937?

A. Yes, sir.

Q. At this particular mine?

A. Yes, sir.

Q. You started up with three or four, and you have gotten up as high as ten; is that right?

A. That is right.

Q. And that is the highest you have ever gotten from that period on?

A. That is the most we have ever operated.

The Court:

Those other stopes, are they worked out?

The Witness:

No, sir; it is new development work.

Q. Now, when you went down in the mine checking the time it took the men to go from the manloading station to the different faces, did you hide so the men didn't know you were checking them, or—

A. No, sir; I didn't have any right to hide.

Q. Did you walk right along with the men?

A. On several occasions me or the assistant would pass some of the men.

Q. I didn't hear you.

A. I said on several occasions me or the assistant would pass some of the men.

Q. Did you start with them from the man unloading station and keep right with them until you got to the face?

A. No, sir. When we got off the unloading station, any men that got off, we would probably pass them and go on ahead of them.

Q. Who were you timing, the men who were walking, or yourself?

A. We were timing those behind us.

Q. Were you timing those ahead of you or behind you?

Mr. Burr:
He was not timing the walking time. He was timing when they got to the working place.

Mr. Harris:
I thought he had some tables of the walking time.

Mr. Burr:
No, sir.

Q. You haven't timed the men, how long it took them to walk to the working places?
A. No, sir.
Q. You haven't taken part in any survey where any men, without any weights in their hands, would walk from the man loading station to the face?
A. I haven't, no, sir.
Q. You haven't seen it done?
A. No, sir.
Q. I misunderstood the kind of thing you were talking about.
A. Yes, sir.
Q. Practically all the mine in Number 4 is either uphill or downhill, isn't it?
A. I couldn't say it is. It is just like I say; it varies up and down.
Q. A man at the face is either mining on an upgrade, or he is mining on a downgrade; there is very little of it where he would be mining on the level, is there?
A. Probably two or three places.
Q. Two or three places out of ten?
A. Yes, sir.
Q. Now, these electric locomotives that pull the cars around, how fast are they geared to go, do you know?
A. I couldn't say.
Q. Well, what power have they, do you know, the gauge power those locomotives have?

A. No, I wouldn't testify.

Q. Do they travel as fast as a man walks or faster?

A. They travel faster than a man walks, a right smart.

Q. Is their power such they could start off with a jerk, or do they have to start very slowly when they are pulling these cars loaded with ore?

A. They start slow.

Q. But they spill the ore all along, and once a week you have to go down and pick up this scrap?

A. We pick it up once a week.

Q. But between the time you pick it up each week that scrap has fallen where the men walking in and out have to step over it?

A. Not particularly, if they walk in the middle of the track.

Q. In other words, if they will pick out the very middle of the track?

A. They have standard tracks, four feet six inches between the rails. The ore falls over to the outside. Sometimes they will find a little rock lying between the rails.

Q. Do you have any places where water leaks in the mine in Number 4?

A. Not at the present time. We have had one or two little places where it leaks in.

Q. You told Mr. Burr at the present time the ventilation was all right. When was it when it wasn't all right?

A. Our ventilation was none too good back three or four months ago. I don't remember when it was.

Q. What did you do three or four months ago to improve the ventilation?

A. A year ago we went to old Number 2 and bratticed off those places,—bratticed off every one of those places and set a big fan out on the air way.

Q. Since you did that the conditions have improved?

A. Yes, sir.

Q. And your ventilation has improved since then?

A. Yes, sir.

Q. Before that that was a mine that was hot down in there?

A. There were some hot places, yes.

Q. If you put your hand up against the wall or ore, did it feel hot to you, or was it just the air in the mine that felt hot to you?

A. It was the air.

Q. It was the air that felt hot to you?

A. Yes, sir.

Q. Did you ever check up to see what the temperature of that air was?

A. No, sir, I didn't.

Q. Was that air dry air or was it moist air?

A. Well, it was dry.

Q. Hot, dry air?

A. Yes, sir.

Q. Now, when Mr. Burr asked you about a lot of work that the men did when they first got to the face. In other words, you mentioned they had to get a quarry bar and sound out the roof; the muckers could make their arrangements; the drill men could move their tripods. They could do all that before any juice came on?

A. They could have, but the juice always went on at 6:30.

Q. Always went on at 6:30?

A. Yes, sir.

Q. And, as a matter of fact, in 1938 and 1939, the juice, or rather the skips would start running around 5:30, wouldn't they?

A. I do not recall.

Q. You don't recall?

A. No, sir.

Q. Were you with them when the mechanical loaders were put in?

A. Yes, sir.

Q. Now, what changes in the methods of mining took place when mechanical loaders went in?

A. Well, they changed the method of the underground stoping system practically all together.

Q. What was that change?

A. Well, they changed in—back then they drove the ground different to what they do now.

Q. How, Mr. Goodwin?

A. Back when it was hand loading, it was driven—a heading was driven and then they would drive a small upset up the hill and that was loaded through a shaker system into the cars onto the track below.

Q. And—

A. After they put in mechanical loaders they done away with all that.

Q. All right. What other changes took place when they put in mechanical loaders?

A. Well, when they put in mechanical loaders they began to do away with the mules underground and began to install these traveling motors.

Q. Electric locomotives?

A. Yes, sir.

Q. Have they always used tram-cars of the same size?

A. No, sir. When they used to—when they installed those mechanical loaders they used a five-ton car. At Number 2 we did use some two-ton cars with mechanical loaders, and after Number 4 shut down in 1934, I believe it was,—during the period it was down up until 1937 when they started Number 4, they taken those cars and transferred them to Number 6, and when they started up again they installed them with six-ton cars.

Q. How many tram cars of ore will the skip hold?

A. About 2½, I imagine.

Q. About $2\frac{1}{2}$?

A. About 15 tons.

The Court:

How much will the motor engine pull?

The Witness:

You mean the hoist?

The Court:

No, on those tracks where the men have to walk?

The Witness:

We have pulled as high as sixty tons, but we don't do that in all cases. Thirty tons is considered a load.

The only time we pull 50 to 60 tons, we are pulling a trip in and setting it on the yard out of the way, and when the other motor comes in, we will get that trip and set it on the dump. We have such a small pocket we have cars that they can't take care of, and lots of times they come in and can't get on the dump and they set the cars on the track and go back.

Mr. Harris:

I think that is all.

Mr. Burr:

Have you gentlemen got anything you want to ask him?

Mr. Smith:

No, sir.

Re-Direct Examination.

(By Mr. Burr):

Q. Mr. Goodwin, there are a few questions I want to ask you.

Mr. Harris asked you with reference to the change in ventilation you say has been made there recently.

When I was examining you I don't know whether I understood you or not. I think I did, but I want to ask you again.

Has the ventilation in that mine at any time been bad on the main slope or haulage ways or not?

A. No, sir, not on the main haulage ways.

Q. The only place you have had any trouble is at the actual working places?

A. Yes, sir.

Q. And did any—was that ventilation—was that where you used the auxiliary fans?

A. We used those auxiliary fans—

Q. In places of that sort?

A. In places where the air is not up sufficiently to take care of it.

Q. I want to get down and get some facts about this spoon crouching business Mr. Harris has asked you about on the slope.

First, how is that slope lighted if it is lighted?

A. Electric lights.

Q. Well, how well is it lighted? Is it—

A. Well, it is lit up where a man can walk down without any light,—without a carbide light.

Q. Would you say the electric lights are as strong as those in here, or give as much light by way of comparison? I just want to find out.

A. 220 watts.

Q. 220 watts and how close are they spaced?

A. I will say about 100 feet or 150 or 200 feet. I wouldn't be positive.

Q. Is there any difficulty about anybody on the skip not seeing the roof or seeing those big rollers that are there?

A. They can see them.

Q. You don't have to have your carbide lit on your main slope to see those?

A. No, sir.

Q. How many head accidents have happened in that mine since you have been there going down that slope in that spoonlike, crouched position that Mr. Harris refers to?

A. Never has but one happened since I have been there, and that happened in 1914.

Q. In 1914?

A. That is on my particular shift now.

Q. That is what I am talking about.

A. Yes, sir.

Q. You had one man got his head bumped in 1914?

A. Yes, sir.

Q. And there haven't been any bumped on your shift since then?

Mr. Harris:

He has asked that once.

Mr. Burr:

Well, you have talked about these rollers in such funereal tones—

The Court:

Go ahead and ask about it.

Q. Is that the only one you know of, Mr. Goodwin?

A. That is the only one I know of.

Q. He has asked questions generally as to safety conditions down there, Mr. Wilson?

A. What is your question?

Q. I say you have been asked about people getting hurt on the track going to their places of work and riding down on the skip and getting their heads bumped.

Could you tell the Court how many consecutive days you went on your shift in that mine without any accident of any kind, on the slope or headings or anywhere else?

A. We went approximately 14 months.

Q. Approximately 14 months without a lost time accident?

A. Yes, sir.

Q. Are you familiar with the awards that are made by the Department of Mines,—the United States Department of Mines under the fund created known as the Joseph Holmes Award Plan?

A. Yes, sir.

Q. How many times have those mines out there won that award in the last ten years to your knowledge?

A. Well, Number 5 has won it four times, I believe it was, maybe five.

Q. That was the first in the United States, and how many times have you won an award?

A. In 1934, Number 4 mine won a Joseph A. Holmes award, and I got a personal award for going the longest time without a lost time accident.

Q. In the United States?

A. Yes, sir.

Q. Talking about accidents, are you familiar with the lowness of roofs or other conditions in coal mines, or do you know anything about coal mines?

Mr. Lipscomb:

We object to that.

A. No, sir.

Mr. Burr:

I will save that for later.

Q. How about the speed of that skip going down; do you know about that?

A. I couldn't say about that.

Q. You did say how long it takes?

A. Yes, sir.

Q. How long does it take?

A. Takes around 9 or 10 minutes to make a round trip.

Q. To make a round trip?

A. Yes, sir.

Q. Up and down?

A. Yes, sir.

Mr. Burr:

I believe that is all I want to ask him.

Mr. Harris:

You—

Mr. Burr:

Wait a minute. Mr. All said something to me just now and I couldn't listen to him.

That is all.

Re-Cross Examination.

(By Mr. Harris):

Q. You referred to lost time accidents. How much time does a man have to lose to have a lost time accident?

A. He has got to lose enough time to where he is compensated.

Q. You mean under the Alabama Compensation Law?

A. Compensation Law, yes, sir.

Q. Well, for several years the Alabama Compensation Law didn't pay a man for the first two weeks, did it?

A. I couldn't say how long, but we didn't have a man off that long.

Q. Well, suppose a man were hurt and stayed off three days; would that be counted a lost time accident?

A. No, sir.

Q. Suppose he stayed off ten days, would that be counted a lost time accident?

A. I couldn't say; I don't know.

Q. Well, suppose a man jumped into this skip and another fellow jumped in and landed on his hand or his ankle and he couldn't continue to muck ore and couldn't continue to run a drill; would you, as mine foreman, put him at something else while his hand or foot was injured so he could keep on working?

A. Any man that gets hurt and goes to see the doctor, he is off until the doctor says he can come back.

Q. All right. And my question was if he got hurt to where he couldn't run his drill or run his mechanical loader on account of an injury he had received, would you switch him to a lighter job so he could keep on making a shift?

A. If he so desired that, I would.

Q. And, of course, where you shifted him and he kept on making a shift, that would not have counted a missed time accident, would it?

A. Not if we should have it.

Q. Now, the company required all men who went into Mine Number 4 to go down on those man skips, didn't it?

A. Yes, sir.

Mr. Harris:

That is all.

Re-Direct Examination.

(By Mr. Burr):

Q. Mr. Goodwin, I wasn't emphasizing the lost time. Are all accidents reported, whether lost time or otherwise, in the mine?

A. Regardless of how slight an injury a man gets, he is supposed to report it to the mine foreman and outside tally man and be written up, whether he reports to the doctor or not.

Q. That is without reference to whether he is off at all or not?

A. Yes, sir.

Q. And when he is off on lost time, does he get a return to work slip from the doctor?

A. Yes, sir, he gets a return to work slip from the doctor, and gets it O. K.'d by the superintendent's office.

Q. The company has records of all accidents, whether lost time—

Mr. Harris:
I think Mr. Burr is leading him.

The Court:
I think we have gone into that enough.

Mr. Burr:
I don't think it has anything to do with the question here. If it becomes material we have our records to show—

The Court:
It is not material.

Mr. Burr:
Come down.

(Witness excused.)

The Court:
Who is your next witness?

Mr. Burr:

I think I will take Mr. Halfpenny next.

I have three or four other witnesses here, but it is repetition of the same testimony.

The Court:

I think if it is repetition—

Mr. Burr:

It is. You can tell. It is a different mine, but it is the same general proposition. For instance, I have got Mr. Stone here, but his testimony would be very similar to that of Mr. Carter and Mr. Goodwin.

The Court:

Well, we have enough to do without repetition.

Mr. Burr:

Come around, Mr. Halfpenny.

1756 JOSEPH HALFPENNY, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. Mr. Halfpenny, what are your initials, please, sir?

A. Joseph Halfpenny.

Q. In order that I can ask this question first, were you born in the United States or not?

A. No. I am a man of Kent. I was born in Kent, England.

Q. What kind of education did you have in England before you came here?

A. My formal education was at St. Peters, Tornbee Hall, and Woolwich. I didn't graduate because there were no industrial degrees at that time.

I got my technical training and experience with the Great Eastern—

Q. What kind of company was that?

A. A railroad company, had shops—

Q. When did you come to the United States, Mr. Halfpenny?

A. In—Must have been—Let me see,—1917, to take care of coal shipments from Hamilton, West Virginia, for the British Government in Canada.

Q. And have you been here ever since then?

A. Yes. After the Armistice I came down with the Tennessee Company.

Q. When did you come with the Tennessee Company?

A. In the Fall of 1918.

Q. And what position do you hold with them at the present time?

A. Chief Industrial Engineer.

Q. You are, then, the head of the Industrial Engineering Department?

A. Yes, sir.

Q. Just tell me in a general way what are the duties and responsibilities of that department?

A. I report to the two vice presidents, one in charge of raw material, and the other in charge of manufacturing operations.

I am responsible for all hourly wage rates, all methods of wage payments, and am a member of the classification committee on salaries, chairman of the salary committee for the United States Steel Corporation, and a member of the wage committee of the Tennessee Company.

Q. Did there come under your direction and supervision in your capacity as Chief Industrial Engineer, the classification of jobs and the evaluation of jobs?

A. Yes, sir.

Q. Does there also come and has there come under your supervision and the supervision of your department the consideration of the wage structure?

A. Yes, sir.

Q. And wage increases that are granted?

A. Yes, sir.

Q. And things of that sort?

A. Yes, sir.

Q. Mr. Halfpenny, did you have charge of assisting in the devising and installation of what has been referred to here by the witnesses as the incentive plan?

A. Yes, sir.

Q. Do you recall when that plan became effective; when it was first put into operation?

A. It was effective May 1st of 1936, but didn't operate until August 19, 1936.

Q. Before it was formulated as a plan had there been any preliminary studies or suggestions made by you or by others under your supervision about—

Mr. Brodie:
I object to that, if the Court please.

The Court:
Overruled.

Mr. Brodie:
And in order that there may not be any misunderstanding, is it understood that I have an objection and exception to all this line of testimony respecting the incentive plan?

The Court:
Yes, sir.

Mr. Burr:
That is all right.

Q. Did you understand the question?

A. Yes, sir.

Q. Please answer it.

A. Studies were made by mining engineers over a number of months of operations at the iron ore mines principally.

There was a break down of the various kinds of work, and time studies were made setting forth in detail the time occupied in loading, drilling, shooting, dragging, delayed time and the reasons for the delays and so forth, and as a result, the management of Red Mountain, Mr. Ball, recommended—

Mr. Harris:

We object to that.

Q. Never mind what he recommended. Tell what was done and how the plan was reached.

A. All right. I was asked to approve a straight tonnage rate. I looked into it and found on a fair day's work that tonnage rate would be 22½ cents a ton. That means if a man or crew mined ten tons they would get paid for ten tons, and if they mined a hundred and fifty tons they would get paid for 150 tons.

From an industrial engineering standpoint, that was not sound, so I recommened, and it was adopted, that an incentive plan be substituted for the tonnage basis, and instead of paying at the fair day's production of 150 tons per crew 22½ cents per ton, the incentive plan paid at 134—I should have said 168 net tons. It was put in on a gross ton basis. I will think back in net tons now. Instead of paying 22½ cents per net ton, we paid 28 cents per ton for 134 net tons, which was at 80 percent of the standard.

Q. Let me see if I understand that. Eighty percent of the standard,—how did you reach the standard?

A. The standard was 168 net tons.

Q. How did ~~you~~ find out that was the standard?

A. That was developed from the studies made which showed about one-half of the eight hours work at the face was productive time. As a matter of fact, the exact figure, I think, was about 4.4 hours. The rest of the time, 3.6 hours, was taken up with delays, with unnecessary things that were done, with overlapping and so forth. There was a nine man crew. The head miner was boss and didn't work and bossed the crew.

Q. That was under the old system?

A. Yes. There were two drill helpers when one was more than sufficient, so automatically the crew necessary was indicated to be seven men.

At the rate of production by the nine-man crew per man per hour, translated into the 7-man crew, together with the additional unproductive time which was made available for production, the standard began at 168 net tons,—just a simple arithmetical calculation.

When the incentive plan—I said we paid 28 cents per net ton instead of 22½ with the result that with 100 percent prformance of ore production, or 168 tons, the crew got 10 percent over their occupational rate, which was an evaluated rate for that job for eight hours work on that kind of work.

When the—from the 100 percent performance to 120 percent performance, we paid 25 cents.

The result was that at 120 percent of performance the curves cross the straight tonnage curve and the percentage curve, and we paid exactly the same in the incentive plan as the tonnage basis of 22½ cents per ton. Up until that time we were paying more on the incentive plan than we would on a straight tonnage basis, but from then on the company would get their innings, and after that time it ran below 20 cents as you got to 140 percent and so on efficiency.

Q. As I understand by that the two lines crossed?

A. Yes, sir.

Q. Up to that point under your incentive plan the men were getting more than they got before?

A. Yes, sir.

Q. After that point, after the production exceeded that point, the company began getting—

A. Yes, sir, the company began to gain after 120 percent performance.

Q. Did the men get more too as they passed beyond that point, or not?

A. Oh, yes; they got 10 percent at 100 percent of standard, 20 on 120 percent, 30 at 140 percent, and so on over their occupational rates.

Q. In fixing your occupational rates, was each job valued?

A. Yes, sir.

Q. How did you reach that valuation?

A. First of all a job description is made up, covering everything that the job is responsible for. That is also broken down to show how much time is spent on each particular duty, the equipment that is used, the supervision that is exercised, and the responsibility that is involved.

For example, we take the view that every man is responsible for his own safety.

Secondly, he is responsible for the safety of the people working around him.

Then he is responsible for the safety of the people he supervises.

Then he is responsible for the equipment he uses; he is responsible for the supplies and materials he uses; he is responsible, too, for the quality of the material that he produces.

We then make an allowance for his experience. It takes a certain number of years to acquire certain minimum experience to do certain jobs. A certain minimum education is required. Allowance is made for that. A certain known skill, which is a combination of experience and education, is also required. Then accuracy is very vital in many occupations underground.

Then there is a question of the surroundings, the hazards of the job, the conditions of the job, whether it is wet or dry or dusty or hot or cold or whatever it may be, and then there is the physical effort required, and then on top of that there is an element known as fatigue which is a combination of mental effort, physical effort and the amount of work which is done.

All that is added up. Then we have the given occupation, a given occupation or rate to be paid a head miner. A tabulation results, which through the years, has acquired a certain—.

Q. And that supposed experience over the years with reference to the amount of production you worked your standard up on would be considered too, would it?

A. Yes, sir.

Q. In that way, without going into detail, each job was evaluated separately?

A. Yes, sir.

Q. And in making that evaluation, was it made on a 10-hour day or 8-hour day?

A. Eight-hour day.

Q. Was every calculation made on an 8-hour day?

A. Eight-hour day.

Q. Were the calculations on work time or traveling time?

A. Work at the working place.

Q. Were all calculations made on that basis?

A. Yes, sir. We found that the drill helper, who was paid three cents less than the mucker, was doing just as good a job and worth just as much as the mucker, and we changed that rate to the same as the mucker on the incentive plan.

Q. You say by reason of the strike the incentive plan didn't go into effect until August 19th?

A. August 19th.

Q. That was under the Governor's settlement, you will recall?

A. Yes, sir.

Q. Has it been in effect ever since?

A. Yes, sir.

Q. In effect now?

A. Yes, sir.

Q. Have you had anything to do, Mr. Halfpenny, with any—with the wage increases that have been made since that time and wage adjustments growing out of negotiations with the committees of the unions and employees?

A. Yes, sir. I am instructed, after agreements are come to, for any reason, between employees or by an opinion or decision of management, to make the necessary changes or adjustments.

In 1934, for example,—

Q. I want you to start there and tell me the times that there have been adjustments following these negotiations.

A. In 1934 there was a general ten percent increase, but there were many adjustments also. In some cases we found ten percent was not enough, and that was adjusted.

Q. Wait a minute right there. When you gave that ten percent increase and gave the specific increases on jobs in addition to that, were those on basis of eight hours, face to face?

A. Yes, sir, and unless I say to the contrary, all my calculations were on face to face. I know nothing else.

Q. Have all your calculations been on an eight-hour basis?

A. Yes, sir. Our wage scale bears that at the head of its caption.

Q. You mentioned the 1934 increase. When was the next one?

A. On June 28th, the same year.

Q. What was that increase?

A. It was not a general wage increase. It was known as a general wage adjustment. A substantial number of wages were adjusted on Red Mountain.

Q. Was that following an investigation of certain complaints?

A. I can't say; I understand so.

Q. When was the next adjustment?

A. The next was the incentive plan, which increased earnings but did not increase rates.

Q. Off hand, can you give me how much it increased the earnings during the year 1940?

A. I couldn't give you in money, but between 5 and 10 percent.

Q. It amounted to—

A. Increased earnings.

Q. After that, when was the next wage increase?

A. After the incentive plan in August, 1936, there was a general wage increase November 16th. For the first time departures were made from a general overall percentage basis.

Before the increases and decreases of a general nature were either 10 percent increases or 10 percent decreases, or 15 percent, whatever it might be, but in November, '36, a new method was applied, so many cents per hour, and according to the hourly rate, so many cents were added, common labor receiving the highest number of cents per hour and being less as it went up.

Q. Still on the basis of 8 hours at the face?

A. Yes, sir.

Q. All right.

A. On March 16, 1937, another general increase on a similar basis, so many cents per hour, and since then, there have been individual adjustments, usually on request of the men, but sometime on the request of rate adjustment on the part of the management for about 15 specific occupations where advances were made, and rates were adjusted.

That brings us up to May 1st.

Q. Well, wasn't there a general increase of ten cents an hour? When was that?

A. May 1st of this year.

Q. May 1st of this year?

A. Yes, sir.

Q. Was that effective May 1st or April 1st, that general increase of ten cents an hour?

A. May 1st—

Q. I see.

A. No, April 1st is right. That is right. I was thinking of the portal to portal.

Q. The wage increase was effective April 1st.

A. Yes, sir.

Q. And ten cents for each employee?

A. For each hour worked.

Q. All those followed negotiations between the employees and the management?

A. So I am informed. I can't speak directly as to that.

Q. Now, did you have charge of working out the—such changes as were necessary in your wage structure to put in the portal to portal plan on May 1st?

A. Yes, sir.

Q. Well, now, will you explain to the Court just how you did change the incentive plan to meet that situation?

A. We did not change the incentive plan. We simply changed our base of eight hours of work to six and a half hours of work, so that the incentive standard was the man hours directed to six and a half hours instead of to eight hours, a difference of a little better than 18 per cent less.

Q. Do I understand by that that the man's—under the portal to portal system you are now operating under the wage scale, the man begins to participate in the earnings on the same proportion, you might say, that the six and a half hours bears to eight hours?

A. Yes, sir.

Q. How much is that per ton?

A. It isn't a per ton base. The percentage is not on a per ton base. It is on a standard base, the production per man hour.

What you want to know is has it resulted in the men earning more incentive pay?

Q. Yes.

A. Yes, it has.

Mr. Harris:

We object to that, if the Court please.

Q. That is what I want to know. Has it resulted in the men earning more incentive pay under the six and a half hours, than in the eight hours?

A. On a percentage basis. Not more in money.

Q. How much is it on a percentage basis?

A. About 15 percent. It was about 5 percent before.

Q. Formerly, how much did they have to get out, a seven man crew,—how much did they have to get out on the eight hours before they began sharing in the incentive earnings?

A. Prior to the installation of—

Q. Yes, sir, prior to May 1st.

A. You might repeat that. I didn't quite get that.

Q. When they were working on the eight hours face to face—

A. Yes, sir.

Q. —how many tons did the 7-man crew have to produce before the men began to get incentive earnings?

A. 134 net tons.

Q. Since May 1st, how many do they have to produce?

A. 81 percent of that.

Q. 81 percent?

A. I don't know what the exact figure would be.

Q. That gives it. Now, since the new system went into effect on May 1st, has there come under your department and your supervision the question of the amount of production—

Mr. Harris:

Same objection.

Q. —as contrasted since then—

The Court:

Overruled.

Q. —with the period before then?

A. I have had the responsibility of reporting if production is not what we find it should be, and production has dropped approximately 10 percent.

Q. Have you got the actual figures?

A. They are available, if you want them.

Q. I want to get them now.

Mr. Harris:

I assume we have the same objection.

The Court:

Yes, sir.

Mr. Burr:

Suppose you mark this series of exhibits.

The Clerk:

This will be 24.

Mr. Burr:

And make this 25.

(Thereupon a statement showing iron ore tonnage deficiency during May and June, 1941, based upon average tons per turn for January, February, March and April, 1941, was marked T. C. I. Exhibit No. 24.)

(Thereupon a graph entitled "Statement Showing Iron Ore Tonnage Deficiency during May and June, 1941, Based Upon Average Tons Per Turn for January, February, March and April, 1941," was marked T. C. I. Exhibit No. 25.)

Q. Mr. Halfpenny, I am showing you Tennessee Company's Exhibit 24, and I will ask you to state whether or not that is a correct statement of the production by tons and by percentages—

A. Yes, sir.

Q. —as appears there?

A. Yes, sir.

Q. In order that the Court can understand it, I notice in the left hand column under the heading, "Mine Number," is Mine Number 4. Mine Number 4 is one of the Muscoda mines, I believe?

A. Yes, sir.

Q. You have in the next column standard tons per turn, 1390, and you have an asterisk indicating "Standard Tons per Turn Based upon January, February, March and April, 1941."

A. Based on eight hours work at the face, that would be the production per turn based on the experience.

Q. And the turns operated were—

A. Forty-four in May.

Q. Forty-four in May?

A. And if those 44 turns had been the same kind of 8-hour turns as they were in the first four months of 1941, the production would have been 61,160 tons.

Q. What did they actually produce?

A. They actually produced, because the turn was 6½ hours of work, 56,376 tons, a reduction of 4,784 tons, or a reduction of 7.82 percent.

Q. That is true on down for each one?

A. Yes, sir.

Q. That is made out for the months of May and June?

A. Yes, sir.

Q. Those are the only records available at this time?

A. Yes, sir.

Mr. Burr:
We offer that in connection with his testimony.

Mr. Harris:
We object.

The Court:
Yes.

Q. We ask you to examine next Tennessee Company's Exhibit 25, which purports to be a graph, I think I will call it. Will you explain to the Court what those lines indicate there, what they show by—

A. This shows the tonnage deficiency during May and June, 1941, based on the average tons per turn for the first four months of the year, showing each day during the two months of May and June with a broken curve to indicate the production based on the first four months and the solid curve showing—

Q. The broken line showing standard production, eight hours face to face, first four months of 1941?

A. Yes, the broken line showing standard production, eight hours face to face, first four months of 1941, and the solid line showing the actual production, portal to portal for the months of May and June.

The Court:
  That is merely a graph?

Mr. Burr:
  A graph of the other.

The Witness:
  In graph form what you had there in the statement.

Mr. Burr:
  That is all.

Cross Examination.

(By Mr. Harris):

Q. This incentive plan is something, to use an American expression, that you are the daddy of, isn't it?

A. No. It is what is known as the Halsey 50-50 plan, with which all economists an industrial engineers are thoroughly familiar. There are a number of incentive plans, but this is one everybody is perfectly familiar with. For instance, this plan is in use in the Carnegie-Illinois Steel Company and the Bethlehem Steel Company and I think Westinghouse uses it.

Q. The Carnegie-Illinois is a subsidiary of United States Steel?

A. Yes, sir.

Q. And then Bethlehem is another steel producer, isn't it?

A. That is right.

Q. Now, when you started working on this incentive plan, did you go and consult the workers to ask them whether they wanted an incentive plan?

A. No, that doesn't come under my jurisdiction. That is a matter for our Industrial Relations group. I haven't got that responsibility.

Q. Did you consult the union leaders to see whether they wanted an incentive plan?

A. That is not my responsibility.

Q. Did you call in any laborer, any ore miner, any mine foreman or any union officers to help you or assist you in your accumulation of factors or evaluation of factors that went into your calculation?

A. Can I break that up into about three parts, that question, and answer them separately?

Q. Yes.

A. The first part of it was did I discuss the question with any employees or unions or foremen. So far as foremen and employees are concerned, yes. I presented the plan to the head miners first—

Q. Where did you—

A. Just a minute. —and at that meeting Mr. Ball and the various mine superintendents were present. The thing was gone into in great detail, explained to them minutely. They asked questions and they were answered, and they were all given a copy of it to take away with them. I think we gave away on that particular day 180 copies.

Q. You couldn't give them copies unless you had already figured out the plan?

A. You said had I discussed with them—

Q. Before—

A. That is another part of the question.

Q. That was the first part. Did you do it before you figured out your plan?

A. No.

Q. You figured out your plan and had 180 copies of it and distributed them?

A. Yes, sir.

Q. You used the term, a fair wage.

A. A fair day's work.

Q. Did you go to any of the men and ask them what a fair day's work was?

A. And they agreed it was. Have you got that thing which I presented to the men in which they agreed it was a fair day's work?

Q. I mean before you figured out your percentage plan?

A. I am still at a loss to understand you. I don't see how I can take up anything with anybody before I figure it out. Give me the papers.

Q. Wait a minute.

A. I will read it out.

Q. Did you ask the men what they thought was a fair day's work before you figured out your incentive plan?

A. No.

Q. Have you ever yourself been down in a mine and mined ore?

A. No, sir.

Q. Have you ever—

A. Let me finish the answer. I have been down in a mine and shoveled sand but I have never mined ore.

Q. Have you ever been down in a mine and served as a member of a timber crew?

A. No, sir.

Q. Or a track crew?

A. No, sir.

Q. I believe you say you got your education in England?

A. Yes, sir.

Q. And during the World War you represented the British Government?

A. Yes, sir.

Q. You don't represent the British Government now in this war?

A. Unfortunately, no.

Q. I presume you are an American citizen?

A. Yes, sir. I was naturalized in 1924.

Q. And when you were hired by the Tennessee Company to figure out this incentive plan, were you paid on a straight salary basis or did you get a salary plus a bonus?

A. Unfortunately, a straight salary.

Q. And are you still on a straight salary basis?

A. Yes, sir.

Q. And have been since your incentive plan went in?

A. Since my employment.

Q. And in working out the incentive plan, you, as an efficiency engineer,—I suppose you could call yourself an efficiency engineer?

A. Names don't make much difference.

Q. What is that?

A. Names don't make much difference. They judge me on what I do.

Q. You said you were an industrial engineer?

A. Yes, sir.

Q. And since you named it, I wanted to know whether you would name it that you were an efficiency engineer?

A. The history of the term of industrial engineer goes through that phase. Some few years ago that was the term used.

Q. Your object in working out the incentive plan for the Tennessee Coal, Iron & Railroad Company was to devise a plan here that they would get a maximum return for the least expenditure of wages, was it?

A. No, sir. My instructions were any plan I devised must be such as the men could not lose but they could only gain, so, therefore, the first thing I had to do was to get official indorsement of a guarantee, you see, for the eight hour period worked at the occupational rate for each of the men working, whether they produced one ton of ore or not,—a wage that they got even though they didn't produce anything. In other words, those were my instructions, they must—

Q. You mean you must get official indorsement from the company or get official indorsement of the men?

A. Get the official indorsement of the management, because they were paying out money, which, in some cases, would be for nothing, so I had to get the approval.

Q. Naturally your incentive plan results, if the men really stretch out and really put forth energy,—it results in them getting less for what they do after they reach 120 percent, doesn't it?

A. No, sir.

Q. Well, now, isn't it a fact up to 120 percent the men are gaining?

A. No, sir.

Q. At 120 percent then the two curves cross?

A. Yes, sir.

Q. And you testified a while ago after 120 percent then the company had its innings?

A. Yes, sir.

Q. All right. Then, the company after 120 percent, begins to derive more from it than the men do, don't they?

A. True.

Q. Yes.

A. And they have to go to 180 percent before they balance up for what they have overpaid the men from 80 percent to 120 percent.

Q. What they overpaid them?

A. Yes, sir.

Q. Do you mean you figured out a plan whereby from 80 percent to 120 percent your employer would be consistently overpaying the man?

A. That was the incentive.

Q. Paying them more than the work was worth?

A. That was the incentive.

Q. To pay these men in the ore mines more than their work is worth?

A. That is their incentive.

Q. And in paying them more than their work is worth, if they reach the 120 percent, as you have stated before, they are paid on a 25 cent per ton basis, and up beyond that it drops down to 22½ cents?

A. And down to 20 cents later on.

Q. So that actually the harder the man worked at the end of the day, and was producing more ore, he was getting less when he was working while fatigued and worn out for a ton of ore than he got for a ton that he produced in the early part of the day, didn't he?

A. I don't want to go into all the details—

Q. But I want you to answer the question.

The Court:

Answer that question yes or no.

A. No.

Q. Suppose he produces up to 119.99 percent; he would get a certain rate?

A. Yes, sir.

Q. Then suppose he produces up to 130 percent; that last 10.01 percent, he wouldn't get paid for at the same rate he got paid for on the other?

A. No, sir, paid less.

Q. Paid less?

A. Without all those adjectives about fatigue and so forth.

Q. I want the figures.

A. The men are not fatigued when they get through. That is an overall constant.

Q. Overall constant?

A. Yes, sir.

Q. Don't you know fatigue is a variable, and starts here on a level,—a man is fresh and has no fatigue,—and as the hours of labor increase his fatigue increases; it is almost a matter of arithmetical progression before it gets through.

A. If it were possible for a man to work straight through he would drop dead. You exercise and relax; you exercise and relax. If motions are properly synchronized, you can maintain a fatigue level all through. You can tell that by seeing the men running home from work.

Q. Running home from work?

A. Yes, sir.

Q. Did you ever seen them running out of the mines—

A. Yes, sir.

Q. —with the steel and oil and the wedges and hangers hanging on one arm, and their lunch basket on the other arm, and running out of the mines to get to the skip?

A. There used to be a term called the race to the bath house. Perhaps you have never heard of it.

Q. I asked you if you had ever seen them running from the place of work to get to the skip. I asked you a specific question.

A. No, sir, because they would be underground, and I don't think I had ever been underground at that time.

Q. You mean you figured—

A. I have seen them on the surface running home.

Q. You mean you figured all this incentive plan out for these men without being underground?

A. No, I have been underground, but usually during work time; usually quit before the men did, so, for convenient reasons, there would not be any hold up of the men.

Q So you were never there to see whether the men were joyously running home?

A. Not underground.

Q. Don't you know in human experience the longer a man works the greater the fatigue becomes until he can't work at all?

A. I said if he continued to work he would drop dead.

Q. He has to have a long period of relaxation?

A. ~~No. In~~ some shops it has been found five minutes per hour compensates; in some it is ten minutes.

Q. It doesn't make any difference if he gets five minutes rest an hour,—it doesn't make any difference whether he works eight hours or 18 hours?

A. On some kinds of work, no, but I would say that experience—

Q. Does it go up—

Mr. Burr:

Let him answer.

A. —has shown eight hours is about the basis, although Levy Brothers, some while ago, started an eight-hour turn and worked straight through, and they got very good results there.

Q. You don't eliminate sleep from the necessity of a working man?. He has got to have some time to go to sleep?

A. If he will avail himself of it, he would.

Q. Is it your idea a man would be just as efficient and produce just as much working 16 hours a day as working eight hours a day?

A. No, sir.

Q. Would the rate of production go down if he worked 16 hours?

A. I would say it would go down considerably.

Q. Whereabouts does the rate of production in your calculations start to go down?

A. I would say after eight hours work.

Q. That his point or his zone of maximum efficiency ends at eight hours?

A. With proper allowance for personal and fatigue rests, eight hours would be about the maximum efficiency overall.

Q. By eight hours, you mean eight hours of physical effort, is that what you mean?

A. Yes, sir.

Q. And whether that physical effort is holding a drill or holding a jackhammer, or carrying tools, or climbing up 134 steps, it would still be an eight hour period of physical effort, wouldn't it?

A. On that type of work, I would say yes.

Q. The men, when the incentive plan was handed to them,—do you remember what day of May, 1936, the incentive plan was handed to the men?

A. I think it was before, but I can't remember the dates. I think it was just a few days before.

Q. How long was it after the incentive plan was handed to the men who worked down under the earth that these men went on strike?

A. I think it was about a week.

Q. About a week. Now, the incentive plan that you devised cut down the number of men on a crew, didn't it? Before you devised that plan a crew consisted of nine men?

A. Yes.

Q. When you got through with it, it consisted of seven men?

A. Yes.

Q. So you were cutting down the number of men you were paying what percent?

A. As 2 is to 9.

Q. As 2 is to 9?

A. Something like that.

Q. So that would be 22-2/11 percent?

A. Something like that.

Q. And you cut down the producing basis only 20 percent, didn't you?

A. I increased the production basis. I didn't cut it down. I increased it. I expected the 7-man crew to produce more than the 9-man crew.

Q. So, you were—the company had been overpaying them up until the time you put this in, and you cut down the amount of overpay the company had been giving them?

A. Yes, sir. They had been substantially overpaid before then.

Q. And you cut it down for the company?

A. I cut it down to a fair day's work.

Q. Now, the result of your incentive plan, if the men worked harder and did produce above the 120 percent, did increase their day's production per man, that made the number of men necessary to be employed in the operation less, didn't it?

A. Yes, sir.

Q. Now only in the particular crew, but throughout the mines?

A. Yes, sir.

Q. So that at a time when unemployment was rampant in America you were fixing it so that fewer men would do more work instead of giving more jobs to more men, weren't you?

A. Yes, sir. That is the history of American progress, the development of methods whereby men can produce more in the same time. I am very proud of it.

Q. And the curve of American progress has been constantly getting more production out of the men, hasn't it?

A. Yes, sir.

Q. Now, have you, in your mathematical calculations, drawn a graph and figured out the breaking point when they will no longer be able to make money out of the men?

A. I don't think there is such a point. You see, these things go together. You don't simply have the effort of the man by himself, but you have improvements in the method of operation, improvements in machinery. They all go together with the result your production per man will increase, your earnings per man will increase, and the cost of your unit you produce is reduced by the fact that the total bill for every item that goes into the finished product is reduced per unit, and that includes labor and everything, sir.

Q. And mathematically speaking, your problem is to get the maximum result in the production with the minimum cost?

A. With the highest possible earnings,—always higher earnings.

Q. But your major problem is to get it at less cost?

A. The cost is outside my province. I am concerned with greater production, and if I am not mistaken, that means a decreased cost.

Q. And reduce men?

A. Yes.

Q. And it will keep on reducing the men necessary for the work?

A. In that particular line of work, but you will increase the necessity for men in other fields of work.

Q. You mean by other things and different lines of business?

A. I mean automobiles and so on. Of course, the standard of living increases as you increase the production per man hour.

Q. But you mean by paring them off the steel industry and ore mining industry, and as you pare them off, and as other efficiency engineers pare them off, then they will be available to somebody else until you get a—

A. That is how you elevate the standard of living.

The Court:

I think you have gone into that enough.

Mr. Burr:

I will want to ask him one question when he is through.

The Court:

I don't mean to cut you off.

Q. When you used the term fair wage, you were limiting a fair wage to the factor of production, what they had produced before?

A. The fair wage, as I told you, was based on what is known as our manual of wage or job evaluations. First of all is responsibility. We believe most any kind of a job has responsibility. That is responsibility for the safety of yourself—

Q. You went into that?

A. Yes, sir.

Q. I don't want you to repeat it so I will ask my questions.

A. Yes.

Q. In figuring your fair wage, did you go into the other angle or other end and figure out what the employees' needs were; did you take his needs into account in figuring out what was a fair wage for him?

A. No. A fair wage is based upon the pool of the district. In every district—for example, in this district there are certain key jobs which have existed over a long period of years, and through the hurly burly of the market have acquired certain values in relation to other jobs. Bricklayers, for instance, are paid so much, and miners are paid so much; and there is a relative value between those various jobs that is pretty well established throughout the district.

Q. All right.

A. So, in attempting to establish a fair rate, the industrial engineer takes a key job like a head miner or brick layer and determines the rate for that in comparison with other similar jobs.

Then there is another constant which changes more rapidly than the other, and that is the common labor rate. So, to put it roughly, if you draw a line from, say, 45 cents, the common labor rate, up to 97 cents, the machinist rate, or 77 cents, the head miner rate, you get a like curve by which you can establish a fair wage for all occupations are they are related to those two jobs.

Q. So that means, when you say you were figuring out a fair rate, that meant you were figuring out a fair evaluation of the rate for that job to receive in comparison with the existing rates that were paid in that district, doesn't it?

A. Existing, established rates,—put it that way.

Q. Existing, established rates?

A. Yes, sir.

Q. Now, you took those rates, whatever they were,—

A. Yes, sir.

Q. And you integrated them, so to speak,—

A. Yes, sir.

Q. —and arrived at a fair rate for a particular job?

A. Yes, sir.

Q. You didn't go back—suppose you found that man over here in a plow factory making plows, and he is getting a certain amount of pay per day; you took that as a constant, which entered into your calculations, didn't you; he was getting so much; you didn't make any inquiries from a social or human relation standpoint to see whether or not the man in the plow factory was actually being paid value received for the amount of work he produced, did you?

A. Well, we took a key position right on Red Mountain, the head miner, and we did go into that to see whether he was paid a fair wage for what he was doing.

Q. But what I am getting at, you didn't go back into these established, existing wages paid throughout the district, and in other districts, and make any inquiry or investigation to see whether or not—

A. Yes, sir, we made a very complete investigation of all wages not only in this district but in all other districts of the United States, and among other things, it is my responsibility to keep up to date with the statistics published by the Department of Labor with regard to the cost of living and wages and so forth, we find them very helpful, and particularly on the production, because Mr. Jackson of the Bureau of Mines confirmed everything we did.

Q. I don't want you to go off into a conversation with Mr. Jackson.

The Court:

Confine your answers to his questions.

Q. In taking established, existing rates, you took that in 1935 and 1936, didn't you?

A. Yes, sir.

Q. The depression was on then, wasn't it?

A. Yes, sir.

Q. And the established, existing rates in 1935 and 1936 were nothing like as high as they were in 1929 and 1928 before the crash and depression?

A. Yes, sir.

Q. What is that?

A. Yes, sir, they were not.

Q. They were not?

A. No.

Q. And all these factors that you went into and took into calculation, the Wage and Hour law came in and wiped out a lot of that, didn't it?

A. No; that just changed the curve. You see, when you elevate the common labor your curve, instead of going that way,—this was less,—started that way and flattened it out.

Q. That changed the way of distributing this fair wage you are talking about?

A. But I may add since November of 1936 this method of adding so many cents per hour, rather than a flat ten per cent, is also doing the same thing because ten cents per hour means about 22 percent increase in the common labor rate, whereas on the craftsman rate it means about ten per cent.

Q. So, the common labor—.

A. Is gradually coming up.

Q. If—because he starts off with a less base, and an hourly increase is a higher percentage to him than it is to the other man?

A. Yes, sir.

Q. The incentive plan was not devised with any reference to the Wage and Hour Law, was it?

A. No, sir; that was before then.

Mr. Harris:

I think that is all. I don't think I want to ask him anything else.

Mr. Burr:

Judge, I have about three minutes, and I will be through.

The Court:

I think we will take him up tomorrow morning. While we think of it, the Court will recess on Friday until Monday morning, and we will recess according to the new daylight saving time, the government time.

We will recess—Court will convene tomorrow morning at 9:30.

(Whereupon at 4:35 P. M., July 16, 1941, an adjournment was had to 9:30 A. M., July 18, 1941.)

July 18, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:
Who will you have?

Mr. Burr:
Mr. Halfpenny was still on the stand.

Mr. Harris:
I have no further questions.

The Court:
You have no further questions?

Mr. Harris:
I have not at this time.

The Court:
Do you want to ask some questions?

Mr. Burr:
Just a minute, Judge.

1789 JOSEPH HALFPENNY thereupon resumed the stand, and having been previously sworn, testified further as follows:

Re-Direct Examination.

(By Mr. Burr):

Q. Mr. Halfpenny, on cross examination yesterday, Mr. Harris asked you about whether or not you discussed the incentive plan after you had designed it in the way you told us you did design it, and I believe you said you did with the Union; was that what you said?

A. You mean—

Q. The union committees. Did you discuss it and explain it to the committees of both unions? I believe there were two at that time, one called the Brotherhood and one called the Smelters Union?

A. Yes, sir.

Q. Now, at that time did you have this synopsis or memorandum you asked for yesterday giving a description of the plan?

A. Yes, sir.

Q. Is this the copy you had and read over to the men?

A. Yes, sir, and gave them copies.

Q. Gave each of them copies?

A. Yes, sir.

Q. Did you discuss it with them item by item?

A. I read it entirely.

Q. Read it entirely?

A. Yes, sir.

Q. During that discussion did any of them make any complaint or raise any complaint about the plan because it was based on the face to face basis or not?

A. No, sir.

Q. Did not?

A. No, sir.

Q. The discussion occurred whereabouts?

A. At Mr. Ball's office on Red Mountain, and then at a room in the commissary on one occasion.

Q. What was that meeting?

A. When we discussed it with the head miners.

Q. In addition to the meeting with the union committees you discussed it with the head miners also?

A. Yes, sir.

Mr. Burr:

We want this identified, if Your Honor please.

The Clerk:

It will be T. C. I. Exhibit 26.

Mr. Burr:
All right; we offer that.

(Thereupon the synopsis of the incentive plan was marked T. C. I. Exhibit No. 26.)

Q. I am not competent to get into an economic discussion with you, but I want to ask you one or two facts. Did this incentive plan, did it or not increase production?

A. Yes, sir.

Q. Did it or not increase the wages of the men?

A. Yes, sir.

The Court:
He has testified to that, Mr. Burr.

Mr. Burr:
I didn't know whether he had testified to it or not.

Q. You gave yesterday an oral statement of the changes you made in the incentive plan to take care of going on the portal to portal basis in May.

A. Yes, sir.

Q. I want to show you a paper—

Mr. Burr:
Mark this, please.

The Clerk:
T. C. I. Exhibit 27.

Q. —marked T. C. I. Exhibit Number 27.

Mr. Burr:
Do you want to see it before I ask about it?

Mr. Harris:
What is the date?

Mr. Burr:
May 1, 1941.

Q. I want to ask you if this is a statement of the changes you submitted to the management and also to the employee as to what changes should be made—

Mr. Harris:
I understand that is subsequent to 1938, and we all have an objection to the evidence about the incentive plan.

The Court:
Yes, sir.

A. Yes, sir.

Q. Will you explain ~~that to~~ us?

A. It is a statement showing the application of the incentive plan to the proposed work day of six and a half hours in the face as compared with the work day of eight hours, and it takes a typical crew of seven men, and shows the application on—shows the conditions when the number of hours of face to face work is eight and the conditions when the number of hours is portal to portal, six and a half. Then the number of tons per man hour is shown. The standard tons per man hour was the same, three tons.

Q. You mean by standard—what do you mean by standard?

A. Standard means the pay starts—

Q. The incentive pay begins?

A. Yes, sir.

Q. Go ahead.

A. And then the relative percentages of the standard.

Q. What is the standard?

A. In the case of eight hours, 134, and in the case of six and a half hours, was 120.

Q. What is the standard—

A. The same; three tons per man hour. If you want me to answer what we have experienced, that is a different thing, but this statement was made before.

The Court:

We will not go into that.

A. It gives the ton earnings, the hourly rates, travel time, the amount of the incentive earnings, the total earnings, which include the traveling time, the loss of incentive earnings because of working an hour and a half less, and then it goes into these different things which ought to come out of this statement.

Mr. Burr:

We don't offer anything in reference to our costs. I believe his explanation is clear enough without offering this as an exhibit.

The Court:

That is Exhibit 27?

Mr. Burr:

Yes, sir. We will just—we will not use it.

The Court:

Sir?

Mr. Burr:

I will not use it because it has got these cost items on it

The Clerk:
Just withdraw it?

Mr. Burr:
Yes, sir.

Mr. Harris:
I inquire of counsel and the Court, you used that as a basis of his testimony?

Mr. Burr:
I will just withdraw his testimony in reference to it. That is the best way to handle it.

The Court:
All right; withdrawn.

Q. Now, you were asked the question as to whether or not in your consideration of this incentive plan and putting it into operation, as to whether or not you considered the Wage and Hour Law and you said of course you didn't, because it wasn't in effect at that time.

I want to ask you this question, Mr. Halfpenny: If at any time the minimum wages paid the underground ore miners in the last, say, ten years have ever been as low as thirty cents an hour.

Mr. Harris:
We object as calling for a conclusion of the witness.

The Court:
I sustain it.

Mr. Burr:
We except, Your Honor. It is not a conclusion. It is whether or not he knows what they have paid.

Q. Could you tell me--

Mr. Harris:
It is also immaterial.

The Court:
I don't see where that is material, Mr. Burr, is the reason I am sustaining it.

Mr. Burr:
All right, sir. That is all I care to ask him.

Mr. Harris:
I have only two questions, I think.

Re-Cross Examination.

(By Mr. Harris):

Q. You were in a conference with Mr. Ball and representatives of the union when the incentive plan was discussed before it went into effect, weren't you?

A. Yes, sir.

Q. And in that discussion your first proposal was to take 150 tons as 100 percent basis for a crew, wasn't it?

A. No, sir.

Q. There never was any discussion—

A. No, sir.

Q. —where 150 tons was the basis?

A. The 150 tons has always been the standard with 80 percent of that as the point on which the incentive was earned.

Q. Wasn't there a time when it was 168 tons?

A. No, sir. It was 150 gross tons, but later it was changed to 168 net tons. The corporation changed everything to net tons.

Q. 150 gross tons is the equivalent of 168 net tons?

A. Yes, sir.

Q. In your investigation and calculation you arrived at 1-½ hour per shift as the average traveling time of the men, didn't you?

A. Not at that time. That wasn't brought into calculation at that time at all.

Q. When was it you made the investigation and arrived at 1-½ hours as the average traveling time?

A. I didn't make that investigation directly, but I think that was done since this portal to portal came up.

Q. Now, in the discussion with Mr. Ball and the Union men, the company union objected, as well as the Union of Mine, Mill & Smelter Workers, to using 168 net tons as 100 percent basis?

A. No, sir.

Q. Nobody objected on the part of the workers?

A. No, sir.

Mr. Harris:

That is all.

Mr. Burr:

That is all, Mr. Halfpenny.

The Court:

Come down.

(Witness excused.)

The Court:

Next witness.

Mr. Burr:

If Your Honor please, I was trying to keep the introduction of this testimony kind of consecutive as between the different companies, but on account of sickness it is impossible to do that, so I will have—so I will not have any lost time I will have to go into the Republic Company.

There are several more witnesses for the Tennessee Company—

The Court:

How many more witnesses will you have for the Tennessee Company?

Mr. Burr:

Let me see, Your Honor. Most of them are short. They are witnesses to back up records. I will have Mr. Neal, is about the only witness,—if he gets well enough to testify,—he had to go to the hospital today. I don't know whether he will be able to testify or not. If he is not, I will probably use one of his assistants or mine foremen. That is Wenonah. Your Honor will recall I stopped Wenonah on account of his sickness.

The Court:

Yes, sir. We will take up the Republic Company.

Mr. Burr:

I think the rest of the Tennessee Company's witnesses will be short. They are witnesses on minor matters,—not minor, but small matters.

The Court:

Well, we will take up the Republic Company, then.

Mr. Burr:

Come around, Mr. Thompson.

1796 NORMAN E. THOMPSON, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

The Court:
What is your name?

The Witness:
Norman E. Thompson.

The Court:
Norman E. Thompson?

The Witness:
Yes, sir.

(By Mr. Burr):

Q. Mr. Thompson, what position do you hold with the Republic Steel Corporation, please, sir?

A. Superintendent of the ore mines, Republic Steel Corporation.

Q. And how long have you been superintendent of the ore mines of the corporation?

A. Five or six years over all the ore mines, and at various times over the different mines.

Q. Suppose we start at the other end of your mining experience. Are you a graduate of any college, or have any technical education?

A. Graduate of Michigan College of Mines.

Q. When did you graduate?

A. 1919.

Q. What degree did you receive?

A. Engineer of Mines and Bachelor of Science.

Q. After leaving college did you take up the profession of mining, you might say?

A. Yes, sir.

Q. Where did you first go to work, and in what capacity?

A. I went to work in the Minnesota Region for the Missaba Syndicate. I worked for them about six months and came to Alabama and worked for the Republic Company—

Q. While you were on the Missaba Range, what company did you work for up there?

A. A company called the Missaba Syndicate. They were pioneering in magnetic iron.

Q. Were they underground mines?

A. No; the work I did was on the surface.

Q. Then you came with the Republic Company?

A. Yes, sir.

Q. When did you come with them?

A. In 1919.

Q. What were those mines, underground or on the surface?

A. They had surface and underground mines. They had Raimund and Spaulding which were underground operations, and the Brown ore operations.

Q. Where were the brown ore operations?

A. Down about Reno.

Q. Where was the Spaulding Mine?

A. About three miles south of Birmingham.

Q. On what mountain?

A. On Red Mountain.

Mr. Harris:

Would you mind talking a little bit louder?

Q. And your Raimund mine?

A. Raimund mine is about a mile and a half from Bessemer on Red Mountain.

Q. How from your Spaulding Mine to your Raimund Mine?

A. About eleven miles.

Q. Is the same vein of ore mined at those two mines?

A. Yes, sir.

Q. Is the same quality of ore mined at those two mines?

A. There is a slight variation of quality.

Q. You served as engineer about how long?

A. About seven years, as I remember.

Q. And then became what, your present position?

A. Then I was sent to the brown ore mines as superintendent of our brown ore operations.

Q. That was down at Greeley?

A. Called Reno at that time.

Q. That was in Tuscaloosa County?

A. Tuscaloosa County.

Q. You stayed there how long?

A. Stayed there a year.

Q. And then went where?

A. Then I was transferred to our Spaulding mine as superintendent of our Spaulding mine, and about a year later I was put in charge of both Spaulding and Raimund mines. About a year later I was transferred to our coal mines and was assistant superintendent of mines in charge of our ore and coal mines.

Q. Coal and ore?

A. Yes, sir.

Q. Then after that?

A. Then after that I went back to the Raimund mines, and from then on I have been in charge of the Red Ore Mines of the Republic.

Q. That includes Raimund and Spaulding?

A. Raimund and Spaulding.

Q. Now has Spaulding been in operation all during this period of time or not?

A. No, sir. Spaulding has been operating intermittently over the period of the last twenty years.

Q. When was it last put in operation again?

A. In September of last year.

Q. In order to use that ore, to put it in operation, has any new process been devised by the company that has made that ore more acceptable or more usable than it was previously?

A. Yes, sir. A mill was built at the Spaulding operations to grind and beneficiate the Spaulding ore to increase the iron content and reduce the insolubles.

Q. As a result of ~~that is~~ that ore more usable than it was before?

A. The process is in a developmental stage, and it is going to develop a large ore body that heretofore has not been merchantable ore.

The Court:

That heretofore has not been or has been merchantable ore?

The Witness:

Has not been merchantable ore.

The Court:

That is still in the experimental stage?

The Witness:

It is still in the experimental stage, but we have reason to believe—

The Court:

You have gone far enough—

The Witness:

We have gone far enough to believe it will be a success.

Q. Are you using that ore now?

A. Yes, sir.

Q. Using it successfully?

A. Yes, sir.

Q. Have you found it is satisfactory for making pig iron?

Mr. Harris:

We don't see the necessity for going into that, if Your Honor please.

A. I will let the blast furnace man answer that.

Q. You don't go into that?

A. I just furnish the ore.

Q. Have you a map of the Spaulding and Raimund mines there?

A. Yes, sir.

Mr. Burr:

We will introduce that map.

Q. Is that the Raimund mine?

A. Yes, sir.

The Clerk:

It will be Republic Number 1.

(Thereupon a map of the Raimund mine of the Republic Steel Corporation was marked Exhibit No. 1.)

The Court:

What mine is that, Mr. Thompson?

The Witness:

This is the Raimund mine.

Q. Now, Mr. Thompson, will you indicate to the Court there—First, prior to May 1, 1941, how many slopes did you have at Raimund that were used?

A. We had—How many prior to 1941?

Q. Well,—

A. We had originally three slopes in the Raimund mines.

Q. Let's start when you first went out there. When you were first acquainted with Raimund, how many slopes—

A. When I first became acquainted with Raimund we were operating Number 3 slope, and operated it for a short period, about three or four months.

Q. Has it been operated since?

A. Has not been operated since.

Q. All right.

A. The Number 2 Main and Number 2 slope,—this is the Number 2 slope right here (indicating on Republic Exhibit No. 1)—were operated until 1931, and after 1931 the Number 2 slope was converted into a man and material slope and used for handling men and material, and all the ore was brought out through Number 1 slope. The ore was brought out from both areas through this slope.

The Court:

Is that indicated by the black line? Where is the ore brought out?

The Witness:

From over here it comes down in this direction—

The Court:

That is what I thought—

The Witness:

—and across here—

The Court:

Yes.

The Witness:

—and out this way.

Q. Did that continue to be the operation substantially up until May 1, 1941?

A. Yes, sir. That is the operation at the present time.

Q. As I understand, you use slope number 2 for hauling the men in? Which slope did you use for that?

A. Since 1931 Number 2 slope has been used—

Q. That is what I mean to say.

A. —to handle men and materials.

Q. But not ore?

A. But not ore.

Q. Number 1 has been used to handle ore?

A. Number 1 has been used to handle ore, and a small amount of material.

Q. Let's take how you handle the ore through number 1 first, and find out how you did that from 1931 on. How was it brought from the stopes to the loading places where they picked it up to haul it out through the slope?

A. The ore is brought from the stopes by electric locomotives to various side tracks where it is picked up by a hoist engine and lowered to another main haulage where it is picked up by locomotives, and from there it is—travels to the storage pocket. The ore is all put in a storage pocket.

Q. What is that storage pocket? Describe that in a general way.

A. The storage pocket is just a large excavation below the main ore body that holds approximately fifteen to eighteen hundred tons of ore, and under which a skip which holds ten tons of ore travels, and the ore is transferred from the storage pocket to the skip and the skip hoisted to the surface.

Q. All right, sir. From the time that ore leaves the stopes or the working places around the stopes, is it handled by what you call production crews or handled by what you call service crews?

A. In some instances it is handled by the production crews to a certain point in their working places where a motor picks that car up, or cars, and from there by the service crews or haulage crews.

Q. Then the service crews haul it from that particular place where the production crews' duty ends in connection with it on down to the storage pocket and out to the surface?

A. Yes, sir.

Q. And that is true of each mine?

A. Yes, sir.

Q. Now, how big did you say your skip was that hauled the ore, that carries the ore out?

A. I said ten tons, but we have been carrying twelve and twelve and a half tons. It was originally designed for a ten-ton skip.

Q. That is the way your ore goes it?

A. Yes, sir.

Q. How does your material go in and out over this period of time?

The material was carried to the Number 2 slope yard by truck, transferred to a material car, lowered to the landing at the bottom of Number 2 slope. From there it is transferred to larries or tram cars and carried by locomotives and hoists to the various sections of the mines.

Q. Is that handled by the service crews, that hauling that you have described?

A. Yes, sir.

Q. You you have an outside supply place for your materials?

A. Yes, sir.

Q. And supplies?

A. Yes, sir.

Q. Where is that located?

A. We have a supply house adjacent to the mine. We have a yard for timbers, ties and heavier material right close to the mouth of the slope.

Q. Now, what sort of skip or car or conveyance is that on which timber and supplies are carried into the mine from the surface?

A. That is carried into the mine in what was formerly a skip, with the sides cut down and the back of the skip left in place. The sides are open now.

Q. Now, is that the same skip used for carrying the men in and out of the mine or not?

A. Yes, sir.

Q. Suppose you describe that skip a little more accurately. Tell us what it is made out of, its dimensions.

A. That skip is about twelve feet long, four and a half feet wide, and four and a half feet deep.

Q. Are those the inside dimensions or overall dimensions?

A. Those are the inside dimensions.

On that skip, when we are hauling men, we have bars made out of pipe that are fastened across the skips to form four separate compartments for the men to ride in, stand in, so they don't crowd each other going down this slope. There are about seven or eight men in each compartment, and they lean against this pipe as they are going down the slope. There is a lattice,—a wooden structure built sort of like a lattice in the bottom for them to rest their feet on to keep from slipping.

The Court:

You mean in the bottom of the skip?

The Witness:

On the floor, lattice construction.

The Court:

I thought you said ladder.

Q. Like a lattice nailed down on the floor?

A. Yes, sir.

Q. How is the material handled?

A. The material is carried in the skip. The bars are removed and the lattice removed and the material is carried in the skip.

Q. Do you every carry materials and men at the same time?

A. No, sir, not in the regular man trips.

Q. That is what I am talking about, the trips carrying the men into the working places.

A. No, sir.

Q. When you first went there, Mr. Thompson, do you recall about how far down that slope was driven, or was it driven the entire distance then it is now?

A. The slope was driven the entire distance,—both slopes, in fact, all three slopes were driven the same distance. The mining was out in this location.

Q. You say "about this". Can you indicate on the map to show about where they were mining when you went there?

A. Well,—

Q. Is there any particular designation or any particular heading—

A. Well,—

Q. You have drawn a line.

A. I will draw a line across for about 1910.

Q. There were mining on the right of the line?

A. They were mining on this side of the line.

Q. The right side the way I am looking at the map?

A. Towards the mouth of the slope or portal.

Q. Towards the mouth of the slope or portal?

A. Yes, sir.

Q. Since then how have the workings been advanced?

A. The workings have been advanced as shown on this map up to the present time.

Q. As shown on the map?

A. Yes, sir.

Q. What is the date of this map as to when it was revised?

A. This map was revised, I think—

Q. When was it brought down to date?

A. About the first of this year, I believe.

Q. About the first of this year?

A. Yes, sir.

Q. Now, would you tell the Court what is the length from the mouth of the mine down to the unloading station on that slope that the men travel down?

A. That is from the mouth of Number 2 slope to the skip loading station—

Q. As far as the men travel on the skip; that is the distance I am trying to get first.

A. The skip travels 2100 feet.

Q. Now, then, is that what you call the unloading station at the end of that 2100 feet or not?

A. Yes, sir.

Q. Do all the men going into the mine get off at that point?

A. Yes, sir.

The Court:

They get off at Number 4?

The Witness:

Number 2.

The Court:

Number 2?

The Witness:
Yes, sir.

Q. They have always traveled Number 2?
A. I am talking about prior to May 1st—
Q. That is what we are talking about; we are talking about the period prior to May 1, 1941.
A. Yes, sir.
Q. I know you have made some changes. I will get to those later.
A. Yes, sir.
Q. Has that place got a designation on the map or not,

Mr. Thompson?
A. Yes, sir; that is marked with a yellow or orange disc.

The Court:
That shows slope Number 2 at the mouth?

The Witness:
That shows Slope Number 2 at the mouth. The yellow-orange line shows the travel of the skip from the mouth to the bottom.

Q. The men traveling the slope, which you haven't testfied about, is it not towards the top of the map—
A. This way.
Q. —as the map is pointed now?
A. Yes, sir.
Q. All right, sir. After the men get off there, do they proceed to their various places where production is? I am talking about the production crews first, now.
A. Yes, sir.
Q. How do they go there?
A. They proceed on foot.

Q. About—have you got indicated there on that map—as I recall it, I remember seeing it. Yes. Do the little dots show the various working places?

A. Yes, sir.

Q. At that time? These little dots through here and here?

A. Yes, sir.

Q. Wherever they are?

A. Yes, sir.

Q. Now, the green lines on your map show the travel way from the slope the way the men walk, is that right?

A. Yes, sir, those are—these are the green lines.

Q. The blue lines show the man trip; is that it here?

A. This is the blue line here from the point where these two blue dots are to the end of that line where the two dots are.

Q. Do you have an auxiliary method of carrying them across that way after they get off the slope, some of the men that work in these workings?

A. No, sir. We have a man trip that carried the men back to the skip returning at the end of the shift.

Q. That is the blue line between the two dots?

A. Yes, sir.

Q. What is that man trip?

A. That is a trip of cars handled by a locomotive that carried the men from the foot of one of the auxiliary slopes back to the manloading station or approximately to the man loading station.

Q. How do those cars run with reference to the cars that, you might say, bring them down to the unloading station? Is it a connecting line of travel? How do the cars run?

A. This trip runs at 3:30 in the afternoon to connect with the skip that is coming out of the mine to bring the men out.

Q. And what sort of cars do they ride when going down there that way?

A. They are regular mne cars, side seat cars, that will hold eight men, and a trip of cars is anywhere from eight to fifteen cars, depending on the number of men, built expressly for handling men.

Q. Does that man trip handle workers all over the mine or not?

A. That handles such workers as elect to come out on that man trip.

Q. You mean that some of them elect to go another way?

A. Some of them elect to walk out and not wait for the man trip.

Q. All right. How do those men walk out?

A. They walk out the same way they went in, either through this haulage way or this man way.

Q. You mean you can walk out the man way?

A. Walk to the loading station.

Q. Along here on the man way?

A. Yes, sir.

Q. But you say some of them prefer to walk out, either on the man way or this way, rather than to wait for the man trip to come?

A. Yes, sir.

The Court:

How far is the furtherest distance from the loading station?

Mr. Burr:

I am going to get to that, Your Honor.

Q. Now, is that all—have we covered all the transportation by vehicle that you provide the men in the mines with? Is there any other transportation by vehicle other than the man trip down the slope and the man trip that ran from this point over here you have indicated?

A. That is all.

Q. That is all?

A. Yes, sir.

Q. And from this point out, in the event they ride out on the man trip, the men walk to their various working places?

A. They walk from their various working places coming out.

Q. You mean you don't run that man trip going in?

A. No, sir.

Q. The man trip is only run coming out?

A. Yes, sir.

Q. Going in they all walk to their various places?

A. Yes, sir.

Q. Going out they all walk to the point where the man trip starts going out and then they either ride or walk out?

A. They don't come to where the man trip starts if they walk out. They elect to ride out or walk out, and if they walk out they go this way.

Q. As indicated there on the map?

A. Yes, sir.

Q. Now, you have got here indicated on the map that the man trip—that is this one here?

A. Yes, sir.

Q. —travels 4900 feet. Is that the correct distance?

A. Yes, sir.

Q. And you have got the man skip travels 2100 feet; is that right?

A. Yes, sir.

Q. And you have got here the nearest working place is slope M. A. C. What does that mean?

A. Slope M, Air course.

Q. Slope M, air course?

A. Yes, sir.

Q. Can you point that out to us?

A. That is right in here.

Q. And that, according to this, is 2425 feet?

A. Yes, sir.

Q. Now, you have got the longest one is 108 left. Where is that, the longest one?

A. 108 left is out here in this part of the mine.

Q. And the distance from that, as shown by the map, to the man loading station is 7575 feet?

A. That is right.

Q. And the other distances, as shown by the map, are in between those two points, the shortest and the longest?

A. Yes, sir, that is right.

Q. Now, about those—First, we will take that man way. How high is the ceiling in that man way? How high would you say it was, Mr. Thompson?

A. Which man way are you referring to?

Q. The man trip.

A. In the man trip?

Q. Yes, sir, in the man trip?

A. Well, it varies from eight to twelve or fourteen feet in different places.

Q. What is the character of the roof along that man trip?

A. The roof is in excellent condition. Part of it is concreted, and there is a section which has been gunited, which is a cement blown onto the surface.

Q. All right, sir. What sort of condition is the bottom of the—of that particular part of the mine where the men walk that do walk out? Is it smooth or rough? Just describe that to the Court as well as you can?

A. Well, that condition is reasonably good for walking.

Mr. Harris:

We move to exclude that answer, Judge. It is clearly a conclusion and doesn't mean anything one way or the other.

Mr. Burr:
I think—

Mr. Harris:
Reasonably good,—what one man might think was reasonably good another man might think was reasonably bad or terrible.

The Court:
Can you describe it?

The Witness:
The walkway in that part of the mine consists of ties over which the motors run. The ties are filled in between with ore and slate. The tracks are kept clean, continually cleaning up the material that falls off the cars. The manways are smooth. Where any condition occurs that we consider unsafe or not good for walking, we cover that particular place with ashes or slag to prevent slipping. We maintain them in as good condition as we can.

Q. Mr. Thompson, how long have the conditions you have testified about existed there in the mines. Is that the general practice?

A. That is the general practice.

Q. Since you have been there?

A. Yes, sir.

Q. How long has that cementing and the guniting been there?

A. That was put in in 1936, I believe. Prior to that time that particular section of the slope was timbered with square timbers.

Q. I see. How is your slope? What is the ceiling and height of the ceiling? What is the height of the ceiling and the character of the ceiling in the main slope where the skip runs.

A. That is what I have just described, Mr. Burr. That is partly gunited and partly cement.

Q. I thought you were describing the other. Tell me what is the general description and condition of that part where the man trip runs from down below there up to the slope?

A. That is in good condition.

Q. Is that substantially the same as the other; is that cemented or gunited?

A. No, sir.

Q. What sort of roof has that got?

A. That has good roof supported where necessary with wooden timbers or steel timbers.

Q. And how is it for the walking as far as the place where the men walk is concerned?

A. It is the same as that I have just described.

Q. How is the walking from that place to the various working places of the men? How do they go, the same way the tracks run?

A. They travel over the tracks into their working places.

Q. How is that condition as contrasted with what you have told us about the other places?

A. They are not quite as good as the others. They are continually being moved and advanced, and as the permanent track is put in the condition is improved.

Q. I see. Mr. Thompson, have you got a bath house at Republic or not?

A. Yes, sir.

Q. Where is that located at Raimund?

A. That is located between the Number 2 and the Number 1 slopes. It is right where indicated there on the map, midway between the two slopes, and the slopes are about 2600 feet—

Q. How long has that bath house been there, about how long?

A. That bath house, as I recall, was built in 1915.

Q. Does ~~Republic~~—Did you make a charge for the use of the bath house or not?

A. Yes, sir.

Q. What charge is made out there for the use of the bath house?

A. Fifty cents per month.

Q. How long has that been in existence, that charge?

A. It has been in existence since I remember.

Q. All the time—

A. Yes, sir.

Q. Since you have been there?

A. Yes, sir.

Q. What is the approximate degree of that slope that the men ride down in?

A. This main slope the men ride in,—the slope is on varying degrees from 15 degrees to fifty degrees.

Q. Could you give us what the vertical depth of the cover is at that mine?

A. Approximately 1000 feet. It varies in different parts of the mine.

Q. And what is the average thickness of the workable seam of ore at the Raimund mine?

A. About six and a half feet.

Q. What sort of method ~~of~~ mining do you say you use out there?

A. We use what is properly termed the room and pillar method of mining. The headings are driven from the main haulage ways at stated intervals. Where mechanical mining is feasible, these headings are driven further apart so as to allow for stopes between the headings which are later mined out by mechanical means. If mechanical means are not going to be followed, the headings are driven closer together, and the ore between the headings is mined out through upsets.

Q. Do you call that a modified room and pillar plan?

A. Yes, sir.

Q. Is that the designation for it?

A. Yes, sir.

Q. You referred to mechanical means; what do you mean by that?

A. Scraper hoists.

Q. That is what has been referred to by the other witnesses as mechanical loaders?

A. Yes, si[illegible]

Q. When di[illegible] you install mechanical loaders first, what year?

A. The first mechanical loader went into Raimund first, I think, in 1930.

Q. Was it all mechanical loading after you got them installed, or do you have the old style loading?

A. There is very little mechanical loading at Raimund Mines.

Q. What type of loading is it, then?

A. Practically all hand—shovel loading.

Q. About how many places did you use the mechanical loader in over this period of time?

A. Oh, from four to five places at a time.

Q. And in how many working places is the shovel and hand system in vogue over this period of time?

A. 50 to 65 to 70 working places.

Q. You have a total number of working places, say, normally, from 1931 down to May 1, 1941, of about how many places?

A. Well, say from fifty to sixty places.

Q. Fifty to sixty places?

A. Yes, sir

Q. What is your system there of operating as far as whether you are on the tonnage basis or not at the present time? Not at the present time,—I will take that up later, but under your system, that existed there all the period of time that you have been there?

A. Since '31 we have operated on what is known as the tonnage or contract basis, and we—

Q. Will you tell the Court what that basis is so we can understand it?

A. Each member of the crew participates in the earnings of that particular place upon a definite tonnage rate. There is no—there is a rate set up for each type of worker in that place, and the tonnage that he might load at that rate is the basis of his earnings.

Q. Now, is or is not that tonnage rate calculated and paid on the basis of a certain number of hours a day or not?

Mr. Harris:

We object to that, if the Court pleases. If they are paid on a flat tonnage rate there couldn't be any hour basis.

Mr. Burr:

I don't see why there couldn't be if—

The Court:

Let the witness state.

Mr. Burr:

Yes, sir.

A. The tonnage rate was set up based on our past experience on a ten hour day, and rates were fixed from that experience.

Q. All right. Now, when you went to a nine-hour day, were those rates adjusted or not?

A. Yes, sir. When we first went to a nine-hour day the rates were adjusted, and then we went to an eight hour day and they were again adjusted.

Q. And they were adjusted on the basis of eight hours a day?

A. Yes, sir.

Mr. Harris:
We object to leading him.

The Court:
Yes.

Mr. Burr:
I could have asked four questions, but I got the testimony in by one.

The Court:
Well,—

Mr. Burr:
Let's go back, then.

Q. Were they adjusted on the basis of eight or six when they were on ten?

A. They were adjusted from the basis of ten hours to nine-hour day.

Q. When you changed from nine to eight, how were they adjusted?

A. They were adjusted on the basis of the eight-hour day.

Q. Do you recall when you were on the ten-hour basis?

A. Until 1933.

Q. Then what basis did you go on?

A. We went on a nine-hour basis for about thirty days, and then to an eight-hour day.

Q. You went on the basis of nine hours for about thirty days?

A. Yes, sir.

Q. And been on eight hours ever since?

A. Yes, sir.

Q. Until May 1, 1941?

A. Yes, sir.

Q. That tonnage basis you have described, did or not that apply to the service men?

A. No, sir.

Q. Then on what basis were the service men—their time computed and they paid?

A. They were paid on an hourly basis for eight or nine or ten hours.

Q. At the time of the eight or nine or ten hours going in effect on the tonnage rate, is that the same time it went in effect on the service men?

A. I don't believe I understand.

The Court:

You mean from ten to nine and nine to eight?

Mr. Burr:

Yes, sir.

Q. When you changed from ten to nine hours, was the change made for both producing and service crews at the same time?

A. Yes, sir.

Q. And when you changed from nine to eight was it made for both the producing and service crews at the same time?

A. Yes, sir.

Q. How many men worked in your production crews over there, Mr. Thompson, during this time I am asking you about?

A. About 200—

Q. I mean in each crew?

A. Each crew? The crews would vary from three to six,—as high as eight men sometimes.

Q. Let's take an eight man crew. What composes an eight man crew?

A. A drill man or contractor, and as many muckers as he could break ore for, from two to four, six or eight.

Q. Let me see if I understand you. The contractor and drill man—

A. The contractors are drill men. That is the same.

Q. The same occupation rate?

A. Yes, sir.

Q. And then as many muckers, as you call them, as he would need—

A. As many muckers as he could break ore for.

Q. In that particular place?

A. Yes, sir.

The Court:

How do they break that ore?

The Witness:

They drill it with air drills—

The Court:

Of course, they shoot it down?

The Witness:

—and blast it down with dynamite.

The Court:

Then, when it is down, it is in large pieces?

The Witness:

It is broken up with hammers and some pieces have to be drilled again and shot with a small amount of powder to break them up.

Q. What proportion, Mr. Thompson, of the total underground employees makes up your service crews?

A. About 46 percent.

Q. Are service, and the balance productive crews, is that right?

A. Yes, sir.

Q. Now, I want to get you, please, sir, to take a man on your production crew, first, and let's see what he does and where he goes and how he goes during the work period or work day, the eight hour day that existed before May 1, 1941. I assume he goes to the bath house first; is that right?

A. He starts at the bath house, those that use the bath house—

Q. Now, right there, do all of them use it or not?

A. Not all of them, no, sir, but practically all, though.

Q. Are they required to use it—

A. No, sir.

Q. —and pay this fifty cent charge?

A. No, sir.

Q. That is optional with them?

A. Optional with them.

Q. Those that do not use it, do you know where they change clothes or not?

A. Now, I do not, but I assume they change their clothes at home.

Q. Change their clothes at home?

A. Yes, sir.

Q. Do a great many of the employees live in close proximity to the mine, or not?

A. Yes, sir.

Q. What would you say would be the average distance of the homes of the employees from the entrance to the mine?

Mr. Harris:
We object to that; immaterial.

The Court:
Overruled.

A. It would merely be a guess on my part.

Mr. Harris:

We object to him guessing.

Q. I don't want you to guess if you haven't any idea.

A. I don't know how far it is.

Q. After they change clothes at the bath house or at home, what is the next thing this miner does?

A. The miner changes clothes, and then goes from the bath house to Number 2 slope where he checks—hands in his check number and gets his battery lamp and waits for the skip to go into the mine.

Q. Now, to get back to this check number, what is that check number at your mine?

A. The check number is an identification that he hands in to the tally man at the beginning of his shift. That is hung on the board in the designated place where he is working that day.

Q. Who handles that board and the checks at your place?

A. The tally man handles the board with the help of the mine foreman.

Q. Does the tally man and the mine foreman check the numbers that are handed in to ascertain whether or not there are any vacancies in the crews that go into the mine—

A. Well,—

Q. —and if so, how is that done?

A. That becomes evident after the men have checked in. The nails that these checks are hung on all have designations as to working places or working crews, and it becomes perfectly evident if there is a man or two vacant or absent on that crew, and if there is such an absence the foreman generally takes a man out of another section crew or the service crew to operate those vacancies wherever he can.

Q. How does he do that? Does he do it at the top or at the bottom or by messages or by phone or how?

A. He does that both ways.

Q. What?

A. He does that both ways,—at the top if he knows before he leaves the top, or he phones to the bottom of the mine and has the man sent to different parts of the mine before they go to the places where they were first supposed to go.

Q. You spoke of lamps. You don't use carbide lights over there?

A. No, sir. Electric lamps.

Q. What is this electric lamp?

A. It is a battery a man carries either in his pocket or on his belt. It is made to carry a battery lamp with a cord that runs from the battery to a headpiece that is fastened to the cap on his head.

Q. Does the man furnish that lamp or does the company furnish it?

A. The company furnishes the lamp.

Q. Does he get that lamp when he deposits his check or where does he get it?

A. He gets a lamp at a window next to the window where he deposits his check.

Q. He deposits his check at one window and gets his lamp at another window?

A. Yes, sir.

Q. Adjoining window?

A. Yes, sir.

Q. How long does it take to deposit his check and get his lamp?

A. Just the length of time it takes to walk up and drop his check and walk over and pick up a lamp. The lamps are sitting on a—

Q. Counter?

A. —counter by the lamp man, and they become so accustomed to their lamp they walk up and get their lamp without even calling for it.

Q. How long have you been using the electric lamps?

A. Since 1936.

Q. Previous to that, what did you use?

A. Carbide.

Q. Where did he get his carbide?

A. The men bought the carbide themselves anywhere they cared to.

Q. You didn't have a supply at the mine?

A. No, sir.

Q. The men bought it anywhere they pleased?

A. Anywhere they cared to.

Q. I believe you have described the skip before that they ride down in the mine in?

A. Yes, sir.

Q. And how many do you take down in a skip load?

A. We carry about thirty men at a trip.

Q. At what time prior to May 1, 1941, did the skips begin to run at Raimund, Mr. Thompson?

A. About 5:30 in the morning.

Q. And when did the last skip run?

A. At 6:30, unless there were some stragglers came along and they ran a special trip for them.

Q. If they were men late you ran a special trip for them?

A. In a number of instances we have done that.

Q. Was there any schedule for the men as to what trip they should take or not?

A. At that time, you mean?

Q. That is what I am talking about.

A. No, sir.

Q. They could catch any skip they pleased that ran during that period of time?

A. Yes, sir.

Q. At what time were they getting to their places where their work began?

A. In the majority of cases, at seven o'clock. In some instances we had the service crews start earlier and they quit within the eight hours.

Q. What were the instances that the service crews started earlier and what service crews were they that started early?

A. The motormen and helpers and haulage crews and some of the timber and track crews.

Q. What was the reason for starting them first?

A. The reason was to get the haulage started before the miners were in their places so they could speed up the transfer of cars.

Q. Those usually went down at 6:30—went to work at 6:30?

A. Yes, sir.

Q. What time did the work day end?

A. At 2:30.

Q. When?

A. 2:30.

Q. The others started at 7 and what time did the work day end?

A. At 3 o'clock.

Q. Did you, at Raimund, have any time out for lunch?

A. There was no time for lunch.

Q. The men took their lunch time on the company's time?

A. Yes, sir.

Q. Is that the way it was?

A. Yes, sir.

Q. During the working hours?

A. Yes, sir.

Q. All right, sir. Now, when the men got to their working places,—I am still talking about the production crews,—I think you operated maybe a little different from the others. You had two kinds of operations?

A. Yes, sir.

Q. The pick and shovel kind and the mechanical kind?

A. Yes, sir.

Q. Let's take the pick and shovel crew and see what they did when they got up to their places of work.

A. A man got to his place of work and he examined his place to make it safe, like quarrying,—timbering or quarrying, cleaned off his track, prepared the place to set up his drill and set his drill up; the muckers started loading and the drill man started drilling.

Q. Would they—would this crew begin loading ore that they had shot down or ore that had been shot down by the preceding crew?

A. In some instances they would load the ore they shot down the day before, and in other instances they would shoot down the ore—load the ore that was shot down on the night shift before.

Q. That varied—

A. Yes, sir.

Q. —In your mines?

A. Yes, sir.

Q. In your crews you didn't have but how many that operated the drill?

A. One man.

Q. One man that operated the drill?

A. Yes, sir.

Q. Explain to the Court how that drill was operated for that hand loading place. How many holes did he have to drill, the depth of them, and where did he drill them in a typical day's operation?

A. In a typical day's operation a man would drill from four to eight ten foot holes, maybe more if his place was in such condition he could drill them.

Q. How did he place those holes in this method of drilling?

A. They were—

Q. Can you show us better on the blackboard?

A. I can show you on the blackboard.

Mr. Burr:

Give us a piece of chalk, and use the bottom part of the board there.

The Court:

We will take a few minutes recess.

Mr. Burr:

Thank you, sir.

(Thereupon proceedings were in recess from 10:40 A. M., to 10:55 A. M., when proceedings were resumed as follows:)

The Court:

All right; let's proceed.

(By Mr. Burr):

Q. Now, Mr. Thompson, you were indicating at the recess,—trying to show us how the shooting is done in these hand loading places. If you will show that—

A. Say this is a typical heading here. It is driven about 25 to 30 feet wide or wider if we think the top will stand it. This is the actual working face at this point.

Q. The track comes in from where your body is?

A. The track comes in this way (indicating).

Q. The haulage way is back here?

A. Yes, sir.

Q. Runs this way?

A. Not necessarily. The man does all his work up at this part of the mine. The man comes in and he first sees his place is safe to work in. He quarries down his rock, timbers if necessary. The muckers clean off the track. The drill man prepares the place for his tripod and sets up his drill and proceeds to drill.

There are a thousand ways to drill. The object is to break the most ore with the least amount of powder. For instance, the working place might be in this shape when he came into the working place, and he might put two holes in this direction and two here and two here, and if this rib hasn't been squared up, he would put maybe a hole here to square that rib up.

At the end of the shift he puts dynamite in those holes and blasts this ore out.

Q. That is the material he loads—

A. That crew either loads it on the next shift, or the following crew will load it. This man on the day shift will load the materal the man on the night shift has blasted down, and the man on the night shift will load the ore the man on the day shift has blasted down as a general rule.

Q. The driller determines where to place his shots and how to place them?

A. Yes, sir, he uses his own judgment. If he requires any assistance, the mine foreman will help him to place his holes to better advantage.

Q. That is the way the hand loading is done?

A. Yes, sir.

Q. Do they load with a shovel into the cars?

A. Shovel or by hand.

Q. Shovel or by hand?

A. Large lumps they load by hand, and the smaller pieces with a shovel.

Q. The mechanical drag places, in that place they use the drag attached to a skidder block, do they?

A. Yes, sir, a double drum hoist with a rope attached to each end of the scrape, one rope on each drum, and that scraper travels back and forth in this stope over a ramp and loads the material into the tram cars.

Q. All right, sir. Let's turn next to the equipment that is used in these places.

Is there a different type of equipment used in the hand loading or shovel loading places as contrasted with the mechanical loading places?

A. There is more equipment used in the mechanical loading places first.

Q. Well, let's take the mechanical loading places first, although you have fewer of those. Could you give us a list of the material that stays in that place, we might say permanently, until it wears out or needs repairing?

A. The material in a mechanical loading place would consist of a double drum scraper hoist, the scraper rope,—

Q. The scraper is the loader?

A. That is the bucket that does the loading.

Q. All right. What else?

A. The ropes, skidder block, hanger and wedges and clamps or clevises to hold the skidder block—

Q. Now, for the present I want the heavy material; the scraper hoist, the scraper, the skidder block, the ropes used on the scraper—

A. The ramp material.

Q. What is the ramp?

A. The ramp is the platform over which the scraper travels. It is elevated at one end above the other, and the other end on the footwall, and they pull the scraper over this ramp to move the ore into the cars.

Q. What about the drill? Do they use the tripod drill?

A. Tripod and column.

Q. What does the heavy drill weigh?

A. About 150 pounds.

Q. What do you use in the way of hose in connection with the drill?

A. That is two pieces of hose about fifty feet long, one-inch air hose and water hose, half inch hose.

Q. I believe you mentioned a skidder block. What are they?

A. They are simply a pulley the rope passes through to control the travel of the bucket.

Q. In that type heading do they use a jackhammer or not?

A. They use the jackhammer to drill the holes for the skidder block and hanger.

Q. What about the drill steel in the large drills, not the jackhammer?

A. We use an inch and a quarter hollow drill steel.

Q. Is that detachable?

A. We have put in detachable bits at the rate of about one place per week.

Q. How long have you been substituting the detachable drills for the—

A. About a year,—a little over a year.

Q. About how many places did you have equipped with the detachable drill bits on May 1, 1941?

A. About 90 percent of the places.

Q. Does that constitute the heavy material used with a typical machine loading crew you have given?

A. Yes, sir.

Q. Now, in what respect does the hand loading crew differ from that mechanical loading crew?

A. The drill and tripod is about the only heavy material they have.

Q. What other materials do they have?

A. They have sledges, picks, hammers, shovels, small hand tools, hose, quarry bars.

Q. Do they use the jackhammer drill or not? I don't guess they do.

A. No, sir.

Q. They don't use the jackhammer, the loader, the ramp,—

A. No, sir.

Q. They don't use the skidder block or jackhammer or drill steel or hangers?

A. They use the drill steel.

Q. I am asking this question again because I am not sure I got it. How many places are the mechanical places, and how many the other?

A. About four to six mechanical.

Q. And the balance hand loading?

A. The balance are hand loading.

Q. Let's go back again to the mechanical loading crews. Do they also, the loading part of the mechanical loading crew, do they use in your place C-hooks or not?

A. If you mean—I don't know what you are talking about.

Q. What do you use to fasten the skidder block to the hanger?

A. We use two straps of iron fastened together with two bolts.

Q. What do you call that?

A. A clamp or clevis.

Q. What would they weigh?

A. About three pounds.

Q. You have heard some of the witnesses from the other companies testify about C-hooks?

A. Yes, sir.

Q. Is that clevis used in the place of the C-hook in your mine?

A. Yes, sir.

Q. Does the mechanical loading crew have a jackhammer?

A. Yes, sir.

Q. What is that?

A. That is a small drill which wouldn't weigh over 30 or 40 pounds.

Mr. Harris:

How many?

The Witness:

Thirty or forty pounds.

Q. Thirty or forty pounds?

A. Yes, sir.

Q. Do they use wedges?

A Yes, sir.

Q. What is the size of the wedges in your place?

A. A tapering piece of steel possitly eight or nine inches long, maybe a foot long, and wouldn't weigh more than half a pound, I guess.

Q. How much do the hangers that you use down there in Raimund weigh?

A. Oh, they wouldn't weight more than six or eight pounds.

Q. Now, turning again to your hand and shovel crews, do they use clevises?

A. No, sir.

Q. Do they use the jackhammer?

A. No, sir.

Q. Do they use the wedges?

A. No, sir.

Q. Do they use the hangers?

A. No, sir.

Q. Or the hanger steel? They don't use the hanger steel—I don't mean hanger steel, but the hammer steel,—jackhammer steel?

A. No, sir.

Q. They don't use that at all?

A. No, sir.

Q. The rest of the material they use consists of hammers and picks and shovels and such as that?

A. Yes, sir.

Q. Mr. Thompson, referring first to what we have classified as the heavy and more substantial materials that stay in the place the longest, in the machine loading places, that is the hoist and scraper and ramp and drills and hangers and skidder block, where is that material gotten first, from the surface?

A. In the supply house at first, or if it has been repaired, in the blacksmith shop.

Q. How does that material, from the supply house or blacksmith shop, get in the mine?

A. Carried from the supply house or the blacksmith shop to the mouth of the mine by truck, and from there it is loaded into the skip by the surface crew and carried to the bottom of Number 2 slope by a haulage crew and transferred to larries or flat cars and carried out to the various working places or to an underground tool house.

Q. All right, sir. Now, in carrying that to the working places, that material, is it handled at any time by the production crew or not?

A. Not if it is carried to the working places by the service crews.

Q. I see. Well, who—what crew carries the scraper loader, scraper and drag hoist and the materials used for the ramp and the drill and tripod and skidder block,—what crew carried that to the working place?

A. The service crew.

Q. Do the service crews always carry that to the working places?

A. Repeat that last, please, sir.

Q. The scrape, the hoist, the ropes used in the scraper, the ramp material, the tripod, the hose and skidder block—

A. In the majority of cases,—practically all cases, those materials are carried to the working places by the service crews.

Q. Now, the items that go to the working places, the clevises and the jackhammers and wedges and hangers and detachable bits,—since you have been using detachable bits, where are those materials carried from from the surface?

A. Those materials are carried usually to the underground tool house.

Q. Are they carried by the same crews you mentioned before that carry the heavy materials?

A. Yes, sir.

Q. The surface crew carries them to the mouth of the mine and the haulage crew down to the tool house?

A. Yes, sir.

Q. Where is that tool house?

A. I can show you on the map. The tool-house is located at this point right here, which is a little better than half way from the mouth of the slope to the furtherest working place.

Q. Is there anyody in charge of that tool house?

A. We have a man in there on each shift, a tool house man.

Q. Well, now, how is that material taken from the tool house, as a usual thing, to the working places?

A. The material is carried to the working places either by service crews, or, if a man needs a particular piece of equipment during his working hours, he goes to the tool house and gets it.

Q. During work hours he comes back and gets it?

A. Yes, sir.

Q. He does do that?

A. Yes, sir.

Q. Has he, during this period of time that I have inquired about, ever picked up that particular type of material on the way to his work at the tool house?

Mr. Harris:
We object; he couldn't know.

The Court:
If he knows.

Mr. Burr:
Yes, sir.

A. Yes, sir, he picks up oil, various small tools; he might pick up a wrench or wedge; he picks up his detachable bits at the steel shop as he goes in.

Q. Now, is that the same character of tools as you have testified about that he can come back to the tool house during his working hours and get?

A. Yes, sir.

Q. And he does do that?

A. Yes, sir.

Q. Is it his option or a requirement of the company that he pick it up on the way going in to those working places?

Mr. Harris:
We object, if the Court please.

The Court:
Overruled.

A. That is optional with the men.

Q. Of course, by doing it that way—that is apparent. There is no use asking the question.

Now, I haven't asked you about the hand crews. You said they had picks and shovels and tools of that character not used by the mechanical loading crews. How are those picks and shovels supplied to the working places?

A. They are carried to the tool house and the man from the service crew or production crew goes to the tool house and gets them.

Q. They are handled just like the other tools you mentioned?

A. Yes, sir.

Q. The light tools of the mechanical loading crew?

A. Yes, sir.

Q. Now, Mr. Thompson, I want to ask you about your service crews as to how their pay prior to May 1, 1941, was computed; that is, the crowd that is not on a tonnage basis. How was their wage set, by the hour or by the day or how?

A. Their wage was set by the hour.

Q. I want to ask you both as to the service crews and the production crews, since you have been connected with the company and had knowledge of it, up until May 1, 1941, was the pay or the wage ever computed,—the pay of the men ever computed or paid on any basis other than the basis you have described, face to face or working place to working place?

A. Not to my knowledge.

Q. Has there ever been any payment for traveling time to either one of those crews in going to and from their working places?

A. No, sir.

Q. I don't know whether I asked you where the working place of the service crews is. Where does their day's work start?

Mr. Harris:

We object to that question in that form. He can ask him where they go and what they do.

Q. Where does the computation of their day's wage start? I will put it that way. That is the same thing.

The Court:

Yes.

Q. In the case of the haulage crews, their work starts at the motor.

Mr. Harris:

We move to exclude that answer. The question was when the computation began. It is a question for the Court when the work begins.

The Court:

Where do they begin their work?

Q. Yes, sir. Where do they begin their work, and when?

Mr. Harris:
I object to that. That is the one I objected to. The Court sustained the objection and then Mr. Burr asked where did the computation start, and then he answered not where the computation started, but where the work began. It is what I objected to.

Mr. Burr:
I think the question is clearly admissible.

The Court:
I think it is admissible where the work began and when. I overrule that and give you an exception.

Mr. Harris:
We except.

A. In the case of the haulage crews the day's work begins at the motor of the particular crew.
Q. What time does the work start?
A. 8:30.
Q. When does their work end?
A. 2:30.
Q. The next crews, service crews?
A. The timber and track crews, their work usually starts at 7 o'clock at a tool house in their particular section of the mine.
Q. And where and when did their work end?
A. Their work ended at 3 o'clock at the same point.
Q. Any other crew that varied from the two designations of the service crews?
A. Well, we did have and have got a crew that handles drill steel that works entirely different hours, between

shifts, who carried the steel back and forth from the shop—

Q. Is that what you call a split crew—split shift?

A. No, it is not a split shift. It is a shift that comes in and works between the regular shift for four hours, and finishes out their work with four hours with the regular shift.

Q. That is what I mean; they work four hours with one shift, is that what you mean?

A. Not in the sense I understand a split shift. They work continuously for eight hours.

Q. Well, it is divided between two shifts; maybe that will define it definitely.

A. Yes.

Q. What time is the shooting time in your working places at Raimund over this period of time?

A. Three o'clock.

Q. And what time does the first skip go out from the loading place down there?

A. Approximately 2:30.

Q. Would all the members of the production crew stay in the working place until the shooting took place, or did they leave before the shooting took place?

A. Some of them left before the shooting took place.

Q. Where would they go when they left?

A. They went to the skip landing.

Q. In going out, how would they decide who would go out on what skip, or how was that handled?

A. The scheduling of that was handled by the first man that come there was the first man out with a few exceptions to it.

Q. What part of the production crew would leave before the shooting and who would be left there to do the shooting?

A. The contractor or drill man remained, and he usually kept one man with him to help him shoot.

Q. Now, Mr. Thompson, I want to ask you next if you had charge of or have been present at the various relationship negotiations that the Republic Company has had with its men in reference to working conditions and wages and things of that sort?

A. Yes, sir.

Q. Could you tell us about when the local of the Smelters' Union was organized at Raimund; about when that was?

A. Sometime in 1933.

Q. When did you say?

A. Sometime in 1933, as I recall.

Q. Now, has that organization remained there ever since?

A. Yes, sir.

Q. Since that time have committees of that organization met with you from time to time, and other officers of the company, in connection with their grievances and complaints—

A. Yes, sir.

Q. —and proposed contracts and things of that sort?

A. Yes, sir.

Q. Have you had regular times for those meetings?

A. No, sir, we had no regular time. There were meetings called at the request of the committee.

Q. About how often, would you say, over that period of time, have you met with that committee over a month?

A. At least once a month, sometimes oftener, depending on the amount of negotiations we had.

Q. When you had those meetings, who would usually attend them representing the company?

A. Usually myself and some other representatives for the management, sometimes a stenographer and the committee, and sometimes some officers of the Smelters Union.

Q. About how many constituted the committee of the Smelters, if you recall?

A. Well, we would have meetings with anywhere from five to seven or eight members.

Mr. Burr:
Will you mark this Exhibit for me, please, sir?

The Clerk:
Republic's Exhibit No. 2.

(Thereupon a document dated September 30, 1933, and signed C. C. Burchell, Chairman, and bearing the seal of the International Union of Mine, Mill & Smelter Workers, Bessemer District, Smelters Council, Bessemer, Alabama, was marked Republic Exhibit No. 2.)

Q. I am showing you, Mr. Thompson, Republic Exhibit No. 2, and I will ask you to please state if that is a correct copy of a paper that was handed to you at one of these meetings on September 30, 1933, signed by C. C. Burchell, chairman, with the seal of the I. U. M. M. & S. W., Bessemer District, Smelters Council, Bessemer, Alabama,—

Mr. Harris:
Have you the original?

Mr. Burr:
The original was turned over to the Labor Board hearing. I can testify to that fact. This is an exact copy.

The Court:
It is an exact copy?

Mr. Burr:
Yes, sir, I know it is.

Mr. Harris:
We have the other.

Mr. Burr:
Yes, sir, you have the other and can check it.

Mr. Harris:
Judge, in making those statements, we don't waive any question of materiality.

Mr. Burr:
I understand.

The Court:
That is true.

Q. Was that the first time any demands in writing were ever made upon you by this organization?
A. Yes, sir.
Q. I notice that among the demands—all together there seem to be thirteen demands or requests.
A. Yes, sir.
Q. And Number 6 is that "the men enter the mine on their own time and come out of the mine on the company time."
Did you have a meeting with the committee and discuss all these demands?
A. Yes, sir.
Q. Were some of them refused and some granted, or do you recall—I don't think that makes any difference.

The Court:
No.

Mr. Burr:
We will not go into that.

Q. What I want to ask you is this, though, at that hearing and that meeting did they ever bring up the number 6 demand, that the men enter the mine on their own time and come out on the company's time; did they ever bring that up at the meeting that considered these thirteen demands?

A. Not that I recall.

Q. You don't recall that being brought up or discussed at all?

A. No.

Q. Now, I show you next, please, sir,—Well, before I show you the next paper, that was presented to you on September 30, 1933?

A. Yes, sir.

Q. What happened as between the men and the company following the presentation of the Exhibit Number 2 that has just been shown you,—was there any cessation of work or strike or anything of that sort?

A. Between that and when?

Q. Following the presentation of this demand.

A. There was a strike called following those demands in December of 1933.

Q. In December of 1933?

A. Yes, sir.

Q. Do you know how long that strike lasted?

A. It lasted into January of the following year. I think it was about the 21st of January.

Q. During that strike, state whether or not this union filed any complaint of any kind with any government board.

A. They filed a complaint with the—with what, I believe, was the Regional Board in Atlanta.

Q. Was that the board, to identify it more closely, presided over by Mr. Marion Smith as chairman?

A. Yes, sir.

Q. Was there a hearing before that board on the demands and complaints?

A. Yes, sir, there was a hearing.

Q. I will ask you to state whether or not at that hearing they presented any complaint or demand with reference to going in on their own time or coming out on the company's time?

A. Not that I recall.

Mr. Harris:

The demand would be—the demand or complaint was in writing, and the writing would be the best evidence.

Mr. Burr:

I am asking if it was presented at the hearing.

Mr. Harris:

I think they had stenog aphic notes.

Mr. Burns:

If he knows—

The Court:

If he knows, I think it would be admissible.

A. I do not recall.

Q. You don't recall it being brought up at all?

A. No, sir.

Q. Now, did they go back to work after that hearing before the Regional Labor Board?

A. Yes, sir.

Mr. Burr:

Will you mark this one next, please, sir?

The Clerk:

It will be Republic Exhibit Number 3.

Mr. Burr:

Yes, sir.

(Thereupon a document headed Atlanta, Georgia, January 15, 1934, and addressed to Mr. Marion Smith, Chairman, Regional Labor Board, Hurt Building, Atlanta, Georgia, and signed, Very truly yours, ..., Attorney for Republic Steel Corporation, was marked Republic Exhibit No. 3.)

Mr. Burr:

This likewise,—the original of this was deposited with Mr. Smith's board, and, of course, is not in the jurisdiction of the Court, but I know this to be an exact copy, so, of course, Mr. Thompson can identify it.

Mr. Harris:

This one he is asking about will be Exhibit Number 3, and, of course, we have objections to all of them, but merely to call it to the attention of the Court, we think that would be clearly a self serving declaration in addition to the grounds we have heretofore called to the attention of the Court.

The Court:

Who is this directed to?

Mr. Burr:

This is a letter directed to the Chairman of the Board, by the company, stating the terms of the settlement, and I expect to prove under this agreement they went back to work.

Mr. Harris:

That was written by you, I suppose?

Mr. Burr:

Yes, sir, it was written by me and accepted by the Union and they went back to work.

Mr. Harris:

We object to that statement.

Mr. Burr:

It will not be denied, because there is not any question about it.

The Court:

The objection will be overruled.

What is the date of it?

Mr. Burr:

January 15, 1934.

Q. I show you Republic Exhibit Number 3, and I will ask you to state whether or not that is a correct copy of a letter dated January 15, 1934, addressed to Mr. Marion Smith, Chairman of the Regional Labor Board, and state whether or not—

Mr. Harris:

Judge, he didn't write the letter. How does he know it was a correct copy?

Q. Is that the copy returned back to you under which the men resumed work?

Mr. Harris:

We object to that statement, "under which the men resumed work".

Q. Well, after you received this letter, did the men go back to work?

Mr. Harris:

The same objection.

A. Yes, sir.

Q. And did they go back to work on the same eight-hour day they had worked previously on?

A. Yes, sir.

Q. And did they accept the terms of this letter with your knowledge?

Mr. Harris:

I didn't hear the question.

Mr. Burr:

Did they accept the terms of this letter?

Mr. Harris:

We object to that.

Mr. Burr:

He knows it.

Mr. Harris:

We object to that. He can't say whether they accepted it or not.

The Court:

I sustain the objection.

Mr. Burr:

If the Court please, I think it is plain that it is admissible, but here is what I want: I don't see any use of having the facts like they were—

The Court:

He can testify what they did.

Mr. Burr:

Yes, sir, but he knows the Union received a copy of this letter and agreed to that.

The Court:
Does he know that?

Mr. Burr:
I think he does.

Q. Do you know or not—

Mr. Harris:
It is a written communication—

The Court:
It is a written communication to an officer, a third party?

Mr. Burr:
Yes, sir.

The Court:
Mr. Smith up here?

Mr. Burr:
That is right.

Mr. Harris:
If they have any letter from the union here agreeing to that letter, let them produce it.

Mr. Burr:
It doesn't have to be in writing. If it is admissible, it is admissible verbally.

Mr. Harris:
He says, "Did the Union accept that?"

The Court:
I am going to sustain the objection, but I am going to let him show what was done after the receipt of the letter.

Q. Did the officers of the Union receive a copy of that letter?

A. I am not sure about them receiving a copy, but I do know they went back to work after we received the letter.

Mr. Burr:

Will you mark this one, please?

The Clerk:

Be Republic Exhibit Number 4.

(Thereupon a document dated Bessemer, Alabama, March 13, 1934, addressed to Repubilc Steel Corporation, Raimund Mine Division, and signed Byrd H. Barksdale, Chester Knowles, Gus Gatewood, J. A. Lipscomb, V. C. Finch, C. Q. Burchell, and M. C. Anderson, was marked Republic Exhibit No. 4.)

Q. Now, Mr. Thompson, I show you next Republic Exhibit Number 4, dated March 13, 1934, signed by Byrd H. Barksdale, Chester Knowles, Gus Gatewood, J. A. Lipscomb, V. C. Finch, C. Q. Burchell and M. C. Anderson.

First, who are those that signed that; were they members of the Smelters Union and their committee or not?

A. Yes, sir.

Q. Was that J. A. Lipscomb by friend Jim over here?

A. Yes, sir.

Q. He was attorney at that time, I believe, for the union?

A. Yes, sir.

Q. Now, was this the next proposed contract or written request or demand of any kind you received from the Smelters Union in connection with working conditions at the Raimund plant, dated March 13, 1934?

A. I believe—we received on March 13th the proposed contract.

Q. I want you to read it and see if that is the one.

Mr. Harris:

Note that their names bear no official designation, if I may interrupt.

Mr. Burr:

Yes, sir.

Mr. Harris:

And also, in order that there may be no confusion, it is my understanding Mr. Brodie has also reserved the right to object, so it will not be necessary for him to repeat the objection.

Mr. Burr:

Yes, sir.

The Court:

That was the understanding.

Mr. Harris:

That was my understanding, but there seemed to be some question.

The Court:

Oh, no.

Mr. Harris:

I didn't mean on Your Honor's part.

The Court:

No; we had that understanding.

Q. Is that the one—You haven't finished checking it yet?

A. Yes, sir, that is a copy of it.

Q. All right, sir. Did you have a discussion with this committee of the Union that presented this with reference to these demands?

~~A. Yes, sir.~~

Q. In that discussion was there any further presentation by verbal statement or otherwise, of the tenth ground of this list of requests or demands?

It reads as follows:

"That the men not be required to enter and leave their place of work on their own time."

A. No, sir, there was no discussion about that.

Mr. Smith:

What exhibit is that, Borden?

Mr. Burr:

Exhibit Number 4.

Q. Now, following the presentment of those demands, was there or not any change made in reference to that proposition? Did it remain face to face or did it go to portal to portal, or halfway between or anything else?

A. Remained face to face.

Q. Now, I believe in 1934, Mr. Thompson, there was a strike, a general strike on the mountain.

Was Raimund involved in that also?

A. Yes, sir.

Q. Your mines were closed down by that strike?

A. Yes, sir.

Q. Do you recall as to who—as to whether any people representing the government or any officers representing the union, national officers, came here and discussed the question of settling that strike with you?

A. Yes, sir. As I recall there was a man named Richardson came here at that time to negotiate the settlement of that strike.

Q. Now, was George Coles, the International Vice President of the Union, here at that time also?

A. I think he was, yes, sir.

Q. And following your negotiations with Richardson and Coles and the members of the committee, did the men return back to work?

A. They did, yes.

Q. Now, when they returned back to work, did they return back to work on the face to face plan that had previously prevailed or not?

A. They went back on the same conditions.

Q. Do you recall whether or not there was an adjustment of wages made when they returned back to work at that time?

A. I don't recall, no, sir, but I don't think there was, though.

Q. Was there a letter written by the company to Mr. Richardson?

A. Yes, sir, a letter written setting out the terms under which we would go back to work, and also, as I recall, the wage—

Mr. Harris:

You have the letter?

Mr. Burr:

I can't find that letter. I thought it was here.

Mr. Harris:

Let me ask you something: Is it identical with the others?

Mr. Burr:

I think so. I will get the letter and put it in later.

The Court:

It will be exhibit 5.

Mr. Burr:

It is the Richardson letter. All the companies made similar replies. I want to check it before I say it is the same.

Mr. Harris:

That is the reason I didn't want him to state what was in that letter.

Mr. Burr:

I didn't ask what was in it.

(Copies of correspondence as follows were later furnished to the clerk and marked Republic Exhibit No. 5):

Letter dated Raimund, July 14, 1934, addressed to Mr. C. L. Richardson, Commissioner of Conciliation, Representing the Secretary of Labor, Washington, D. C., and signed W. H. Oldham, District Manager, Birmingham District;

Letter dated Bessemer, Alabama, July 15, 1934, addressed to Mr. C. L. Richardson, Commissioner-Conciliator, United States Department of Labor, Birmingham, Alabama, and signed George R. Coles and Rufus Kendrick;

Letter dated July 15, 1934, addressed to Mr. C. L. Richardson, Commissioner of Conciliation, Representing the Secretary of Labor, Washington, D. C., and signed W. H. Oldham, District Manager, Birmingham District;

Letter dated July 17, 1934, addressed to Mr. C. L. Richardson, Commissioner of Conciliation, Representing the Secretary of Labor, Washington, D. C., and signed W. H. Oldham, to which are attached two sheets containing wage scale;

Letter dated July 30, 1936, addressed to Mr. A. E. Horn, President, District Number 5, International Union of Mine, Mill & Smelter Workers, Bessemer, Alabama, and signed W. H. Oldham, District Manager, and showing copies to Mr. Newcomb Barco, U. S. Department of Labor, and C. L. Bransford and J. G. Walsh.

(By Mr. Burr):

Q. They returned to work following that letter?
A. Yes, sir.
Q. And they returned on the face to face plan?
A. Yes, sir.
Q. During the negotiations with Coles, the vice president of the Union, did any question arise during those negotiations the men should be paid for transportation time or any part of the transportation time?
A. I don't recall that it did.
Q. Is it your recollection that it did or didn't?
A. That it didn't.

Mr. Burr:
Now, this next one will be Republic Exhibit—

The Clerk:
Republic Number 6.

Mr. Burr:
All right, sir.

(Thereupon a form of proposed agreement between the Republic Steel Corporation and the Raimund Local Union

No. 121 of the International Union of Mine, Mill & Smelter Workers, consisting of eighteen numbered sections, and concluding with the words, "In witness whereof, the parties hereto have executed this agreement upon the .... day of ...., 1935, the same being unexecuted, was marked Republic Exhibit No. 6.)

Q. Now, Mr. Thompson, I want to show you Republic Exhibit Number 6, and for the purpose of refreshing your recollection, I want to show you a letter, so as to get the date, that you wrote to Mr. J. G. Walsh, Superintendent of Mines, and also to one of the other officials in which you stated, "I am handing you a written agreement presented by the following committee representing the Smelters Union: W. H. Kendrick, Earl Clevenger, W. H. Boatner, Virgil Thomas, Albert Lowe, and Andrew Livingston," and ask you if this is the agreement that they forwarded with that letter?

Mr. Burr:
I have no objection to you all seeing the letter if you want to. It has other matters in it. I don't think it is relevant. I just want to be accurate about the date.

Mr. Harris:
Is that a letter from you?

Mr. Burr:
No, sir.

The Court:
A letter to the company to refresh his memory?

Mr. Burr:
As to the date.

Mr. Brodie:
The date he received this document?

Mr. Burr:
Yes, sir.

The Court:
What is that document?

Mr. Burr:
The proposed agreement.

A. Yes, sir.
Q. The date you received it is June 18, 1935, about that date?
A. Yes, sir.

The Court:
Is that the date the letter bears?

Mr. Burr:
Yes, sir.

Mr. Harris:
All he is doing is to let him look at the letter to get the date?.

Mr. Burr:
Yes, sir.

Mr. Harris:
And that is not a contract; it is a proposal?

Mr. Burr:
It is a proposal.

Q. The ninth provision of that agreement reads:

"It is agreed that the employees shall enter the mine on their own time and come out of the mine on the company's time."

Now, did you have a meeting with the committee that presented these demands—

A. Yes, sir.

Q. —and discuss the demands?

A. Yes, sir.

Q. At that meeting did they make any insistence on or was there any discussion at all with reference to that ninth demand?

A. No, sir.

Mr. Burr:

Off the record.

(Thereupon followed an off the record discussion.)

Mr. Burr:

This will be Republic Exhibit Number 7. I am asking the questions about this letter and will substitute it later.

The Court:

Yes.

(Thereupon a letter dated May 26, 1936, and signed by A. E. Horn, President, District 5, International Union of Mine, Mill & Smelter Workers, was marked "Republic Exhibit Number 7.")

Q. I will ask you if on or about May 26, 1936, you received a letter signed by A. E. Horn, President, District Number 5, International Union of Mine, Mill & Smelter Workers?

A. Yes, sir.

Q. Was that letter presented to you by Mr. Kendrick, the President of the Local down there?

A. Yes, sir.

Q. Inclosed with that letter was there a proposed contract Horn sent—

A. Yes, sir.

Q. —with the letter?

A. Yes, sir.

Q. Did that proposed contract have this provision in it: "The eight hour day means eight hours in and about the mines eat the usual working places for all classes of workers."

A. Yes, sir.

Q. All right, sir. Now, since that time has there ever been at any time either verbally or in writing any presentment made by the Union or its committees to you in which they have brought up this question of traveling time; does this constitute the only times it has been brought to your attention?

A. Yes, sir.

Q. That we have gone over here this morning?

A. Yes, sir.

Q. All right, sir. Now,—

Mr. Burr:

Judge, off the record, I will have to apologize for not having these things in better order, but this is the first time I have seen them since this hearing down here.

The Clerk:

This will be Exhibit Number 8.

(Thereupon a document dated July 13, 1935, addressed, "To Committee of Employees," and signed W. H. Oldham, District Manager, was marked Republic Exhibit No. 8.)

Mr. Lipscomb:

Mr. Burr submitted a contract to which my name is signed. I didn't draw it and I don't like for that reference to be in the record.

Mr. Burr:

Take it out. I didn't mean it for the record at all. I was just guying you a little.

The Court:

Then it is withdrawn?

Mr. Burr:

Certainly. I had no desire for it to be in the record. Any remark I made to Jim or about him is withdrawn. I was talking to him across the table.

Q. I am showing you Republic Exhibit Number 8, and will ask you to state whether or not that is a correct copy of a letter that was sent to Mr. Horn and Mr. Kendrick and the other members of the committee that presented the proposed contract referred to,—whether or not that is a correct copy.

A. Yes, sir.

Mr. Burr:

Your Honor, it is short. I will just read it.

The Court:

What is the date?

Mr. Burr:

July 13, 1935. It reads:

"To Commitee of Employees:—".

Mr. A. E. Horn, International Representative, District Number 5, I. U. M. M. & S. W.,

R. H. Kendrick, Chairman,
C. D. Milford,
Gordon Moore,
Fred Ward,
A. E. Posey,
Preston Lee,
McKinley Belcher,
Elbert McCoy,
Virgil Thomas.

Dear Sirs:

Referring to list of demands which you presented as a committee representing a portion of our Raimund Mine Employees under date of June 17, 1935, to Mr. N. E. Thompson, Superintendent.

Beg to advise that it is the intent and purpose of this corporation to continue its present policy.

Owing to the unsettled conditions prevalent throughout the country at this time we feel it unwise to make any changes in our present policy. This policy has given satisfaction for the past twelve months, and we see no reason for either employee or employer making any change.

Therefore, these requests or demands, as set out, are denied, and we will continue indefinitely, as stated above, consistent with future business conditions.

We refer you to our letter of understanding to Mr. C. L. Richardson, Commissioner of Conciliation, Representing the Secretary of Labor, Washington, D. C., dated July 14, 1934, and wish to advise that we shall abide by this until such time as it is more definitely indicated that such arrangement is no longer practical.

Yours very truly, W. H. Oldham, District Manager."

(By Mr. Burr):

Q. All right, sir. Now, after that letter was sent, did they continue to work on the face to face plan?

A. Yes, sir.

Q. Without bringing up any question of any portal to portal question at all?

A. Yes, sir

Mr. Burr:

This will be—

The Clerk:

Republic Exhibit Number 9.

Mr. Burr:

—Republic Number 9.

(Thereupon a form of agreement, which was unexecuted, between Republic Steel Corporation and Raimund Red Ore Local Number 121 of the International Union of Mine, Mill & Smelter Workers, containing sixteen numbered sections, and providing under Section 15, "This agreement shall continue in full force and effect until the .... day of ...., 1940," was marked Republic Exhibit No. 9.)

Q. Now, Mr. Thompson, I am showing you next Republic Exhibit Number 9, and I will ask you to state whether or not the committee of the Smelters Union presented that to you on or about September 26, 1939, as a proposed contract?

A. Yes, sir.

Q. All right, sir. Now, I show you next, please, sir, three separate papers consisting of a letter dated December 26, 1939, directed to you and signed by Van D. Jones, and the registered envelope which is attached to it, and an agreement referred to in the letter, all of them under Republic Exhibit Number—

The Court:
Republic Exhibit Number 10.

Mr. Burr:
And identified as Republic Exhibit Number 10.

Mr. Harris:
Of course, the same general objection I stated yesterday to everything after 1938.

Mr. Burr:
Yes, sir.

(Thereupon a letter on the stationary of the International Union of Mine, Mill & Smelter Workers, dated 233 Fairfax Avenue, Bessemer, Alabama, December 26, 1939, and addressed to Mr. N. E. Thompson, Superintendent, Raimund Ore Mines of the Republic Steel Company, Bessemer, Alabama, and signed Van D. Jones, attached to which was a return receipt requested envelope addressed to Mr. N. E. Thompson, Superintendent Raimund Ore Mines of the Republic Steel Company, Bessemer, Alabama, and attached to which was a form of agreement in all respects identical with the unexecuted agreement described as Republic Exhibit Number 9, was marked Republic Exhibit No. 10.)

Q. I will ask you to examine the first page, and see if the letter on the stationary of the International Union of Mine Mill & Smelter Workers, signed Van D. Jones, Executive Board Member, District Number 5,—if you received that letter?
A. Yes, sir.

Q. Does it show the date stamped on there you received it?

A. Received it December 27, 1939.

Q. Did it come in this registered envelope attached there?

A. Yes, sir.

Q. And did it include the agreement that follows; was that the agreement referred to?

Mr. Harris:
You mean a proposed agreement?

Mr. Burr:
Proposed agreement.

The Court:
Proposed agreement, Mr. Burr?

Mr. Burr:
That is right, yes, sir.

A. Yes, sir.

The Court:
That is all the Exhibit 10?

Mr. Burr:
I think, Judge, that about gets them all.

The Court:
That is all Exhibit 10?

Mr. Burr:
Yes, sir, under one cover.
I think I have found this Richardson letter. I can put it in right now.

The Clerk:
Richardson letter?

Mr. Burr:
Yes, sir.

The Clerk:
That was Number 5, May 26, 1936?

Mr. Burr:
The first one was July 14, 1934.

The Court:
July 14, 1934?

Mr. Burr:
Yes, sir.

Q. All right, sir. If you will, Mr.—

Mr. Burr:
Judge, suppose you let me get these together during the lunch period.

The Court:
Well, it is time for adjournment now.

Mr. Burr:
It is time for adjournment now.

The Court:
We will adjourn until 1:30.

(Whereupon, at 12:05 P. M., July 18, 1941, a recess was had until 1:30 P. M. of the same day.)

After Recess, 1:30 P. M.

Direct Examination—Resumed.

Mr. Burr:

Here is the letter of understanding I couldn't find this morning.

The Clerk:

Republic Exhibit 5.

Mr. Harris:

That has other letters attached to it.

Mr. Burr:

All of them are in reference to the same matter. They are extensions of the original one.

(By Mr Burr):

Q. Mr. Thompson, there are the letters in 1934 I couldn't locate this morning and I said I would supply later.

I show you now Republic Exhibit 5, the first letter is dated July 14, 1934, addressed to Mr. C. L. Richardson, Commissioner of Conciliation.

Is that the one you testified about this morning?
A. Yes, sir.

Q. The next one is dated July 15, 1934, to Mr. C. L. Richardson, Conciliator, signed by Coles and Rufus Kendrick.

Who was Kendrick at that time?
A. He was president of the Local at that time.

Q. And Mr. Coles was vice president of the International Union?
A. Yes, sir.

Mr. Burr:

This letter has not been read.

"Bessemer, Alabama, July 15, 1934.

"Mr. C. L. Richardson, Commissioner Conciliator, United States Department of Labor, Birmingham, Alabama.

"Dear Sir:

"This is to inform you that the proposition submitted to the committee in regard to rates of pay and collective bargaining has been unanimously accepted.

"We understood in the conference of yesterday that the company would agree to let the 325 employees who left the service of the company May 4th return to work, but would not have as much as four or five days per week for this amount of men. With this understanding we are willing to call the strike off providing that 325 men can return to work and share the work proposition if it is only two or three days of work per week for them.

"We would also like for it to be understood that there is 34 percent of the employees who were formerly employed by the Republic Steel Corporation who have been out of work since the 28th of January, and suggest that these men be given preference if competent and worthy before hiring new employees, when business conditions warrant such.

"Asking that you take this up with the management and have an understanding and communicate with us as to their understanding of this subject.

"Yours truly, George R. Coles, Rufus Kendrick."

Then the letter of July 16th, 1934, to Mr. Richardson:

"We will agree to return back to work the 325 men that were working on May 4th, as per our schedule submitted to you last Saturday, and we also will endeavor where possible and consistent with ability, if there are any additional men to be put on due to increase in operations, that we will take these from the men out of work employed prior to December 17, 1933.

"Yours very truly, W. H. Oldham, District Manager, Birmingham District."

(By Mr. Burr):

Q. The letter of July 17th is the original letter to Richardson, which has the wage scale attached to it?

A. Yes, sir.

Q. Is that the wage scale?

A. Yes, sir.

Q. Does that wage scale show the different raises that were made, starting with janitor with a present rate of 26½ cents, and a proposed rate of 30 cents, and machinist first class, getting 61½ cents, raised to 62½ cents; that shows all that?

A. Yes, sir.

Q. And the last letter is a letter of July 30, 1936, to Mr Horn:

"This is to advise you that we will continue our present policy as to wages, hours and working conditions at Raimund Ore Mine until further notice.

"I have discussed this with Mr. Barco, of the U. S. Department of Labor, and he says he feels this would be entirely satisfactory.

"You know well enough, Mr. Horn, that we do not need any understanding. When I gave my word as I did in a meeting at Raimund, that we are going to live up to it, and we expect you to do the same. In other words, a fifty-fifty proposition. Our past record stands for itself."

A. Yes, sir.

Q. That constitutes the correspondence, does it?

A. Yes, sir.

Q. About this whole matter?

A. Yes, sir.

Q. Mr. Barco, Mr. Oldham refers to in one of his letters, was he one of the government conciliators that came down here about this matter?

A. Yes, sir.

Q. And Richardson was another one?

A. Yes, sir.

Q. The next one—I will ask you if on January 9th—if, in 1939, the Smelters Union preferred charges before the National Labor Relations Board against the company involving certain matters set forth in the charges?

A. Yes, sir.

Mr. Burr:

I will ask you to mark this—

The Clerk:

Republic Exhibit Number 11.

The Court:

Preferred charges against the Republic Company?

Mr. Burr:

Yes, sir, before the National Labor Relations Board. I don't know it has any bearing—

The Court:

I was just wondering what bearing it had.

Mr. Burr:

—except that they didn't make any charges with reference to this matter and when the whole matter was settled they went back to work on the eight hour basis. That is where the relevancy comes in.

Mr. Harris:

Of course, we have our objection, if the Court please.

(Thereupon a document entitled United States of America, Before the National Labor Relations Board, Tenth Region, In the Matter of Republic Steel Corporation and International Union of Mine, Mill & Smelter Workers, Case No. X-C-548, Date Filed, March 9, 1939, and signed by Van D. Johes, was marked Republic Exhibit No. 11.)

Q. Was that a copy of the charges that were filed?

A. Yes, sir.

Q. Now, there was an amended charge filed. I will ask you to look at that and see if that is the amended charge?

A. Yes, sir.

Mr. Burr:

Will you mark this?

The Clerk:

[illegible]

(Thereupon a document styled the same as Exhibit No. 11, except Date Filed shows May 1, 1940, was marked Republic Exhibit No. 12.)

Mr. Burr:

Will you clip those together and mark them?

The Clerk:

They will be Number 13.

(Thereupon three documents, each entitled United States of American, before the National Labor Relations Board, Tenth Region, in the matter of Republic Steel Corporation and International Union of Mine, Mill & Smelter

Workers, Case No. X-C-548, and each entitled "Stipulation" were marked Republic Exhibit No. 13.)

Q. I will ask you if the charges that were on file before—presented to the National Labor Relations Board, if they were settled between the parties—

Mr. Harris:
We object to that, if the Court please.

Q. —and if Exhibit 13 is a copy of the settlement that was made between the parties?

The Court:
Overruled.

A. Yes, sir.
Q. Now, then, during that entire period was there any claim or complaint on the part of the union that they were not being paid for any portion of the traveling time, and that they ought to be paid for it?
A. No, sir.
Q. Did they go back—under that settlement did they go back and continue to work under the face to face plan, or was it changed?
A. Continued to work.

Mr. Burr:
The next one is the same resolution that was Exhibit B to the complaint.

The Court:
What is the date of that last exhibit, Exhibit 13?

Mr. Patterson:
Dated May 1, 1940.

The Court:
May 1, 1940?

Mr. Burr:
Yes, sir.

Mr. Patterson:
Yes, sir, 1940.

The Court:
That is Exhibit 13?

Mr. Burr:
Yes, sir. That is the stipulation settling the case.

The Clerk:
This is 14.

(Thereupon a resolution of Raimund Local Number 121 of the International Union of Mine, Mill & Smelter Workers, District Number 5, an Affiliate of the Bessemer Smelters Council, dated October 12, 1940, was marked Republic Exhibit No. 14.)

Q. I show you Republic Exhibit Number 14, and I will ask you if this is the original resolution you got from the local on the 12th day of October, 1940, in reference to— it purports to be with reference to overtime or traveling time—

The Court:
Dated when? Mr. Burr?

Mr. Burr:
October 12, 1940.

A. Yes, sir.

Q. Was Louis Tarrant at that time president of the Raimund Local?

A. Yes, sir.

Q. Was B. G. Stephens one of your Raimund employees?

A. Yes, sir.

Q. He signs his name as Recording Secretary?

A. Yes, sir.

Q. Mr. Thompson, did the Republic Company at its Raimund operations ever make a contract with the International Union of Mine, Mill Smelter & Workers; did they ever execute a contract?

A. No, sir.

Q. Have you down to the present time?

A. No, sir.

The Court:
Didn't they recently?

The Witness:
No, sir.

The Court:
It has nothing to do with this case.

Mr. Burr:
No, sir. Off the record.

(Here followed an off the record discussion.)

Q. All right, sir. Now, then, did you make any change, Mr. Thompson, in operations at Raimund on May 1, 1941?

A. Yes, sir, we made a change in the method of handling the men in and out of the mines.

Q. I wish you would explain to the Court how you did make that change and what the change consisted of.

A. Prior to May 1st we were handling all the men into Number 2 slope. After May 1st we handled the men through Number 1 and Number 2 slopes to the bottom—

Mr. Harris:
I can't hear you.

The Court:
Talk louder.

A. —since May 1st we are handling all them through Number 1 slope and Number 2 slope. We are transporting the men from Number 2 slope to Number 1 slope by bus. From there we carry them to the bottom by skip. From there the men proceed to their working places, either from Number 1 bottom or Number 2 bottom.

Q. Whichever is the closest?

A. The men are so distributed to get them landed as close as possible to their working places, and we also stipulate the time a man can report for work for that particular trip going down. We schedule the trips going down and coming up so as to get the men in the mine and out in the eight hours.

Q. You are operating now on an overall period of eight hours in the mine?

A. Yes, sir.

Q. Is that right?

A. That is right.

Q. Let me see, Mr. Thompson, if I understand. Prior to May 1st the men went in on Number 1 slope?

A. Number 2.

Q. I mean Number 2.

A. Yes, sir.

Q. Now, you split them and schedule a portion of them to go in number 2 and a portion in number 1?

A. That is right.

Q. That bus you were talking about, what about that?

A. That is a bus to transport the men on the surface from where they check in at Number 2 to Number 1 and back again at the end of the shift.

Q. The men scheduled to go down at Number 1 slope check in at Number 2 slope?

A. They check in at Number 2 and are transported by bus to Number 1.

Q. You furnish that much of them transportation on the outside?

A. Yes, sir.

Q. And pay them to ride?

Mr. Harris:

We object to him arguing with the witness.

Mr. Burr:

It is not an argument.

Q. You are paying them for that ride down from Number 1 slope to Number 2 slope?

A. Yes, sir.

Q. Under operations since May 1, 1941, as contrasted with the period before May 1, 1941, has the working time at the working places increased or decreased or remained the same?

A. It has been decreased.

Q. How much has it been decreased?

A. Averages about an hour and twenty-five minutes.

Q. Does that constitute all the changes you have made?

A. That constitutes the changes we have made, but we have other changes on order—

Mr. Harris:

We object, if the Court please.

The Court:
I think so.

Q. We are not going into what you are contemplating doing.

Now, Mr. Thompson, are you working, since May 1st up to the present time, at Raimund mine,—are you working substantially the same crews, same number in the same working places and substantially the same condition you worked under before May 1, 1941?

A. We are working under the same conditions. We are working more men.

Q. You have put on more men?

A. Yes, sir.

Q. About how many more men?

A. About 25 or 30 more men.

Q. But with that exception it is the same mine and with the changes you have made in transportation, that is the only change?

A. Yes, sir.

Q. Could you tell us whether or not since May 1st, with the changes you have made, you have detailed here, putting on the additional men and changing the transportation, and having an hour and a half less working time at the face, whether or not your production has increased or diminshed or remained about the same?

Mr. Harris:
We object; illegal, irrelevant, incompetent and immaterial; has no bearing in this case.

The Court:
Overruled.

A. Our production has decreased.

Mr. Harris:

Same objection all the way through.

Q. Can you tell us how much it has decreased per day at the Raimund mine?

A. It has decreased on an average between 225 and 250 tons per day.

Q. That is per day?

A. Yes, sir.

Mr. Burr:

Will you mark this, please, sir, as an exhibit?

The Clerk:

Republic Exhibit Number 15.

The Court:

What is that?

Mr. Burr:

It is a similar pay receipt and statement that we have had.

The Court:

I don't see the necessity for it, Mr. Burr. It is just encumbering the record.

Mr. Burr:

Well, sir, I think, if Your Honor please, when you see the authorities, when a man comes up two or four times a month and acknowledges getting payment—

The Court:

You think it is an estoppel or waiver?

Mr. Burr:

I don't offer it at this time for that. We will make that claim when we get that far.

The Court:

I assume it has been to show the acquiescence of the men under the present contract.

Mr. Burr:

It is for the purpose of showing the conditions at the time Congress enacted the law.

The Court:

All right, sir.

Mr. Burr:

Do you want to see it?

Mr. Harris:

This has no date on it at all.

Mr. Burr:

I am just using that as a form. That is not any particular one.

(Thereupon a specimen pay statement and receipt of the Republic Steel Corporation, Birmingham District, Raimund Mine, was marked Republic Exhibit No. 15.)

Q. Mr. Thompson, I show you Republic Exhibit Number 15, and I will ask you to state whether or not that is the form that is used in making up the pay statements for the employees on which they get their money on pay day?

Mr. Harris:

We object, if the Court please.

Q. The fore part shows the statement of the earnings during the period, does it?

A. Yes, sir.

The Court:

Overruled.

Q. And the next part shows the deductions?

A. Yes, sir.

Q. And down here is where the individual signs a receipt for it?

A. That is right.

Q. Is a copy of this given to each individual; does each employee have a copy of that?

A. Each employee has a yellow sheet which he signs and his money is given to him in this envelope.

Q. He keeps this?

A. No, sir, he turns this in to the Acounting Department; the paymaster, to receive this.

Q. Signs it and turns it in?

A. Yes, sir.

Q. How long has that been in force out there,—about how long?

A. That has been in force since I have been at Raimund mine.

Q. State whether or not they paid, prior to May 1, 1941, twice a month or four times a month.

A. Paid usually twice a month.

Q. How long has the twice a month payment of wages been in force out there?

A. Ever since I have been out there.

Q. Now, I am going to Spaulding next.

If the same thing done at Spaulding mine in the way of wages as that exhibit shows?

A. Yes, sir.

Q. All right, sir. Will you get for me the map of the Spaulding mine, please, sir?

(Thereupon a map of the Spaulding Mine of the Republic Steel Corporation was placed on the blackboard.)

Mr. Harris:

Now, we call the Court's attention to the fact that the complaint doesn't relate to the Spaulding operation in any way.

Mr. Burr:

I think it does. My recollection is that it does, but it doesn't make a bit of difference whether it does or doesn't. It is a mine right here on the same mountain that the ruling applies to, and if Your Honor decides this case—of course, the complaint does.

The Court:

I was thinking it does.

Mr. Burr:

"Plaintiff operates two iron ore mines, one at Spaulding and one at Raimund."

The Court:

I thought it did.

Mr. Burr:

It doesn't make any difference whether it does or not.

The Court:

Go ahead.

Q. Just one question before I get to the Spaulding mine. Was there another labor organization out at Raimund mine?

A. Yes, sir.

Q. What was that organization?

A. It was called the Brotherhood of Captive Mines.

Q. Do you remember when that organization was formed out at Raimund?

A. Sometime in 1934.

Q. Did you have committees from that organization that met with you during this period of time?

A. Yes, sir.

Q. Is that organization still in existence or not?

A. I don't think it is.

Q. About when did it go out of existence?

A. About three or four months ago.

Q. They ceased having committees about three or four months ago?

A. Yes, sir.

Q. Of course, you don't know who belongs or who does not belong to either organization?

A. No, sir.

Q. But you had meetings with them up until two or three months ago?

A. Yes, sir.

Q. And in those meetings did members of those committees raise with you the question of paying for traveling time?

A. No, sir.

Mr. Harris:

We object to that one specifically. That was a company union, and whether the members of a company union raised the question or not wouldn't have anything to do with whether an independent union raised the question or not.

The Court:

I overrule the objection.

Q. Let's get to the Spaulding mine.

Mr. Harris:

Judge, we have an objection to every question on Spaulding mine without having to repeat them?

The Court:
Yes, sir.

The Clerk:
Do you wish to introduce that map?

Mr. Burr:
Yes, sir.

The Clerk:
It will be Republic Exhibit Number 17.

(Thereupon a map of the Spaulding Mine of the Republic Steel Corporation was marked Republic Exhibit No. 16.)

Q. Mr. Thompson, is that the mine you spoke of this morning as having been recently reopened?

A. This mine was reopened in September, last year.

Q. Is that the mine where you have installed and operate some kind of concentration plant?

A. Yes, sir.

Q. You didn't tell me this morning,—that concentration plant, without going into details, in what way does it improve the quality of the ore? You said it made it more usable.

A. The process increases the iron content of the ore, and decreases the insoluble content with a loss of a certain amount of the ore itself and makes it more acceptable to the blast furnaces.

Q. I believe you said this morning it was being used with entire satisfaction?

A. Yes, sir, entire satisfaction.

Q. How does it compare with the Raimund ore?

A. It is a much higher grade of ore than the Raimund ore.

The Court:
Spaulding is?

The Witness:
After it has been beneficiated.

The Court:
Off the record.

(Here followed an off the record discussion.)

Q. I believe your general engineer Hassler is the one that perfected this plant?

A. Yes, sir.

Q. He can probably explain it more in detail?

A. Yes, sir.

Q. Can you tell the Court whether or not—where is the entrance to this mine?

A. The entrance to this mine is right here. There is the entrance to the ore slope which runs in this direction. The entrance to the manway where the men travel is right here. (indicating on Republic Exhibit No. 16.) It goes down in this direction and crosses over and comes into the ore where the two slopes converge at a point right here.

Q. Where is the ore being removed from at this time?

A. The ore is being removed from this area right in here. On this side of the main slope there are three places and three places on this side.

Q. What is the size of the vein of that ore?

A. That vein runs 20 to 22 feet in thickness.

Q. Is there a large or small supply of it there?

A. A large supply.

Q. Does that ore lie differently from what it does down below?

A. Yes, sir.

Q. In what way?

A. It is flatter pitched, and the principal difference is it is closer to the surface.

Q. It is closer to the surface?

A. Yes, sir.

Q. How do the men get to their working places from the surface?

A. They walk to their working places from the surface. The bath house is located right at the mouth of the slope, the man way. The men walk to the work room and get their lights and deposit their checks and walk down the man way to their working places.

Q. About how far is the furtherst working place from the surface?

A. The furtherest working place, it will take a man about five or six minutes to walk to his working place.

Q. Is that one way?

A. One way. It will take him about eight or nine or ten minutes to come out.

Q. Will that walking distance increase to any great extent as your mine progresses?

A. It will increase to a certain extent, but not as great as our other mine, because we haven't the area and property in front of us that we have in our Raimund mine.

Q. Which way does your ore lie, out this way or this way?

A. There is very little in front of it. Most of it is out this side.

Q. Does that ore lie there like it is shown on the map, pretty close to the surface?

A. It is 200 to 500 feet from the surface.

Q. What is the degree of that slope the men walk down, the man way?

A. About 15 to 18 degrees, and then it flattens off at 5 degrees at the bottom.

The Court:

That is near a gap in Red Mountain?

The Witness:

That is at Grace's Gap.

Q. Is that close to the power company station, Magella?

A. About half a mile from there.

The Court:

You spoke of a man way. That is not the haulage way at all?

The Witness:

No, sir. That is opened and kept opened for the men. It is a man way equipped with steps.

Q. I didn't ask you—I am glad the Court asked that. How does the ore come out of that mine?

A. The ore is handled in the same way as at our Raimund mine, to a pocket, and then in a skip to the surface.

Q. What sort of man way is that man way with reference to smoothness or wetness or dryness or wet condition?

A. It is a very good way to travel. It is dry.

Q. I believe you said the bath house is right there—

A. The bath house is right at the opening of the man way.

Q. Are the methods of mining the same, practically, as at Raimund, so I will not have to go into that?

A. The method is the same as our drag mining at our Raimund mine. The mine is entirely, with probably an exception or two occasionally, a mechanical mine.

Q. Is there a tool house at Spaulding?

A. Yes, there is a tool house on each of those long headings.

Q. The equipment is the same as at Raimund?

A. Yes, sir.

Q. The equipment is the same as at Raimund?

A. It is the same except it is heavier and larger.

Mr. Burr:

Mr. All has one or two questions.

The Court:

All right, Mr. All.

(By Mr. All):

Q. Mr. Thompson, at the Raimund mine—I don't believe you located it. Is that in line with the other mines on Red Mountain or not?

A. Yes, sir.

Mr. Harris:

Land lines you mean, or geographical lines?

Mr. All:

I mean along the line with Tennessee, Sloss and Woodward.

Q. Is it on the same mountain?

A. Same mountain, same vein of ore.

Q. Where is it with reference to the others?

A. It is on the same mountain. It is the last mine on the mountain.

The Court:

Beyond Bessemer?

The Witness:

Beyond Bessemer about a mile.

Q. All right, sir. Now, I just want to ask you a question or two with respect to your slope or tunnel. I believe you stated that the distance—I mean that the height of the roof of your slope along that part of your haulage way where the men are carried in a man trip or carried in a skip, from the floor of the mine—from the bottom to the top, did you not?

A. Yes, sir.

Q. What is the height of that roof above the floor of the car that the men ride on?

A. Well, it is over six—six and a half—about six feet ten inches.

Q. Now, what I was interested in, from the point where the men get on the trip to the point where they are unloaded, is there any part of that trip where the men have to lean over to avoid coming in contact with the roof? If there is, what part of that distance?

A. No, sir, there is no necessity to lean over, unless it is an exceptionally tall man. There are places where—I don't have to duck my head, but I do because I think I am going to get hit.

Q. How many places are there—Is that all the way down?

A. No, sir.

Q. How much—

A. There is a place at the bottom where we have a small roller where you duck your head, and that is all.

Q. You are talking about Raimund?

A. Raimund.

Q. That is what I asked you. You stated that predominantly your loading crews were hand loading crews?

A. They are.

Q. And they vary in size from three man crews to five or six, I believe you stated?

A. They are.

Q. What determines the size of those crews, if there is anything that governs that, and what is the size of the average crew?

A. The average crew will be about four men, and they will vary with the width of the place and the amount of tonnage that the contractor is able to break. That will determine the number of men,—muckers he has with his crew.

Q. How many drill men in those hand loading crews?

A. Only one.

Q. Only one in any of them regardless of the size? Now, you said something about those crews using shovels and picks. How are those shovels and picks in those headings originally gotten to the working places?

A. Originally—

Q. I mean when they are first put there?

A. They are carried down by service crews.

Q. And delivered where?

A. Delivered to the tool house. If there were a number of picks or shovels—Now, by originally, I mean when we start out—

Q. I am talking about when the new shovels were placed—new shovels and picks are put into a heading is what I mean.

A. New shovels and picks would be carried from the tool house by the service crews, or the man would come to the tool house during the work hours and get the picks and shovels.

Q. What is the usual life of a shovel or pick?

The Court:

I don't think that is material at all.

Mr. All:

Judge, I am trying to show who takes them down or whether the producers have anything to do with moving them into the headings.

The Court:

You can show that without going into the life of a shovel.

Q. After they are put in a heading, how often are they replaced?

Mr. Harris:
That is the same question over again in other words.

Q. Whether it is on account of the loss of the shovel or the life of the shovel, is it frequent they are replaced there?
A. It may be both, the loss or the shovel or wearing it out.
Q. Is it frequently they are replaced?
A. They don't last so long.

The Court:
What is the answer?

The Witness:
They don't last so long.

Q. How long?
A. Oh, about six or eight weeks.
Q. Now, I want to ask you about the powder and oil and the drill bits, and that will be all. I say about the powder and the oil and the drill bits,—

The Court:
Who brings them down into the mine?

A. The powder is handled by regular haulage crews, transported to powder houses that are located as close to the active workings as is safe. From the powder houses the contractors or someone designated by the contractor from his crew goes to the powder house and gets the powder during the shift and carries it to the place where he is working.
Q. That is during the shift, you say?

A. Yes, sir.

Q. Now, about the oil?

A. The oil is carried by the contractor or someone he designates from the tool house going to his working place.

Q. What member of the crew takes that usually?

A. The contractor or someone he might designate.

Q. What about the drill bits, do they remain in the heading, or are they brought out?

A. The drill bits are picked up at the steel shop close by the tool house by the contractor or someone he designates, and carried to the working place as he goes to his place in the morning.

Q. Are they large or small items?

A. Small.

Mr. All:

I believe that is all.

The Court:

Cross examine.

Cross Examination.

Mr. Harris:

Could you take down that Spaulding map so we will have the other map only showing?

(Thereupon the map of the Spaulding mine was removed from the blackboard, leaving the map of Raimund mine on the blackboard.)

(By Mr. Harris):

Q. Now, Mr. Thompson, you were in Court last week while the case was going on, weren't you?

A. No, sir. I was here yesterday.

Q. You were on duty at—for the Republic Company on Friday of last week?

A. I wasn't at Court last week.

Q. No. I was asking if you were on duty Friday of last week?

A. Yes, sir.

Q. Don't you know a man named Fowler, riding a man skip at Raimund mine had his head busted on Friday of last week?

A. His head wasn't busted. His head was hit.

Q. Well, did he have to go to a doctor for treatment?

A. Yes, sir.

Q. How many stitches did the doctor take in his head, do you know?

A. No, I don't.

Q. That happened while he was riding down in a skip at Raimund?

A. Yes, sir.

Q. Was he going down or being hoisted out?

A. Being hoisted out.

Q. That is the same man skip you told the Court you would think you had to bow your head, but really you didn't have to bow your head?

A. That is right.

Q. The same one?

A. The same one.

Q. Now, Mr. Thompson, is this map that appears here—has that been colored for use in this trial or is that the same way the map was kept in the office before any litigation arose, this coloring along here?

A. That was prepared for this trial.

Q. Prepared for the trial?

A. Yes, sir.

Q. Now, in preparing it for the trial, did you show anything about the different levels of that mine as to the relative height of one place above another place?

A. No. We couldn't do that on that map.

Q. You couldn't do that on that map? Have you prepared any map to show the Court how much higher the underground workings are in one place than they are in another place?

A. No, sir.

Q. As a matter of fact, the workings in that mine at Raimund, some of them are 200 feet higher than the workings at other parts of the mine, aren't they?

A. No. The greatest difference, I think, is about 90—between 90 and 100 feet.

Mr. Burr:

Norman, keep' your voice up. I am sitting down over here to try to rest.

Q. Mr. Thompson, from the mouth of that mine to the furtherest working face is approximately two miles, isn't it? I mean the way the men travel?

A. From the mouth of Number 2 mine?

Q. Yes, to the furtherest working face.

A. The furtherest working face shown on that map is 12,675 feet.

Q. That would be considerably over two miles?

A. Yes, sir.

The Court:

How much?

The Witness:

12,675 feet.

Q. And the men only ride about 2300 feet of that, or 3500 feet of that?

A. 2100 feet.

Q. So, it gives them 10,000 feet to walk if they work at the furtherest place?

A. Yes, sir.

Q. Now, in that walk in this mine, whose condition you summarized for Mr. Burr, there is one place alone in the walk way or man way where men have to climb 107 steps in going to work, isn't there? If you nod, I can't hear you.

A. Yes, sir. I didn't count the steps. I don't know how many steps there are.

Q. And then those steps have a rise of from 8 inches to 11 or 12 inches for each step?

A. No, the rise is uniform.

Q. What is the rise of the 107 steps that the men have to go up?

A. About eight inches, I think.

Q. About eight inches, and at least 100 men on each shift have to walk by that, don't they?

A. Probably so.

Q. And on those steps water is dripping and the steps are slippery, aren't they?

A. No, they are not slippery. There is water running down the side of the steps.

Q. I will ask you to look at this and see if that isn't a picture of a portion of those 107 steps that those men have to climb?

Mr. Burr:

We would like to know where those pictures were taken and who they were taken by.

Mr. Harris:

I don't have to go into that. If I show him a picture and he says it is a picture of the place, that is sufficient.

A. It looks like a picture of the place.

Mr. Burr:

Would you mind having that identified?

Mr. Harris:

Oh, no; I will be glad to have it identified.

The Clerk:
That will be defendant's Exhibit Number 7.

Mr. Harris:
For identification. I haven't introduced anything yet.

(Thereupon a picture showing steps in Raimund mine of the Republic Steel Corporation was marked for identification Defendants' Exhibit No. 7.)

Q. Then there is another place in the mine where the men have to climb 32 steps, isn't there?

The Court:
What exhibit is that?

The Clerk:
Exhibit Number 7.

A. They have to climb a certain number of steps. I don't know how many there are.

Q. And in this two miles the men walk to the furtherest place you have electric power lines, haven't you?

A. Yes, sir.

Q. And those lines up to the working faces or stopes are right along over or on the side of the walkways where the men have to walk going in and out, aren't they?

A. Yes, sir.

Q. And how far would you say those electric lines are above the head of a man five feet six inches tall as he walks that two miles?

A. The minimum distance of an unguarded line is six and a half feet above the rail.

Q. Six and a half feet above the rail?

A. Yes, sir.

Q. Now, unguarded line,—what does that mean in mining language?

A. Means a line that is not guarded by some approved method to prevent shock.

Q. Now, what is an approved method to prevent shock?

A. By using strips of wood with steel clamps to prevent a man from coming in contact with the wire.

Q. Now, in how many places on that two mile journey would you say there were unguarded stretchers of your electric line?

A. Well, there are quite a number of places where the trolley wire is six and a half feet or above that we do not guard.

Q. Yes,

A. Approved by the State Mining Law.

Q. I didn't ask you about anything else. I move to exclude that.

The Court:

Yes, sir, that is excluded. Answer his questions. Answer what he asks you.

Q. Now, let's go back to this skip for a moment. You said that in Raimund Number 2 the slope, that is, the main slope was so steep, or varied from 25 degrees to 50 degrees —That is right, isn't it?

A. I think I said 15 to 50.

Q. Maybe you did. Maybe I have got it wrong. The reason that you have what you call your lattice, and the judge then asked you if you said ladder or lattice,—the reason you have this lattice work on the floor of your skip is because that slope is so steep that these men riding in the skip have to have something to stand on and hold to as the skip goes in and comes out, isn't it?

A. Yes, sir, that is right.

Q. That is the reason?

A. Yes, sir.

Q. And in that place where it is 50 or 52½ degrees, as that skip goes down or comes up, the man will have his foot on the lattice, which has turned into a ladder, and then he is holding onto another part of the skip; that is the way they have to do, isn't it?

A. Either the side or the front.

Q. Either the side or the front?

A. Yes, sir.

Q. And that was true from October 24, 1938, on up to May 1, 1941, wasn't it?

A. Yes, sir.

Q. Now, when was it that you started loading the men in a skip with a top on it?

A. That was on May 1, 1941.

Q. I will ask you to look at that and see if that is a picture of the skip with the top on it that you installed on May 1, 1941?

A. That is right.

Mr. Harris:

I will ask you to mark that as our Exhibit Number 8 for identification.

The Clerk:

All right.

(Thereupon a picture showing a skip at Raimund Mine of the Republic Steel Corporation was marked for identification Defendant's Exhibit Number 8.)

Q. How high is the top of that thing above the floor of it?

A. A little over five feet.

Q. This is the thing you said held 38 men or 33 men?

A. No.

Q. How many men do you carry in it?

A. Approximately 25.

Q. How many of them are back there under the five feet roof?

A. Well, I have never counted them. All you don't see sticking their heads out there are sitting down inside.

Q. Now, then, before you used this skip—you had used that some before May 1st, hadn't you?

A. No; sir.

Q. You had just built it a day or two before May 1st—

A. That is the regular ore skip. After May 1st, in order to facilitate the hauling of the men, we carried them to Number 1 slope and put them in that skip, awaiting the arrival of the regular skip.

Q. Before you used this skip that was covered up and had lattice work on the floor, you had an uncovered skip that had been in use in '38, '39 and '40?

A. Not on that slope.

Q. In Raimund Number 2, I am talking about.

A. Yes, sir.

Q. That uncovered skip had the lattice work on the floor?

A. That was the only one we used that had the lattice work on the floor.

Q. And the uncovered skip, in addition to the lattice work on the floor, had the iron bars going across at a distance of four feet?

A. That is right.

Q. That bar wasn't put there to brace the skip, wasn't it?

A. No, sir.

Q. That was put there to keep the men from tumbling back on each other or from tumbling forward on each other as they went down and up these steep slopes?

A. That was to keep the men from crowding each other.

Q. And in this 12-foot skip how many of those steel cross bars did you have put in there to keep the men from crowding each other as they went down this steep slope?

A. I think there were three in this particular skip.

Q. When you spoke of the electric batteries this morning, you didn't make clear—you said the electric batteries were furnished by the company. You don't mean the company furnished the lights free of charge to the men, do you?

A. No.

Q. ~~You~~ mean the company rents them batteries or sells them batteries?

A. They rent them batteries at so much per shift.

Q. And what does a man have to pay for each battery on each shift?

A. Six cents.

Q. Six cents a battery?

A. Yes, sir.

Q. The contractors that work out there have to buy what tools and articles that were used in their work?

A. They bought such hand tools as were necessary to properly do their work.

Q. All right. Now, let's state to the Court the tools the contractors bought and paid for to the Republic Mining Company.

A. They bought shovels, picks, hammers and small wrenches.

Q. How about quarry bars?

A. Bought no quarry bars.

Q. Where did they buy those, underground or on the surface?

A. They bought those underground and on the surface.

Q. And when they bought them they continued to remain the property of the contractor, didn't they? The company didn't take them over from the contractors?

A. They were the property of the contractor, yes, sir.

Q. And as they were worn out the contractor bought new ones?

A. That is right.

Q. And the contractor or members of his crew, when he bought them on the surface, would carry these picks and shovels down with them, and if he got them at the tool house underground, they would carry them from there to the faces, wouldn't they?

A. They would carry them or could have them carried by the motorman on a trip to the face.

Q. Now, then, did they also buy the detachable bits?

A. No, sir.

Q. Did they buy the powder?

A. Yes, sir.

Q. Did they buy the oil?

A. No, sir.

Q. Now, in carrying those tools during this two-mile walk from the man unloading station a man had to be alert always not to hold his pick over his head or his shovel over his head when he passed these unguarded electric cables, didn't he?

A. If he carried any tools like that. It was very seldom we allowed anyone to carry anything like that in the skip—in a regular trip.

Q. No; I am not talking about the time he left the man unloading station and walked to a working face. If he inadvertently rested his shovel or pick up over his shoulder, every time he came to one of those unguarded cables there was danger of a shock, wasn't there?

A. Certainly.

Q. How about the fuses and the caps the men used there; did they buy those?

A. Yes, sir.

Q. The contractor bought those?

A. Yes, sir.

Q. Do you still have contractors out there?

A. Yes, sir.

Q. Do you have out—do you still have—do you have an incentive plan out there whereby your contractors clear a rate of pay or a changed rate of pay on the tonnage?

A. No, sir.

Q. You don't know about any incentive plan with the contractors?

A. No, except what I have read and heard of the incentive plan from a distance.

Q. But I mean as to the operations of the Republic Company; there never has been any incentive plan since you have been out there?

A. No, sir.

Q. How is the contractor's—from 1938 up until May 1, 1941, how was the contractor's pay calculated?

A. The contractor's pay is calculated by the tonnage and a rate that is fixed for that particular place in which he is working.

Q. Now, in order to distinguish the tonnage that one contractor produces from the tonnage another contractor produces, you have brass checks—

A. Yes, sir.

Q. —which are put on the ore cars?

A. Yes, sir.

Q. How many—

The Court:

We will take a five minute recess.

Mr. Harris:

Yes, Your Honor.

(Thereupon proceedings were in recess from 2:30 P. M. to 2:40 P. M., at which time proceedings were resumed as follows:)

The Court:

Proceed.

Q. Mr. Thompson, up until May 1st you didn't have any men taken into the mine or brought out of the mine through Number 1 slope, did you?

A. No, I am sure we didn't.

Q. Now, let's go back to October 24, 1938. What time, on the day shift, did you start hauling the men down number 2 slope on the day shift?

A. About 5:30.

Q. What time did your last skip go down?

A. 6:30.

Q. Took an hour to move them down?

A. About an hour.

Q. You said on your direct examination any man could catch any skip he pleased. There couldn't be but thirty men catch the first skip?

A. That is right.

Q. If more than thirty got there all above thirty had to wait for the second skip?

A. Yes, sir.

Q. If all of them got there at 5:30, thirty of them had to wait until 6:30?

A. Yes, sir.

Q. Now, how many employees in 1938 did you have on your day shift, how many underground employees?

A. About 280 or 290, I would say. I wouldn't be positive about that.

Q. How many did you have on your night shift?

A. About the same number of them.

Q. And all of them, the 280 or 290, as the case might be, they had to ride down on skips, didn't they?

A. No, not all of them. There were fifty or sixty that didn't work underground at all. They worked outside.

Q. Well, you misunderstood my question. I said underground employees. So, you would say there were about 230 or 240 underground employees?

A. About that.

Q. And all of them had to ride the skip?

A. Yes, sir.

Q. And after they got to the bottom of the slope, to the man unloading station, during '38, '39 and '40, there wasn't any way whereby the company transported those men beyond that place, was there?

A. No, sir.

Q. But after they had made their shots and had mucked their ore and were coming out of the mine, you did have a way of bringing some of them out if they wanted to come that way?

A. Yes, sir.

Q. Now, how many trips did this auxiliary man transport system make at the end of the shift?

A. It would make from one to three trips.

Q. And how many men could it haul each trip?

A. Haul about eighty men.

Q. You had six little cars?

A. Had fifteen cars.

Q. Were they regular little ore cars?

A. No, sir, regular man cars, built specially to haul men in.

Q. Now, that first trip of that auxiliary transport system back in 1938 ran at that time on the day shift?

A. Well, the time was changed. The last time was about 3:30.

Q. And then the time before the last, what was it?

A. I don't know. We changed it several times to suit the convenience of the men. We were requested at various times to change the time of the trip.

Q. If they rode that auxiliary man trip, how long a ride did they get?

A. Almost a mile.

Q. And some of them, however, preferred to walk that mile rather than wait for that man trip?

A. That is right.

Q. Well, how long did they have to wait before that auxiliary trip started out?

A. The man trip was scheduled to leave at a certain time, whatever time we agreed to have it leave, and we left at that time.

Q. Well, when were you shooting, when the man trip left at 3:30 from the auxiliary station?

A. Shooting at 3 o'clock.

Q. Shot at 3, but muckers and mechanical loading men would frequently be through work before 3 o'clock, wouldn't they?

A. Yes, sir.

Q. And those were the men that, instead of going up to this place and waiting until 3:30 to get to ride, would walk on out, the men who had finished early?

A. Some of them would, yes, sir.

Q. Now, was that ride out on this little auxiliary man trip on level ground from the time the men would get in those little cars until the time they got out at the man unloading station, or was it uphill and down dale?

A. It was up and down hill.

Q. Was it or not in a place where you had mined what you call a slope, or merely in headings that had come through there?

A. It was operated partly on main haulage ways, and partly through old headings we had changed into a man way.

Q. If a man walked that distance did he walk a different way; that is, he didn't walk the same way your auxiliary transport—

A. They had several different ways. They could walk that way or come around and walk out through the number 2 slope, whichever way they preferred.

Q. I failed to ask you what was the electrical voltage carried in those exposed wires down in the mine?

A. 250 volts.

Q. How often at Republic did you have a clean up crew go over the haulage ways and pick up the ore that had fallen off the cars?

A. We were constantly doing that,—say once a week.

Q. You mean by constantly somewhere in the mine there was somebody picking up ore off the track?

A. Daily, yes, sir.

Q. But you don't mean on any particular line of track there was somebody picking up ore daily?

A. No, sir.

Q. They would get to any particular place on an average of once a week?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. You spoke about beneficiated ores. Have you ever studied chemistry?

A. Yes, sir.

Q. Did you ever take a preliminary or elementary course, or did you go into it to any great degree?

A. I went into it pretty thoroughly, but I haven't practiced it in twenty years. I haven't practiced chemistry.

Q. One of the problems in the Birmingham district, ever since they discovered ore here, has been to beneficiate the ore, hasn't it?

A. Yes, sir.

Q. And when the mining industry first started, the belief current among mining men was you couldn't use the hard ores? You are familiar with the history of mining in this district, aren't you?

A. Yes, sir.

Q. Then they found out you could use the hard ores?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

Q. And then they found out by making different combinations of ores, some of this ore from this mine and ore from another mine they could make better ore?

A. Yes, sir.

Q. So, during the entire history of the industry engineers and chemists have been working to devise better methods of beneficiating the ore?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. And the Republic trying to beneficiate the ore out at Spaulding, that is no new thing in the mining of ore in the Birmingham district, is it?

A. Yes, sir.

Q. The effort may be new, but the effort is a continuation of the efforts others have made?

A. The idea is not new, but the method and process is new.

Q. The idea is not new but the process is new?

A. The idea of beneficiating ores is not new, but the process we are using at the present time is new.

Q. Is your process a secret process?

A. No, sir.

Q. What process are you using?

A. We are using a process of grinding and classifying and separating the material from the hematite by a tabling process.

Q. You don't use any kind of flotation system, do you?

A. No, sir.

Q. When the men are working down underground without the mechanical loaders and a piece of ore comes out weighing 100 or 150 pounds, do they have to break that up underground or is it permitted by the company for them to pick it up and carry it and put it in the tram car?

A. They are limited to the size they can put in the tram cars by the size of our chute.

Q. What is the size of your chute?

A. About four feet—we limit the size of the ore. That limit with the mechanical loader is about thirty inches, but a man handling ore otherwise couldn't load that in a car. He would have to break it up.

Q. And what is the method of breaking up those big chunks of ore thrown out by the explosion or blast?

A. He breaks it up either with a hammer or lays it aside and lets the drill man shoot it up on the next shift, the following shift.

Q. He does not use the big drill but the jackhammer drill to drill holes to shoot up slabs that have fallen off?

A. Occasionally. There is not much of that done in the hand loading places. They are usually broken up small enough he can load them in the car.

Q. In using your jackhammer drill do you use water with your jackhammer drill?

A. No, sir.

Q. You do not?

A. No, sir.

Q. Do you use water with your tripod and column drills?

A. Yes, sir.

Q. What method did you have in 1938, '39 and '40, of getting fresh air back two miles in the mine?

A. We had a fan at Number 2 mine that circulated it through the headings and leads through Number 1 mine in the slope and man way.

Q. How many fans did you have down in the mine itself?

A. We had none in the mine itself.

Q. That fan at Number 2 was all you had in '38, '39 and '40?

A. Yes, sir.

Q. What size was that fan?

A. The fan was rated about 130 or forty thousand cubic feet.

Q. Cubic feet per what?

A. Per minute.

Q. Now, you spoke this morning of a complaint before the Labor Board.

Mr. Harris:

I am not sure,—did you introduce that complaint, Mr. Burr?

Mr. Burr:

Yes, sir.

Mr. Harris:

The complaint before the Labor Board was itself introduced?

Mr. Burr:

Yes, sir, the complaint and amended complaint.

Q. Well, there was a complaint lodged in 1933 before the old Labor Board. Has that been shown you here today?

Mr. Burr:

No, that—

A. I don't recall.

Mr. Burr:

That wasn't. I haven't got a copy of that complaint.

Q. A copy of that complaint in 1933 was served on the Republic Company, wasn't it?

A. I would have to see the—

Q. Well, don't you remember there was a complaint before the Labor Board in 1933?

Mr. Burr:

There was no Labor Board in '33.

Mr. Harris:

Well, in 1934 there was a complaint.

Mr. Burr:

'34 either.

Q. National Labor Board, not National Labor Relations Board, but the National Labor Board; wasn't there a complaint back in 1933 against the Republic Company under the N. R. A.?

A. I don't know what you are referring to unless it is these complaints that came in from the local union. I don't recall any complaints from the Labor Board.

Q. I mean made by the union before the Board, is what I am talking about. Not one the Board instituted, but one the union instituted.

A. Well, we had complaints that were brought out here this morning—

Q. All right. Have you brought out all the complaints you have ever heard of or know anything about?

A. So far as I know we have. I don't recall any others.

Q. Does the Republic Company keep production records, and did it keep production records of its production of ore during the years '38, '39 and '40 and up to May 1, 1941?

A. Yes, sir.

Q. Did it also have production records of its pig iron produced during those years?

A. Yes, sir.

Q. And those—Did it keep records of blast furnace loadings during those years?

A. I couldn't tell you about that.

Q. Are those records that I mentiond kept here in the Birmingham district?

A. The records on ore, I know are kept here.

Q. And the records on pig iron produced, are they kept here?

A. I would say so. I am not sure. I don't have anything to do with it.

Q. What officers of the Republic Company—under whose department would those records be kept?

A. They would be kept under the accounting department.

Q. And who was the head and who is the head of the accounting department?

A. Mr. Hagy.

Q. How do you spell his name?

A. H-a-g-y.

Q. What is his first name?

A. J. L.

Q. I will show you a complaint headed Raimund Red Ore Local Number 121, I. U. M. M. & S. W., affiliated with American Federation of Labor, versus Republic Steel Corporation, Raimund Red Ore Mines, Bessemer Division, Defendant.

I will ask you to look at that and see if you recall seeing that.

A. I don't remember seeing this.

Q. Do you notice the certificate at the end of this:

"This is to certify that I have this 21st day of December, 1933, placed in the mail a true and exact copy of our complaint and request and Exhibit A, addressed to Mr. Wade H. Oldham, Vice President in Charge of Republic Steel Corporation, Birmingham, Alabama, and signed, J. A. Lipscomb, Birmingham, Alabama."

Mr. Burr:
Off the record.

(Here followed an off the record discussion.)

Mr. Harris:
I want to identify this as our next exhibit.

Mr. Burr:
Let me see what it is. Of course, I am not admitting its relevancy.

Mr. Harris:
I understand that.

Mr. Burr:
But I am perfectly willing to help you out.

Mr. Harris:
I will appreciate it.

Mr. Burr:
I think this is a copy of the original complaint. I think you will probably find it was amended subsequently.

Mr. Harris:
Well, we will find out about it. I will identify it now.

Mr. Burr:
I will be glad to help you get up the whole list.

The Clerk:
Do you want this marked for identification?

Mr. Harris:
Yes, sir.

The Clerk:
Exhibit 9.

Mr. Burr:
And also the final decision with reference to it.

(Thereupon, a complaint before the National Labor Board by Raimund Local No. 121 of the International Union of Mine, Mill & Smelter Workers, against the Republic Steel Corporation, was marked for identification Defendants' Exhibit No. 9.)

Q. Now, then, Mr. Thompson, I show you a document—

Mr. Burr:
What was that identification number, please?

The Clerk:
Number 9.

Mr. Burr:
Number 9?

The Clerk:
It is Number 9.

Q. I show you a document bearing the signature in ink, Norman E. Thompson, and over to the left, sworn to and subscribed before me on this 4th day of October, 1940, Margaret Kennedy, Notary Public.
Is that your signature?
A. Yes, sir.
Q. And you did swear to it before Margaret Kennedy, Notary Public?

Mr. Burr:
Let me see that, see what you are talking about.

Q. Did you say you did swear to it before her?
A. Yes, sir.

Mr. Burr:
I would like—I assume this is one of the affidavits that was filed with the Administrator; is that right?

Mr. Brodie:
Yes, sir.

Mr. Burr:
Do I understand the Administrator is giving over to Mr. Harris that which he refused to give us as being confidential? We asked for every one of these affidavits.
I don't object to it. I want them all.

Mr. Harris:
We don't have to make any explanation of where we get a document, if the Court pleases.

Mr Burr:
I know, but I am bringing it to the attention of the Court and I will, at the proper time, prepare a motion on it because they have affidavits I am very anxious to have.
Now, I see one of the affidavits in the hands of an attorney in this case—

Mr. Harris:
Which is perfectly all right.

Mr. Burr:
Which is perfectly all right. I want all the affidavits. I assume the Administrator in this case is not taking partisan sides,—ought not to be,—and if this stuff is confidential as to this affidavit—as to the other affidavits, it is confidential as to this one.

The Court:

This is a matter sworn to by this witness?

Mr. Burr:

Yes, sir.

The Court:

And an employee of the plaintiff?

Mr. Burr:

Yes, sir, but turned over—I don't think Your Honor catches the point.

Before this case was set for trial I made a motion—

The Court:

I remember that.

Mr. Burr:

—asking for the affidavits filed in this case, including not only the affidavits filed on behalf of the plaintiffs but affidavits of parties defendant in this case.

Your Honor held that was a confidential matter, and they didn't have to turn them over.

I want all those affidavits, and I don't see how Your Honor can take the position that one can be turned over and not the others.

The Court:

The fact they were confidential documents and so considered, and the fact he voluntarily lets one of them come into the case, does that prevent—does that authorize you to demand all of them?

Mr. Burr:

I should think it would.

Mr. Harris:
I don't—

The Court:
I don't agree with you.

Mr. Burr:
Take Mr. Kendrick, the president of that local; he has one of those affidavits that he made. Am I to be denied the access to it?
I don't object to this affidavit—

The Court:
We are going to let it in.

Mr. Burr:
I don't object to it coming in.

Mr. Harris:
It has been ruled on.

Mr. Burr:
I will bring it up by forman motion.

The Court:
All right.

Mr. Harris:
I don't know whether the witness answered by question before as to whether he swore to that.

The Court:
Yes, sir, he did.

Mr. Burr:
Are you offering that for identification?

Mr. Harris:
No, sir; I have not put in a single document.

Mr. Burr:
I mean for identification?

Mr. Harris:
Yes, sir.

The Clerk:
It will be exhibit 10.

(Thereupon the affidavit of Norman E. Thompson, sworn to before Margaret Kennedy, Notary Public, on October 3, 1940, was marked for identification Defendants' Exhibit No. 10.)

Mr. Burr:
Give me the date of the jurat.

The Clerk:
October 3, 1940.

Q. On your direct examination this morning you spoke about unsafe places which were covered with slag and ashes so the men would not slip.

Did you have a regular slag crew or ash crew that was continually going through the mines filling up places with either slag or ashes so the men would not slip?

A. No; sir, we didn't. We do not have enough such places to warrant that.

Q. How often did you send men out to fix the slippery places with slag and ashes?

A. As often as it was deemed necessary, and the places warranted that treatment.

Q. Could you give us any idea of the frequency with which you sent such men out during '38, '39 and '40, up to May 1, 1941?

A. Sent such men out? I don't understand.

Q. Yes, to fix up places with slag and ashes so the men would not slip. How often did you do that?

A. There would be no definite time for that. It would vary with the period of the year. During the period of the year when there was more moisture we would use more slag and ashes on these particular places. Other times of the year it was not necessary at all.

Q. Was that moisture that condensed from the air?

A. Yes, sir.

Q. It was not water that came in through the earth?

A. In some instances it was water that came through the formation.

Q. Do you have pumps to pump out water that came through the formation?

A. Yes, sir.

Q. How many water pumps did you have at the Raimund workings in '38, '39 and '40, and up to May 1, 1941, pumping out water?

A. I couldn't tell you that.

Q. Could you give us any idea at all?

A. Oh, six or eight smaller pumps and six large pumps that handled the main body of water that was pumped out of the mine.

Q. What do you mean by the main body of water?

A. The continuous flow that is caught above the ledge of the trough that we use for domestic purposes and for cooling our compressors and for fire protection and that sort of thing.

Q. That was not water that ran down and made the slippery places; that was the reservoir where you got your water for operation?

A. That is what it was used for. That was not the purpose. The water had to be pumped out of the mine or it would have gone down to our lower workings. Because of the quality of the water it could be used for the particular purpose to which we put it.

Q. You kept about six big pumps busy pumping that water out?

A. We had four at one mine and two at another. They did not work continually.

Q. In addition to that you had small pumps?

A. We had gathering pumps to pick the water up at the distant places. Those pumps were moved all the time and used more or less at any particular time.

Mr. Harris:
That is all.

The Court:
Are you through?

Mr. Harris:
Yes, sir.

Re-Direct Examination.

(By Mr. Burr):

Q. Mr. Thompson, Mr. Harris asked you about a man named Fowler who got his head hurt last Friday.

A. Yes, sir.

Q. How was that man hurt?

Mr. Harris:
Well, unless he was there and knows something about it, he couldn't go into the details.

Q. You got the report?

The Court:
Yes; he has to speak of his own knowledge.

Mr. Burr:
His evidence as to the man being hurt would be hearsay.

Q. Did you get that knowledge from the same report?

Mr. Harris:
We object to that.

The Court:
That is a question of his knowledge.

Mr. Burr:
I understand, but if he wasn't there when the man was injured, how could he testify except by hearsay?

Mr. Harris:
How do I know it was hearsay. I object on the ground of hearsay.

The Court:
Sustain the objection.

Mr. Burr:
We except.

Q. Are you familiar with accidents that have happened in the mine since you have been there, Mr. Thompson? Are those accidents always reported to you?
A. Yes, sir.
Q. How many accidents of that kind have you had since you have been in charge of that mine as superintendent?
A. This makes the second accident.
Q. How many years does that cover?
A. To my knowledge it covers ten years.
Q. And you don't know how he got hurt; what he did to get hurt?

Mr. Harris:
We object to that.

Mr. Burr:
I am asking him if he knows.

The Court:
Overruled, if he knows.

Q. Do you know how that man got hurt of your own knowledge?
A. Which man?
Q. Fowler, the man that got hurt Friday?
A. The only knowledge I have is through the accident report.

The Court:
You don't know.

Q. You don't know of his own knowledge how he got hurt?
A. No, sir.
Q. But you do know you have had only two accidents—

Mr. Harris:
He went into that.

Q. You have had only two accidents, as I understand. reported to you during this length of time?

Mr. Harris:
I object as needless repetition.

The Court:
I sustain the objection.

Q. And how Fowler got hurt you don't know of your own knowledge at all?

Mr. Harris:

We object to that as a needless repetition. He has asked that.

The Court:

I sustain the objection.

Q. Mr. Harris asked you about this map. Mr. Harris asked you whether this map was prepared for this case. Do you recall whether or not this map was first prepared for a hearing held here by the Wage & Hour Administrator and just brought down to date for this case; is that how it was prepared?

A. That is right, yes, sir.

Q. I want to call your attention to Defendants' Exhibit 8, offered for identification.

Was that car ever in use for hauling men prior to May 1, 1941?

A. No, sir.

Q. What was that car used for until you began complying or trying to comply with this portal to portal—

A. That is the skip that handles the ore out of our Number 1 slope,—used for handling the ore.

Q. Is it the same type of car you use for handling the ore?

A. That is the car we used for handling ore.

Q. That is the car and you are using it temporarily until you can get another car?

A. We are using it temporarily until we can get two man cars we have on order.

Q. And it was never used prior to May 1, 1941?

A. No, sir.

Q. What was the purpose of having an ore car with a cover on the back end?

A. The purpose is to handle more ore. Before we put the top on we were handling about eight tons of ore per trip in the skip and now we are handling about twelve tons.

Q. Why is that?

A. To handle more ore and get more production.

Q. Why would it hold more ore with the top on?

A. The skip travels over a slope of about 45 degrees, and if we didn't have the top on it the ore would fall off.

Q. That was the object of the top?

A. Yes, sir.

Q. And it wasn't put there to keep the men from getting their heads hurt?

A. No, sir.

Q. And it was never used prior to May 1, 1941?

A. Not as a regular man car.

Q. It was used as an ore skip and not as a man skip?

A. Yes, sir.

Q. Now, he asked you about these steps shown by Exhibit Number 7 for identification.

Where do those steps go to?

A. Those steps go up the man way and come out at our underground steel shop.

Q. Do the men have to go up those steps to go to their working places or not?

A. No. They can go around straight through number 2 haulage way and slope and come into their working places.

Q. What are those steps made out of?

A. Concrete.

Q. And they go up to the tool house?

A. Yes, sir.

Q. He asked about some more steps. Where is the twenty-two steps or something like that he asked you about? Where are they?

A. Those steps are in number 2 mine on the haulage way that most of the men travel.

Q. Is that the haulage way—what part of the haulage way—Could you indicate there on the map about where that is?

A. Those steps are right in this area right here where the ore is faulted. There is a displacement thereof about forty feet above the main haulage way. The steps go from this lower haulage way to the upper haulage way, and here the men do travel them down through this part of the mine to their working places.

Q. That is, then, further down than the underground man loading station?

A. Here is the underground man loading station, and the steps are there (indicating on map).

Q. And the men who go this route and walk that way in preference to coming this way use those steps?

A. Yes, sir.

The Court:

Mr. Thompson, where is—will you indicate on the map where these steps were in this picture here?

The Witness:

Those steps are in the Number 1 man way at a point—

Q. Take a pencil and mark it, Norman.

A. Right in here.

Q. Now, draw a line down and put "steps" down where you can see it.

A. (Witness indicates on map).

Q. Now, you were asked about some unguarded electric lines. Where are those underground lines?

A. Those lines are on the main haulage ways where the trolley wire is six and a half feet above, or better or more, above the track, and six inches outside the rails.

Q. Now, during your experience there as superintendent and since you have been there connected with these mines, have you or not had anybody hurt by those lines? If so, how many and over what period of time?

A. Yes, we have had some accidents due to coming in contact with trolley wires. As I recall, about four or five years ago is the last accident we had, and I don't believe we have had more than three or four accidents of that nature in my experience at Raimund.

Q. Is that clearance—you said something about approved by the mine inspectors. Is that clearance for unguarded wires approved by the State Mine Inspector or not?

Mr. Harris:

I object. I understand they don't have any rule—

The Court:

I sustain the objection. We can't go into all these things.

Q. All right, sir. You gave the distance at those places where you have those unguarded wires, not guarded. Where are you measuring that distance from?

A. The top of the rail.

Q. From the top of the rail to the place where the wire is is how many feet?

A. Six and a half feet.

Q. Six and a half feet?

A. Yes, sir.

Q. Is that where the men ride in the skip or not?

A. No, sir.

Q. Whereabouts are those places?

A. Those are on the main haulage ways, travel ways where the ore is handled by electric locomotive within 500 feet of the face or actual working place, and in those places the ore is usually handled by a locomotive with a reel cable which hangs to the trolley wire, and then the locomotive runs into this place and gets its power from this uncovered cable.

Q. He asked you about the hazards of the wires from men carrying picks and shovels. Is that where the men carry picks and shovels under the requirements of the company or not?

A. No, sir.

Mr. Harris:
We object to the requirements of the company.

Q. Is that where they carry them at all or not? We want it both ways.

A. There are instances where they do and have carried picks and shovels under those wires.

Q. Is that against the rules and policies of the company and instructions of the company and your efforts to keep them from doing that, or not?

Mr. Harris:
We object to the question in that form.

Mr. Burr:
You went into the question of it being a hazard.

The Court:
Overruled.

A. No, sir; it is not against the rules, but it is against our policy, and we try—

Mr. Harris:
We move to exclude it being against their policy.

The Court:
I sustain the objection.

Q. What was—you started to say you try to do something. What did you say you tried to do?

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
I can't read his mind. Let me ask off the record.

The Court:
All right.

(Thereupon Mr. Burr conferred with the witness off the record.)

The Court:
That is the end. We are not going any further with that matter.

Mr. Burr:
Then we except to not being allowed to find out off the record.

The Court:
We are not going to spend the balance of the afternoon on matters of that sort.

Q. State whether or not, Mr. Thompson, in carrying these tools you did not direct your mine foreman or otherwise to try to prevent the men from carrying them or anything of that kind?

Mr. Harris:
We object to the question in that form, leading and suggestive.

The Court:
I sustain it.

Mr. Burr:

All right, sir. We except.

Q. I am not sure that I understood from your answer on cross examination as to whether or not this latticed work you have in the man skips—was that lattice work in the skip that has always been operated down the regular mine slope, or is it in this one that has been shown for identification?

A. That is in both skips.

Q. In both skips?

A. Yes, sir.

Q. Did you put that in the skip when you adopted the man skip for use or had it been there all the time?

A. Are you speaking about the ore skip?

Q. Yes, sir; is that in the ore skip you have been using for hauling men down the slope since May 1st?

A. That was put in there for the convenience of hauling men down the slope.

Mr. Harris:

I think he went into that on direct examination and said they took it out while they were handling ore; that it was put in there for the convenience of the men.

Q. I just wanted to find out whether it was in both skips. It was in the one you use since May 1, 1941, and the one used prior to that time?

A. Yes, sir.

Q. Mr. Harris asked you about whether or not the company sold shovels and picks and tools to the contractors and underground miners.

A. Yes, sir.

Q. I believe you stated they did?

A. Yes, sir.

Q. Are those sold to them at cost or with a service charge or for profit, or what about that?

A. The tools I mentioned are sold at cost.

Q. Any charge made at all for the service of selling them?

A. No, sir.

Q. Is there any obligation on them at all to get them from you or are they free to get them where they please?

A. There was no obligation to buy them from us.

Q. How about the powder? How is that sold, at cost or profit?

A. It is sold at cost plus a small handling charge for transportation into the mine.

Q. Is that true of the caps or not?

A. The caps are sold at cost and below cost, as I recall it.

Q. Cost and below cost?

A. Yes, sir.

Q. Now, you were asked again on cross examination as to whether or not some of the men who worked in this portion of the mine, that is, below where the auxiliary man trip runs, walked out instead of using the man trip.

Could you tell us about what proportion of the men that work down here walked out in preference to riding the man trip out?

A. When the man trip was first started we operated three scheduled trips. Two of those trips were loaded. The third trip was partly loaded. As time went on we gradually reduced the number of trips, gradually reduced the number of cars per trip because we found the men were not available themselves of the man trip that was being run, so at the present time only one man trip is being run.

Q. That answers my question in a way, but would you give your judgment of about what proportion or percentage along about May 1st were walking in preference to riding?

A. About 3/4,—2/3 to 3/4 of the men used the man trip to start with, and finally about 1/3 to 1/4 of the men used the trip.

Q. Now, Mr. Harris placed it as to whether or not the men,—some of the men didn't use—didn't walk out in preference to using that auxiliary man trip because they had left their places of work before three o'clock.

What time did that man trip stop—start, I mean?

A. The last schedule time was at 3:30.

Q. And what was the first schedule?

A. I don't recall exactly what our schedules were. We changed the schedules two or three different times to suit the convenience of the men. We started earlier than that when we first started the trip. The men complained the trip was running too soon so we lengthened it,—advanced the time of starting those trips and finally it dwindled down to one trip at 3:30.

Q. One trip at 3:30?

A. To take care of those men that wanted to ride out at 3 o'clock.

Q. Something was asked you about the ventilation in that mine, Mr. Thompson, and you explained your system of ventilation, but I would like to ask you as to what the results of that system have been. Have you had any trouble or not with ventilation in that mine?

Mr. Harris:

We object to that, if the Court pleases. That is highly indefinite,—have you had any trouble.

The Court:

All right. We will let him answer it. We want to get through. We want to take up another witness today.

A. No, sir, there has been no trouble.

Q. Has the ventilation been good or bad or how?

Mr. Harris:

Same objection, if the Court please.

A. It has been good.

Q. Have there or not been any accidents of any kind during the time you have been there at all claimed to be due to the ventilation?

Mr. Harris:

Same objection, if the Court please.

The Court:

Overruled.

A. I don't recall any.

Q. Now, these places in the mine, how many of them are there in the mine and where are they located, and the number of them where you have put this slag or other substance to keep it from being slippery?

A. The principal place is at the foot of the Number 2 slope where the air enters the mine and where the dampness at certain seasons—periods accumulates, and we constantly keep that covered with slag or ashes, and in number 1 manway below these steps there are a few places in there where we keep slag or sand to sprinkle over those areas.

Q. Now, are they the only places where you do find it necessary to keep slag or sand?

A. Those are the principal places. There are a few scattered places.

Q. As a general rule, is it necessasry over the mine as a whole?

A. No, sir.

Q. They are exceptional cases?

A. Yes, sir.

Q. Do you keep them in good condition by that process or not?

A. Yes, sir.

Q. Have you ever had any accidents, in your knowledge, of people getting hurt by slipping or falling down because of it being wet or damp there in the mines?

A. Nothing particularly serious, a sprained ankle.

Q. Have you had any sprained ankle?

A. The only case of that kind I know is a man running, trying to catch the man trip—

Q. That is the only accident of that kind you know about since you have been there?

A. Whether that was slippery ground or not, I couldn't say.

Q. I don't know that I understand about these pumps. Have you got a pump somewhere in the mine where you assemble the water you pump out of the mines?

A. We have two main sumps. We have one at the Number 1 mine at 26 heading, which is right at this point, and Number 2 mine at 27 heading. All the water that accumulates from the upper workings, upper section of the mines,—this represents a big fault, these two lines here. All the water that accumulates above that big fault is accumulated in those two sumps and pumped out of the mine by those big pumps.

Q. Is that where those pumps are located?

A. Yes, sir.

Q. Pumped out of the mine for what purpose?

A. For what purpose?

Q. Yes, sir.

A. To rid the mine of water.

Q. Is the water used for anything?

A. Yes, sir, for cooling, compressors, fire protection, domestic purposes.

Q. In other words, that is your water supply, your reservoir for your water supply?

A. Yes, sir.

Mr. Burr:
That is all.

The Court:
Have you anything, Mr. Harris?

Mr. Harris:
I have no further questions.

Mr. Burr:
Then, Your Honor, for the record, it is stipulated, without any waiver of the relevancy of it, of course, that the letter dated May 26, 1936, that went to the other companies and has already been offered in evidence, was likewise sent to the Republic Company, and enclosed in that letter was the same proposed contract to the Republic Company as was sent to the other three companies.
I believe that is all for Mr. Thompson.

The Court:
You are excused, Mr. Thompson.

Mr. Burr:
I bet he is glad to hear it.

(Witness excused.)

The Court:
Who will you have next?

Mr. Monaghan:
That letter has been identified as Sloss Exhibit Number 7.

The Court:
We will adjourn until 9:30 Monday morning, the regular time. We are not on daylight savings,—the Court and

city will not be, so we will come here at the regular time, 9:30 Monday morning.

Court is adjourned until then.

(Whereupon, at 3:55 P. M., July 18, 1941, an adjournment was had to 9:30 A. M., July 21, 1941.)

July 21, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:
Are you ready for the first witness?

Mr. Burr:
Yes, sir. I will use Mr. Geisking first, just on a formal matter.

1928 M. H. GEISKING, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Court:
What is your name, please, Mr. Geisking?

The Witness:
M. H. Geisking.

The Court:
G-e-i-s-m-a-n?

The Witness:
G-e-i-s-k-i-n-g.

(By Mr. Burr):

Q. Mr. Geisking, do you have charge and have you had charge for the past several years of the contracts made with the government, and recently what we call war contracts?

A. Yes, sir.

Mr. Burr:

Off the record, if Your Honor please, I might save time. We have a number of contracts here, and under our agreement at the beginning I want to offer them and then withdraw them.

Mr. Harris:

Well, any contracts with the government—

Mr. Burr:

I know you have your objection.

The Court:

I would like for you to state your grounds.

Mr. Harris:

As we see it, if the Court please, any government or private contracts would not be relevant evidence in this case. They are wholly irrelevant to the question before the Court, which is the simple question of whether or not —rather, a simple question of when the work time begins, when a man is actually at work under the orders of the company.

There were not any defense contracts between these plaintiffs and the United States Government at the time Congress passed the Fair Labor Standards Act, and people can't go out and make any sort of private agreement or public agreement that would operate to change a law, to emasculate a law, so, as we see it, we not only would be going into stuff that is immaterial and irrelevant, but on the greatest stretch of reasoning couldn't possibly shed any light upon the intent of the Congress—Mr. Burr has offered a number of things on the theory he was going to show the intent of the Congress, but there wasn't any war in 1938, and so, even on that theory it couldn't be admissible as we see it.

Furthermore, if we go into defense contracts it becomes necessary to remember the Government and the companies entered into discussions as to prices and profits, or escalator clauses, and we would have to start into a complete study of the entire industry and all kinds of industries, so we think for those reasons, among others, that any question—any evidence of defense contracts would be completely out of the case.

My information is that they struck the defense contracts from the pleadings. I may be wrong about that—

Mr. Burr:

No; you are wrong about it.

Mr. Harris:

But whether they did or not, even if they still be in their pleadings, a man can't by pleading something that has no bearing on the issues, entitle himself to produce evidence that has no bearing on the issues.

Now, it may be Mr. Brodie has an additional objection.

The Court:

I want to hear from Mr. Burr right now.

Mr. Burr:

If the Court pleases, the purpose of offering these war contracts—

The Court:

I didn't hear you.

Mr. Burr:

The purpose of offering these war contracts is entirely out of line with what Mr. Harris states in his objection to them.

We have two questions in this case. One is the construction of Section 7 as it relates to back time. That is the question in which Mr. Harris is principally interested. Another question in which we are interested, and the sole question in which the Administrator is interested,—the other party,—is whether or not that portal to portal ruling shall remain in effect in the future; that is, whether the Administrator's opinion with reference to it is correct or incorrect.

As Your Honor will recall, our complaint alleges, and on the allegation is based the jurisdiction of the Court,—certainly as far as the Administrator is concerned, because he has no concern with the back pay issue at all, that in the future plaintiffs will suffer irreparable injury if the opinion of the Administrator remains in force.

It is not for the purpose of showing the intent of Congress because it happened long after Congress passed the Act.

But it is for the purpose of showing the injury that may result to this company, permanent injury, irreparable injury, as alleged in the complaint, if this ruling remains in effect.

And we have the contract here to prove those allegations. We have a number of valuable contracts made with the government in which we agree without any ifs, ands and buts, to be subject to the regulations of the Administrator with reference to this matter. That is put in these contracts. That is what I am offering the contracts for. That is a matter of relevant testimony, material testimony in this case. That is all we are offering the contracts for. There is no question about prices, there is no question about profits, there is no question except but what we have the contracts that compel us, as alleged in the bill, at the risk of losing our business, to put the portal to portal into effect while this case is being determined. That is all they are for. They don't involve profit; they don't involve costs.

There is not a thing in the world in there except the provision they come under it.

The Court:

Aren't they objecting to the conforming with the ruling?

Mr. Burr:

No, sir, not as far as these contracts are concerned. If they were, we could test that in the Courts, but Your Honor is familiar with the recent decision that under government contracts it don't make any difference what provisions they put in the contracts, that they can put in any private contract anything they wish. They put in there it shall be subject to the direction of the Secretary of Labor, and it contains this provision:

"No person employed in the manufacture or furnishing of the materials, supplies, articles or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor,"

and said contracts further provide, on account of the breach or violation of the stipulations therein contained, for liquidated damages. In other words, if we hadn't put this in, we are liable for damages,—liquidated damages,—for "liquidated damages in addition to damages for any other breach of the contract in the sum of ten dollars per day and a sum equal to the amount of any reduction, rebates, refunds or underpayment of wages due to any employee engaged in the performance of the contracts, and in addition of the United States entering into the contract shall have the right to cancel same and to make open market purchases, or to enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor."

Now, that is the relevancy in this case of this evidence, and it is not only within the pleadings but it is within the jurisdiction of the Court as far as the Administrator is concerned, to show that as long as this ruling remains in effect, if we don't comply with it, and that is the allegation of our bill, we stand subject to the provisions in the contracts, as to which there is no judicial review at all,—stand subject to those provisions to pay liquidated damages, and have the contracts canceled at any time, and that is what would have happened to us if he hadn't put this in on May 1, 1941.

So, I say to the Court there can't be any question about it, and every point Colonel Harris has raised is not at all in line with the purpose of the offer of the contract. There are no profits involved. The only thing involved here is whether or not our contracts that say in effect the Administrator shall be the supervisor, so far as wages and hours of service are concerned, if we don't follow his construction of it,—not the Court's construction, but his construction, will stand subject to cancellation, and we are liable for the liquidated damages.

Mr. Harris:
Now,—

Mr. Brodie:
Will Your Honor hear me on that?

The Court:
I will hear Mr. Brodie.

Mr. Brodie:
He says the Secretary of Labor. That refers to the Walsh-Healey Act.

As we have stated to Your Honor, the Administrator has no power to make a binding interpretation of what this act means upon this Court. In certain cases he has the right to promulgate certain regulations which have the effect of law, but in this case he is merely stating his opinion, and he has as much right, in the performance of his duty, to state what the law is as counsel or anyone else, and the Court may or may not give that opinion weight.

Consequently, the question then becomes a matter for the Court whether the Tennesese Coal, Iron & Railroad Company or the Republic Steel Corporation or the Sloss-Sheffield Steel & Iron Company or any other company has violated the statute by working, or by not paying overtime for work, in excess of the statutory maximum for the time that the workers spent underground. That is the question for the Court to determine, whether the companies have violated these overtime provisions of the Act.

Now, that determination of that question is not dependent on anything in these war contracts. They have come into Court to determine whether they have complied with Section 7 of the Act in not paying their employees overtime for hours in excess of the statutory maximum which they spent underground, and that is the only issue before Your Honor. It isn't a question of what these contracts say or anything of the sort, but according to counsel's statements, these contracts confer upon the Administrator a greater power than the statute gives him, a greater power than the Administrator claims. The Administrator has never contended he has the right or the power to make any binding interpretation. The Administrator could proceed in the performance of his duty without issuing any public interpretation. Those public interpretations are just merely as a public service to inform people what his policy will be, but his position in enforcing the Act is in the same position as the Attorney General is in. The Attorney General, for example, is not required to issue a proclamation he is going to apply the Sherman Anti-Trust Act in a certain case, and if he goes ahead in the performance of his duty and in enforcing the Sherman Anti-Trust Act in a certain way, it does not become material that there are provisions in a contract that may state otherwise. If he did issue such a proclamation it would have no binding effect. He has no power to issue such a proclamation.

The question is not whether the Administrator's interpretation is right or wrong. The question is whether these men are at work within the meaning of the statute when they enter the mine. That is the sole question before Your Honor.

I would like to say one further thing with respect to this, Your Honor will recall we gave notice of the taking of oral depositions. One of the witnesses whose deposition we desired to take was Mr. Geisking. We were prevented from doing that.

Further, at a hearing on a motion to compel more complete answers to interrogatories, counsel for the plaintiffs stated he was going to withdraw from his pleadings all those allegations respecting impossibility of performance, respecting National Defense contracts and so forth. Relying upon that interpretation we said we would not press our motion.

Now, for all those grounds, and on the further ground this evidence is completely irrelevant and immaterial, I suggest that what counsel is attempting to bring out from Mr. Geisking is inadmissible.

Mr. Burr:

Do you want to say anything else, Crampton?

Mr. Harris:

As I understand, we, being the objectors, have the opening and close.

Mr. Burr:

I haven't had an opportunity to reply to this gentleman over here, and I certainly want that opportunity.

Mr. Harris:

Suppose you reply to him and I will close.

Mr. Burr:

That is all right.

The gentleman representing the Administrator, I submit to the Court, is as far wrong in the reasons given for his objections as were the grounds given by Mr. Harris for his objections.

Now, what does he say? He says the Administrator has no power to make any binding opinion. Of course he hasn't, that is, no power to establish the law, but these contracts remain subject to his control. These contracts are contracts made by other departments of the government in which they, in effect, put the Administrator in charge of the enforcement of the provisions of the contracts, and I don't care whether he is operating under the Walsh-Healey Act or he is operating under the Wage and Hour Act,—they put the Administrator, in effect, as the supreme tribunal to determine whether or not we are complying, not with the statute or the law, but with his interpretation of the law. The departments of the government go to him for interpretation and enforcement, not of the law, but of his interpretation of the law; that goes to these parties with whom we had our contracts. They might—suppose we had relied on what we conceived the law to be, and had refused on May 1st to go to the portal to portal. The very minute we did it,, with the Administrator's ruling outstanding, these parties with whom we had these valuable contracts, under the terms of those contracts, had the right to say to us, "You have violated the provisions of those contracts which said you should do those things that you are not doing," and in addition to that they would have had the right to put the penalty upon us. Now, it doesn't say we shall comply with the provisions of Section 7. That isn't at all what it says.

"This stipulation with respect to minimum wages shall apply only to persons and contractors relating to such industries as the government has contracts with."

Then it says that:

"No person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles or equipment used in the performance of the contracts shall be permitted to work in excess of eight hours in any one day, or in excess of forty hours in any one week, unless such person is paid such applicable overtime rate as has been set by the Secretary of Labor."

In other words, being subject to the supervision of the Administrator, the minute we fail to comply with the Administrator's rulings, whether they are legal or not legal, we become subject to the provisions of these contracts. There couldn't be any contest on it.

Mr. All:

It would be too late for any contest.

Mr. Ali:

Mr. Ali says that any contest would be too late. That is true of the holding companies provisions.

The people who have had any experience with the Administration of this law and related matters every now and then learn a thing or two, but the attorney for the Administrator,—well enough in a way,—he gets up and solemnly says the Administrator doesn't make the law, he just gives his opinion of what it is, but there is evidence that when he gives his opinion and you don't comply with that opinion you do so at the risk of threats and penalties that are almost insurmountable. You do it under the threat of the invocation of the hot goods provision. He has a right to go into Court and enjoin you from shipping a piece of pig iron out of the State under the hot goods provision. He says the Courts will decide. How long will it take the Courts to decide? Maybe months and years. No industry can afford to take the chance.

Not only is that true generally, but in these particular matters that are involved here, where we have the pleadings in this case as they are, is Your Honor going to strip the pleadings by objections to testimony? The pleadings allege these contracts. There has never been any agreement to take these contracts out of this case for this purpose. What we agreed to take out was the question of costs and profits. We are not asking about any question of profits and costs.

What we are here to show is as long as these provisions of these contracts remain in force, we are subject to losing our contracts and to liquidated damages.

Mr. Harris:

If the Court please, there is an ancient maxim of law that every man is presumed to know the law, and when they make contracts they make them in the light of existing law, and they can't be heard to influence the Court's interpretation of the law by saying that after that law was passed I went out and made a contract which I expected to make a profit out of. The Court doesn't determine the validity of the application of a law by the private arrangements of individuals engaged in business.

Now, these contracts haven't been submitted to the Administrator for interpretation. He doesn't interpret their contracts. We are not sitting here to determine whether the Administrator's ruling was a wise ruling or an unwise ruling. This is not an appeal from an order of an Administrator. This is a Court proceeding to determine the meaning of a law, and whether that law has been complied with up to May 1, 1941.

Now, even with the Walsh-Healey Act, which he talks about, that is not a self-executing provision about hot goods. If they claim they were shipping hot goods in interstate commerce, they would have to go to a Court; it isn't something a man just says you have hot goods and I therefore demand so and so of you. They would have to go to a Court and determine whether they were shipping goods,—hot goods in interstate commerce, so I respectfully submit, if the Court please, that what he is doing or what he is trying to do is to put in his private arrangements, and to say they are defense contracts doesn't give them any magic. They made those contracts because they expected to make a profit, and they are engaged in business for the purpose of making a profit. We don't know whether they are making ten percent, whether they are making twelve percent or whether they are making forty percent. We could never tell how much money they were making until we went into all the costs of them. We don't know whether it would still be profitable and very profitable to pay these miners overtime according to the counterclaims. For all we know, the company could pay them their overtime and still have a ten or twelve or twenty percent profit, so I say that by no stretch of the imagination can the Court be limited in its construction of a law, and in the application of a law, by private agreements entered into after the law was passed.

Mr. Burr:

May I ask you one question?

Mr. Harris:

I respectfully submit that none of those contracts, whether you call them defense contracts or something else, are admissible.

Mr. Burr:

I will ask you one question, Crampton. You have the close. You don't deny my statement of the law that the Supreme Court has held that the government in making contracts has the right to lay down any restriction it pleases, whether it is required by the law or not?

Mr. Harris:

I don't know what the particular case is to which you refer, but in any private agreement the parties have a right to enter into any agreement they please that is not against the law.

Mr. Burr:

Yes, but—

The Court:

I am going to sustain the objection.

Mr. Burr:

Let's see about the record. It is understood these contracts have been offered—

The Court:
Yes, sir.

Mr. Burr:
With these provisions in them, separately and severally—

The Court:
Yes, sir.

Mr. Burr:
—and the provisions are the same as the allegations set out in the complaint, and we have an exception,—separate and several exception?

The Court:
I will give you a separate and several exception as to each contract you offer to introduce.

Mr. Burr:
And those provisions?

The Court:
Yes, sir.

Mr. Burr:
Do you want me to set them out now?

The Court:
I don't think it is necessary.

Mr. Harris:
I think we should have a list of what contracts he is going to offer. I don't know—

The Court:

I don't think it is material testimony. I don't think it is material testimony called for by—I don't think it is admissible.

Mr. Burr

What I want to know is if I have got my exceptions, Your Honor.

The Court:

Well, you had better make them separately.

Mr. Harris:

As I understand, he is now going to offer—we have our objection and Your Honor has sustained our objection, and he is offering—

The Court:

Each one of them, separately and severally.

Mr. Harris:

He is merely identifying them to make a record?

Mr. Burr:

The first one I offer—

The Court:

Yes, sir. You can consider the ruling has been made or not as you like.

Mr. Burr:

I don't know I exactly understand yet. All I am interested in is getting my exception properly in the record.

The Court:

Whichever way you like, you go ahead.

Mr. Burr:
Well, we offer first the contract of the Tennessee Company with the Gulf Shipbuilding Company dated January 23, 1941.

Mr. Harris:
And we interpose all objections Mr. Brodie and I have—

The Court:
Objection sustained.

Mr. Burr:
We offer next the contract with the War Department, made on January 20, 1941.

Mr. Harris:
And we interpose the same objection.

Mr. Burr:
Now, can't we—isn't it understood he has an objection to each one and I have an exception to each one?

Mr. Harris:
All right.

Mr. Brodie:
That applies to the Administrator also.

The Court:
Yes, sir, and the Court sustains the objection and you have an exception.

Mr. Burr:
The next one is with the United States Agricultural Department, dated September 9, 1940.

The next one is contract identified as Number W-Ord.,—which is Ordance,—380, dated May 24, 1940.

The Court:
Sustained.

Mr. Burr:
Now, I believe that is enough of them, Your Honor, to raise the question without offering all the rest of them. Each plaintiff, separately and severally, offers these, and states that on account of the Court's ruling that we are not going through the formality of offering the rest of them.

The Court:
In other words, each of the plaintiffs makes the same offer you have?

Mr. Burr:
Yes, sir.

The Court:
And the Court sustains the objection.

Mr. Harris:
For the benefit of the record also, Judge, he is building up there as to the other purposes, we offer the additional objection that the Sloss Company couldn't possibly be hindered by a defense contract the T. C. I. had.

The Court:
I sustain the objection—

Mr. Harris:
It couldn't possibly be relevant to the Sloss Company or the Republic Corporation.

The Court:
The objection is on the evidence. He is perfecting his record.

Mr. Burr:

Now, I offer—our exception goes separately and severally as to each of the original defendants, and separately and severally for the intervener defendants, because that is the one where I am most confident this evidence is admissible.

The Court:

Then, of course, you have your—the—

Mr. Burr:

In other words, we offer them as against all defendants.

The Court:

Yes.

Mr. Burr:

And we have our exception.

The Court:

Yes.

Mr. Burr:

Then we offer them as to Defendant Fleming, as to him alone, and the government objects, I understand.

Mr. Brodie:

Yes, sir.

The Court:

The objection is sustained.

Mr. Burr:

And we have our exception.

The Court:

Just a minute. This is a matter of the indulgence of the Court.

Mr. Burr:
We will be glad to give you all the time you want.

The Court:
I have a matter set in chambers, Birmingham Clay Products. I will be back shortly,—Not long, I hope.

Mr. Burr:
Ten minutes, fifteen minutes?

The Court:
Adjourn for fifteen minutes.

(Thereupon proceedings were in recess from 10:05 A. M., to 10:30 A. M., at which time proceedings were resumed as follows:)

The Court:
All right, proceed.

Mr. Burr:
Come around, Mr. Hassler. We will examine him next.

The Court:
Who will you have next, Mr. Burr?

Mr. Burr:
Mr. Hassler.

1944 J. M. HASSLER, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

The Court:
How do you spell your name?

The Witness:
H-a-s-s-l-e-r.

The Court:
What are your initials?

The Witness:
J. M.

The Court:
H. M.?

Mr. Burr:
J. M.

(By Mr. Burr):
Q. John, keep your voice up so we can hear you.
A. Yes, sir.
Q. This is J. M. Hassler?
A. Yes, sir.
Q. How old are you, John?
A. 43.
Q. Are you in the employment, at the present time, of the Republic Steel Corporation?
A. Yes, sir.
Q. That used to be the Republic Steel & Iron—
A. Republic Steel & Iron Company.
Q. Republic Steel & Iron Company?
A. Yes, sir.
Q. What position do you hold with them at the present time?
A. I am chief engineer for the Birmingham district.
Q. How long have you been chief engineer?
A. Since January, '30; January 1, 1930.
Q. When did you first get into any business connected with engineering and mining after you left school, approximately?

A. About 1922.

Q. And where was your first employment?

A. My first mining employment was prior to that, while I was going to school, with the Tennessee Company.

Q. I see.

A. Number 4 mines.

Q. Is Number 4 mine a coal mine or an iron mine?

A. Coal mine.

Q. Number 4, I believe, is located at Pratt City,—at Wylam?

A. Yes, sir. It is about at the end of the steel mill, the Ensley Steel Mill.

Q. And after that, where was your next work? I will take your work instead of anything else. Your first work was with the Tennessee Company?

A. Yes, sir.

Q. And your next work?

A. With the Semet-Solvay Company at Ensley.

Q. What did you do there?

A. Plant engineer at Ensley.

Q. Then where did you go?

A. I went to Syracuse, New York, with the Semet-Solvay Company.

Q. What was your capacity there?

A. Plant engineer.

Q. Then what did you do?

A. I stayed there about two years and then went down to New York City with the Semet-Solvay Engineering Corporation.

Q. What was your job there?

A. Chief draftsman.

Q. Then where did you go?

A. I went to Buffalo with the same company.

Q. Was that mining work?

A. No, sir; that was coke plant construction.

Q. Then where did you go?

A. I went with the Republic Company in 1929.

Q. While you were working for the Semet-Solvay Company, did ~~you do any work~~ in connection with mining?

A. Yes, sir.

Q. What was it?

A. We had a coal mine at Littleton and I was engineer of that mine.

Q. Did that work require you to go in and out of the mine?

A. Yes, sir.

Q. Then you went with the Republic Company in 1929?

A. Yes, sir.

Q. And became chief engineer in 1930?

A. Yes, sir.

Q. What sort of work did you do prior to becoming chief engineer?

A. I was plant engineer at the Thomas works.

Q. Have you also, during this time, and if so, what part of the time, had charge of the Republic Company's employee relations?

A. Yes, sir, since about June, 1933. I also have the title of superintendent of industrial relations.

Q. That work is under your supervision also?

A. Yes, sir.

Q. And has been for how long?

A. Since 1933, in June.

Q. Now, since you have been with the company, we will say, as chief engineer, did you have supervision as chief engineer of both coal and ore properties?

A. Yes, sir, and also the plants.

Q. Also the plants?

A. Yes, sir.

Q. Now, from the time you went with them up until October 24, 1938, what ore mines were under your supervision as chief engineer?

A. Well, the two mines at Raimund, Raimund Number 1 and Number 2, and Spaulding and the Shannon mine that is idle.

Q. The Shannon mine is the mine over in the valley where they sank down a vertical shaft?

A. Yes, sir; it is almost vertical.

Q. That has not been in operation for some time; I believe?

A. No.

Q. Was that an ore mine, the Shannon mine?

A. Yes, sir.

Q. Do you recall what period of years it was in operation?

A. Yes, sir; it operated from about 1925 on up until about 1932.

Q. The mines at Raimund and Spaulding you mentioned, the ore mines, are the same mines you heard Mr. Norman Thompson, Superintendent of Ore Mines, testify about the other day?

A. Yes, sir, they are the same mines.

Q. Were the conditions he described there substantially correct?

Mr. Harris:

We object.

Mr. Burr:

I am just trying to save time, Your Honor.

The Court:

I will overrule the objection.

Mr. Burr:

I don't see any use of going over the same mines with him again.

Q. Was his testimony correct?

A. Yes, sir.

Q. I wish you would give me the names or numbers of the company's coal mines during the period of time we are talking about.

Mr. Harris:

So far as coal mines go, they certainly have nothing to do with this case.

Mr. Burr:

Your Honor can't tell, of course, until you hear something about them.

The Court:

I will overrule the objection.

Mr. Burr:

When we get to the right point I will want Your Honor to hear us.

Q. How many coal mines have they had, Mr. Hassler?

A. Sayreton 1 and Sayreton 2, and Virginia and Warner out at Republic and the Altoona mine. Virginia and the Republic and Altona mines are not now being operated.

Q. Suppose we get rid of the ones that haven't been operated. Take Virginia Mines; when was that last operated?

A. That was last operated in 1932 and it is being rehabilitated now for operation.

Q. Is that a slope mine?

A. Yes, sir.

Q. Where is that mine located?

A. It is—

Q. How far is it from your nearest ore mine property?

A. It is approximately—about eight miles from Raimund.

Q. About eight miles from Raimund?

A. And seven miles southwest from Bessemer, about seven miles.

Q. All right, sir: Your Raimund mine—What were your other coal mines? You mentioned Virginia.

A. Sayreton.

Q. Sayreton. How many mines have you at Sayreton?

A. There are two.

Q. You understand, I am talking about the period I have asked you about,—

A. Yes, sir.

Q. October 24, 1938, up to the present time?

A. Yes, sir.

Q. What are the mines at Sayreton?

A. Number 1 and Number 2.

Q. What about the mines at Altoona?

A. They are still operated on a wagon basis.

Q. Are they slope mines or drift mines?

A. They are drift.

Q. Sayreton are slopes?

A. Yes, sir, both slopes.

Q. You mentioned the Warner mine?

A. Yes, sir.

Q. Is it still being operated?

A. Being operated to a small extent.

Q. Where is it?

A. Out on Cat Mountain towards Blossburg.

Q. Is that a slope mine or drift mine?

A. Slope mine.

Q. Is it still in operation?

A. Yes, sir.

Q. How far is Sayreton from your ore mining operations?

A. You mean the nearest point?

Q. Yes, sir.

A. That would be Spaulding,—probably ten to eleven miles straight across the valley.

Q. Now, confining our questions for the present to the Sayreton mines as illustrative of the slope mine operations, have they or not been in operation ever since you have been with the company?

A. Yes, sir.

Mr. Harris:
May I have an objection to each one of these questions—

Mr. Burr:
Yes, sir; satisfactory to us, Judge.

Mr. Harris:
With reference to coal mines?

The Court:
Yes, sir.

Mr. Brodie:
And that applies also to the Administrator?

The Court:
Yes, sir.

Q. Have you a map of the Sayreton mines?
A. Yes, sir.
Q. Will you put it on the Board? Let it be marked.

The Clerk:
Exhibit Number 17.

Mr. Harris:
As to each exhibit dealing with coal mines, we—

Mr. Burr:
Perfectly all right with us for them to have an objection to each question without making it.

The Court:
What exhibit is that?

The Clerk:
Republic Exhibit Number 17.

(Thereupon a map of Sayreton Mines Numbers 1 and 2 was marked Republic Exhibit No. 17.)

The Court:

I am not going into testimony on coal mines unless it is shown these mines are operated in a similar manner to ore mines.

Mr. Burr:

That is what I am preparing to do right now.

The Court:

That is certainly as far as I can go.

Mr. Burr:

Yes, sir.

Mr. Harris:

Of course, it is our theory, Your Honor, that the coal mines do not shed any light on the legal question or the factual question here any more than the operation of a shoe factory or oil mill or rolling mill or any one of the thousand and one industries in America because the law applies to and was passed not merely for ore mines, but for the entire picture of American Industry.

Mr. Burr:

Of course, we are interested here with underground mines. That is what we are interested in. We propose to show—

The Court:

Well, the opinion has not been rendered on coal mines, has it?

Mr. Burr:

Well, no, sir, but as my friends have so often said, the opinion is not law.

The Court:
I know.

Mr. Burr:
Yes, sir. If Your Honor wants—

The Court:
As far as you are concerned now,—

Mr. Burr:
Yes, sir, but it shouldn't be—

The Court:
Portal to portal is not in effect in coal mines?

Mr. Burr:
Sir?

The Court:
Coal mines operate on face to face?

Mr. Burr:
They do at the present time, but as soon as you decide traveling time is chargeable, what is contracts between friends?

If Your Honor wants to hear that proposition discussed—

The Court:
I would rather hear it discussed at this time.

Mr. Burr:
All right, sir.

The Court:
You are objecting to it?

Mr. Harris:

Yes, sir, we are objecting to it.

I might let Mr. Brodie start the objection, and then Mr. Burr, and I will reply.

Mr. Burr:

I think Mr. All will want to be heard too.

The Court:

Yes, sir.

Mr. Harris:

All right; Mr. Brodie, you go ahead.

Mr. Burr:

Before Mr. Brodie starts, the way I want to present this matter is in connected form. I want to discuss every particular item which makes a holding on the evidence we want to offer on this subject necessary.

Mr. Brodie:

Shall I proceed?

The Court:

Yes, sir.

Mr. Burr:

And that will include the issue under the pleadings.

The Court:

All right.

Mr. Brodie:

If Your Honor please, the sole question here is not whether men are paid face to face or portal to portal or some variation of those two. The question is when a miner's day's work starts and when it ends. That is the only question for Your Honor.

Whether the Administrator has held that face to face or portal to portal is the proper way of computing pay is of no materiality here because the question with which Your Honor is concerned is how many hours does a man work during a week, and if he works over forty hours during the week he is entitled to overtime. If he works less than forty hours during the week and his pay is above the minimum wage, then we have no concern with it because there has been no violation of the law. So that if in a particular industry, we will say, underground miners work four hours a day face to face and it takes them two hours to get from the portal to the face and then back from the face to the portal,—if the total pay they get for the week, for forty hours, is above twelve dollars a week, then there is no question. The Administrator might say that portal to portal is the proper method of payment, but the question is: Is a man paid the minimum wage for the hours worked, and is he paid overtime for hours worked in excess of forty hours per week?

It is the contention of the Administrator and it is the contention of the defendants represented by Colonel Harris and Judge Smith that the underground workers in these mines have not been paid overtime for hours worked in excess of the various maxima set out in Section 7, and that is the question for Your Honor to decide.

Portal to portal or face to face are really merely symbols, because they become important only in determining how many hours a day a man works.

Now, if these men when they enter the mine at the beginning of the week, and when they emerge from the mine at the end of the week are at work, according to the interpretation Your Honor places upon the statute, for more than forty hours since October 24, 1940, or more than forty-two hours for the period from October 24, 1939, to October 24, 1940, or for more than forty-four hours for the period of the first year of the operation of the Act, then they are entitled to overtime without regard to what has happened in another industry.

Now, for the sole purpose of this evidence relating to coal mines is to import here some sort of an estoppel against the Administrator. Now, at the proper time we will show Your Honor there can be no estoppel against the Administrator.

Mr. Burr:

That is not the purpose of it at all. I can correct you on that right now so you will not have any misunderstanding about it.

Mr. Brodie:

We have already stated it is our position, and has always been our position, that the Administrator's opinion is not binding upon the Court. The Administrator has never claimed the power to make a binding opinion. He has said that, in his opinion, an underground ore miner is at work when he enters the mine.

Now, if, from the time he enters the mine until the time he emerges from the mine the hours are in excess of forty, then, says the Administrator, and we think this is a proper interpretation of the Act,—the man is entitled to over time. If he is underground less than forty hours a week, then whether he is paid on a face to face basis or a portal to portal basis or hourly basis or shift basis or piece rate basis, as long as his pay is in excess of the minimum wage, then there has been no violation of law.

So, the sole question for Your Honor to decide is when do these ore miners start to work and when do they come under the control and supervision of their employers; when does the relationship of employer and employee attach and when does it end? That is the sole question for Your Honor to decide without regard to what happens in coal mines where the hours are different. The face that in coal mines men are paid on a face to face basis is entirely immaterial, because coal contracts, as we all know provide for seven hours work per day, thirty-five hours a week, so that, unless the time between the portal and the face exceeds five hours a week since October 24, 1940, seven hours a week since October 24, 1939, or nine hours a week since October 24, 1938, then there is no problem with respect to coal and we are not trying the coal mines here, and for that reason I respectfully submit, Your Honor, that evidence respecting the practice of coal mines is immaterial, and if this evidence goes in it seems to me it would open the door to the admission of evidence respecting how many hours a coal miner spends underground from the time he enters the mouth or portal or collar of the mine until he emerges from there. And it is up to—then it would seem to me it would be up to Your Honor to decide whether the Act has been violated with respect to coal miners, something entirely remote and apart from these cases.

This case concerns these men, whether they are at work for more hours than the statute permits without the payment of overtime, and that is the sole issue.

Mr. Burr:

Will you hand me a glass of water, please, sir?

Mr. Brodie:

May I say one thing Mr. Cooper reminds me of?

The Court:

Yes, sir.

Mr. Brodie:

Your Honor has already ruled on a preliminary motion for documents and so forth that evidence respecting the coal mines is immaterial.

I submit that has become the law of the case for the purpose of this trial, and that any evidence now which is in contravention of Your Honor's ruling is a reversal of the law of the case and the theory upon which this case is being tried, and I respectfully submit that as an additional ground why this evidence should not be introduced.

The Court:
Go ahead.

Mr. Burr:
If Your Honor please, with reference to his last ground, this matter has never been discussed before the Court, and, of course, there is no such a thing as the law of the case until the case is over with.

The Court:
He probably means to say I am bound by that—

Mr. Burr:
Yes, sir, but Your Honor is not bound—

The Court:
—as a theory of the case.

Mr. Burr:
But Your Honor is not bound by it as the theory of the case. That was denied on the ground it was confidential information. Your Honor wouldn't let a ruling you made then interfere with your ruling now if it was incorrect, so I will not pay any attention to that.

Now, if it please the Court, it seems to me we have really, during a large portion of the trial of this case, gotten entirely away from the issue of the case. Certainly, if the statement made by opposing counsel is the issue in this case, why, I am lost or the issue is lost one. So, I want first to go back and see what the issue in this case is.

Here are the questions that Your Honor has to answer, —that you are requested to answer:

> "Did the Congress, in the enactment of Section 7 of the Act, intend that the work week should consist of the time, per se, actually spent by the underground employees of the plaintiffs working at and around their usual working places?
>
> "(C) Did the Congress, in the enactment of Section 7 of the Act, intend that the work week of plaintiffs underground employees should include any portion of their time spent in being transported or walking to and from their usual working places, and while not engaged in any physical work or service for the plaintiffs?"

Now, that is what we are here for. We are not here to try the question of whether one mine had a different means of transportation from another; we are not here to try the question as to what kind of transportation one mine presented as against another; we are not here, in answering that question, to determine the question as to whether or not one mine has one practice about handling tools and another mine has another practice. Those are questions which may throw light and may not throw light on the main question. They are questions which will be decided long after we have gotten past the declaration of law which the Court has to make in this case. Now, there can't be any question about that being what is raised by the pleadings.

Now, I will read to you the answer, first, of the Smelters Union in that regard:

> "For a further separate defense, these defendants allege that under the Fair Labor Standards Act of 1938 the work week for the employees of the plaintiff engaged in pro-

duction of goods for commerce includes all the time when a miner reports for duty as required at or near the collar or portal of the mine, and ends when such miner reaches the collar or portal of the mine at the end of the shift, and all of the time spent on the surface in obtaining and returning lamps, carbide and tools, and checking in and out."

Now, Your Honor will notice, of course, that they are claiming the law is just the opposite of what we are claiming the law is. We allege in our complaint that the work week does not include traveling time to and from the working place per se. We exclude from the question any time spent in active work. They come along and they say, "You are wrong; the work week includes all the time, without regard to conditions or circumstances, from the time the miner gets to the entrance of the mine until he comes back." So, that is the issue so far made by this complaint and this answer between myself and these gentlemen over here.

Now, what does the Intervener say?

"Intervener alleges that the proper interpretation—" Now, that is what we are getting at. Your Honor is interpreting Section 7.

"Intervener alleges that the proper interpretation of Section 7 of the Fair Labor Standards Act of 1938 is as set forth in the opinion and report, a copy of which is annexed to plaintiff's petition as Exhibit A."

I will read that again:

"Intervener alleges that the proper interpretation of Section 7 of the Fair Labor Standards Act of 1938 is as set forth in the opinion and report, a copy of which is annexed to plaintiff's petition as Exhibit A."

Your Honor will notice that the opinion of the Administrator, and it will be in evidence in this case,—it is bound to be,—before we get through, because if they don't see fit to defend it,—they have already alleged it is proper in their pleadings, and if they don't introduce it we will introduce it. Your Honor can consider it in evidence now.

Both answers of all parties claim that the proper interpretation of Section 7 is that whenever an underground miner in an ore mine,—I will show you why if it is in a ore mine it is bound to be in a coal mine,—that whenever an underground ore miner steps into his transportation here he is at work until he comes back out from that mine. It doesn't make any difference in answering this first question as to whether conditions are dangerous or not dangerous; it doesn't make any difference in answering that question as to whether they carry tools or don't carry tools; it does not make any difference whether, when the miner goes down into the mine, he rides in a skip or car or whether he walks or whether he rides in a skip or car that is air conditioned or has seats or cushions, or one that is built so there is not any possibility of him getting hurt and things of that sort because they are contending under this law that it was the intent and purpose of Congress in 1938 that evry time an ore miner got out from under the sunshine and traveled to his place, whether it became safe or unsafe, whether he walked or didn't walk, he was at work because he had passed the portal of the mine. That is the issue in this case.

Now, let's see what is relevant to show the intent of Congress. What does Section 7 say?

But before I pass to that, let me show Your Honor some of the rest of the pleadings in the case. Here are other averments. I am reading them consecutively.

"Otherwise stated, the plaintiff asserts that the Congress intended—" This is our averment of the complaint, which they deny,—"the word 'workweek' to be construed as meaning the time actually spent by plaintiff's underground miners in or about their usual work places, and did not intend to include as a part of the 'workweek' the time spent by such underground employees in being transported or walking to and from the places where they actually work."

"It has been for more than fifty years the unvarying and continuous custom in plaintiff's ore mines, as well as in all other ore mines in Alabama, for the wages of underground ore miners to be computed and paid on the face to face basis."

"It has been for more than fifty years the unvarying and continuous custom in plaintiff's ore mines,"—that is what I am prepared to prove,—"as well as in all other ore mines in Alabama, that underground ore miners should not have their wages computed or paid for the necessary time in going from and to the surface and to and from their underground working places."

"The same unvarying and continuous custom, as set forth in one and two above,"—that is what I have just read to Your Honor—"has for more than fifty years existed in all underground coal mining operations of the plaintiff and of all other coal operators in the State of Alabama."

"The plaintiff operates four underground coal mines,"—that is in the complaint—"and uses the coal and by-products thereof in the manufacture of its products. The operation in its coal mines,"—and that is what I have got Mr. Hassler on the stand to prove right now,—"insofar as the questions involved here are related and concerned, is in substance the same as its operations in its ore mines and limestone mine."

Now, don't forget, may it please the Court, that already the issue has been made and evidence offered without objection,—there may have been objection, but offered and admitted by the Court that the underground limestone mine there adjacent to these ore mines is involved in this case, and it is involved just as much as the ore mines are.

The complaint goes on: "The same unvarying and continuous custom, as set forth in one and two above,"—I read that paragraph.

"Plaintiffs allege that there can be, under conditions existing in the State of Alabama, no logical or possible differentiation between underground ore mines and underground coal mines, so far as the question under consideration is concerned."

It alleges again—

The Court:

Mr. Burr, has the administrator made a ruling on coal mines?

Mr. Burr:

Yes. I will get to that after a while,—yes, sir. That is another reason why it is absolutely admissible in this case.

Then the complaint alleges:

"Written contracts excuted between the plaintiffs and locals of the United Mine Workers of America, containing an exactly similar definition of the work day as meaning 'hours of work ~~in or about~~ the mines at the usual working places', have been in existence since, to-wit, May 2, 1934."

Other averments show that they have been in existence since 1898 in the State of Alabama in coal mines.

Now, let's get back and see why you can't keep the coal mines out of this case on the broad proposition of whether traveling time, per se, in mines, under Section 7, constitute a part of work.

I propose to show by Mr. Hassler and every witness that testifies, and there can't be any doubt about it, that conditions in ore mines and coal mines are substantially the same, just as we have alleged in the complaint; we propose to show that these coal mines are underground mines just like the ore mines; that the only difference between them, if any difference exists, is that in the coal mines the traveling time is longer than in the ore mines.

"Why," the government says, "what concern is that of yours? You have got a seven-hour day in the coal mines by contract."

In the first place, what is a contract as shown by the evidence in this case or by the contention of the defendants in this case? We have got a contract with just as much solemnity, signed by the national president of the union before this matter ever came up that it shall be working place to working place, but they say that contract can't repeal the law, and it can't, unless we can hereafter work in a question of waiver and estoppel that is not involved here.

Then, turn to your coal contracts,—seven hours a day. Why, may it please the Court, when I get through examining this witness and other witnesses the evidence will be uncontradicted that so much further do the miners in the coal mines walk that there is an overtime even when they don't work but seven hours at the face, and that has existed during all the period of this time, and just as sure as I am standing here, and Your Honor is sitting there, if this Court shall hold and the Appellate Court should sustain the holdings, that traveling time per se in an underground mine, whether it be coal mines or limestone mines or the mines out in the west his opinion referred to, or gold or zinc or silver or any other metal,—just so long, if the Court should ever reach that conclusion that the traveling time per se is work time, without reference to the character or the mine, the kind of the mine, the length of the slope, the condition of the slope, why, if that ruling is ever made, where do we stand with our coal mines? Do you think we would want to bring these coal mines into this proposition if we thought they could be safely let out? It wouldn't be three days before the individual coal miners, acting through the same or different attorneys, with the intervener joining in, as he may do, if the opinion here involved is held to be correct, before they would be claiming against us that the Court has held that traveling time, per se, the time a man is in the mine has to be paid for and pay us. Then tell me they are not involved in this case and in this litigation.

The intent of Congress is what we are after here. On October 24, 1938, what did Congress intend when it enacted this law with this verbiage:

"No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce for a work week longer than—" at the present time forty hours.

Now, that is the thing Your Honor is construing. These gentlemen say, and the Administrator, strange to say, wants to join in that,—he wants to get as far away from his opinion as he can,—he can't leave it, no. These gentlemen say that word "workweek" means what? It doesn't mean carrying tools; it doesn't mean encountering danger; it means you have got to pay this time and a half for all this period of time for every man who went in your mine, whether those mines were like they were out here at Spaulding, a short walk down, or like they were at Raimund, a mile down, or whether they are like they are at Sayreton, three or four miles down,—that is what you have got to pay them for.

Now, let's see what Congress intended. That is what we are interested in now. Every piece of evidence—We are not trying this case before a jury. We are trying to solve a difficult problem. Every piece of evidence that throws a particle of light on this issue is admissible, and will be admitted in evidence by Your Honor. You can't do otherwise. The coal mines are not only admissible in evidence, but more so than the ore mines. Can Your Honor find anything in that section about ore mines? Can Your Honor find anything in that section about coal mines? Can Your Honor find anything in that section about underground mines? Can Your Honor interpret the intent of Congress as it relates to the Tennessee Company or Republic Company or Sloss Company? That is not what you are here interpreting. You are here to interpret this Act and answer the question of whether or not traveling time per se is work. That is your question. Doesn't Your Honor know if Congress were legislating against underground ore mines as contrasted with the coal mines, it would have said so? If the Congress had intended a different rule to apply to underground ore mines because of different conditions, different means of transportation, different dangers, different carrying of tools or anything else under high heaven; if the Congress had intended to set apart the mines of the Tennessee Company and Sloss Company ~~and Republic~~ Corporation and say this law applies to them and you have got to pay your men for traveling, no matter where they travel to or under what conditions they travel,—if the Congress had intended that it would have said it.

When Your Honor gets further into this case and hears all the evidence, you will find out every time when that question has been up for consideration by state legislatures and by Congress and by every department that has ruled on it,—every time it has been up for consideration, when the intention of Congress or legislatures was that coal mines shouldn't do certain things, they said it, or ore mines should do certain things, they said it, or other businesses shouldn't do certain things, they said it. Nothing of that sort is said in this case. You can't find any humanitarian or sociological considerations as support for this part of the law. Congress didn't say that you fellows down there in the Alabama ore mines or in the West can't work men in the mines because it is against their health or endangering their safety. No, no, they didn't say that. They said just the opposite,—You can work them just as long as you please as long as you pay them time and a half for overtime.

Your Honor has to answer the presented question; you have got to determine what the Congress meant, and you can't answer it by saying that the work week in the Tennessee Company's ore mines is entirely different from the—

The Court:
Why do you want to go into the coal mines?

Mr. Burr:
To find the intent of Congress in passing the law.

The Court:
Has the Administrator made a ruling on coal mines?

Mr. Burr:
The Administrator has not made an authoritative ruling on anything.

The Court:
I know, but—

Mr. Burr:

Yes, sir, he has ruled in coal mines it is on a face to face basis. He is right there, just as he is wrong here, and that is why we want to go into the coal mines.

Getting back to the intention of Congress when they passed this law in October, 1938, the decisions hold if there is any ambiguity in the word "workweek" you have to look to what the conditions were at that time. All right. What were the conditions at that time?

As we expect to prove by this evidence we will offer later,—In the first place, we propose to show at that time, if you take it on a quantity basis, that, in accordance with the figures of the Bureau of Mines which have been identified under the offer of proof, that there were working at that time, in 1938, in Alabama, not quite four thousand ore miners and over 20,000 coal miners in underground mines. Now, does Your Honor think that they intended to put those 4000 coal miners on a different basis from the 20,000 ore miners?

The Court:

It is the other way.

Mr. Burr:

Yes, sir, it is the other way, just the opposite,—4000 ore miners and 20,000 coal miners.

If we take it on production it is even stronger. If we go from the Alabama mines to all over the United States, and that is where you have got to go to find the intent of Congress, you will find these unusual figures that appear in these government publications, and I want to give them to Your Honor. They show in 1938 there were coal miners in the underground bituminous coal mines of the United States a total of 441,331, while the number employes in ore mines was 19,778. Now, did Congress legislate for those ore miners and didn't legislate for the 441,000—didn't Congress, when the Senators and Representatives from all those States, who knew of that tremendous number of underground coal miners,—if they had intended to make this difference between ore mines and coal mines, wouldn't they have said so in the Act? Not only that, but isn't it a reasonable and inescapable conclusion that Congress would never have passed that law if it had intended to earthquake the conditions existing in the ore and coal mines and other underground mines of the United States and not say so in express language that they knew how to use? If you follow that out to your next step, if you follow it to the underground anthracite coal mines under these records here, you will find that the proportion of miners in underground coal workings increase with even greater proportion.

So, I say that anything that shows the exact condition that existed when Congress passed this law is bound to be relevant evidence in this case, and we are proposing to show by the government publications that at that time the underground coal miners engaged in the production of coal out numbered the ore miners engaged in the production of iron ore in the proportion I have shown Your Honor, and if that is true, the answer is inescapable that Congress didn't intend to create a condition where every coal miner in the United States,—nearly a half million of them, because that would have to be the condition if Your Honor ruled according to their contention here that traveling per se is work time,—Congress didn't intend every coal miner in the United States, a half million of them, notwithstanding custom and contract, should be entitled under this act, to be paid as a part of their work for traveling time they spent in going to and from their working places.

Not only are those facts true, as shown by this evidence, but what else happened? Your Honor already knows here, from the testimony that under the N. R. A. a code was adopted for the bituminous coal industry and that there was not a code adopted for the ore industry. The evidence is undisputed here that as to the bituminous coal mines we are talking about, showing again the complete tie-up of the ore and coal mines in this industry,—the exhibits are there before Your Honor that in 1933 when the union made its first proposal that they be granted half and half traveling time, what was the response.

The proposal of the Union was that,

> "In view of the fact, the company can force the men to enter and leave the mines at any time stated by the company, we ask the right to enter on out time and to leave on the company's time."

The answer of the company to that was this: —That is the first one I want to get in, the one in—Wait just a minute. There is one in front of this. It will be exhibit 5. This has the same thing in a different form, but I want to start with the first one.

The suggestion was that the men enter the mines on their own time and come out on company time; suggestion for an eight hour day and forty hour work week, and suggestion that rates of pay be increased accordingly.

Here is the answer:

> "These three suggestions are considered as one since they can be answered as such. The code adopted for coal mining is being followed very closely by this company in connection with its ore mining operations, and that code provides for eight hours of work at the usual working place, exclusive of the lunch period, for a forty hour week and for certain wage scales. While we do not propose the adoption of identical wage scales at the ore mines as those of coal mines, proper differentials are being maintained and adjustments have been made to insure a fair wage to each employee."

So Your Honor sees there that as far back as 1933, following the adoption of the bituminous coal code, that the union itself, when it presented this question, was told, and nothing further was heard from it, that we are following as closely as we can the coal code in reference to the operations in our mines.

How close did they follow it?

Another item of evidence we expect to put in evidence is the Code of Fair Competition for the Bituminous Coal Industry, as approved on September 18, 1933, by President Roosevelt.

Now, mind you, this is what Congress knew about it when it passed this law. The President said this in approving this code. After reciting the application having been made, he goes ahead and says:

"* * * Having found that the said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act and that the requirements of clauses (1) and (2) of subsection (a) of section 3 of the said Act have been met;

"Now, therefore, I, Franklin D. Roosevelt,—" and then he goes on and approves it as made and as submitted by the Administrator.

Title I that he says has been complied with, one of the principal provisions of that title,—there were two; one was 7 (a) which Your Honor will recall related to bargaining rights, which is not involved here, and the other one is the part relating to maximum hours, and President Roosevelt says, "I find that that code complies with the maximum hour requirements,"—the same sort of language you have got to consider here under Section 7 of this Act, and what did the Code that he approved contain?

"Seven hours of labor shall constitute a day's work—" I am reading from the Code, the maximum hours of labor,—"and this means"—traveling time? No, sir, "—and this means seven hours of work at the usual working places for all classes of labor, exclusive of the lunch period."

So, I say, may it please the Court, that not only did Congress, when it passed this all inclusive law, including coal mines and ore mines and all other kinds of mines and all industries,—not only did it have before it at that time as evidencing its intent the undisputed facts which we are presenting here,—I don't think they will be disputed; they can't be disputed,—the undisputed facts that both in ore mines and coal mines, and, for that matter, in the underground metal mines, every underground mine in the United States at that time, we will show before we get through with this case, and prove it by their own testimony, that with the exception of three—I want Your Honor to catch this and remember it,—that with the exception of three western states, Utah, Arizona and Navada, where the legislatures passed laws where they said in plain words what Congress hasn't said here, where they said that a man's labor begins when a man enters the mine and ends when he comes out,—that with the exception of those three states,—none of which mine any iron ore or coal,—with the exception of those three states, and as this testimony will show taken by the Administrator when we didn't, and with the exception of eight small contracts made by the Smelters Union in that section of the country, that from one end of this country to the other, from Alaska down through Alabama, from the great coal producing states of New Jersey, Pennsylvania and New York, on out through the Lake Superior Region to the far west, that with the exception of those three states and those few contracts, that not only had the custom, since the memory of man runneth not to the contrary, but the actual contracts with the labor unions, ore, gold, silver, limestone, coal,—that not one, with the exceptions I have mentioned, was ever on this portal to portal basis.

Now, we propose to show in reference to the coal mines that that has been true, they have formulated the custom that has been adopted—Your Honor remembers these exhibits,—that has gone into every one of these contracts that have been signed up until April of this year,—every one of them. You can get them and put them down side by side, and you will find that the definition of the work day is just as put in this bituminous coal code and as approved by the President of the United States.

We propose further to show by the evidence that has been identified for introduction in this case, subject to objection for relevancy,—we propose to show that previous to October 24, 1938, this question had arisen before a number of mediation boards. During the presidency of President Wilson—

The Court:

You are getting off, aren't you?

Mr. Burr:

No, sir, I am not getting off. I am getting on. It is the first time we have been on since we started this case.

I am showing the facts that existed at the time Congress passed the law, and you have got to consider those facts. You have got to consider the question whether the Congress, in enacting Section 7 of this Act, enacted it to apply to the Alabama ore mines or to all mines. Why, if Your Honor please, nobody has questioned that until the last two or three days,—since this case started. It is admitted by the conduct of the government in this case; it is admitted by the decisions, the rulings, or the interpretations or the opinions of the Administrator in this case. You can't find any possible justification for eliminating the coal mines from this broad question, because Congress was legislating just as much for the coal mines as it was for the ore mines.

Now, it is our contention, if it please the Court, that in addition to this reason, as showing the intent of Congress when the Act was passed, that this evidence is admissible for the purpose of showing, if the Act is ambiguous, the construction of the parties after the Act was passed.

Now, we were just as much parties, in our coal mine contracts, to the construction of the Act as we were in our ore mine contracts. We propose to show that in the coal mines of Alabama,—in these coal mines,—since 1898, at all time, whether the union was in control or the companies were in control or neither party was in control, that since 1898 every contract has followed the language which the Code followed under President Roosevelt's approval,—the Code of 1933; that over that entire period of time the face to face definition of the day's work has not only been recognized, but has been carried into the contracts.

Now, we say this evidence is admissible as showing the construction placed upon the Act by the parties after the Act was passed if there is any ambiguity about it. We say these same coal mines and these same ore mines, and those of the United States, have gone right along until about the month of March, 1941, operating on the face to face basis.

We propose to offer in evidence here, along with the other documentary testimony, the joint request of the United Mine Workers of America and the coal operators of the Appalachian field, which has been given publicity, as admitted by this pre-trial statement here as having been given publicity, under which they went to the Administrator and asked for an interpretation of this law, and I would like to read Your Honor what this statement says, and we are prepared to prove it if there is any dispute about it. There can't be any dispute, because the Administrator gave it out.

Here is what this joint statement says, among other things:

"The United Mine Workers of America and coal operators of the United States have been negotiating wage agreements for a period of fifty years. The Appalachian Agreement, covering as it does a great number of men and mines, has been worked out over that period of time, and covers within its general provisions myriad wage rates, conditions of work and hours of employment. This agreement, with its 23 supplemental agreements, constitutes a whole document. In these conferences, of course, hours of work has been one of the principal matters of consideration during this period of time. Hours of work with wage rates constitutes the heart of any such agreement. In this basic industry we have provided for seven-hour days, five-day weeks, thirty-five hours per week, with high rates of pay. The basic inside day rate in the North is $.857 per hour, and in the South it is $.80 per hour. The underground workers are paid on this basis, with maximum rates for mobile loading machine operators, approximately $1.09 per hour. In addition, the agreement provides, 'work by mine workers paid by hour or day in excess of seven hours in one day, or thirty-five hours in any one week, shall be paid for at the rate of time and one-half.' It is our opinion that these substantive provisions of the agreement are among the highest standards of labor provided in any industry in the United States, both as to hours of working time and as to wages paid. There is full and complete understanding in the industry between employer and employees as to the application of these provisions. This method of measuring the working time at the place of work has been the standard provision in the basic wage agreements for almost fifty years"—and so it has been in Alabama,—"and is the result of collective bargaining in its complete sense.

"There are many reasons why the provisions as to working time has been set out as provided by this agreement."

Now, I want Your Honor to listen to this and see if you can draw any distinction. You can't. It is evidence you are entitled to have.

"The impracticability of measuring time by any other method."—I am skimming over the other parts of the documents. Your Honor will have the document before you,—"is inherent in the very nature of mining coal. Coal mines are sometimes very extensive. When they are first opened up, the working places are, of course, close by and near to the opening of the mines."

Isn't that the undisputed evidence?

"In such cases there is no problem of either transportation of the men to the working places or time consumed in reaching them.

Isn't that true about the ore mines? Isn't that true about the Spaulding Mine?

Mr. Harris:
Judge, if I may interrupt,—

Mr. Burr:
Yes, sir.

Mr. Harris:
It seems to me he is, in effect, introducing his evidence and reading it to the Court rather than—

Mr. Burr:
Your Honor said you would let me show what we propose to put in.

The Court:
I thought that a while ago, but I will let him go ahead.

Mr. Burr:
I am reading this because it is a statement of the Administrator.

The Court:
If you quote everything you have got, we will never get through.

Mr. Burr:
I don't think Your Honor would want to rule on this without you knew the whole situation.

The Court:
I don't.

Mr. Burr:
That is what I am trying to give to Your Honor, what the whole situation is.

The Court:
All right; go ahead.

Mr. Burr:
I will read some, and call Your Honor's attention that what I am reading is the statement made by the Appalachian operators and the Union requesting the face to face ruling.

"But as mines grow older, the working places move farther and farther away from the portal or opening of the mine, and as such conditions develop, it becomes necessary for provisions to be made for transportation of the men over long distances to their working places. This is usually provided by what is known in the industry as 'mantrips'. These trips are scheduled to leave the outside or opening of the mine at a certain hour, so that all the employees will reach their working places by the hour at which work regularly begins at the working places throughout the mine, and these trips are also scheduled to leave the inside of the mine when the day's work is done, at the conclusion of the seven hour period of work at the working places.

"Among other provisions of the agreement, there is provided a time for starting the day's work, and a lunch period, as well as a time for expiration of the work day. There is some variation in this, depending upon local conditions as to the starting and quitting time at the various collieries. The agreement provides for certain tolerance. In any event, the starting and quitting time are no more than seven hours apart, exclusive of the lunch period."

Now, if Your Honor pleases, if you change that and use the words "ore mines" instead of "coal mines", and change the words "seven hours" to "eight hours", you have got identically the same proposition we have got here.

Now, following the presentation of that joint request, and after giving it consideration, the Administrator made this ruling:

"The second administrative determination announced by Colonel Fleming today involved the question of determining the number of hours worked by miners in the bituminous coal mining industries.

"Colonel Fleming announced that on the basis of an inquiry submitted by the bituminous coal mining industry, the Wage and Hour Division in carrying out its enforcement duties in that industry will accord great weight to any reasonable standards for determining working time, which represents the prevailing customs and practices in the particular industry, and are supported by a long history of bona fide collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry; Colonel Fleming announced the practice of computing working time on a 'face to face' basis in the bituminous coal mining industry would not be unreasonable. Colonel Fleming explained the term 'face to face' to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work, and the time spent in returning from the working place to the portal in the evening. The Administrator added that the determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in the bituminous coal mining industry."

So there, if Your Honor pleases—And the same thing is followed in the address that will be offered in evidence by the Administrator, which is admitted as having been prepared by him for delivery before the American Mining Congress on Wednesday, September 18, 1940.

So, if Your Honor looks at the history of the matter, which has to be necessarily looked at in arriving at the intent of Congress, before the Act, what have you got? You have got section 7 applying to all mines; you have got Congress knowing at that time that in the bituminous coal industry, the practice and custom, traditional and universal, had been on the face to face basis; you have got the fact that the President and the Code Commissioner, when they had to set down and define what a work day was, used the exact language that is in all these contracts,—it is work at the face in an underground mine; you have got the fact, without dispute, as these documents show, that the number affected by the law in coal mines was overwhelmingly larger than in the ore mines; you have got the fact that in coal mines the traditional practice had been on the face to face basis; you have all those facts I have mentioned in considering this question.

Then, if you go on the other side of that, you have got the construction made by the Administrator himself, which, under the decisions, is entitled to weight, that in bituminous coal mines it is on the face to face basis.

Now, to get down to the local situation, what do we propose to prove by Mr. Hassler and, with Your Honor's permission, by the other witnesses in this case? We propose to show that these coal mines and ore mines are almost contiguous to each other in the sense of distance. The testimony already here shows that this mine, as I recall—is this the one that is eight or twelve miles,—Sayreton,—

The Witness:
Eight miles.

Mr. Burr:
Eight miles from these underground ore mines. We propose to show that the situation is exactly the same as far as transportation is concerned, and that is what Your Honor has got to answer in this case. We propose to show that the slopes go down in the same way, that they go down for longer distances than in the ore mines; that they turn right and left into headings just as they do in the ore mines, that working places are turned off from the headings just as they are in the ore mines, and we propose to show that being true that every reference to this is most material on the question Your Honor has got under consideration.

You can't confine this to ore mines; you couldn't eliminate limestone mines; you can't eliminate the coal mines because we all know when Your Honor answers that question that you have got before you today for consideration when this case is over, you are going to have to say whether traveling per se in underground mines is in and of itself a part of the day's work. That is what the Administrator's opinion, which is going to be before you, places it on. True, he eliminates coal mines, he confines it to metal mines, but did the Congress eliminate coal mines when it passed the law? Can anyone with any logical reasoning say it is right to eliminate the coal mines, a mine in exactly the same condition, and include in the decision, as the Administrator does, the gold and silver and other nonferrous mines out in the West,—in the far west?

Now, considering the internal conditions in the mines, and there seems to be some feeling that going into the coal mines will go into that kind of evidence,—that evidence on this question we are considering has no material bearing, as I see it myself, at all for this reason: The question that Your Honor is going to answer is whether or not traveling time per se is a part of the day's work. When that question is answered, why, we shall have no difficulty with the other questions involved.

After it is determined—after that question has been answered, that traveling time is not, per se, a part of the work time, but it is also shown, or afterwards shown or proven that the men did do actual work, part of them, while they were traveling or walking to and from, or carrying tools,—if that becomes an issue in this case, why, that is a matter between the individual person and the company and the company owes them for that time, not because it was traveling time, but because it was actual work, if it amounts to actual work under the evidence as afterwards produced.

Why, under the testimony as now produced, there are hundreds and thousands of these underground employees who never carried any tools, and that is in reference to a certain part of the productive people. The pleadings in this case and the Administrator's opinion answers that question in this way, if Your Honor will refer again both to the pleadings and the opinion. It says that all the time

—after saying the traveling time per se is payable as part of the work time, it then concludes, "the work day also includes the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out."

Take the evidence in reference to the Muscoda mines, for illustration: Under that part of the opinion, if it is work, and it is,—if before they get to their working places, on the surface these men fill requisitions for material over here before they go to the entrance of the mine and carry that material to the entrance of the mine, then, that time, if it is work time, is covered by the language of the opinion which says, "The aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools." Then, by the same token, and applying the same measuring rod, if traveling time is not per se work, but if, while in the mines, and provided they work more than eight hours,—if in addition to the eight hours work at the face any individuals do additional work by carrying tools or any other sort of work, why, then, they are, of course, entitled to payment for that work additionally done and actually done, but that doesn't mean that you can draw a line here at the portal of the mine and say that everybody that passes that line, whether he does a lick of work or not, is to be paid and is to be paid whether he goes down a short distance or a long distance, or whether he carries tools or doesn't carry tools, or whether it is safe or unsafe, and regardless of what kind of passage way is provided for him to walk on, or regardless of the character of skip provided for him to ride in.

What this Court and what the Appellate Court is going to answer is the question of traveling time per se. Does the time of every miner who gets down in that skip start here? Why does it start here rather than at the bath house? Why should it not start where requisitions are issued outside? Why shouldn't it be a general rule? You are not asked to interpret this as to one particular mine; you are asked to interpret it as to all. If you say travel time per se is a part of the work day, it is a part of the work day no matter how that man travels or the distance he travels. That is establishing the construction of that law.

Doesn't Your Honor see where that puts us on that kind of a construction? If we are right on that construction—if we are right, why, they when Tom Jones steps out here at Spaulding, for instance, and takes less than five minutes to go to his place of work, without being transported at all, and when Tom Jones is a head miner, or somebody else, or a mechanic that never touches a tool or does a lick of work until he gets down to the place where his work starts, why, certainly Tom Jones is not entitled to be paid if we are right and Congress' intent is correct. As shown by the history, he is not entitled to be paid. You can't put it on the hardship of the travel for two reasons. One is the hardship of the travel is necessarily involved in the wage scale that is made at the bottom. Here we will show you before we get through in this case, in the ore mines, the men make higher rates of wages than they do in the coal mines where they are making as high as 90 cents to $1.00 an hour under wages negotiated from time immemorial in which all hardships are taken into consideration, and then somebody comes along and says, oh, no, Congress intended to dynamite every practice and every contract that existed in this country for fifty years and to say you have got to pay a man from the time he enters the portal until he comes out.

We will not have any trouble when this ruling is set aside, as I am firmly convinced it will be set aside. If, for some humanitarian reason, it becomes necessary, as in the past, to put in better skips, we can put them in, and at a much less cost, and for much less money than it would cost to the time and a half we would have to pay while the men are riding down on what counsel apparently think are per se insecure skips.

That brings me to the last comparison between ore mines and coal mines, if it becomes necessary to go into it. I don't think the question of safety on this primary matter has anything to do with it, because things can be made safe. When you say travel time is work time, you can't correct your traveling time by making it safe. If we have got the right—if, under Section 7 ,we have got to pay time and a half for over time against custom, against contract, if we have got to pay that, why, we have got a right to work them from the time they hit the top until they get to the bottom; we can have them carrying what we please, from anvils on down, but we haven't been doing that. There are hundreds and hundreds of these people, as the proof now shows, that never did any work. If custom and contract is left where Congress intended it to be left, why, the changes of methods and transportation in the mines will evolve, as they have been evolving in these mines over the years, growing year by year better.

But Congress didn't intend under section 7—Congress didn't say in there we are going to annul and abrogate custom, and we are going to legislate against your contracts,—no matter how good your mines are; you may haul them down in air conditioned, leather cushioned skips, you may sprinkle talcum powder on the seats, but you have got to pay them for travel time just the same. Did Congress intend to say to 20,000 ore miners you shall be paid for traveling time and to 400,000 coal miners, you shall not be paid for traveling time? That is the question you have got here.

As we propose to show by Mr. Hassler,—we will show it witness by witness,—I see Ed Flynn sitting out there,—we expect to show it by him,—back begining in 1898, I expect to show that the conditions are the same in these coal mines right in our back yard as they are in the ore mines. I have already shown that they have been treated as the same. We will show by witness after witness, if necessary, that a man who mines in a coal mine can go right into an ore mine and go to work, so far as knowledge of the work is concerned. There is one witness that has already been on the stand who will be recalled for that one question. That is Mr. Smith. Your Honor will recall he had a long experience in coal mines, and I expect to prove by him, if this evidence is admitted, after working in coal mines from youth up until middle age he was able to step into an ore mine as a foreman of their underground operations. We say that evidence is unquestionably admissible in this case.

I don't think safety has anything to do with it, but if it comes to that, we expect to offer the records as shown by the Bureau of Mines as to accidents in the ore mines and in the coal mines. We will show that the frequency in 1938 of accidents and the severity of accidents in our coal mines, and we try to make them as safe as we can,—we have got a more hazardous condition there than in the ore mines, as the evidence will show,—we have gas in the coal mines, we have thinner seams, longer reaches, longer extensions,—we expect to show that the actual records show in coal mines that the accident frequency in 1938 was one and one-half times larger right here in Alabama in the coal mines than in the ore mines, and then when you turn over to the United States as a whole you will find it is 239 percent larger.

So, we say, may it please the Court, for all these reasons, and there can be no reason to the contrary as I see it, the questions I am proposing to ask Mr. Hassler as to actual conditions prior to October 24, 1938, in these coal mines operated by the same companies under the same kind of wage contracts, in the same territory, with the same kind of cover above them, except not so secure, with the same, except longer distances to travel,—we say Congress had that information before it, had to have it under the authorities, and having it, that it never intended to say that in coal mines traveling time per se was a part of work, and if they didn't say it in coal mines and didn't intend to say it, they didn't intend to say it and couldn't have said it in reference to ore mines.

The pleadings call for the—Yes, when they offer these depositions,—I suppose you are going to offer the government depositions you took in Minnesota?

Mr. Brodie:

That will become an issue when it becomes an issue.

Mr. Burr:

I want to know now. I am making an issue now. I am going to offer them if he doesn't, and they will show the facts I have stated here.

You have got to interpret Section 7 as applicable not to ore mines, not to ore and coal mines, not to an industry, but on the strict proposition does transportation per se in any plant where men work constitute a part of the day's work; that is the issue we have got here and the only issue we have to try here.

Mr. All, I think, has something to say.

Mr. All:

Judge, I want to speak very briefly with reference to the verbiage of the Act, and then I want to answer particularly one or two theories that Mr. Brodie advanced.

If the Court please, I want to ask two or three questions in connection with this thing,—of course, rhetorically, but I think the answers to those questions will determine the admissability of the evidence with respect to coal mines.

It is to be remembered this act was passed in October, 1938, and in this act the Congress defined a number of terms. For instance it defined the term "person" so that there would be no uncertainty about what was meant by the word "person"; it defined the word "commerce" so that there couldn't be any mistake about what it meant when the word "commerce" was used; it defined the word "state", the word "employer", "employee", "agriculture", "employ", "industry", "goods", "produced", "sale", "sell", "oppressive child labor",—all at length. Why? Because it recognized that in most instances if they did not define what they meant, and there are a variety of meanings which, in various aspects, might be attached to the words used, and the Congress gave those definitions so that there could not be any mistake about what Congress meant whatever differences of opinion the people might have.

When the Congress came down to the words "work" and "workweek" used in Section 7 (a) this is all Congress said, —it did not define "work" and did not define "workweek":—

"No employer shall, except as otherwise provided in this section, employe any of his employees who is engaged in commerce or in the production of goods for commerce for a workweek longer than forty-four hours during the first year from the effective date of this section, for a workweek longer than forty-two hours during the second year from such date, or for a workweek longer than forty hours after the expiration of the second year from such date."

Workweek is not defined.

Now, the question I ask, if the Court please, is this: Why—How can workweek mean one thing in an ore mine and not mean the same thing in a coal mine,—a workweek as such? Why is it, as we say, and this is the issue we have,—it is not a question of whether an individual performs a chore going down in the mine, or does something which might be considered work, or isn't considered work because we are considering here whether traveling time as such is work within the meaning of the word workweek. That is important for two or three reasons. If the work is considered to be work and done during work hours, the parties themselves can remedy that; if the employer is required to pay for it, not because it is travel time and hence work because it is travel time, but because the man actually works, that work can be increased by the agreement of the parties, or the necessity for that work may be dispensed with by the employer and the compensation obviated for it. For instance, if it be considered that carrying tools, for the sake of the argument, into the mines during travel time is work, then if that is work because of the carrying of the tools, the carrying of the tools can be discontinued, but the travel time is inevitable, so that the question here and the only important question is whether the travel time as such is work time.

Now, I think this, if the Court please,—I think Your Honor has proceeded thus far to the present time on the theory that the word "workweek" is an uncertain term, it is an ambiguous term, and we are trying to arrive at what Congress meant in the use of that word. I lay this down as a proposition that I do not think can be challenged, and that is this: That when a legislature or congress uses language or passes an act of this sort, it is presumed to have been passed in connection with and in consonance with the custom, practice and contracts in existence at the time unless Congress says to the contrary. In other words, if the Court please. I think this is the principle that has probably been laid down,—it is not exactly a maxim,—that a legislative act is not presumed to be in derogation of customs, practices and contracts unless so expressly declared; it is to be construed to be consistent with those customs, practices and contracts unless Congress indicates it intends to destroy or to change the customs, practices and contracts.

Now, Congress, in 1938, comes along and uses the word "workweek". Now, I ask this question: Congress doesn't in terms apply that to coal mines, ore mines, chalk mines, quarries, or any other mines; it doesn't even confine it to mines. It simply says "workweek". What showing of fact is there in that act to say Congress intended,—I am speaking of the broad aspects now,—that Congress intended it to be different under the surface from on the ground? It didn't say so. It said "workweek".

Now, we will go further than that and confine it to underground. Why is it that should be applicable to an underground ore mine and not to an underground coal mine, or vice versa, or to a quarry or to a limestone mine? By the same token, if the Court pleases, if we were undertaking to arrive at what Congress meant by the term "workweek",—we don't know whether it is applicable to this case or not; we don't know what it means; we want to see what Congress meant,—would Your Honor say to me, "All, in order to see what Congress actually meant, I am going to see what the custom was in ore mines," and suppose I should reply, "Why is the custom in ore mines of any more value in arriving at what Congress meant in this act for universal, nationwide application than the custom in coal mines? Why would you take the ore mines as the criterion to determine whether or not Congress meant traveling time to be work time. Why aren't coal mines equally—why isn't that situation of equal value in determining what Congress meant? They didn't even confine it to coal or ore mines or mines. They said, "workweek".

What we want to find out, if the Court pleases, is what is the broad practice, what is the situation upon which this Act is to operate? What is the accepted conception of work time of the industries to which it will likely be sought to be applied? Workweek! Workweek! Why can we any more arrive at what Congress meant by the word "workweek" by canvassing the ore mine situation any more than we can by canvassing the coal mine situation? Why aren't they both applicable?

Now, something has been said about the coal mines being identical or practically identical with the ore mines. I want to give my humble opinion on that. I think if you showed the coal mines were different from the ore mines, you would throw a lot more light on the problem than if they were the same, if you could show the ore mines were dominant the coal mines of comparatively little importance, I would say, therefore, some little minority here doesn't shed much light on the question. The big coal mine situation is the thing that Congress had in mind. I say—I repeat I say I don't think it is essential for the admissibility of the coal mines testimony for it to be like the ore mines. To help us it has got to be like the ore mines, but if it isn't like the ore mines, and they have got 75 percent of the country, it hurts us. It is competent either way, one against us and the other for us.

Now, I want to say this in reply to one or two—I may have misconstrued—as I understood Mr. Brodie, he said if you had an underground operation, and this act applies to one just as much as it does the other,—it doesn't make any difference what kind of work they are engaged in—and they paid the man for four hours and the man actually worked six hours, that the Administrator was not concerned with that so long as there was compliance with the maximum hours and the minimum wage.

Isn't that about what you said?

Mr. Brodie:

I assume you are addressing your remarks to the Court.

Mr. All:

I am, but I understood you to say that.

Mr. Harris:

I suggest we don't get into a debate.

The Court:

Yes; go ahead.

Mr. All:

I did that casually, Judge. I didn't mean to raise as much fuss over there as seems to have happened.

Here is what we mean: Suppose we have a coal mine. They say your coal mine is seven hours a day and 35 hours a week, and that makes a difference; you haven't worked your people overtime, and what we are interested in is overtime. Well, that isn't what they are interested in at all. I want to get this point clear. If a coal operator—a quarry is working a man seven hours a day and 35 hours a week, and it is held that the travel time is work time, regardless of overtime, the Administrator is interested in that man being paid for eight hours.

Now, mind you—mind that the facts on what happens to be the existing coal contracts,—7 hours a day and 35 days a week. Suppose, for the sake of the argument that the coal miner had one hour travel time,—one hour travel time, which would make 8 hours a day and 40 hours a week. There would be no overtime. But under this Act that company would owe him one hour straight time that they haven't been paying him. Do I make myself clear on that, if the Court please? Now, that is to say if travel is work, if travel as such is work, and the man has worked seven hours, he would be owed an additional hour.

The established custom in ore mines of face to face or working place to working place does not determine the meaning of work time. We contend that the established custom in coal mines of starting work at the face,—of starting at the face and ending at the face,—together with the ore mines,—is conclusive that work time commences at the face and ends at the face, but I say if it doesn't, and the individual shows he has, including his travel time as travel time and work time as work time, he has worked more than seven hours and hasn't gotten paid for more than seven hours work, he is entitled to pay for the excess over seven hours at straight time.

Mr. Burr:

Don't forget too, Ernest, in some of these coal mines, as I understand it, and I think the evidence will show it, it takes two hours travel.

Mr. All:

Yes, sir.

Now, if the Court please, we expect—Mr. Burr proposes to use Mr. Hassler. We have a few more witnesses. We propose to show the universal custom in Alabama and the universal custom over the country has been to follow the face to face policy in the coal mines, which Congress had to have in mind as much as the ore mines, and we think the evidence will show in the main the travel time in coal mines is greater than it is in ore mines and that the travel conditions are probably about the same,—may be no better or no worse,—there may be more danger in some aspects in coal mines, they may have gas in coal mines they do not have in ore mines, if danger has anything to do with work, which we don't think it has,—but if you have a situation in the coal mines which involves greater travel time than it does in the ore mines, and, if the Court please, this travel time is work time in ore mines it is work time in all mines, big, little and indifferent, and it is work time in coal mines whether big, little or indifferent, whether it will break them or whether it won't,—good or bad.

Now, we expect the evidence to show that in the main the coal mines are driven in the face of the coal, that the headings are turned off and they have rooms just like they have in the ore mines. There is a little variation in the coal mines as there is in the ore mines, depending on whether they use mechanical loaders or not, but the variations there are very much the same as the variations we find in ore mines, based on whether they use mechanical loading or hand loading.

Now, if the Court please, getting back to this particular Act, I say this: I don't think there is any answer to it,—that when Congress in this Act, comes along with an act that is labeled to relieve obstruction of interstate commerce,—Now, I don't know what they meant by that,—but they fixed a minimum wage and a maximum hour, and then provided you must pay time and a half for overtime, and then merely used the word "workweek",—that if that is in derogation of the long existing custom in the enormous coal mining industry in the country, and the ore mining industry, which is not nearly as great, but still great,—that if it meant to revolutionize the conception of those industries with respect to the conception that had always obtained between employer and employee as to what constituted work and what constituted work time, it was up to Congress to say so, else it was enacted for the purpose of operating upon and consistent with existing conceptions and not in derogation of them, and not intended to revolutionize them without saying so.

We respectfully submit, if the Court please, that especially in view of the fact of the number of ore mines, the industry, as great as it is, not being anything like as great as the coal industry, that you can't, if you are arriving at what Congress meant, that there is no logic in any position which would take into account the customs and usages of the ore mines and discard the customs and contracts and usages in the great bituminous coal industry, and this being a national act, you have got to take the national picture of the industries on which that act would operate and to which it would apply to determine what Congress meant and to say they did not mean to revolutionize industry in this particular, and they didn't say so, and it was up to Congress to say so if that is what it meant.

Mr. Quinn:

Your Honor,—

The Court:
I want to take a recess. We will recess until a quarter of two.

Court is adjourned until a quarter of two.

(Whereupon, at 12:25 P. M., July 21, 1941, a recess was had to 1:45 P. M. of the same day.)

After Recess, 1:45 P. M.

The Court:
Proceed, gentlemen.

Mr. Quinn:
With Your Honor's permission I would like to say a few words—

The Court:
Yes.

Mr. Quinn:
—with regard to the arguments of Mr. Burr and Mr. All.

The Court:
Yes.

Mr. Quinn:
Your Honor, it appears that it is more than obvious that the evidence relating to coal mine operations has no place in this case. The very fact, Your Honor, that the Administrator arrived at a different decision,—it depends entirely upon what elements entered into the decision,—that is diametrically opposed to the underground ore mines—

The Court:
That is what—exactly what I want to know—

Mr. Quinn:
Yes, sir.

The Court:
—what is behind the Administrator's decision about coal mines.

Mr. Quinn:
Then, if we admit Mr. Burr's evidence he has offered, it will necessitate, Your Honor—

The Court:
Why certainly.

Mr. Quinn:
—of going into every phase. So much for that.

As to the proposition Mr. Burr and Mr. All have repeated here several times before, why didn't Congress define the workweek in the Act, Your Honor, that is childish, it seems to me. With the thousands of different industries of the nation, Congress can't—

The Court:
I felt that way about it at first, but when you think about it, it is impossible.

Mr. Quinn:
It would have been impossible for Congress to define the different hours of the workers engaged in the interstate commerce industries of this country.

It is to be interpreted, and the only common sense way is to give it a common sense expression in the particular industry called in question. That is the only way it can be done.

Evidently Congress had that in mind when it enacted and set up machinery and had an Administrator to operate and to carry into force and effect the operation of this Act with rules and regulations and constructive opinions of his own.

And that is what has been done here. He holds hearings and takes into consideration all the angles and sources of information and all the evidences that arises, the common sense, practical operation of an industry,—all that is necessary. For instance, in this case here that was done.

To go into an entirely different industry,—we are not afraid of the evidence, Your Honor, that might be brought in from the coal operations. Our objection is that it is irrelevant and illegal and has no materiality in this case. It is a different industry. They may be paid better in the coal industry. They certainly operate on a seven hour basis with $7.00 per day pay. Your Honor would have to take all that into consideration. They may be better paid from a half and a third than in the red ore industry in this district. Your Honor would have to take all that into consideration.

Congress sets the policy; Congress is the policy forming agency of this government. It sets up machinery and puts the operation of the Fair Labor Standards Act in the hands of a department with department machinery, and virtually says, "You are an intelligent administrator; use your common sense and interpret it in fitting each separate industry into the carrying out of the congressional policy."

That is all I want to say, Your Honor.

The Court:

Mr. Harris.

Mr. Harris:

If the Court please, I didn't take a correct and accurate measure of the time, but I think the gentlemen on the other side addressed the Court probably for an hour and forty minutes on this question this morning, and in their argument was woven so much of questions of substance and questions of evidence that it becomes necessary for me to take up possibly more time of the Court than I otherwise would, because I don't want in any particular anything to be said on which I feel that I might perhaps be of some help to the Court in discussing what has been brought to the attention of the Court.

Now, it is a very elementary thing that here in America we live in a land that is ruled by law, a land where there has from time immemorial been a separation of power into the legislative, the executive, and the judicial departments.

We know that in those countries where law has disappeared the liberties of the people have disappeared, and we know that in our American system of government that the legislative branch of the government is the branch which outlines the broad, general policies, not a policy limited to a particular industry, not a policy limited to a particular group, but in the nation the Congress declares the public policy of the American people; in a State the State Legislature declares the public policy in that State, and we have in the Congress machinery set up and in use over a long period of years to investigate all of the economic conditions, the factual conditions, the social conditions, the method of living, the effect of this method of living, and method of payment upon the lives and health of the citizens. Congress has investigating committees to go out and accumulate a vast mass of facts, and then, under our system, those facts are considered by the members of the House and the members of the Senate, and they are translated into definite, precise, for the most part, rules of law, and when those rules of law have been promulgated, either the executive or the judicial departments begin to exercise their function.

Now, bearing in mind that in this case they have discussed with Your Honor time after time the existence of a custom, the existence of a usage, a practice, as if a custom or a practice or a usage would be of any avail where the supreme legislative authority of the land has spoken.

If their argument had any effect or any weight with a Court or with all the Courts occupying the same position that your Honor occupies from the Atlantic to the Pacific Seaboards, the Act of Congress would be absolutely vain and foolish because their argument comes to this, that the existence of things as they are is not to be disturbed by any legislative enactment. The very customs which they present to Your Honor are no doubt a part of the things which the Congress of the United States meant to do away with.

A system had grown up in America that was destroying America; and we crashed in 1933, and the operation of our three-fold system of government with a Congress passing laws to meet the shifting dangers that were confronting the American people,—the operation of that system has been the thing that has enabled the United States to keep going when countries all around her tottered and lost their liberty.

And what did the Congress of the United States say? In the very law that Your Honor has before you? "Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled:

"That this Act may be cited as the 'Fair Labor Standards Act of 1938'."

The very thing that Congress had in mind, the name with which it christened the law was a fair labor standards act,—not merely a labor standards act, but a fair labor standards act, and then in the very opening paragraph:

"Section 2: The Congress"—Now, here is where they find and declare the policy, the policy of the American people through their proper department of government. I can't declare it and the gentlemen on the other side can't declare it. Congress can and has.

"The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary—" for what?—"for health, efficiency and general well-being of workers."

Congress, in passing the Fair Labor Standards Act of 1938 did not have as its goal and purpose the prepetuation of the existing order of things. Congress had in mind the crushing of existing evils. It was a remedial statute. It is to be liberally construed to accomplish this purpose.

Bear in mind that three-fold separation of power into legislative, executive and judicial. Let us see just for a moment how Courts operate. The gentlemen on the other side apparently want to transform this case from a judicial body—a branch of the judicial department, into the legislative body. They want this Court to embark upon an investigation, which, if we enter upon it, would extend from the Gulf of Mexico to Canada, and from the Atlantic to the Pacific. If this Court started upon the kind of evidence they want to introduce, and you are going to go into the coal mines in Alabama, could you stop there? Did the Congress of the United States legislate for the State of Alabama alone? They have set up in their bill the small proportion of the national production of iron and steel that is found in Alabama.

Then, if they start to investigate other industries, must not the Court, if it is going to change from a judicial into a legislative Court of inquiry,—must not this Court say I will do this: I will review every economic factor which any member of the Congress of the United States had before him when Congress promulgated the Fair Labor Standards Act of 1938, and the case which we entered upon eight days ago, if that procedure is followed, would be in session, occupying the time of this Court, eight months from today if this Court considered every bit of evidence equally relevant and equally material.

They are asking this Court to announce a ruling, some abstract theory. They say if you don't do this it will cause such and such a result.

This Court—under our American system of jurisprudence, this Court passes upon specific questions between the litigants who are before the Court. The case system is the system that grew up in England and has been followed in America, and it has been a system that worked. The Court doesn't write text books and say I hereby announce and hand down that in all controversies that will ever come in this Court or any other District Court or any Court in any state of the land the rule to be followed will be so and so. Our system doesn't work that way. Our system is that the Tennessee Coal, Iron & Railroad Company comes in and says these men are about to sue them, and the men come in and say we have a claim against you. There is an actual controversy, and the declaratory judgments act passed by Congress is limited to an actual case of controversy between the parties, and the Court decides the issue between those litigants. It would be impossible—suppose that 500 suits were started in America and every United States District Judge in America said I will not longer be governed by the accepted order of things in America, but I will start, and I will conduct an investigation, which I haven't the facilities to conduct, I have no investigators that I am paying a maximum of $300 a month to send out all over the United States,—and every judge starts—he has a case before him, and every judge starts on an investigation of a legislative measure, and every judge in every Court arrives at a decision, and some of them say we will announce a general rule for all the world, and they announce rule A, and others say we will announce a general rule for all the world, and they announce rule B,—where are we? We have substituted—one of the foundation principles of our. government is one law governing one people, one nation,—for that we would have substituted an entirely different system, and that is what the effort to go into the coal mining industry would do in this particular case at this particular time.

I say that the gentlemen not only are asking the Court to do that, but I think they have shifted their position from time to time; they have shifted their position, bearing in mind, if the Court pleases, that this bill was not like when Your Honor went up to Court and a man handed you a plea you didn't expect or a replication you had never seen before, and you had to sit down and answer it right then and there,—when the plaintiffs filed the bill in this Court they had had plenty of time to prepare it. The bill was long, and it was carefully put together, and in that bill, subdivision Number 5 was devoted entirely to the opinion of the Administrator, and when I took—when an amendment was made and I took a red pencil and started through my copy of the original bill served upon me, I found page after page of references to the opinion of the Administrator had been stricken from the bill. Not only that, but they struck those exhibits which were attached to the bill, and by amendment which they had carefully studied, they came in and changed their plan and changed their original contention, and the Administrator is out of the case, and then they, in their argument to Your Honor this morning, time and time again, said Your Honor must do this to the opinion of the Administrator By what logical system can we work on that basis? They put it in. They took it out. Now, and they come in when they have solemnly removed it, and say on account of a question of evidence Your Honor must strike down the opinion of the Administrator?

We are not—We are not here—I personally am not here defending or challenging the opinion of the Wage and Hour Administrator. His opinion is not binding on this

Court. It is of persuasive authority, but that man in Washington, whatever his ability may be, can't substitute his opinion for Your Honor's opinion, and how do I know but what this Court or some other Court, in a proper case, if the Administrator has rendered a decision or opinion in the coal case, the Court might very well say you are entirely wrong in your ruling or in your opinion in the coal case, and right in your opinion on the ore mines case.

The thing this Court has to decide is this? This case deals with the employer-employee relationship. The law says no employer shall keep his employee engaged in work more than so many hours, and the Congress in its practical consideration of a business problem in the world stepped down the time. It was forty-four hours a week the first year, forty-two the next, and forty-two the next.

Now, why Congress adopted that particular hour limit I don't know. I do know this: That you can easily say, knowing that the coal miners in Alabama were already working and already had a seven-hour day and a five day week, that Congress, bearing that coal situation in mind, and with that well-established fact before it, gave a definite limit for American industry as a whole.

Section 7 of the Act begins,

"No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce,"—and so forth.

There isn't any shadow of doubt but that these men who come up there and report at the mouth of the mine, each one of them, is an employee. He is given a check which nobody else gets, so far as the Tennessee Company is concerned, except employees. He is required to turn that check in before he enters the mine, and the Supreme Court of the United States many years ago made a ruling that he also serves who only stands and waits, and one of the gentlemen argues that we are not giving, if we have them carrying their lights or their tools,—we are not giving all the strength that the employee can give the way they give it when they are at the face. It isn't a question of the exhaustion of the physical body of the laborer. It is a question of whether or not the employer-employee relationship is existing from the moment that he starts down into the mine. I think personally that when he turns in that check at the tally house and becomes subject to their orders, that his time starts, but in this case it is of no great importance because it apparently only takes them a minute or half a minute or twenty seconds to go from the tally house to the mouth of the mine, therefore, the phrase portal to portal operates to reach the same practical results.

Now, I said the gentlemen had changed their opinion. In the Republic case, for instance, in the argument yesterday when they got into the Spaulding Mine, we objected to any testimony about Spaulding, and I made the statement to Your Honor that Spaulding wasn't in the case, and the gentlemen said it was. Well, naturally, I don't want to make any misstatement of fact to this Court, so we have checked, and I read from page 3, subdivision 2, "The plaintiff and its operations", and here is the language in the bill:

> "Plaintiff owns and operates in Jefferson County, Alabama, two underground iron ore mines, one at Spaulding—parenthesis—this mine is not involved in this proceeding—parenthesis,—and the other at Raimund."

So, naturally, when they introduced evidence of Spaulding, they having led me and my associates, the gentlemen on my side of the table, all of us, to think Spaulding is out, we are taking them at their word, and in reading to Your Honor this morning the questions in the case,—I don't know whether Your Honor caught that,—Mr. Burr, as I saw it, was reading from questions in the case which he had presented in his bill before we spent time and we spent labor and we took up the time of this Court and we sat—I think it took us a day or two days,—the lawyers in there agreeing on a pre-trial order that might be worked out and submitted to this Court, and there was one worked out, and there was one submitted, and there was one signed, and what does that pre-trial order say about the question in this case?

Here it is:

"2. It was agreed by all of the parties that the following are all of the issues in controversy in this cause:

a. What constitutes the working time which makes up the workweek of"—Who? Of coal miners? Of railroad employees? Of men in rolling mills? No. Here is what we all agreed, and Your Honor signed an order after you drafted it out in Your Honor's library.

"What constitutes the working time which makes up the workweek of"—Who? "—the underground ore mining employees of the plaintiff within the meaning of Section 7 of the Fair Labor Standards Act of 1938?"

That was the question we agreed upon and that was the question the order was made—

Mr. Burr:
Read 1, Crampton, which states the question, which is the way the bill states it, and your answer states it in the case.

Mr. Harris:
It states contentions. I am stating the issue in the case.

Mr. Burr:
You don't mind reading 1, do you?

Mr. Harris:
I want to conduct my argument in my own way.

Mr. Burr:
If you don't want to read it, it is all right with me.

The Court:
Go ahead.

Mr. Harris:
I want to make my own presentation.

The Court:
Go ahead.

Mr. Harris:
If the coal miners,—if a controversy arises with the coal miners, that is in the lap of the gods. We don't know whether they are ever going to have a disagreement or not. The United States Supreme Court does not pass on constitutional questions unless they are actually an issue in the case. Why should this Court travel afield in hypothetical theories and consideration of a possibly controversy between somebody who is not a party to this case?

Now, I don't know,—they say this is a case of considerable magnitude. It is a case of considerable magnitude. It involves right here in this district about 6000 men, but the magnitude of the case doesn't affect the legal principles involved, and I see no reason why a District Court of the United States should be threatened with the magnitude of some decision. This Court is here to decide all legal questions, great and small, and under our system of Courts, a District Court is a great Court; it is the one in closest contact with the American people. It is through its function that the decisions first touch the American citizen, and I don't care whether it involves ten million dollars or one hundred million dollars. It involves a question of law, which this Court, under its power, is not only fully competent, but is under a solemn duty to decide, and no opinion of anybody else, whether it was actual or whether it was true,—actual and true or false and unsound, has nothing to do with this Court. We consider it, because the Administrator is supposed to have made some investigation, but this Court, if it had the case of a coal miner before it, could say, I don't care what your custom and habit has been, custom can't dictate to Congress, custom can't dictate to the Courts, laws are superior to customs, and your coal mine situation itself is wrong. But that case isn't here, and why drag it in as a sort of bugaboo as if to frighten a Court of having something to do with the actual decision of a controversy involving it.

Now, they wove here this morning their arguments of fact and of custom, and endeavored to show when these men asked for traveling time, as they call it, one way, they abandoned that request.

Well, the coal mining industry, Your Honor knows, has been highly organized for years and years. Is Your Honor to take a custom where the evidence is already in in this case and that evidence shows beyond the shadow of a doubt, first, that the Republic Company has never recognized these unions and entered into a contract with them, and there is no contract today between then and the Republic Company; it shows that the Tennessee Coal, Iron & Railroad Company from the time this union, the International Union of Mine, Mill & Smelter Workers was organized in 1933,—it shows for Your Honor to read, and we haven't put on any evidence whatsoever yet, but Your Honor can discern the true facts behind the situation; Your Honor can see that the Tennessee Company didn't even give them a document in 1934. They did write a letter to whom? Not to these men going underground, risking their lives and their health and expending their strength for the Tennessee Company,—they didn't write them a contract, but they said we will write a letter of understanding to a government official in Washington, and then another year we will write them a letter of understanding, and another year that goes on, and we get a contract for the first time on October 6, 1938, and Congress was then, I imagine, considering the Fair Labor Standards Act, and they got a contract and increase of wages only eighteen days, as I recall, before the law whose benefits we are claiming in behalf of the people for whom it was passed,—we got that contract eighteen days before the law was passed, and to come into Court and say that a custom, a custom not from other places, a custom here, should operate to deprive these men of the benefits of a law when the whole law was to improve labor standards in America and industry, and there is case after case holding that they cannot waive the provisions of a law passed by the Congress of the United States or by State legislatures for their benefit. And surely, a private agreement is stronger than a custom which a man didn't create. His predecessors are the men who built up a custom, but any actual agreement is an act of his own, and the law is that an agreement of an individual cannot operate to destroy or nullify an act of Congress, and Judge Siddon, in a case before the Labor Relations Board, in the Fifth Circuit, held that to go around and get receipts or waivers or anything else wouldn't operate to destroy the force and effect of the ruling of the Labor Board. Then, if these receipts and waivers cannot operate to destroy a ruling of the Labor Board, can any receipt or custom operate to destroy the force and effect of an enactment of the Congress which created that Labor Board and all other Federal Boards except a few executive, departmental appointees?

So, we submit, if the Court pleases, to talk about going into custom,—to go into this industry,—if we go into it, where are we going to stop? There is a railroad case,—I imagine there are some two or three or four or five hundred thousand railroad employees in America. They had traveling time and a Federal Judge held they were entitled to be paid traveling time. If they go into the coal mining industry, shall I—shall the representative of the Administrator then go out and dig up all the evidence that was introduced in the railroad case and bring it here and say, Your Honor, we can't confine it to any one industry, you have to take the whole picture?

Mr. Burr:
The railroad case you are referring to, is that the Williams-Atlantic Coast Line Case you are talking about?

Mr. Harris:
That is right.

Mr. Burr:
I just wanted to know.

Mr. Harris:
I think it is the Williams case. I know it is the Atlantic Coast Line.

Mr. Burr:
You know what it holds, don't you?

The Court:
Go ahead, Mr. Harris.

Mr. Harris:
What is that, Your Honor?

The Court:
I say you go ahead.

Mr. Harris:
Yes, sir. I will be through, I think, in just a minute.
My position throughout this case, Your Honor, has been a very simple, a very direct position. I have endeavored

consistently from the beginning of the trial to the present moment to make clear to the Court, as the case proceeded, what I thought the issue was. That issue, as I see it, is as stated in the pre-trial order: What constitutes work time for the underground ore mining employees of these plaintiffs? That is a question of evidence, and the application to those facts of law, and the crucial and critical language of that law is that no employer shall keep an employee employed more than so many hours. We have that situation here with these men, and what difference does it make if any one of the ten million industries in America should present different problems and different consideration? What difference does it make whether, in some other industry, different questions should arise? This problem involves men whether they are in this department or that department. The problem under our system of government and of law is a problem and litigation between a plaintiff here and a defendant here, and this Court passes on the merits of that particular controversy between them, and this Court is neither interested, as I conceive the mind of the Court, nor intimidated by any threat of the magnitude of a decision off in some other industry or some other locality.

We have a clear-cut, simple problem. Ore miners have been working under certain conditions; they have been paid a certain amount; they have worked for a certain length of time. Has the law which was passed for their benefit conferred upon them a right? Are they entitled by virtue of that right to a judgment for pay which they have earned and which they have not received? It is the same immemorial system where A sues B for a horse, or he sues B for a breach of contract, and the Court, in deciding the horse case, wasn't interested in whether there were ten thousand horses roaming the Texas prairies or one hundred horses. It was interested in the question before it. The question here today is shall the entire picture of American industry be offered in this proceeding, or shall be follow the time honored rule of trying specific issues between specific litigants, and I think with that ancient rule of law in mind and applied to this case that there is no question but what all the evidence of coal mines which Your Honor has kept out up until the present time should be continued to be kept out until this case is over?

The Court:

We will take about a five minute recess.

(Thereupon proceedings were in recess from 2:30 P. M. to 2:40 P. M., at which time proceedings were resumed as follows:)

Mr. Burr:

Judge, we didn't have the benefit of knowing what Mr. Harris was going to say about this matter. We don't request the privilege of replying to him at length—

The Court:

I can't give you but a few minutes,—a very few minutes.

Mr. Burr:

We only knew the matters brought out by the Administrator's attorney.

In the first place, the intimidation that was used for the purpose of threatening the Court or intimidating the Court by saying this was a case of great moment,—if we made such a statement, I do not recall it. Certainly we didn't think this Court could be intimidated by us or anyone else. The size of the case has nothing to do with it.

The Court:

The size of the case has nothing to do with it.

Mr. Burr:

The size of the case has nothing to do with it and the length of taking testimony has nothing to do with it.

He referred to the case of Williams against the Atlantic Coast Line. That case is as far removed from the proposition we have here as, I think, a case could possibly be. In that case the railroad had charged the men for carrying them to their places of work on some kind of railroad transportation. In charging them that brought the wage below the minimum of thirty cents an hour, and the District Judge held that was an improper charge, and it couldn't be deducted and thereby the railroad had not paid them the minimum amount.

Now, the Colonel read a paragraph in the finding of facts on the pretrial hearing or agreement. I want to read Your Honor the pertinent portion which shows again clearly what we have here for consideration. It starts with a.

"What constitutes the working time which makes up the workweek of the underground ore mining employees of the plaintiff within the meaning of Section 7 of the Fair Labor Standards Act of 1938?"

Of course, that is the primary question that is involved, but in determining that question, the Court is bound to find what the intent of the Congress was.

Here is the controversy which is what gives you jurisdiction, and it states it just as the bill does.

"(1) In reference to 'a' above, the plaintiff contends that such workweek does not include that portion of the time spent by the underground ore mining employees in being transported or walking to and from their usual working places.

"(2) In reference to 'a' above, the defendants contend that the workweek covers all time from portal to portal as announced in the opinion and report of the Wage and Hour Administrator under the Fair Labor Standards Act on March 23, 1941, and also includes aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out."

Now, he says the evidence we offer of existing customs and practices and contracts in the coal mining industry is not admissible, because Congress had a right to change the customs and practices and contracts, and that was the purpose of the law. So, if Congress had intended to make a change, it would have said so. So, it is not a question of the hours used in testimony at all. It is a question of the rules of construction followed in construing an ambiguous statute, so, it is our contention if Congress acted as to ore mines it acted as to coal mines. The only thing that bears on the question of the underground coal miners is is there a substantial amount of traveling time? There is a proposition that seems to be so clear that I don't see how it could be questioned; and I have heard nothing Colonel Harris said in his argument that militates against it. I am just concerned—I don't think there is any man more concerned in the United States than I am in keeping the separation intact of our three divisions of government, but I want to say this, and as we see this and as the evidence supports our view, if the Courts should hold, particularly in the absence of this evidence, that Congress, when it used the word "workweek". included travel time in ore mines and didn't include it in coal mines, then surely the Court, as we construe it, would be usurping the functions of Congress.

Mr. All:

If the Court please, for about an equally short time.

I wouldn't want to say anything here except I have some very deep convictions about this partcular proposition, not that it means anything much to anybody but me and my client, but I submit that the argument which has been made hasn't touched this point at all. It just hasn't touched this point at all. It just hasn't touched it.

We have got here a suit, it is true, which involves the ore mines, but the very first thing that the Court has got to do in deciding the rights of these parties is to construe the statute to determine what the statute means. A great many times people will sue and say I am entitled to this under the statute, and you have got to decide very often how broad that statute is in order to determine whether it covers this man, that man and the other man. So, we are dealing here with the primary, essential, basic question as to what the proper interpretation, the basic interpretation of the statute is before we can apply it to the particular plaintiff in the case. The statute has got to be construed.

Colonel Harris made this statement, and I want to say this.—I can't—whether I have the right or not, I want to say this with all the earnestness and conviction I have got: That this Court, in view of what he read in the prelude to the act may say what Congress intended to do was to do away with existing custom. That is just about what he says. Now that, if the Court please—I say this with all frankness,—that is not a legal argument. That is not a legal argument. I agree with him Congress may have wanted to disturb and set aside those customs, but at the same time it may not have and Congress doesn't—this is a cardinal rule of construction,—no Congress can pass revolutionary legislation without labeling it.

The Court:

Without what?

Mr. All:

Without saying so. It is to be taken as consistent with the practice unless Congress indicates to the contrary.

The Court:

That is what you said before lunch.

Mr. All:

That is what I said, but I call attention to the fact he hasn't answered it.

Now, he called attention to the Fair Labor Standards Act. It is a sentimental appeal, but the Fair Labor Standards Act is a means, by abbreviation, for making reference to the Act, and doesn't carry any other signification whatever.

I believe Mr. Burr made this proposition that if it had been the intent of Congress that traveling time should be work time it would have said so in enacting the legislation.

Now, the other point is this, if the Court please: If Congress passes an Act that is ambiguous or uncertain as to what is meant by its terms, and there is a prevailing, established custom that will shed light on the construction of the legislation, however that might be, and aid the Court in determining whether that legislation is intended to disturb the custom or follow the custom, and if that is the point in the case, the length of time and scope of evidence that is necessary to go into that to determine that issue in the case is not an argument in the case; it may take thirty minutes, five days, or it may take ten days, but if it is necessary to exhaust the custom in determining what the legislative intent was, the time element and the ramifications are no answer to the proposition.

Mr. Harris:

I understood the order of the procedure was to give us the close?

The Court:

Yes, sir.

Mr. Harris:

On account of the fact we were the objectors.

The Court:

Yes, sir.

Mr. Harris:
I think those gentlemen used five or six minutes apiece.

The Court:
I am going to sustain the objection.

Mr. Harris:
Then we don't care to be heard.

Mr. Burr:
Come around, Mr. Hassler.

2021 J. M. HASSLER thereupon resumed the stand, and having been previously sworn, testified further as follows:

Direct Examination—Resumed.

Mr. Burr:
I suppose Your Honor will give us the permission to make our offer, and I will do that with Mr. Hassler on the stand.

Mr. Harris:
In order that we don't have to take up the time of the Court, it is our understanding each of our objections are in and we will not have to repeat them, and as we understand, the objections are sustained?

The Court:
Yes, sir.

Mr. Burr:
And we have an exception, separately and severally for each offer of proof for each plaintiff.

Mr. All:

For each plaintiff.

Mr. Burr:

For each plaintiff as against each set of defendants. I will eliminate what he has already testified—

Mr. Harris:

Of course, what he has already testified to about coal mines, I move it be excluded.

The Court:

It will be excluded.

Mr. Burr:

We except to that.

Mr. Burr:

I will read the offer to prove.

I entered the employment of the Republic Iron & Steel Company, now the Republic Steel Corporation, in February, 1929, and since 1930—

The Court:

Ask him the question. If you are going to read—

Mr. Smith:

I understand he has testified about his experience.

Mr. Burr:

I don't understand what you have excluded.

The Court:

The preliminaries about who he is with and what he does is not excluded.

Mr. Smith:
There was no objection to that.

The Court:
I don't know there is any testimony in—

Mr. Harris:
There is some testimony—

Mr. Burr:
About the location of the coal mines and distances.

The Court:
Well, that is all stricken, all about the coal mines.

Mr. Burr:
We offer to show he worked, as he said this morning—

Mr. Harris:
The judge said that was in.

The Court:
I just stated that was not excluded, Mr. Burr. All I said was excluded was the last part of his testimony, you might say.

Mr. Burr:
I say I am fixing the time.

Since 1930 I have been chief engineer for the company, having engineering charge of both its ore and coal mines, and during this period, both prior to October 24, 1938, and since, I have been thoroughly familiar with the conditions of work in the ore mines at Raimund, Spaulding and Shannon, and also with the coal mines of the company, which, during this time, have been located at Sayreton Mines Number 1 and 2 and Virginia Mines.

I understood Your Honor to state here you were allowing me to prove that about the coal mines?

The Court:
I have allowed that in.

Mr. Burr:
About him being familiar with the coal mines?

The Court:
Yes, sir.

Mr. Burr:
All these coal mines are located in Jefferson County, Alabama.

I offer to prove the Sayreton mines are about 14 miles from the Spaulding mine and Virginia mine is about 8 miles from the Raimund mine.

I offer to prove that.

Mr. Harirs:
We object to that.

The Court:
Sustain the objection.

Mr. Burr:
The coal operations are underground mines.

Mr. Harris:
We object to that.

The Court:
Sustain the objection.

Mr. Burr:
The entrance to all these mines is by slopes with varying degrees of pitch.

Mr. Harris:
We object to that.

The Court:
That is sustained.

Mr. Burr:
The coal mine Number 1 at Sayreton has a pitch of approximately 15 degrees, and Number 2 about 16 degrees, and the slope of Virginia mines is on a pitch of 22 degrees 18 minutes.

Mr. Harris:
We object to each one of those.

The Court:
Sustained.

Mr. Burr:
All right, sir.

(By Mr. Burr):
Q. I would like for you to tell me what the slope at Raimund ~~is,~~ the ore mine.

Mr. Harris:
We object,—Oh, the ore mine?

Mr. Burr:
Yes, sir. I want to get the record complete.

A. It varies from about 26 degrees up to 51 degrees.
Q. What is the pitch of the slope of the ore mine at Spaulding?
A. 18 degrees.

Mr. Burr:
We offer to prove that there is no difference in the principle of mining iron ore than from the principle of mining coal.

Mr. Harris:
We object.

The Court:
I sustain it.

Mr. Burr:
We offer to prove that in the coal mines the headings turn off the main haulage way, that is, the slope; in the same way they turn off in the ore mines.

Mr. Harris:
We object to that.

The Court:
Sustain the objection.

Mr. Burr:
It is not necessary for me to repeat my exception each time?

The Court:
You have them anyhow.

Mr. Burr:
That is what I understand. He was objecting each time.

The Court:
I said it was necessary.

Mr. Burr:
In the ore mines the headings turn off at approximately right angles from the slope.

Mr. Harris:
That is in the ore mines?

Mr. Burr:
That is in the ore mines. Do you object to that?

Mr. Harris:
No, I don't object.

Q. Is that a fact, Mr. Hassler?
A. Yes, sir.
Q. I will ask you if they turn off in the coal mines in the same way, the only difference being that in the ore mines the working places turned off from the headings are called stopes, and in the coal mines they are called rooms?

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Then I offer to show that the transportation has been the same in the coal mines as in the ore mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We offer to prove in the coal mines the underground employees are either carried a part of the way from the entrance of the mine by mechanical means and walk the remaining portion of the way to their working places, or the walk all the way to and from their working places from and to the entrance or mouth of the mines.

Mr. Harris:
We object to that as to the coal mines.

The Court:
Sustained.

Mr. Burr:
We offer to prove by him that in the coal mines he is testifying about or we offer to have him to testify about, the men have always walked from the entrance of the mine to the bottom of the slope where man trip trains pick them up and carry them to the various sections of the mines in which their working places are located, and at the end of the shift the man trip trains return the men to the bottom of the slope where they catch a specially built man car train—

Mr. Harris:
We object to that.

Mr. Burr:
—and return to the surface.

Mr. Harris:
As to coal mines, we object.

Mr. Burr:
All right, sir. We offer this as to ventilation: Where mechanical ventilation is used, it is substantially the same in the ore mines and the coal mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Ventilation in the ore mines is cooler than in the coal mines because,—

Mr. Harris:
We object to that.

Mr. Burr:
I haven't finished the sentence.

Mr. Harris:
I beg your pardon.

Mr. Burr:
—on account of the gas which is found in the coal mines, and not in as hazardous quantities in the ore mines, the ventilation has to be forced in the coal mines, and for this reason the air is hotter in the coal mines than in the ore mines.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
The roofs of the slopes are handled in substantially the same way in both the ore and coal mines,—

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:

With the exception that the roofs in the slopes in the ore mines are higher from the bottom than in the coal mines,—

Mr. Harris:

We object to that comparison.

Mr. Burr:

—while the width—I don't offer it as a comparison. I am offering it as a fact. I want to change it. I want to get a fair ruling.

The Court:

State the question.

Q. State what has been the average height of the slopes in the ore mines.

A. It will vary from a minimum of around seven feet up to as high as twenty or maybe twenty-five feet.

Q. Now, state what the heights are in the coal mines with reference to the same—

Mr. Harris:

We object to that.

The Court:

Sustained.

Mr. Burr:

We offer to prove—How much is it, for the—

The Witness:

At Sayreton it would be about 72 inches.

The Court:

That is not in the record.

Mr. Burr:
I am just getting the information.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
He objected to it as a comparison.

Q. Is that same thing true with reference to the headings leading to the respective working places?

Mr. Harris:
We object to that.

The Court:
Is that with reference to coal mines?

Mr. Burr:
Coal mines, yes, sir.

Mr. Harris:
We object.

The Court:
Sustained:

Mr. Burr:
We except.

Q. In the coal mines, I will ask you to state whether or not the roofs are so low in a large portion of the working places, or most of the working places, that the miners have to work in a stooped or sitting position?

Mr. Harris:
We object to that.

The Court:
Sustained.

Q. In the ore mines, do they have to work in a stooped or sitting position,—in the ore mines?

A. No, sir. They can stand up at practically any place in them.

Q. Now, you are familiar, are you, as chief engineer with the grades in the ore mines we have been asking you about?

A. Yes, sir.

Q. Are they on a level or do they undulate up and down?

A. The grades?

Q. Yes.

A. Oh, they vary up and down.

Q. I will ask you to state whether or not in the coal mines the grades undulate and vary up and down?

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Now, I offer to prove they do not vary as much in the coal mines as they do in the ore mines he is talking about.

The Court:
Just a minute. What is the new ruling under the rules of procedure as to an offer?

Mr. Burr:
I think you have a right to make your offer of proof.

The Court:
I think not.

Mr. Burr:
Certainly the Court would give me that right. This is a matter about what we are sincere.

The Court:
I know you are.

Mr. Burr:
We think this matter ought to be presented. We have this proof here. There is no question about that. We have it here to be presented.

Mr. Harris:
Judge, I don't think there is any question but what he has a right to make his offer.

The Court:
I think he has a right, according to the rules.

Mr. Harris:
I haven't objected to him making his offer.

The Court:
I know. I just wanted to see. All right, Mr. Burr.

Q. Mr. Hassler, are you familiar with the question of transportation and handling of supplies and tools in the ore mines?

Mr. Harris:
We object to that.

Mr. Quinn:
That is in the ore mines.

The Court:
You are asking about ore mines?

Mr. Burr:
First about ore.

Q. I am asking if you are acquainted with the hauling of ore and the handling of supplies and distribution of crews in the ore mines?

A. I am familiar with the handling of ore and supplies.

Q. I will ask you if you are familiar with the same thing in the coal mines?

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We offer to prove he is familiar with that, and offer to have him testify as to the method in both mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
As showing that it is substantially the same. We state the proof will show it is substantially the same.

Mr. Harris:
Object.

The Court:
Sustained.

Mr. Burr:

I offer to prove by him the following facts in reference to the equipment and tools:

There are differences in the equipment and tools used in the coal mines as contrasted with the ore mines. Coal is a little more flexible than ore, and the blanket or seam of coal is a little more uniform, and for this reason somewhat different tools, and generally speaking lighter tools are required at the face in the coal mines than in the ore mines.

Mr. Harris:

We object to that.

The Court:

You are offering to prove that?

Mr. Burr:

Yes, sir.

The Court:

I sustain the objection.

Mr. Burr:

Your Honor, the objection is not made because I am drawing the comparison, because, if you do—

Mr. Harris:

I object to any testimony whatsoever about—

Mr. Burr:

I know, but you don't put it on that ground, because it will take so much longer to ask him the questions. I can ask him—

Mr. All:

The point is you are asking questions which would tend to prove the conclusions.

Mr. Burr:

I am offering to prove facts. It is not the conclusion.

The Court:

All right.

Mr. Burr:

I offer to prove in coal mines a machine is used at the face to undercut the coal after which it is shot down by explosives.

Mr. Harris:

We object to that.

The Court:

Sustained.

Mr. Burr:

We offer to prove where mechanical loaders are use,—Sayreton Mine Number 2 is fully equipped with mechanical loaders, while Sayreton Mine Number 1 is a hand loading operation—

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Burr:

That the mechanical loaders in the coal mines are substantially lighter than the mechanical loaders in ore mines.

Mr. Harris:

We object.

The Court:
Sustained.

Q. Do you know substantially the weight of the mechanical loaders in the coal mines and ore mines?
A. Yes, sir.

Mr. Harris:
We object as to the coal mines.

The Court:
Sustained.

Mr. Burr:
Judge, off the record, I didn't have this rule in mind, but I think under the rule the way I prepared this is the proper way to do this.

The rule says you have a right to reduce it to writing and offer it. I believe I will go ahead and read it.

The Court:
How long will it take?

Mr. Burr:
Not long,—quicker than this way.

The Court:
All right.

Mr. Burr:
Your Honor, it will be understood where I use a conclusion or comparison, I am offering the two sets of facts that make up that comparison.

The Court:
He can object to one without the other. In other words, if you mention coal and ore, for instance, like the mechanical—

Mr. Burr:

Can't we have an understanding when I mention iron ore there is no objection? Won't that cover that?

Mr. Harris:

Well, we will get into a very difficult problem there.

The Court:

I think so.

Mr. Harris:

I can't let that—

The Court:

We will just follow it, Mr. Burr.

Mr. Burr:

All right, sir.

The Court:

Go ahead.

Mr. Burr:

The drills used in coal mines are practically motor driven augurs.

Mr. Harris.

We object to that.

The Court:

Sustained.

Q. The drills used in the ore mines are the tripod—what kind of drill do you call that?

A. The drills used in the ore mines are the tripod or column drills.

Q. Tripod or column drills?

A. Yes, sir.

Mr. Burr:
We offer to show how much explosives are used in the coal mines.

Mr. Harris:
We object

The Court:
Sustained.

Mr. Burr:
And how much explosives are used in the ore mines and then to prove that the explosives used in the coal mines are loaded lighter than those used in the ore mines.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
We offer to prove now the distribution and handling of tools in the coal mines during this period of time.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
We offer to prove that tools are supplies to the miners in the coal mines at their working places—

Mr. Harris:
We object to that.

Mr. Burr:
—except that in the coal mines the custom has arisen over a great many years of the miners picking up, both on the outside and on the inside, the picks and shovels and other tools and supplies and carrying them to their working places.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
We offer to prove that picks and shovels have always been carried by the miners in the coal mines to and from their working places—

Mr. Harris:
We object to that.

Mr. Burr:
—whenever it is necessary to take them out to be sharpened and repaired.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
We offer to prove in the coal mines during this period of time, and all my questions relate to the period of time—

The Court:
Yes.

Mr. Burr:

The coal miners have always obtained their supplies of explosives at the surface and carried them to their working places.

Mr. Harris:

We object.

The Court:

That is coal miners?

Mr. Burr:

Coal miners, yes.

The Court:

Sustained.

Mr. Burr:

That this is not true of the caps used to detonate the explosives, these caps being supplied to the miners at their working places by a service man.

Mr. Harris:

We object to that.

The Court:

Sustain the objection.

Mr. Burr:

We offer to prove that the coal miners use electric lamps; that they obtain these lamps at the tally house just before they descend into the mines, and return them to the tally house at the end of the shift, being charged a rental by the company for their use.

Mr. Harris:

We object.

The Court:
Sustained.

Mr. Burr:
And we offer to prove this is the exact practice in the ore mines.

Mr. Harris:
They have already proven the practice in the ore mines by independent witnesses.

Mr. Burr:
I think it has been proven.

The Court:
Yes.

Mr. Burr:
I think so.

We offer to prove each employee in the coal mines is furnished by the employer with a brass check carrying a number on it, and each employee deposits this check as he enters the mine with the mine foreman, and it is placed on the board where his working place is, and that on coming out of the mine he takes up the check he has deposited as he entered the mine at the beginning of the shift.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
We offer to prove that the purpose of that in the coal mines is to enable the mine foreman to know who has gone

in the mine and whether all the miners have come out of the mine at the end of the shift, and also for the purpose of noting and filling vacancies when vacancies occur in the crews.

Mr. Harris

We object to that.

The Court:

Sustained.

Mr. Burr:

We offer to prove that the foreman of the coal mine, when a miner—when a miner hasn't deposited his check, and his place is vacant on the board, that the foreman fills that vacancy—

Mr. Harris:

We object to that.

Mr. Burr:

—by ether phoning down and having the vacancy supplied from the service crews, or by putting a man from another crew in his place?

Mr. Harris:

We object to that.

The Court:

Sustained.

Mr. Burr:

We offer to prove that is the same exactly as it is handled in the ore mines.

Mr. Harris:

And we object to that.

The Court:
Sustained.

Mr. Burr:
All right, sir. We offer to prove—I wouldn't admit this evidence is admissible, because we have been objecting to it all along,—we offer to prove that the records of the company, which are kept by Mr. Hassler, show that since his connection with the company there has been a better record for frequency and severity of accidents in the ore mines than in the coal mines.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
And we offer the records themselves for the purpose of showing that.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We offer to prove by Mr. Hassler that the normal employment in the coal mines during this time has been 1100 men.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
And that the normal employment in the ore mines during this period has been approximately 600 men.

Q. Is that for all your mines, Raimund and Spaulding?
A. The two mines.

Mr. Burr:
Now, we first offer to prove he is familiar with the extent, depth, distance and cover of the coal mines of the company.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We offer to prove that the coal mines both in reference to the slopes and the headings are longer and more extensive than the ore mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We offer in proof—in evidence the map which has been identified as Republic—

The Court:
Exhibit 17.

Mr. Burr:
Exhibit 17, yes, sir.

Mr. Harris:

We object to that map, which, as I understand is a map of a coal mine.

The Court:

Sustained.

(Thereupon a map of Sayretons Mines of Republic Steel Corporation was marked for identification Republic Exhibit No. 17.)

Mr. Burr:

We offer to prove that is a correct map by Mr. Hassler who knows, of the coal mines it purports to show.

Mr. Harris:

We object to that.

The Court:

Sustained.

Mr. Burr:

We offer to prove a similar map of the Virginia mines of the Republic Company, which is now being prepared for operations.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Burr:

Will you please get that out and let it be marked?

The Clerk:

It will be Republic Exhibit 18 for identification.

Mr. Harris:
We object to that map too, if Your Honor please.

Mr. Burr:
We offer to prove that is a correct map.

Mr. Harris:
We object to it.

The Court:
What number?

The Clerk:
Number 18.

The Court:
Republic?

The Clerk:
Yes, sir.

The Court:
The objection is sustained.

(Thereupon a map of Virginia Mines of Republic Steel Corporation was marked for identification Republic Exhibit No. 18.)

Mr. Burr:
Now, we offer to prove by Mr. Hassler that the distance from the entrance of Mine Number 2 of Sayreton to the furtherest working place on and shortly prior to October 24, 1936, was approximately 1-3/4 miles.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
And that the shortest distance from the entrance to the nearest working place at that time was three-quarters of a mile.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And that in Mine Number 1 at Sayreton, the furtherest distance at that time was approximately 3-1/2 miles, and the shortest distance 2 miles.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We offer to prove that the Virginia mines of the company have not been in operation since the year 1932, but are now being prepared for reopening.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
That the length of the main slope at Virginia mines on and shortly prior to October 24, 1938, was approximately 3200 feet,—

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
—and the shortest distance from the bottom of the slope to the furtherest place that is now being prepared for work was approximately one and a quarter miles, and the shortest distance a quarter of a mile.

Mr. Harris:
We object.

The Court:
Sustained. That is what mine? A coal mine?

Mr. Burr:
Virginia coal mine, yes.

The Court:
Yes.

Mr. Burr:
In other words, the offer is to show that the distance is further than in the ore mines.

The Court:
Yes.

Mr. Burr:
That is the purpose of it.

The Court:
Yes.

Mr. Burr:
Now, we offer to prove by Mr. Hassler he was not only acquainted with the coal mines of the Republic Company, but is acquainted in a general way with the coal mining operations in the Alabama District—

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And was so acquainted during the period of time on and shortly prior to October 24, 1938.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Then we offer to show that during that period of time he was an engineer at Littleton Coal Mine located in Jefferson County, Alabama, and operated by the Semet-Solvay Company, and was located within about how many miles, Mr. Hassler, so I can make my offer from your nearest ore mine?

The Witness:
I would say a distance of about 25 miles.

Mr. Harris:

I thought that went in earlier in the testimony in giving his personal experience.

Mr. Burr:

He excluded everything. I am getting the distance.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Burr:

Now, we offer to show he worked in Number 4 mine of the Tennessee Company—

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Burr:

—and I offer to prove that Number 4 mine of the Tennessee Company is about four miles from the ore mine operations.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Burr:

All right, sir. We offer to prove the depth of the slope in the Number 4 mine and the distances of the headings leading off from that slope, the actual distances.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And we offer to prove by him that they are further in both respects than in the ore mines that he is familiar with.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Oh, yes. I offer the actual distances, and Your Honor sustains that?

The Court:
Yes, sir.

Mr. Burr:
Now, we offer to prove by him that in addition to the mines we offer to prove he has actually worked in, he is familiar with the other coal mines in the district in a general way, has been in them, and that the same general conditions we offer to prove exist in the Republic Company's mines and in the Littleton mine and in Number 4 of the Tennessee Company exist in these other mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:

And we offer to prove each one of those conditions separately.

Mr. Harris:

And we object separately.

The Court:

Sustained.

Mr. Burr:

We offer to prove by him it has been the custom in the coal mines during the period of time inquired about, that is, from the time he first came to Alabama and was connected with the coal mines until the present time, to compute the men's wages and pay their wages on the working place to working place basis.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Burr:

And that custom has been universal and without exception.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Burr:

And we offer to prove by the witness that the Republic Company and no other company in Alabama during that period of time has ever paid the men—the underground employees, I mean, by the men, and that the underground men have not received any payment for the time spent in going to and from their working places.

Mr. Harris:
That is coal mines?

Mr. Burr:
Yes, sir; I am talking about in every coal mine in Alabama.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Then we offer to prove the computation and payment of wages to all underground service employees in the mines I mentioned above has always been on an hourly or day basis,—

We object.

Mr. Burr:
—there being an occupational rate set up for each job.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We offer to prove the same system has existed in the ore mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We offer to prove the rate per crew for the number of hours at the face which constituted at the time the basis of the mines' operations.

Mr. Harris:
We object.

The Court:
That is the coal mines?

Mr. Burr:
Yes, sir; that is the tonnage.

The Court:
Sustained.

Mr. Burr:
Now, we offer to prove by Mr. Hassler that it has been his business, and that he has represented the Republic Company to conduct the employee relationships and bargaining relationships with the employees and with the union members and employees.

Mr. Harris:
As to coal mines?

Mr. Burr:
As to coal mines, yes, sir.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Now, we ask that this be identified as Republic Exhibit—

The Clerk:
19.

Mr. Burr:
And I would like permission to withdraw it and substitute copies later on.

Mr. Harris:
That is to coal mines?

Mr. Burr:
Yes, sir.

The Court:
That is as to coal mines?

Mr. Burr:
Each one that has been made.

Mr. Harris:
We object separately and severally.

Mr. Burr:
We offer them separately and severally.

The Court:
I sustain the objection, separately and severally, and you are given the right to substitute—

Mr. Burr:
Copies of the originals?

The Court:
Yes, sir.

(Thereupon a booklet containing original agreements between Republic Steel Corporation and United Mine Workers of America ~~as~~ follows:

Agreement effective April 1, 1934, and expiring April 1, 1935;

Agreement effective January 11, 1935, and expiring September 22, 1935;

Agreement effective September 2, 1935, and expiring April 1, 1937;

Agreement effective May 14, 1937, concerning washer loss;

Agreement effective April 1, 1937, and expiring April 1, 1939;

Agreement effective April 1, 1941, concerning retroactive rate;

Agreement effective May 10, 1941, being a temporary agreement, and expiring March 31, 1943; was thereupon marked for identification Republic Exhibit No. 19.)

Mr. Burr:
Your Honor wouldn't be interested, I don't suppose—I might state for the record, so you will know what you are passing on, that each and every one of those contains the definition of hours of work as being at the face.

The Court:
That is for the coal mines?

Mr. Burr:
Yes, sir, that is for the coal mines.

Th Court:
I don't think that is necessary. I am not going into it.

Mr. Burr:
They speak for themselves.

Now, the contracts that I have offered cover the years from 1934 down to the present contract, which expires on March 31, 1943. That is the one just recently made. That is under the cover that I just gave him just now.

Now, in addition to those contracts I offer to prove in 1933, that is, the year previous to the contracts, that John L. Lewis and the United Mine Workers of America signed —I am offering to prove in 1933 he had a signed contract with the local committee of the miners union.

Mr. Harris:
We object.

The Court:
I sustain the objection.

Mr. Burr:
And that that contract contained a similar agreement that the day's work was at the working place, just as described in these contracts, the definition in that contract being:

"Eight hours of labor shall constitute a day's work, and this means eight hours work at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid on the day or the tonnage or other piece work basis."

Mr. Harris:
We object.

Mr. Burr:
Then I offer separately, so there can't be any argument,—I don't think it makes any difference,—that the seven hour day took place—the eight hours, back when we had eight hours,—it appeared first in that contract back in 1933.

We offer to prove that.

Mr. Harris:
We object.

The Court:
I sustain the objection.

Mr. Burr:
All right, sir.

I offer to prove the reason we haven't got the copy of the contract that was made in 1933, he has made a search of his files, and that contract has been lost, but the facts in connection with it are as I have offered to prove.

Mr. Harris:
We object, because it is immaterial.

The Court:
Sustained.

Mr. Burr:
Now, we offer to prove, separately and severally, that each one of the facts I have offered to prove has existed at these various times: First, shortly prior to March 24, 1938—October 24, 1938; Second, for a substantial time prior to that time;—

Mr. Harris:
As to each we object.

Mr. Burr:
And third—

The Court:
Sustained.

Mr. Burr:
—at a period time as far back as his knowledge of the conditions goes.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And, fourth, as to the time since that time, down to the present moment, with the present existing contract by its terms expiring in 1943.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Now, we want to offer this—Well, I think I will take that up letter. Yes.

We want to offer this testimony, in each separate part of the offer, separately as to each separate defendant without—I mean in the two classes. I don't want to divide them by separately as to—Well, I will divide them in three classes.

First, with reference to the defendants associated with the C. I. O. organization.

Mr. Harris:
And we object for the C. I. O. as to all of them.

The Court:
Sustained.

Mr. Burr:
And, second, as to the defendants affiliated with the American Federation of Labor.

Mr. Quinn:
The same objection as to those.

The Court:
Sustained.

Mr. Burr:
And, third, and very separately as to him, as to the Intervener, General—Colonel or General Fleming.

Mr. Brodie:
And we object as to him.

The Court:
Sustained.

Mr. Burr:
And we separately and severally offer it on behalf of each plaintiff as to each class of defendant.

Mr. Harris:
And separately and severally all of us on this side of the table object.

The Court:
Sustained.

Mr. Burr:
I want to offer next—I want the record to show that this evidence I am now offering, separately and severally, is being offered, first, before Mr. Hassler testifies, so that his testimony follows it, and then, after Your Honor sustains objection, I want to offer it as following his testimony, so there can't be any question about it being premature.

I offer first—

The Court:
I—

Mr. Harris:
I don't follow you on that.

Mr. Quinn:
I don't follow it either.

The Court:
I don't follow your point.

Mr. Burr:
Well, I will offer it now.

The Court:
That is something else.

Mr. Burr:
I am offering this documentary evidence. I judge, under Your Honor's ruling, you will rule it out.

The Court:
Yes, sir.

Mr. Burr:

We will see what it is when we get to it.

I offer now the publication which is identified in the order of proof in paragraph d-2.

I offer the publication of the United States Department of the Interior, Harold L. Ickes, Secretary, Bureau of Mines, R. R. Sayres, Director, entitled "Iron Ore, Pig Iron, Ferro-Alloys, and Steel, By Robert H. Ridgway and H. W. Davis. Chapter from Minerals Yearbook, 1940, United States Government Printing Office, Washington, 1941."

Now, I particularly offer these portions from it, but separately offer the entire book, so it can't be said we are not putting it all in the record, but the part I am calling attention to, though, appears on page—

Mr. Harris:

I want to see it.

The Court:

I think counsel will want to see it.

Mr. Burr:

Judge, I am glad for them to see it, but this is the document presented in the pre-trial agreement, and they have had a chance to see it.

The Court:

If you will state what it is—

Mr. Burr:

That is what I was trying to do.

If they want to stop and look them over now, I will be glad to do it.

Mr. Harris:

Judge, I have been as busy as a switch engine since the case started.

Mr. Burr:

If you see anything you want to see, let me know.

The Court:

Let him glance over it.

Mr. Burr (handing document to Mr. Harris):

Don't lose my markers, Crampton. Hold them where they are.

Mr. Harris:

If the Court please, these documents have a great mass of figures in them, and I would like the opportunity of looking them over tonight so we would have a chance to see whether we wanted to object.

The Court:

I think it will be all right—

Mr. Burr:

I will offer them and you can have them tonight.

The Court:

I can rule on them tomorrow.

Mr. Burr:

Let me identify them.

Mr. Harris:

Identify them merely, and don't offer them now, and we can put in our objection in the morning.

Mr. Burr:

I am going to offer them now, and you can hold your objection until tomorrow morning.

The Court:
You can hold your objection until tomorrow morning. You will not waive your right to object.

Mr. Harris:
And our objections, when offered tomorrow, will be as though they were offered now?

The Court:
Yes, sir.

Mr. Burr:
That will be all right. We offer this exhibit—

The Clerk:
It will be T. C. I. Number 28.

The Court:
What number?

Mr. Burr:
T. C. I. Number 28, and that is the publication referred to under d-2 of the pre-trial agreement, which is a publication of the United States Department of the Interior, Harold L. Ickes, Secretary, Bureau of Mines, R. R. Sayers, Director, entitled "Iron Ore, Pig Iron, Ferro-Alloys, and Steel," by Robert H. Ridgway and H. W. Davis,—Chapter from Minerals Yearbook, 1940, Review of 1939, United States Government Printing Office, Washington, 1941.

The Court:
Will you make a note—

Mr. Burr:
He can have the exhibits after we turn them over to the clerk.

If Your Honor don't mind, I am going to ask that the exhibits be numbered as they are numbered in the pre-trial order so I will not get them mixed up. I am going to put this in as Plaintiffs' general Exhibit Number 7.

The Court:

You mean plaintiffs instead of T. C. I.?

The Clerk:

Just call it Plaintiffs' Number 7, if you haven't any objection.

Mr. Burr:

Yes, sir, Plaintiffs' Number 7.

Mr. Brodie:

May I ask if you are offering the entire document?

Mr. Burr:

I am offering only certan sections, but if anybody raises the point, I will offer the entire document, I don't want anything technical in this case.

If they object because I don't offer all, I will offer all.

(Thereupon the document referred to in Section d-2 of the pre-trial order, being a publication of the United States Department of the Interior, entitled "Iron Ore, Pig Iron, Ferro-Alloys, and Steel," by Robert H. Ridgway and H. W. Davis, and bearing the notation, "Chapter from Minerals Yearbook, 1940, Review of 1939," was marked Plaintiffs' Exhibit No. 7.)

Mr. Burr:

On page 550, the part of the article, and the chart and the graph showing the men employed and output per man at mines.

And on page 553, the same information in reference to the mines in the southeastern district, including Alabama.

The Court:
Showing the number of men employed in the southeastern district?

Mr. Burr:
Yes, sir. I will read it to Your Honor:

"The largest and most consistent producing mines in the Southeastern district are in Jefferson County, Alabama, where 3,803 men working 6,058,805 man hours in 1938 produced 3,970,604 tons of merchantable ore," and so on.

And then particularly on page 554 the summary which shows the average number of men employed in iron ore mines all over the United States, and which shows that in the Southeastern District, which includes Alabama, Georgia, Tennessee and Virginia, the number employed was 4,356, and the total number for the entire United States was 19,788.

All right, sir. That is that one.

Now, we offer next the Number 12—

The Court:
Plaintiffs' General 12?

Mr. Burr:
Plaintiff's General 12.

The Court:
The other was 7?

Mr. Burr:
That is right, but I was using the numbers in the pretrial order.

The Court:
Plaintiffs' General Exhibit Number 12?

Mr. Burr:

Number 12, which appears in pre-trial item Number 10.

(Thereupon the publication referred to in Section d-10 of the pre-trial order, and which is a publication of the United States Department of the Interior, entitled "Bituminous Coal," by M. E. McMilian, R. L. Anderson and W. H. Young, and bearing the notation, "Chapter from Minerals Yearbook, 1940, Review of 1939, with final statistics for 1938," United States Government Printing Office, Washington, 1940, was thereupon marked for identification "Plaintiffs' Exhibit No. 12.")

Mr. Burr:

In the same way we offer the following portions of that. It is in reference to the production—number of men employed in the coal mines—bituminous coal mines in the United States.

The Court:

Page what?

Mr. Burr:

The other was the iron ore mines. This is the coal mines in the bituminous field.

Mr. Smith:

We object to that right now.

Mr. Burr:

All right, sir. I am very glad to have you object. Do you want to stay out of the coal mines or go in?

Mr. Harris:

I understood I was going to take them and make my objections tomorrow morning. I am going to object to coal mines or anything pertaining to coal mines coming in evidence.

Mr. Burr:
It shows—

The Court:
What page?

Mr. Burr:
774. It shows the output of bituminous coal in 1939 was 393,065,000 tons, a 13 percent increase over 1938, and then on page 799,—no, it is on page 800—

Mr. Brodie:
Page 800?

Mr. Burr:
Yes, sir, under "Man-days of Labor"—

Mr. Harris:
Well, I don't have to look at that document. I object to it now.

Mr. Burr:
And over on page 709, which gives a chart and shows the men employed, shows an average of 441,000—

The Court:
Is that 799?

Mr. Burr:
Yes, sir, 799.

The Court:
An average of—

Mr. Burr:
441,333 men employed in coal mines in 1938.

Mr. Harris:
That entire pamphlet seems to relate to coal mines?

Mr. Burr:
Yes, sir.

Mr. Harris:
Then I object to it now.

The Court:
Sustained.

Mr. Burr:
All right, sir.

The next one in the same book, relating to coal mines, is production, men employed, days operated and output per man per day at bituminous coal mines in specified states and counties in 1938 of Alabama, which shows that—number of employees at coal mines in 1938 was 18,339.

Mr. Harris:
We object.

Mr. Burr:
If I make a mistake in giving these figures, of course the exhibit speaks for itself.

Mr. Brodie:
What page?

Mr. Burr:
814.

The Court:
Sustained.

Mr. Burr:
We offer the entire tables beginning on page 814, which carries facts for all the coal mines, through the summary, after you get to West Virginia, which is on page 828, and which shows a total production of—well, I will not read it. It is getting too much like the national debt Anyway, it is in there.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
Now, the next is Plaintiffs' General Exhibit Number 13, which is identified in the—Well, I don't find that right now. I think it is number 11 of the pretrial order.

It relates exclusively to the anthracite coal of the United States, and it shows the number of men employed in the anthracite field in 1938, and that information appears particularly on pages 847, 849, 859 and 860.

Mr. Harris:
I object to that now.

The Court:
Sustained.

(Thereupon a document identified in Section d-10 of the pre-trial order, being a publication of the United States Department of the Interior, entitled "Pennsylvania Anthracite," by M. Van Siclen, L. Mann and J. R. Bradley, and bearing the notation, "Chapter from Minerals Yearbook, 1940, Review of 1939," United States Government Printing Office, Washington, 1940, was thereupon marked for identification "Plaintiffs' Exhibit No. 13.)

Mr. Burr:
We offer now Plaintiffs General Exhibit Number 13-A, which also related to production—

The Court:
General Exhibit—

Mr. Burr:
13-A, "Production, Stocks and Consumption of Coal," and which is identified in item 12 of the pre-trial agreement.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
And we will particularly offer Table Number 2.

Mr. Harris:
And we object to Table Number 2.

The Court:
That is as to coal?

Mr. Burr:
Yes, sir, that is as to coal.

The Court:
I sustain the objection.

Mr. Burr:
That shows what it was in 19—

The Court:
What is that number?

The Clerk:
That is Plaintiffs' 13-A.

The Court:
I thought that was a new one.

Mr. Harris:
That is a specific portion of the general 13.

The Court:
All right.

(Thereupon a document identified in Section d-12 of the pre-trial order, being a publication of the United States Department of the Interior, Bituminous Coal Division, Weekly Coal Report, Number W. C. R. 1231, dated February 15, 1941, and entitled "Production, Stocks and Consumption of Coal," was thereupon marked for identification Plaintiffs' Exhibit No. 13-A.)

Mr. Burr:
Now, we next offer Plaintiffs General Exhibit Number 14, which relates to item 13 in the pre-trial order, and which is the approved code, number 24, Registry Number 702-45 of the National Recovery Administration, "Code of Fair Competition for the Bituminous Coal Industry," as approved September 18, 1933.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:

And carrying with it the approval of the President as being in compliance with Title I of the N. R. A., and we offer particularly and specifically and separately from the entire Code the portion appearing on page—the President's approval of it appearing on pages 323 and 324, with the approval recommended by Hugh S. Johnson, Administrator, and the White House approval dated September 18, 1933, and we offer particularly that portion of the Executive Order which recites it is in full compliance with Title I of the N. R. A. Act, and particularly we offer the definition which appears on page 327 under the Title "Article 3: Maximum hours of labor."

The Clerk:

That will be Plaintiffs Exhibit 14.

Mr. Harris:

We object to each part of it.

Mr. Burr:

And particularly we offer that part of it where it says;

"Seven hours of labor shall constitute a day's work, and this means seven hours work at the usual working places for all classes of labor."

Mr. Harris:

We object.

The Court:

Sustained as to each one of them.

(Thereupon the document referred to in Section d-13 of the pretrial order, and being the Code of Fair Competition for the Bituminous Coal Industry of the National Recovery Administration, Approved Code No. 24, Registry

No. 702-45, as approved September 18, 1933, was marked for identification Plaintiffs' Exhibit No. 14.)

Mr. Burr:
Now, we offer next, marking it the same as in the pretrial agreement—No, I don't believe that was in the pretrial agreement.

The Clerk:
Make it Plaintiffs' Exhibit 25.

Mr. Burr:
The joint statement or letter directed to Colonel Philip B. Fleming, Administrator, Wage and Hour Division, Department of Labor, Washington, D. C., dated July 9, 1940, and signed by United Mine Workers of America by Earl E. Houck, Director of the Legal Department, and for the operators by W. L. Robison, Chairman, and four others as the Appalachian Joint Conference Negotiating Committee, which is the document given publicity by the Administrator as admitted in the answers to interrogatories.

The Court:
That pertains to coal?

Mr. Burr:
Yes, sir. It is in the brief I read to Your Honor why it should be on face to face basis.

Mr. Harris:
We object to that.

The Court:
Objection sustained. That is the Plaintiffs' General Exhibit 25?

The Clerk:
Yes, sir.

(Thereupon a document dated 1617 Pennsylvania Boulevard, Philadelphia, Pennsylvania, July 9, 1940, and addressed to Colonel Philip B. Fleming, Administrator, Wage and Hour Division, Department of Labor, Washington, D. C., and signed, "For the United Mine Workers of America, Earl E. Houck, Director of the Legal Department," and "For the Operators, W. L. Robison, Chairman, Charles O'Neill, L. T. Putman, L. C. Gunter and G. D. A. Morrow, Appalachian Joint Conference Negotiating Committee," was marked for identification Plaintiffs Exhibit No. 25.)

Mr. Burr:
All right, sir.

This will be Plaintiffs' General Exhibit 4-B as referred to in—referred to in d-1 of the pretrial agreement.

This is the Administrator's ruling on—headed, "Two Mining Determinations Announced," release 928, Saturday, July 27, 1940.

We offer that portion of it which appears on pages 2 and 3 and which—in which Colonel Fleming announces the—an interpretation of this Section 7 as relating to the bituminous coal mining industry that I refererd to in the argument this morning.

Mr. Harris:
We object.

The Court:
Sustained. What is that one?

The Clerk:
Exhibit 4-B.

The Court:
4-B?

The Clerk:
Yes, sir.

The Court:
Sustained.

(Thereupon the document referred to in Section d-1 of the pretrial order, entitled, "Two Mining Determinations Announced," and being release Number 928 of the Wage and Hour Division of the United States Department of Labor dated Saturday, July 27, 1940, was thereupon marked for identification Plaintiffs Exhibit No. 4-B.)

Mr. Burr:
We offer next the Plaintiffs' General Exhibit Number 4-C, which is the article identified in the pretrial agreement as d-1, and which is a release by the Administrator dated September 18, 1940, and which relates—which is an address delivered by the Administrator before the American Mining Congress at Colorado Springs, and we offer separately that portion of it which begins with:

"I want to list some of the principal ones as a basis, at least, for further discussion."

"1. Must the time spent by the underground working in traveling from the portal to the face be counted as time worked?

"2. Must time spent at lunch underground be considered as time worked?"

And then the other portions which discuss that proposition and announce his views and conclusions.

The Court:
Is that with reference to coal?

Mr. Burr:

Yes, sir, it is with reference to coal,—it is in a way. It is general, I guess.

The Court:

Sustain it.

Mr. Burr:

It is general. In other words, he announces a ruling for coal, but states that the same will be reasonable for all other industries where custom justifies it.

Mr. Harris:

We object.

The Court:

Sustain it.

(Thereupon a document referred to in Section d-1 of the pre-trial order and entitled "Address Scheduled for Delivery by Colonel Philip B. Fleming, Administrator Wage and Hour Division, United Stated Department of Labor, before the American Mining Congress, Colorado Spring, Colorado, Wednesday, September 18, 1940," and bearing the notation, "For release Wednesday, September 18, 1940," was thereupon marked for identification Plaintiffs' Exhibit No. 4-C.)

Mr. Burr:

Now, we offer next General Exhibit No. 6,—that part of it which sets out a letter from Colonel Philip B. Fleming to the Editor of the Engineering and Mining Journal, in which he refers to his two rulings, one as to coal and the other as to iron ore,—

Mr. Harris:

We object to that private letter.—

Mr. Burr:

—dated April, 1941, and which he states in his answers to interrogatories is a correct copy of his explanation of his ruling.

Mr. Harris:

I haven't answered any interrogatories, and my clients haven't offered any.

The Court:

I sustain it.

(Thereupon an article appearing in the April, 1941 issue of the Engineering and Mining Journal, entitled, "Collar-to-collar vs. Face-to-face," was marked for identification Plaintiffs' Exhibit No. 6.)

Mr. Burr:

Your Honor understands we are offering—we had better make that clear right now,—that we offer each of these papers separately against each defendant and each class of defendants.

Mr. Brodie:

At the present time I am objecting. I don't know what it is. I would like to see it. I am reserving an objection.

The Court:

You might reserve it until tomorrow morning.

Mr. Burr, you have offered it?

Mr. Burr:

Yes, sir, I have offered it.

The Court:

And tomorrow morning you let the Court know whether you object to it and the grounds.

Mr. Brodie:
Yes, sir.

Mr. Harris:
But I have indicated as I went along—

The Court:
Yes; I have sustained your objection.

Mr. Burr:
Now, I want to offer next in reference to this coal matter the various depositions that have been taken in other parts of the country.

Mr. Harris:
Now, as to each deposition dealing with coal, wherever taken, we object, if the Court pleases, to each deposition, separately and severally, on coal, just as we do to anything testified to by these witnesses.

The Court:
I sustain the objection.

Mr. Burr:
We offer these separately on behalf of the Plaintiffs and separately and severally as against each defendant and each class of defendants.

Mr. Smith:
We want the same objection noted.

The Court:
Yes, sir.

Mr. Smith:
I understand it goes along, but I want it noted.

The Court:
Sustain the objection.

Mr. Brodie:
We have filed written objections to those depositions to coal operators.

The Court:
Depositions of coal operators?

Mr. Brodie:
Yes, sir.

Mr. Burr:
I didn't understand.

The Court:
He said he had filed objections to that part of the written depositions to coal operators.

Mr. Brodie:
Yes, sir.

Mr. Burr:
Fleming did, and he is the only one as far as I can recall.

The Court:
I haven't passed on the written objections, but you are objecting now?

Mr. Brodie:
Yes, sir.

The Court:
I sustain the objection.

Mr. Harris:
I don't have to file written objections. I object.

The Court:
No. I don't see any necessity for passing on his written objections.

Mr. Burr:
It is not necessary. Your Honor is going to sustain it?

The Court:
Yes, sir.

Mr. Brodie:
I call your attention—

The Court:
I sustain the objection, whether it is Mr. Harris' or Judge Smith's.

Mr. Burr:
The first one I offer is the deposition of W. J. Jenkins, and, separately and severally, each portion of the deposition.

The Clerk:
With the exhibits attached to it? There are seven exhibits.

Mr. Burr:
Yes, sir, separately, each exhibit we offer.
These seven exhibits are the wage agreements going back from the present time back in the future which show—

Mr. Harris:
Back in the past?

Mr. Burr:
Back in the past, I mean, which show the custom, and that contracts were in existence at that time on the face to face basis, defining it in the contracts.

Mr. Harris:
That is in the coal industry?

Mr. Burr:
It is in the coal industry, yes, sir.

The Court:
Is that a coal exhibit?

M . Burr:
Yes, sir, it is, I think, the Appalachian—No, it is in St. Louis.

Mr. Harris:
We object.

The Court:
I sustain the objection.

Mr. Harris:
And to the exhibits also?

The Court:
Yes, sir, I sustain the objection to the exhibits also.

The Clerk:
That will be Plaintiffs' General Exhibit No. 26.

(Thereupon the deposition of W. J. Jenkins, together with the exhibits thereto, was marked for identification Plaintiffs' Exhibit No. 26.)

Mr. Burr:

Next we are offering the deposition of L. C. Gunter of Knoxville.

The Clerk:

General Exhibit 27.

Mr. Harris:

That is coal also?

Mr. Burr:

Yes, sir, it is coal. It is the deposition of L. C. Gunter, and we offer separately and severally each separate and several answer and separately and severally each exhibit referred to.

Mr. Harris:

And we object.

Mr. Burr:

It relates exclusively to coal mines.

The Court:

It relates exclusively to coal mines?

Mr. Burr:

Yes, sir. It covers what has been referred to, I think, as the Southern Appalachian field,—our competitors up here in Tennessee.

The Court:

Is there any objection to that?

Mr. Harris:

Yes, sir, we objected.

The Court:
I didn't hear it.

Mr. Harris:
Yes, sir; we object. I beg your pardon.

The Court:
Sustain it.

Mr. Brodie:
We object too.

The Court:
Sustain the objection.

(Thereupon the deposition of L. C. Gunter, with the exhibits thereto, was marked for identification Plaintiffs' Exhibit No. 27.)

Mr. Burr:
Next the deposition of Francis J. Keegan—

The Clerk:
Exhibit Number 28.

Mr. Burr:
—who is another operator in Kansas.

The Court:
Is that a coal mine?

Mr. Burr:
Yes, sir, a coal mine.

We offer that, separately and severally, as to each separate question and answer, and as to each separate and several exhibit attached.

Mr. Smith:
And we object.

The Court:
I sustain the objection.

(Thereupon the deposition of Francis J. Keegan, with the exhibits thereto, was marked for identification Plaintiffs' Exhibit No. 28.)

Mr. Burr:
The next one is the deposition of D. C. Kennedy, which relates to coal mines and coal customs and coal agreements in the Appalachian and Kanawah Districts.

The Clerk:
Number 29.

Mr. Harris:
And we object.

The Court:
Sustained.

(Thereupon the deposition of D. C. Kennedy, with the exhibits thereto, was marked for identification Plaintiffs' Exhibit No. 29.)

Mr. Burr:
You understand we are not offering the answers to the cross interrogatories. As I understand, they are objecting and that will go out.

That is all the depositions, if the Court please.

If Your Honor please, we want to offer next—we are prepared to make the proof, and Your Honor sustains it, I think, on the ground it is incompetent and irrelevant,—we offer next contracts beginning with the one made back January 28, 1898.

The Court:
What is that?

Mr. Burr:
They are coal contracts beginning on January 28, 1898.

The Court:
In another section of the country?

Mr. Burr:
They may be in the same section, but these are all of them, cover all the coal mining operations.

The Court:
That is with reference to coal mines?

Mr. Burr:
Yes, sir, and shows in each contract has these words, beginning back in 1898, and on down to the present time, the definition—all these contracts, hundreds of them, expressly exclude traveling time, and says, "Hours work, means eight hours work at the usual working places."

Mr. Harris:
We object to each contract, wherever made, the section it is made in.

Mr. Burr:
Your objection is on the ground of relevancy and materiality? You are not raising any question—

Mr. Harris:
I am assuming they are correct copies of the contracts.

Mr. Burr:

Yes, sir. We had these made in Washington.

Mr. Harris:

We object.

The Court:

I will sustain the objection.

Mr. Burr:

Here is a complete set, and we will put it all in one exhibit and mark it Plaintiffs' Exhibit so and so.

The Clerk:

Plaintiffs' Exhibit Number 30.

(Thereupon a great number of contracts between the United Mine Workers of America and various coal operating companies was marked for identification Plaintiffs' Exhibit No. 30.)

Mr. Harris:

I want to make it clear—We are proceeding unusually fast. Undoubtedly, in an industry of the magnitude of the coal industry there are thousands of contracts. I don't want to put Mr. Burr to the trouble of going off and proving those are the contracts.

The Court:

You are not requiring authentication of them?

Mr. Harris:

I am not requiring authentication of all those contracts, and then I am putting in every objection I can, but not on that particular point.

Mr. Burr:

That is all right.

Mr. Brodie:
May I say to the Court for the purpose of the offer of proof we waive the authentication of the contracts.

Mr. Burr:
That is what it is.

Mr. Harris:
That is what it is.

Mr. Burr:
It will appear, when I make the record, when I have to make it,—I hope I don't,—it will appear these are correct copies.

The Court:
That is right.

Mr. Burr:
The two I particularly offer are those which involve—I don't know whether Your Honor has changed your ruling, but you ought to after you get all this before you. This goes back to 1917 and shows as far back as that time this question, including the question—the very question we have here, of the day's work was submitted by the coal industry to a board of arbitration, and Mr. Rembrandt Peale was selected to represent the United States Fuel Administration.

The first one we offer—

The Clerk:
Exhibit 31.

Mr. Burr:
Is the report which defines the work day.

Mr. Harris:
We object.

Mr. Brodie:
We object.

The Court:
That is as to coal mines?

Mr. Burr:
Yes, sir.

The Court:
Sustain the objection of the defendants and the intervener.

(Thereupon a document entitled "Recommendations of United States Fuel Administrator, December 17, 1917," was marked for identification Plaintiffs' Exhibit No. 31.)

Mr. Burr:
The next one is the United States Fuel Administration agreement and award of arbitration committee.

The Clerk:
Plaintiffs' Exhibit Number 32.

Mr. Harris:
We object to that.

The Court:
The defendants object?

Mr. Harris:
All of them.

The Court:
Sustained.

(Thereupon a document entitled "United States Fuel Administration Agreement and Award of Arbitration Committee for Mines in Southeastern Kentucky East Tennessee, Knoxville, Tennessee, November 10, 1917," was marked for identification Plaintiffs' Exhibit No. 32.)

Mr. Burr:
Now, if Your Honor please, we want to make our next offer of proof,—some of this testimony, I think, will be relevant,—but before I do that, may I ask Mr. Hassler a few questions about the ore mine operations?

The Court:
Yes, sir.

Mr. Burr:
I will go back to that before he leaves the stand.

(By Mr. Burr):
Q. Mr. Hassler, I believe you stated—what was your title in your relationship to the men? I have forgotten?
A. Superintendent of industrial relations.
Q. In that capacity was it part of your duties to participate in all the various negotiations that were had with these various committees of the Union?
A. Most of them, yes, sir.
Q. You are familiar, are you not, with the exhibits which were offered in evidence during Mr. Norman Thompson's testimony—
A. Yes, sir.
Q. —which set out the various proposals made from time to time by these committees for contracts?
A. That is right. They were take from my files.

Q. I will ask you to state whether or not at any time—Well, first did you attend the meetings that were held from time to time with the committee of this Union since it was organized in 1934?

A. Yes, sir, I attended many meetings, not all of them.

Q. With the exception of the proposals which have been identified in Mr. Thompson's evidence as having been submitted in writing, I will ask you to state whether or not at any time any of those committees or any other employee has ever, in your presence, suggested or requested that they be paid for transportation time in going to and from their working places?

Mr. Harris:
That is limited to ore mines?

Mr. Burr:
Sure. I have gone on from coal.

The Court:
That is ore mines.

Mr. Harris:
As I understand, my original objection way back yonder holds good?

The Court:
Yes, sir, all back of October 24, 1938.

Mr. Harris:
Yes, sir.

A. Yes, sir; there were three instances, I think, in those proposed demands that they be paid for one way.

Q. Those were the only three?

A. Yes, sir.

Q. No others presented?

A. Not while I was there.

Q. When those proposals were presented, after presenting them in writing, in the discussions in reference to them and the other complaints there, did they take up those questions in those discussions in any way?

A. No, sir.

Q. Nothing said more than making the bare presentment of it?

A. That is all.

Q. Is that right?

A. Yes, sir.

Q. Now, just to save time, I will ask you if you heard Mr. Norman Thompson's testimony in reference to the customs and practices and conditions in the ore mines of the Republic Company?

A. Yes, sir, I heard it.

Q. Are the statements he made correct?

Mr. Harris:
I object, if Your Honor please.

The Court:
Overruled.

Mr. Burr:
If you want me to go over it section by section I will be glad to do it.

Mr. Harris:
I know, but I objected to a great part of his testimony.

The Court:
Overruled.

Mr. Burr:
You have your objection to that.

Q. Are the statements he made as to conditions there in the mines substantially correct?

A. Substantially, yes, sir.

Q. Of course, there may be some details, but it is substantially correct?

A. Substantially correct.

Mr. Burr:

I believe that is all, Mr. Hassler.

The Court:

Do you want to cross examine him?

Mr. Harris:

No, sir.

The Court:

All right.

Mr. Smith:

No, sir.

(Witness excused.)

Mr. Burr:

Now, Judge, in order that we may have the record absolutely complete, on all these offers we have made and exceptions which I—the offers are being made separately and severally by each plaintiff; you understand that?

The Court:

You stated that before.

Mr. Burr:

Our exception is separately and severally as to each ruling.

The Court:
Each ruling.

Mr. Burr:
And each class of defendants.

The Court:
Each class of defendants.

Mr. Burr:
And separately and severally as to each part of each offer so there can't be any doubt about it.

The Court:
That is understood.

Mr. Burr:
That is understood. Now, Judge, I started—this is off the record.

(Here followed an off the record discussion.)

The Court:
We will recess until 9:30 tomorrow morning.

(Whereupon, at 4:10 P. M., July 21, 1941, an adjournment was had to 9:00 A. M., July 22, 1941.)

July 22, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:
All right, gentlemen.

Mr. Harris:
There was one exhibit offered yesterday, Number 7, I believe, that I wanted to look over, and as to this exhibit—

The Court:
Was it 7?

Mr. Harris:
It is marked Plaintiffs Exhibit Number 7.

The Court:
Yes.

Mr. Harris:
As to this exhibit, the unions affiliated with the C. I. O. and the individuals that I represent—my firm and Mr. Lipscomb represent, they object to each part of the exhibit, separately and severally, on the ground that although it deals with ore mines, the exhibit introduced and the pages introduced for instance, deal with Michigan, Minnesota, Wisconsin, Alabama, Georgia, Tennessee, Virginia, New Jersey, New York, Pennsylvania, California, Missouri, New Mexico, Utah, Washington and Wyoming, and it is our opinion that what happens in all those distant states, whether it is an ore mine or not has no relevancy and is of no assistance to the Court in determining when the work time begins for these men in the Alabama ore mines; that it wouldn't be relevant on a custom, if any custom were material, because the custom in those distant states, even if it amounted to anything, would have to be brought home to these individuals, and these individuals recognize it here and do it voluntarily, so we submit, as to this exhibit and each particular page offered, it is subject to the objection of being illegal, irrelevant, immaterial and incompetent and outside the issues in this case.

The Court:
Does that have any reference to the Alabama ore mines?

Mr. Burr:
We want to be heard on that.

Mr. Smith:

We offer the same objection.

Mr. Burr:

We want to see what the other objections are.

Mr. Brodie:

I have no objection to those statistics.

The Court:

What is that?

Mr. Brodie:

I have no objection as to those statistics.

Mr. Burr:

Since it is in as to one, except to state to Your Honor what our position is on the matter, as far as his objection is concerned, I do not care to say anything.

What he objects to relates solely to iron ore mines in the United States. Your Honor ruled yesterday you wouldn't go into the coal mines here or elsewhere. You certainly didn't put it on the basis it was national because you excluded the evidence as to coal mines within four to eight miles of our ore mines. We, therefore, assumed Your Honor's idea was that the coal industry was a different industry and evidence as to that industry couldn't be heard in this case.

Now, this exhibit relates to iron ore mines in the United States.

As I pointed out yesterday, what we have to determine here is not the individual claims of these employees. That is not here before this Court at this time. The sole question before the Court at this time is whether or not the traveling time per se is a part of the work time. That is the question we have to consider.

Now, in considering that question it has to be considered on the basis of what Congress intended to do. That is raised by the pleadings, because if Your Honor please, in the pleadings we specifically eliminated any question of labor and confined it to traveling time.

Subdivision (2) of the pretrial order reads as follows:

> "In reference to 'a' above, the defendants contend that the work week covers all time from portal to portal as announced in the opinion and report of the Wage and Hour Administrator under the Fair Labor Standards Act on March 23, 1941, and also includes aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools and in checking in and out."

So, that presents clearly the sole proposition as to whether Congress, in reference to Alabama mines, intended, when it passed that law, to include traveling time as traveling time as a part of the day's work. Now, if that is what we are trying to find out, then certainly, as now admitted by the Administrator by not objecting to this exhibit, then certainly any exhibit that shows the conditions that exist as to ore mines—not coal mines, we have passed that. You have ruled on that, and while I disagree with you I accept the ruling. That puts us up to the question whether evidence that has to do with ore mines in the United States is material evidence. It is not a question of estoppel or waiver. It is a question of whether Colonel Harris' clients are bound by it. It is evidence for Your Honor to consider to assist you in working out what is the workweek. We have a right, and I think we would be derelict in our duty to the Court if we didn't put before the Court the overall situation in the ore mines of the United States so we may know what Congress had in mind when it passed this law.

The Court:

I overrule the objection.

Mr. Harris:

May I call Your Honor's attention to the fact the items covered in this exhibit are statistics? It isn't a question—If Your Honor will indulge me just a second to make my point clear,—it isn't a question of whether traveling time per se, and that is just a phrase, something to catch the mind and hold it and keep us from looking at the real problem. The real problem, according to these men—when does their work time begin; in the employer-employee relationship, when does this work time begin?

All this evidence where he offers some production figures back in the year 1938 in different mines in the United States does not aid us in determining that question.

In order that the Court may have clearly before it—the fact Mr. Brodie doesn't object to something,—the Administrator's lawyer and the Administrator may have their ideas of what is the question. Mr. Burr has his and I have mine. For instance, depositions that they have taken, whether Mr. Burr took them or whether the Administrator took them, doesn't make a particle of difference to me. I am not agreeing with Mr. Burr if he offers them, nor am I agreeing with Mr. Brodie if he offers them.

The question that is before this Court, and the question that has been before this Court from the beginning of this trial, and will be before this Court to the end of this trial, is what constitutes work time for these ore miners in Alabama, and I am objecting to anything that I think takes away from that fundamental problem.

The Court:

I overrule the objection.

Mr. Harris:

We except.

(Thereupon Plaintiffs' Exhibit No. 7, heretofore marked for identification, was received in evidence.)

Mr. Burr:
All right; we will take Mr.—did you have anything else?

Mr. Brodie:
There were some other documents to which we reserved objections.

Mr. Burr:
I thought you had objected to everything else.

Mr. Brodie:
I think everything else except Exhibit 6. Your Honor stated—I didn't know what that was. It was Exhibit 6. I objected to that.

The Court:
I believe you did.

Mr. Burr:
What is that? I don't remember what Exhibit 6 was.

Mr. Brodie:
The article in the Mining and Engineering Journal.

Mr. Burr:
It is just the front part, the letter, we offer.

Mr. Harris:
Your Honor sustained object to that one, I thought, yesterday. I may be wrong on that.

The Court:
I believe so. The Court reporters might refer to that.

Mr. Harris:
I think I have that part of the record.

The Court:
That part of the record?

Mr. Burr:
I don't recall. There were some reserved and some not.

The Court:
I don't either, Mr. Burr.

Mr. Harris:
My recollection is you sustained it for me and gave him the privilege of looking it over—

The Court:
I think that accounts for the reason it isn't shown on my notes.

Mr. Harris:
Yes, sir.

The Court:
It wasn't in last night.

Mr. Burr:
We can cure it by Your Honor ruling on it now.

The Court:
All right.

Mr. Burr:
That will fix it all right.

Mr. Harris:
I again object on the same theory I did yesterday. It is irrelevant, illegal and incompetent.

Mr. Quinn:
On the further ground it wasn't in any official capacity, and only a letter written to a convention outside of his official duties and responsibilities.

Mr. Burr:
There is such a rule of law admissions are admissible in evidence whether they are official or not official.

Mr. Smith:
What a man says at a convention, I don't think is an admission.

Mr. Burr:
The Judge has ruled against that a hundred times, to my knowledge, on the bench.

The Court:
Mr. Brodie speaking now.

Mr. Burr:
Yes, sir.

Mr. Brodie:
We object on a number of grounds. First, it is immaterial and irrelevant on the question in this case.

Your Honor has previously ruled that the opinion of the Administrator, —that any of the opinions expressed by the Administrator are not relevant to the question when does the work day start and end for these miners.

Secondly, Your Honor has ruled, on a motion addressed to interrogatories, that this was immaterial and irrelevant.

That, I conceive to be the law of the case, using that term in its technical signification.

Thirdly, it is not admissible as an admission against the Administrator, because the correctness or incorrectness of any opinion expressed by the Administrator is not the issue here.

If this were admissible as an admission it would have to be so only upon a principle that what the Administrator said with respect to his opinion regarding the law binds this Court, and if that were so, then the Administrator's opinion with respect to iron mines, as to which we claim no binding significance, would also bind the Court, and so it is not admissible as an admission, nor can it be admissible as an attempt to estop the government because the government cannot be estopped by statements made by an administrative official. He may be entirely wrong; he may be entirely right; that is immaterial. The question is which must be decided by Your Honor, when does the work day start and end for these miners.

The statute says each employer shall pay to each of his employees who is employed for more than a certain number of hours—the crucial word there is "employed", and it is for this Court to determine when the employment starts, and what the Administrator has said in one instance or another, and particularly in a matter of this sort, is not admissible. It is immaterial.

Mr. Harris:

I have the record here on what happened yesterday.

The Court:

That is right in line—

Mr. Brodie:

It says—

The Court:

It doesn't make any difference. We are going at it anew.

Mr. Brodie:

It is a letter by the Administrator in which he says I have been asked, "to reconcile, if I can, the statements I made in my speech before the American Mining Congress on September 18, 1940, with my recent approval of an examiner's report announcing our opinion that in effect hours worked in underground metal mining include all hours spent portal to portal minus the lunch period."

The Court:

I don't think that is admissible.

Will you let me have that just a minute?

Mr. Brodie:

Yes, sir.

Mr. Burr:

Your Honor, I am not going to make an argument in reference to the admissibility of this exhibit except to state, in fairness to the Court, why I think it is admissible, and then I will take my exception without Your Honor changes his mind.

This is a letter by Colonel Philip B. Fleming, Administrator of the Wage and Hour Division, Department of Labor, in which he takes up and discusses his ruling, first, in the bituminous coal case, which Your Honor has decided was not admissible here, and then his ruling which is before the Court by the pleadings in this matter, —opinion, I should say, instead of ruling.

Now, we anticipate—Of course, if I am wrong about that, what I have to say hasn't got any relevancy,—we anticipate when this case is finally argued, the Administrator's counsel, under the American Trucking Association Case is going to ask the Court to give weight to the Administrator's ruling.

Now, assuming that will be done, or that the Court, without that, will be inclined to give weight to the Administrator's opinion, we think this letter shows, when read, very clearly the opinion is not entitled to any weight. He says:

"I am afraid that I must take the blame for making a misleading statement."

That is all through it. That is what we think the exhibit is admissible for.

The Court:
I sustain the objection.

Mr. Burr:
We except, and except separately to sustaining it as to the part that relates to the iron ore mines.

The Court:
Objection sustained.

Mr. Burr:
Except.

The Court:
Objection of all defendants and intervener is sustained.

Mr. Burr:
And we except separately and severally.

There is one thing I want to bring out. I was dumbfounded when Mr. Harris called my attention to a parenthetical remark in the pleadings that the Spaulding Mine was not included. I was dumbfounded and astonished. I later found out how that occurred.

I wrote the Tennessee Company bill first, and I tried to make it all inclusive, and I turned over to my stenographer the Tennessee Company bill and told her to eliminate from it anything that related to the Tennessee Company and to copy in the bill the portions of the statements from the Republic Company which appeared before the Administrator here last fall, and that part was in there. I will, at the proper time, amend the Republic bill to strike out that line and include the Spaulding mine. I think in fairness to the miners there it ought to be in there.

Mr. Patterson says he called my attention to that paragraph but I didn't read the parenthetical remark at that time.

At the proper time I will amend the bill to take care of that.

The Court:
All right.

Mr. Burr:
I will take Mr. Lacey.

2084 W. M. LACEY, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):
Q. This is Mr. W. M. Lacey, is it?
A. Yes, sir.
Q. Mr. Lacey, how old are you, please, sir?
A. Fifty-four.

Q. You are a resident of Jefferson County?

A. Yes, sir.

Q. Were you born in this county and have you resided here off and on all your life?

A. I was born down at Woodward.

Q. Now, I want you, please, sir, to give to the Court your mining experience in Alabama and elsewhere, just giving the experience without going into detail, and also your colleges you attended, if any, and the degrees you obtained,—just a brief resume of your professional life.

A. I started in 1903 working on the floating gang at the Woodward Iron Company, and on the tipple, and went from—.

Q. Now, what sort of mine was that?

A. Ore mine,—Number 1 Woodward ore mine.

Q. Ore mine? How old were you then, Mr. Lacey?

A. 16.

Q. 16?

A. Yes, sir.

Q. All right, sir.

A. In September, 1903, I entered Auburn and took a course in mining engineering and finished in 1907.

During the vacations I worked at the Woodward Iron Company on the tipple and fired an engine.

In June, 1907, I went to work with the Engineering Department of the Woodward Iron Company as a rodman.

The Court;

As what?

The Witness:

As rodman.

Q. As rodman?

A. Yes, sir.

Q. Did you finish your course at Auburn?

A. Yes, sir.

Q. Did you get a degree there?

A. Yes, sir.

Q. What degree did you get?

A. I got a degree of B. S. in mining engineering in 1907, and an M. S. degree in 1932.

Q. You say in June, 1907, you went to work with the engineering department of the Woodward Iron Company as rodman?

A. Yes, sir.

Q. How long did you work as that?

A. For the next five years I worked as rodman and transitman and assistant engineer between the ore mines and coal mines.

Q. That was first one day in the coal mines and the next in the ore mines?

A. Yes, sir. The last year, 1912 or 1913, I was assistant superintendent at Dolomite.

Q. While you were with the engineering department, you did what?

A. I measured the progress of the mining, made maps and laid out work.

Q. Then you say you went to Dolomite as Assistant Superintendent?

A. Yes, sir.

Q. Was that an ore or coal mine?

A. Coal mine.

Q. How far was that from the ore mine?

Mr. Harris.

We object to that. That is something along the same lines we had yesterday. I haven't objected to the part qualifying the witness, but when you get into the details of coal mines, we object.

The Court:

I sustain the objection.

Mr. Burr:
We except and offer to prove the Dolomite mine—How far is it from the closest ore mine, so I can make my offer right?

The Witness:
About six miles.

Mr. Burr:
—about six miles from the ore mine in which he had worked.

Mr. Harris:
We object.

The Court:
That is off the record.

Mr. Burr:
Yes, sir, that is the offer of proof.

Mr. Harris:
He is now offering it, and I object.

The Court:
What is your offer?

Mr. Burr:
I offer to prove the Dolomite coal mine at which he worked was about six miles from the ore mine where he worked.

Mr. Harris:
We object.

The Court:
Sustain the objection.

Q. After you left Dolomite, where did you go?

A. About September, 1916, I went to work for Mr. H. L. Badham and Mr. W. S. Lovell, and spent about three years as superintendent at Belle Ellen and Aldrich coal mines.

Q. Are those coal mines?

A. Yes, sir.

Q. Are they underground or surface mines?

Mr. Harris:

We object to whether they were underground or surface.

The Court:

Overruled. He is just giving his experience.

Mr. Harris:

Except.

A. They were all underground mines.

Q. I didn't hear you.

A. They were all underground mines.

Q. After that, where did you come next?

A. November, 1917, I accepted a position with the Woodward Iron Company as general superintendent of ore mines.

Q. How long did you hold that position?

A. Six years.

Q. What ore mines did you have charge of at that time?

A. Number 1 2 and 3 Woodward and Sango.

Q. 1, 2 and 3 Woodward were located on the mountain down here?

A. Yes, sir, just to the rear of Lipscomb.

Q. Just to the rear of Lipscomb?

A. Yes, sir.

Q. Where is Sango located?

A. Sango is up in the rear of Ishkooda; you might say in the rear of Powderly.

Q. It is on Red Mountain, of course?

A. Yes, sir.

Q. I want to go back and ask one question with reference to the coal mines at Belle Ellen and Aldrich, which Mr. Harris will probably object to, but I want to prove it.

Mr. Burr:

I might just put it in the form of an offer to save time. I offer to prove the Belle Ellen mine he referred to was in Bibb County—

Mr. Harris:

We object.

The Witness:

Yes, sir.

Mr. Burr:

A coal mine, and Aldrich was in Shelby county.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Harris:

The witness thought he was talking to him, and answered.

The Court:

I will exclude the answer.

Mr. Burr:
We except.

Q. You gave me the dates you served as superintendent of the ore mines of Woodward Iron Company as from November 1, 1917, to September, 1923?

A. Yes, sir.

Q. In September, 1923, what position did you take up?

A. The DeBardeleben Coal Corporation was formed, and I worked with those people for ten years as general superintendent of their eastern division.

Q. Were they ore mines or coal mines?

A. Coal.

Q. Will you give me the names of the coal mines you served as superintendent of?

A. Empire, Sipsey, Hull and Payne's Bend.

Mr. Burr:
We offer to prove—

Q. Where were those coal mines located?

Mr. Harris:
We object.

The Court:
Sustained.

A. Three of them in Walker County—

Mr. Harris:
We object.

Mr. Burr:
He is telling me. Off the record.

(Here followed an off the record interchange between Mr. Burr and the witness.)

Mr. Burr:
We offer to prove of those mines that Empire, Hull and Sipsey were in Walker County, and Payne's Bend in Jefferson County.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And they are all underground coal mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
We except.

Q. 1933 was when the depression hit us?
A. Yes, sir.
Q. What happened to your job down there?
A. My job was abolished.
Q. Where did you go next in any position?
A. I worked as a sales engineer for the Sanford-Day Iron Company at Knoxville, Tennessee, for a year and a half.
Q. What, in a general way, did that job require you to do in the way of visiting the mines?

A. It required me to visit the mines and contact the superintendents or general managers and try to interest them in mine cars, mine car wheels and heavy mining machinery.

Q. In doing that did you go to a mine and stay a little time or stay some time?

A. Sometimes we stayed from a day to a week. We made haulage studies of the mines and estimates of installing—

Q. Well, did they give you access to the records and the payrolls of the mines?

Mr. Harris:

We object to that,—the records he got access to back in 1933 and '34.

The Court:

I sustain the objection.

Mr. Burr:

We except.

Of course, Your Honor knows the question of producing original documents in collateral matters—what we propose to show by him is that he learned from these records they were working on a face to face basis in all these mines.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. Burr:

We except.

Q. Did you talk with the men while you were in the mines?

Mr. Harris:
We object to that. This is hearsay.

The Court:
Sustained.

Mr. Burr:
Except.

Q. Did you actually see the men at work in the mines?

Mr. Harris:
We object to that. It is immaterial whether he saw men working in Tennessee.

Q. Did you talk to the men at some of these ore mines?

A. No, sir. All the mines I visited outside of Alabama were coal mines.

Mr. Harris:
We move to exclude his statement he talked to coal miners.

The Court:
Sustained.

Mr. Burr:
We except.

We offer to prove he would go in the mines and stay as long as a week at a time and make studies of the haulage equipment and system, make studies of costs of the hauling system they had in operation, and set up an estimate of the cost of equipping the mines with the character of equipment he was trying to put in there; that he had access to and examined the employment records of the company, showing the employees, how their pay was computed, talked to the employees in the mines, saw them go in the mines and leave the mines, saw them while they were at work in the mines, saw the payrolls, methods of computing and paying the wages of the underground miners, and that these mines were located outside of Alabama,—the ones I am asking about now, in Tennessee, Kentucky, West Virginia or Pennsylvania—

Mr. Harris:
We—

Mr. Burr:
And that all these particular mines were coal mines; that during that entire period of time, in all these mines, the coal miners' wages were computed and were paid on the working place to working place basis.

Mr. Harris:
We object to all of that, if the Court please.

Mr. Burr:
I hadn't quite finished.

Mr. Harris:
I beg your pardon.

Mr. Burr:
And there was no question raised at any time of the transportation time being paid for, and that the workings in those mines at that time were deeper, and we offer to show the depths of them and how deep they were, both as to slopes and as to headings, than the ore mines of Alabama, and that the general system of mining was the same in those mines, those coal mines, as in the ore mines in Alabama.

Mr. Harris:
We object to each part of it, separately and severally.

The Court:
Sustained.

Mr. Burr:
And we except, separately and severally, as to all of it, and each separate part, separately and severally, we offer to prove.

Q. All right, sir. What was your next employment and mining experience after leaving that particular work I just called your attention to?
A. I worked for a year and a half as superintendent of the Aldrich Mine of the Montevallo Coal Mining Company.
Q. That was a coal mine in Shelby County?

Mr. Harris:
We object to that, no matter where it was.

Mr. Burr:
We offer to prove it was in Shelby County.

The Court:
I will let it stay in he worked at that coal mine.

Mr. Burr:
We offer to prove where it was.

Mr. Harris:
We object.

The Court:
I don't think it is material.

Mr. Burr:
I understand Your Honor does not consider it material. I offer to prove it and take an exception.

The Court:
All right.

Q. What was the next mining experience you had after you left the Aldrich coal mines?

A. I was superintendent of the Praco Division of the A. B. C. for about a year from February 1, 1936, to February 22, 1937, which division embraced three coal mines.

Q. What sort of mines were at the Praco Division of the Alabama By-Products Corporation you worked in from February 1, 1936, to February 22, 1937?

A. There were three of them. Number 6 and 7 were slopes and 7½ was a drift.

Q. Were they coal mines or ore mines?

A. Coal mines.

Q. In what county were those coal mines located?

Mr. Harris:
We object to what county those mines were located in.

The Court:
Sustained.

Mr. Burr:
We except and offer to prove they were located in Jefferson County, Alabama.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
And offer to prove how far they were from the ore mines involved in this case.

Mr. Harris:
We object.

The Court:
Sustained.

Q. Where did you go next?
A. Went to the Edgewater mine of—
Q. What company operated the Edgewater mine?
A. The Tennessee Company.
Q. Was there any other mine you had charge of besides Edgewater?
A. I had superintendency over Wylam Number 8 for the last three years.
Q. Which one,—Number 8 at Wylam?
A. Yes, sir.
Q. Were all those mines coal mines?
A. Yes, sir.

Mr. Burr:
We offer to prove the Edgewater mine is located in Jefferson County, Alabama, and four or five miles from the ore mines of the Tennessee Company,—

Mr. Harris:
We object.

Mr. Burr:
And that the Wylam Mine is in Jefferson County, Alabama, and about the same distance from the ore mines.

The Court:
Is that all one question?

Mr. Burr:
Yes, sir. I am trying to save time.

Mr. Harris:
We object.

The Court:
Sustained.

Q. What was your next job? That brought you down to July 15, 1941.

A. I went with the Republic Company as general superintendent of coal mines.

Mr. Harris:
What year?

Mr. Burr:
This year.

The Court:
What is your position?

The Witness:
General superintendent of coal mines of the Republic Company.

Q. That was July 15th of this year?
A. Yes, sir.
Q. Where are those coal mines located?

Mr. Harris:
We object to where they are.

The Court:
Sustained.

Mr. Burr:
We except, and offer to prove that they are locatel as testified by Mr. Hassler.

First, I want to direct these questions to coal mines.

I offer to prove, separately and severally, as to each coal mine he was employed at,—I offer to prove in reference to each of those coal mines, separately and severally, the location of the mines, their distance from the ore mines in question here on Red Mountain, the character of mining that is done in each of them; that they are, with the exception of a few drift mines, all underground coal mines, having the same transportation system as is in the ore mines. I offer to show what that system is, so as to avoid any possibility of a comparison, how the men are conducted from the time they go to the bath house, and what they do at the bath house, and what they do in the way of getting lamps, carbide and electric lamps where electric lamps are used, and what they do in the way of depositing and taking up the brass checks as they go in and out of the mines, how they are transported in and out of the mines, the character and description of the cars that they ride on, the character and description of the main haulage ways in which they ride, showing the width and height, showing the clearance distance between the cars they ride on and the roof, and showing the progress of the miner after he reaches the underground loading station to his working place, how he gets to his working place, and the character and condition of the haulage ways on which he walks in going to his working place, and the character and condition of his working place, including the tools that he uses there and the way in which those tools are supplied and distributed, and particularly with reference to them as showing that, with the exception of heavy supplies,—and the way in which the heavy supplies are supplied to them,—the men bring them from the outside in many instances, including picks and shovels and tools of that kind, and that this has been the practice and custom in those mines, —was the practice and custom from October 24, 1938, and had been for all times previous to that time, since he had been connected with the mining industry, and has continued to be the practice from that time on down to the present time.

And that—And we offer to prove any other conditions that existed in the coal mines during that period of time.

Mr. Harris:

We—

Mr. Burr:

Now, then, we offer to prove by him as a part of the offer of proof that during that entire period of time in the coal mines, from the time he began working when he was sixteen years old to the present time, the men have always had their wages computed, and have always had their wages paid on the working place to working place basis, and that the traveling time and no part of the traveling time has ever been paid as a part of the work day.

That the service men in the coal mines consist of those underground employees who do not engage in the production work in the working places; that during this entire period of time the service men have always been paid on an hourly basis of either ten, nine or eight hours per day, and that hourly basis being based upon the time spent at the usual working places of the service men, not including any part of the transportation or traveling time to and from the working places.

That so far as the production crews are concerned that the method of paying and computation of pay in some of these mines has been on the hourly basis just like the service men; that with some of them it has been on a tonnage basis, but that tonnage basis was fixed on the evaluation of each job and the tonnage rate based on that evaluation, and that these production men during this entire period of time have always had their time computed and paid on the working place to working place basis and have never been paid or had any portion of the time going to and from their working places, either computed or paid.

We further offer to prove by this witness that during this period of time he sat in negotiations with the employees and the management, with the committees representing the United Mine Workers of America and affiliated with the C. I. O. organization at the present time,—not then affiliate, but now is,—and that during this entire period of time, in none of these negotiations, has any committeeman or union official or any individual employee of any of these companies ever claimed that they were entitled to be paid for any portion of this traveling time; that the custom has been universal, both by custom and by payment of wages, not to pay any portion of the traveling time to these employees.

We further offer to prove that within his knowledge, since he has been employed in these mines, that he knows that since the United Mine Workers of America has been engaged in representing the employees, or a majority of them, that they have, beginning as far back as 1903, within his recollection,—that they have negotiated contracts every two years with the various companies operating the mines, and that each and every one of these contracts contains the stipulation, in effect, that the working time should be computed on the face to face—on the usual working place to working place basis, being the same provision that is set forth in the contracts which were offered in evidence on yesterday, and to which Your Honor sustained objection, identified by Mr. Hassler; that the other companies had similar contracts with similar provisions in them over that period of time.

I believe that covers my offer of proof by him as to coal mines.

Mr. Harris:

We object to it on the whole, and each separate offer, separately and severally.

The Court:

Sustained.

Mr. Burr:

We except, separately and severally, as to the offer as a whole, and as to each separate and several paragraph in the offer, so the matter can be raised completely without any technicalities.

(By Mr. Burr):

Q. All right, sir. Now, I will take you into the ore mines. You have told the Court about the experience you have had in the ore mines, and I am confining these questions to the ore mines.

I will ask you to state to the Court whether or not in all the ore mines you have worked in and been familiar with during the time you have testified—

Mr. Harris:

May I interrupt?

Mr. Burr:

Yes, sir.

Mr. Harris:

He didn't work for any ore mines of any of these plaintiffs, did he?

Mr. Burr:

Yes, sir, he did. He worked for the Tennessee Company some, I think, and worked in the ore mines of the Woodward Company.

The Court:
Did you work for any ore mines except Woodward Iron Company?

The Witness:
No, sir.

The Court:
He said not.

Q. Just the Woodward Iron Company?
A. Yes, sir.

Mr. Harris:
And in line with our other objection, testimony as to what happened at Woodward Iron Company, which is not a party to the suit, and whose employees are not in the case, we object to all that, irrelevant, illegal and immaterial, and transactions between other parties, and throws no light on the issue in this case.

The Court:
The Woodward Iron Company operates in the Birmingham District?

The Witness:
Yes, sir.

The Court:
Overruled.

Mr. Harris:
May we have an objection to all testimony along that line?

Mr. Burr:
Yes, sir. You have got it already.

Mr. Harris:
I didn't know what year—

Mr. Burr:
You can have it, as far as I am concerned, for every year from the Civil War on down.

Mr. Harris:
All right.

Q. With reference to these Woodward Ore Mine operations while you worked there, I will ask you to state whether or not, Mr. Lacey the computation of the pay of the men was on a working place to working place basis, or was it on a portal to portal basis?

Mr. Quinn:
We object unless he qualifies him as to whether he knows or not.

Mr. Burr:
I am asking him what he knows in the mines—

The Court:
Overrule the objection.

A. It was from working place to working place. I know because I was superintendent and was in and out of the mines and very familiar with it.

Q. Was that the method and practice during the entire period you were acquainted with the conditions?

A. From the time I went to work there in 1903 until I quit there in 1923, that was the method of marking time, from working place to working place.

Q. During that period of time did you ever have any employee or ever hear of any employee or any committee of any union or any committee representing any group of employees claim they should be paid for any portion of the time spent in traveling to and from the working place?

A. The question was never brought up.

Mr. Burr:

I think, Your Honor, we would be taking up unnecessary time of the Court if we asked him about the particular details, so we are content with that for the present.

The Court:

All right.

Mr. Burr:

If there is any matter on rebuttal, we can use him later.

The Court:

Is there any cross examination.

Cross Examination.

(By Mr. Harris):

Q. During this time that you say you were at Woodward from 1903 to 1923, did you say,—

A. Not continuously. I worked from 1903 about a year before I went to college, and then every summer I worked there, and then I went to work for Woodward in 1907 and worked there until 1913 in the engineering department, and then I came back in 1917 as superintendent of ore mines and stayed there until 1923.

Q. During that time you had the contract system and the men were paid on a tonnage basis, weren't they?

A. The miners were. We still worked a large number of company men.

Mr. Harris:

That is all.

The Court:
You are excused.

Mr. Harris:
Does Your Honor—is it about time for a recess?

The Court:
We will take a recess for a minute or two if you want to.

(Thereupon proceedings were in recess from 10:20 A. M. to 10:35 A. M., at which time proceedings were resumed as follows:)

The Court:
All right; proceed.

Mr. All:
Call Mr. Fies.

2103 MILTON H. FIES, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

(By Mr. All):
Q. Mr. Milton H. Fies?
A. That is right.
Q. You live in Birmingham, Mr. Fies?
A. Yes, sir.
Q. How long have you lived in Birmingham, Mr. Fies?
A. All my life.
Q. You were born in Birmingham?
A. Yes, sir.
Q. What is your age?

A. 58.

Q. What is your avocation, Mr. Fies?

A. I am vice president in charge of operations of the DeBardeleben Coal Corporation.

Q. What has been—What were you educated for? That is what I am getting at.

A. Mining engineering.

Q. Mining engineering?

A. Yes, sir.

Q. What school did you go to?

A. School of Mines, Columbia University.

Q. You received a degree there?

A. Engineer of Mines.

Q. Have you taken any other courses or received any other degrees?

A. I have an honorary degree from the University of Alabama,—Doctor of Science.

Q. Mr. Fies, have you had any connection with the American Institute of Mining and Metallurgical Engineers, or any other Institute of that sort?

A. I have been a member of the American Institute of Mining and Metallurgical Engineers since 1910 or '11.

Q. In your experience there have you served on any particular committees of that organization?

A. I am presently a member of four or five committees of the Institute,—the Committee on Industrial Preparedness, on Health and Safety in Mines, Promotion of Student Interest in Coal Mining, Saunders Mining Medal Award. I am not certain whether there are others or not.

Q. I will ask you if you are not vice president of the Southern Association for the Advancement of Science?

A. I am.

Q. Are you a member of the Alabama Academy of Science, Mr. Fies?

A. I am.

Q. Will you give us briefly your professional experience?

A. Why, first, from 1904—

Q. That is when you graduated?

A. That is right. —to 1908, I was engineer and superintendent of mines for the Republic Steel & Iron Company, which is now the Republic Steel Corporation. That was coal mines.

From 1908 to 1912 I was with the Birmingham Coal & Iron Company as general superintendent of coal mines. The properties of that company are now owned by the Woodward Iron Company.

And from 1912 to date, my entire connection has been with the DeBardeleben Coal Corporation.

Q. Has your experience been more peculiarly in ore mines or in coal mines?

A. Almost entirely in coal mines.

Q. Going first to the DeBardeleben Coal Corporation's operations how many—does that corporation operate any ore mines?

A. No, sir.

Q. How many coal mines does it operate, Mr. Fies?

Mr. Harris:

We object to any questions about how many coal mines the DeBardeleben Corporation operates, and where they are, and all about them.

The Court:

Sustained.

Mr. All:

Now, I offer to prove—

Mr. Burr:

Do I understand the Administrator Fleming is objecting too?

Mr. Brodie:

Yes, sir.

Mr. Burr:

I wanted to be certain.

Mr. Smith:

And we object too.

Mr. All:

Off the record. What mines—

Mr. Harris:

We object to all this off the record. I want the record to be the whole record. I am sure Mr. All knows the DeBardeleben Mines.

Mr. All:

No, I don't.

The Court:

All right; ask him off the record.

(Mr. All confers with the witness off the record.)

The Court:

As a matter of fact, Mr. All, we have ruled on the coal mining industry in this case, and I don't see the need of going into the operations of the coal mines.

Mr. All:

Now, I offer to prove that the DeBardeleben Coal Corporation is a commercial operator and is not operating captive mines.

The Court:

Make all your offer in one offer, and categorically make them, if you will.

Mr. All:

We offer to prove that Mr. Fies is now vice president in charge of operations of the DeBardeleben Coal Corporation—

The Court:

You have proven that once.

Mr. All:

—and that the DeBardeleben Coal Corporation operates three coal mines, Empire, Sipsey and Coal Valley; that those three mines are situated in Walker County, Alabama; that they are all underground mines and that they have a number of—substantial number of underground employees in each mine; that the travel distances in those mines—the average travel distance is approximately, for the production employees, the miners, two miles from the mouth of the mine; that that travel distance is covered by the miners by walking a part of the way, and by riding on trips a part of the way; that the customary method of carrying the tools, such as picks and other things they mine with, is by the company, and that it is optional with the men as to whether they carry their tools for their own convenience; and that sometimes the men carry the tools for their own convenience to the working places part of the way or all the way from the slope.

We offer to prove by him in his experience and observation that the hazards of underground coal mining to the coal miner is greater in coal mines than it is in ore mines.

Q. Now, Mr. Fies—

Mr. Harris:

Have you finished your offer?

Mr. All:

No, I have finished that part of it.

Mr. Harris:

Now, I do not object to the first few sentences where he offered to show he was Vice President of the DeBardeleben Corporation, but—

The Court:

That has already been shown.

Mr. Harris:

—I object to everything after that.

The Court:

Sustain the objection.

Mr. All:

I offer to prove further that the general method of mining, whether it be drift, shaft or slope, is the same method as employed in ore mining, being in both practices, essentially the driving of headings from the slope and rooms from the headings in the same way ore mining is done, in Alabama.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. All:

I offer to prove further by him that the trend—I offer to prove that these same conditions which have been outlined existed prior to October 24, 1938, for a number of years, and continually, prior to that time, for the time subsequent to 1908, and subsequent to October 24, 1938, up to the present time.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. All:
We offer to prove that the tendency and trend is—that the travel distance in the mines is growing greater—

The Court:
You have already stated that.

Mr. All:
—in coal and ore mines; that the trend is towards greater distances in ore mines because the trend is towards fewer openings, and that results in the headings being driven at right angles to the slope in greater distances.

Mr. Harris:
He used the term ore mines by a slip of the tongue.

The Court:
No.

Mr. All:
I am making a comparison.

Mr. Harris:
Well, we object to the comparison.

The Court:
Sustained.

Mr. All:
All right, sir. I offer to prove by this witness that he is familiar with and has been familiar with—has been

in the mines of the Woodward Iron Company, one located at Mulga and the other at Dolomite, both in Jefferson County, Alabama, and that the average travel distance from the mouth of the mine to the working places or in the production places in those mines is four miles.

Mr. Harris:
We object.

The Court:
Is that coal mines?

Mr. All:
That is coal mines.

The Court:
Sustained.

Mr. All:
We except.
And that the method of mining in those mines is the same as it is in the ore mines.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. All:
I offer to prove by this witness that he is familiar with the mining operations of the Roden Coal Company at Marvel, Alabama,—

Mr. Harris:
We object.

Mr. All:

—and that the average distance underground for the miners working underground in that mine is approximately two miles,—a mile and a half or two miles.

Mr. Harris:

We object.

The Court:

Sustain the objection.

Mr. All:

And that the method of mining there is the same as in the other coal mines, as to which I have offered to make proof.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. All:

Off the record.

(Here followed an off the record discussion.)

Mr. All:

I offer to prove that he is familiar with the operations of the Republic Steel Corporation's mines at Warner and Sayreton, and that the travel distance in those mines is substantial, and, particularly, that the Sayreton mine is an old mine and the travel distance is two or three miles or more.

Mr. Harris:

We object.

Mr. All:

That the mining operations are underground, and that their mining operations are similar to the other mining operations with which he is connected, and similar to the ore mining operations.

Mr. Harris:

We object.

The Court:

Sustained.

Mr. All:

Off the record.

(Here followed an off the record discussion.)

Mr. All:

I offer to prove he is familiar with other coal mining operations in Walker County, and with Boothton, in Shelby County, and Edgewater and Docena mines of the Tennessee Company,—

Mr. Harris:

We object.

The Court:

Sustained.

Mr. All:

And that the travel distance the underground miners have to go to their working places is very substantial, running several miles in distance, and that they travel to their working places partially on cars operated for the men and partially walk, and that the cover over—the over burden is substantial in all these mines with which he is familiar.

Mr. Harris:
We object to that.

The Court:
Sustained.

(By Mr. All):
Q. Now, Mr. Fies, what have you had to do, if anything, with the negotiation of coal contracts—

Mr. Harris:
We object.

Q. —within the last—say, since 1934,—beginning with 1934?

The Court:
Sustained.

Mr. All:
I offer to prove that he, for a number of those years has been—some of those years has been on the negotiating committees that represented the commercial coal operators in making contracts for the United Mine Workers of America, acting on behalf of the miners.

Mr. Harris:
We object.

The Court:
Sustain the objection.

Mr. All:
And that in all these contracts—in all those contracts this substantial provision has been incorporated:

"A seven hour day and five day week,—thirty-five hours per week,—shall prevail, exclusive of a 30 minute lunch period, with option to run through without suspension if agreed between the operator and the mine committee.

"The seven hour day means seven hours of work in and about the mines in the usual working places for all classes of labor,—other than those accepted by this contract,—exclusive of the lunch period, whether they be paid by the day or by the tonnage or piece work basis, except in case of accident which temporarily necessitates longer hours on the part of the employees than those required."

Mr. Harris:
We object.

Mr. All:
That is in each of those contracts.

The Court:
Are you offering to prove that?

Mr. All:
Yes, sir. Now,—

The Court:
I didn't understand, Mr. All.

Mr. All:
I want to offer this contract as typical of the coal contracts which have been negotiated by the committees of the Alabama coal operators with the United Mine Workers of America.

Mr. Quinn:
For how long?

Mr. All:
Since 1934.

Mr. Harris:
We object.

The Court:
Sustained.

(By Mr. All):
Q. What was the work day prior to that time?

Mr. Harris:
We object.

The Court:
Sustained.

Mr. All:
We offer to prove it was eight hours.

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. All:
Note these contracts were negotiated by a committee on behalf of the coal operators, but when the contract is negotiated, an individual contract is signed.

Mr. Harris:
We object to that.

The Court:
Sustained.

(By Mr. All):

Q. Now, what connection have you had, Mr. Fies, with the United States Bureau of Mines, if any?

A. I have been a consulting engineer of the United States Bureau of Mines and a member of the Advisory Board, and am presently a member of the Advisory Board for the U. S. Bureau of Mines for its electro-technical laboratory at Norris, Tennessee, and its southern experiment station at the University of Alabama.

Mr. All:

I offer to prove by this witness he has been familiar with coal mining operations in Tennessee—

The Court:

Where?

Mr. All:

Tennessee and Kentucky,—

Mr. Harris:

We object.

Mr. All:

—and that the method of operating coal mines there is the same as in Alabama.

The Court:

Sustained.

Mr. All:

That the coal mines—that the substantial coal mines are underground coal mines, and the operation is the same, and the travel time is substantial, extending from three or four to four or five miles.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. All:
And taken up partly in riding and partly in walking,—and in Tennessee the work time is at the usual place of work as it is under the Alabama contracts.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. All:
I want to introduce this instrument as typical of the Alabama commercial operators' contracts.

Mr. Harris:
And we object to it.

The Court:
Sustained.

Mr. All:
I believe I will take this course. I don't mean this explanation to be a part of the offer of proof. The permanent contracts that are negotiated are signed by the individual operators.

Mr. Harris:
We object to that.

Mr. All:

The individual contracts are signed by the operators themselves after being negotiated by the committee.

Mr. Harris:

I object.

The Court:

Sustained.

Mr. All:

We understand that each of these offers to prove is separate and several and we have a separate and several exception to the action of the Court in sustaining objections to it, both on behalf of all the plaintiffs and each of the plaintiffs, separately and severally, both as to all the defendants and each group of the defendants, separately and severally, including the intervener.

That is all.

Mr. Harris:

No questions.

(Witness excused.)

Mr. Burr:

I will take Mr. Ed Flynn next.

Mr. All:

I want to mark this exhibit for identification.

The Clerk:

It will be Number 38, Sloss.

(Thereupon the specimen contract of Alabama commercial coal operators with the United Mine Workers of America was marked for identification Sloss Exhibit No. 38.)

2115 ED FLYNN, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. Mr. Flynn, where do you live, please, sir?

A. I live at Pinson, Alabama.

Q. What business are you engaged in at the present time?

A. Well, at the present time I am working for the United States Department of Labor, Bureau of Labor Standards.

Mr. Harris:

I didn't hear you.

Q. Start over again.

A. I am working for the United States Department of Labor, Bureau of Labor Standards, as special agent for the Committee for the Conservation of Man Power in Defense Industries,—a dollar a year.

Q. Is that in reference to safety work or not?

A. That is safety work, safety, health and sanitation.

Q. How old are you, Mr. Flynn?

A. I was 67 on the 2nd day of April, 1941.

Q. I wish you would begin with your first experience in mining and tell me where it began and just go hurriedly through it.

A. My first experience in mining started at Tracy City, Tennessee.

Q. In what year, do you recall?

A. In the fall of 1884.

Q. And how long did you stay up there?

A. I stayed there until 1892.

Q. Now, were you engaged—what kind of mining up there?

A. Coal mining.

Q. Coal mining?

A. Yes, sir.

Q. Were they underground mines or not?

A. Underground mines.

Mr. Harris:

We object; it is immaterial whether they were underground mines in Tennessee or not.

The Court:

Sustained.

Mr. Burr:

We offer to prove that his experience in coal mining in Tennessee was in underground coal mines.

Mr. Harris:

We object.

Mr. Burr:

And we offer to show the length, distance and things of that sort.

I will wait and take that later and group it all together and make it shorter.

Mr. Harris:

We object.

The Court:

Sustained.

Q. After leaving the coal mines in Tennessee, where did you go next?

A. In September, 1892, I went to Thurker, Texas.

The Court:
Where?

The Witness:
Thurker, Texas.

Q. Who did you work for out there?
A. For the Texas and Pacific Coal Company.
Q. What sort of mines?

Mr. Harris:
We object; it is immaterial what sort of mines he worked in in Texas.

Mr. Burr:
The Court has been allowing me to show that on his experience.

The Court:
I will permit it.

Q. Were they ore mines or coal mines?
A. Coal mines.
Q. Where did you next work?
A. In December, 1892, I went to Alderson, Indian Territory, Oklahoma now, and worked there until September 1893.
Q. For what company?
A. Choctaw Coal & Railway Company.
Q. Were they ore mines or coal mines?
A. Coal mines.
Q. Where did you go from Oklahoma?
A. From Oklahoma I came to Pratt City, Alabama, December, 1893, to March, 1894, I worked at Wylam Mine of the Tennessee Coal, Iron & Railroad Company.
Q. That was a coal mine also?

A. Yes, sir.

Q. In March, 1894, when you left the Tennessee Company, where did you go?

A. I went back to Tennessee, Tracy City.

Q. How long did you stay there?

A. Until March, 1895.

Q. Did you work in the coal mines in Tennessee at that time?

A. Yes, sir.

Q. From there where did you go?

A. I came back to Pratt City in March, 1895.

Q. To what company?

A. Tennessee Coal, Iron & Railroad Company.

Q. And at what place in Pratt City?

A. Well, I worked two days on Red Mountain in the ore mines in '95, and then I went back to Pratt City and worked in the railroad shop from May to September, 1895, and then I went to Number 7 Pratt Mine as a miner.

Q. And you continued to work in the mines of the Tennessee Company for how long?

A. I worked in Number 7 until 1898, and then I worked at Number 5 slope, Wylam mine, until December, 1900.

Q. All right, sir. Did you become at any time—during this period of time were you at any time an officer of the United Mine Workers of America?

A. In December, 1900, I was elected President of District 20 of the United Mine Workers of America and held that position until February, 1907.

Q. Then what happened—

Mr. Harris:

We object.

Q. What did you do in February, 1907, work, I am asking about?

A. In February, 1907, I resigned and accepted a position as assistant mine inspector of the State of Alabama.

Q. Under what Governor did you hold that position?

A. Governor B. B. Comer.

Q. How long did you hold that position?

A. I held that position for two years and was then appointed chief mine inspector under Governor Comer, and held that position until March 31, 1910, when I resigned to accept a position as chief mine inspector for the Tennessee Coal, Iron & Railroad Company.

Q. How long did you hold that position?

A. 29 years and one month.

Q. You retired when?

A. May 1, 1939.

Q. And then you retired on pension?

A. Yes, sir.

Q. Now, with the exception of that two or those—I believe you said two days you were in the ore mine,—I will leave that out, I think it is too short a time to be considered,—has your actual work been in connection with coal mines as a miner?

A. Except the five months I worked in the railroad shops.

Q. Did you at one time—in addition to the work you have told about, did you have an occasion to make a general inspection of the ore mines of Pennsylvania and to make a report on that inspection?

Mr. Harris:

We object.

Mr. Burr:

Showing his experience as a miner. I am not going to ask what the report was he made.

Mr. Harris:

He has shown an experience of forty or fifty years.

Mr. Burr:
Yes, sir, and I have a right to show how detailed it was so this matter may be considered by any Court it gets to. I am going very rapidly and taking up but very little time.

The Court:
You asked him—

Mr. Burr:
I asked him if he made an inspection of the A. C. Fricke Coal Company mines in Pennsylvania.

The Court:
Is that coal mines?

Mr. Burr:
Yes, sir.

Mr. Harris:
We object.

The Court:
Sustain the objection.

Mr. Burr:
We offer to show in 1910 he was employed to make and did make an inspection of all the A. C. Fricke Coal Company mines in Pennsylvania.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:

We offer to show he made inspections while employed by the Tennessee Coal, Iron & Railroad Company for the Woodward Company—

Mr. Harris:

We object.—

Mr. Burr:

I hadn't finished. Read what I said last.

(Thereupon the reporter read the last offer made by Mr. Burr as above recorded.)

Mr. Burr:

Cut it out, and I will start over.

We offer to prove that while working for the Tennessee Coal, Iron & Railroad Company as chief mine inspector he made inspections for that company and went into the underground coal mines in Illinois and in West Virginia.

Mr. Harris:

We object to that.

The Court:

Sustained.

Mr. Burr:

And we offer to prove that he made two inspections for the Woodward Iron Company during the period of time I have been asking him about in the mines of Pennsylvania,—coal mines of Pennsylvania.

Mr. Harris:

We object to that.

The Court:
Sustained.

Mr. Burr:
Now, if Your Honor will allow me,—I think it will save time,—I will just read the offer of proof and offer it separately and severally.

The Court:
When you get through, indicate.

Mr. Burr:
When I quit reading, I am through.

The Court:
All right.

Mr. Burr:
During my entire experience with the coal mining industry, the computation of a miner's time started when he reached his working place and ended when he left his working place,—in other words, the face to face or working place to working place basis. The time spent by a miner in going to and from his working place was on his own time. This is true of the mines I worked in in Alabama, and is also true of the mines I inspected in Pennsylvania and West Virginia.

We offer to prove by Mr. Flynn that the United Mine Workers organized in Alabama in the year 1898 and in that year succeeded in organizing all of the mines in Alabama substantially 100 percent; that it had a State organization, and beginning in 1898 it began to make contracts with the coal mining operators in Alabama, including the captive coal mines operated by Sloss, Woodward, Tennessee and Republic, and including the commercial coal mines throughout the Alabama district.

That these contracts were negotiated, beginning in 1898, in joint convention of the Alabama coal operators and the representatives and delegates of the United Mine Workers of America, and that near the end of each contract another convention was had annually and a new contract negotiated; that these contracts were thus negotiated year by year beginning in 1898 until the joint scale convention was held in the year 1903.

That all the contracts contained a—had a provision in the contract which read as follows, the provision varying only so as to read eight days where the eight-hour day was in force and to read ten days when the ten-hour,—wage for a ten hour day.

Mr. Harris:
You said ten days.

Mr. Burr:
Ten hours.
The provision reads as follows:

"That an eight hour day means eight hours work in the mine at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from same at night.

"Regarding drivers, they shall take their mules to and from the stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named."

We offer to prove that the contract contained that provision for each of those years when the contracts were negotiated.

Now, we offer to prove that in 1903 that at the joint scale convention of the United Mine Workers of America and the Alabama Coal Operators held in the City of Birmingham, that Mr. Flynn was elected and served as the chairman of that joint convention, that they were not able to—that the convention resulted in an inability to agree on a contract, the inability to agree being—

The Court:
Mr. Burr, I think that is going far afield.

Mr. Burr:
Your Honor, I have got a right to make an offer of proof.

The Court:
I know, but I don't think you ought to take up the time of the Court—

Mr. Burr:
I can't make it any quicker.

The Court:
I am going to limit you.

Mr. Burr:
I am making it as fast as I can.

The Court:
The idea of not being able to agree on a contract is certainly—

Mr. Burr:
Sir?

The Court:
Go ahead.

Mr. Burr:

I am showing why they were not able to agree, and the matter of not being able to agree was submitted to an arbitration board.

The Court:

All right; go ahead.

Mr. Burr:

That arbitration was held in the City of Birmingham and Mr. Flynn and Mr. Beddow, an attorney, and others represented the miners, and Mr. Walker Percy and Mr. Cabanias and others represented the operators; that the Board of arbitration consisted of Honorable George Gray of New Jersey as the agreed upon umpire or chairman of the board, and members of the operators and the union; that the arbitration board presented a contract in which they granted some of the demands of the union, and refused some, and the contract was executed pursuant to the award of arbitration, and the contract was on the face to face basis,—that was in 1904,—by the award of the arbitrators.

Now, we offer to prove that since that time, as long as Mr. Flynn was connected either with the Union or any of the companies he has offered to testify about, that all contracts have been on the same basis of working place to working place, without any exceptions.

We offer to prove by him also that he is familiar with the contracts entered into between the United Mine Workers of America and the coal operators in the other districts, including the districts of Indiana, Illinois, Ohio and Pennsylvania, and what is known as the Appalachian Region, and we offer in that connection to prove that the contract made by that general joint conference of the coal miners and operators of Illinois, Indiana, Ohio and Pennsylvania resulted in the making of a contract containing the same provisions that I read just now, similar to the one contained in the Alabama contract.

We offer to show by Mr. Flynn that, in the proceedings before the Board of Arbitration, known as the Gray Arbitration Board, that it was expressly admitted by the miners, and we offer the stenographic report of that proceeding, that the miners admitted that the time spent in travel was not to be computed in their day's pay.

The exact—Just a minute, Your Honor; ~~I think I~~ am almost through.

Well, we will offer to prove, Your Honor, and I will supply the exact language later, the exact language of the agreement on the part of the two parties as stated in the convention.

I will supply that to the record later so as not to lose any time.

Now, we further offer to prove that the first union contract of the kind I have mentioned was made in 1898, and they continued to be made each year with similar provisions from 1898 to 1904, and continued until 1908, at which time there was a strike and the union lost the strike, and that then there were no contracts made until about 1921 at which time or about which time the union succeeded in again reorganizing and began making contracts again with the coal operators, and made the contract—the first new contract after the period of time when they were not organized was known as the Beltona contract, and was made in 1921, and which is identified as Plaintiffs' General Exhibit—whatever the next number is.

The Clerk:

Plaintiffs' General Number 33.

Mr. Burr:

Yes, sir.

The Clerk:

That is for identification only at this time?

Mr. Burr:

That is right. I understand I am just making the offer of proof.

The Court:

Plaintiffs' 33.

The Clerk:

33.

Mr. Burr:

Yes, sir.

(Thereupon the Beltona contract was marked for identification Plaintiffs' Exhibit No. 33.)

Mr. Burr:

This contract contained the following provision:

"The eight hour day will be in effect, which means eight hours actual work at the usual working places. The time required going from and to the usual working places shall not be considered a part of the day. The starting time shall be not later than seven A. M., and not more than thirty minutes for lunch."

That that contract was the first new contract executed after the reorganization of the union, and was executed by a number of the coal operators, and that subsequent to that the later contracts were made, and all of them contained the same provision found in the contracts identified by Mr. Hassler on yesterday.

Now, we offer to prove by Mr. Flynn that during the entire time that he has been connected with coal mines, and up until the time he left the employment of the Tennessee Company as an active mine official, that computation of pay and pay was always made on the working place to working place basis, and that no traveling time to and from the working place was ever paid for or ever asked for any any union or any committees or by any employees within his knowledge; that there never was any question raised about it.

As an illustration, we offer to prove that, taking the driver, one of the service crews, for instance, when he reached the side track at the point where he got his cars to deliver, that was his working place and his day's work started at that time, even though he had previously gone to the stable and harnessed his mule and brought him to the side track at the point where he got his cars to deliver, and that, taking the producing miners, their working place was when they got to their room or the place of work where they performed duties in producing the coal.

We also offer to prove by him that during this period of time the miners,—that is, up until the last few years,—carried their tools from the top; that in some of the mines,—most of them,—the miners entered the mine at the portal and deposited their checks and took their checks out when they came out of the mines; that there were no bath houses in those days and the men changed anywhere they found it convenient to change.

The Court:

You want to show that?

Mr. Burr:

Yes, sir.

That the transportation in and to the coal mines and the walking to and from the working place was—either they were transported—walked all the way from the surface to the working places, or they were transported part of the way and walked part of the way, and vice versa.

We also offer to prove that as mine inspector he inspected and was required to inspect all the coal mines in the State, and to make reports on them, and the ones he didn't inspect himself he had reports on from his associate inspectors.

We offer to show that from 1890 to 1904 the length of the slopes in the different coal mines in Alabama varied; that at the time Number 5 slope of the Tennessee Company was about one and one-half miles from the top, and that the men, on their time, going to and from their work, walked both ways; that the time consumed in going to and from the working places was not insisted on by the union in the period [illegible] his connection with it, because of the fact that in some plants a man might live some miles from the plant, but his day's work did not start until he actually went to work; that the service to the company did not start until you reached your place of work, and it did not make any difference whether you traveled underground or overground, your traveling was going to your place of work; that if one mine, as many of them were, was four or five miles underground and the coal miner would have to consume two hours to go to and from his work, and another mine would be a much shorter distance, the latter mine would have its employees at their working places ahead of the other, and would, therefore, get much more productive work in the mine having the shorter transportation than in the mine where the miner had to travel from two to five miles.

We further offer to prove that during the period of time that I have asked him about up to and including October 24, 1938, that in all the mines he worked in and inspected, including separately the various coal mines in Alabama, those in Tennessee, those in Texas, those in Oklahoma, those in Pennsylvania, and West Virginia and other parts of the Appalachian field, that it has always always been the universal custom to pay the miner and for the miner to accept pay on the working place to working place plan, and that never during his experience with coal mines he has never had any experience that any pay has ever been made for transportation time or for traveling time to and from the working place.

I think that covers the offer of proof.

Mr. Harris:

We object.

The Court:

Objection sustained.

Mr. Smith:

Your Honor, that will apply to all three, the defendants and intervener?

The Court:

Applies to each defendant and the intervener.

Mr. Burr:

Of course, in making the offer, in order to shorten it, I have probably sometimes put in conclusions, but I am offering to prove the facts which follow those conclusions, that is, the details as to each mine, develop the facts that the conclusion follows from.

Mr. Harris:

We object, whether stated as a fact or conclusion.

The Court:

I sustain the objection.

Mr. Burr:

And in reference to the contracts, we offer to prove—and I can save some time,—the offer will be made by Mr. Flynn in connection with some of them and by other witnesses in connection with others, but we offer each contract that contains a provision so there will not be any question of the contract itself.

Mr. Harris:

We object to each contract.

The Court:

Sustained.

Mr. Burr:

And our offer is made separately and severally on behalf of each of the plaintiffs, and it is made separately and severally as to each part of the offer, and we take, separately and severally, an exception as to the offer as a whole, and each part as to each defendant and each class of defendants, including the interveners.

I believe that covers it.

That is all, Mr. Flynn.

The Court:

You are excused, Mr. Flynn.

(Witness excused.)

Mr. Burr:

All right, sir. We want to take Mr. McHugh next.

2130 J. M. McHUGH, being called as a witness, and being duly sworn, testified as follows;

Direct Examination.

The Court:
J. M. McHugh?

Mr. Burr:
Yes, sir.

(By Mr. Burr):
Q. Mr. McHugh, what is your—how old are you, please, sir, now? How old are you now?
A. I am in my 76 year.
Q. Are you engaged in active work at the present time, or are you retired?
A. Well, I am retired, but interested in a little mining proposition.
Q. You are operating a little coal mine, are you?
A. Yes, sir.
Q. Where is that mine located, Mr. McHugh?
A. Pratt City.
Q. Sir?
A. Pratt City.
Q. Pratt City?
A. Yes, sir.

Mr. Burr:
I believe, if Your Honor pleases, I would save time if you would just let me read them, and then when we get to a point where you want to object, you can object. I have got his statement written out.

The Court:
When will he know when to object?

Mr. Burr:

I thought maybe he wouldn't object to his history or his mining experience. I will let you know when I get in the coal mining business.

The Court:

All right.

Mr. Burr:

I am in my 76th year, and am engaged in the coal business at the present time in Pratt City, Jefferson County, Alabama, under the name and style of the Colonial Coal and Coke Company. I have been actively connected with the coal mining business since I was 14 years old.

I came to the Birmingham district and entered the employment of the Tennessee Coal, Iron & Railroad Company as superintendent of its coal mines on August 1, 1905, and served as superintendent until March 1, 1919, at which time I was promoted and became general superintendent of all of the coal mines of the company of this district. I continued to serve as general superintendent until March 1, 1936, ~~at~~ which time I retired.

Previous to my connection with the company I had worked for various companies in Pennsylvania, Missouri and Iowa in various capacities. My first work was as trapper when I was fourteen years old. Among other occupations that I have had in coal mining are dragman, driver, miner, machinist, electrical and mechanical engineer, and superintendent. My last employer before coming to the Birmingham district, was the United Coal Company at Elizabeth, Pennsylvania, where I was employed as a mechanical and electrical engineer.

Now, that is the historical part about it. Do you want to object to that or not?

Mr. Harris:
I understand that is merely qualifying the witness as to his experience, and Your Honor has ruled it is admissible.

The Court:
Really it is not, but I have been admitting it all along.

Mr. Burr:
Yes, sir.

Mr. Harris:
The rest of it is an offer to prove?

Mr. Burr:
The rest of it is an offer to prove, and I will read that.

The Court:
Yes, sir.

Mr. Burr:
The first contract which was made by the company with any labor organization was made between the company and John L. Lewis, Phillip Murray, Thomas Kennedy, William Mitch and other representatives of the United Mine Workers of America on the second day of May, 1934. The only provision in this contract relating to questions here under consideration reads as follows:

"Seven hours of labor shall constitute a day's work. The seven hour day means seven hours of work in the mines at the usual working places for all classes of labor," and so forth. It is not necessary to read it.

Subsequently contracts were made with the same union on the 25th day of November, 1935, and the 17th day of January, 1936, the last contract remaining in effect until April 1, 1937. That is the last contract I had knowledge of and participated in the making of.

The only question appearing in these contracts relating to the question here under consideration reads as follows, and then it is the same definition of the seven hour day.

Contemporaneously with the execution of the contracts referred to above, contracts containing similar terms and provisions were executed between the company and representatives of the Brotherhood of Mine Workers of Captive Mines.

The contracts above referred to were all made during my service as general superintendent of coal mines.

Now, we make formal offer to offer each one of those contracts, separately, and each of them contains the provisions I have just read.

Mr. Harris:

And we object to each one of them, separately and severally.

The Court:

Sustained as to each one.

Mr. Burr:

I understand—No, needn't read that.

Since my connection with the company, it has been the universal custom and practice to compute the hours worked for which the men are paid as the time actually spent by them at the face, or at the usual working place of the men.

I took part in the negotiation of these contracts with the union. No question has ever been raised in any of these negotiations by any of the employees or by representatives of any of the employees or representatives of the union contrary to this general custom and practice.

The men have always been paid and have always accepted pay on the basis of time spent at the working place without any pay or consideration for the time spent by them in going to and from the portal of the mine to their working places.

During all this period of time I have been thoroughly familiar with and have known the custom and practice which has been in effect in the coal mines concerning the use of the words "working place" and "hours of work", and it has always been the custom and practice in the coal mines of the Birmingham district that hours of work were intended to and did refer to hours worked by the miners at the face, and other employees at their usual working places.

Now, we offer to show the details in reference to the depth of the slopes, the character of slopes, method and kind of transportation, the check system of entering the mines, the fact that in the coal mines the coal miners carried a portion of their tools from the surface to the working places and from the underground unloading station to the working places; the physical condition of the slope and of the walkways and the ventilation in the same general way that we offered more specifically while Mr. Hassler was on the stand.

I think that will save going into all that. I think that covers it. That completes the offer for Mr. McHugh.

Mr. Harris:

We object to it, if the Court please.

The Court:

Sustained.

Mr. Burr:

And we make the same statement in reference to the way the offer is made and the way the exception is taken as on the last witness, Mr. Flynn, so as not to repeat it, but just have the understanding it is done the same way.

Mr. Harris:
That is agreeable with us.

Mr. Burr:
All right, sir.

Q. I don't know—Mr. McHugh, have you got any knowledge of the custom of the ore mines of the company, or is yours confined to the coal mines?
A. The coal mines.
Q. The coal mines?
A. Yes, sir.

Mr. Burr:
I don't want to ask him anything about the ore mines, then.

The Court:
You are excusing him?

Mr. Burr:
Yes, sir.

The Court:
You are excused, Mr. McHugh.

(Witness excused.)

Further offer of proof by Ed Flynn.

Mr. Burr:
Now, may I go back a little into the record and state in the record what I wanted to offer in connection with Mr. Flynn's testimony that I could not find?

The Court:
Yes, sir.

Mr. Burr:
It is short.

The Court:
Yes, sir.

Mr. Burr:
As to the statement of the union as to the matter, this statement was made:

"The day is reckoned from the time the miner commences work in the morning at seven or a quarter past seven, until half past four. The time is started from the time the driver hitches to the car until he unhitches from the car and from the time the miner gets to the face of the coal until he leaves the face of the coal.

"Question: And where it applies to the miner, it is from the time he gets to the face of the coal until he leaves the face of the coal?

"Answer: Yes, sir, that is where they count it.

"Question: Where the eight hour day is in force, it counts from the time the men actually get to their working place in the mine until they leave it?

"Answer: Yes, sir.

"Question: While walking in there you are not on company time?

"Answer: No, sir."

I think that is enough to illustrate the point.

Mr. Harris:
We object to that also.

The Court:
Sustained.

Mr. Burr:
I offer—further we offer for Mr. Flynn also to show—I didn't show that—that he has worked in the coal mines at every occupation from driver on up to the place he went to, every kind of occupation.
All right, sir. Now, we—

Mr. Harris:
Now, on that, in proving his experience,—he has proven a number of years he worked in different mines, and merely to show the kind of work he did would probably be consistent with Your Honor's ruling,—I mean to qualify him.

Mr. Burr:
That has been—

Mr. Harris:
I don't know why—

Mr. Burr:
It has been proven before.

The Court:
Admit that.

Mr. Burr:
In other words, he has worked in every occupation from a driver and trapper—

Mr. Harris:
What I mean, I don't want my objection sustained—

Mr. Burr:

Yes, sir. I will take Mr. Kirk next. It will not take but a few minutes.

2137 R. E. KIRK, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

The Court:

What are your initials, Mr. Kirk?

The Witness:

R. E.

(By Mr. Burr):

Q. Mr. Kirk, what is your present position with the Tennessee Company, please, sir?

A. General superintendent of coal mines.

Q. When did you become general superintendent of coal mines?

A. May 1, 1936.

Q. Whom did you succeed in that capacity?

A. Mr. Flynn was acting in the interim after Mr. McHugh retired.

Q. Ed Flynn?

A. Yes, sir.

Q. Now, have you continued to be general superintendent of the coal mines for the Tennessee Company since that time to the present time?

A. Since that time to the present time.

Q. How old are you, please, sir?

A. Fifty-one.

Q. Are you a graduate of any colleges with any degrees?

A. Penn State College.

Q. What degree, please, sir?

A. Bachelor of Science in Mining Engineering.

Q. Would you mind giving me rapidly and not in detail your business experience after leaving college and previous to your employment by the Tennessee Company, where you worked and who you worked for?

A. After leaving college I was first employed as time keeper by the Dravo Construction Company in Pittsburgh, and then as transitman by the Bessemer Coke Company, and then as superintendent of the Lusane Coal and Coke Company, and then as division superintendent of the H. C. Fricke Coal Company.

Then I enlisted in the army and was discharged as Captain of the Fiftieth Infantry, and became assistant superintendent of the Fricke Company in 1919 and continued to 1930, when I became superintendent of the Mahanoy Division of the Philadelphia and Reading Coal and Iron Company, where I remained until 1936 when I came to the Tennessee Company.

Q. Now, did those companies operate coal mines or ore mines or both?

A. Coal mines.

Q. Was your connection with all these companies in connection with their coal mines?

A. Yes, sir.

Q. Since being with the Tennessee Company, have you had any connection with the ore mines or not?

A. Only superficially.

Q. Superficially?

A. Yes, sir.

Q. Your real work had been in charge of the coal mines?

A. Yes, sir.

Mr. Burr:

Now, we offer to prove by Mr. Kirk the following: I am assuming this is the quickest way to get at it again.

We offer to prove by Mr. Kirk that when he became general superintendent of the coal mines the working conditions of the employees in the coal mines of the company were under the contract, with the union that Mr. McHugh identified; that the last contract Mr. McHugh made was in effect when he got here, containing the provision of the face to face definition.

The Court:
  Proved by Mr. McHugh?

Mr. Burr:
  Yes, sir.

The Court:
  You didn't identify it but you offered it.

Mr. Burr:
  Yes, sir.

Now, I offer by him that since that time that Mr. Kirk has had, along with the other officials of the company, the duty of negotiating contracts with the United Mine Workers of America, and that there have been negotiated with that union, under his administration, and also with the Brotherhood, which is the union affiliated with the American Federation of Labor, agreements which —a contract which expired, the first one under his supervision, expired on the first day of April, 1937, and on the 7th days of May and June, 1937, respectively, the company and representatives of the United Mine Workers of America and of the Brotherhood extended the agreement which expired on the first day of April, 1937, in all its terms and conditions, until April 1, 1939, and on May 19, 1939, this contract with the United Mine Workers of America was continued, by written agreement, until April 1, 1941, and a written contract has recently been made which expires on April 1, 1943.

The Witness:
That is right.

Mr. Burr:
And we offer all those contracts, and all of them contain the provisions that I have referred to.

Mr. Harris:
We object to each one of them, if the Court please.

The Court:
The objection to each one is sustained.

Mr. Burr:
Now, do you gentlemen make similar objections to your contracts?

Mr. Smith:
Yes, sir. I thought it was understood.

The Court:
Sustained.

Mr. Burr:
I just wanted to be certain. I am offering both sets of contracts.

The Court:
Sustained as to those gentlemen and the intervener also.

Mr. Burr:
We offer to prove by Mr. Kirk that he was present and took part in all the negotiations with the representatives of both these unions at the various meetings where these contracts were under consideration, and also where any complaints or suggestions or requests by any

of these unions were under discussion at the meetings which were held at regular intervals and at leave once a month during this period of time, and that at none of these meetings, nor during none of those negotiations has any representative of any union or any employee of the company or any committee representing any employees ever suggested or requested or claimed that the work day should include any part of the traveling time; that on the contrary their position was exactly the opposite, that it should not include the traveling time.

We offer to prove by him during the period of time he has been connected with the company that the computation and payment of wages has been on the face to face or working place to working place basis and that there has never been any computation or payment of traveling time.

We further offer to prove by Mr. Kirk that he has, in his business as general superintendent of mines for the Tennessee Company, had occasion to go in the mines of coal mining companies throughout the Alabama District, and that the same conditions that exist in the Tennessee Company's mines exist there.

That in all the mines that he worked at previous to coming to Alabama, as covered by him in his general statement and testimony, the same conditions always existed in each and all those mines, and that in no mine he has ever worked in has the contention been made that traveling time should be considered as a part of the day's work.

We also offer to prove by him, and in that connection ask that this map be identified—

The Clerk:

It will be Plaintiff's General Exhibit Number 34 for identification.

Mr. Burr:

That is all right.

(Thereupon a map of the Hamilton Mines of the Tennessee Coal, Iron & Railroad Company was marked for identification Plaintiffs' Exhibit No. 34.)

Mr. Burr:

We offer to prove by Mr. Kirk that he is familiar with Plaintiffs' Exhibit 34, which is a map of the Hamilton Mines of the Tennessee Company, and that it is a correct map of the Hamilton Mines, and shows the working places in the mines and shows the slope and the distances, and we offer to show that the distance of the slope—the length of the slope on October 24, 1938, was in excess of 10,000 feet, and that since that time it has been extended approximately 2,000 feet.

We offer to show at that time, on October 24, 1938, the furtherest working place from the bottom of the slope was approximately two miles, and that since that time the furtherest working place—the mine has been so extended that the furtherest working place is now approximately two miles and a half.

And we offer to show the details of this map, showing the number of working places, the length of the slope, the distance the men have to travel, the distance they ride and the distance they walk, and we offer to show the other coal mines of the company are substantially similar to those shown here,—sometimes varying as to distances,—and that the operations are the same, and that in all the coal mines in which he has had experience, and specifically the Tennessee Company mines, the Hamilton, Docena, Edgewater and Wylam mines, it has been the practice in all those mines during this period of time for the men to deposit their checks at the portal after being at the bath house, and we offer to prove the method of transportation, character of it and extent of it from there to the working places, and the way the tools are handled, and explosives, and all other things, and the condition of the mines with reference to the roofs, the height of the roofs, both on the main slopes, in the headings and rooms, and to prove that in all instances the distances in coal mines are greater than in the ore mines, as shown by the map we offer to have him look at in order to make that proof, and we offer to prove that during this period the custom and practice of the coal miners has been to carry their tools to and from their working places as far as light tools are concerned, some of them being carried from the surface and others delivered to the working places by the service crews.

We offer to prove where the service crews go to their working places, where their work starts and stops, and the same thing as to the production crews and prove it is similar to the ore mines.

We offer to prove that ventilation in the coal mines is more necessary in the coal mines than in the ore mines on account of the gas existing in the coal mines and not in the ore mines, and that the air and ventilation is better in the ore mines than in the coal mines; that the working conditions, both in traveling and working, are more comfortable and safer in the ore mines than in the coal mines, and we offer to prove the details of that by proper evidence to support that conclusion. For instance, in the coal mines they have to stoop. We offer the details to support the conclusion. I believe that covers it, Your Honor.

Mr. Harris:

We object to that, to the map and the offer.

The Court:

The objection is sustained.

Mr. Burr:

And we have the same character of exception as stated in connection with Mr. Flynn.

The Court:

That covers all defendants, and the intervener,—the objection does.

Mr. Brodie:

As I understand, all objections inure to all defendants and the intervener.

The Court:

Yes, sir.

Mr. Burr:

Off the record.

(Here followed an off the record discussion.)

Mr. Burr:

It is stipulated by counsel that substantially the same offer of proof shall be made—

The Court:

May be made, not should.

Mr. Burr:

Is made—

The Court:

Is made.

Mr. Burr:

Yes, sir.

The Court:

All right.

Mr. Burr:

—by Ben F. Roden, Ed Rowe, Carr McCormack, Gene Morgan, and George Peters,—I have got him available,—George Peters,—and all of whom are on call as witnesses, and we make the same offer substantially as shown by the testimony of Mr. Milton Fies.

Mr. Brodie:

Offer of Mr. Milton Fies.

Mr. Burr:

The offer of Mr. Milton Fies, the commercial operator who testified, with the right, at our convenience and the Court's convenience, to put that in writing, giving their experience, with the understanding when it is put in writing we give these gentlemen a copy, and they can indicate if there is anything in there they want to withdraw their objection to, and if so, they may do so.

Mr. Harris:

With the exception of the qualification?

Mr. Burr:

Yes, sir.

Mr. Harris:

That is agreeable.

Mr. All:

And with the understanding we want to ask the witnesses questions to develop the facts we want to prove.

Mr. Harris:

We are not limiting our objection; we are not limiting it as to whether it was a conclusion, but if I understood Mr. Burr a while ago, he was offering to state the facts on which the conclusion was based or laid.

Mr. Burr:
That is right.

The Court:
That is right.

Mr. Burr:
And in any event, they were objecting to the facts and the reasons.

The Court:
All right.

Mr. All:
On account of Sloss being a party to the suit, I wish to use Mr. Costner.

2146 T. E. COSTNER, being recalled as a witness, and having been previously sworn, testified further as follows:

Direct Examination.

(By Mr. All):
Q. Mr. Costner,—This is Mr. T. E. Costner, who has heretofore been sworn and has already testified with respect to ore mines?

The Court:
Yes, sir, he has been on the stand. He has testified with reference to ore mines.

Q. What experience have you had with coal mines, Mr. Costner?
A. I have been working in them in various capacities since 1915, mostly in an engineering way, until 1928,

at which time I was superintendent of one of the large coal mines in the district; from 1930 to 1935 I was superintendent of the Lewisburg mine; from 1935 I have been general superintendent of both ore mines and coal mines of Sloss-Sheffield Steel & Iron Company.

Q. Since 1935?

A. Yes, sir.

Q. Since 1935 do your duties as superintendent take you into both classes of mines underground?

A. They do.

Q. How often during that period of time would you say you have been underground in the ore mines?

A. With the exception of the past year I go underground—went underground in the ore mines two or three times per week, and will average twice a week.

Q. Do you go around for inspections?

A. Yes, sir.

Q. Was that more or less minute?

A. Yes, sir.

Q. Well, what about coal mines during that period of time?

A. I was underground in them about the same number of times, an average of twice per week.

Q. Were your inspections similar?

A. They were.

Q. So you were in each one every week?

A. Right.

Q. Have your visits recently been more or less frequent, during the last year?

A. Been less frequent.

Mr. All:

Now, we offer to prove this with respect to the Lewisburg Number 2 coal mine:

This mine was opened in 1920 by a slope driven from the outcrop of the Mary Lee Seam. This main slope is driven 12 feet wide and is from 6 feet to 22 feet high.

The dip is 25 percent near the surface and tapers down to 12 percent for a distance of 4000 feet. From that point the grade flattens out from 1 to 2 percent for remaining distances to the faces.

A manway is driven parallel with the slope, and men entering the mine walk the 4000 feet to the slope bottom. On leaving the mine all men are hoisted up the slope after completing their shift of seven hours at working place or face.

The mine is divided into three sections. The distance to the nearest section is 7000 feet from the portal and the fartherest distance is 18,000 feet. The elevation on the surface at the portal is 562 feet above sea level and the lowest elevation inside the mine is 90 feet above sea level. The minimum cover, or vertical distance, over the coal seam is 310 feet; maximum cover is 650 feet.

As stated, workmen walk to the slope basin. There they enter mantrips and are transported to the various sections of the mine.

The greatest walking distance for the underground miners is between four and five miles and the shortest distance is approximately two miles, and the distance from the mouth of the mine to the most remote working places has increased approximately 1000 feet since 1938. The distance from the mouth of the mine to the shortest—to the nearer working places to the slope has not increased at all; they are practically the same distance.

In the Flat Top Mine the greatest distance to the working places from the mouth of the mine is approximately 27,000 feet, and to the nearer working places 21,400 feet. In 1938,—the latter part of 1938 the remoter working places were approximately 25,000 feet from the mouth of the slope, and the nearer working places were about the same as they are now.

The travel distance in both mines is covered by the underground workmen partially by riding on man trips and partially by walking.

The travel conditions as between the coal mines and the ore mines are very similar.

The hazards of the—Put it this way,—that they use—there are relatively more injuries of all sorts in the coal mines than there are in the ore mines, and we offer to prove by the witness that in his opinion the hazards attending coal mining are greater—are greater in number and greater in severity than they are in ore mines.

That the custom and practice and usage with respect to the carrying of tools in coal mines to the working places is that the company customarily takes the tools to the working places as in the ore mines, but that the men, if they wish, may take the tools to their working places, and that is sometimes the case, and that the conditions in this respect—with respect to carrying the tools are practically the same as—in the ore mines as in the coal mines.

That he is familiar with the contracts that have been made with—between the company and the representatives of the United Mine Workers of America since 1934 and that those contracts, since that time, have carried the definitions of working place and work time that the other contracts which have been offered carried,—the same as the commercial contracts, and that under those contracts time is computed from working place to working place, and that the travel time is not included in the computation of work time or in the consideration of work time and has not been and has never been in any coal mine with which he has had any experience since he became familiar with the coal mining business, and that he does not know of, and has never heard of time being computed on any basis in coal mining operations than working place to working place; that he has never heard of travel time being included in work time in Alabama operations.

I want to introduce the Sloss contracts, and I would like to have leave—

Mr. Harris:
You mean you are offering them for identification?

Mr. All:
I am offering them for identification. I want to offer them in evidence.

Mr. Harris:
Of course, we object to them.

The Court:
What do you offer to prove?

Mr. All:
I want to offer in evidence the contracts.

Mr. Harris:
Are those coal contracts?

Mr. All:
Yes, sir, coal contracts.

Mr. Harris:
We object to each one, separately and severally.

The Court:
Sustained.

Mr. All:
I want leave to use copies instead of the originals.

The Clerk:
Do you want them marked for identification?

Mr. All:
Yes, sir.

The Clerk:
They will be 39, 40, 41 and 42.

(Thereupon contracts between the Sloss-Sheffield Steel & Iron Company and the United Mine Workers of America were marked for identification Plaintiffs' Exhibits 39, 40, 41 and 42.)

Mr. Harris:
Have you finished with your offer of proof?

Mr. All:
I think that is all.

The Court:
Is that all?

Mr. All:
Yes, sir. Now—.

Mr. Harris:
We—

Mr. All:
Now, Mr. Harris, just a minute.
This has no reference to this matter here, but I want to put in the record, as has been done in some of the other cases, a list of the classification of occupations in the ore mines of the Sloss Company.

Mr. Harris:
Let me get my objection.

The Court:
Let him get his objection.

Mr. All:
I thought he had stated it.

The Court:

No.

Mr. Harris:

We object to that offer of proof as to all these coal mining operations he has offered by this witness.

The Court:

It is sustained as to each defendant, and the intervener.

Mr. All:

It was understood it was on behalf of each plaintiff?

The Court:

Separately and severally.

Mr. All:

And each one has a separate and several exception.

The Court:

What is that about the ore mines?

Mr. All:

Just a list of the occupations.

The Court:

What is it?

Mr. Harris:

It is the same thing Mr. Burr handed me and I have been checking it, and I haven't finished checking it yet.

The Court:

Is this the occupations?

Mr. All:

Just the number of occupations of those in the ore mines.

Mr. Harris:

I would like an opportunity to check it. Just hold it and offer it out of order.

Mr. All:

I want to straighten this out before Mr. Costner goes, because I would like to excuse him to do some work.

The Court sustained objection to this letter from Mr. Davis to Mr. Richardson, memorandum of the agreement in 1934 on the theory of not having the witness here to prove the execution of it.

Mr. Harris and I had an agreement about that letter. It is the same letter. It provided the men go back to work—

Mr. Harris:

We had that conversation up before the Court before we adjourned the other afternoon.

Mr. All:

Yes, sir, but I want the record to show it is admitted in evidence rather than excluded. The record shows it is excluded.

The Court:

I will admit it.

Mr. Harris:

Of course, we didn't waive our objection.

Mr. All:

No.

Mr. Harris:

I merely stated if Mr. All had that letter, just as other companies received letters—

Mr. All:
Yes, sir.

Mr. Harris:
—the same letter—

Mr. All:
Yes, except you made no point on not having the witness here.

Mr. Harris:
Oh, no, I was not wasting time to bring the witness in here. I object on all the other grounds.

Mr. All:
All right. That is Sloss Exhibit Number 2.

(Thereupon Sloss Exhibit Number 2, heretofore identified, was received in evidence.)

Mr. Harris:
Of course, I don't admit his classification or description of the letter, because that was one of those letters of understanding you were talking about.

Mr. All:
It was in 1934, and I have put a—

The Court:
It was the letter that took the place of a contract?

Mr. All:
Yes, sir.

The Court:
That was a letter of understanding?

Mr. All:
Yes, sir.

The Court:
Is there anything else, Mr. All?

Mr. All:
Is there any necessity to identify those? We might put these in—

Mr. Harris:
I thought you were going to let me check them.

Mr. All:
Well, will you do that?

The Court:
He has agreed that may be introduced out of order.

Mr. All:
Now, we want to do the same thing as to Woodward out of order. I will give you copies to check.

Mr. Harris:
As to Woodward, we object to anything about Woodward.

The Court:
Woodward is not a party to the case and I don't think that is material.

Mr. All:
It is just a matter of convenience.

The Court:
I sustain the objection.

Mr. All:
We except.

Mr. Harris:
No questions to Mr. Costner.

(Witness excused.)

The Court:
Court is adjourned until a quarter of two.

(Whereupon, at 12:1[illegible] P. M., July 22, 1941, a recess was had until 1:45 P. M. of the same day.)

After Recess, 1:45 P. M.

The Court:
Are plaintiffs through?

Mr. Burr:
No, sir.

The Court:
Who will you have for the first witness?

Mr. Burr:
If Your Honor please, there was one witness I neglected to mention in the offer of proof this morning that I want to refer to and include briefly without bringing him back. That was the witness Mr. J. M. Smith, Your Honor will recall, from Ishkooda, that had been working with the company and in the district so long.

The Court:
Yes; sir.

Mr. Burr:

If Your Honor will recall, he testified about a large part of his time being in the various coal mines.

The Court:

Yes, sir.

Mr. Burr:

And it was at that time Your Honor first sustained the objection about going into the coal mines, and I want to offer to prove by Mr. Smith the conditions in the coal mines I asked him—including him in the showing with Mr. Hassler. Is that satisfactory?

Mr. Harris:

Yes, sir. We object, and objection sustained.

The Court:

Yes, sir.

Mr. Burr:

There is one fact I want to add. I want to prove by him that the conditions of work are so similar in the ore mines that he was able to go from a miner in the coal mines to a foreman in the ore mines.

Mr. Harris:

We, of course, object to that as immaterial.

The Court:

Sustained.

Mr. Burr:

Now, we want to ask Your Honor's indulgence for withholding three witnesses who cannot be present,—they are all short witnesses,—on account of sickness or being called out of town.

Mr. George Neal, our superintendent at Wenonah, is still sick. If he recovers I want the opportunity to examine him briefly.

Mr. Hallman has been away on his vacation. His testimony will be confined to the testimony—there is one exhibit, I think, about—in connection with Mr. Goodwyn's testimony where Mr. Goodwyn testified he and Mr. Hallman and some others kept a check on the time the miners at Muscoda reached their working places and left their working places; and, third, Mr. Vance, who was here, and who was called to Washington to appear before this mediation board who had these two cases—he is expected back tomorrow.

Those three, so far as I know, constitute our oral testimony..

Mr. Harris:

I am very anxious indeed that when the plaintiffs close I will know that the plaintiffs are through.

As I understand, when plaintiff rests his case, then thereafter he can't put on witnesses to make out his main case, but only in rebuttal, and there are methods we have used under the Alabama practice if a witness was not present we wrote out a showing, or we could stipulate about it, but I would be very much adverse to having the plaintiffs put on a part of their case and then say we will have something else we will put on later. I want to know exactly where I am and what I am confronted with when the plaintiffs rest.

The Court:

I think we ought to do that. I think they should put in their testimony or make a showing.

Mr. Burr:

This is not a trial before a jury.

The Court:
I know.

Mr. Burr:
I have indicated what their testimony will be. Mr. Neal attended Court two or three or four days and went to put up his car and had this heart attack. If he recovers I should have his testimony in all fairness.

And certainly Mr. Vance couldn't be here. He was called to Washington to appear before the mediation board on account of these two threatened labor troubles out at the plant.

The Court:
Couldn't you prepare a showing for Mr. Vance?

Mr. Burr:
Yes, sir, but I want you to look the witnesses in the eye. I wouldn't want to be put on a showing for these witnesses in a case of this kind.

Mr. Harris:
He states we are not before a jury, and this is not a jury trial, and then next we have a jury argument.

Mr. Burr:
No, it is not a jury argument at all.

Mr. Harris:
This, to me, is a very important case,—and extremely important case. It is one the gentlemen have had under consideration for months. I think I am entitled to know where I am when they close. If they put it on by piecemeal then we will get into an irregular proceeding. They can submit a showing or stipulation, but when they get through—if I have evidence I may want to offer or may not want to offer—

The Court:

The trouble—if it is tried by piecemeal and he brings in testimony by these witnesses—I don't approve that.

Mr. Burr:

Then we ask the opportunity for writing showings for these witnesses. I couldn't help Mr. Neal being sick.

The Court:

I know. It is probable he will not be able to testify. I tell you what to do,—you write your showings for Mr. Neal and Mr. Hallman and Mr. Vance—

Mr. Burr:

I will do it as quickly as I can get to a stenographer.

The Court:

And then I will do this in fairness to both sides. If these witnesses return and are able to testify, I will let you show what is in the showings.

Mr. Burr:

That will be all right. I will put in the showing what I want to prove by them.

The Court:

In other words, I am confining the testimony to the showing. You will know how to offer your evidence.

Mr. Burr:

I expect I can cover these by showings if I extend myself. I will try to do it so anyway. It is hard to do.

Mr. Harris:

I think that would be better.

The Court:

Well, let it go at a showing.

Mr. Burr:

We can handle the other matter if it comes up later. I will prepare the showings and have them ready tomorrow.

Mr. Harris:

I want them before I start.

Mr. Burr:

Well, we will take a recess and dictate them.

The Court:

Is there anything else you want to offer?

Mr. Burr:

Yes, sir, there is some documentary evidence we want to offer.

Let me have the depositions taken in Minnesota.

Mr. Harris:

In order that I don't have to take up Your Honor's time, I will state as to the depositions, for myself and all my clients, individually, and as representative of a class, I object to all the depositions, separately and severally, taken outside of the State of Alabama with reference to ore mines, whatever state they are in, and whether those depositions were taken in the first instance by the plaintiffs or whether they were taken in the first instance by the intervener.

Now, those depositions were taken on oral interrogatories, and my fundamental objection to them is that they throw no light on the issues involved in this controversy here; they are too remote; they deal with transactions between other parties than the parties to this litigation;

that they are illegal and irrelevant and immaterial and incompetent..

I have heretofore indicated, in more detail, to Your Honor my theory of this case, and whether either one or both of them thought they were admissible, I don't, so I want to preserve my grounds of objection to each one whoever offers it, whether by the government or by the plaintiff.

Mr. Smith:

We make that same objection, if the Court please.

The Court:

All right.

Mr. Burr:

So Your Honor can understand in a general way what those depositions are about, I might state,—while they speak for themselves,—they are depositions of witnesses taken by the Administrator Fleming as to which notice was given to us and to the other parties. We appeared and cross examined the witnesses. No other parties appeared except the attorneys for the Intervener Fleming, who took the testimony, and the plaintiffs by counsel.

We made a number of objections before the Commissioner. We are withdrawing those objections so there can't be any delay in considering our objections, and are offering the depositions in their entirety.

They relate in the main,—all of them, and each witness testified in the main to ore mines in the Minnesota field, which has already been shown by the depositions admitted this morning, is over 90 percent of the producing iron ore fields of the United States. The same thing we said this morning with reference to that exhibit, and the same thing that makes it admissible makes these depositions admissible.

Mr. Brodie:

I am in a somewhat peculiar position because the depositions were originally taken at our instance.

Under the rules, however, the witnesses do not become witnesses of anyone until the depositions are offered, and then they become the witnesses of the party offering them.

Now, at the time we took the depositions, the evidence seemed to us relevant under the pleadings and under the scope the case appeared to be taking.

In view of the case that the plaintiffs have made out so far as we are content to rest on the situation in the Plaintiffs' minds and on the issue whether the employees of the plaintiffs, when they go down in the mines, are at work, and so that—I don't know whether I can object or not. Of course, we will accept whatever ruling Your Honor makes on them. I don't think—in view of the situation the case—the posture the case has assumed, that evidence is now relevant.

Mr. Burr:

If Your Honor please, these—are you through, Mr. Brodie?

Mr. Brodie:

Yes, sir.

Mr. Burr:

That is an unusual position for a party to take who has taken testimony. We think he is right in the first instance, and there is no question about the evidence being material in our view of the case. It is not what the issues are that have been made here. The issues have been made by Section 7 and what Section 7 means, and the question as stated here in the agreed order on pre-trial hearing, the order of the Court on that hearing, and that order states that the position of all the defendants is,

"that the workweek covers all time from portal to portal, as announced in the opinion and report of the Wage and Hour Administrator under the Fair Labor Standards Act on March 23, 1941, and also includes aggregates of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out."

Now, it is absolutely certain that Congress didn't pass this law for the benefit of the Tennessee Company mines or Sloss or Woodward or Republic, or to penalize the Alabama mines. We are proposing to show, by these depositions taken by the Government, what conditions are, not in copper mines, not in gold mines, not in zinc mines, not in coal mines, but in ore mines when this Act was passed. That question can't be eliminated in this case. It is a funny position for the Administrator to try to eliminate that issue, and this evidence, when his whole opinion is based upon the general conditions throughout the United States. That is all he bases it on. You can read it from the top to bottom. He states in the opinion and report that the portal to poral has been in operation in all the mines in the United States, and that Alabama is the only—he uses that expression, the only underground metal mines of the United States that are on the face to face basis.

Now, we are proposing to show by testimony taken by them, not to tear down the opinion of the Administrator, because, as everybody has stated here, it is not what we are trying, but in support of our contention, which is fundamentally correct, that Congress when it passed this law wasn't considering the Alabama mines, ore mines alone in Alabama, it wasn't considering the ore mines elsewhere alone.

Now, I don't understand—do you object to them or not? I don't understand what his position is.

Mr. Brodie:
Are you through, Mr. Burr?

Mr. Burr:
Yes, sir, I am through.

Mr. Brodie:
At the time these depositions were taken, the complaint—the pleadings with reference to the Administrator's opinion and to the,—as it was claimed, erroneous opinion of the Administrator, asked that the opinion of the Administrator be declared illegal, and there were other similar matters in the complaint. Under that broad complaint we didn't know what we had to meet. We took these depositions—I would like to say one thing, Your Honor. We are not afraid of the facts in those depositions. There isn't any question about that.

Mr. Burr:
Well, what is the trouble? What is the worry about them.

Mr. Brodie:
Well, the worry is—there is no worry; there is no worry about it.

The Court:
Now, this is with reference to Minnesota?

Mr. Brodie:
Yes, sir, Minnesota.

Mr. Burr:
Yes, sir; ore mines.

Mr. Brodie:
Ore mines.

The Court:
I am going to admit them.

Mr. Burr:
Do you want them read?

The Court:
I think, Mr. Burr, probably it would be better for the Court for you to read them.
Are they pretty lengthy?

Mr. Burr:
Yes, sir, pretty lengthy,—about nine or ten witnesses.

The Court:
How many pages to the witness?

Mr. Burr:
I haven't opened them. I think the best way would be to read them.

The Court:
I think they ought to be read.

Mr. Burr:
I will get some of these young fellows to read them.

The Court:
Let one read the questions and the other the answers.

Mr. Burr:
Now, as I stated to Your Honor, we are withdrawing the objections, so they need not stop to read the objec-

tions and argument of counsel, but just the testimony of the witnesses.

The Court:
I didn't get that.

Mr. Burr:
We withdraw our objections, so it is not necessary to read those. Just read the questions and answers.

The Court:
Both direct and cross?

Mr. Burr:
Yes, sir.

Mr. Brodie:
If Your Honor please, I am somewhat vague as to what the cross examination was about. I don't make a blanket withdrawal of the objections to the cross examination. I will let the objections stand, and when we come to them I will have the right to press them or not as I see fit.

The Court:
The Court will consider your objections as they are brought out.

Mr. Burr:
As we get to them?

The Court:
Yes, sir. One of you read the questions, and the other the answers.

Mr. All:
I will read the questions and Mr. Bronaugh will read the answers.

(Thereupon, with Mr. All reading the questions and Mr. Bronaugh the answers, the reading of the deposition of Sam E. Swanson was begun, and was continued through the answer, "That is what I am generally known as," on page 8 of said deposition, when the following occurred:)

Mr. Harris:
May I interrupt, Mr. All, to bring up something else? This will probably take all afternoon?

Mr. All:
I think it will.

Mr. Harris:
This is pay day. Some of these men want to go get their pay.

The Court:
How many depositions are there? I don't want to take up all afternoon.

Mr. Brodie:
There are 391 pages.

The Court:
All right. We will make up the time tomorrow.

Mr. Harris:
Any of you men who want to draw your pay can go out to your various places.

The Court:
Be back tomorrow morning at 9:30 Daylight Savings Time.

Mr. Harris:
Thank you very much.

(Thereupon the reading of the deposition of Sam E. Swanson was resumed and continued through the answer, "Iron ore mine,—underground and open pit, both," appearing on page 10 of said deposition, when the following occurred:)

Mr. Brodie:
If Your Honor would prefer to follow this with my copy—

The Court:
No, I will just listen.

(Thereupon ~~the reading of~~ the deposition of Sam E. Swanson was resumed and continued through the question, "Now, after 1929?" on page 14 of said deposition, when the following occurred:)

The Court:
That was a shaft mine?

Mr. Bronaugh:
Yes, sir.

(Thereupon the reading of the deposition of Sam E. Swanson was resumed and continued through the question, "As a matter of fact the percentage of underground out of the total is about 16 or 17 percent, isn't it?" and the answer ~~appearing on~~ page 51 of said deposition, "I can't believe that," when it was stipulated by counsel that the answer should read, "I can believe that."

Thereupon the reading of the deposition of Sam E. Swanson was resumed and continued to page 59 through the question, "You would go down to the main loading station?" and the answer, "Yes, we worked down there," when it was stipulated by counsel that the answer should read, "Yes, we walked down there."

Thereupon the reading of the deposition of Sam E. Swanson was resumed and continued through the answer beginning on page 86 and engine on page 87, "Absolutely not. They had nothing to do with the eight hour collar to collar because it has never been included in any contract that I have seen made by the Steel Workers Organizing Committee," when proceedings were in recess from 3:30 P. M. to 3:40 P. M. at which time proceedings were resumed, continuing the reading of the deposition of Sam E. Swanson, beginning with the question on page 87, "You say you never have seen that provision included in a C. I. O. contract?" and continued through the question on page 89 of said deposition, "Now, I am not asking this question in the sense of saying anything improper, you understand, but merely for the purpose of getting some dates: When was the first time that any representative of the Wage and Hour Division talked with you about this matter?" when the following occurred:)

Mr. Brodie:
There is an objection here that question is incompetent, irrelevant and immaterial.

The Court:
I will overrule the objection.

(Thereupon the reading of the deposition of Sam E. Swanson was resumed, beginning with the answer, "It was on a Sunday, a couple or three weeks ago," on page 89 of said deposition, and the reading of said deposition completed.)

The Court:
How many depositions are there?

Mr. Bronaugh:
Two, four, six,—nine.

The Court:
Have you got one or more in Minnesota?

Mr. Brodie:
There are nine witnesses.

The Court:
Who are they?

Mr. Brodie:
Sam E. Swanson, George Micheal, Burck, Leander Runn, John DeBeltz, Anton Pechek, Joseph Bovitz, Andrew Sopko, Florindo Pilotto and Frank Eagloski, and then there are some exhibits.

Mr. Burr:
The exhibits are the minute book and a contract.

The Clerk:
They will be Plaintiffs' Exhibit 35, these depositions.

Mr. Harris:
I don't think each deposition would be in the form of an exhibit.

The Clerk:
I am just putting them in one exhibit.

(Thereupon the depositions of Sam E. Swanson, George Micheal Burck, Leander Runn, John DeBeltz, Anton Pechek, Sam E. Swanson (Recalled), Joseph Bovitz, Andrew Sopko, Florindo Pilotto and Frank Eagloski were marked Plaintiffs' Exhibit No. 35, together with the exhibits thereto.)

Mr. Burr:
Off the record.

(Here followed an off the record discussion.)

Mr. Harris:
Judge, the other day,—they turned over to us Friday a lot of their original exhibits, and if it suits their convenience, Mr. Elman will return them to them when we adjourn.

Mr. Burr:
Just give them back to the clerk.

Mr. Harris:
They substituted copies and we have got the originals.

Mr. Bronaugh:
You can give them to us after we adjourn.

Mr. Harris:
If that meets your convenience, so that will save our responsibility for original documents.

The Court:
That will be done this afternoon.

Mr. Burr:
We offer next the deposition of Mr. Rupp, which deposition was taken by us in Colorado in reference to the only iron ore mine—those are iron ore mines in Colorado. There are two witnesses, but one of them, a man named Collins, is in reference to iron ore mines exclusively, but so far we are offering only the deposition of Mr. Rupp.

The Court:
There are objections to that, I assume?

Mr. Harris:

Yes, sir; I have an objection to every one, no matter by whom taken.

(Thereupon Mr. Burr began the reading of the deposition of George Rupp, and continued the reading of said deposition to where Exhibit No. 1 to said deposition was offered, when the following occurred:)

Mr. Brodie:

There is an objection to that contract. I don't know why he objected. I assume because it was a copy and not the original contract.

The Court:

Well, it is overruled.

Mr. Brodie:

All right, sir.

(Thereupon Mr. Burr continued the reading of the deposition of George Rupp, and read to where the words "seven hours at the usual working place," occur in said deposition, when the following occurred:)

Mr. Harris:

We move to exclude that remark about the coal mines.

The Court:

That is about the coal mines?

Mr. Harris:

Yes, sir.

The Court:

Well, that will be sustained. All that about the coal mines is stricken.

Mr. Burr:

I might state for Mr. Harris' information there are two or three references in the man's testimony as to coal mines too.

Do you want it in or out?

Mr. Harris:

Personally, I haven't seen any of these depositions.

Mr. Burr:

I want to tell you that now.

Mr. Harris:

Well, wherever coal mine testimony comes in, no matter from what direction, we object to it, and I understand it is out.

Mr. Burr:

And Your Honor sustains that objection?

The Court:

Yes, sir; it is stricken.

Mr. Burr:

And we except; and, with this exception, that it was gone into by the government

Mr. Brodie:

Well, my history of the deposition is imperfect. The witness, in stating where he had worked, said he worked in a coal mine in North Dakota or something like that.

Mr. Burr:

And then your lawyer questioned him about it.

Mr. Brodie:

Then I agree it may be stricken.

The Court:
Then that will be stricken.

Mr. Burr:
We just wanted to call your attention to it.

Mr. All:
I want to call attention to this: Do you offer in evidence agreement between the Colorado Fuel & Iron Company as Exhibit 2?

The Court:
That is coal?

Mr. Burr:
That is also here. That was not objected to by the administrator. The question as to admissibility—

The Court:
Well, Mr. Harris is not bound by that.

Mr. Burr:
No, sir.

Mr. Brodie:
Well, under the rules we are dealing with, that any objections where any depositions are taken on oral testimony, the objections may be interposed at the time they are read, and the fact we didn't object before is not a waiver—

The Court:
I think that is true.

Mr. Brodie:
The only waiver is to the form of the question, whether leading or something of that kind, so that the question

may be reframed, so at this time I object to all reference to that coal contract.

The Court:
I sustain the objection.

Mr. Burr:
And we except to that ruling.

Mr. All:
Here is another question. It has the total number of employees working in the mines of these companies, including coal and iron.

The Court:
That will not be considered.

Mr. Burr:
Well, I will not read it.

The Court:
Just glance over it, and if it includes coal—

Mr. Burr:
It includes coal.

The Court:
I understand.

Mr. Burr:
Is that all right.

Mr. Harris:
We object to that.

The Court:
Sustained.

(Thereupon Mr. Burr resumed the reading of the deposition of George Rupp and read through the question and answer, "Please state how many men you have in the ore mines," and the answer, "Approximately 500," when the following occurred:)

Mr. Burr:
Then the other is as to the coal mines, which I will leave out, and with respect to which I understand we have an exception.

The Court:
Oh, yes.

Mr. Burr:
Next is with respect to the contract, and we will cut that out with the understanding we have an exception.

The Court:
It is understood you have an exception to all parts excluded.

(Thereupon Mr. Burr resumed the reading of the deposition of George Rupp and completed the same.)

Mr. Burr:
We offer that deposition and the exhibits.

The Clerk:
That will be Plaintiffs' Exhibit No. 37.

(Thereupon the deposition of George Rupp, with the exhibits thereto attached, was marked Plaintiffs' Exhibit No. 37.)

Mr. Burr:
It is not really an exhibit, but you can call it that.

The Clerk:

And the exhibits attached to it.

Mr. Burr:

Judge, we have a little more documentary evidence that I don't think will take over half an hour in the morning.

We would like to know, so we can prepare ourselves, at what particular mine you will start, so we can have our superintendent of that particular mine and not have our superintendents of the others here.

Can you give us that information, Crampton?

Mr. Harris:

Yes. I will start with Ishkooda in the morning.

Mr. Burr:

Off the record.

(Here followed an off the record discussion.)

Mr. Harris:

Now, before we go—this applies to Mr. All, and I don't know just what it is. I had Mr. Elman check on your exhibits, and there have been some little errors crept in on two of your exhibits by the Sloss Company.

Exhibit 14, the original exhibit, has no rate list attached at all. Your substituted copy has a rate list, but your exhibit hasn't.

Then, on Exhibit 18, the rate list in the original and the substituted copy differ.

There has been some mistake in your office somewhere.

The Court:

Well, just make your copies like the originals.

Mr. All:
That is the way to do that. That is the only way to do it.

The Court:
Yes, sir.

Mr. Harris:
There isn't any rate list at all on the original on 14.

Mr. All:
Crampton, that may be misplaced. We will check that.

The Court:
Are you going to turn over the originals?

Mr. Harris:
Yes, sir; we will turn them over this afternoon if it suits Mr. Monaghan's convenience. We will be glad to get rid of them.

Mr. Burr:
What time in the morning?

The Court:
We will meet tomorrow morning at 9:30, and everybody is excused until that time.

(Whereupon, at 4:40 P. M., July 22, 1941, an adjournment was had to 9:30 A. M., July 23, 1941.)

July 23, 1941, 9:30 A. M.

Court met pursuant to adjournment.

Mr. Burr:
Shall I go ahead, Your Honor?

The Court:

Yes, sir.

Mr. Burr:

I want to examine Mr. Mitchell first, Your Honor. Come around, Mr. Mitchell.

2173 F. R. MITCHELL, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. Mr. Mitchell, what is your profession, please, sir?

A. Mining engineer.

Q. And how long have you been engaged in that profession?

A. About twenty years.

Q. Are you a graduate of some university or college?

A. The Michigan College of Mines.

Q. With what degree, if you obtained a degree?

A. Engineer of Mines.

Q. Where did you go to work after receiving that degree, if you went to work?

A. The Cleveland-Cliffs Iron Company.

Q. Where were their mines located?

A. Michigan and Wisconsin.

Q. Were they underground or open pit mines?

A. They are both.

Q. They had both at the time you worked for them?

A. Yes, sir.

Q. Do you remember the names of some of the mines?

A. Yes, sir; in the Marquette District they had the Cliff Shaft—

Mr. Harris:

If the Court pleases, I want to interpose to the testimony of this witness the objection I interposed to interrogatories and depositions dealing with mines outside the State of Alabama.

The Court:

Overruled.

Mr. Harris:

That goes all the way through.

The Court:

Yes, sir.

Mr. Burr:

May it please the Court, one of my main purposes is to put Mr. Mitchell on to explain the mines in the Lake Superior District so the Court can understand the testimony given in the depositions taken in Minnesota.

The Court:

Mr. Burr, you are just going into the underground mines?

Mr. Burr:

I am going to deal with that first, and then I am going to the open pit. We can discuss that at the time.

Q. Name some of the other mines of this company, just the underground mines.

A. Athens; that is also in the Michigan district.

Q. Just the underground mines.

A. Yes, sir.

Q. All right.

A. In Minnesota we had the Boeing and we have Halmer. Those are all the underground mines.

Q. What sort of work did you do for this company while you were with them,—during the time you testified you were with that company?

A. Mining engineering work, surveying and design.

Q. Was that inside or outside the mines?

A. Inside and outside.

Q. Were you in the mines frequently?

A. Practically every day.

Q. What was your next mining experience?

A. My next mining experience was with the Tennessee Company.

Q. When did you come with the Tennessee Company?

A. In January, 1924.

Q. Have you been with the Tennessee Company since that time?

A. Yes, sir.

Q. Now, what different positions have you held with the Tennessee Company since you have been with that company?

A. My position with the Tennessee Company has been the same since I came with them.

Q. And that position is what?

A. Division engineer of the Wenonah Division.

Mr. Harris:

I can't hear you.

The Witness:

I beg your pardon, sir. I will try to talk louder.

Mr. Harris:

I did not hear the last one.

The Witness:

Division engineer at the Wenonah Division.

The Court:
Division engineer?

The Witness:
Yes, sir.

Q. Have you any duties to perform with reference to the other mines of the company on the mountain, or has your work been confined solely to the Wenonah Division?

A. Just in a general way.

Q. Have you or not been in the other mines?

A. I have been in all the other mines.

Q. All right, sir. These mines, the underground ore mines in Minnesota and Michigan you told us about—first, since you worked there, have you seen those mines again since that time; have you been in that field again?

A. Yes, sir.

Q. When did you go?

A. In April of this year.

Q. Who accompanied you on the trip in April?

A. Milton Baird and Norman Thompson.

Q. Mr. Milton Baird, who is Chief Clerk for Mr. Ball?

A. Yes, sir.

Q. And Mr. Norman Thompson, Superintendent of Mines for the Republic Company?

A. Superintendent of Mines for the Republic Company.

Q. On that trip, did you and these other gentlemen go into the underground mines in that territory?

A. Yes, sir.

Q. Will you tell us briefly the mines you went into?

A. Went into the Godfrey in Minnesota, and Sunday Lake and Geneva and Montreal. Those mines are in the Gogebic District.

Q. Those mines—did all of them have vertical shafts as entrances, or slopes; what kind of entrances?

A. All vertical shafts.

Q. All vertical shafts?

A. Yes, sir.

Q. Were they shafts of different depths in those mines?

A. Yes, sir. They varied from 230 feet to 3500 feet.

Q. What was the shortest one? We will take that as a typical short mine.

A. The shortest mine was the Godfrey.

Q. And what was the longest?

A. The Montreal.

Q. How long was the shaft in the Godfrey Mine?

A. 230 feet.

Q. How long was the shaft in the Montreal Mine?

A. 3500 feet.

Q. Were the other mines varying distances between those two?

A. Yes, sir.

Q. In mining that ore up there in the Lake Superior district—That is what it is usually called,—Lake Superior district?

A. Yes, sir.

Q. Can you explain to the Court briefly how that mining is done, whether they use levels or what?

A. Could I use the blackboard?

Q. Yes, sir. Suppose you take a mine that has more than one level and just show how that mining is done.

A. In the Mesaba or Gogebic?

Q. The longest one you mentioned.

A. That is in the Gogebic.

Q. Take that mine.

The Court:

Mr. Burr, can he draw the seam of ore, showing the pitch?

A. That represents the ground. The ore pitch is to the north, about 80 or 85 degrees. The shaft is usually sunk in what we call the footwall or rock right under the ore. That would be on this side of the ore body. These levels we are talking about are driven out to the ore body at intervals of, roughly, 100 feet.

Q. Suppose you put two or three more.

A. All right. This would be the first level. These come at intervals of 100 feet, and in the Montreal they are down to the 35th level, so they are put down to 3500 feet.

Q. Suppose you put your levels on down here.

A. (Witness draws on blackboard.)

Q. You say the Montreal is down 35 levels?

A. Yes, sir.

Q. How far down is the shortest mine,—the Godfrey, how many levels did it have?

A. Just one level. It is down 230 feet from the surface.

Q. It is 230 feet?

A. Yes, sir.

Q. The Godfrey Mine?

A. Yes, sir.

Q. How do the men get down to the various levels and how did they when you were up there in April?

A. They ride down in a skip, which works in a shaft, and get off at their working levels.

Q. That skip, is that what you call an elevator cage?

A. It would be called an elevator in a building.

Q. Does it stop the men at the various levels?

A. It stops at the different levels where men are working.

Q. And the men get off at the various levels?

A. Yes, sir.

Q. When they get to the level—use this level because it is larger, and show the Court where the working place is after the men get in the level?

A. Let's take this 35th level. These levels are, in the case of the Gogebic Mine, driven in the rock, and are quite a distance from the ore body. When they go down to mine this ore they use what is called the sub-level cave-in method. These sub-levels are up here 25 feet apart. Connecting those subs with the main levels are raises.

To get into their working places, which may be on the top sub above the 35th level, the men go down the skip and walk out through the drift and climb the last 25 or 50 or 75 feet above their level and go down this level to their working places.

Q. As I recall, some of the witnesses in their depositions, used the word "ladder". Is that what they use?

A. They use ladders to climb the raises.

Q. Approximately how high would you say those raises are the men would have to climb?

A. They would be a maximum distance in this Montreal Mine of 75 feet.

Q. How does it run in the other mines?

A. Most of the mines are 100 foot levels, but where they use a top slice method, as they do in the Mesaba range, the last level would be 90 feet.

Q. How far is this distance from where they get out of the cage to where they begin to climb the ladders?

A. That distance varies.

The Court:

In other words, he rides—

Mr. Burr:

He walks that distance.

The Witness:

He might have to laterally walk this way a good distance.

The Court:
What is the longest distance?

Q. Those you found up there?
A. About 2,000 or 3,000 feet.
Q. The shortest distance would be about what?
A. The shortest distance would be about as low as 2 000 feet.
Q. The distance would depend on how far the level had to go before it struck the ore body—
A. Yes, sir, and then how far the limits of the property were out this way.
Q. Is that ore—what is the thickness of that ore?
A. These deposits in the Gogebic range and in the Mesaba range are not a seam.
Q. What do you call it?
A. A mass of deposits.
Q. A mass of deposits?
A. A mass of deposits.
Q. How far does that mass run?
A. In the Mesaba range maybe three miles long, a mile wide and several hundred feet thick.
Q. And in the Gogebic Range?
A. In the Gogebic Range they are much smaller, possibly a mile long, a half mile wide and several hundred feet thick.
Q. After the miner has climbed the ladder and gotten in the working place, up there, just in a general way how is the wrok performed at that particular mine? Do they use dynamite? Do they use mechanical loaders? What tools do they use? Just describe how that is done.
A. In the Gogebic and Mesaba ranges the procedure is practically the same. The ore is rather soft, but it has to be blasted. The procedure is to drill holes, load them with dynamite and blast out the ore and then load it with scrapers just as we do here.

The timbering is a little different because they do what they call mining on timbers. The timbering is cut very close to the face. Aside from that the procedure is very similar to what it is in Alabama.

Mr. Burr:
I ask that be identified as Plaintiffs' Exhibit—

The Court:
Is that Plaintiffs' or T. C. I.?

Mr. Burr:
Just make it Plaintiffs'.

The Clerk:
Plaintiffs' Number 37.

(Thereupon a photograph showing timbering in mines in the Lake Superior District was marked Plaintiffs' Exhibit No. 37.)

Mr. Harris:
That deals with operations up there?

Mr. Burr:
You have an objection to every bit of it.

Mr. Harris:
Not only as to questions, but as to exhibits and everything else?

The Court:
Yes, sir.

Mr. Burr:
Yes, sir.

Q. I show you Plaintiffs' Exhibit 37 and ask you if that is a correct picture of the timbering you talked about, showing the timbering close to the face?

A. Yes, sir, that is a typical picture and might apply to either the Gogebic or Mesaba Range.

Q. When the ore is shot down in those places, how is it gotten to the surface?

A. After it is shot down up there, it is dragged by scrapers—

Q. Are those mechanical scrapers?

A. Mechanical scrapers, yes, sir.

Q. The same type as we use here in Alabama?

A. The same type as we use here in Alabama except they are a little smaller.

Q. Are the drills substantially the same as we use here?

A. The drills they use in the Mesaba field are smaller. In other words, they are an augur drill instead of a rotary drill.

Q. After it is shot down how is it handled?

A. It is dragged down to a car—

Q. After the ore is gotten in the car in these mines up there, how is it transported to the outside?

A. The cars are transported by means of electric locomotives to a skip—rather, to a pocket at the shaft and dumped into the skip and drawn to the outside.

Q. Is that system substantially the same as our system here?

A. Practically the same.

Q. In those operations up there, do they have and did they have when you were working there, what you might call two sets of crews, the actual producing crews and the service crews?

A. Yes, sir, they have two sets of crews, mining crews and service crews.

Mr. Burr:

I will get you to identify this one, please, sir.

The Clerk:

Plaintiffs' Exhibit Number 38.

(Thereupon a photograph showing ladder in raises in mines in the Lake Superior District was marked Plaintiffs' Exhibit No. 38.)

Q. I show you a picture, Plaintiffs' Exhibit 38, and ask you to state whether or not that is a correct picture of the kind of ladders that were used when you were up there in April, and the way the men you saw ascending that ladder to get to their working places ascended the ladder?

A. Yes, sir, that is a typical picture. That might apply to both ranges.

Q. To both ranges?

A. Yes, sir.

Q. ~~Of course~~, that shows just the beginning of the ladder?

A. Yes, sir.

Q. After that man gets on up to the place where he is going to work, how does he get into the working place; is it all open there, or is there a hole he goes through, or what?

A. It is just like stepping into a hall in a building.

Q. How large is the opening he goes through? What I want to know—just tell us what it is.

A. The horizontal opening?

Q. Yes.

A. About four by four, I would say.

Q. About four by four?

A. About four feet.

Q. In other words, he has to go through a hole about four by four, taking the tools with him?

A. That is right.

Mr. Burr:
Off the record, just a minute. Judge, I have one other picture I must have left at the office I want to get later. It shows how they set their fuses.

The Court:
How they set their fuses?

Mr. Burr:
We will mark it later and give it an exhibit number.

The Clerk:
Exhibit Number 39.

(Thereupon Plaintiffs' Exhibit Number 39 was assigned to an exhibit to be later furnished.)

Mr. Burr:
Could I qualify him about it now?

The Court:
Yes, sir.

Mr. Burr:
He has seen it.

The Court:
Yes, sir.

Q. You have seen the picture I have reference to—
A. Yes, sir.
Q. —showing how they set the fuses in the face?
A. Yes, sir.
Q. That is a correct picture of how that is done in those mines?
A. Yes, sir.

Q. Generally, just a few general questions about the—are these mines up in these regions what you would call wet or dry mines?

A. On the Mesaba Range particularly they are what I would call wet mines, because they are very close to the surface and the top over the ore is nothing but gravel drift, which is sand and gravel, and naturally any water that falls on the ground reaches the mines, and they are very wet.

Q. Do the men have to wear special clothing?

A. In some places they wear oil skins, that is, rain-proof coats and hats and rubber boots.

Q. Comparing first—not comparing either, but I will ask you this: Those elevators that go down in the shafts, do they descend slowly or rapidly?

A. That would depend, of course, on the depth of the shaft.

Q. I mean how is the movement of the elevator; is it slow or fast, the ordinary movement of the elevator in the shaft carrying the men?

A. I don't know just what you mean by slow or fast. I would say it travels as fast as a high speed elevator in a tall building.

Q. That is what I wanted, to get some idea of it. Now, do the men, when they get off the elevator at their working places, do they walk or ride from there to their actual places of work?

A. In most places they walk.

Q. What are the exceptional cases where they don't walk?

A. In one or two mines they ride in cars on the haulage level.

Q. On the haulage level?

A. Yes, sir.

Q. Is that exceptional or general?

A. I would say that is exceptional.

The Court:
Is that where the greater distances are?

The Witness:
That is where the greater distances are.

The Court:
Greater?

The Witness:
Yes, sir.

Q. Up there where they do walk,—I will ask it this way: Is the haulage system on the level there, on the drift, is that where that is?

A. Partially.

Q. Do the men walk along there?

A. The men walk along there, and then there is another haulage level which extends out in this direction.

Q. Yes.

A. So the procedure is to walk in here and then use this way into the rest when they go out in this direction.

Q. Then all the walking is where the tracks are?

A. Yes, sir.

Q. Just like we have it here?

A. That is right.

Q. Is the track on the level up there or is it undulating?

A. It is undulating. They probably have as much as 3 percent grade.

Q. In climbing up to the working place they use a ladder like anyone would use the rungs of a ladder?

A. Yes, sir.

Q. Just climb a ladder?

A. Yes, sir.

Q. That is what it is?

A. Yes, sir.

The Court:

I want to ask you this, Mr. Mitchell.

As a general proposition, the further down they go the greater the distance?

The Witness:

Yes, sir.

The Court:

Now, on the deepest levels where they have been extended the furtherest, do you have the motor carriage to carry the men?

The Witness:

Some mines make a practice of carrying the men and some do not, no matter what the distance. For instance, in the Montreal Mine we are talking about, they do not carry the men.

The Court:

They do not?

The Witness:

No, sir.

Q. Which would you say—is it the rule or exception that they carry them to the place where they climb the ladder?

A. I would say it is the exception.

Mr. Burr:

Now, if Your Honor please, I want to next ask him—

Q. Mr. Mitchell, are the same conditions you are talking about that existed on your trip up there in April, were they substantially similar conditions as when you were at work,—when you were working up there, so far as the mines and the methods used are concerned?

A. Of course, I worked only on the Mesaba Range, and the conditions there are practically the same.

Q. While you were there in April, and these other two gentlemen there with you, did you make any inquiry from men working there and the management of the mines, whether or not the men's pay was on a portal to portal basis or on a face to face basis?

Mr. Harris:

We add the additional objection to that that it is clearly hearsay.

The Court:

I sustain the objection.

Mr. Burr:

We except and offer to show that investigation was made,—that is the only way he could testify, and that the reports of the men and the mine foremen and management—.

The Court:

I think that is hearsay.

Mr. Burr:

I think some hearsay testimony is admissible, and I think this is one of those times.

I want to get an exception to it.

The Court:

All right.

Mr. Burr:

And as a result of that investigation he is prepared to testify from the investigation, and the reports of these men it has been, since he has been familiar with it up there, on the face to face basis.

The Court:
Now, is that your offer of proof?

Mr. Burr:
Yes, sir.

Mr. Harris:
We object.

The Court:
Sustained.

Q. I will ask you now, Mr. Mitchell, while you were working there and when you went up there in April on this investigation trip, you and Mr. Baird and Mr. Thompson together, if you also inspected the open pit operations?
A. Yes, sir.
Q. Can you tell which is the largest open pit operation there is up there?
A. The pit known as the Hull-Rust is the largest pit.

Mr. Burr:
Will you please identify this next?

The Clerk:
Plaintiffs' Exhibit Number 40.

(Thereupon a map of the Hull-Rust pit was marked Plaintiffs' Exhibit No. 40.)

Q. Before asking you about the exhibit, Mr. Mitchell, will you please tell me the dimensions of that pit as to width and length and depth and how—

A. The pit is approximately two and a half to three miles long, about a mile wide, and perhaps 350 feet or a little better than that deep.

Mr. Harris:
May I—

Q. In that—

Mr. Harris:
May I call the attention of the Court—

Mr. Burr:
Yes, sir.

Mr. Harris:
—to the distinction between pit and underground mine? I want to remind the Court of that distinction.

The Court:
All right. I will overrule the objection. You have an exception to this line of testimony.

Mr. Harris:
All right, sir.

Q. What did you say was the name of that pit there?
A. The Hull-Rust.
Q. Does one company or several companies operate in that same pit?
A. Yes, sir, there are several mining companies that are operating in the same pit or same hole.
Q. What kind of machinery or equipment do they use —I will ask you this: The mining started at the surface, originally, did it not, or near the surface?
A. Yes, sir.

Q. About how near the surface did they strike that ore when, they started it?

A. In the Hull-Rust Pit I think the ore was in about four feet of the surface.

Q. Four feet of the surface?

A. Yes, sir.

Q. As they take the ore out the pit gradually gets deeper?

A. Yes, sir.

Q. How do they take that ore out of the pit?

A. The ore is taken out by mechanical shovels.

Q. By what?

A. By mechanical shovels.

Q. What is the motive power, steam or electricity or what?

A. At the present time the large shovels are powered with electricity.

Q. As they go down, do they go straight down or is there left on the sides places for transportation to haul the ore, or anything of that sort?

A. There are benches left on the side where they put the tracks, standard railroad tracks, which carry the cars to transport the ore from the pit to the surface.

Q. Are those roads like on some of our high mountains, keep coming around—

A. That is right; they have to wind around.

Q. Have to wind around?

A. Yes, sir.

Q. Do you know whether they have reached the bottom of that ore now, or do you know whether the ore, by means of diamond drills, has been found to go further below the present bottom?

A. I couldn't answer that question directly, but I know they were working it in April when we were there. They hadn't reached the bottom.

Q. When the men are getting down—First, these electrical shovels we are talking about, what size crew does it take to operate one of those shovels?

A. Four or five men.

Q. About—do you know in a general way the ore production of the Tennessee Company in all its ore mines on the mountain,—ore mines, I am asking about, on the mountain?

A. Yes, sir.

Q. Will one of those shovels get out as much as that or more—

The Court:
Mr. Burr,—

Mr. Burr:
Yes, sir.

The Court:
Unless it is shown the men dig and blast ore there like they do here in Alabama, I am not going into it.

Q. Do the men blast there?

A. They do some blasting?

The Court:
To any great extent?

The Witness:
Not as much as we do here.

The Court:
In fact, the shovels do most of the digging?

The Witness:
Yes, sir.

Mr. Harris:
We object.

The Court:
I sustain the objection.

Mr. Harris:
We move to exclude the testimony about all this open pit mining.

The Court:
Sustained.

Mr. Burr:
We except. We don't think that is any distinction at all when travel time is involved.

The Court:
It is a question bearing on conditions.

Mr. Burr:
No, sir, on the intent of Congress in passing this act. Congress said nothing about underground ore mines.

The Court:
It is a case of work done.

Mr. Burr:
That is true when you get to the individual workman. In this case the individual workman hasn't anything to do with it. However, I am just respectfully reserving my exception.

Mr. Harris:
It is understood we have—

Mr. Burr:
It is all an offer. The objection is sustained.

The Court:
You are objecting and I sustain the objection.

Mr. Harris:
Just so the witness doesn't offer anything.

Mr. Burr:
No. I am making it an offer of proof like I did yesterday.

The plaintiffs, separately and severally, offer to prove by this witness that at all times—that at the time he worked at these underground mines he was also engaged in the business of surveying in the pit mines and became familiar with them, and that on his trip back there in April he found substantially the same conditions as to methods of operations existing then as previously existed.

That the miners in traveling to and from their places of work have to get down to their working place, which are either steam shovels or such unit of work as they do, running a locomotive, or any unit of work that they do; that the operations are by electric shovels principally, and one or two or three or four,—sometimes a crew of as many as five employees operating one of these shovels produces as much iron ore in one day as the Tennessee Company can and does produce in all its iron ore mines in one day.

You mean with one shovel?

Mr. Burr:
Yes, sir, with one shovel.

The Court:
That is five men?

Mr. Burr:

That is five men, yes, sir.

That the iron ore produced from these open pit operations constitutes something over 85 percent of the total production of the iron ore of the United States.

That in these open pit mines in the Lake Superior District,—ore mines,—the miners reach their working places or unit of work where they actually begin producing ore, in various ways.

We offer to show in one of them operated by the Republic Steel Corporation, that in order to get to the bottom of the pit the company had sunk a shaft from the surface, and this shaft goes down several hundred—not several hundred feet, but about how many feet, for my own information?

The Witness:

About 200 feet.

Mr. Burr:

Goes down about 200 feet, and there has been driven from the bottom of the shaft a tunnel which runs into the pit and that tunnel is about how long?

The Witness:

Three or four hundred feet.

Mr. Burr:

Is three or four hundred feet, and that the employees of that particular mine get to their places of work by being let down the shaft in a cage and walking through the tunnel to where the tunnel strikes one of the benches of the pit, and then the pit has been extended below that bench, and they walk from that place on down to the working place, and that walk, when he was there in April was—about how much?

The Witness:

About 400 feet.

Mr. Burr:

About 400 feet, and that those particular miners get to their places of work in that way.

That this is one of the large operations in this particular open pit.

That the miners of the other companies that operate in that same pit, and in other pits similar to it, get to their units of work at the bottom of the pit in various ways. Some of them, at their option, ride the trains that circle around the various ridges,—

The Witness:

Benches.

Mr. Burr:

Benches. —that is, the trains that haul the ore or empty cars; the majority of them either walk down to their working places by walking along the ridges or benches,—either that or they use steps which have been built from the rib down to the working places; that there were as many as 75 of these steps leading from the rim down to the bottom of the pit that the men climbed up and climbed down, and that after they get off these steps, which do not go all the way down to the bottom of the pit, they walk an additional distance by walking around the rims until they get to their working places; that that same condition has existed ever since he has been familiar with the mining business in that country, and that when the men get down to their work unit, the steam shovel or electric shovel or locomotive engine, that the men's pay begins, and is computed from the time they reach the working place, and there is not included any of the time in getting to or from their working places.

Mr. Harris:

On that particular phase we add the additional objection that knowledge on his part would be hearsay.

Mr. Burr:

He was there in 1919.

Mr. Harris:

1919 is twenty years ago.

Mr. Burr:

We will show it came on down all the time until now. That is one of the things I am offering to show, the same conditions existed back in 1919, and then he goes back there and finds conditions—

The Court:

That was before he came to Alabama?

Mr. Burr:

Yes, sir, and have been going on since they started the mines.

The Court:

How old is that mine?

The Witness:

About fifty-two or -three years old.

The Court:

To what extent had it been mined before you came to Alabama?

The Witness:

I expect it had been mined about fifty-percent, Your Honor. It was a very large pit when I was there.

Mr. Burr:

Now, we offer as a part of his testimony Plaintiffs' Exhibit 40, which is a correct map of the operations in this particular mine, the Hull-Rust open pit mine, and shows the different companies and different ownerships, and the different locations of those ownerships.

Mr. Harris:

That is to be marked for identification only?

Mr. Burr:

Mark it just like it is. I am offering it.

The Court sustains objection to it?

The Court:

Yes, sir, I sustain objection.

Mr. Harris:

I thought he was marking those for identification to distinguish between those that were in evidence and those that were not in evidence.

The Court:

Yes, sir.

Mr. Burr:

No, sir, I haven't done it that way, no.

The Court:

You are offering Exhibit Number 40?

Mr. Burr:

Yes, sir, and objection is sustained to it.

Mr. Harris:

That is right.

Mr. Burr:
I understand objection is sustained to all that?

The Court:
That is right.

Mr. Harris:
That is right.

Mr. Burr:
And we except, separately and severally.
Will you please mark these for me next? They are photographs.

The Clerk:
Plaintiffs' Exhibit No. 41.

The Court:
What is that, Mr. Burr?

Mr. Burr:
They are photographs of this mine. This will be 42, and this 43.

(Thereupon three photographs of the Hull-Rust open pit mine were marked for identification, respectively, Plaintiffs' Exhibits 41, 42 and 43.)

Mr. Burr:
We offer to prove by this witness that Exhibit Number 42 is a correct picture taken at the bottom of the pit mine, and that exhibit 41 is another picture taken at the bottom showing the—

The Court:
That is what?

Mr. Burr:

—bottom and a glimpse of the side.

The Court:

That is Exhibit 41?

Mr. Burr:

Yes, sir. Now 43, we offer, and we do not offer the printed description, but offer the photograph only,—this is cut out of a magazine,—as a correct picture view of the mine itself, a map of it, showing the location of some of the principal mines, and on the second page the steam shovel—the electric shovel in operation on the bottom of the pit, and the third picture showing the side of the pit and operations with the steam shovel.

Of course, we don't offer any of the printed matter.

The Court:

None of the printed matter?

Mr. Burr:

None of the printed matter describing it; just the actual pictures showing what it is.

Q. Now, when you were there in April, Mr. Mitchell, about—in your judgment—we are offering this too, Your Honor. Tell me.

(Thereupon Mr. Burr whispered with the witness.)

Mr. Burr:

We offer to prove by the witness that the length of the walk, the travel distance, that the man takes from the rim of the mine down to his working place will be as long a distance as a mile, and will consume as much as forty or fifty minutes going down or coming back.

The Witness:
Just one way.

Mr. Burr:
One way, and that varies to where the shortest distance would be—what?

The Witness:
The shortest distance would be—

Mr. Harris:
Now, we—

Mr. Burr:
Just for my information; just whisper it to me.

Mr. Harris:
It looks like he is getting in evidence I am objecting to.

Mr. Burr:
Nobody in the world is putting in evidence. The shortest distance—

The Court:
That is what you offer to prove?

Mr. Burr:
Yes, sir.
The shortest distance would be about five or ten minutes each way, and the distances would vary between those two—

The Court:
As the men walk?

Mr. Burr:
As the men walk down, yes, sir.

And that the offer—the offer also includes an offer to prove that similar conditions existed there when he was back the last time; that he found the same conditions that existed there when he was there the first time were there when he was back the last time, and he can testify from the physical conditions there in April that the same method had been used in carrying the mining on down further, and in transporting the men and ore, and that the distances the men had to be transported or walk in, and the ore had to be transported accumulated more each year.

Mr. All wants to ask him one question.

The Court:

Are you through?

Mr. Burr:

Yes, sir, I am through.

The Court:

It is understood that is objected to and objection sustained.

Yes, sir, and we make the same offer as to each plaintiff and each paragraph of the offer and the same kind of exception we have been taking all through.

The Court:

Yes, sir.

Mr. All:

Judge, this is to be as to underground mines.

The Court:

Yes, sir.

(By Mr. All):

Q. You said in April you made some investigations in two very large fields?

A. Yes, sir.

Q. Which ones?

A. Mesaba and Gogebic.

Q. You testified to methods which were employed by means of these levels and the shafts—

A. Yes, sir.

Q. —at the time you observed it in April; is that right?

A. That is right.

Q. And I believe you stated the method of mining you observed in April was essentially the same as those you observed followed in those mines in ranges before you came to Alabama?

A. Yes, sir.

Q. What I want to ask you particularly, in the shaft mines where you observed the men in these lower levels, could you tell from watching that part that had been mined out of the upper levels, whether or not the same method of mining had been employed in mining out the upper levels?

A. I don't quite understand your question.

Q. Well, you go down, say, and observe how the current mining is being done in the 75th level.

A. Yes, sir.

Q. You see how that is being done.

A. Yes, sir.

Q. Did you observe the upper part of that mine?

A. No, sir.

Q. Did you see a—

The Court:

He says he did not examine it—

Mr. All:

He says he did not examine the inside of the mine.

Q. Did you go down this shaft?

A. Yes, sir.

Q. Could you see there were upper levels and upper entries to this thing?

A. No, sir, because you are practically enclosed in the cage.

Mr. All:

That is all.

Cross Examination.

(By Mr. Harris):

Q. Mr. Mitchell, the nature of this ore deposit in the shaft mines that you worked in and that you visited in April is not clear to me. Is that deposit a stratum of ore just uptilted, just as if you had taken a horizontal ore bench in Alabama and turned it up almost vertically, or is it an essentially different kind of ore?

A. You will have to qualify that question by confining it to the different ranges.

Q. Well, now, let's take the range that you visited and that you testified about. I am talking about not the pit mines but the shaft mines. Which ranges—name the ranges that you visited.

A. The Mesaba Range and the Gogebic.

Q. All right. Take the Mesaba range and tell us how that ore is actually deposited in the earth, what form and shape it is in.

A. I will have to use the board to explain it.

Q. All right.

A. These are what we call lenticular deposits.

Q. Lenticular?

A. Yes, sir. In other words, they have a greater horizontal dimension compared with the vertical dimension. For instance, in this Hull-Rust pit—

Q. I am not talking about the pits.

A. The pits and the underground deposits are the same. These pits may have an extent of three or four miles this way and a mile this way with a depth of about three or four hundred feet. The only thing that determines whether you shall mine that by underground method or open pit method is the thickness of the cover up here. If you have the top not very thick, as in the case of the Hull-Rust, you would mine it by open pit method.

If you have a good deposit here with the cover 100 or more feet thick, then you would sink a shaft and then drive out this way with your haulage ways or levels.

Q. When you sink this shaft, that is just a straight, vertical shaft like the elevator in a New York skyscraper, isn't it?

A. Yes, sir.

Q. Like an elevator shaft?

A. Yes, sir.

Q. When you spoke about a cage going down with the speed of an elevator, you meant the speed of an elevator that goes to the thirtieth or fortieth floor in a tall building, and not the local elevator?

A. Yes, sir.

Q. Now, when you sink your shaft and start out on the horizontal to get to your ore bed, that doesn't try—that drift doesn't try to follow—the miners don't try to make it follow any ore bed itself, but that is purely a passage way to get to the ore bed, isn't it?

A. That is correct.

Q. And, therefore, that passage way is uniformly level, isn't it?

A. It may be level or it may be on a slight grade.

Q. Not more than a three-percent pitch one way or the other? Now, how close do you start digging that vertical shaft to the edge of the ore deposit?

A. That would depend on the geological conditions or the condition of the foot wall. The approximate figure would be a couple of hundred feet, I would say.

Q. All you are really doing is to leave enough pillar in there between the shaft and the ore bed for that pillar to protect your vertical shaft, isn't it?

A. That is correct.

Q. So you would start off underground at a distance of 100 or 200 feet from the ore itself?

A. That is right.

Q. And when you sink your shaft, do you have all 35 levels being mined at one and the same time, or do you mine the tops levels, and when you get them mined out, go out with the lower drifts?

A. That is correct; it is a progressive system.

Q. It is a progressive system?

A. Yes, sir.

Q. So that, in the beginning, when they start, the only distance that a miner in that sort of mine would have to travel to get to his ore deposit would be from 100 to 200 feet?

A. That is true of that drift, but he may have to go farther this way.

Q. That is correct; that is to say, to get to the ore deposit?

A. That is correct.

Q. Now, if we use this book as an illustration of the ore deposit. They come in here, and that is the drift leading to it?

A. Let's put the book this way and it would be correct.

Q. Then they, when they hit the book—the ore deposit, they go out in a horizontal direction?

A. That is right.

Q. Just as if they were going to mine out this book here standing this way?

A. That is right.

Q. And the deepest mine you knew anything about up there was the Montreal mine, wasn't it?

A. That was the deepest one I visited.

Q. And that was only down 3500 feet approximately?

A. 3500 feet.

Q. To ride that 3500 feet on those high speed elevators, wouldn't take two minutes, would it?

A. Takes approximately three minutes, I think.

Q. And the ore deposit itself being practically vertical, the distance from your landing place on the 35th level out to the ore deposit, would be approximately how many feet in the deepest one you visited?

A. Four or five hundred feet.

Mr. Burr:

I didn't get that answer.

Mr. Harris:

Four or five hundred feet.

Q. Now, the—what other mine of vertical shaft of that nature did you visit up there? You say you visited the Montreal?

A. Geneva.

Q. What?

A. The Geneva mine.

Q. And how deep had that gone down?

A. That was 3400 feet.

Q. And the distance from the 34th level over to the ore deposit was in that, I assume, four or five hundred feet?

A. Approximately the same.

Q. And then what other mine did you visit of a vertical shaft nature?

A. The Godfrey mine on the Mesaba Range.

Q. And what level had it reached?

A. It is a one-level mine approximately 230 feet from the surface.

Q. Well, that has a vertical shaft?

A. Yes, sir.

Q. 200 feet deep, and so in that mine all the ride in the elevator is about 200 feet?

A. 230 feet.

Q. Then they only have to walk about 230 feet, something like that, to get to the ore bed, don't they?

A. Approximately that, yes, sir.

Q. In none of those vertical mines, vertical shafts that you went, did you find any greater distances from the shaft to the ore bed than 500 feet, did you?

A. No, sir.

Q. Now, are those—any of those vertical mines, if I may use that phrase, or shaft mines, owned by the United States Steel Corporation or any subsidiary of the United States Steel Corporation?

Mr. Burr:
We want to note an exception to that question.

Mr. Harris:
The reason I am bringing that in—

Mr. Burr:
I just want the objection.

Mr. Harris:
I just want to explain to the Court—

The Court:
Go ahead.

Mr. Harris:
The reason I am bringing that in, Mr. Burr, on some days—the days are all run together in my mind and I can't remember the exact day—presented evidence of the

competitive situation between the mines here in this district and mines elsewhere.

I propose to show on these mines this gentleman has visited the same ownership obtains as obtains to these plaintiffs.

Mr. Burr:

If Your Honor please, until he made that statement I didn't state my grounds of objection.

The competition I have talked about is not the kind of competition he is talking about.

The kind of competition he is talking about, I don't think it is material in this case.

The Court:

I overrule the objection and will let you all argue that to the Court.

Mr. Burr:

Argue that to the Court. That is a good way to handle it, I think.

I would like to state my position on the matter.

Some of the stiffest competition the Tennessee Company has—we are not interested in the Tennessee Company right now—is with the subsidiaries of the United States Steel Corporation.

Mr. Harris:

The Court says you may answer the question.

Will you read the question?

(Thereupon the question last propounded was read as above recorded.)

A. Yes, sir.

Q. Which one of those shaft mines you visited was owned by the United States Steel Corporation or a subsidiary?

Mr. Burr:

Your Honor understands we have the same objection?

The Court:

Yes, sir; same ruling.

A. The Godfrey mine.

Q. What?

A. The Godfrey mine.

Q. The Oliver Iron Company, is that a shaft mine or pit mine?

A. The Oliver Iron Mining Company is a mining company. They have both open pit and underground mines.

Q. Did you visit any of the mines of the Oliver Mining Company?

A. The Godfrey mine is one of the mines of the Oliver Mining Company.

Q. And the Oliver Mining Company is a subsidiary of the United States Steel Corporation?

A. That is correct.

Q. Now, were any of those shaft mines you visited operated by the Republic Steel Corporation or Republic Corporation or a subsidiary of it?

A. We did not go underground in any Republic mine.

Q. Well, whether you went underground or not, are there mines up in that region which are operated by the Republic Company?

A. Yes, sir.

Q. Do you know the names of the mines, the shaft mines operated by Republic up there?

A. The Susquehana Mine, which is a combination open pit and shaft mine on the Mesaba Range.

Q. Any others?

A. They have some mines in the Gogebic district also, the Palms,—Angles, I believe, was one of them.

Q. Was the mine you worked for twenty years or more ago—was it at that time or is it now owned by a subsidiary of the United States Steel Corporation?

A. No, sir.

Q. When you were with the mine you worked for—it was a shaft mine, Cleveland-Cliffs Iron Company?

A. The Cleveland-Cliffs Iron Company have the same relations as the Oliver Mining Company. They have several mines, both open pit and underground mines.

Q. And you worked in the underground mine?

A. The mine I happened to be connected with was a combination mine, open pit and shaft.

Q. And the men in the shaft mine—in that mine had their lunch on the company's time, didn't they?

A. I can't answer definitely on that.

Q. Can't tell about that? Well, now, you know—Well, did you know whether or not the Cleveland-Cliffs Mining Company was owned jointly by a member of the big iron or steel companies?

Mr. Burr:

We object to that question along with his other questions just for the same reason.

The Court:

Overruled.

Mr. Burr:

All right, sir. We except.

A. As far as I know at that time Cleveland-Cliffs was an independent company.

Q. How about now?

A. Now, I think they are more or less connected with the Republic Steel Corporation.

Q. All right.

Mr. Burr:
In addition to our objection, we move to exclude his answer because he says he thinks. He doesn't know. He couldn't know to save his life.

Q. Now, then, Mr.—

Mr. Burr:
Wait a minute. I want this ruled on.

The Court:
Did you say you think or you know?

The Witness:
I say I think so. I don't necessarily know.

The Court:
Sustain the objection.

Q. Well, is the Cleveland-Cliffs Iron Company generally reputed to be an affiliate or subsidiary of the Republic Company?

Mr. Burr:
Same objection to that question if the Court please. I don't think we are trying any anti-monopoly case.

Mr. Harris:
I am not trying an anti-monopoly case. It is something he brought in.

The Court:
Sustain the objection.

Mr. Burr:
It is on the operation of the mines up there. I don't know whether it is owned by Tom, Dick or Harry.

The Court:
Sustain the objection.

Q. How far does the ore from those vertical shafts have to be transported by railroad after it leaves the mouth of the mine before it gets to a water haul?

A. Water haul, was that the last word?

Q. Yes, the last word was a water haul or boat transportation.

Mr. Burr:
We object to that question too.

The Court:
Overruled.

Mr. Burr:
We except

A. The ore from the Mesaba Range is transported to the ports of Duluth, Minnesota, or Superior, Wisconsin.

Q. How far is that?

A. I don't know the exact distance; about sixty miles.

Q. When it gets there is it transhipped to boat?

A. It is placed in boats.

Mr. Burr:
Your Honor understands I have an objection to these questions.

The Court:
Overruled.

Mr. Burr:
That is a good deal further off than a coal mine in Alabama, I think.

Q. After it gets to the boat, how far is the water haul?

A. That would depend on whether it was going to the Chicago District or Cleveland District.

Q. Or Pittsburgh District?

A. Yes, sir; that is Cleveland.

Q. Well, how far is that water haul, say, to the Chicago district?

A. Anything I say would be guess work.

Q. You have traveled up in that region, haven't you?

A. Yes, sir.

Q. You have a judgment, don't you, Mr. Mitchell?

A. I would say about a thousand miles.

Q. All right. How far is it to Cleveland?

A. About 1200.

Q. And how far is the water haul on the ore going to Pittsburgh.

A. Going to Pittsburgh, it would have to go to some Lake Erie port, which would be about the same distance as the Cleveland ore.

Q. The Cleveland ore, does that have another railroad haulage after the boat haulage?

A. Yes, sir.

Q. How far is the railroad haulage at the other end, the Cleveland end?

A. Approximately a hundred miles You are talking about the Cleveland District now?

Q. All right. That is close enough. And how far is the railroad haulage at the Pittsburgh end?

A. About 150 miles.

Q. Is there any railroad haulage of a substantial nature at the Chicago end?

A. That is practically on the Lake shore.

The Court:

We will take a few minutes recess.

(Thereupon proceedings were in recess from 10:40 A. M., to 10:55 A. M., at which time proceedings were resumed as follows:)

Mr. Harris:
Shall I—

The Court:
Proceed.

Q. Mr. Mitchell, you are in the engineering department, aren't you?

A. Yes, sir.

Q. In the engineering work do you make surveys of the mines or is that done under your supervision, or does your work touch only one mine of the Tennessee Company?

A. That is done under my supervision.

Q. Are all the mines of the Tennessee Company under your engineering supervision?

A. No; just the mines at the Wenonah Division.

Q. At the Wenonah Division?

A. Yes, sir.

Q. As I understood those vertical shafts you testified about, two of them, one down to 3500 feet vertically and the other 3400 feet vertically—

A. That is right.

Q. How thick is the thickest top on the mines at Wenonah over which you have engineering supervision?

A. About 1500 feet.

Q. Have they made test drills of that cover? Have the Tennessee Company made test drills of that cover?

A. It has been diamond drilled, yes, sir.

Q. Is there anything in the geological formation of the cover or the ore deposits here that would make impossible the sinking of a vertical shaft here?

A. No, I don't know of anything.

Q. And what company or companies in this district have already sunk vertical shafts?

A. The Woodward Iron Company.

Q. How many vertical shafts have they got?

A. They have two.

Q. Now, do you know anything about how far the fluxing material has to be transported that goes into the shaft ore at Cleveland, at Chicago and at Pittsburgh?

Mr. Burr:

We want an objection noted to that line of questions, Your Honor, as having nothing to do with this case.

The Court:

Overruled.

Mr. Burr:

We except.

A. I don't believe I can give you any very good idea about that.

Q. Well, do you know anything about blast furnace operations at all?

A. I know the chemical procedure, yes.

Q. And you do know that the ore from the vertical shafts you have talked about is not a self-fluxing ore, do you not?

A. No, it is not self-fluxing.

Q. And the materials to make it flux have to be brought to the furnaces and mixed with the ore?

A. That is correct.

Q. Do you have any idea where that material is obtained even though you do not know the number of miles? Where do they get it?

A. I am afraid any testimony I might give on that would be purely a guess.

The Court:
Mr. Burr, anything in rebuttal?

Mr. Burr:
Yes, sir.

The Court:
He is through.

Re-Direct Examination.

(By Mr. Burr):
Q. Mr. Mitchell,—

Mr. Burr:
I am asking my questions on rebuttal without waiving my objection, of course, to the testimony that has been elicited.

The Court:
Go ahead.

Q. You testified in answer to the questions of Mr. Harris concerning transportation by boat and so forth from the Lake Superior District to the Manufacturing Plants of various companies, and you also testified as to the chemical situation that exists in reference to the ore up there requiring fluxing.

Will you tell us how many tons of that ore it takes to make a ton of pig iron, and how many tons of ore mined out here at Wenonah and Muscoda and Ishkooda it takes to make a ton of pig iron?

A. Roughly, it would take two tons of the Lake Superior ore to make a ton of pig iron, and three tons of the Alabama ore.

Q. I see. I believe you have already testified that the ore in the Lake Superior Region lies in these pockets, I would call them.

A. Lenticular deposits is the right word for it.

Q. And where they are close enough to the surface they are handled by steam shovels or electric shovels?

A. That is right.

Q. Can a five man crew with an electric shovel handle as much ore—

Mr. Harris:

We have objection—

Q. —in one day as all the mines of the Tennessee Company?

Mr. Harris:

We have an objection to anything about pit operations.

Mr. Burr:

He has asked about pit ore being carried by boats.

Mr. Harris:

I didn't ask anything about pit ore.

The Court:

Sustain the objection.

Mr. Burr:

We offer to show in answer to the testimony he brought out, that the same ore that is transported by boat that was testified about on cross examination, that in the mining of that ore three men can, in one day, mine as much ore as the 5,000 miners in the ore mines in Alabama can mine in one day.

Mr. Harris:

We object to that.

The Court:
The testimony is confined to underground mines.

Mr. Burr:
That is my offer, Your Honor.

The Court:
Sustain the objection.

Mr. Burr:
I couldn't separate—

The Court:
Sustained.

Mr. Burr:
Except.

Q. I will ask you this question: Do you know what the proportion of the ore that comes out of the Lake Superior District mined in underground mines and pits is?

Mr. Harris:
We object to that,—Any comparison between shaft and pit ore. That has nothing to do with this case.

The Court:
Sustained.

Mr. Burr:
We except.

The Court:
I will permit you to show the amount of ore mined.

Mr. Burr:

That is in government publications we will have in a few minutes.

Q. Take the Godfrey mine,—that mine, you say, is owned by the Oliver Company?

A. Yes, sir.

Q. That is the one, you say, that has one level?

A. Yes, sir.

Q. It has only one level before it gets to this ore, and then they mine the ore by the method you have described, going almost laterally with the ore bed, and then coming up steps?

A. In that case there are no steps because it is all on one level.

Q. Then there are no steps in this particular case?

A. No, sir.

Q. That mine is owned by whom?

A. The Oliver Mining Company.

Q. In that particular case the Oliver Mining Company mines that ore with the miners having to travel only the two or three hundred feet down the shaft, and then walking the amount of distance—how far was it?—to the ore bed?

A. I think we are getting a little confused because you are using a diagram of the Gogebic Range illustrating a Mesaba Range Mine.

Q. Doesn't that illustrate it?

A. It would, if you could cut over this pitch of the ore.

Q. In the Godfrey Mine the miners come down this shaft how far?

A. 230 feet.

Q. Then they walk up this drift or level?

A. Yes, sir.

Q. When the mine first started it started when they struck the ore pocket?

A. That is right.

Q. The distance was shorter?

A. Yes, sir.

Q. And the distance kept growing greater?

A. Yes, sir, that is right.

Q. Until now it is a maximum of how much?

A. 17 or 18 hundred feet.

Q. Now, I believe you said the Montreal Mine—is that the one he asked you about?

A. Yes, sir.

Q. That has thirty-five levels?

A. Yes, sir.

Q. The Montreal Mine is owned by what company?

A. Overby-Norton Company.

Q. Overby-Norton Company?

A. Yes, sir.

Q. So, in that mine, when you were up there in April, the miners had to come down the shaft how far?

A. 3500 feet.

Q. And then they had to walk how far?

A. Four or five hundred feet until they struck the ore body.

Q. Until they struck the ore body, and then they had to go laterally to where their working places were?

A. Yes, sir.

Q. And then after that they had to climb the raises to their working places?

A. Yes, sir.

The Court:

Mr. Burr, you have been over that.

Mr. Burr:

No, sir.

Q. This is in the Montreal Mine?

A. Yes, sir.

Q. How far do they walk after they climb up to their working places?

A. Practically right at it.

Mr. Harris:

And go through the four-foot hole?

The Witness:

Yes, sir.

The Court:

We have been over that.

Q. Now, Mr. Mitchell, you were asked about the stock ownership or control of various companies up there. Has the Sloss Company got any subsidiary up therein that country you know anything about?

A. Not that I know anything about.

Q. Has the Woodward Company got any subsidiaries up there?

A. Not that I know of.

Q. Do you know the Oliver is a subsidiary of the United States Steel Corporation?

A. Yes, sir.

Q. Do you know the Republic has any subsidiaries up there?

A. The Republic Corporation does mine ore. I think it is the parent company.

Q. Is the Republic Company that operates up there—I am offering to prove this,—is that the company up there that operates in the open pit—

Mr. Harris:

We object.

Mr. Burr:

I said I was offering to prove this—

Q. —by means of a shaft driven down and then by a tunnel over to the pit?

Mr. Harris:
We object.

The Court:
I don't understand your question.

Mr. Burr:
I offered to prove the operations of one company up there in the open pit operation which got its men to their working places by means of a shaft driven down and a tunnel, and I am offering to prove now that is the Republic Company.

Mr. Harris:
We object.

The Court:
Sustained.

Mr. Burr:
That is an offer to prove, and we except.

The Court:
All right.

Mr. Burr:
I think that is all, Your Honor. Just one minute.

(By Mr. Burr):
Q. The shaft mines you spoke of in this district, how many of them did you say were in operation in this district?
A. There are none in operation.
Q. There are none in operation?

A. Two vertical shafts, however.

Q. Where are those vertical shafts you mentioned located, and who do they belong to?

A. They both belong to the Woodward Iron Company.

Q. Where are they?

A. One is at the Sango Mine.

Q. Do you know how long since that mine has been in operation?

A. I can't say exactly. I think it is about twenty-four or twenty-five.

Q. Where is the other?

A. The other is called the Pyne Shaft. It is not an operating mine but simply a shaft.

Q. Has it ever been an operating mine in your knowledge?

A. There are only two that I know of.

Q. Well, since you have been here did the Gulf States Steel Company, which has been absorbed by Republic, operate a shaft mine over in the valley?

A. It operated an inclined shaft.

Q. How long since that has been in operation?

A. I expect it shut down about '31 or '32.

Q. Not operating now, is it?

A. No, sir.

Q. Now, as a mining engineer, Mr. Mitchell, familiar with these mines on Red Mountain that operate with the slope method, and knowing the pitch and slope of the ore, and the conditions, which is the most practical way to operate those mines, by the present method or putting down shafts?

Mr. Harris:

We object; calling for an unauthorized conclusion and speculation.

The Court:

Overruled.

Q. Answer it.

A. At the present time I would say the slope operation is the most economical.

Q. Is sinking a shaft—they don't just grow there; you have to put them down, don't you?

A. Yes, sir.

Q. Is it expensive or inexpensive?

A. Yes, it is expensive.

Q. We had no shaft mine operating in this district at the time of the passage—since October 24, 1938, have we?

A. No, sir.

Mr. Burr:
That is all.

Re-Cross Examination.

(By Mr. Harris):

Q. As I understand, it is your opinion that on a collar to collar basis it is more economical for the company to pay for the time consumed in going the entire distance from the mouth back as much as a mile or two miles in the slope system now than it would be to use a vertical shaft system?

Mr. Burr:
I object to that question.

Mr. Harris:
I want to know if he is basing it—

Mr. Burr:
I want my objection to it.

The Court:
Overruled.

Mr. Burr:

And an exception.

A. That would be rather hard to answer off hand. I would have to make a study of it.

Q. You told Mr. Burr in your opinion it was more practicable and economical to use the slope method than to sink a shaft?

A. At the present time, yes, sir.

Q. Now, when you say that are you taking into account the payment of the collar to collar basis?

A. I will have to confess the portal to portal rule did not enter my mind in that light.

Mr. Burr:

Neither did I include it in the question; it hasn't got a thing in the world to do with it.

A. You would have to make a very careful study on that.

Q. So, your opinion on that, on reflection, you wouldn't consider it worth anything whatever?

A. In the light of the collar to collar ruling, it would porbably have to be revised.

Q. Under all the circumstances, your opinion you just gave Mr. Burr, as an engineer, and to the Court, you would consider it valueless?

A. No, I wouldn't say that.

Mr. Harris:

That is all.

The Court:

Is that all.

Mr. Burr:

What I asked you, Mr. Mitchell, and I will ask you again if you didn't understand—

The Court:
I heard it.

Mr. Burr:
All right.

The Court:
It is plain.

Mr. Burr:
That is all.

The Court:
Come down.

(Witness excused.)

The Court:
Who will you have?

Mr. Burr:
I was asked to prepare these showings. There they are.

The Court:
They will have to have time to see them.

Mr. Harris:
Yes, sir, I want to see them. I want very much to see them before my case starts. I thought I was to have them this morning. I was at my office at twenty minutes of eight.

Mr. Burr:
Judge, I worked last night and got to my office before eight o'clock this morning. I am perfectly willing for him to have all the time he wants, but if he is criticising me—

Mr. Harris:
I am not criticising you.

The Court:
How long will it take to check this?

Mr. Harris:
I don't know.

The Court:
Will thirty minutes do?

Mr. Harris:
Yes, sir.

The Court:
Have you anything else?

Mr. Burr:
I have this documentary evidence.

Mr. Harris:
Well, maybe the documentary evidence will take up to thirty minutes of noon. If this documentary evidence is offered, it might take him until a half hour before adjourning time. Then, I will wait.

The Court:
It is a quarter after 11:00 now.

(The showings referred to are as follows:)

2224 J. F. VANCE, if present and sworn as a witness, would testify as follows:

Until I recently reached the retirement age I held the position with the Tennessee Company of Manager of Industrial Relations. I became Manager of Industrial Relations in the year 1933 and continued to serve in this capacity until the end of September, 1940, and since this time have served as Assistant to the President in an advisory capacity in connection with employee relationships. Previous to becoming Manager of Industrial Relations I had served for approximately 17 years as Manager of the Employment Bureau, and previous to this had served for many years in the transportation and other departments of the Tennessee Company. My service with the Tennessee Company aggregates about 46 years.

During this entire time it has been a part of my duties to know the relationships existing between the company and its men, the methods of employment, the handling of complaints and grievances and the negotiation and fixing of wage scales and of all working contracts. I have had charge of and set in the conferences with the committees representing the Smelters Union, the Brotherhood (American Federation of Labor Union), the employees' representatives and groups and individual employees. I am familiar with the contracts which have been negotiated and signed with all these unions.

The contracts which have been offered in evidence during the testimony of Mr. Ball and identified as T. C. I. Exhibits .... are the contracts which we have actually signed with unions or committees representing unions, and constitute all the contracts with the exception of contracts which I now identify as T. C. I. Exhibits .... These contracts are the original contracts signed by the authorized representatives of the Union and by the authorized representatives of the Company. T. C. I. Exhibit ...., followed meetings which we held in the City of New York, attended by myself and other representatives of the Company and by Mr. Reid Robinson, International President of the Smelters Union and other authorized representatives of this Union and of the Locals of this Union at Muscoda, Wenonah and Ishkooda.

The making of this contract was a part of a settlement which was made by the Tennessee Company and the International Union and its locals of charges that were then pending before the National Labor Relations Board. These charges involved the claim on the part of the Union that approximately 172 members of their Union had been improperly and discriminatorily discharged by the Company and were entitled to reinstatement and payment of back wages. At this conference the Company agreed to pay in settlement of these claims approximately $102,650.00 and to give re-employment to 138 of these people, and as a part of this same agreement the Union and its locals and the company agreed to enter into a written working agreement. The Exhibit T. C. I. No. .... is the agreement which was thus agreed upon and was executed by the parties, this being substantially agreed upon at conferences held in New York and Chicago and then being agreed upon in final form and executed in Birmingham by the parties whose signatures appear upon the paper.

During all these negotiations none of the union representatives at any time requested or suggested that the workday be changed from the existing practice of working place to working place, and the stipulation in reference to what the workingday should consist of was discussed and agreed upon as a part of the agreement reached and was incorporated in the contract as signed.

I took part in the negotiations that preceded the making of all the other contracts which have been introduced in evidence, and I also took part in all negotiations which were held since 1933 where any question of labor relations, increase of wages, wage scales and matters of this kind came under consideration for the ore mines of the Tennessee Company.

I identify T. C. I. Exhibits No. 5, 6 and 7, which have been offered in evidence during the testimony of Mr. Ball.

I was present at the time the Union presented first in October, 1933, their verbal request containing six suggestions or demands. T. C. I. Exhibit No. 5 is a correct statement of these six requests made at this time, and T. C. I. Exhibit No. 7 is a correct statement of the reply that the President of the Company made to these requests.

I am also familiar with the demand presented on or about April 13, 1934, by defendant Van D. Jones and others, representing the Smelters Union, containing twenty-two request and which has been identified as T. C. I. Exhibit No. 6. The response of the President of the Company to this request is correctly stated in the written paper which has been identified as T. C. I. Exhibit No. 7.

I was present at all the other meetings relating to industrial relations which have been testified to by Mr. Ball and the statements made by Mr. Ball with reference to these meetings are true.

With the exception of these written documents (T. C. I. Exhibits 5, 6 and 7) and this occurred, as I recall it, on only three occasions, no committee of any union or representing any of our employees has ever presented a suggestion, request or demand that any portion of the time spent in going to and from the working place should be part of the day's work and should be compensated for. On these occasions, while the request of payment of half of the traveling time was made, it was never insisted upon by those presenting the request, and was never brought up for discussion or discussed.

The Tennessee Company has, during the entire period of time that I have been connected with it, paid its underground employees, and its underground employees have accepted payment on the basis of time computed on the workingplace to workingplace plan, each one of the employees signing receipts therefor at each of the pay periods similar to T. C. I. Exhibits Nos. Y and V, and have accepted full settlement of their claims on this basis.

I know that following negotiations between the representatives of the Unions and the Company, in which I participated, a number of increases in wages have been granted, and these increases were all made and accepted and paid to the employees on the basis of working place to working place, and with the authorized committees of the Union expressly agreeing. These increases in wages would not have been given unless wages had been agreed to by the Unions to be computed and paid on the working place basis.

I know that the incentive plan was based on wages computed on the working place to working place basis, and know that every wage scale for the time I had charge of these matters until May 1, 1941, was based on the work- to by the Unions to be computed and paid on the working ing place to working place plan.

I identify T. C. I. Exhibits Nos. .... and ....
These contracts are the original contracts signed by the authorized representatives of the respective unions and by the authorized representatives of the Company.

In performing the duties of my position it has been necessary for me to become familiar and I have become familiar and known of the customs and practices in the other iron ore mines in Alabama, as well as in Minnesota and other sections of the United States, and I know that on October 24, 1938, and for many years previous the iron ore operations of the United States and in the various parts of the United States all computed and paid the wages of the underground employees on the working place to working place basis, and that they did not pay anything for the time spent in going to and from the working places.

The time spent in going to and from the working places varies in different mines in Alabama and also varies in different mines throughout the United States.

2229 GEORGE B. NEAL, if present and sworn as a witness, would testify as follows:

My name is George. B. Neal.

After finishing school I worked from 1907 until, 1932 in the brown ore mines of the Tennessee Company located at Greeley in Tuscaloosa County, and at Champion, located in Blount County, Alabama. I first started to work in the mines at sixteen years of age, and my first job was that of repair crewman. From that time on I have done about everything there is to be done in an ore mine, having run steam shovels, tenders, worked on repair crews, walking boss, ore inspector, assistant superintendent and superintendent. Some of the places that I worked at during my earlier experience were open pit mines. This is true of the ore mines at Greeley and Champion and the dolomite quarry of the Tennessee Company at Ketona.

In the open pit mines the men all worked on an hourly basis and their work time began when they actually commenced work at the place of production. The computation and payment of time was referred to as being when the men were "on their shovels" or unit of work. Some of these Alabama pits were deep and the men would have to walk to their shovels or unit of work, for instance, the locomotive or drills on the wall. This walking distance would consume approximately ten minutes; that is, ten minutes going and ten minutes returning.

My entire mine experience has been with the Tennessee Company. I became ore inspector for all the red ore mines of the company in 1922 and continued as ore inspector until December, 1923. During this time I inspected all the mines in all the Divisions of the Company and was in the mines from three to four times a week, being in some one of them nearly every day. In inspecting these ore mines I became familiar with the methods of operations and the conditions that existed in the mines. I became Superintendent of the Wenonah Division in January, 1924, and have continued as Superintendent until the present time.

When I first began working in the ore mines on Red Mountain the bath house charge was fifty cents, and this charge continued up until 1932, and was a voluntary payment on the part of the men; that is, the men were not required to bathe in the bath house but could bathe where they pleased. Some of them bathed at home.

The practice as to carbide in the mines has been practically the same ever since I have been connected with the iron ore mines. The men have always bought their carbide, and they would buy a supply which would last from two to three days. As a usual thing the men buy the carbide at the tally house where the Company keeps it and sells it for cost. ~~It can be purchased cheaper there than elsewhere.~~ When the miner puts his empty carbide can in at the window at the tally house a full can of carbide is given to him and it is charged up to him according to his name and badge number and it is cut through the pay roll. Obtaining the carbide takes only a fraction of a minute. There has not been in the past and is not now any crowding or delaying of the men at Wenonah because of having to get carbide.

The underground miners and underground workers have never been required to get tools on the surface at Wenonah. I do not know of any miners bringing tools into the mines for their own convenience. Tools originate at the outside supply house. On requisitions from the mine foreman they are sent by the surface crews from the supply house to the yard at the entrance of the mine by truck. From this place they are taken into the mines by underground service crews.

The witness would further testify that he has read the testimony of E. C. Scott and that the testimony of Mr. Scott as to methods and practices of the underground workers is true.

During the time I have been superintendent at Wenonah it has been my duty to take part in and I have taken part in all the meetings which have been held with the union committees (either Smelters Union or Brotherhood of A. F. of L. Union) at Wenonah concerning their complaints, grievances and requests relating to the Wenonah Division.

In addition to this I have attended most of the meetings held in Mr. Bell's office with the general committees of the unions above referred to in reference to requests, grievences and complaints covering the entire iron ore operations, these meetings have been held regularly since the year 1932 with the Smelters and since 1934 with the Brotherhood, the predecessor of the American Federation of Labor Union.

I have never heard any committee of any of these unions or any representative of any of these unions present at any time any request or complaint or suggestion that the time spent in traveling from the entrance of the mine to the place of work and return should be included as a part of the day's work or be in any way compensated for.

The computation of the time and payment of the men have always been on the working place to working place basis, and they have never received any pay for the time spent in traveling. I know that this has been the universal custom and practice in all the mines of the Tennessee Company since I have been connected with them.

In 1935 I was sent by the Company to inspect and learn the methods and practices used in the iron ore mines in Minnesota, Michigan and Wisconsin, and I visited and inspected iron ore mines in these states, went into the workings and saw the men at work. I know that at this time all of the underground miners were paid in all these mines on the working place to working place basis, and that none of them received any pay for time spent in going to and from their working places. At this same time I also inspected and went into the open pit operations in the State of Minnesota. These operations, one of them known as the Hull-Rust, are very large and very deep pits,—the largest in the world. Several companies have operations in this same big, open mouth pit. The operations are principally by electric shovels and one or two employees operating one of these shovels can produce and did produce while I was there as much iron ore in one day as the Tennessee Company can and does produce in all its iron ore mines in a day.

In this open pit mine the miners at this time reached the working places where they worked in actually producing ore at the electric shovel or other units in various ways. In one of these mines, operated by the Republic Company, which is located in the corner of the pit, a shaft has been driven some distance from the mouth of the pit and a tunnel made from the bottom of the shaft opening out into the pit where the Republic Company's ore was located. The miners working in this operation would go down the shaft on the cage and then walk through the tunnel into the open pit. At one time the place of work was on the same grade as the tunnel, but the work had been extended deeper so that it was some distance from the entrance of the tunnel and the men who used the tunnel would walk down a stairway, or follow switch tracks bringing them eventually to their unit of work. In this same mine other miners of the Republic Company and of other companies walked from the rim of the pit down to the working places in the bottom of the pit. In some instances they use stairways or steps which have been built down from the rim of the pit, and in some instances they ride cars part of the way and walk down steps the balance of the way.

As I have testified there are various ways for the miners in these open pit mines to get to their working places. They are in this particular open pit mine required to go different distances, some as far as half mile or more. The pit is about three miles long, about a mile wide, and about 340 feet deep. I found that there had been built, going from the rim of the pit, down into the pit, as many as seventy-five stairways which were in general use by the men in going to and from their working places.

The workday of the employees in these open pits is computed and they are paid from the time they reach their electrical shovel or their unit of work until the time they leave it, and they do not and did not receive any pay for any of the time spent in traveling to and from their working places.

All underground employees in the Wenonah Mines of the Tennessee Company have always been on an hourly basis and their wages computed and paid on this basis and on the basis of an occupational wage for each job.

Mr. Burr:

Now, shall I proceed with this documentary evidence?

The Court:

Yes.

Mr. Burr:

We offer first, if Your Honor please, the government publication; United States Department of the Interior, Bureau of Mines, Iron Ore, Pig Iron, Ferro-Alloys and Steel, which is covered by the pre-trial order and gives the government figures on the production of iron ore on pages 528, 542, 548, 549, 550, 551, 552, 553 and 554.

Mr. Harris:

And I, for my client, object to any figures dealing with production of iron ore outside of the Birmingham district, if the Court pleases.

The Court:

Does that include all districts, Mr. Burr?

Mr. Burr:

Yes, sir. That is similar to the one already in evidence. It is different pages,—different years.

Mr. Harris:
On the further ground we haven't seen it—

The Court:
I will admit it.

Mr. Harris:
Where it deals with pit mines—pit ores, we object.

The Court:
It is not with reference to pit mines? Mr. Burr, all statistics with reference to underground mines are admitted.

Mr. Burr:
Yes, sir.

The Court:
And those as to pit mines are not.

Mr. Burr:
We except to the pit mines being excluded.

Mr. Cooper:
May we have an opportunity to see that?

Mr. Burr:
These were presented on the pre-trial hearing about two or three months ago.

Mr. Cooper:
It wouldn't take but a moment.

The Court:
All right, you might look at it.

The Clerk:
That will be Plaintiffs' Exhibit 44.

The Court:
Plaintiffs' General Exhibit?

The Clerk:
Yes, sir.

(Thereupon a government publication ~~of~~ the United States Department of the Interior, Harold L. Ickes, Secretary, Bureau of Mines, R. R. Sayers, Director, Entitled, "Iron Ore, Pig Iron, Ferro-Alloys, and Steel," by Robert H. Ridgway ~~and H. W. Davis,~~ and bearing the notation, "Chapter from Minerals Yearbook, 1940, Review of 1939," United States Government Printing Office, Washington. 1941, was marked Plaintiffs' Exhibit No. 44.)

Mr. Burr:
We offer next Plaintiffs' Exhibit Number—the general number 8, which is—relates to iron ore production.—

The Court:
What is your last one?

The Clerk:
44 was the last one. This will be Number 8.

Mr. Burr:
—In the year 1940. The other was with reference to the year 1938, as I recall.

Mr. Harris:
We renew our objection to it as a whole, and especially to those parts embracing pit mines.

The Court:
What does this include?

Mr. Burr:

I would suggest, if Your Honor would just let the exhibit come in and then if you want to exclude it, exclude it when we present it.

Wouldn't that be satisfactory?

The Court:

I don't think it would. I think we ought to settle this as we go along.

Mr. Burr:

We have never had an opportunity to present that question. We can present it when we argue the case. The Court is not going to consider anything but relevant evidence, and if Your Honor wants to make a different ruling, you can make it then.

The Court:

Let each one of them look at it now.

Mr. Harris:

If we sweep ahead of us a mass of stuff, we will never—

The Court:

On second thought, I don't think it is well to do that.

Mr. Burr:

All right. Then we will have to have a ruling as to each particular page.

The Court:

Let him inspect it.

Mr. Burr:

All right, sir. I am either going to have the evidence in or a showing as to the evidence. I am not offering anything that I don't think is relevant.

Mr. Harris:
You mean an offer?

Mr. Burr:
Yes, sir.

(Thereupon a Government Publication of the United States Department of the Interior, Bureau of Mines, R. R. Sayers, Director, entitled "Statistical and Economic Surveys, Metal Economic Division, for release January 15, 1941,—Mineral Market Reports, M. M. S. No. 885, Iron Ore Industry in 1940—Advance Summary," was marked Plaintiffs' Exhibit No. 8.)

Mr. Burr:
I offer next General Exhibit Number 16, 17, 18, 19, 20 and 21, all of which are—

The Court:
20 and 21?

Mr. Burr:
Yes, sir. All of which are opinions of the Attorney General, Comptroller of the Treasury, the Comptroller General and the Attorney General, involving interpretation of certain laws that have work hours and traveling time involved.

Mr. Harris:
Now, we object to each one of those documents separately—

Mr. Burr:
Let's do it one way or another. If we are going to object to each one now, let's take them up one at a time. I thought Your Honor suggested we put the exhibits in and consider them at one time.

The Court:

Are you gentlemen familiar with the documents?

Mr. Brodie:

Not from that cursory statement. We think we know. If we do, they are matters on which the Court has already passed.

Mr. Burr:

Not these documents.

Mr. Brodie:

Your Honor held—

Mr. Burr:

You held they were confidential, coming from the other party.

Mr. Brodie:

The Court held they were irrelevant.

Mr. Burr:

No, sir, not these documents.

Mr. Harris:

I don't need to determine any position from my standpoint.

The Court:

I will take it all up at one time.

Mr. Burr:

The next I am going to offer will have to be offered, you might say, in a double aspect.

Your Honor will recall that among the papers that we filed a motion against the Administrator to produce was correspondence between the Comptroller General and the Department of Labor and the Department of Justice in regard to the legality of the eight hour law,—whether included in the eight hours work was the time that was spent by employees of the Labor Department in being transported in Government boats from San Francisco to Angel Island, and that correspondence was refused on the ground it was inter-Departmental and confidential.

Now, we wrote to the Comptroller General of the United States, complying with their rules, and requested copies of that correspondence, and have here letter dated July 16th addressed to Mr. All. It reads as follows:

"Dear Sir:

"In response to your letter dated July 2, 1941, received July 8, 1941, requesting copies of certain communications respecting the hours of duty of employees of the Immigration and Naturalization Service at the Angle Island Station, California, there are transmitted herewith copies of the following letters:

"Acting Comptroller General, October 28, 1937.

"Department of Labor, November 22, 1937.

"Comptroller General, October 9, 1939.

"Department of Labor, November 2, 1939.

"Acting Comptroller General, August 20, 1940.

"Department of Justice, October 3, 1940.

Now, if that is sufficient primary proof, I want to offer it as primary proof.

The Court:

I don't see the relevancy of it.

Mr. Burr:

Your Honor will hear us on that, I guess, when we get to it, I suppose.

The Court:

I can't see what the Angel Island Hours have got to do with it.

Mr. Burr:

Your Honor can't see, if the Departments of the Government, prior to the enactment of the Act, had considered a law similar to the one here under consideration, that wouldn't have any bearing on the intent of Congress?

The Court:

I think there are other things in the ore mines to be taken in consideration.

Mr. Burr:

You will certainly give us an opportunity to be heard before the final ruling?

The Court:

Haven't we passed on that?

Mr. Burr:

No, sir.

The Court:

I will let it be introduced—

Mr. Burr:

First, I want to know if there is any objection on the ground of it not being authentic copies.

The Court:

There is no objection on that ground.

Mr. Burr:

I want to know—If that question is raised I want to take depositions. If it is claimed the letters are not copies, I want time to take proof. It will just put us to this trouble.

Mr. Brodie:

I would like to point out in reference to Mr. Burr's statement that the order on that question specifically recites these documents have been found to be immaterial and irrelevant by the Court.

Mr. Burr:

I wasn't here when that matter was up for consideration.

The Court:

I thought it was taken up.

Mr. Burr:

Yes, sir. I don't see how Your Honor could pass on it until you saw the letters.

That isn't the point we have got now, however. What I want to know is is there any question made on the ground those documents come by letter rather than by deposition?

The Court:

If you had them sworn to—

Mr. Harris:

I would still object. It doesn't make any difference.

The Court:

I sustain the objection.

Mr. Burr:

I want it where I can't have my evidence thrown out if it is necessary to take this case up.

The Court:
We are not ruling on that ground.

Mr. Harris:
I haven't made a single objection on the lack of predicate since the case started.

Mr. All:
In other words, this is going on lack of probative value and materiality in this case?

Mr. Harris:
No, I don't limit it to those two grounds. All I say is the fact he didn't take the man's deposition or get it certified according to the Act of Congress—

Mr. Burr:
All right; that is all I want.
Does the Government agree to that?

Mr. Brodie:
As I understand, when you make an offer, it is merely for the Appellate Court to determine whether the documents are admissible or not. No other question is determined.

In other words, we don't want to waive any other objection we may have to it at other times should that question arise, and for the purpose of the offer of proof we waive the deposition.

Mr. Burr:
That is all there is to it. That is all we wanted done. In other words, this is treated as if it were sworn to by the Attorney General?

Mr. Brodie:
For the purpose of this offer.

Mr. Burr:
For the purpose of this case.

The Court:
It is not objected to on account of its authenticity.

Mr. Burr:
That is all I wanted. I wanted to be certain the record shows that.

The Court:
I am going to sustain the objection.

Mr. Burr:
I want to be certain I have got it in primarily.

Mr. All:
On the ground of lack of materiality?

The Court:
On all grounds.

Mr. Burr:
It is admitted by stipulation that the letters which are attached—copies of the letters which are attached to the letter of the Comptroller General, dated July 16, 1941, are correct copies of the letters sent by the respective parties the letters show.

Mr. Brodie:
May it please the Court, we don't admit that, because it has been ruled it is immaterial.

Mr. Burr:
No, we don't want to get to that until this is settled. I don't offer them—

The Court:

Just a minute. Let him talk, Mr. Burr.

Mr. Brodie:

Our point is since the objection has been sustained, the it not necessary for the exhibit to be in the form of admissible proof, but just so Mr. Burr can make a showing as to the exhibit. If the Appellate Court should hold Your Honor is wrong, then we should wish later to be in position to require him to put his testimony in admissible form. That is all that is before Your Honor now.

Mr. Burr:

I haven't even offered this yet. I brought up this matter first. I am solely asking if there is any point made—I am talking about the trial of this case,—I am not talking about any future trial,—if there is any point made on the question we haven't got the deposition of the Attorney General?

Mr. Harris:

For my part—

The Court:

I will listen to Colonel Harris.

Mr. Harris:

I have stated I do not object on that ground. I do not take any position. I don't object to it on that point.

Mr. Burr:

Is that the Government's position?

Mr. Brodie:

Our position is simply we do not waive any objection to the admissibility of the documents if they are held admissible by the Appellate Court. They have now been held immaterial. It is not necessary for us to indicate the grounds of our objection.

Mr. Burr:
They haven't been held immaterial. I haven't offered them.

Mr. Brodie:
I thought objection had been sustained.

Mr. Burr:
Oh, no, I haven't offered them and can't offer them.
What is Your Honor's ruling whether the preliminary proof is met?

The Court:
It is sufficient.

Mr. Burr:
It is sufficient?

The Court:
That is what I understood a while ago.

Mr. Burr:
That is what I thought, but their statements—

The Court:
Go ahead.

Mr. Burr:
With that statement, I offer separately and severally the separate and several letters attached to the letter from the Comptroller General of the United States to Mr. Ali. First, I offer, separately and severally, the separate and several letters, and, second, those portions of the letters which refer to hours worked by the San Francisco—the

work at Angel Island. There are other matters in the letters that relate to other questions of the account.

Mr. Harris:

And we object to them, separately and severally, on the ground, illegal, irrelevant, incompetent and immaterial and transactions between third parties, res inter alios acta, and shed no light on the issues in this case.

Mr. Smith:

We adopt that same objection, and add to it it throws no light on iron ore mines,—underground iron ore mines.

The Court:

The Court sustains the objection.

Mr. Burr:

And your Honor will give us the right, in the final argument of this case, to present authorities on this? The matter is all here before you.

Mr. Smith:

Let's get rid of it now.

Mr. Burr:

Why get rid of it now?

Mr. Smith:

That is what we are here for.

Mr. Burr:

Why take this thing in piecemeal? Your Honor does not want to exclude matter that is relevant when you hear—

The Court:

It depends on how long you are going to take.

Mr. Burr:
It depends on how long Your Honor will give us. If you don't want to hear it, we will put it in brief.

The Court:
I prefer to hear it argued orally.

Mr. Burr:
I prefer to argue it orally.

Mr. Harris:
I want to argue the case orally, but that is a different thing from what Mr. Burr wants. When I come to—

The Court:
I don't want to do that.

Mr. Burr:
Then we ask Your Hono to give us time to present our views about this particular matter we now have under consideration.

Mr. Harris:
That has been heard in a hearing with Mr. All and these gentlemen present.

Mr. All:
No, sir; you couldn't pass on it without seeing the documents.

Mr. Burr:
I want the privilege of making our presentation.

Mr. Harris:
Our position is that we shouldn't finish the case and then Your Honor turn into a Court of review and review what you have done for two weeks.

The Court:

I am not going to do that.

(Thereupon exhibits were marked as follows:

"Eight-Hour Law—Reclamation Service," 26 Opinion of Attorney General, 64, dated October 11, 1906, was marked Plaintiffs' Exhibit 16.

"Eight-Hour Law—Hours of Service of Lock Tenders, Etc.," 26 Opinions of Attorney General, 605, dated May 11, 1908, was marked Plaintiffs' Exhibit No. 17.)

"Traveling Expenses—Railway Postal Clerks," 27 Comptroller of the Treasury, 1060, dated June 14, 1921 was marked Plaintiffs' Exhibit No. 18.

"Compensation—Extra Pay for Night Work—Railway Postal Clerks," 9 Decisions of the Comptroller General 200, dated November 11, 1929, was marked Plaintiffs' Exhibit No. 19.)

"Compensation—Overtime—Forty Hour Week," 14 Comptroller General, 907, dated June 18, 1935, was marked Plaintiffs' Exhibit No. 20.

"Application of the Eight Hour Law to Employees of the Civilian Conservation Corps," Opinion Attorney General of the United States, was marked Plaintiffs' Exhibit No. 21.

Letter dated July 16, 1941, to Mr. Ernest L. All, Care of Bradley, Baldwin, All & White, 2100-28, Comer Building, Birmingham, Alabama, from the Comptroller General of the United States, with the following letters attached:

Letter of Acting Comptroller General, dated October 28, 1937;

Letter of Department of Labor, dated November 22, 1937;

Letter of Comptroller General, dated October 9, 1939;

Letter of Department of Labor, dated November 2, 1939;

Letter of Acting Comptroller General, dated August 20, 1940;

Letter of Department of Justice, dated October 3, 1940, was marked for identification, Plaintiffs' Exhibit No. 45.)

Mr. Burr:
I find yesterday on my offer on coal mine evidence—I want to include in the offer—the first is a letter of President Wilson, addressed to G. B. McCormack and John Kennamer, President of District 20. I want to include that in the offer of proof.

Mr. Harris:
We object.

The Court:
What is the date of that, Mr. Burr?

Mr. Burr:
19th of March, 1920.

Mr. Harris:
We object along the lines we objected to the other testimony.

The Court:
I sustain the objection.

Mr. Burr:

I understand all this coal proposition is sustained. I am just adding to the offer of proof.

The Clerk:

Do you want this marked for identification?

Mr. Burr:

Yes, sir.

The Clerk:

It will be Plaintiffs' Exhibit 46 for identification.

(Thereupon a letter signed Woodrow Wilson, dated March 19, 1920, and addressed to G. B. McCormack, President Alabama Coal Operators Association, and John Kennamer, President of District No. 20, Both Birmingham, Alabama, was marked for identification Plaintiffs' Exhibit No. 46.)

Mr. Burr:

And then the next exhibits are the copies of the coal contracts which were not offered on Yesterday, and the extensions of them as made between the coal operators—Alabama coal operators and District 20, United Mine Workers of America.

Mr. Harris:

We object.

The Court:

Sustained.

(Thereupon the following documents:

"Wage Agreement between Alabama Coal Mine Operators and District 20, United Mine Workers of America, Effective September 22, 1935, Expires April 1, 1937," "Wage Agreement between Alabama Coal Mine Operators and District 20, United Mine Workers of America, April 1, 1937, to April 1, 1939,"

And form of Agreement extending the April 1, 1937, to April 1, 1939, agreement to April 1, 1941,

And temporary agreement, dated Birmingham, Alabama, May 8, 1941, extending, pending negotiations, the contract expiring March 31, 1941 until such time as a new agreement shall be negotiated,

were marked for identification Plaintiffs' Exhibit 47.

Mr. Burr:
Now, the next one, Your Honor, and I think the last one if I can find a memorandum I took this morning,—no, sir, it is not quite the last one. There are one or two others.

We want to offer next the release of the Administrator dated July 11, 1941, which is identified as Release 1448; and which related to an opinion of the Administrator in reference to traveling time from fences, walls and other antisabatage barriers to working places.

Mr. Harris:
We object.

The Court:
Sustained.

The Clerk:
It will be General 48 for the Plaintiffs.

Mr. Burr:
We except, the same exception we have had.
I understand Judge Smith is objecting?

Mr. Smith:
Yes, sir.

Mr. Burr:
And I want to know if the Government is objecting?

The Court:
The intervener?

Mr. Brodie:
Yes, sir; it is immaterial.

The Court:
You all ought to object if you are going to object, and don't wait until you are told.

Mr. Brodie:
I assumed if Mr. Harris objected it was assumed we objected also, unless we had something else.

The Court:
You object?

Mr. Brodie:
Yes, sir.

The Court:
The objection is sustained.

(Thereupon a document entitled "U. S. Department of Labor, Wage and Hour Division, Washington,—Working Time Does Not Necessarily Begin at Plant Gates Administrator Says," bearing notation "For release Afternoon Papers, Wednesday, June 11, 1941,—R-1448" was marked for identification Plaintiffs' Exhibit No. 48.)

Mr. Burr:

We want to offer next the interrogatories propounded to the intervener and the answers of the interveners to those interrogatories.

Mr. Harris:

And I, of course, object for my clients as to all interrogatories.

Mr. Smith:

And we interpose the same objection.

The Court:

Whose interrogatories are they; Plaintiffs?

Mr. Burr:

Plaintiffs interrogatories.

The Court:

What do they pertain to, coal mines or ore mines?

Mr. Burr:

Sir?

The Court:

What does it pertain to, coal mines or ore mines?

Mr. Burr:

Pertains to ore mines as far as I know, those that were answered. We filed a number of interrogatories and Your Honor sustained objection to a great many of them, and these are the answers to the ones to which you did not sustain objection.

The Court:

All right.

Mr. Burr:
Do you want those read or just consider them read?

The Court:
How long will it take?

Mr. Burr:
Probably half an hour.

Mr. Cooper:
You are referring to our answers to your interrogatories?

Mr. Burr:
Yes, sir.

Mr. Cooper:
We have filed answers without waiving objections, and we would like to be heard on those.

The Court:
Suppose you read the questions and answers.

Mr. Burr:
Before we get to reading them, I want to call Your Honor's attention to the order that was made sustaining objections of the intervener to a number of these questions, and I note that inadvertently there was no exception given to us as against the ruling of the Court.

The Court:
I will give you an exception.

Mr. Burr:
We will just state for the record Plaintiffs are allowed exceptions, separately and severally, to the ruling of the Court as to its action in sustaining intervener's objections

to the separate and several interrogatories the Court did sustain objection to.

The Court:
All right.

Mr. Burr:
May I also, at the same time, before I overlook it, have a similar exception to the ruling of the Court on the motion to produce the papers and documents?

The Court:
You don't have to have that.

Mr. Burr:
I was not certain.

The Court:
Under the new rules—

Mr. Burr:
Those rules—

The Court:
Probably that is why it was overlooked.

Mr. All:
Is that true of all these adverse rulings and motions, that we have an exception?

The Court:
I think possibly in the interrogatories it is.

Mr. All:
If not, it is understood we have it?

The Court:
As to evidence and rulings on motions, there doesn't have to be any exception, but as to interrogatories I am not sure, but I give you the exception. I allow it.

Mr. Burr:
Judge, shall I just read these?

The Court:
Yes, sir, that will be better.

Mr. Burr:
I will read the questions and answers, and if there is an objection, they can make the objection.

"State when you were appointed—"

The Court:
Who is this interrogatory propounded to?

Mr. Burr:
The intervener.

The Court:
What witness?

Mr. Burr:
The intervener.

"I was appointed on the 4th day of March, 1940."

"State when you were qualified—"

Mr. Cooper:
Mr. Burr, may I interrupt?

Mr. Burr:
Yes, sir.

Mr. Cooper:
Shall we state our objections?

The Court:
That is what he stated.

Mr. Burr:
"If I understand your question, the answer is March 4, 1940."

"State when you began to serve as Administrator of the Wage and Hour Division of the United States Department of Labor?"

"I began to serve as Administrator on the 4th day of March, 1940."

The next I see answered—I am skipping the ones Your Honor sustained objection to. You had better follow me on this

Mr. Cooper:
Mr. Burr, will you let me see the file? I haven't found our copy of the written objections.

Mr. Burr:
I haven't got it.

The Clerk:
Here is the clerk's file.

Mr. Cooper:
All right.

I found your answer here if you want it.
Here is the way it reads:

"Philip B. Fleming, being duly sworn, makes the following answers to interrogatories propounded to him in the above entitled cases, except those interrogatories to which intervener has filed objections:"

There couldn't be any objection to those. He answered those without objection.

Mr. Brodie:
We filed objections to the interrogatories propounded by plaintiffs and that reads as follows, if I may read it:

The Court:
Yes.

Mr. Brodie:
"Now comes the intervener, Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, and objects to the written interrogatories propounded to him by plaintiffs on the grounds that said interrogatories are not material and relevant to the issues of these cases, and many call for information contained in confidential government files, and which is privileged from disclosure.

"Without waiving his objections to the relevancy and materiality of said interrogatories and preserving his right to object to the introduction of such interrogatories and the answers thereto at the trial of these cases, will answer many and will file said answers within the time limited by rules of Court. The following interrogatories will not be answered by intervener and they are all, and each is, objected to on the grounds that they are not material to any of the issues of these cases, and because they relate solely to an attempt to prove the processes by which an administrative officer of the United States Government reach a conclusion respecting the policies to be pursued by him in performing his official duties; and the correctness of that conclusion is not an issue before this Court, and for additional reasons hereinafter specified."

Mr. Burr:
When is that dated, please, sir?

The Court:
Then we had a hearing on that motion.

Mr. Burr:
Yes, sir.

Mr. Cooper:
And Your Honor sustained all our specific objections.

The Court:
Then why shouldn't that eliminate any argument here today?

Mr. Burr:
That is the way I see it.

Mr. Cooper:
I am not sure I made myself perfectly clear to Your Honor. As to those to which you did not sustain objection, although we answered them, we reserve an exception.

The Court:
I am going to permit those to be read they have answered.

Mr. All:
Your Honor, will you take a statement from me—

Mr. Burr:

Let's don't waste any time. He has ruled with us.

"B. State whether or not you are the Administrator duly appointed under Section 204 of the Fair Labor Standards Act of 1938 (hereinafter referred to as the Act).

The answer is, "Yes."

"C. State when you, under your appointment, took the direction of the Wage and Hour Division created in the Department of Labor pursuant to the terms of the Act."

He says, "See 1-A(c)."

"D. State whether or not when and since you assumed the direction of the Wage and Hour Division in the Department of Labor all the employees in said Division became and have remained until the present time under your supervision and direction."

"Yes."

"E. State whether or not when and since you assumed the direction of the Wage and Hour Division in the Department of Labor all the papers, files and records of the Wage and Hour Division in the Department of Labor became and have remained,

"(a) In your custody on control, or

"(b) Subject to your direction and control."

The answer is, "Yes."

"F. Give the name or names of the person or persons who served as Administrator of the Wage and Hour Division previous to the time you began your service and state whether or not, so far as you know, all the papers, files and records of the Wage and Hour Division as administered by the previous Administrator or Administrators were turned over to you and have since such time been, and now are, in your custody or under your direction and control as Administrator."

Answer: "Elmer E. Andrews and Harold D. Jacobs, acted as previous Administrators. So far as I know, all the papers, files and records of the Wage and Hour Division as administered by the previous Administrators were turned over to me and they are now under my direction and control as Administrator."

"G. State whether or not, as Administrator of the Wage and Hour Division of the Department of Labor, you have access to the papers and files of the Department of Labor which are in other departments thereof."

Answer: "This question cannot be answered unqualifiedly. I have access to the papers which have to do with the administration of the Act."

"H. State whether or not you can, as such Administrator, on request, secure access to the papers, files, or records of the Department of Labor, other than the Wage and Hour Division thereof."

The answer is, "I have no control or direction over papers in the Department of Labor, other than those papers which pertain to the administration of the Wage and Hour Division. My ability to secure such papers is dependent upon receiving permission from the Secretary of Labor, who has control of such papers."

"I. State whether or not the heads of other departments of the Department of Labor other than the Wage and Hour Division will, at your request, allow you to have the originals or copies of any papers in their files which are relevant to the issues in this case."

Answer: The only papers in the Departments of the Department of Labor other than the Wage and Hour Division which may be relevant to the issues of this case are those containing information which has been made public and which I am informed by counsel are subject to judicial notice."

"J. State whether or not you are willing to request from the heads of other departments of the Department of ~~Labor, other~~ than the Wage and Hour Division, the originals or copies of any papers, files, or records which are or may become relevant and material to the issues in this case."

"I should be willing to request of the heads of departments of the Department of Labor other than the Wage and Hour Division papers, files and records which have been made public and are not confidential as relevant and material to the issues of this case."

"Interrogatory II. Will you please examine the paper attached to the complaint in Civil Action File 5232, in which the Tennessee Coal, Iron & Railroad Company a corporation, is petitioner and plaintiff, and which is marked 'Exhibit A', and made a part of the complaint?

"A. Is such Exhibit 'A' a complete and correct copy of an opinion rendered by you as Administrator of the Wage and Hour Division, designated 'R-1315 (revised)', for release on Sunday, March 23, 1941, and of a reported designated 'G-131'; which was attached to such opinion for release on Sunday, March 23, 1941?"

The answer is, "Yes."

"B. If such Exhibit 'A' is not a correct and complete copy of such opinion and such report attached to your answer to this interrogatory a correct and complete copy of such opinion and report."

The answer is, "See Answer to 'A'."

"C. Please refer to the original report as made by Mr. Stein and state in reference to such report:

"(a) When it was signed."

The answer is, "On date indicated on report, March 15, 1941."

I am skipping those that are not answered.

"F. Has it been and is it now customary in the Wage and Hour Division of the United States Department of Labor for opinions and reports to be prepared for release to the press in mimeographed form and for distribution to the public generally?"

Answer: I has been and is customary in the Wage and Hour Division of the U. S. Department of Labor to release opinions and reports to the press in mimeographed form and for distribution to the Public generally, when, in the opinion of the Administrator, it is deemed to be of sufficient public interest."

"G. Is Exhibit 'A' a correct copy of the opinion and report for release on Sunday, March 23, 1941, and was it given out for release in accordance with the custom and practice asked about in the immediately preceding question?"

"Yes."

"H. The announcement of the 'Modified Portal to Portal Wage and Hour Opinion' bears the designation 'R-1315 (revised)'. "Please state what this designation signifies."

Answer: "This designation signifies the official release of the opinion of the Administrator. It is a revision of an unofficial release."

"N. State whether or not the opinion which you finally rendered in this case is correctly stated and set forth in Exhibit 'A'. State whether or not that is your opinion as Administrator at the time of the answering of these interrogatories. State whether or not it is your purpose in administering the Act to follow such opinion unless the same is judicially declared to be incorrect."

Answer: My opinion is correctly stated as set forth in Exhibit A of the petitioner's complaint. It is my present opinion as Administrator. The opinion referred to is a notification and a guide to all interested parties of my interpretation of the Fair Labor Standards Act as applied to the situation described in that opinion. There is no duty imposed upon me by the Act to issue any interpretations and such interpretations as are issued by me are not binding upon the Courts or the parties.

"I intend to follow the interpretation in question unless directed otherwise by the authoritative rulings of the Courts, or unless I should subsequently decide that my prior interpretation is incorrect."

The next that is answered seems to be Interrogatory V.

"D. Please refer to that portion of plaintiffs complaint in cause number 5232 wherein the Tennessee Coal, Iron & Railroad Company is plaintiff which sets out what purports to be a copy of a release by the Wage and Hour Division for release morning papers, Saturday, July 27, 1940, R-928, and state whether or not:—"

Mr. Brodie:

Excuse me. I think some of those have been offered and objection sustained.

Mr. Burr:

I think that relates to coal.

The Court:

Then it will be stricken.

Mr. Burr:

The same thing applies to D (a), D (b) and E; and the next one, if Your Honor please, F and F (a) and (b) also relate to the coal address delivered by him out in—

The Court:

Well, that is stricken.

Mr. Burr:

That is stricken, and we except to that.

The Court:

Yes.

Mr. Burr:

H relates to another that was excluded when it was offered,—the letter,—which was the letter of Colonel Fleming to the Editor of the Mining and Engineering Journal, so, under the same ruling, I guess that would have to come out.

The Court:
Yes, sir.

Mr. Burr:
And we take an exception.
I call Your Honor's attention to the fact, in connection with the answer to the last interrogatory, that letter which we offered to introduce was a copy of the letter there referred to. That is in I and J. The letter goes out or not?

Mr. Harris:
We object to the letter.

Mr. Burr:
You haven't anything to do with that.

Mr. Harris:
I have objected to all of it.

Mr. Burr:
This is not against you.

Mr. Brodie:
I object.

The Court:
I sustain the objection.

Mr. Burr:
And we except. All right, sir.

The next one is on page 18 that I see answered. It is Roman VIII and letter A.

"State whether or not statistical and economic studies have been made by the Bureau of Labor Statistics in the Economic Section of the Wage and Hour Division in relation to the production of the United States in underground mines of iron ore separate and apart from the production of any other mining products."

The answer is: "I am informed that there are authoritative studies made by government agencies or under government auspices on the production of iron ore in underground mines of the United States, and that such studies are public documents and are as available to plaintiffs and their counsel as they are to me or my counsel or representatives.

"I am further informed that the Research and Statistics Branch of the Wage and Hour Division has made no such studies, but that it may, in preparation of the trial of these cases consult authoritative sources to determine the production of iron ore by underground mines of the United States.

"Counsel informs me that such data are the subject of judicial notice."

Now, the next one is E under that same Roman VIII. "State whether or not any investigations made by the Wage and Hour Division took into consideration competitive inter-relationships and or the convertability of operations normally carried on in underground iron ore mining operations as contrasted with either the stripping or open pit operations producing iron ore, or the underground operations of mines producing gold, silver, zinc, copper or products other than iron ore."

Answer: "Because of its indefiniteness, I am not sure what this question means. If it is meant to inquire whether the Wage and Hour Division has considered competition between underground iron ore mining operations and open pit iron ore mining operations, or between underground iron ore mining operations and underground operations of mines producing products other than iron ore, my answer is that I am informed that a study of the competition and competitive factors existing between underground and open pit iron ore mining may be made in preparation for the trial of these cases."

"F. State whether or not the Wage Hour Division or any of its employees ascertained, or whether, within your knowledge, there exists as a fact any competitive interrelationships between the underground iron ore mining operations of plaintiffs in the State of Alabama and the underground operations in other parts of the United States producing gold, silver, zinc, copper or products other than iron ore."

Answer: "I am informed that at the present time it is not known whether there exists any competitive interrelationships."

"H. State whether or not your investigation disclosed that there existed substantial differences in the methods of underground iron ore mining operations of different sections of the United States as contrasted with such underground iron ore mining operations in other sections of the United States."

"The question is indefinite, since it is not indicated what is meant by 'substantial'. I do not know that there exists differences in methods of underground iron ore mining operations in different sections of the United States."

"I. If you have answered the immediately preceding question in the affirmative, are such differences substantial or insubstantial,—little or great?

"I cannot answer this question because of its indefiniteness."

"J. State whether or not your investigation disclosed that the length of time used by underground mining employees in traveling from and to the portal or the mine to their usual working places varies in different mines in the same locality, and also varies in different mines located in various parts of the United States?"

The answer is, "Yes."

"K. Are the differences inquired about in the immediately preceding interrogatory substantial or insubstantial,—great or small?"

The answer is, "I cannot answer this question because of its indefiniteness."

"L. Is it not a fact that the difference of the length of time spent by the underground mining employees in traveling to and from the portal of the mine from and to their usual working places varies, according to your research and investigation, in different underground mining operations in different sections of the United States from as small a time as a comparatively few minutes, to as long a time as two hours?"

The answer is, "Yes."

The Court:
That is all?

Mr. Burr:
Yes, sir. He attaches the exhibits, and the first one is the release of July 27, 1940, which relates to coal, and which Your Honor excludes, and we except.

The Court:

That is excluded.

Mr. Burr:

And the next one is an address delivered by Colonel Fleming, which also relates to coal, which Your Honor excludes, and we except.

The Court:

That is excluded.

Mr. Burr:

Next is Interpretive Bulletin 13, which is attached.

The Court:

That is excluded also; that is on coal.

Mr. Burr:

No, sir; 13 is his general interpretative bulletin he issued on traveling time and various other things. We have no objection to it. If they want it in, it is fine.

Mr. Harris:

I think he offered that before.

Mr. Burr:

We are offering it.

Mr. Brodie:

I think I can explain that. When the Act was passed, the Administrator issued a series of interpretive bulletins in which he said, "This is what I think the law is—".

Mr. Burr:

Do you object to it?

Mr. Brodie:

I don't think it makes any difference.

→ The Court:
What is the date of it?

Mr. Burr:
It is dated—

Mr. Brodie:
I think the Court can take judicial knowledge.

Mr. Burr:
—October 30, 1940.

The Court:
It is in.

Mr. Harris:
I have objected to it, Your Honor.

Mr. Quinn:
We have no objection.

Mr. Burr:
They have no objection. Then everybody is satisfied.

Mr. Harris:
I don't think I made myself clear. I said I have an objection.

The Court:
I overrule the objection.

Mr. Burr:
Next we want to offer as against—as an independent exhibit,—it is already in as an exhibit to the answers, but we want to offer as against everybody the Administrator's opinion as a true copy of the opinion. It is referred to in

the pre-trial agreement, and we are offering that against everybody.

Mr. Harris:
And in the pre-trial agreement I agreed not only it would be a true copy, but that it was admissible.

Mr. Burr:
Was what?

Mr. Harris:
Was admissible.

Mr. Burr:
Then that is in evidence?

The Court:
It is in evidence.

Mr. Burr:
We offer it as a true copy.

The Court:
Yes, sir.

Mr. Burr:
That includes the report itself: it is all one report.

The Court:
The report upon which the opinion is based?

Mr. Burr:
Yes, sir, and that is attached to it.

The Court:
I believe there were two of those men made the report?

Mr. Burr:
No, sir, just one; Mr. Stein.

The Court:
Stein?

Mr. Burr:
Yes, sir.

The Court:
I was thinking there was someone else with him.

Mr. Burr:
We are through. It is adjourning time—Yes, sir, there is one other thing I want to offer I was about to forget.

Let me have the affidavits. I would like to ask the Administrator's attorneys if they will be kind enough to let me have the original affidavits that were filed on the hearing by Mr. Kendrick—

Mr. Harris:
By whom?

Mr. Burr:
Mr. Kendrick, who was president of the Smelter's Local at Republic. I want to offer those by way of admissions as against those particular individuals who are parties defendant to the case.

Mr. Brodie:
Well, I am obliged to refuse to produce anything from the Government's files.

Mr. Burr:
Might I ask a question there? You produced one the other day made by Mr. Thompson, didn't you?

Mr. Brodie:
We object to that question.

Mr. Burr:
I would like just to get his refusal on the record. I have copies. Can we find those during the recess?

The Court:
I would like to finish.

Mr. Burr:
That is all there will be.

Mr. Smith:
What is that? I didn't understand.

Mr. Harris:
I understand there was an affidavit of some individual miner who was an officer of the union. I don't know what it is. I don't know that I have ever seen the affidavit. When I see it I may want to object to it.

Mr. Smith:
Is that on the theory of estoppel?

Mr. Burr:
No, sir, it is an admission.

The Court:
Is that an affidavit of an individual?

Mr. Burr:
Yes, sir.

The Court:
Was that authorized by the local?

Mr. Burr:

No, sir, I don't suppose it was, but I am offering it against this particular individual.

Mr. Smith:

Wouldn't that come up when you got to that individual, whether he is entitled to something?

Mr. Burr:

It is not relating to whether he is entitled to something; it relates to how he was paid and matters of that sort.

Mr. Smith:

That don't seem to be anything new in this case.

Mr. Burr:

I think we have finally found it. Shall I read it to Your Honor.

Mr. Harris:

I want to object to it, if I may see it.

The Court:

Is that the only one you have?

Mr. Burr:

Yes, sir. There are five or six of them under one cover.

The Court:

The same—

Mr. Burr:

Yes, sir. I think they signed the same affidavit.

Mr. Harris:

Now, we object to a specific part of this which begins at the bottom of page 1, Mr. Burr, which involves conclusions and hearsay and general reputation, and are not—whether in the form of an affidavit or any other form, would not be legally competent evidence, if the Court please.

Mr. Burr:
All right. Shall I read it to Your Honor?

The Court:
You might read it, Mr. Burr, and then I will rule on it.

Mr. Burr:
"State of Alabama, Jefferson County:

"Before the undersigned authority in and for said state and county personally appeared R. H. Kendricks, M. C. Crawford and Hiram S. Peterson,—"

Mr. Kendrick has been identified as chairman of the Raimund Local, and the others are members of the Local Committee at Raimund.

"—who, being first duly sworn, depose as follows:

"Affiant Kendricks deposes that he is at the present time working as a drill sharpener in the ore mines of the Republic Steel Corporation (hereinafterward referred to as the 'Republic Company') at Raimund, Alabama; that he has been in the employment of this company and its predecessors in its ore mining operations at Raimund for twenty-six years.

"Affiant M. C. Crawford deposes that he is at present a surface foreman for the Republic Company at its Raimune ore mining operations; that he has been in the employment of this company and its predecessors for about forty years; during which time he has served in various capacities inside and outside of the mines, having for some time served as assistant superintendent and acting superintendent.

"Affiant Hiram S. Peterson deposes that he formerly was an employee of the Republic Company and has only recently retired. Affiant Peterson further deposes that he first entered the employment of the Republic Company in 1907, and that with the exception of three years, when he was employed by the Tennessee Coal, Iron & Railroad Company as carpenter foreman at one of its ore mining operations, and with the exception of service in the army during the World War, he has been in the employment of the Republic Steel Corporation and its predecessor serving as underground foreman, as repair man, as timber man, and in other capacities.

"All of affiants—"

Here is where your objection begins.

"All of affiants further depose that during all of the time of their employment by the Republic Company they have been acquainted with the custom and practice in the ore mine of the company in reference to computing the hours of work for which men are paid, and know that the computation was made and the men were paid on the basis of time actually spent by them at the face or at their usual working places; that the men have always been paid and have always accepted their pay on the basis of time spent at the working place, and without any consideration for the time spent in going to and from the portal of the mine to the face.

"Affiants further depose that they have never heard, until recently, of any claim being made that there should be included in the time worked for which the men are to be paid the time spent in going to and from the working place or the usual place of work, and that so far as they know, no one has ever, until recently, when they heard of this present claim, made such a contention."

Mr. Harris:
The part I object to—

The Court:
I see—

Mr. Harris:
—is where it starts, "that the men have always been paid and have always accepted their pay on the basis of the time spent at the working place, and without any consideration for the time spent in going to and from the portal of the mine to the face," because that is something that it appears on its face a man couldn't possibly know. It involves a conclusion, and couldn't be an admission against these other parties.

Mr. Burr:
It is an admission—

The Court:
I will admit it.

Mr. Harris:
And we except.

And also that part, "Affiants further depose that they have never heard, until recently, of any claim being made that there should be included in the time worked for which the men are to be paid the time spent in going to and from the working place or the usual place of work, and that so far as they know, no one has ever, until recently, when they heard of this present claim, made such a contention."

The Court:
You couldn't possibly get it in only on that theory that it is an admission.

Mr. Burr:
That is right.

Mr. Harris:
It couldn't be any admission against anybody but the man that made it.

The Court:
That is right.

Mr. Smith:
If the Court please, we object to it on the part of the A. F. of L. because all our clients are in the Tennessee Company.

The Court:
As I said, Mr. Smith, it will not be applicable to anybody except this man.

Mr. Burr:
Substantially the same affidavits are made by Herbert McCoy, Sam Pearson, and perhaps other. I don't want to put anything in here I am not certain about. I know Mr. Kendricks is a party to the suit and an officer of the Smelters. I am not certain about these other three. I want to qualify offering their affidavits until I ascertain that fact. I notice by reading their affidavits apparently they were not officers of the Smelters. I think one of the held the position of assistant superintendent at some time.

The Clerk:
This will be Exhibit 49.

Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 409

TENNESSEE COAL, IRON & RAILROAD COMPANY, SLOSS-SHEFFIELD STEEL & IRON COMPANY AND REPUBLIC STEEL CORPORATION, PETITIONERS,

vs.

MUSCODA LOCAL No. 123, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 4, 1943.

CERTIORARI GRANTED NOVEMBER 15, 1943.

VOLUME IV.

—

TRANSCRIPT OF RECORD

UNITED STATES
CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT.

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Appellant,
versus
MUSCODA LOCAL No. 123, ETC., ET AL.,
Appellees,

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
Appellant,
versus
SLOSS RED ORE LOCAL No. 109, ETC., ET AL.,
Appellees,

REPUBLIC STEEL CORPORATION,
Appellant,
versus
RAIMUND LOCAL No. 121, ETC., ET AL.,
Appellees.

Appeals from the District Court of the United States for the Northern District of Alabama.

(ORIGINAL RECORD RECEIVED APR. 4 42.)

(Thereupon the affidavit of R. H. Kendrick, and others, was marked Plaintiffs Exhibit No. 49.)

Mr. Burr:
Could you tell me about those others, Jim.

Mr. Harris:
Kendricks hasn't been an officer for two years.

Mr. Burr:
He was at the time the affidavit was made.

Mr. Harris:
No, sir.

Mr. Burr:
That is all; we close.

Mr. Harris:
With the exception of the showing.

The Court:
Yes, sir.

Mr. Harris:
I will look at that during the lunch hour.

Mr. Cooper:
In order that you may be through with these documents, we would like to state our objections to the opinions of the Attorney General. We don't think they are material. We have no objection to any other documents.

Mr. Burr:
You don't object to any except the Attorney General's opinions?

Mr. Cooper:
That is all that has been given us.

Mr. Burr:
We gave them all to you.

Mr. Cooper:
And we have our objections to the opinions of the Attorney General.

The Court:
I have ruled on that.

Mr. Burr:
You did rule on it, and said we could discuss the matter in our briefs.

Mr. Cooper:
But the evidence is excluded now? It is not admitted?

The Court:
Yes, sir.

Mr. Smith:
Your Honor has sustained objection to those at this time?

The Court:
They are not admitted.

Mr. Harris:
And all those letters about somebody in the Immigration Department—

The Court:
I think I will just rule on this. I don't see the necessity of discussing that in the briefs, or in the oral argument,

Mr. Burr:
Yes, sir.

The Court:
On these written documents, I don't see any necessity of having arguments on it orally or in brief, and I will rule on it now.

Mr. Burr:
Your Honor has never seen our authorities. I think you want to see the authorities.

Mr. Smith:
We have to pass on evidence as offered.

Mr. Burr:
You have passed on it.

Mr. Smith:
Then that ends it.

Mr. Burr:
It is there as an offer of evidence.

The Court:
I have sustained objection to it.

Mr. Burr:
Your Honor has not allowed us to be heard except you said I could have five minutes, and then I asked you to permit me to refer to it in my brief, and you said I could. We have never had an opportunity to present it to you, and I am convinced they are legally admissible.

The Court:
I am going to look over them at noon time.

Mr. Burr:

We want you to have a chance to look over the authorities.

Mr. All:

Judge, may I say this? I have said nothing about this particular thing. I don't know how much value our study may have been, but we are certainly honest in our view.

The Court:

I know you are.

Mr. All:

I don't believe our study has been worthless, and we are thoroughly convinced this is admissible testimony on the interpretation of a statute.

The Court:

This is Plaintiffs' Exhibit Number 45?

Mr. All:

Yes, sir.

The Court:

I want to look over this, and then if I want argument, I may ask for it.

Mr. Cooper:

Judge, I call your attention to the fact their motion to produce specifically describes those documents.

Mr. Monaghan:

You are wrong about that. That was the Attorney General's ruling.

Mr. All:

That was all on privilege.

Mr. Cooper:
I beg your pardon. The Court said they were irrelevant.

Mr. Smith:
I beg your pardon. The Court has said it.

Mr. All:
How could he say it without seeing them?

The Court:
I will look over them.

Mr. Burr:
We want a chance to present our argument.

The Court:
How long will it take you?

Mr. Burr:
I don't know. I think I could cover it in a brief in three pages. Why it couldn't go in a brief I don't see. That is the easiest way to get rid of it.

Mr. Harris:
I respectfully submit sooner or later somewhere in the course of a trial the contentions of the various counsel must come to a position when the Court has ruled, and this Court has ruled on this, and the Court offered him five minutes, and he didn't take it.

Mr. Burr:
That is right.

Mr. Harris:
And it is impossible for the Court, or us, to know what to do if things are swept along and carried to the end of the case.

The Court:

Here is the position the Court takes, Mr. Harris:

I want to know what I am doing. I think I know. We make mistakes. Everybody does.

Mr. Harris:

Yes, sir.

Mr. Burr:

Yes, sir.

The Court:

I want to give it some consideration or study.

Mr. Burr:

There isn't a thing in rebuttal that could be offered. These are either admissible evidence or they are not. Your Honor would have plenty of time to pass on that without committing yourself irrevocably now.

The Court:

As I see it, I can take this under consideration and it will not affect you on your proceedings. You can go on with the witnesses.

Mr. Harris:

No, sir.

The Court:

And I will take this under consideration.

Mr. Burr:

We will submit you a little memorandum brief.

The Court:

Could you give it to me this afternoon? You have briefed it, I suppose.

Mr. Burr:

I have briefed it in a way. I have got to be in Court this afternoon.

The Court:

I am going to adjourn until two o'clock.

Mr. Burr:

There are some physical limitations, if the Court please, to what—

The Court:

How long do you want to submit your authorities?

Mr. Burr:

Judge, let me submit it to you Monday. They will be on their evidence long after then.

The Court:

How long will it take you for your evidence?

Mr. Harris:

I am going to make it brief. I would think on my witnesses, unless the cross examination is pretty long, after we get one or two men from each mine, I will be through with the general aspects of the picture, and I think I will be through with my evidence in two days and a half. Of course, I don't know how long Mr. Burr will cross examine. He can make it as long as he pleases by his cross examination. This is said—

Mr. Burr:

Suppose we wait to see how we get along, Judge, and the first recess we get I will give you a memorandum as soon as I can.

The Court:
Mr. Burr, you can give it to me Saturday sometime?

Mr. Burr:
By sitting up Friday night, yes, sir.

The Court:
Well, I will give you until Monday morning. In other words, I want to determine the question while we are still on evidence.

Mr. Burr:
Yes, sir, I will give it to you.

The Court:
That is all for your side?

Mr. Burr:
Yes, sir.

Mr. All:
Of course, it is understood all the way through this evidence is on behalf of each plaintiff?

The Court:
Yes, sir.

Mr. All:
And against each defendant?

Mr. Harris:
No, that is not correct. Mr. Burr stated a while ago he didn't offer something against me.

The Court:
I think you lawyers have taken care of yourselves. I think you have kept the blanket over all of them.

Mr. All:
We have tried to keep that blanket over them.

The Court:
Court is adjourned until 2 o'clock.

(Whereupon, at 12:30 P. M., July 23, 1941, a recess was had until 2:00 P. M. of the same day.)

After Recess, 2:00 P. M.

Mr. Harris:
If the Court pleases, during the noon hour I gave very careful consideration to the two showings which under the federal practice would probably be considered a stipulation as to what a witness would say, and if you have an extra copy so that the Judge could be looking over it I could call Your Honor's attention—

Mr. Burr:
How would it do just to draw parentheses around anything you object to?

Mr. Harris:
Well, I can read to Your Honor—

The Court:
Well, if you will let me check it we can eliminate it without taking up further time.

Mr. Burr:
I gave Judge Smith one. He might use that one. Wait a minute. I have found one.

Mr. Harris:
Your Honor, Mr. Burr and I can go over it right here and see if he is willing to strike it.

Mr. Burr:
Which one have you got?

Mr. Harris:
Vance. Now, this is on page 2 of Vance's statement, beginning with the paragraph, "The making of this contract."

Mr. Burr:
Down to where?

Mr. Harris:
All of that paragraph.

(Discussion off the record between Mr. Burr and Mr. Harris.)

Mr. Burr:
Judge, these two showings, Mr. Harris agreed to parenthesis the portions that he objects, and you can just check it and make your rulings on those portions. Where you sustain the objection I will note an exception and where you overrule the objection he can take an exception. Is that satisfactory?

Mr. Harris:
Yes.

Mr. Burr:
I will commence with numbers. Which one have you got first?

Mr. Harris:
No. 1 on the first page, beginning with the words, "Some of the places that I worked at during my earlier experience were open pit mines. This is true of the ore mines at Greeley and Champion and the dolomite quarry of the Ten-

nessee Company at Ketona," down through the word, "Ketona."

The Court:
Are you objecting to that?

Mr. Burr:
Under your ruling you sustain that?

Mr. Harris:
And it goes down to the bottom of the page. It goes down through, "that is, ten minutes going and ten minutes returning."

The Court:
That is sustained.

Mr. Burr:
The Court sustains the objection to the parts where it is numbered 1, and we except.

Mr. Harris:
Now, on page 3, the paragraph begins, "The witness would further testify that he has read the testimony of E. C. Scott and that the testimony of Mr. Scott as to methods and practices of the underground workers is true."

Mr. Burr:
I put that in there as a matter of shortening the showing.

Mr. Harris:
That is not the proper way to show it. One witness comes along and says, "That is true." Here is my problem. I am losing, as Your Honor will see, the benefit of cross examination and the cross examination in the case always develops facts that are beneficial to the other side.

Mr. Burr:

You have had the benefit of Scott's cross examination.

The Court:

I sustain the objection.

Mr. Burr:

We except.

Mr. Harris:

Then you turn over to the next page beginning with the words, "I know at this time all of the underground miners," from there all the way through that page to the next page, down through the words, "to and from their working places," on the next and very last page.

The Court:

What does that relate to?

Mr. Harris:

Pit mines:

Mr. Burr:

That relates to pit mines with this exception: I leave it down through "miners" and put in there "underground and pit mines," so that he can exclude "pit mines," and leave "underground mines," just that one sentence there. You sustain it as to "pit" and leave it as to "underground"?

Mr. Harris:

Of course, as to Mr. Neal, we had this question up this morning, then it is in there again, that each of them was paid, and he doesn't know that each of them was paid except by hearsay.

The Court:

All right, I will sustain the objection to that.

Mr. Burr:
And we except.

Mr. Harris:
Well, that finishes with Mr. Neal.

Mr. Burr:
We except especially to that portion of No. 3 relating to underground mines.

The Court:
As to underground mines, that is not sustained.

Mr. Harris:
As to where he says he knew they were paid on the working place to working place basis?

The Court:
How does it read, Mr. Burr?

Mr. Burr:
"I know that at this time all of the underground miners were paid in all these mines on the working place to working place basis, and that none of them received any pay for time spent in going to and from their working places."

Mr. Harris:
Well, I am trying to accommodate him so we don't delay, but I can't agree to that. I think it is improper.

The Court:
I sustain the objection.

Mr. Burr:
Now, that is all of Neal's. Now, let's get Mr. Vance's next. Read Vance's.

Mr. Harris:

I have nothing on page 1. On page 2 I have blanks where I understood you are filling in the blanks.

Mr. Burr:

I can fill those in.

Mr. Harris:

That is actual contracts? It leaves the impression that it is an actual contract.

Mr. Burr:

It is an actual contract. That is true of all of those blanks. Here it reads: "T. C. I. Exhibit . . . . followed meetings which were held in the City of New York, attended by myself and other representatives of the company and by Mr. Reid Robinson, International President of the Smelters Union and other authorized representatives of this union and of the locals of this union at Muscoda, Wenonah and Ishkooda."

Now, here is what he objects to: "The making of this contract was a part of a settlement which was made by the Tennessee Company and the International Union and its locals of charges that were then pending before the National Labor Relations Board. These charges involved the claim on the part of the union that approximately 172 members of their union had been improperly and discriminatorily discharged by the company and were entitled to reinstatement and payment of back wages. At this conference the company agreed to pay in settlement of these claims approximately $102,650.00 and to give re-employment to 138 of these people, and as a part of this same agreement the union and its locals and the company agreed to enter into a written working agreement. The Exhibit T. C. I. No. . . . . is the agreement which was thus agreed upon and was executed by the parties, this being substantially agreed upon at conferences held in New York and Chicago and then being agreed upon in final form and executed in Birmingham by the parties whose signatures appear upon the paper."

Now, that is the end of the first parenthesis.

The Court:
What is your reason for objecting to that?

Mr. Harris:
Well, I thought he was going far afield in going into the terms of a settlement.

Mr. Burr:
We didn't go into it except to attempt to state what it was. There is no dispute about that.

Mr. Harris:
Then, of course, that would be a good witness to testify what the settlement was.

Mr. Burr:
That is all right. All right, sir, now, the next one.

Mr. Harris:
The next one is the next immediate paragraph.

Mr. Burr:
That is numbered 1.

Mr. Harris:
That is No. 1. The next one is the following paragraph, the words, "stipulation in reference to" what should be a working day.

Mr. Burr:

I want to put there, "stipulation in the contract, T. C. I. Exhibit ....." Let's read the whole sentence.

Mr. Harris:

"During all these negotiations none of the union representatives at any time requested or suggested that the work day be changed from the existing practice of working place to working place, and the stipulation in the contract, T. C. I. ...., in reference to what the working day should consist of was discussed and agreed upon as a part of the agreement reached and was in the contract as signed."

That is a conclusion that it was done as a part of the agreement reached.

Mr. Burr:

No, sir, it just says it became a part of the contract. It is in there.

Mr. Smith:

The contract speaks for itself.

Mr. Burr:

I know, but all I want in there is that they discussed it and agreed upon it.

The Court:

That is cumulative.

Mr. Harris:

The point that I am particularly thinking about is the phrase, "and agreed upon as a part of the agreement reached.' Now, you have got in there the other way, "a stipulation in the contract as to what the work day should consist of was incorporated in the contract as signed."

Mr. Burr:
Well, put in there, "thereupon incorporated." I had just as soon have it that way.

Mr. Harris:
Now, on the next page, still some other blanks.

Mr. Burr:
The next page would be No. 3.

Mr. Harris:
Well, there is that same stuff in there. He says that everything Mr. Ball testified would be true.

Mr. Burr:
As to the negotiations in these meetings.

The Court:
Sustained.

Mr. Burr:
No. 3 is sustained, and we except.

Mr. Harris:
Then in the next paragraph, which would be No. 4, it says, "It was never insisted upon by those presenting the request." Of course, that involves a conclusion whether it was insisted upon or whether it was merely brought up. I object to that.

Mr. Burr:
Just strike out, "insisted upon" and leave it "discussed, brought up for discussion or discussed."

Mr. Harris:
Now, three lines down—the next would be No. 4—the phrase, "and its underground employees have accepted

payment on the basis of time computed on the working place to working place plan." The phrase, "have accepted payment" carries with it a contemplation which we cannot agree to, if the Court pleases. That is a conclusion of law, whether they accepted it or not.

Mr. Burr:

All right, sir, I except to leaving it, "underground employees were paid on the basis of time computed on the working place to working place plan." There is some conclusion which I think the law allows. I except to that part.

Mr. Harris:

Then on the next page at the top, the same idea we just had, is the phrase, "and have accepted full settlement of their claims on this basis.

Mr. Burr:

Of course, I think—we will agree to except to that. That is 6, isn't it?

Mr. Harris:

That would be 5, the way I have it. That would be 4 you had and didn't take any exception to it.

Mr. Burr:

Yes, I excepted to making the change. No, someone had made it 6. Six is sustained, and we except. Now, the next one.

Mr. Harris:

The bottom of the next paragraph, No. 7, you have this sentence: "These increases in wages would not have been given unless wages had been agreed to by the unions to be computed and paid on the working place to working place basis."

The Court:
Sustain the objection.

Mr. Burr:
We except to that.

Mr. Harris:
Then you strike out the word, "authorized." Now, the next one is No. 8, where he says at the bottom of that page:

"In performing the duties of my position it has been necessary for me to become familiar and I have become familiar and know of the customs and practices in the other iron ore mines in Alabama, as well as in Minnesota and other sections of the United States, and I know that on October 24, 1938, and for many years previous the iron ore operations of the United States, underground and pit, and in the various parts of the United States all computed and paid the wages of the underground employees on the working place to working place basis, and that they did not pay anything for the time spent in going to and from the working places."

Mr. Burr:
I put in there, "both underground and pit," right after, "United States," "both underground and pit."

Mr. Harris:
Of course, we object to that.

The Court:
What place is that?

Mr. Harris:
"Iron ore operations of the United States, and in various parts of the United States, all computed and paid the

wages of the underground employees on the working place to working place basis, and that they did not pay anything for the time spent in going to and from the working places."

The Court:

Overrule the objection.

Mr. Harris:

Now, the specific objections that I have to this—of course, the pit situation is out any way.

Mr. Burr:

Yes, it is.

Mr. Harris:

The other objection on that is that this man could not possibly know what is going on all over the United States. Now, in doing this I want it clearly understood—because this is a modification of the rules of the Federal Court—we are stipulating that he would swear to that if we had him in here and what he says is true, and we do not by that stipulate we have no right to put on contradictory evidence.

Mr. Burr:

That is just as a showing.

The Court:

Correct.

Mr. Burr:

Now, we can put this one with the file and you can keep your copy.

The Clerk:

We will mark that Plaintiffs' Exhibit No. 50 for identification.

Mr. Burr:

Here is one Mr. Ball didn't testify about. It is shown by two more pages of testimony. You can check it.

Mr. Harris:

Well, there is no reason to bring anybody back to prove the contract, or that they are operating on the basis of 1941.

Mr. Burr:

Note what the definition of the day's work in this contract is. This is portal to portal.

"The eight (8) hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch or rest periods as provided for in (b) above, whether they be paid for the day or be paid on the tonnage basis, less such traveling time as is reasonably necessary for the employees to go to and from their usual working place; such traveling time starting when the employee is required to report for transportation at the entrance of the mine and ending when he returns to that point."

Then it goes ahead and,

"It is understood that the above inclusion as a part of the day's work of the traveling time reasonably necessary for the employee to go to and from his usual working place has been herein agreed to by the company in compliance with the opinion rendered by the Administrator of the Wage and Hour Division of the Department of Labor, which becomes effective on May 1, 1941. The company denies the correctness of said opinion. Suits are now pending for the judicial determination of this question. It is, therefore, agreed that if and when there is a final judicial interpretation (this agreement then being in existence) overruling or modifying the opinion of the Administrator or in the event the Administrator changes his opinion or the law is amended, the question of whether or not the definition of the workday herein agreed to shall thereupon be changed so as to comply with the Court's decision or the law as interpreted or amended shall immediately become a question for negotiation, and, if not settled between the parties by such negotiations within thirty (30) days after such final judicial interpretation or change or amendment has occurred, neither of the parties hereto shall be further bound or obligated by the definition of the day's work as herein contained."

The Court:
That will that be, 40?

Mr. Burr:
The showing is Plaintiffs' Exhibit 50 and this will be 51.

Mr. Harris:
Of course, as to this one we waive the predicate. I still have my customary objection to the contract.

The Court:
Of course. That is understood.

Mr. Burr:
I gave you both of the showings, didn't I?

Mr. Harris:
Just one for Vance.

Mr. Burr:
Which one have you got?

Mr. Harris:
I have got Vance's.

The Clerk:
And Neal.

Mr. Harris:
You will have to let the reporter correct them after you marked them because you dictated some changes, didn't you?

Mr. Burr:
No, they are written. I wrote them in there with pencil.

(Thereupon, said showings for the witnesses J. F. Vance and George B. Neal were marked for identification Plaintiffs' Exhibits 50 and 50-A, respectively.)

The Court:
Is that all?

Mr. Burr:
Yes, sir, that was all. We are through, of course.

The Court:
We are now ready to go into the testimony of the defendants.

Mr. Harris:
May I have the exhibits that were introduced?

The Court:
How are you going to proceed with the examination? Is each counsel going to examine the witnesses?

Mr. Harris:
The idea that I had in mind—of course, I haven't had a chance for a full discussion—you know we have all been working day and night—the idea I had in mind was to put

on my witnesses on behalf of the unions and the individuals and then at the end of a couple of days if I am tired I can switch and somebody else can put on something and give me a chance to rest for a day or a half if I would like to do it for a half day. I haven't talked with Mr. Spencer or Judge Smith or with Mr. Quinn. If they prefer to put on their evidence first, I have no objection. Whatever you gentlemen want to do is perfectly agreeable.

Mr. Smith:

We had made our arrangements to put on our witnesses after Col. Harris. We haven't got them here. We have got them on call. These people are working. When we started out, his case coming first on the original complaint, I thought probably he came first, and in deference to the intervener I agreed that when we started here that he should come first and we should come in the next order. So it may be that after Col. Harris gets through we can cut down our witnesses considerably because I imagine that there will be a great deal of duplication in the testimony, from what I understand.

The Court:

I don't want any duplication in the examination of witnesses from one side.

Mr. All:

Well; we won't have that over here.

The Court:

In other words, if Col. Harris examines a witness I don't want other questions asked that he has been over.

Mr. Smith:

No, sir. We will avoid that and have done it all the way through the trial.

Mr. Brody:

In the order of questioning, Judge, it is agreed that we would follow Col. Harris. We would not want to put on any witnesses ourselves at this time, but reserve the right to ask any additional questions.

Mr. Harris:

And unless the Court orders me to, I don't want to agree to put on and go straight on through, unless some of these gentlemen want to ask questions.

The Court:

That is all right. I don't believe there will be any objection.

Mr. Burr:

No, sir, there will be no objection to handling it, on my part, any way these gentlemen see fit. I would like to make this request: I would like to know as far ahead of time as to what mine they propose to use particular witnesses from. For instance, Mr. Harris states he proposes to use witnesses from Ishkooda this afternoon. If we can do that it will keep men working and he can have his men here.

Mr. All:

Mr. Harris, can you tell us what witnesses you are going to use tomorrow morning, that is, what mine?

Mr. Harris:

I don't know how far along we will be before we adjourn. We have got an hour and a half. I can tell you this afternoon when we get through. I can let you know then.

Mr. All:

You have got no order that you expect to call the witnesses as to mines?

Mr. Harris:
You mean as to companies?

Mr. All:
As to mines.

Mr. Harris:
Yes, I think I have. This is subject to modification because I want to consult with the other gentlemen. It is my inclination to take up all of the mines of the Tennessee Company and finish with them.

Mr. Burr:
Do you have Ishkooda first and then will your next one be Muscoda or Wenonah?

Mr. Harris:
I don't know which it is we have here. I will let you know before I leave. Then as to the Sloss Company or the Republic Company, as to which I will put on our witnesses first I do not know.

Mr. All:
Give us a half day's notice.

Mr. Harris:
I think I can do that all right.

The Court:
All right.

Plaintiffs rest.

Mr. Harris:

The first thing I want to introduce, if the Court pleases, is the Rule Book of the Tennessee Coal, Iron & Railroad Company for the month of March, 1937, heretofore marked for identification Defendants' Exhibit No. 1, and that portion of the rule book which is found on page 35:

"Penalty: Violation of any of the above rules shall be subject to the following penalty.

"First violation: Strong reprimand by superintendent of the department.

"Second violation: Suspension for not less than three days and not more than ten days.

"Third violation: Discharge."

The Court:

That is on page 35, you say?

Mr. Harris:

That is on page 35. Then on page 43, Rule 15:

"All men must use regular travelways provided, and not haulage slopes, when traveling through the mines."

I will identify another section of that, under the subdivision, Rules for Drillmen, on page 39, paragraph 3:

"3. The drillman must go into the mine on the first man-trip at the beginning of each shift and shall be the first employee to enter the working face.

"4. The drillman must personally examine the roofs; ribs and working faces by means of a hammer and bar and with the assistance of the section helper, quarry down all dangerous ground."

The Court:

It will be what number for the Defendants' Exhibits, what exhibit?

Mr. Harris:

It will be our Exhibit No. 1. Then there was a penalty on page 40, which was the same as I had read above, and another penalty on page 44, which is identical.

Now, as to the exhibit—

Mr. Burr:

Just a minute. Are you through with that one?

Mr. Harris:

Yes.

Mr. Smith:

If Your Honor pleases, while we are on that exhibit, we have got the identical books and the identical rules marked. Suppose Your Honor considers it as to ours, A. F. of L. along with it. That will keep down a duplication.

Mr. Burr:

Offered by all defendants.

The Court:

Yes, all the defendants join in the offering of the exhibit described by Mr. Harris.

Mr. Smith:
Yes, sir.

The Court:
It will be so considered.

Mr. Burr:
All right, sir. Now,—

The Court:
Does the plaintiff have any objection?

Mr. Smith:
That will be considered in?

The Court:
Yes.

Mr. Burr:
The plaintiffs separately and severally object to the rule book as a whole and also object to each portion of it that has been offered and read.

The Court:
Overruled.

Mr. Burr:
And take an exception, separately and severally. Now, then, since the objection has been overruled, there are other rules in here that we will probably want to call attention to. The whole book is in and we can call attention to this on rebuttal when we get on it. That is all on that.

(Thereupon, said rule book of the Tennessee Coal, Iron & Railroad Company, March, 1937, was admitted in evidence as Defendants' Exhibit No. 1.)

Mr. Harris:

Now, for Defendants' Exhibit No. 5, for identification, December, 1938, the magazine "Ore Miner," we offer. I will have to mark the pages with pencil because they are not numbered.

The Court:

You say the article is what?

Mr. Harris:

It is a publication by the Tennessee Coal, Iron & Railroad Company.

The Court:

I know that is the publication.

Mr. Harris:

The article is not identified in any way, and if I may be permitted to number the pages with pencil—

Mr. Burr:

Give me the date of the publication first.

Mr. Harris:

This first one is of December, 1938. I didn't notice, Your Honor, that these pages were not numbered.

The Court:

Maybe they are at the bottom.

Mr. Harris:

I don't find any number at all. I also call particular attention—I offer in evidence, if the Court pleases—I started and numbered the pages on one side only, 1, 2, 3, on up—of the issue of the Ore Miner, marked "Safety," December, 1938, issue 36, that page marked No. 3 with its words and illustrations; on page marked No. 5, over on the right-hand side, headed—there are two columns on the page—headed, "Skip accidents," page No. 6 for the illustrations as to the method of work done—not the language of the poem—and then on page No. 8, right-hand column, entitled, "Underground Fire Hazards." I think you gentlemen have seen each one of those.

Mr. Burr:
And plaintiffs separately and severally want to object to the newspaper as a whole and to each separate and several portion that is referred to as appearing on the separate and several pages 3, 5, 6 and 8, and each illustration and sentence appearing in those places.

The Court:
Overruled.

Mr. Burr:
And we take an exception, separately and severally, on behalf of each of the plaintiffs to each separate and several matter objected to.

Mr. Harris:
That will be our Exhibit No. 2. It was marked for identification as No. 6, but it is actually marked—

The Court:
That will be Exhibit 5.

The Clerk:
This will be No. 5.

Mr. Burr:
Yes, the correct exhibit number, the next paper was 5.

(Thereupon, said copy of the December, 1938, issue of The Ore Miner, containing the articles referred to above, was marked for identification as Defendants' Exhibit No. 5, and admitted in evidence.)

Mr. Harris:

Then as to the next exhibit, marked Defendants' Exhibit No. 6—coming back to the rules on page 52 of the same rule book that has been introduced in evidence under the main topic, Main Slopes, Skips and Cages, we offer the paragraphs reading as follows:

"1. No one must get on the man skip or cage while it is in motion or until eight bells signal has been given and permission to get on has been given by the man in charge of the skip. No one must get off of the man skip or cage until it comes to a dead stop."

Riding on Skips, No. 2:

"2. Riding on skips is strictly prohibited except on regular man trips and in emergency cases, and then only on authority of mine foremen."

That is No. 2.

Mr. Burr:

Of course, we have the same objections and exceptions.

The Court:

The same rulings.

Mr. Burr:

As we had on the other.

Mr. Harris:

As to the issue of The Ore Miner dated February, 1940, Defendants' Exhibit No. 6, we offer the photographs and language on pages marked No. 4—the mark is down at the lower right-hand corner of the page—we offer the article on page No. 7, the last—we offer that page and particularly call the Court's attention to the last paragraph on the page, on page 7, and then on page 8—that continues on page 8, the left-hand column on that page. We offer those, separately and severally.

Mr. Burr:
And we make the same objection to that in the same way that we made to the other issue.

The Court:
The same ruling.

Mr. Burr:
Of The Ore Miner, and the separate parts offered.

(Thereupon, the articles in the February, 1940, issue of The Ore Miner on pages 4, 7 and 8, were marked for identification as Defendants' Exhibit No. 6, and admitted in evidence.)

Mr. Harris:
There will be some other issues of those, but I don't know whether the pages have been marked and I will see that it is done so that I don't have to take the time of the Court to mark them. We have some more here.

Mr. Patterson.

2296 E. T. PATTERSON, being called as a witness, and having duly affirmed, testified as follows:

The Court:
What are your initials?

The Witness:
E. T.

The Court:
Swear him.

The Clerk:
He doesn't swear.

The Court:
Do you affirm?

The Witness:
Yes, sir.

Direct Examination.

(By Mr. Harris):
Q. What is your full name, Mr. Patterson?
A. Edward Travis.
Q. How old are you?
A. Thirty-five.
Q. Are you a graduate of any university or college?
A. No, sir.
Q. Are you a graduate of a high school?
A. No, sir.
Q. How high did you go in school?
A. Went to the seventh grade.
Q. How long have you been working under Red Mountain cut here?
A. Around eighteen years.
Q. What was the first work that you did in the ore mine?
A. Track helping.
Q. About how long did you work as a track helper?
A. About three months.
Q. What mine was that?

A. Songo, over here at the Woodward Iron Company.

Q. Then what work did you do underground?

A. Went from there to track foreman.

Q. Was that at the Woodward Iron Company?

A. Yes, sir.

Q. How long were you track foreman, approximately?

A. Around a year, I guess.

Q. And then what did you do?

A. I went from that to timber foreman.

Q. With the Woodward Iron Company?

A. Yes, sir.

Q. How long were you timber foreman with them?

A. Just a short while, about a month or so.

Q. Then what did you do?

A. I went to—from this particular mine I went to the No. 2 mine of the Woodward Iron Company.

Q. How long did you work at that mine?

A. About three months.

Q. In what capacity, what kind of work did you do?

A. Worked with the contractor, just mucking.

Q. Was that hand mucking or machine mucking, machining ore?

A. Hand mucking.

Q. How long did you work as a hand mucker or first mucker, as they call it at Woodward?

A. About three months.

Q. Then where did you work?

A. I went to the Tennessee, the T. C. I.

Q. About when was it that you began working for the Tennessee Coal, Iron & Railroad Company?

A. September, 1926.

Q. Have you worked for any other company since September, 1926, as an ore miner in iron ore mines, other than the Tennessee Company?

A. No, sir.

Q. Now, when you went with the Tennessee Company in September, 1926, what work did you first do with them?

A. Went to work as a night watchman.

Q. How long were you a night watchman, Mr. Patterson?

A. Around a year. I can't say positive.

Q. Then what did you do?

A. Inside of No. 13 mines as a little hoisting engineer, developing hoist.

Q. Now, 13 is at Ishkooda, isn't it?

A. That is right.

Q. And how long did you work at Ishkooda as a hoisting engineer on a little hoisting engine?

A. I couldn't—

Q. All right, then after—if you don't remember how long it was, why then what did you do after that job, what kind of work did you do for the Tennessee Company?

A. Well, for a short time I pipe helped and then I would catch extras, rapping.

Q. Catch what?

A. Extras, rapping.

Q. What do you mean by that? I don't understand you.

A. Skip tender.

Q. How long did you work as a skip tender?

A. I just worked extra as a skip tender.

Q. Then after you had worked as a skip tender what did you do?

A. They transferred me to No. 11 mine as a timber foreman.

Q. Do you remember what year it was you became a timber foreman?

A. No, sir, I do not.

Q. Do you know how long you worked as a timber foreman?

A. Approximately a year.

Q. And then what did you do?

A. I went as a driller.

Q. In No. 11 or No. 13?

A. No. 11.

Q. Were you a head driller then or a drill helper, which were you?

A. I was a driller, a drill runner. I had a helper under me.

Q. About how long did you work as a driller at No. 11 of the T. C. I.? Are you still working at that kind of work?

A. No, sir, I am not a driller now. Approximately four or five years as a driller.

Q. Then what did you do?

A. I went as a section foreman or, as it is now, head miner.

Q. You are a head miner now?

A. Yes, sir.

Q. At no. 11?

A. Yes, sir.

Q. Well, how long have you been head miner at No. 11?

A. Since 1937, I believe it is. I wouldn't be positive.

Q. Well, that is about four years as head miner or section foreman at No. 11. How many men do you have or did you have under you when you started to work in 1937?

A. I had six.

Q. Did you continue to have six under you up until May 1st of this year?

A. Yes, sir.

Q. The number has stayed the same?

A. Yes, sir.

Q. Now, do you—and I am going to ask you to think, if you can—I am not asking about anything that happened since May 1, 1941. The time that I will be asking you about until I change it is from October 24, 1938, up to May 1st, this year. That is the time I am talking about from now on unless I change. Now, in that period from October 24, 1938, to May 1, 1941, were you head miner on a day shift merely or on a day shift part of the time and a night shift part of the time?

A. A day shift part of the time and a night shift part of the time.

Q. Was there any regular system by which you changed from day shift to night shift?

A. We changed from day shift to night shift from—Saturday would be our last day shift and Sunday night would be our first night shift.

Q. In other words, you would work a week of day shift and the next week of night shift and keep alternating?

A. Yes, sir.

Q. Now, then, at the No. 11 mine of the T. C. I. did you and the members of your crew have any kind of brass checks issued to you by the company?

A. Yes, sir.

Q. Did you get those checks when you were employed, and did they have a number on them?

A. When we were employed we got a badge number and when we went to the check-in house to check in why they gave us a check-in number, a brass check.

Q. So your badge number was when you were first employed, first had employment there?

A. Yes, sir.

Q. And then when you went to check in you got also a brass check?

A. Yes, sir.

Q. And you kept both your badge number and your check, your brass check?

A. Yes, sir.

Q. Now, in October, 1938, on up until May 1, 1941, what time of day did you and the other members of the day shift report for work at the No. 11 mine?

A. Six o'clock.

Q. How far was the tally house from the mouth of the mine?

A. Approximately one hundred feet.

Q. When you reported for work at the beginning of your shift did you use your brass check?

Mr. Burr:
Just a minute, Mr. Harris. We don't want our silence to consent to that word. "At work" is the proper word to use. I have got no objection to using that, where it is subject to cross examination, but that is a question we have got here to determine, when he reported to work.

Mr. Harris:
Whether it was compulsory by the company at the time, that question was asked.

Mr. Burr:
I think the facts are what we want, Judge. He can use that term but I want the Court to know that it is used with our insistence that that is not what it is. We insist that he reported at the loading station.

The Court:
All right.

Mr. Harris:
The same way, Judge, Mr. Burr used "working place" all the way through.

Mr. Burr:
You objected when I did and I am returning the compliment. We are even on that.

Mr. Harris:
All right, we are fifty-fifty on that.

Mr. Burr:
Yes.

Q. You reported for work at six o'clock and did what with your brass check, Mr. Patterson?

A. Carried it and deposited it either at a window; to the tally man, or hung it up myself on the nail that I used.

Q. Now, as head miner did any of the men in your crew turn over their brass checks for you to hang up, or did they have somebody else at the tally house to take their brass checks?

A. Some turned it over to me and some—they have an assistant mine foreman who is the one that checks them in and they have to lay their brass in at the window and the assistant mine foreman checked those in.

Q. Now, when you handed in your brass check at the beginning of the day shift did you have to wait, or did the other men have to wait, when you handed in your check for the mine foreman to say something or to acknowledge that he had got it, or did the man put the check on a counter, or in a bucket, or, as you sometimes did, hang it on a nail? My question is this: Could the men walk up and put the check there?

Mr. Burr:
Just a minute.

Q. Did they?

Mr. Burr:
I think he can tell what the men did. You can just tell what they did with the checks.

The Court:
Ask him whether they did or not.

Q. Tell whether or not the men walked up and put the checks on the counter and then walked away, or whether they waited for the assistant mine foreman to pick up the check before they walked away?

A. They walked up and put their brass in at the window and the assistant mine foreman would pick it up and hang it on a nail.

Q. Then after putting the check in at the window did the men who reported at six o'clock, at the same time that you reported, did they, from October 24, 1938, up until May 1st, did they immediately start down the mine all in a bunch, or did they go in different groups?

A. Well, they went in different groups, on different mantrips.

Q. Was there any person standing there at the mantrip to tell the skip tender when to start, or tell the men when they had enough for a load? Did the mine foreman or assistant mine foreman stand there as the men got into the skip?

A. Usually the skip tender is the one that gave the orders when they had a load or when they did not have a load.

Q. Now, that skip belonged to the Tennessee Company, didn't it?

A. Yes, sir, so far as I know.

Q. What is that?

A. So far as I know.

Q. The skip tender wasn't hired by you or any of the men under you or on your crew, was he?

A. No, sir.

Q. And when you got to the bottom of the skip during those three years, were you then haled to another part of the mine, or did you get out of the skip at the man unloading station and walk?

A. We got out at the unloading station and walked.

Q. Now, when you were coming out of the mine, you were going to come out and get your check at the end of the shift, was there any order in which a man got on the skip to come out?

A. Yes, sir, we had a man loading station and as the men came in to this station they got in rotation; whenever his turn came he got out into the skip and loaded up and was carried.

Q. Did the company have any employee there directing the men as to when there were enough to fill the skip or telling the skip tender when to pull out with a load?

A. Yes, sir. The assistant mine foreman did the loading of the men on the inside.

Q. Now, in No. 11 mine, in coming out, did the men have to pass through a little chute or a gate to get into the skip?

A. Yes, sir.

Q. And did the assistant mine foreman stand at that gate?

Mr. Burr:

We had rather that you ask what the assistant mine foreman did than state it in the question.

Mr. Harris:

All right.

Mr. Burr:

I think it is the best way to let the witness testify.

Mr. Harris:

All right. I think we have proceeded along that line all the way through, Mr. Burr.

Mr. Burr:

Yes, we did, and I let you do it to save time.

Mr. Harris:

I permitted you to do it.

Mr. Burr:

All right, sir.

Q. Did the assistant mine foreman stand there at the chute, at the man loading station and direct the men in coming up and loading and coming out of the skip as they came out of the mine?

A. He did. He counted the men as they came out of the unloading—out of the chute.

Q. Was that skip at No. 11 made out of wood or iron or steel? What was it made out of?

A. It was made of iron.

Q. In your experience out there did the assistant mine foreman of the Tennessee Company ever tell you what skip to get on, going into the mine or coming out?

A. The mine foreman has.

Q. The mine foreman. Do you recall any occasion out there in which you didn't want to ride a certain skip and the mine foreman talked to you?

A. Yes, sir, there was one time—I don't remember just the date—I got inside of the skip and the rapper overloaded the skip, in my opinion, that it was crowded very heavily, and I crawled out of the skip and told him I would wait on another, and he said that I could either get in the skip or get my brass, so I told him he could hand me my brass if he wanted me to go back. I never did get that brass.

Q. Now, let's get the actual—this is not a photograph of the actual skip that you have in that mine. We have no pictures of Ishkooda, but I think it is substantially the same skip. Was the skip that the men traveled in at No. 11 from October 24, '38, to May, 1941, built like that?

A. Yes, sir.

Q. In your judgment, is that a fair representation of the skip that you all rode down in the mine in?

A. It is.

Q. Are you still using one like that out there?

A. Yes, sir.

Mr. Harris:

We offer this as an illustration for the benefit of the Court of the kind of skip that they were using and the general type they were using at that time, and ask the clerk to mark it.

The Clerk:

It is No. 11.

Q. Now, I show you another photograph of that skip with the pictures of men standing in it and other men jumping in it, or another man jumping in it. Is that the way that you get in the skip at No. 11?

Mr. Burr:

You mean the picture shows the way they get in it?

Mr. Harris:

How is that?

Mr. Burr:

You mean the picture shows the way they got in?

Mr. Harris:

Yes.

Mr. Burr:

All right, I don't object to the way the picture shows.

A. Something similar, the station. It shows that we have got a little farther distance to step than that.

Q. You mean—

A. From the loading platform, into the skip.

Q. But what I am trying to get at was the way the men got in the skip.

A. That is it.

Mr. Harris:

We offer this as our next exhibit.

The Clerk:

Defendants' Exhibit No. 12.

Q. Now, at your No. 11 operation is it a place where you step on to the skip, that is, the top of the side wall; was the top of the side wall at No. 11 even with the place where you would be standing, or was it above the place where you would be standing or below?

Mr. Burr:

Just a minute, Mr. Harris. Your Honor will recall that in the beginning of this case when Mr. Ball was first asked questions of this kind that we objected and the Court overruled the objection and then, of course, following the Court's ruling we offered evidence on it. And with the understanding that I am objecting to each of these questions on the same grounds that I objected in the beginning, that is, on the question of the kind or character of the haulage or the equipment used and the method used, has no relevant bearing on the issues that we have to consider, just to save time we would like to have an understanding that we have an objection, so I won't have to interrupt you. Is that satisfactory with the Court? If there is anything special I will bring it out.

The Court:

Yes. Overrule the objection.

Mr. Burr:

And we may have the understanding that we have the objection all the way through?

Mr. Harris:

What you want is everything that has to do with all conditions in the mine?

Mr. Burr:

That is right. I take the position that that is something that hasn't got anything to do with the matter under consideration.

The Court:

I don't recall, Mr. Burr, what testimony you offered..

Mr. Burr:

On cross examination Mr. Harris went into it and I objected to it and Your Honor overruled my objection.

The Court:

I guess I misunderstood the question.

Mr. Burr:

No, sir. I just didn't want you to think I was waiving my objection.

The Court:

Yes, that is understood, and with that understood I am overruling your objection and you will have an exception.

Mr. Harris:

You will have an exception, if that is the purpose, to that kind of questions, and in that way we will save an enormous amount of time.

Q. How far was the place where you step at No. 11 above the top of the skip?

A. It was below the top of the skip. On the upper end was about a foot and a half or two feet and the lower end was about even with the top.

Q. In other words, instead of jumping down into the skip you climbed up into the skip, is that what you mean?

A. On the front end, but the distance from the skip to the platform was approximately two and a half feet.

Q. So that you had to step over a two-and-a-half-foot gap there to get from the place where you were standing to the top of the skip. Now, during the period of time, October, '38, to May, '41, what was the average number of men put in there on each mantrip that you rode on, what was the skip load, what was the average haul?

A. Approximately thirty men.

Q. And those thirty men, did they have a place to sit or did they have to stand?

A. They didn't have a place to sit and they had to scrouge in there the best way they could get in.

Q. Now, in riding down that skip and riding out did the men stand erect or did they crouch over?

A. They humped over and squatted down.

Q. Was that true throughout the entire course of the skip, or were there places where they stood erect?

A. Yes. About—just before they reached the mouth coming out there was approximately seven or eight hundred feet, probably, they could raise up and get straight.

Q. Did the men ride spoon fashion in the skips at No. 11?

Mr. Burr:
We object to that.

A. I didn't understand you.

Mr. Burr:
We object to the definition that Mr. Harris seems to like so much—spoon fashion. He has some very picturesque language that he gets in as being leaping and jumping and spooning. Of course, I don't think it has any effect, but I rather object to it.

The Court:
Well, he is not talking about that kind.

Mr. Burr:

We will let Your Honor go down and see it. We would be glad to have you do it.

Mr. Harris:

Judge, I am going to object to the Court going into any of these ore mines.

The Court:

I am not going.

Mr. Burr:

You wouldn't have to go into it to see any of the skips. You can see them on the outside.

Mr. Harris:

Let me have Mr. Taylor and Mr. Butler and another man. Well, you would make the third man. Mr. Butler, come up. You are not with the T. C. I., though; you are with the Republic. All right, Mr. Scruggs.

Mr. Burr:

He is a Republic man. No, he is with the Tennessee Company.

Mr. Harris:

Your Honor, I had already had them do that in my office so that I would know how they rode, to bring Your Honor the illustration.

Mr. Burr:

I don't know that we want a result of practice.

The Court:

All right, go ahead.

Mr. Burr:

Just so you tell them to do it like they do it on the skip, and not like they did it in your office.

The Court:

Come to order.

Mr. Harris:

Now, will you men stand or take the position that you take going down on the skip at No. 11, when it has the full load that Mr. Patterson mentioned?

(The three men illustrate by squatting down in a row, the second man directly behind the first and the third man directly behind the second.)

Mr. Harris:

Your Honor, I don't see anything to laugh at.

Mr. Burr:

No, I beg Your Honor's pardon.

Mr. Harris:

I admit we are all nervous, but I don't admit it is a matter of laughter.

Q. Now, then, Mr. Patterson, when you got off the skip —or, rather, I will change the question: Did you have any property of your own besides your clothes when you got on the skip at the beginning of your shift?

A. No, sir.

Q. Was the carbide light your property or the property of the Tennessee Company?

A. The carbide light was my property.

Q. You had to buy the carbide lamp yourself?

A. Yes, sir.

Q. And the carbide, you bought that from the company?

A. Yes, sir.

Q. Now, did you make any investigation anywhere to see whether the company sold it to you at cost or as cheap as you could buy carbide elsewhere?

Mr. Burr:

We object to the form, of the question, whether he made any investigation or not.

Mr. Harris:

Why, if the Court pleases, he has had man after man to testify—

Mr. Burr:

That is no way to prove that they didn't buy it at cost or didn't sell it at cost. If it is your purpose to show that you could get it cheaper, I have no objection to it.

The Court:

If he knows.

Mr. Harris:

I will change the question.

Q. Do you know, of your own knowledge, whether or not the company sold it to you at cost?

A. No, sir.

Q. Did you buy any carbide anywhere else from October, '38, up until May 1, '41?

A. No, sir.

Q. Could you mine ore in the mine of the Tennessee Company, No. 11, without a carbide light?

A. No, sir.

Q. Did you and each member of your crew and the other men who went underground have carbide lights?

A. Yes, sir.

Q. Has that been true the whole time from October, '38, to May 1, 1941? At any time from October up to May 1st has the Tennessee Company furnished you carbide free?

A. No, sir.

Q. I suppose they did furnish you the picks and shovels that you worked with, or did you have to buy those?

A. They furnished those.

Q. And did they furnish the drills and jackhammers and wedges, or did you have to buy any of those?

A. They furnished those.

Q. Well, was there anything else that you had to have in your mining operation, your work as a miner, for which you paid, other than carbide; was there anything else that you used as a miner that you paid for, which was charged to you, besides carbide?

A. Nothing only clothes or safety shoes.

Q. How about powder, was the powder charged to you at the T. C. I.?

A. No, sir.

Q. Or dynamite. The powder and the fuses were not charged to you out there. Now, you say safety clothes were charged to you?

A. Safety shoes, when we bought them.

Q. What is a safety shoe? How is that built?

A. It is a shoe that we were required to wear underground. It has a steel toe in it, and we have to wear those. It is orders that we can't go down inside without a pair of safety shoes on.

Q. Well, is that steel toe on there for any kind of work you do with your feet, or is it there as a safety measure for your feet?

A. It is a safety measure.

Q. How far does this steel cap come back from the tip of your toe on your foot over in these safety shoes?

A. It is just in the cap of the shoe, in the cap of the toe.

The Court:

Under the leather?

The Witness:

Yes, sir.

Q. Do you buy the steel cap and put in there or do you buy that shoe with the cap already in there?

A. We have to buy the shoe with the cap already in there.

Q. Does the Tennessee Company sell you that shoe, or do you have to buy them somewhere else?

A. The company sells them.

Q. When you report for work at the beginning of a shift at six o'clock or do you know what skip you are going to be allowed to ride on, or did you from October 24, 1938, up until May 1st?

A. No, sir.

Q. And when you got off at the man unloading station at the bottom of the main slope, during the period from October to May that I have mentioned, did you proceed directly to the heading or stope where you had been drilling the day before, or did you go by any other particular place for any sort of supplies?

A. Well, at times very often we would go by what was called the tool house, or I would give orders for my men to go by and get various pipe fittings and hose pipes, hangers, wedges, and drill or jackhammer steel, or things of that sort.

Q. Well, did you, during these three years, that period of time, carry your jackhammer steel or wedges or C-hooks on the skip with you as you went down, did you take them on the skip with you, did you ever take any tools during that three years?

A. At times we have. When we were short of hangers they would straighten hangers up that went through the crusher and they would be laying out there and the mine foreman would tell us we could get some of those and we would carry them down on the skip.

Q. What about wedges, did you carry wedges down on the skip?

A. No, sir, I haven't.

Q. Were the hangers straightened up or repaired at a blacksmith shop on the top or down under the ground?

A. They must have been on top.

The Court:

I didn't hear that, Mr. Patterson.

The Witness:

They must have been on top because they would be lying up on the surface when we would ask about hangers and wedges.

Q. Did you use any oil in your drilling operations?

A. Yes, sir.

Q. Did you have to squirt that oil into the different places in your drill, or did you have an automatic lubricator where you could pour the oil and it would automatically flow?

A. We had an automatic lubricator.

Q. And how much oil would your automatic lubricator hold?

A. Around a quart.

Q. And in an ordinary day's drilling, how many times would you fill that lubricator?

A. About once or twice a day.

(A short recess was then taken.)

Q. Mr. Patterson, I wasn't clear as to your answer to the last question or the last statement you made about your mine foreman or assistant mine foreman telling you to pick up hangers. Did you pick up those hangers out on the surface before you jumped into the skip, or did you pick them up at some place after you got out of the skip?

A. The new hangers, hangers that were made and sent inside to a box, and the wedges were put in those boxes, and when my men wanted wedges or hangers or jackhammer steel they would come to me on the outside whenever they would walk in and tell me that they needed such and such a tool to work with, and I would go to the mine foreman or assistant mine foreman and tell him that I needed such things, and he would tell me to go inside and get them or go by the tool house and get them and carry them on as we would go to our working place.

Q. Now, then, they would tell you outside before you all got in the skip?

A. Yes, sir.

Q. And you would tell the mine foreman or assistant mine foreman before you got in the skip?

A. Yes, sir.

Q. And he would then tell you where to get them?

A. Yes, sir.

Q. And did you have any place where you got them at the man unloading station or near the man unloading station?

A. That place was—the man unloading station was one heading and right below that place why we picked up our jackhammer steel, hangers and wedges and other fittings for drills and tripods and such.

Q. Now, since October, 1938, and from that time up to May 1st, have you and your crew worked in more than one heading, during the past three years?

A. Yes, sir.

Q. What different headings have you worked in during the past three years?

A. The first one was 65 right, No. 11 mine; the next was 63; the next was 67; the next was 68; the next was 2nd left, northeast, and the present heading that I am working in now is 1st right.

Q. Well, from October, '38, up to the present time has the heading or stope in which you have been working kept moving farther from the man unloading station, or has it moved back and forth so that you would be working closer at one period and farther at another period; they would alternate, I mean?

A. You mean the one that I am working now?

Q. No, I mean for the whole three years have you walked an increasing distance as you would finish one heading or one stope and take up another one, has the length of your walk increased?

A. It has.

Q. How far were you walking from the man unloading station three years ago to get from the man unloading station to your heading or stope, how far would you walk, approximately?

A. Approximately three thousand feet, I guess.

Q. And at the present time how far, that is up to May 1st, say during the month of April or the month of March, how far were you walking from the man unloading station to your heading or stope?

A. Well, at the time I was in 2nd left I couldn't hardly estimate that distance, but that was the farthest distance because I would go from 64 down through to the fault down to the pocket and then from the pocket approximately five thousand feet, I guess.

Q. You know, I suppose that five thousand two hundred and eighty feet make a mile, would you say?

A. No, sir, I didn't.

Q. You didn't know that. Well, was it approximately a mile, in your judgment, that you walked?

A. No, sir, it wasn't that far It was a quarter of a mile, I guess, from the pocket. I walked about—from the unloading station to the 2nd left was approximately a half mile.

Q. Now, when you were doing that walking during these three years were you walking on level ground or rough ground? Tell the Court what kind of footing you had as you walked from the man unloading station to your stope or heading.

A. Well, part of the way we went down what was called a manway over three or four headings, and that was where the pipe lines, the various pipe lines and water lines and electrical wires and different things were overhead, telephone wires and so on. We had to go under and stoop under and cross over and walk over pipe lines. In some cases we had water running down the manway—slippery. When we reached the level where they have piping why we went over a motor—a track that the traveling motor goes over, which the ties are spaced about two feet apart.

Q. Well, do you mean that you climbed up a place and then went down, or was that a level place that the ties were spaced two feet apart?

A. It went down about that pitch in some cases; in some cases a little more.

Q. And then after you passed that place how was the footing on up to your heading or stope?

A. Well, after we passed that place into the headings that we worked in we had a regular track for the cars to run on that we walked in, and then after that we went into the stopes up where we drilled, or the face, why we walked over muck and ore.

Q. Now, in taking that walk from the man unloading station did you or any member of your crew carry oil for this automatic lubricator and your drill, or was the oil brought up to your drilling place and furnished you there by the company?

A. They have an oil house or a place that they keep oil. It is not a house. It is setting out open just across from this place that we get our tools.

Q. Right near the man unloading station?

A. Yes. And then go by there and get oil. Usually they bring the cans up in the afternoon and carry them back in the morning.

Q. What size cans are ordinarily used to carry that oil back?

A. One-gallon cans.

Q. Now, how long, in your judgment, would one of those drills run if you didn't use that oil on it? In other words, how long would it take it to run hot and get where you couldn't drill at all if you ran completely out of oil and kept on running your drill?

A. Approximately six hours.

Q. You mean without any oil at all in your drill, you could operate it for six hours, in your opinion?

A. Yes, sir, that is right, for six hours without it stopping on you. You couldn't operate it without endangering it that long.

Q. Now, in drilling does the air pressure in your air pipe or the air pressure that comes into your drill have anything to do with the cutting speed of your drill?

A. Yes, sir.

Q. In your experience as a head miner and driller, what is the air pressure on your drill that gives the best results, within what limits?

A. Around eighty-five pounds, your usual—I have noticed the gauge. We have a guage on the main line. Of course, we haven't a guage in the heading. Approximately at the beginning of the working place there is a gauge and around eighty-five to ninety pounds is what it is.

Q. Now, suppose that your air pressure dropped down as low as fifty pounds, what effect would that have on the speed with which the drill went into the ore body?

A. Well, it would cut it down considerably.

Q. When you first get into the vicinity of your drilling place on your morning shift what is the very first thing that you as a head miner customarily do when you first get there?

A. The first thing when we get into the working place?

Q. Yes. When you get up to the face what is the first thing you do in the morning?

A. We examine the roof and rib and see that there is no loose stuff or dangerous top over us.

Q. How do you make that examination, Mr. Patterson?

A. By means of using a steel bar.

Q. Now, tell the Court how you use that steel bar. What do you do to it or with it?

A. Well, when we go into a place after blasting—why we blast out the face of the ore and it leaves ore in some cases thick and not loose ore, and then we go into that and then overhead there is in most cases a ledge of sand rock about so thick and that occasionally gets loose and we timber it as we come up, and after we pass those timbers into that place we take that bar and go over the roof to sound to see whether or not it has got dead since the last evening.

Q. And does it have what you call a drummy sound if it is loose?

A. Yes, sir.

Q. And it is your job as a head miner to check that the very first thing after arriving at the face?

A. Yes, sir.

Q. Whether it is day shift or night shift?

A. Yes, sir.

Q. Now, was it in a place like that, out in a manway, that two men were killed Saturday?

Mr. Burr:

We object to that question, if Your Honor please.

The Court:

I sustain the objection.

Q. The manways, the place where you—

Mr. Burr:
Your Honor excluded that, did you?

The Court:
Did he answer it?

Mr. Burr:
No, sir. The question is what I am objecting to.

The Court:
I sustained the objection.

Mr. Burr:
The question, the form of it, is what I am objecting to. I just want it excluded; that is all.

The Court:
I sustained the objection to the question and it wasn't answered.

Mr. Burr:
All right, sir. That will do.

Q. Now, then, Mr. Patterson, as you walk along from the man unloading station to the face you bent over to illustrate while you are passing under those wires and cables. Are you able to stand erect after getting beyond those wires and cables in going up to your face, or do you have to bend over any more?

A. We do stand erect after we get into the working place.

Q. Well, what distance is it—suppose you were leaving the face and going out to the man unloading station, for what distance could you walk before you had to begin stooping over or dodging the roof or cables or anything else?

A. That would be hard to say because all along up the walking places why we have occasion to stoop over and then we can walk maybe a heading or two and then we raise up.

Q. Now, have you worked in any other ore mines at all in the last fourteen years besides the T. C. I.?

A. Yes, sir, I worked at Woodward.

Q. Well wasn't that more than fourteen years ago that you worked out there? You are thirty-five.

A. Yes, sir, it was in '23.

Q. Now, you haven't been, have you, in any of the other mines besides the T. C. I.?

A. No, sir.

Q. Have you been in the Sloss mines or the Republic mines?

A. No, sir.

Q. In working underground there at this T. C. I. mine suppose you or your men have to go to the toilet, where are the closets with reference to the face of the mine?

A. Well, in my place why we just—well, in most of the places we would go right into an old working right close to where we are at. In the place that I am in now most everybody uses the place above me or one right out in front of me, where the man fan circulates the air right through this way through in a circle around through northeast and comes back through east into 1st right, back down to the main slope.

Q. Now, did they have any arrangements in No. 11, any privies or holes cut in the earth, or any water closets, or anything of the sort, at which all of these men working down under there just go and stop at some—any place they had there in the mines?

A. They go just any place that they wish.

Q. Has that situation been going on during the three years that you have been working out there?

A. Yes, sir.

Q. How far do you travel on your journey from the man unloading station before you detect any bad odors of this kind?

A. Well, you can detect that at the man unloading station.

Q. At the man unloading station. Has that been true all the time that you have been working out there, I mean since October 24, 1938?

A. Yes, sir.

Q. Have you been on any committee that was negotiating with the Tennessee Coal, Iron & Railroad Company for the unions since you have been working for them? Had you met with Mr. Ball when you were negotiating or discussing wages or any other matters?

A. Not on the contract. On this first negotiation that I was in was in Chicago when this hearing was in Birmingham, of the 1936 strike.

Q. You went up to Chicago?

A. Yes, sir.

Q. Well, now, have you ever heard the phrase "undesirable" used out there at the mine?

A. Yes, sir.

Q. When was the phrase "undesirable" first used out at No. 11, so far as you know?

A. It was after the strike of 1936, when the incentive plan went into effect, that we accepted the Governor's proposal that we go back on a trial of the incentive plan. Through this it was understood that the men would be placed back to work as they came off.

Mr. Burr:

We are going to put a special objection, if Your Honor please, to trying anything in reference to that case. It was settled and disposed of. It took nine months, I think, to get rid of it. It has got nothing to do with this case.

Mr. Harris:

If the Court pleases, maybe it is in Ball's testimony—

Mr. Burr:

No, what you are talking about is in Mr. Vance's testimony. He said they settled it. Now, what you are doing is going behind the settlement.

Mr. Harris:

I made a motion—

Mr. Burr:

All right, I withdraw the objection. I would rather do that than to take up time. If he wants to go into it, let's travel on it. As long as Your Honor has got patience we will go ahead with it.

Mr. Harris:

Well, I am going to ask the Court to adjourn in three or four minutes, if it is agreeable with the Court.

The Court:

I am going to in a while.

Mr. Harris:

And if it is agreeable with the Court, I will start with this witness in the morning.

The Court:

It is four o'clock, isn't it, 4:05?

Mr. Harris:

Yes, sir.

The Court:

Court is adjourned until 9:30 tomorrow morning.

(Thereupon, at 4:05 P. M., July 23, 1941, Court adjourned until 9:30 A. M., July 24, 1941.)

July 24, 1941, 9:30 A. M.

Court met Pursuant to Adjournment.

The Court:
All right, proceed.

2326 E. T. PATTERSON resumed the stand and testified further as follows:

Direct Examination—Resumed.

(By Mr. Harris):

Q. Mr. Patterson, when did you join the union, International Union of Mine, Mill and Smelter Workers?

A. In August, 1933.

Q. Have you been a member of that union from that time on up to the present time?

A. Yes, sir.

Q. Have you been an officer of any local of that union?

A. Yes, sir.

Q. What official position have you held with the union?

A. First I was Executive Board Member and after '36 I was elected as President of the Ishkooda Local.

Q. Are you President of the Ishkooda Local now?

A. No, sir.

Q. How long were you President?

A. Approximately two years.

Q. What official position, if any, do you hold with Ishkooda Local now?

A. I am Executive Board Member.

Q. In 1936, when the incentive plan was put into effect by the Tennessee Company were you then a head miner or a drill operator?

A. I was a drill operator, I believe. I wouldn't be positive.

Q. At that time, just before they put in the incentive plan, were there or not nine men in a crew with the mechanical loaders?

A. There were.

Q. And then immediately after they put in the incentive plan how many men were in the same kind of crew at the same place, doing the same work?

A. Seven.

Q. When this plan was presented in 1936 did the men work under it and then go out on a strike, or did they go out on a strike before working under it at all?

A. They went out on a strike before working under it at all.

Q. Now, after the strike was over, how long—in 1936 I am talking about—did the Tennessee Company operate? Did they shut down shortly after the strike was over, or was it when the 1934 strike that they shut down shortly after it/was over?

A. It was 1934, and some time after the '36 strike they shut down for a short time. I don't know just when.

Q. Now, did anybody from the Tennessee Company ask you for your approval of the incentive plan before they put it into effect?

A. No, sir.

Q. In 1936, after the strike, did the membership of your Local Union increase or decrease?

A. Decreased considerably.

Q. And then in 1937 did the membership of your Local Union increase or decrease, during 1937, the next year?

A. It continued to decrease.

Q. About how many members prior to this strike in 1936 did you normally have in attendance at a meeting of your local; that was before the '36 strike?

A. Well, on various occasions—

Mr. Burr:

Your Honor understands I don't want to interrupt, but I am objecting to all of this line of questions.

Mr. Harris:
We understood your objection.

The Court:
Overruled, ~~and~~ exception taken to the questions.

A. At times sometimes we would have one hundred and sometimes it would be up around three hundred or four hundred.

Q. Now, then, in the year 1936, after the strike was broken, what did the attendance, the average attendance, after the strike was broken amount to?

A. Well, right after the strike we would sometimes have one hundred members, and then on as we continued on why it dropped down to as low as twenty-five members.

Q. Was that in '36 it did that?

A. Well, it goes on into '37.

Q. In '37. What was it during '37, was the average attendance at the union meetings of your local?

A. Well, the average attendance would be around ten.

Q. Around ten. And now, then, after the Fair Labor Standards Act went into effect in 1938 did the membership attendance at your local start increasing, or did it continue as it was in '37?

A. After the settlement of the undesirables our membership started increasing in '38.

Q. Now, who were the undesirables?

A. The undesirables were men that the company left out of the—whenever we taken the incentive plan under trial.

Q. You mean that they were men who had been working for the company before the incentive plan went into effect and they were dropped by the company as soon as they put the incentive plan into effect?

A. Yes, sir.

Q. Now, were these men who were dropped as soon as the incentive plan went into effect men who were members of the International Union of Mine, Mill and Smelter Workers, or were they members of a company union, or were they men that were not members of any union?

A. They were all members of the International Union of Mine, Mill and Smelter Workers.

Q. Now, did they drop, as soon as they put that incentive plan into effect, did they drop from the employment rolls any men who had been officers or were officers in the union?

A. Yes, sir.

Q. And do you recall how many, approximately how many men who had been active in union work were let off when the incentive plan went into effect?

A. Well, at Ishkooda Division there was approximately thirty-five.

Q. And how many of that thirty-five that the company let out would you say were officers of the Union?

A. Approximately five of them.

Q. Five?

A. Yes, sir.

Q. Five of the thirty-five were officers of the union. Now, when was it that the matter of the undesirables was taken up by you or by anybody else in your presence with the officers of the Tennessee Company, or of the Steel Corporation above the Tennessee Company? I will change it, if you don't understand it. Were you ever at any meeting with any officers of the Tennessee Company or of the Steel Corporation where the matter of the undesirables was taken up?

A. No, sir, other than the last conference that we had in Montgomery with the Governor, when we called the president of the company in down there, I was in.

Q. Was that in '36 you are talking about, or '38?

A. It was in '36 or '37, I don't know just when.

Q. Now, then, did you attend a meeting in Chicago?

A. Yes, sir.

Q. Well, who was present at the meeting in Chicago?

A. To my best recollection, was myself and Mr. McDaniel, Mr. Van Jones, Mr. Bill Mitch and Mr. Lemley, old man Lemley—I don't know just what his initials are—and Frank Allen.

Q. Frank Allen is a colored man?

A. Yes, sir.

Q. And who else?

A. And Lee Pressman, the counsel for the C. I. O.

Q. Now, who was present from Birmingham representing the Tennessee Coal, Iron & Railroad Company?

Mr. Burr:

I want them all. I don't know whether he had given them all or not.

Q. Is that all that you remember on the union side?

A. That is all I remember.

Q. Now, then do you remember who was present for the Tennessee Company at that meeting in Chicago?

A. Mr. Vance. I believe that is all that I can recall.

Q. All right. Do you remember the names of any man or any men who were there from the head offices of the United States Steel Corporation?

A. Yes, sir.

Q. Who were they?

A. Mr. Moses, the Vice President of the Raw Material.

Q. Now, at the Chicago meeting was the matter of the undesirables discussed?

A. Well, it was discussed of the ways and means of paying off the undesirables and we were offered a settlement and a contract whenever it was drawn up, for the ore miners.

Q. All right. Did you have a separate paper dealing with the undesirables, or was the matter of the undesirables in the contract itself?

A. We had a stipulation dealing with the undesirables.

Q. Do you recall whether or not that stipulation was written into the document or whether it was a separate paper?

A. It was a separate paper.

Q. Now, was that document handed to the union men by the representatives of the company, or was it handed by the union men to the representatives of the company, in Chicago?

A. It was handed to the representatives of the union by the company.

Q. Have you in your files a copy of that stipulation, that side agreement, about the undesirables?

A. I haven't but I presume that the district office has one.

Q. Now, coming back to the work in the mines: After you as head miner finished drilling your holes from the period October 24, 1938, up to May 1st of this year, could you shoot whenever you wanted to, or did you have a regular time set by the company for shooting?

A. We had a regular time set by the company.

Q. And if you finished drilling your holes before that time did you have to wait until the time arrived before you could shoot?

A. We did.

Q. During that period could you leave the mine any time you wanted to, or were you required by the company to come out on a man trip?

A. We were required to come out on a man trip.

Q. And in coming out on that man trip and getting to the top at the end of your day's shift did you then pick up your brass check at the tally house?

A. We did.

Q. How long did it take to get your brass check back, how many minutes would you say that it took you on day shift to get all their brass checks back when they came to the tally house?

A. Well, to take—for the whole crew?

Q. Yes.

A. Well, that would be hard to say. I can say it in this way, that the one drag, took each skip load at the time.

Q. All right, how long did it take a skip load to get their brass checks at the end of the shift?

A. It would take the skip load approximately eight to ten minutes.

Q. I believe you said that when you tossed them on the counter going down it only took a minute or so?

A. Yes, sir, it taken—in going down it would take the whole crew, they can check in the whole crew in ten minutes.

Q. You mean the entire day's shift?

A. Yes, sir.

Q. Can check in in ten minutes?

A. Yes, sir.

Q. But coming out a skip load would take ten minutes to check out?

A. Yes, sir.

Q. What is meant by the phrase "narrow work" in ore mining in the Birmingham district?

A. Well, narrow work is a development where they are advancing a place and they carry it on narrower than they do stope work. Narrow works run in the Tennessee Company's mines from twelve feet to twenty feet and stoping runs twenty-five feet.

Q. Stoping, then, is the place where you are doing the work for the express purpose of getting out the ore?

A. Yes, sir.

Q. And narrow work, as I understand it, is work that you are doing not merely to get out the ore that you are moving but to get into a further portion of the ores so that you can open up different stopes?

A. That is right.

Q. Now, in mining during the years you have worked for the Tennessee Company can a crew produce more ore in narrow work or in stoping?

A. In stoping.

Q. Since May 1, 1941, in your mine out there, has the Tennessee Company been doing more narrow work or less narrow work than it did before?

A. Well, I couldn't say.

Q. Well, in your crew, how about your crew?

A. Well, in my crew practically the same as it was before.

Q. The last two months in your crew you have done the same amount of development work that you did for two or three months before May 1st?

A. Yes, sir.

Q. You don't know about the work in the other mines or other divisions of the Tennessee Company?

A. No, sir.

Q. Now, have you ever worked in those other mines at all; have you ever been in the other mines?

A. None other than No. 13.

Q. Now, during the years that you worked for the Tennessee Company what was the manner in which you were paid; when pay day came how did you get your pay?

A. They usually post notice of the pay days and on that day we would go to the office. We would obtain what they call a statement, and we signed that statement, or got that statement and signed and tear off a small portion of it on the bottom where it says, "This to the Paymaster," and carry that in and give it to the paymaster and we kept the shorter portion of it for ourselves and we would obtain our money on that.

Q. Now, then, when you go to get your money is that when they tear off one portion and keep a portion?

A. Yes, sir.

Q. When you actually got your money?

A. After we signed we tear off the small portion and throw it in at the window for the paymaster and then he takes it and gives us our money in return.

Q. All right. Now, in paying and doing your work there did they have a certain hour on a certain day when they paid you, or could you go any time you wanted to get your pay?

A. They had certain hours.

Q. During this—did they have a pay window where the men lined up?

A. Yes, sir.

Q. What time of day did they usually start payment, or did they have any set time?

A. Since May 1st they have changed it to 1:15 when they start paying off and up until 3:30, I believe, is the last time.

Q. All right. Now, before May 1st what time of day were you paid?

A. Started at 11:00 o'clock and paid until 12:00, and then after—start back at 2:00, I believe it was, and paid until 4:30, I believe.

Q. Now, has any officer or representative of the Tennessee Coal, Iron & Railroad Company since October 24, 1938, when the Fair Labor Standards Act went into effect, has any such officer or representative ever told you that in signing the paper and getting your pay that you were giving up any rights under the Fair Labor Standards Act law?

A. Have not.

Mr. Burr:

Of course, we object to that, in addition to the objection we have had all the time.

The Court:

Overruled.

Mr. Quinn:

What was his answer? I didn't catch it.

Mr. Harris:
Have not.

Q. Did any officer or representative of the Tennessee Company tell you, after October 24, 1938, that if you continued to sign receipts as you did in the years before that they would use those receipts as a claim against you, if you made any claim for wages under the Fair Labor Standards Act?

Mr. Burr:
The same objection, if Your Honor please.

The Court:
Overruled.

Mr. Burr:
Exception.

A. No, sir.

Q. Do you recall whether you have read those receipts from October 24, '38, until May 1, '41?

Mr. Burr:
The same objection.

A. No, sir.

The Court:
Overruled.

Mr. Burr:
Exception.

Q. Does that look like one (indicating)?

Mr. Burr:

What is the Exhibit number, so that we will know what you are talking about?

Mr. Harris:

This is Tennessee—it looks like it is V and Y, Tennessee Exhibits V and Y.

Q. Does that look like the kind of thing that was handed you and you tore off and signed a paper?

A. It does.

Q. Has that same kind of thing been used all the years you have been working out there?

A. Yes, sir.

Mr. Harris:

I believe that is all for the witness, Your Honor.

The Court:

All right, cross examination.

Mr. Harris:

I suppose that if anybody on our side wants to—

The Court:

Do you want to ask any additional questions?

Mr. Harris:

—ask any additional questions, we will follow the same plan we did with them.

Mr. Cooper:

We don't have any questions.

The Court:

All right, Mr. Burr:

Mr. Burr:

Have you got any questions?

The Court:

No, they have none. Cross examination.

Cross Examination.

(By Mr. Burr):

Q. Mr. Patterson, I believe you said that before the 1936 strike you were a drill man or drill operator. What was that position you had?

A. I think that was what I was. I was off and on head section foreman and drill operator. I wouldn't be positive just which one of them.

Q. Your best judgment; your last occupation before the strike, before you went out on strike, was a drill operator?

A. That is right.

Q. Now, then, after you went back to work under this settlement you have talked about that was made in Chicago, since then I believe you said you have been a head miner?

A. Yes, sir; I went back after the—right after the '36 strike.

Q. As a head miner, and you have been a head miner ever since?

A. Yes, sir.

Q. And you are a head miner now?

A. Yes, sir.

Q. All right, sir. Now, I want to ask you some questions about the general practices and then I will ask you about some particular things that you say happened occasionally. I want to ask you about your own practice, not anybody else's. Now, the first place you went to before you went to work was the bath house on the company's premises, isn't it?

A. Yes, sir.

Q. Now, that bath house is about how far, in your judgment, from the mine entrance?

A. I imagine about five hundred feet.

Q. About five hundred feet. When you go to work you take your clothes off and put them in the hanger—you have got a hanger or a locker system?

A. Locker.

Q. A locker. You carry a key to your locker?

A. How is that?

Q. Have you got a key or just an individual locker?

A. Individual locker. Some have locks and some don't.

Q. How about you, did you have a key, or not?

A. No, sir.

Q. I am talking about you all the time.

A. No, sir, I haven't got a key.

Q. Well, you will hang your street clothes in that locker?

A. That is right.

Q. And put on your work clothes and then you went on and walked to the place where you got your carbide?

A. Yes, sir.

Q. Is that the next thing you did?

A. Yes, sir.

Q. Now, that carbide you got in cans, didn't you?

A. Yes, sir, in pound cans.

Q. In pound cans. And about how much carbide, about how long does a can of carbide last you or did it last you since you were a head miner?

A. About two days.

Q. About two days. Would you say that was about the average that it would last others?

A. Yes, sir, I use about as much as they do.

Q. About as much as any of them. So you wouldn't have to buy your carbide every day; it would be about every other day or every third day, something like that?

A. No, sir, about every other day.

Q. About every other day you would buy your carbide. And where was the carbide, how close was it to the place where you left your check when you went into the mine?

A. Right in the same building.

Q. In the same building?

A. Yes, sir.

Q. That is what is called the tally house, isn't it?

A. Yes, sir.

Q. Right in the tally house. Well, the company always had a man there to give you the carbide?

A. Yes, sir.

Q. You would turn in an old can and get a new one, would you?

A. That is right.

Q. And then he had a memorandum there that he would take your number and charge you with that can of carbide?

A. That is right.

Q. And that would take just a very few seconds, wouldn't it?

A. Yes, sir.

Q. Just kind of hesitate and go on, hand in a can and get your can and leave?

A. Go on.

Q. Now, then, you were asked about whether or not you knew whether or not that was sold you at cost, and I believe you said you didn't know about that?

A. No, sir, I do not.

Q. You hadn't priced it anywhere else?

A. No, sir, I have not.

Q. No, rules of the company or no instruction of the company ever told you that you had to get it there at that place?

A. Well, when I first went to work for the company I bought carbide very often and I didn't get carbide at the tally house and I was cut carbide, and I went in and asked the clerk why I was cut and he said it was there for me, if I didn't get it it was my fault.

Q. Now, when was that?

A. That was about a year after I went to work.

Q. Well, how long ago was that?

A. About thirteen years ago, or fourteen. I mean twelve or thirteen.

Q. Twelve or thirteen years ago?

A. Yes, sir.

Q. And who was the clerk, do you remember?

A. Mr. Hugh Strong, I believe.

Q. Mr. Hugh Strong, and you have gotten your carbide there ever since?

A. Yes, sir.

Q. Now, is that the only one that ever told you anything about the carbide?

A. The only one I recollect, the only one I ever went to.

Q. Did you take it up, make any complaints about these cuts of carbide that you didn't get?

A. Only this particular man.

Q. Well, did you go before that, or not?

A. No, sir.

Q. Was that the end of it?

A. Yes, sir.

Q. And that occurred about thirteen or fourteen years ago, you say?

A. About twelve or thirteen.

Q. Now, when you were at Woodward where did you get your carbide?

A. I bought carbide in twenty-five-pound cans.

Q. You would buy it anywhere you pleased?

A. Yes, sir, I bought it anywhere then.

Q. Well, have you ever, since you have worked for the Tennessee Company, bought carbide anywhere else except to buy it at the Tennessee Company?

A. Other than the first that I mentioned.

Q. Other than the first you mentioned. You have never worked in any mine anywhere any time that the miner didn't furnish his carbide and furnish his lamp; that has always been furnished by the miner, hasn't it?

A. Everywhere that I have worked.

Q. That is what I say, everywhere you have worked, any mine, anywhere?

A. Yes, sir.

Q. Just like he furnishes his clothes; he furnishes his clothes, doesn't he?

A. Yes, sir.

Q. And he furnishes his shoes, a part of his clothing?

A. Yes, sir.

Q. Now, you said something yesterday about safety shoes, that had some kind of safety tip on the toe.

A. Yes, sir.

Q. Do you know whether or not those shoes are sold to you at cost by the company?

A. No, sir, I was not.

Q. Have you ever priced them anywhere else?

A. Yes, sir, I have.

Q. Whereabouts?

A. Simmons' in Bessemer.

Q. Where?

A. At Simmons' in Bessemer.

Q. Did you get some there, or not?

A. Yes, sir, I got one pair.

Q. After that you got them or bought them at the company?

A. No, sir. I haven't bought any more from the company since I got that pair.

Q. Since then you have been getting your safety shoes from Simmons?

A. I haven't bought but the one pair.

Q. It has lasted until now. Well, did anybody object to your wearing those shoes?

A. Did anybody object to me wearing those shoes?

Q. Yes; you have been wearing them?

A. Yes, sir. No, sir, there hasn't anybody objected.

Q. And you are still wearing them?

A. Yes, sir.

Q. Now, as I understand, what they are for, Mr. Patterson, there is just a steel tip that is on the inside of it that protects your toe from anything, any rock that might fall?

A. Yes, sir.

Q. No matter where you get them, that is what they are for?

A. That is right.

Q. And that is what you use them for. Now, the next thing that you do—I am talking about you individually—you would go and pick up the check, or, as you said yesterday—I don't mean pick it up—turn in your check as you go to work?

A. (Witness nods his head.)

Q. That is done at the tally house, is it?

A. Yes, sir.

Q. Now, this check—what is your bade number now, check number?

A. 5728.

Q. What date—how long have you had that number, about how long have you had it?

A. About fourteen years.

Q. And you have been using it the same way ever since?

A. Yes, sir.

Q. When you worked at Woodward did you use check numbers, or not?

A. Yes, sir, we used check numbers.

Q. Used them in the same way that you did at the Tennessee Company, practically?

A. Practically the same thing.

Q. So ever since you have been mining you have used these check numbers in substantially the same way?

A. Yes, sir.

Q. Now, the check number is the same number that appears on the statement that you get?

A. That is right.

Q. Along with your name; has all of these years?

A. Yes, sir.

Q. You have that in your pocket, I suppose, as you come up to the tally house, do you not?

A. Yes, sir.

Q. And, as you said yesterday, you either just pass it in to the assistant mine foreman or the mine foreman or lay it down and you sometimes hang it up yourself on your hook?

A. As a head miner I just hang it up myself.

Q. Hang it on your hook and go on down?

A. No, sir, I don't go on down.

Q. You stay there, do you?

A. Yes, sir.

Q. You don't go down with the first crew?

A. I stay there to see that my men are checked in and see if I need an extra man.

Q. You stay to see if you have a vacancy in your crew. That is the way you handle it?

A. That is the way I handle it.

Q. Other miners handle it differently?

A. I don't know about others.

Q. But you want to see that your crew is there; you are interested in the incentive earnings?

A. That was the instructions that we had after I went in as head miner, after the incentive plan went in, that we check our men in.

Q. Who gave you those instructions?

A. Mr. Cameron.

Q. Where did he give them to you?

A. He gave them to us at the office.

Q. All of you there together?

A. He called in all head miners.

Q. He called in all head miners. Just exactly what did he say to you?

A. He told us we were selected as head miners and we were to see that our crews were checked in and see after our crews, check them in and see after them, that was our duty.

Q. Tell me everything Mr. Cameron said, now. He called all of the head miners into his office together, did he?

A. Well, he called what he had selected at that time.

Q. That is what I am talking about.

A. And told he—

Q. Now, just tell me everything he told you.

A. He said that we were selected as head miners at No. 11 and we would select our crews and turn them in to him.

Q. You would select the members of the crews?

A. Yes, sir, and turn them in to him.

Q. All right.

A. And after we had done that why we were given our crews and then he told us—

Q. Now, wait a minute. Is this a separate time? Have you told me all that he told you at this first time when you said you had been instructed to turn in the names of the crews?

A. Well, that is all that I can recall.

Q. In either of the two times?

A. Well, when we came back down —

Q. Well, let's get through with the first time.

The Court:

I think you are interrupting him. I think you ought to let him go ahead and answer the question.

Mr. Burr:

That is what I am trying to do.

The Court:

There wasn't anything said about two conversations until you asked him about it.

Q. I understood you to say it was two times that he talked to you. Is that right, or not?

A. The first time we were called into the office. We were told that we were selected as head miners and that we would select our crews, and that we were turned loose at that time.

Q. Is that all he said at that time?

A. At that time.

Mr. Burr:

That is what I understood, Your Honor, that there were two conversations. That is the reason I was trying to get them separated.

Q. Now, at that time he told you that you had been selected and to select your crews. Of course, you selected your crews from the employees; you couldn't go outside to get a man or anything of that sort?

A. No, sir.

Q. He gave you a chance to pick your crews that you wanted to work with, did he not?

A. Yes, sir.

Q. Now, that was all of that conversation. Now, then, what was the next conversation in which he told you about your duties? That is the one I am interested in.

A. Well, after we brought these crews back he had some lists of men, stricken off some of these men, and then I had to select from a sheet that he had there other men, and after this selection he gave me the crew and he said, "You see—" to see after these men.

Q. I want you to tell everything he said to you.

Mr. Harris:
Judge, he can't tell everything at once.

The Court:
Let him alone. I agree with you. I think you are interrupting. Let him go ahead and say. He just told you what he said.

Mr. Harris:
Right then you began to ask him a question.

Mr. Burr:
I asked him to tell everything.

The Court:
Let him tell it.

Mr. Burr:
Your Honor said I was interrupting.

The Court:
I did and I repeat that statement. It is true, because when you asked him about the second time he hadn't said he had finished that conversation. He hadn't, in other words.

Mr. Burr:
Your Honor, he clearly indicated to me there were two conversations. What I am trying to get at is everything that was said.

Q. You have told us everything that was said in the first conversation, Mr. Patterson?
A. Yes, sir, as I recollect.
Q. Now, I want you to tell everything that was said in the second conversation.

Mr. Harris:
Now, just like that, Mr. Burr says every two seconds "Tell everything. Tell everything. Tell everything."

The Court:
Just let him go ahead and tell it.

Mr. Harris:
Take all the time he wants.

The Court:
If he knows, and get through.

A. And we presented the names of the men in our crews, then we had a list that he had stricken off some of the men that I had in my crew, and he handed me a list and said that I could pick me those men for the crew. So I did that, and I handed these to him, and he said, "You see that these men are checked in, and the vacancies on your crew; that is what you are supposed to do at the beginning of the shift."

Q. Is that all he said?

A. That is all I can recall right at the present.

Q. To see that these men are checked in at the beginning of the shift?

A. Yes, sir.

Q. All right, sir. When you left to go down to the working place yourself on the skip, did you make a practice of riding on any particular skip, or did you catch the second or third or whichever one you wanted to?

A. I usually caught the skip after I found out my whole crew was checked in, while I would catch the next skip, possibly.

Q. By checking in, you mean they had deposited their checks?

A. That is right.

Q. Now, you said that you sometimes deposited them for them, or they would deposit them with you, is that right?

A. Sometimes they would bring their checks to me and sometimes come in by the window and leave them with the mine foreman and he would hand them in for me.

Q. Sometimes bring their checks to you and sometimes leave them with the mine foreman?

A. Yes, sir.

Q. On these occasions would they all hand them to you or just some members of the crew?

A. Just some members.

Q. If only one handed it to you, you would hand it in the same way?

A. Yes, sir.

Q. How much time did it take you to hand that check in at the window or to hang it on the hook you have described?

A. I didn't understand you.

Q. How much time did that take?

A. How much time did it take?

Q. Yes, how much time did it take you?

A. It would only take a few seconds from the time the man handed it to me for me to deposit it.

Q. And then if all your crew was there and their checks had been deposited, you would go on down in the mine?

A. Yes, sir.

Q. Take the next skip, whichever one that was?

A. Yes, sir.

Q. What time did the first skip leave during this period of time, do you know?

A. I didn't understand you.

Q. What time did the first skip leave the portal or the entrance of the mine?

A. Well, they operated from—

Q. Leave about—well, go ahead.

A. From five minutes after six until six o'clock.

Q. I will ask you if the average of the time of the leaving of the first skip wasn't about eight minutes after six, just on an average?

A. Well, I never did have the time.

Q. But you say it was from six o'clock to five minutes after six, in your best judgment?

A. Yes, sir.

Q. About what time did the last skip leave, about what time?

A. Leave the portal?

Q. Yes.

A. Well, it will vary from 6:30 to 6:35.

Q. That is right. Now, you told Mr. Harris on yesterday that you went down on whatever skip you picked to go down on, that is right, isn't it?

A. Yes, sir.

Q. Now, then, when you went down would the mine foreman or the assistant mine foreman be at the tally house, first one and another of them stayed there, or which one was it regularly or most of the time?

A. Most of the time they both were at the tally house.

Q. Both of them stayed at the tally house?

A. Yes, sir.

Q. And when you left, the skip you caught, would you still leave the mine foreman and the assistant mine foreman at the tally house?

A. The majority of the time.

Q. The majority of the time. Then neither one of them rode down with you, as a usual thing, on the skip?

A. No, sir.

Q. Now, then, did you select the men that you would ride with on the skip, or did you just get in the skip that was available at the time you were ready to go?

A. Got in the skip that was available for me at the time for me to go.

Q. Then you didn't know whether your men had gone down in front of you or came down after you or on the same skip; that was a matter that you didn't pay attention to?

A. No, sir, I didn't know that.

Q. Sometimes none of your crew might be on the same skip with you at all?

A. That is right.

Q. That is right, and the people riding on your skip might be members of other crews or service crews or just anybody that happened to catch that particular skip, isn't that right?

A. That is right.

Q. Did your crew work pretty regularly, Mr. Patterson, the one you had since you have been back at work as head miner?

A. All of them but one man. I have got one man that don't work regular.

Q. All right, now, then, when that man didn't show up how would you get a man to take his place?

A. Well, I usually wait around until the men are all checked in.

Q. That is until everybody has deposited their checks, you mean?

A. That is right.

Q. All right.

A. And then I would—the mine foreman would look over the board and I would tell him I was short a man and ask him did he have a man that he could give me and he would usually pick that man off of a service crew or maybe a heading that was down for some purpose; he would give me a man out of that crew.

Q. How would he get that man to your crew? Would he 'phone down or send down, or how would he get him to your crew? Who would he issue the instructions sometime to?

A. Sometimes he would tell me, he would say, "You go over in 1st right, wherever the track men are working, or send one of your men over there," to tell this man to come over to my place.

Q. Would you go up yourself sometimes when he told you to do it?

A. Whichever way it came convenient.

Q. The most convenient to you?

A. Convenient.

Q. And you wouldn't do that, of course, until you went down into the mine?

A. Unless I would see some of the men on the outside there, I would tell him.

Q. When you would see one of these men you would tell him to get out at a certain place and pick up a man?

A. Yes, sir.

Q. But when you didn't see a man around there you would do it yourself?

A. I would do it myself when I would go down.

Q. When you got down. I believe you said yesterday that the skip was started by—what is the name of the man that runs the skip and gives the signal?

A. The skip tender.

Q. The skip tender, yes. Now, you told us on yesterday about one occasion when some assistant mine foremen told you to get off of a skip that you had gotten on because it was too crowded. Do you remember that incident?

A. The mine foreman—I got out of the skip. He didn't tell me to get out. I got out and he told me if I didn't want to ride it to get my number.

Q. You got out because it was too crowded?

A. Yes, sir.

Q. And you wanted to catch another skip that didn't have so many in it?

A. I didn't want to ride as scrouged as I was in that one.

Q. So you got out?

A. Yes, sir.

Q. And the mine foreman told you—did he tell you after you got out or before you got out?

A. After I got out.

Q. If you didn't want to ride to get your brass?

A. If I didn't want to ride it to get my number.

Q. Did you go get it?

A. I told him if he didn't want me to have it to go get it.

Q. And you still have it?

A. Yes, sir.

Q. Have had it ever since?

A. Yes, sir.

The Court:

All right, let's go ahead.

Q. So that was all there was to that occasion?

A. Yes, sir.

Q. Who was the mine foreman, if you don't mind telling me?

A. Mr. Jim Carson.

Q. And when did that happen?

A. That happened approximately a year ago.

Q. Approximately a year ago?

A. Yes, sir.

Q. Now, this rule book which has been offered in evidence, being Defendants' Exhibit No. 1: Of course, as head miner you are familiar with the rule book. You have had a copy of it. Now, are you familiar with the rule over on page 52 in reference to the main slope, skips and cages, particularly this one here, "When hoisting or lowering man trips, skip must be free of tools and material." You are familiar with that rule and have been, of course; you tried to observe the rules, didn't you?

A. Sir?

Q. You tried to observe the rules as well as you could, didn't you?

A. I tried to obey my foreman.

Q. And tried to obey the rules too, didn't you?

A. Well, in cases where the foreman would tell me to do things I didn't obey the rules; I obeyed him.

Q. In cases where the foreman would tell you to do things you didn't obey the rules; you obeyed him?

A. Yes, sir.

Q. You told us of one instance yesterday where you said the foreman told you to take some steel down, or hangers, was it?

A. He told us we could get the hangers out there.

Q. When was that, this one instance?

A. I couldn't recall the date.

Q. About when? I don't want the exact date.

A. It was approximately a year ago.

Q. Approximately a year ago. Now, as I understand it, those were hangers that had been brought out of the mine and repaired or sharpened or something of that sort?

A. They had been straightened.

Q. They had been straightened and you say they were lying up there?

A. Yes, on the surface.

Q. And what was it he told you?

A. Told him—

Q. Told you?

A. Well, I told him I needed some hangers and he said, "There is not any inside. Here is some that are straightened here." He said, "You can get some of those and take them down."

Q. How many did you get?

A. I got two or three. I don't know just how many.

Q. Did you carry them down?

A. I gave some of them to my men.

Q. Did you carry any of them down?

A. I carried one.

Q. You carried one?

A. Yes, sir.

Q. And gave how many to the others?

A. One or two to the other men.

Q. And they carried them down on a skip at that time?

A. Yes, sir.

Q. Now, those were the hangers, as I understand it, that the loading part of the crew used in your working place?

A. Yes, sir.

Q. And I believe you said that on this occasion the foreman told you that there were none down at the tool house?

A. Yes, sir.

Q. That is where they usually stayed?

A. Yes, sir.

Q. Where they stayed as a usual proposition?

A. Yes, sir.

Q. Had you asked for those hangers as you came off of work the night before, or not?

A. No, sir.

Q. Or had you just asked for them that morning?

A. Asked for them that morning, that shift.

Q. Well, you did sometimes ask for them when you found out you needed hangers or steel, right then at the end of a shift you asked the foreman to send some down to the tool house, or were they usually kept at the tool house?

A. They usually kept hangers and wedges and pipe fittings and material such as that.

Q. That is what I am asking about, that material that was usually at the tool house.

A. Yes, sir

Q. On this occasion did the mine foreman tell you that there was none down there?

A. That is right.

Q. And there was some that had been straightened and to take those?

A. Yes, sir.

Q. And you took them?

A. Yes, sir.

Q. Now, after you got off at the underground man station you walked to your working place?

A. Yes, sir.

Q. If you were working in a stope you call it a stope and if it is narrow work which is in the heading, the narrow work; what do you call it?

A. Well, in driving a stope work you have got one development place, you see, what we call a face stope.

Q. That is when you first open it?

A. We carry it further in robbing the stopes out as we drive the place for it.

Q. Well, whether it is a stope of that kind or whether it is a stope that has already been opened, or whether you are working on the inside of it, or whether it is narrow work, you walk from your underground station to that place?

A. That is right.

Q. And, of course, the distance of your walk and the time it takes you depends upon how far the working place is from the underground station?

A. That is right.

Q. Now, when you get up there to your working place you are in charge of the crew?

A. Yes, sir.

Q. And you are the boss of the other six men that are in there?

A. Yes, sir.

Q. The first thing you have to do is to see that your working place is safe; that is the first thing?

A. Yes, sir.

Q. And, as your explained on yesterday, you and I guess your drill helper helps you on that?

A. The drill runner.

Q. I mean the drill man. You are primarily responsible and he is next responsible for seeing that the place is safe?

A. Yes, sir.

Q. And that is the first thing that you do when you get to work, when you get to that working place?

A. Yes, sir, when we get to our working place.

Q. And that is the first thing you do outside of the time that you have testified about carrying things, that is the first work that is done by you and your crew?

Mr. Harris:

We object to that, calls for a conclusion. He can state what he has done.

The Court:

Yes, let him state what he has done.

Q. Well, you have told us everything that is done up until this time. If there is anything else—

The Court:

If there is anything else you have done.

Q. If there is anything else done, tell it.

A. Well, usually when we go into the working place, we have got a fan; we start that, and then whatever tools that we carry from the nuck or from this place, why we get them loaded and carry them up on trams and then the drill men, they go with me to the working place or working face and start quarrying and making that place safe to go to work. These other men carry other material that we get from the nuck. It varies in different ways.

Q. These other men are not allowed to go up to where the working place is until after you and the drill men have found it is safe?

A. On occasions they go along with us to help us make it safe.

Q. Well, if they are not helping you make it safe they are not allowed. That is your primary duty, first?

A. Yes, sir.

Q. This rule—I will ask you if you didn't follow the rule in this respect, Rule 2 on page 37 of the exhibit says, "The head miner has direct supervision over all drillmen and section helpers employed in his section." That is you?

A. Yes, sir.

Q. And you do have direct supervision of your crew, of course?

A. Yes, sir.

Q. The next one is, "The head miner will be held personally responsible for the safety of any other workmen who are employed in his section for any special purpose." The next one, "The head miner must, upon entering the working place of his section, personally examine and test with a hammer and bar, roof, ribs and face of the working place." That is your first responsibility?

A. Yes, sir.

Q. And in doing that you are helped first by drillmen and if you call in any others they help you?

A. Yes, sir.

Q. And the work does not start at the face, I mean the work of producing ore or setting up mechanical drilling, that does not start until after you have made the place safe?

A. That is right.

Q. Now, in leaving the underground man station and going up to your stope or place you are working in, do you have any special people to go with? Does the mine foreman ever go with you up there ordinarily or usually, or the assistant mine foreman or anybody of that kind?

A. No, sir, we usually go just whenever we get off of the man trip.

Q. It is the same way with the crew?

A. Yes, sir.

Q. You go right on to your working place when you get off and your crew, when they get off they go to the working place?

A. Unless otherwise changed by the mine foreman.

Q. That is your usual practice?

A. Yes, sir.

Q. So you don't all get up to the working place at the same time necessarily. That depends upon what car you went down on and how the men went up there?

A. That is right.

Q. You don't accompany your men as a usual rule to your working place; you may walk up with one that happens to be on the same car, but that would be a matter of accident and not of design, is that right?

A. That is right.

Q. Do you get there generally at your working place behind or ahead of ~~your crew~~, as a usual proposition?

A. I usually get there behind the crew.

Q. And if that is true they are waiting for you up there but they can't go in until you get there, can they?

A. Well, they usually go in—if they get there ahead of me they go in and get their steel and trolley poles and such as that.

Q. They commence getting ready?

Mr. Harris:
Let him finish. Don't interrupt.

A. I give that instruction to my crew not to go in the working place but to get the material that they need to remove the mechanical loaders or lay the trolleys on the chute and get them ready for the place they are going to work in, and such as that.

Q. In other words, your instructions to your crew and what you usually do if they go there ahead of you is not to go up to the face where you have to go to make the place safe, but to do the preparatory work about trolleys and such as that in getting in readiness for work; they can do that?

A. Yes, sir.

Q. What time in the morning would you say you usually get up to your working place, up to the stope you are working in, is what I mean?

A. At what time?

Q. At the beginning of the shift.

A. At the present time?

Q. No, all the questions I am asking are just like Colonel Harris asked, that is, before May 1, 1941.

A. Well, usually before May 1st I got into my working place around a quarter till seven.

Q. At 6:45?

A. From 6:30 to a quarter till seven.

Q. What time was the juice turned on at that time?

A. Before May 1st it was turned on at a quarter till seven.

Q. Now, your crew was divided into two sections, you might say, the drilling part of the crew and the loading part of the crew?

A. Yes, sir.

Q. But you, of course, were boss over both sections?

A. Yes, sir.

Q. Now, the loading part of the crew, their work consisted of handling the drag, skidder blocks and drilling the holes for the hangers and putting set blocks in them and the jackhammer and the wedges?

A. That is right.

Q. And scraping the ore up to the ramp and into the car?

A. Yes, sir.

Q. And then did their duties require them after the car was filled to roll it down to the sidetrack?

A. Yes, sir.

Q. Where the service crew picked it up to haul it up to the rotary dump, is that the way you do it?

A. Yes, sir.

Q. The place the service crew carries it—what do you call the nuck, where is the nuck?

A. It is the place where the traveling motor picks up our loads.

Q. Your crew—it is your duty—your loading part of the crew carries the loaded cars down to the nuck?

A. Yes, sir.

Q. Where the service crew picks it up and I guess picks the empties back up?

A. Yes, sir.

Q. Now, the drilling part of the crew, they are the ones that use the tripod drill and the heavy drill steel and, of course, connected with that is the air hose and the water hose, I suppose, and ~~then~~ after they drill the holes they charge the holes?

A. Yes, sir.

Q. With the dynamite and the fuse and cap, and then they set it off when the time comes?

A. Yes, sir.

Q. What time was the shooting prior to May 1, 1941?

A. 3:15.

Q. 3:15?

A. We started lighting up holes at ten minutes after three.

Q. 3:10 was the regular prescribed shooting time?

A. Yes, sir.

Q. And you couldn't shoot at other times in this mine?

A. No, sir.

Q. Now, the loading crew necessarily left, or did they leave during this period of time the working place, the stope or wherever you were working, before this shot was fired?

A. Yes, sir, the whole crew left before they were fired.

Q. Well, what I am trying to get at, who left first? Can you tell me that? Was there any part of the crew that left ahead of the other when your work on the loading crew finished up there with reference to the time the shot was fired?

A. When the lights went out.

Q. And that was what time?

A. At 3:10.

Q. Well, didn't they very often finish before the lights went out?

A. Very often?

Q. Yes.

A. Not often.

Q. Well, about how often?

A. Well, they might finish one day out of a week or something like that.

Q. All right, we will say one day out of a week that they finish some time around a quarter to three, or 2:30 or 3:00 o'clock, that one day?

A. Well, sometimes they would finish at 2:30.

Q. That is what I say, anywhere from 2;30 until 3:00.

A. Yes, sir.

Q. That is your crew. Of course, you don't know about the other crews, when they finished?

A. No, sir.

Q. All right, whether they finished at 2:30 or a quarter to three they had to be away by 3:10?

A. Yes, sir, that is when the lighting started.

Q. And whatever time the loaders got through the crew didn't have to stay back to do the shooting; you and your drill men did the shooting?

A. Yes, sir.

Q. And while you were doing that shooting they went out to the hoodlum?

A. While we were lighting.

Q. And on occasions before?

A. No, sir, they wouldn't leave the heading until five minutes after three at no time, because the mine foreman gave orders that every man stay in the heading.

Q. So then, if they finished work at 2:30 they would stay until five minutes after three and then leave?

A. Yes, sir.

Q. And you and your drill men would stay until 3:10?

A. Yes, sir.

Q. And then fire the fuse and then you all would go?

A. That is right.

Q. In going down to the loading station and going out after the end of the shift you were the last man out of your working place?

A. I was with the drill man.

Q. Either you or the drill man?

A. Yes, sir.

Q. Would you sometimes, you or the drill man go to handle the shooting alone?

A. On some occasions, by permission of the mine foreman.

Q. Or did you do it yourself?

A. Yes, sir.

Q. I am not trying to charge you with any dereliction of duty. Sometimes you went before but usually you stayed and did it yourself?

A. Yes, sir.

Q. Now, when these men went down to the unloading station, the hoodlum, as some of them call it, they had places there where seats were provided where the men sat; the first ones that got there where they could get on the skip the first ones that went?

A. Yes, sir.

Q. Would you say when the first skip ran there were usually assembled down there at that hoodlum more than could ride on the skip, or not? In other words, did some have to stay there and wait until the next skip, or did they gather as the skip ran?

A. Usually some had to wait.

Q. Usually some had to wait for their turn?

A. That is right.

Q. Like you happened to be in a doctor's office or a lunch counter, you would have to wait to where you could get a place?

A. Yes, sir.

Q. And when the skip would come the first ones would take that skip until it was loaded?

A. Yes, sir.

Q. And you usually had an assistant mine foreman to stay there and watch the performance.

A. Yes, sir.

Q. But he would watch it to the extent of seeing that it was not overloaded or that no misconduct happened, that is what he did?

A. He counted the men out.

Q. He counted the men out to go on the skip?

A. Yes, sir.

Q. About how many would he count out to go on a skip, usually, going out?

A. Around thirty.

Q. Around thirty?

A. Thirty or thirty-three. I won't be positive.

Q. And then those that were counted into the skip and made a skip load, why I suppose the ones that didn't catch the load would move up on the seats to catch the next one?

A. Yes, sir.

Q. And [illegible] would catch the next one and in turn, so on, until everybody was out of the mine?

A. Yes, sir.

Q. This first skip, before May 1st, Mr. Patterson, about what time would it leave to go out?

A. It would leave around 3:10 or 3:15.

Q. Around 3:10 or 3:15?

A. Yes, sir.

Q. And the last one would leave about what time?

A. It would vary between 3:30 and 3:45.

Q. Well, of course, the skips wouldn't leave until they had a load?

A. No, sir.

Q. They wouldn't leave until they had the thirty, if that was the load. So the first one would leave about 3:10 and the last one about 3:45, and at intervals apart how long do you think that would be between the skips; would they leave five or ten or fifteen minutes apart?

A. I would imagine between eight and ten minutes.

Q. Would it be the same skip that would go up and come back?

A. Yes, sir.

Q. That is what would determine it. All right, sir. Now, when you got out—well, first this: Would you ride out with any prescribed or designated person, or would you just ride out with the crowd that happened to catch the skip you caught?

A. I would ride out when my turn came.

Q. You would ride out when your turn came. So you might ride out with some of your crew or you might not ride out with any of your crew?

A. That is right.

Q. So if you happened to be the last one that left your working place your crew would be gone, if they preceded you and had gotten first place?

A. Some of them would.

Q. All of the loading crew would?

A. Yes, sir.

Q. They would generally be out before you got down there?

A. Yes, sir.

Q. Now, in riding out, just as coming in, did the mine foreman or assistant mine foreman ride down with you as a usual proposition, or just the men that had been working?

A. The men that had been working.

Q. The same skip tender that would take it out brought it in, the skip tender who had charge of the movements?

A. Yes, sir.

Q. When you got out you deposited your check, I mean you picked up your check?

A. Yes, sir.

Q. Stopped at the tally house and got your check?

A. Yes, sir.

Q. And went on to the bath house and took your bath and went on home?

A. That is right.

Q. Now, I want to ask you a few questions about this incentive plan. You told Mr. Harris this morning that the strike was—that you strick before you tried the incentive plan, as I understand it?

A. Yes, sir.

Q. Your union, after the plan had been explained to them and you discussed it you decided you didn't want to work under the incentive plan; that is right, isn't it?

A. Yes, sir.

Q. And refused to work under it?

A. Yes, sir.

Q. And struck, and the mine closed down, didn't it?

A. That is right.

Q. Now, you were asked about the membership of the union, as to how strong it was. It was sufficiently strong then to shut the mines down?

Mr. Harris:

We object to that, if the Court pleases, argumentative, calls for a conclusion.

The Court:

Sustained.

Q. Well, it did shut the mine down?

Mr. Harris:

We object to that. He can tell what happened but not what caused it to shut down.

Q. You voted to strike, didn't you?

A. Yes, sir.

Q. And struck?

A. Yes, sir.

Q. And the mine was completely shut down, wasn't it?

A. Yes, sir.

Q. And stayed shut down until what you referred to as the Governor's agreement was made?

A. Yes, sir.

Q. And then when that was made you returned to work except a number that you call undesirables who did not return to work?

A. Yes, sir.

Q. And the mine reopened?

A. Yes, sir.

Q. Under the incentive plan?

A. That is right.

Q. And they have been under the incentive plan ever since and are today?

A. That is right.

Q. Now, under that incentive plan you get a guaranteed wage, don't you, Mr. Patterson?

A. Yes, sir.

Q. No matter how much ore you produce you are paid so much. Prior to May 1, 1941, you were paid so much an hour for eight hours, weren't you?

A. That is right. We were paid for eight hours.

Q. And how much guaranteed wage before May 1st?

A. $6.16.

Q. That was the company's occupational rate for the head miner, the guaranteed wage for the head miner?

A. That is right.

Q. Do you recall the guaranteed wage of your drill men? I believe he is next?

A. $5.60.

Q. $5.60. Now, do you recall what the next man was, the guaranteed wage?

A. $4.92.

Q. And was that the last one?

A. The last one.

Q. What did the $4.92 guaranteed wage, what members of your crew did that cover?

A. It covered the drill helpers, the section helpers at that time.

Q. Covered everybody except the head miner and the driller?

A. And the drag operator.

Q. What was the drag operator?

A. $5.60.

Q. He got the same as the driller?

A. Yes, sir.

Q. Now, without reference to the incentive plan that you worked under, without reference to that, that is what you got for eight hours work, that is right, isn't it?

A. Yes, sir.

Q. Now, relative to that, after you produced a certain amount you got an incentive or bonus above these rates?

A. Yes, sir.

Q. If your crew produced more than that amount. Just for illustration here, you were asked about exhibits that were shown you, these statements. I want to show you at this time one of your own, just to illustrate this incentive plan. This is the kind of statement that you got?

A. Yes, sir.

Q. Now, you got that at what office?

A. At the Ishkooda office.

Q. You got that at the Ishkooda office from whom?

A. The statement?

Q. Yes, the statement just like this.

A. They have a boy there in the statement house, we call it, that issues the statements to us.

Q. It is a clerk?

A. Yes, sir.

Q. They gave you the statements. You would go there on payday; is that when you got it?

A. Yes, sir.

Q. You got there on payday and ask for your statement and he gives you this whole thing?

A. Yes, sir.

Q. Then you would go up to the pay window and tear off this part up here that you sign?

Q. That would be right here where it says, "second"—"duplicate," you say?

A. Yes, sir.

Q. You sign that and leave this with them?

A. Yes, sir.

Q. And then you would retain this part?

A. That is right.

Q. Now, then, this one here says, "For second half of October, 1938." It shows that half of the month that you had a total units of 88 hours at the rate of 77 and your guaranteed earnings were $67.76 and your incentive earnings to you individually were $4.23, making a total of $71.99, whatever the total was, and then they deduct from that what your deductions had been during the month?

A. That is right.

Q. And your balance would be the amount you had earned, guaranteed wage plus incentives, less the deductions which cover the unemployment insurance, federal old age benefit tax, medical, electricity and water, rental. You had a company house?

A. No, sir.

Q. At this time, didn't you, in October?

A. No, sir, I haven't lived in a company house since 1934.

Q. Do you know what that was for?

A. Well, that was for rent I had in 1931.

Q. That was back payment?

A. Yes, sir.

Q. Rent that you owed but you had to pay back payments upon?

A. Yes, sir.

Q. $4.50?

A. Yes, sir.

Q. And your store account was $5.00?

A. Yes, sir.

Q. That is just an illustration. And your cash that you got was $59.05?

A. Yes, sir.

Q. You were working at this time five days a week, I believe?

A. Yes, sir.

Q. Working eight hours a day and paid eight hours a day?

A. Yes, sir.

Q. And none of that time included any time you spent in traveling?

A. I didn't understand.

Q. It did not include—you were not paid for the time you spent in traveling?

A. No, sir.

Q. In other words, what you were paid for was from 6:45 in the morning at the working place until 3:15 in the afternoon with thirty minutes out for lunch?

A. That is right.

The Court:

Let's take a recess.

(A brief recess was then taken.)

Mr. Burr:

Will you please, sir, get this statement I asked to be identified?

The Clerk:
Do you want it as the plaintiffs' or T. C. I.?

Mr. Burr:
Let it be T. C. I.

The Clerk:
It will be T. C. I. No. 28.

(Thereupon, the statement of earnings of the witness E. T. Patterson for the second half of October, 1938, showing incentive plan benefit and deductions, was identified as T. C. I. Exhibit No. 28.)

Q. Mr. Patterson, I showed you and asked you a few questions before the recess about this statement here which is T. C. I. Exhibit 28, which was for the second half of October, 1938. Now, I want to ask you so as to get another period. Here is one for February, 1941, in which it shows you worked 40 units and your rate was 77 cents an hour.
A. Yes, sir.
Q. And the eight hours at that rate makes $30.80.
A. Yes, sir.
Q. And then on this particular pay period you made an incentive of $31.92.
A. Yes, sir.
Q. That covers, of course—they always gave you an incentive benefit every two weeks?
A. Yes, sir.
Q. Even when they were paying you for one week?
A. Yes, sir.
Q. This is not for two weeks but one week?
A. That is for me. That is not for the crew.
Q. The crew got the same proportion that they were entitled to?

A. No, sir.

Q. Well, they got their incentive benefit, whatever it was?

A. Whatever the incentive called for.

Q. At the same time you got an incentive payment they got the same payment under that plan?

A. At the time I got that $31.92 my mucker got a dollar.

Q. Well, you didn't know that?

A. No, sir.

Q. But that would be part of the time?

A. Yes, sir.

Q. But they got whatever the incentive earning plan called for?

A. Yes, sir.

Q. And you got the incentive earning according to the plan?

A. Yes, sir.

Q. And you got on this particular statement $31.92?

A. Yes, sir.

Q. You got a total earning of $62.72, the incentive being $31.92 and one week of wages, $30.80?

A. Yes, sir.

Mr. Burr:

We offer this and ask that it be identified, this statement.

The Clerk:

T. C. I. No. 29.

(Thereupon, the statement of earnings of the witness E. T. Patterson for one week of the month of February, 1941, showing incentive plan earnings and deductions, was identified as T. C. I. Exhibit No. 29.)

Q. Now, you have been getting those statements and signing those statements ever since you have been working for them, haven't you?

A. Yes, sir.

Q. They have been made out the same way?

A. Yes, sir.

Q. Substantially the same way, haven't they?

A. Yes, sir.

Q. And that started back when you first went to work. For a while you got them twice a month and for the last three or four years you got them four times a month?

A. Yes, sir.

Q. Ever since you have been working the last time, that is, ever since the incentive plan has been in effect, you have been getting the statement four times a month?

A. Yes, sir.

Q. Showing that you have been paid your guaranteed rate of eight hours—

Mr. Harris:

The statement shows, speaks for itself.

The Court:

He has been over it twice.

Mr. Burr:

I don't think, if Your Honor please, I have ever asked that question before.

The Court:

You have asked him that question twice.

Mr. Burr:

I am asking him about how long this procedure has been in effect.

Mr. Harris:

The question I am objecting to, the statement showing so and so. The statement is in evidence and speaks for itself.

Q. You know, of course, that you were not paid for traveling time, Mr. Patterson?

A. Yes, sir.

Q. You knew that all the time?

A. Yes, sir.

Q. You don't have to have a company auditor to tell you that; you knew.

Mr. Harris:

We object to arguing with him.

The Court:

He said he hadn't been paid it.

Q. And you haven't been paid since you have been working there traveling time?

A. No, sir.

The Court:

Let's get along. We are taking up too much time.

Mr. Burr:

If Your Honor please, I am getting along just as fast as I can. I realize, of course, it is going to be long on the first witness.

The Court:

Have you got any other question to ask this witness?

Mr. Burr:

Yes, sir, I have got several.

The Court:
Well, proceed.

Mr. Burr:
Well, I just don't want Your Honor to think we are unnecessarily taking up time.

The Court:
I think you are.

Mr. Burr:
All right, sir, I want to state my side of the proposition, that I am not. This is the first witness that has been put on the stand by the defendants. As I recall, Mr. Ball was examined and cross examined.

The Court:
That is all right, I will allow you liberal cross examination and expect to, but I don't want you to be repeating something over and over, Mr. Burr.

Mr. Burr:
I disagree with Your Honor's thought about that. I am certainly not doing it in a way that is unnecessary.

The Court:
Well, do you want the last word?

Mr. Burr:
No, sir. Your Honor always has the last word with me.

The Court:
All right, sir, I say let's go ahead.

Mr. Burr:
All right, sir.

Q. Working under this incentive plan and since you have been working under that plan, you and your crew, have you endeavored to produce as much ore as you could within reasonable physical limitations?

Mr. Harris:
We object to that, if the Court pleases, calls for a conclusion.

The Court:
Overruled.

A. Yes, sir.

Q. And it has been to your financial interest to produce as much as you could under the incentive plan, hasn't it?

Mr. Harris:
We object to that.

The Court:
I think that is a conclusion.

Mr. Burr:
Well, if he knows it, it is not a conclusion.

The Court:
If he knows it, let him answer it.

A. Well, as far as the job is concerned, it is to my financial—

Q. I am talking about you.

Mr. Harris:
Let him finish.

A. I was told whenever the incentive plan went into effect—

Q. I never asked you that, Mr. Patterson. I just asked you a simple question, when you went under the incentive plan, it was to your personal interest to produce as much ore as you can.

A. Yes, sir.

Q. Now, I want you to tell me, please, sir, just where this place is that you said you had to stoop on the walkway from the underground loading station to the place where you worked, where you described some wires that were over your head.

A. Between 64 and 66.

Q. Betwen 64 and 66?

A. Yes, sir.

Q. Is that 64th stope or 64th entry?

A. 64th heading.

Q. 64th heading. That is not on the main slope, that is on one of the heading slopes?

A. On the manway.

Q. On the manway. I wanted to see—to get exactly where it was. I don't understand it myself, the manway that you are talking about. Is that where the haulage or hauling of ore is, or where you walk?

A. That is where the men walk.

Q. Where the men walk.

A. And where they carry pipe lines and those signal wires and 'phone wires and high tension wires.

Q. About how long is that place that is between 64 and 66, that you are talking about?

A. I couldn't hardly say. It varies. Sometimes you could walk fifty feet and could straighten up and then right back down again, or you might; I couldn't.

Q. About how far is the whole distance between 64 and 66? You can tell me that, can't you?

A. I think those headings are about sixty feet apart.

Q. Is the place that you are talking about lighted electrically, or not?

A. Yes, sir, it is electrically lit up.

Q. Is the place that you are talking about a place where there is an overcross above, is that what it is?

A. I didn't understand you.

Q. At 66 is there an overhead bridge?

A. Yes, sir.

Q. Is that where the wires run up above where you walk?

A. Yes, sir, the wires go above the bridge.

Q. The wires go above the bridge?

A. Yes, sir, the wires between 64 and 65, is where the wires are right down close to where you walk and all down the manway is where the pipes are.

Q. These pipe lines are on the side, are they not?

A. They are on the side in some places and run right down where men have to cross back and forth.

Q. Now, referring again to this rule book that has been identified in evidence, Rule 10: If any of your crew is injured, no matter how small the injury is, it is your duty to report that?

A. If I know about it.

Q. Of course, if you didn't know about it you couldn't report it. And if you are injured yourself, it is your duty to report it?

A. Yes, sir.

Q. I want to ask you if you have ever been injured and reported that injury, walking along the places you told us about?

A. No, sir.

Q. Since you have been working there?

A. No, sir.

Q. How many years have you been walking there?

A. Thirteen years; about thirteen years.

Q. During that period of time have you learned or reported that one of your men received any injury walking along that place?

A. No, sir.

Q. So, so far as your knowing it of your own knowledge or being put to you by your men, during the thirteen years that that place has been used, nobody has ever been hurt?

A. I couldn't say that, because there has men slipped.

Q. I said hurt. I didn't say anything about slipping.

A. If a man falls down he is hurt, and there was one man. I don't recall who he was.

Q. Now, is this something you know about? That is what I am asking you about, Mr. Patterson; not what somebody told you.

A. This is something I know about.

Q. All right, what is that, now? Let's see when it was.

A. The man slipped down and kind of rubbed the hide up on his leg.

Q. When was that, that he rubbed the hide up on his leg; when was that?

A. Probably two or three years ago.

Q. Who was it?

A. I couldn't recall that.

Q. Was that a member of your crew?

A. No, sir.

Q. Is that the only one you ever saw that got hurt?

A. As far as I can recollect.

Q. Did he quit work that day, or do you know?

A. No, sir, he didn't.

Q. Was his injury reported or not, or do you know?

A. I couldn't say that because he wasn't on my crew.

Q. But you or your crew, you know about them, you never had and reported an injury since you have been working there, on that walkway?

A. No, sir.

Q. That is true of the skip, you and your crews, so far as you know?

A. So far as I know.

Q. So far as you and your crew in thirteen years have never been hurt or received an injury that you reported from the time you left the entrance on the skip until it got to the working place, traveling there?

A. No, sir.

Q. Neither going or coming. Now, these cables along this place are all armored cables and insulated wire, aren't they?

A. Yes, sir.

Q. That you are talking about. And this bridge, this low place I asked about, is a bridge where the tram crosses the manway that you were talking about?

A. Yes, sir.

Q. That is the lowest place along there, isn't it?

A. Yes, that is the lowest place.

Q. That is the lowest place. And how wide is that bridge?

A. I couldn't say because I don't know just exactly.

Q. Just about how long do you have to stoop to get under that particular obstruction?

A. About ten feet.

Q. About ten feet. Would you mind showing us about how much you have to stoop to get under that particular obstruction? Just illustrate it to us.

A. Well, for me I have to stoop about that. (Witness stands erect and bends forward.)

Q. All right, sir, going along that ten feet. Now, you said something about there was some place in the mine that got slippery sometimes, part of the walkway. Now, where was that particular place?

A. That is between 64 and 66.

Q. That is the same place, then?

A. Yes, sir, and all along the pipe lines.

Q. That is where the pipe lines are?

A. Yes, sir.

Q. And that is the place that you referred to as being somewhat slippery?

A. Yes, sir.

Q. And that is the place where the one man that you remember seeing slip down and skin his leg along there somewhere?

A. I couldn't say that, because I think that that was above this place, back up around 62.

Q. I thought you said you saw that at this place.

A. It was between 62 and 63.

Q. Is where this man slipped and got hurt.

A. The same pipe line.

Q. How close were you to him when he slipped?

A. I was about eight or ten feet.

Q. About eight or ten feet, in front of him or behind him?

A. Behind him.

Q. You don't remember who he was?

A. No, sir, I couldn't say.

Q. Did he get up and go on?

A. Yes, sir, he got up. He seen that he wasn't injured bad.

Q. Did he take his pants down?

A. Yes, sir. It was a colored man. I don't recall who he was.

Q. Scratched his thigh, is that where it was?

A. Yes, sir, on his thigh, where he turned and slid.

Q. Now, you said something about there being no Chick Sayle houses or privies, as Colonel Harris called them, I believe, underground. Have you ever worked in a mine where they had toilets underground?

A. No, sir.

Q. That condition has been existing ever since you have been a miner?

A. Yes, sir.

Q. Did you ever do any farming?

A. Yes, sir.

Q. Did you ever work on a farm where they had them but in the field?

Mr. Harris:
We object to that.

The Court:
Sustain it.

Mr. Burr:
All right, sir, we except.

The Court:
No comparison.

Q. Do you have those places at the bath house?

A. Yes, sir.

Q. That is, toilets?

A. Yes, sir.

Q. You have them, of course, at your home?

Mr. Harris:
We object to what he has at his home.

Mr. Burr:
All right, if he objects I don't insist on it.

Q. As the result of that, you say the bad smell—is that what you are talking about, that there was a bad smell—did I understand you to say that that is what it is from?

A. Yes, sir.

Q. From men having calls of nature underground?

A. Yes, sir, in most instances.

Q. How long has that situation—have you noticed the bad smell down there?

A. Well, most particularly since we have got down in the lower vein below the fault and down in the bottom part of the mine.

Q. Well, it has been going on more or less all the time?

A. Yes, sir.

Q. Ever since you have been working there?

A. Yes, sir.

Q. Now, Mr. Patterson, you say you were President of the Local for a while, about two years, I believe you say?

A. Yes, sir.

Q. And at all other times since 1933 you have been either President or on the Executive Board, as you call it?

A. Yes, sir.

Q. Is that the Executive Board of the Local or the Executive Board of the District?

A. The Local.

Q. The Executive Board of the Local and your Local is what number?

A. 153.

Q. You have also served during a large part of this time as a member of the Grievance Committee, haven't you?

A. I didn't understand the question.

Q. You have also served as a member of the Grievance Committee, the committee that takes up with Mr. Cameron any grievance you have?

A. While I was President.

Q. While you were President?

A. Yes, sir.

Q. You served as a member of that committee?

A. Yes, sir.

Q. And you and your committee would meet with him regularly once a month, just about, didn't you?

A. Yes, sir.

Q. You met in his office there at Ishkooda?

A. Yes, sir.

Q. And you presented to him such complaints or grievances as you had?

A. Yes, sir.

Q. And he had a secretary or stenographer or somebody present to take minutes?

A. Yes, sir.

Q. And the minutes were written up and then a copy given to you and you signed a copy as to the correctness?

A. Yes, sir.

Q. And you didn't sign it without you thought they were correct; they were correct statements that you signed?

A. Yes, sir.

Q. Now, the same conditions that have existed about not having any Chick Sayle houses, and also the same conditions in this 64 and 66 heading that you are talking about and the same skips and the same character of skips and the same haulage ways and the same walkways have been used since May 1, 1941 that were used before May 1, 1941, haven't they?

A. Yes, sir.

Q. The only difference, so far as method is concerned, is the time of going in the mine and coming out?

A. I didn't understand.

Q. The only difference, so far as traveling is concerned, is the time of going in the mine and coming out?

A. That is right.

Q. You come out from underground now since May 1st an hour and a half shorter time than you used to; that is what it amounts to, isn't it?

A. Approximately, yes, sir.

Q. Approximately an hour and a half. Now, have you, since May 1, 1941, presented any complaint or grievances to Mr. Cameron, or has the union within your knowledge, presented any such complaints or grievances about these conditions of not having toilets or this walkway that you told us about yesterday and this morning, between 64 and 66, and the kind of skip that you three gentlemen illustrated yesterday that you run over as you go down?

A. No, sir.

Q. You haven't complained of any of these things since May 1, 1941, have you?

A. No, sir.

Q. And they have been just the same as they were before May. 1, 1941?

A. Practically, yes, sir.

Mr. Burr:

Now, let me have those minutes.

Q. Did you keep the copies of these minutes that were given to you after the meetings?

A. The organization does.

Q. Have you got them all, or not?

A. I couldn't say whether it has, or not.

Q. Have you turned over all that you have to your attorneys?

A. To Mr. Sisemore, when I was President.

Q. I am showing you minutes that are signed by you. The one I first show you is one date January 11, 1939:

"Minutes of Meeting held in Superintendent C. B. Cameron's office January 11, 1939.

"Those present were: Mr. C. B. Cameron, Superintendent, Mr. J. I. Williams, Superintendent's Clerk, and the following committee representing the members of Ishkooda Local No. 153 of the International Union of Mine, Mill & Smelter Workers: Mr. E. T. Patterson, President, Mr. L. H. McBrayer, Committeeman.

"The meeting was called to order at 9:00 A. M., by Mr. C. B. Cameron, Superintendent.

"Mr. Cameron:
This is the regular monthly meeting and the meeting is now open. I would like to state that the meeting in the future will be held at 9:00 A. M., on the first idle shift in the second week of each month.

"Mr. Patterson:
That is all right with the committee.

"Mr. Cameron:
Do you have anything to bring up for discussion today?

"Mr. Patterson:
Yes, sir, the first thing is a complaint against George Holloway, Colored, bath house attendant, at No. 11 bath house. He comes into the white section of the bath house about 6:10 or 6:20 o'clock and starts sweeping before the men get away from the bath house. I have asked him three times to quit doing that as the dust is too bad for the men.

"Mr. Cameron:
You should have taken this up with the Foreman instead of telling Holloway. I have already taken that matter up and I supposed it had been corrected but if it has not been I will see that it will be."

Q. Did you make at any subsequent time complaint about that?

Mr. Harris:

I don't see the materiality of that, if the Court pleases.

Mr. Burr:

I expect, if Your Honor pleases, to show that these things that he is proving were never complained about, and I expect to offer the minutes.

The Court:

He has said on the stand that he didn't complain about that.

Mr. Burr:

I want to show the method of complaint that he did make.

Mr. Harris:

I don't think, if the Court pleases, to go into the details of all the little complaints at these monthly meetings and find out if that particular little complaint was corrected, and whether they handled it later, I don't think that has a thing in the world to do with this case. Now, when he started to offer the minutes I didn't object, but then he starts asking a lot of questions about what happened as a result of the meetings.

The Court:

I am going to let the minutes in.

Mr. Harris:

You let the minutes in?

The Court:

Yes.

Mr. Burr:

But I offer to prove and I expect to prove by this witness—

The Court:

I am talking about the minutes. I am admitting the minutes.

Mr. Burr:

But I want to submit my proof on the question I understood Your Honor sustained objection to. I understood this complaint Mr. Cameron stated was to be handled in the future. Now, my object is this—

The Court:

I will let the minutes in.

Q. Was there any more dust complaint after that about dust in sweeping in the bath house, or was that, so far as, you know handled?

A. There was no more complaint.

Q. Then the minutes go ahead.

"Mr. Patterson:

We want to bring up the case of Lon Randall, Colored. He has asked the Committee to see if he can not be allowed to go back in the mine to work. I had him to go to see the doctor and the doctor told him that his eye was as well as it would ever be and we think that he should be allowed to go back into the mine to work. There are other men in the mine with one eye.

"Mr. Cameron:

I don't agree with you. There are several men in the mine who only have one eye but they have been working in the mine for a long time. I don't think that we should allow Randall to go back into the mine at this time. Just because we have other men in the mine that only have one eye is no reason for putting anyone else in there. Randall has only been injured since March, 1938, about a year, and he is not accustomed to the loss of his eye yet.

"Mr. Patterson:
Since others are in the mine with only one eye Randall feels that he could work all right in the mine."

Mr. Burr:
Then it goes ahead with the other. There is no use to read all of those.

The Court:
Read it if you want to. It is all in but I have about agreed to make up my mind that I am going to let you loose.

Mr. Burr:
All right, sir.

"Mr. Cameron:
Randall has talked to me several times about his going back into the mine but I don't feel that it is good practice to allow him to go back now.

"Mr. Patterson:
Then you will not allow him to go back to work in the mine?

"Mr. Cameron:
No, not at this time.

"Mr. Patterson:
Well, I will take that report to him and if he wants us to take it up any further we will arrange to do so.

"Mr. Cameron:
All right."

Q. (Continuing.) Then I will ask you to look over that and see if these other complaints were made at this same meeting, without going into details. The next one is about Willie McCray. The next one is about Freeman Wood. You remember that, don't you?

A. Yes, sir.

Q. About a skip tender job being open.

A. Yes, sir.

Q. I believe that is the last one. That is all the discussion about Freeman. It winds up:

"Mr. Cameron:

That is all right.

"Mr. Patterson:

That is all that we have today.

"Meeting adjourned at 10:40 A. M."

Then you signed for the Committee, Mr. Cameron and then Mr. Williams. Now, was that the usual custom of these meetings that the minutes were taken down and you signed the minutes?

A. Yes, sir.

Q. And you got a copy and the company got a copy?

A. Yes, sir.

Q. Now, just to identify your signature on the other meetings, this is your signature on the minutes of September 21, 1937; isn't it?

A. Yes, sir.

Q. It shows there a meeting.

A. Yes, sir.

Q. And on Friday, November 11th. The next one is February 8, 1939.

A. Yes, sir.

Q. The next one is March 8, 1939.

A. Yes, sir.

Q. March 8, 1939.

A. Yes, sir.

Q. The next one is March 23, 1939. Is that your signature there?

A. Yes, sir.

Q. The next one is April 12, 1939. The next is May 10, 1939, is that right?

A. That is right.

Q. And the next is June 13, 1939. That is Sisemore.

A. Yes, sir.

Q. Who was Mr. Sisemore?

A. He was President of the organization.

Q. Succeeded you as President?

A. Yes, sir.

Q. And the next seems to be McBrayer. That seems to be the ones you have signed.

Mr. Burr:

Now, we will offer the ones that he has identified, Your Honor, and subsequently the others, if the other witnesses testify.

The Clerk:

Do you want those marked as exhibits?

The Court:

What is the exhibit number?

The Clerk:

30.

Mr. Burr:

Make it 30. I will give these gentlemen an opportunity to check these. These are the only signed copies we have. We will withdraw these and substitute the others.

Mr. Harris:

Of course, we will want to check them and a lot of other minutes I have asked about.

Mr. Burr:

Yes, I will give you all the minutes in this book. These are the ones for Ishkooda. I am taking them up by divisions.

The Court:

All right.

(Thereupon the minutes entitled, "Tennessee Coal, Iron & Railroad Company, Ishkooda Division, Minutes of Meetings held in Superintendent C. B. Cameron's office, dated January 11, 1939, September 21, 1937, November 11, 193.., February 8, 1939, March 8, 1939, March 23, 1939, April 12, 1939, May 10, 1939, testified to by the witness, were identified as T. C. I. Exhibits Nos. 30-30G-, inclusive.)

Q. Now, then, I will ask you whether or not during all of the time that you served as president and as a member of this committee—I have shown you these minutes—I will ask you whether or not independent of the minutes you ever remember that you did at any time ever present or take up with Mr. Cameron any grievances about conditions on the skip or in the walkways; has there any such grievance ever been submitted during that entire period of time?

A. Not to Mr. Cameron.

Q. Not to Mr. Cameron. Well, he is the man that you went to with your grievances, isn't he?

A. Yes, sir.

Q. So far as you know, none ever was submitted to te Mr. Cameron?

A. No, sir.

Q. All right, sir. Now, then, have you ever served on any negotiating committee of the union in the negotiation or attempted negotiation of contracts, Mr. Patterson, since 1933, other than the one at Chicago that you mentioned?

A. Not that I know of.

Q. You don't recall ever being on any other negotiating committees?

A. No, sir.

Q. Now, you testified this morning to Mr. Harris about the meeting in Chicago that was attended by Mr. Vance and Mr. Moses, representing the company, and, so far as you could recall, by yourself and Mr. McDaniel. Was Mr. McDaniel the President of one of the other Locals on the mountain?

A. President of Wenonah.

Q. At Wenonah. Mr. Mitch, of course, was the Regional Director of the C. I. O., was he, and President of the United Mine Workers of America?

A. That is right.

Q. What office did Mr. Lemley hold with the union?

A. He was President of the Muscoda Local, I think, at that time.

Q. What office did Frank Allen hold?

A. He was representing the International.

Q. International Vice-President of the District, is that his title, or do you recall?

A. No, sir.

Q. International Representative?

A. Yes, sir.

Q. Where did he live?

A. Where did he live?

Q. Yes.

A. He lives at Brown Station.

Q. Did he work for any of these companies?

A. He did work for them.

Q. Now, do you know how long since he had worked for any of them?

A. No, sir, I do not.

Q. Now, Lee Pressman, I believe you said was the General Counsel or the Counsel for the Smelters Union, the International Union?

A. For the C. I. O.

Q. For the C. I. O. Was Mr. Reid Robinson, the President of the Union, engaged in those conferences?

A. Yes, sir.

Mr. Burr:

Now, I would like to have the T. C. I. exhibit; that is, the contract signed. They commence with 5, 6, 7, 8, 9, 10, 11, 12, 13 to 31. Just let me have that file and I can get it out.

Q. Do you remember the date that that contract was signed, that you negotiated at Chicago, Mr. Patterson? Do you remember what year it was in?

A. It was in 1938, I think. I don't know just the exact date.

Q. I will ask you, please, sir, to look at T. C. I. Exhibit No. 14, and see if that is the one that was negotiated in Chicago and signed by Reid Robinson, Van D. Jones, C. J. McDaniel, E. T. Patterson, J. M. Lemley and Frank Allen.

A. That was the one that we brought back to the Local.

Q. Presented to the Local. Was it actually signed in Chicago or signed here, or do you recall?

A. We discussed it in Chicago and it was drawn up in Chicago and brought back here.

Q. To be submitted to the Local?

A. To be submitted to the Locals and to be signed in the Brown-Marx Building.

Q. And you did submit it to the locals?

A. Yes, sir.

Q. And they approved it?

A. Yes, sir.

Q. And then on that approval you signed it?

A. That is right.

Q. Now, is that the only one that you took part in? I think it is, as I recall it.

A. Yes, sir, I think it is.

Q. I think that is the only one. Now, then, you say that this grew out of—it started, you say, that the company offered a settlement and a contract about the undesirables and a settlement of that case that was pending before the National Labor Relations Board at the time, do you, Mr. Patterson?

A. Yes, sir.

Q. In other words, it was approximately something over two hundred former employees who claimed they ought to have been re-employed when the mine opened after the strike, on account of the incentive plan?

A. Around one hundred and fifty or sixty.

Q. Do you remembr the exact number? Was it one hundred and fifty-eight? I am just trying to refresh my own recollection.

A. I think there was one hundred and fifty-three that got paid off.

Q. I know, but there was a good many more in the original complaint. Do you remember how many there were in the complaint in the case that was tried?

A. No, sir, I do not.

Q. And you say that the company offered you—the settlement was on the basis of a contract, a working contract being made and the men being paid so much money in a lump sum that you all divided as you saw fit, I believe?

A. That is right.

Q. And the one hundred and fifty-eight, if that was the number, if they could stand the physical examination, would be re-employed?

A. That is right.

Q. So there were three parts to the agreement; one part was paying the money, and another part was re-employing them and another part was negotiating a satisfactory contract, a work contract?

A. Well, they handed this to us and told us that was it.

Q. How is that?

A. They handed this contract to us after that, drawed up for the steel workers, and we promised we would discuss it with the men.

Q. You all discussed the terms of the contract for quite a while in Chicago, didn't you, Mr. Patterson, Mr. Robinson and Mr. Pressman and you and everybody else up there?

A. No, sir.

Q. That is all you did in Chicago, wasn't it?

A. No, sir, not on the contract. It was on the undesirables.

Q. I thought the undesirables was the way—that the understanding was reached in New York before it got to Chicago.

A. The agreement for the undesirables, we discussed that in Chicago, with the contract.

Q. Then do I understand that your recollection is that this contract was drawn and they told you to take it or leave it or the settlement would fall through, is that the idea I got?

A. It wasn't stated to me in that form.

Q. But it was the substance of it?

A. The substance of my—

Q. If I—

Mr. Harris:

Let him finish.

Mr. Burr:

Go ahead. I didn't mean to interrupt him.

A. In my way of looking at it, we could either take that and bring it back or present it to the men and leave it like it was and it would go on through.

Q. And if that wasn't done, the whole thing, the settlement wouldn't go through?

A. That was my understanding.

Q. So you agreed, as you say, to this contract of '38, and the Locals agreed to it, in order to get the settlement through?

A. We agreed—

Q. To get the one hundred thousand dollars, or whatever it was, and the men go back to work?

A. To save our organization.

Q. That is the reason that you agreed to this contract, was to get the men back and to get the one hundred thousand dollars and to save the organization?

A. Yes, sir.

Q. And this contract was the one that you agreed to and signed?

A. That is right.

Mr. Burr:

It shows that it was the one signed by you up there. Your Honor, I think that is about all I care to ask him just now. Just a minute now. Mr. All wants to ask him a few questions about his Woodward operation.

The Court:

Very well.

(By Mr. All):

Q. As I understand you, Mr. Patterson, you say you are thirty-five years old?

A. Yes, sir.

Q. You started to work—where have you lived since you were born?

A. In St. Clair County and Jefferson County.

Q. Where?

A. In St. Clair and Jefferson.

Q. Now, when you started to work the first company you started to work with was the Woodward Company?

A. Yes, sir.

Q. How old were you then?

A. Around seventeen, sixteen or seventeen years old. They had to sign a minor's release to get to work.

Q. What kind of work did you do?

A. The first work I did was track helper.

Q. You said you worked at Songo?

A. Yes, sir.

Q. To No. 2. When did you work at Songo?

A. In 1923.

Q. When did you begin work at Songo?

A. I don't know just the exact date.

Q. Well, how long did you work at Songo?

A. Approximately two years.

Q. About two years?

A. Or a little better.

Q. Then you went from there to No. 2?

A. Yes, sir.

Q. How long did you work at No. 2?

A. About three months.

Q. Do you remember what year that was in?

A. In 1926.

Q. When you left?

A. Yes, sir.

Q. That is when you went with the T. C. I.?

A. Yes, sir.

Q. You said something about being foreman over there at the Woodward Iron Company.

A. Yes, sir.

Q. What kind of foremen were you?

A. I was track foreman, timber foreman and tipple foreman.

Q. What year was that?

A. I can't recall. It was just all different times.

Q. How long were you a foreman?

A. I couldn't say that.

Q. How long were you track foreman, how long tipple foreman and how long timber foreman, to the best of your recollection?

A. Well, it was just a short time. I couldn't say. I was timber foreman longer than any of the rest of them.

Q. I know, but was it a week or a month or six months or a year or two? What I am driving at is your recollection as to the time.

A. Well, track foreman, was around two months or three.

Q. What year?

A. I couldn't say that. It was right after I was taken off—I went from track helping to track foreman.

Q. Songo or No. 2?

A. Songo.

Q. How long were you timber foreman and where?

A. At Songo, for a little better than a year.

Q. And then tipple foreman?

A. At Songo, for just a short period, I don't know, a month or two.

Mr. All:

I believe that is all.

Mr. Burr:

Your Honor, I had about three questions to conclude with.

(By Mr. Burr):

Q. Mr. Patterson, you have presented a claim and the claim that you have, that the company owes you something for the traveling time since October 24, 1938?

A. Yes, sir.

Q. That is your present position, isn't it?

A. Yes, sir.

Q. And you base that claim on the claim that that traveling time was a part of your work?

A. That is right.

Q. That you were not paid for?

A. Yes, sir.

Q. And that you worked during that period of time eight hours a day and paid eight hours a day and that you are entitled to receive time and a half overtime over and above that during that period of time, that is your claim, isn't it?

A. I didn't understand the question.

Q. Well, you figured it over time, if you don't understand it?

A. Yes, sir.

Q. That is what you are claiming, for overtime?

A. Yes, sir.

Q. Beyond the eight hours that you were paid for?

A. Yes, sir.

Q. Now, when did you first make that claim and give the company any notice of it?

A. We did that through our representatives.

Q. All right, when was that, that you did that through your representative? I want to know when you first presented that claim from your Local, within your knowledge?

A. I don't know exactly when that claim was put in, but it has been discussed—

Mr. Burr:
I didn't ask you that.

Mr. Harris:
Let him answer.

Mr. Burr:
No, sir, that is something I don't want him to answer. I asked when did he first present it to the company.

Q. Well, do you recall when the local passed a resolution in reference to it and authorizing a copy to be served on all of these companies, do you remember that, or not?

A. I don't remember the resolution. All I remember is talking.

Q. Do you remember attending a meeting in which Mr. Sisemore was present on October 5, 1940, in re Ishkooda Local No. 153 of International Union of Mine, Mill and Smelter workers, District No. 5, an affiliate of the Bessemer Smelters Council, just a conference is all? Is that the first time you ever presented it to the company or authorized it to be presented to the company?

A. So far as I remember.

Q. So far as you remember?

A. I remember that being read and the Local approving it.

The Court:
He said that.

Mr. Burr:
All right, sir.

The Court:

Do you want to go over it?

Mr. Burr:

Well, sir, I didn't want to have any doubt about it. I thought Your Honor said you would turn me loose a little bit.

The Court:

I did a while ago, provided you don't ask the same questions.

Mr. Burr:

I believe now that is all I care to ask him.

Re-Direct Examination.

(By Mr. Harris):

Q. Mr. Burr asked you about buying a pair of shoes at Simmons'. Was that pair of shoes that you bought at Simmons', those safety shoes, substantially the same kind and quality of shoes that you had been getting at the T. C. I.?

A. Yes, sir.

Q. And what did they charge you for them at the T. C. I.?

A. $2.95.

Q. What did they charge you for them at Simmons'?

Mr. Burr:

We object to that, if Your Honor please.

The Court:

Overruled.

A. $2.45.

The Court:

You went into it.

Mr. Burr:

All right, sir. Not the fact that he can get them somewhere else.

Q. All right. When you arrived at the heading or stop on your shift did you start making the place safe before the juice was turned on, or did you wait until the juice was turned on?

A. I didn't understand the question.

Q. When you got up to the place, you entered in your shift, whether day or night, and you came down the slope and walked in through the various manways, and you are getting up to the drilling place. Now, would you wait when you first arrived there until the juice was turned on to start making the room safe, or would you start making it safe as soon as you got there?

A. Usually I would walk up into the place and look over before the lights came on, if I entered the heading before time, to see how the place was looking and what steps we would have to take to start work.

Q. Now, during these three years where Mr. Burr asked you about eight hours, during the three years up until May 1, 1941, how did the company take the time, your time; did a man come to you on the surface or did he come to you down in the mines, or where did he come to get your time?

A. I usually made out my time inside and the tally man or the time taker would check it on the outside.

Q. When did you make out your time, when you started work, that is to say, when they started drilling, or during the lunch period, or did you wait until you had finished drilling; did you have any regular time?

A. Various times in the day. Sometimes it would be before dinner or after dinner.

Q. And was the time of the men in your crew taken at various times during the day also?

A. I didn't understand.

Q. How about the men in your crew, how was their time taken?

A. Well, I usually knew who I was working or what men I was working and when I got a convenient time to turn loose to go where I made out my time I would go and mark the right men's names and eight hours on the sheet.

Q. That is right. So every man that you had on your crew, if he was there you always just reported eight hours?

A. Yes, sir.

Q. Now, Mr. Burr asked you if the mine completely shut down in 1936. Now, I will ask you if company men, during the time that the strike of '36 was on, were those company men at work, doing work for the company?

A. They were.

Q. What work were company men doing?

A. They were cutting bushes on the mountain.

Q. All over the top of Red Mountain near Ishkooda?

A. Yes, sir.

Q. Had those bushes, so far as you could see, been connected in any way with the operations of the mine before 1936?

A. No, sir.

Mr. Burr:

Your Honor understands I have got objections to all of this.

Mr. Harris:

Yes.

Mr. Burr:

I thought I ought to call attention to it when it is getting so far out of the issues, and trying to save time.

Mr. Harris:

I am trying to save time too.

Mr. Burr:

I am objecting because I can't conceive how it has got anything to do with this case, working on the mountain during the strike, on top of the mountain.

The Court:

Overruled.

Mr. Burr:

Exception.

Q. For what distance were the bushes and trash cleared off of the mountain, from the top of the slope?

A. They were cleared off up to the mouth of the slope.

Q. And then how far out from the mouth of the slope?

A. All over the top of the mountain.

Q. Do you know whether any other company men were doing any work there besides cutting down the bushes?

A. No, sir, I don't.

Q. You don't know whether they were putting in towers or concrete work or electric work or wires or anything else?

A. No, sir, I don't.

Q. Of your own knowledge, you don't know. Now, Mr. Burr asked you about production under the incentive plan and about it being to your financial interest to produce more ore and you had got to this statement and were interrupted: "So far as my job was concerned, it was to my interest." In what way was it to your interest, so far as your job was concerned, to produce?

A. Well, when the incentive plan was first put into effect we were called into the office and told that it was going into effect and that we would get so much over our—over—for running over twenty cars—twenty-four cars. At that time we had five-ton cars. And we were told that we must get over that and if we didn't that our place would be investigated by the mine foreman and assistant and other officials, and if we couldn't produce why there would be another man to take our place.

Q. As mine foreman?

A. As head miner.

Q. At these meetings with the company officials did the union ever have their own stenographer there?

A. No, sir, not to my knowledge.

Q. Did you all ever ask to have your stenographer there?

A. Not as I recall.

Q. Now, when Mr. Burr was talking to you about making a complaint as to the condition of the walkway, the manway, you made the statement that you hadn't made any complaint to Mr. Cameron. Were complaints made to any other officer or representative of the company besides Mr. Cameron about the condition of the walkways that he was asking you about?

A. In reference to the skip there had.

Q. What complaints were made, and to whom?

A. Mr. Carson, our mine foreman. Very often, from time to time, that the skips would be overloaded, and we would make complaints about them being overloaded and men being crowded in the skip too heavily and mashed.

Q. Tell whether or not that was done from time to time during these three years from 1938 up to 1941, these complaints to Carson, or was it before, or before and since?

A. It has been within these three years, from time to time.

Q. All right. Now, you said that in respect to this portal to portal or collar to collar payment, so far as you knew that resolution was the first formal presentation to the company, and you said something about it being discussed and you didn't give a date. Were you referring to discussions with representatives of the company, whether they were formal or not, or were you talking about discussions where only union men were present?

A. Discussions in our organization.

Q. Discussions in your organization. Well, I don't think that would be admissible. Now, as to the slippery place or places that you walked over, you mentioned pipe lines. Did those slippery places ordinarily extend all along where the pipe lines were running in the manways? Is that what you mean, only part of the way, or were they found in other places?

A. They were found in other places, various other places in the mines.

Q. Are they greater or less, both in number and size, along the places where the pipe lines run?

A. Yes, sir.

Q. When I asked you whether the slippery places were greater or less you answered, "Yes, sir." Did you mean, "Yes, sir, they were greater," or "Yes, sir, they were less," along the pipe lines?

A. They are greater up and down where this pipe line ran.

Q. You told Mr. Burr that you signed the contract in Chicago in order to save your union. I will read Section 3 under Subdivision 1.

Mr. Burr:

No, sir, his question isn't stated correctly.

The Court:

What is that he proposes to read from?

Mr. Burr:

I just don't want that to go in as being answered differently now. I don't mind him reading it, but I don't want him to assume that is what the witness said.

Mr. Harris:

The record shows what the witness said.

Mr. Burr:

It shows what he said, and it shows a good deal more than that.

Q. Section 3: "The company agrees"—and then down under 3: "It will not in any manner dominate or interfere with the administration of the Mine Workers or with the Brotherhood of Mine Workers of Captive Mines, Ore Mine Division, or any other labor organization or its employees, or contribute financial or other support to any of said organizations." Do you remember that clause in the contract?

A. Yes, sir.

Q. Were there discussions as to what the company would do about this Captive Mine or Company Union that they had?

A. Yes, sir.

Q. And what was the discussion in Chicago as to what this company would do about the Union or Brotherhood of Captive Miners?

A. Well, at that time the company had a building on their property, and these Captive Miners or the Company Union, we called it, met there at that hall and they had protection of the company going through and they did their work there, and it seemed to us that the company was holding them under cover, that they were holding that organization together, and we talked a whole lot about this being this company union, and during the discussion we told the Vice President of Raw Material about how the company had hovered them and that they had discriminated and given these men preference over union men and had discouraged the union men from even attending meetings, and different things that they did to discourage men to belong to our organization, and it was summed up and agreed that the company would not let them meet on the company property any more and that they would move off and would not contribute any support whatever to the Brotherhood of Captive Miners.

Mr. Harris:
That is all.

Mr. Burr:
Now, let me have that, if you don't mind, an exhibit.

Mr. Harris:
I don't think that is an exhibit.

Mr. Burr:
Give me that exhibit, that contract.

The Clerk:
You have all of your exhibits there.

Re-Cross Examination.

(By Mr. Burr):

Q. How long did that confernce in Chicago last, Mr. Patterson, about how long?

A. Approximately four days, I think.

Q. Four days. And do you remember the discussion that you have just mentioned?

A. Yes, sir.

Q. Well, that is not all that was discussed there, is it? That wasn't all that was discussed there in those four days, was it?

A. No, sir, not all.

Q. Well, didn't you go over the contract, section by section?

A. Yes, sir.

Q. And you were asked if you remembered that section. Do you also remember this section, No. 4:

"Eight hours shall constitute a day's work and forty hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight hours in any one day or for all overtime in excess of forty hours in any one week.

"The eight hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

A. Yes, sir.

Q. That was discussed too, wasn't it?

A. No, sir, not only we agreed to take that from the—drawn up from the steel workers. This was the agreement that this was taken up from. We taken this agreement and drawed up our agreement for the ore miners from the steel workers' contract, with a few minor changes.

Q. Was it read and discussed, that provision?

A. No, sir, not in particular, that I know.

Q. You remember it; you didn't sign something that you didn't know about?

A. That is true.

Q. You agreed to it, didn't you?

A. Yes, sir.

Q. And you came back and submitted it to your Local?

A. Yes, sir.

Q. They agreed to it?

A. Yes, sir.

Q. And they signed it?

A. Yes, sir.

Q. And Mr. Robinson, your President, was there?

A. Yes, sir.

Q. And your lawyer, Mr. Pressman, was there?

A. Yes, sir.

Q. And Mr. Robinson signed it?

A. Yes, sir.

Q. And the provisions that Mr. Harris read to you, do you remember the number of that?

A. That is in the stipulation.

Q. It is not in this contract here?

A. No, sir, that is the stipulation.

Q. The stipulation was in reference to the undesirables?

A. The undesirables.

Q. That was discussed too.

A. Yes, sir. Well, mostly what was discussed, the stipulation, not the contract.

Q. Both of them were discussed together; you had to sign the contract to get the stipulation?

A. Yes, sir.

Q. That is what you assumed?

A. Yes, sir.

Q. Now, he asked you as to whether or not there were some other slippery places in the mine that were not so slippery as the one you told us about, 62 to 64, and you said there were. I just wanted to be certain whether or not your testimony was to the effect that neither you or, so far as you know, none of your men, were ever hurt during the thirteen years that you have been there.

Mr. Harris:
I didn't ask him any more about that.

Mr. Burr:
You asked him about different places. My question is the one he testified about.

The Court:
Go ahead.

Q. Does your statement to me that you had never had any accident yourself and your men had never had any, does that apply to all of the places, that you had walked?

A. Yes, sir.

Q. You were speaking to Colonel Harris about the head miners being called in and the incentive plan being explained to them. Was that a meeting of the head miners just of your division that you are talking about, or was that a general meeting? Did you attend a meeting that Mr. Halfpenny and Mr. Ball conducted?

A. I don't recall.

Q. Were either one of them present at the meeting that you did attend?

A. I think Mr. Ball was. I wouldn't be positive.

Q. You don't remember Mr. Halfpenny?

A. No, sir, I don't remember Mr. Halfpenny.

Q. Now, you said something about that complaints had been made to Mr. Carson—I believe he is the mine foreman—didn't you?

A. Yes, sir.

Q. About the skip being overcrowded. Do you remember when those complaints were made?

A. At various times.

Q. Did you make them yourself, or how were they made?

A. I made them myself.

Q. You made them yourself?

A. The ones that I know about.

Q. That is what I want to find out, the ones that you know about. How many did you make about them being overcrowded?

A. About three or four.

Q. About three or four. When was the first one?

A. Probably about six or seven years ago.

Q. And then since then you have made two or three more?

A. Yes, sir.

Q. Without going into all of them, because I don't want to take that much time, but just what did you say to Mr. Carson?

A. Well, I would tell him the skip was being overcrowded.

Q. Just give the words as near as you can?

A. And I thought we ought to have somebody to see after it or check it, on the outside most especially going down, they just piled in there any way and couldn't nobody count them.

Q. I didn't ask you that, Mr. Patterson. I asked you for the exact language as near as you can give it. I want you to tell as near as you can what you said to Mr. Carson.

A. That is what happened.

Q. Well, what did you say to him?

A. That is exactly what I was saying to him.

Q. That is exactly what you were saying to him?

A. Yes, sir.

Q. Well, tell me again.

A. That these men would pile up there and nobody couldn't count them, that I thought he ought to put somebody out there to count them.

Q. What did he say?

A. He said all right, he would see after it; and he would see after it one day and it would go on again at various times until I would have to call his memory to it again.

Q. And the same thing would go through from four to six years?

A. Yes, sir.

Q. And that is the only complaint that you made about the matter?

A. That I can recollect.

Q. And you didn't go any further with it, with Mr. Cameron?

A. No, sir.

Q. Did your committee?

A. No, sir.

Q. Now, you were asked about the way you turned in your time sheets as head miner. That is the kind of time sheet you made out at that time, was it (indicating)?

A. Yes, sir.

Q. And you put here the names of the crew (indicating)?

A. Yes, sir.

Q. And the badge number over here (indicating)?

A. Yes, sir.

Q. Of course, your name would be here opposite head miner?

A. Yes, sir.

Q. And the drill runners there?

A. Yes, sir.

Q. Of course, there you would put eight hours of work?

A. Yes, sir.

Q. On each one of them?

A. Yes, sir.

Q. And that eight hours didn't include the traveling time?

A. No, sir, it wouldn't.

Q. It included the time from 6:45 to 3:15?

A. That is the way it was.

Q. And at that time you would make them out each day?

A. Yes, sir.

Q. And after making them out you would sign here (indicating)?

A. Yes, sir.

Q. And after making it out what did you do with it, turn it in to the mine foreman?

A. Turn them in at the tally house, since May 1st.

Q. I don't want anything that was done since May 1st. You turned them in at the tally house?

A. Yes, sir.

Q. And, of course, after that you don't know?

A. Yes, sir, I do know. We would bring them and turn them in to the time taker's shack. Before May 1st we had a little suitcase at first and we made a complaint about carrying them down in the skip and we got them put off inside at the time taker's shack where we load up on the skip coming out.

Q. Well, I didn't ask you about that. I asked you about do you know what became of this sheet after you turned it over to the mine foreman?

A. No, sir, I don't.

Q. That is what I asked you. Do you know what was done with it in the office?

A. No, sir, I don't.

Q. You don't know what was done with it after you turned it in?

A. No, sir, I don't.

Mr. Burr:

That is all, Your Honor.

Mr. Harris:
That is all, Your Honor.

The Court:
Court is adjourned until 1:30.

(Whereupon, at 12:15 P. M., July 24, 1941, a recess was had until 1:30 P. M. of the same day.)

After Recess, 1:30 P. M.

Mr. Harris:
Call Mr. Souggs.

2422 LEM SCRUGGS, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. What is your name, please, sir?
A. Lem Scruggs.
Q. How old are you, Mr. Scruggs?
A. Forty-seven.
Q. Where were you born?
A. In Georgia.
Q. How high did you go in school?
A. The fourth grade.
Q. How long have you been working in the mining business?
A. Approximately nineteen year.
Q. What company do you work for?
A. The T. C. I.
Q. How long have you been working for them?
A. About nineteen year.
Q. At what mine do you work for them?

A. At the present time at No. 11.

Q. How many different mines of theirs have you worked in?

A. I have worked in four different mines.

Q. Which ones?

A. No. 11, 12, 13 and No. 4.

Q. Eleven, twelve and thirteen, Ishkooda, and No. 4 is in the Muscoda Division?

A. Muscoda.

Q. During the time from October 24, 1938, up to May 1, 1941, the Ishkooda mines were running on a five-day shift per week, were they not?

A. Yes, sir.

Q. Does that apply to both day shifts and night shifts?

A. Yes, sir.

Q. In your work now just what are you doing?

A. I am head miner.

Q. Were you a head miner on October 24, 1938?

A. Yes, sir.

Q. What time did you report for work on the day shift in October, 1938?

A. Six o'clock.

Q. How many miners did you have under you?

A. Six.

Q. Did you turn in a brass check at the tally house?

A. Yes, sir.

Q. Did you ride down in a skip?

A. Yes, sir.

Q. Did the company require you to ride down in a skip?

A. Yes, sir.

Q. Did you see the mine foreman or assistant mine foreman around there from six o'clock, the time you reported, until you would go down on the man trip?

A. Yes, sir. The assistant mine foreman and the mine foreman would be there at the time?

A. Yes, sir.

Q. How far after you got off the man trip did you walk, the period from October 24, 1938, to the place where you actually drilled and blasted?

A. Well, it would vary. Some places I worked in was further from the man unloading station up.

Q. What was the farthest heading you worked in?

A. I would say it was something like six or seven hundred feet.

Q. That was the farthest?

A. That is from where we dumped the ore.

Q. Well, I mean when you got off.

A. Where we got off.

Q. At the man unloading station, how far?

A. It would be some eight hundred to a thousand feet.

Q. What headings have you worked in since October 24, 1938?

A. I worked in No. 65, 63, 67 right and 1st, it is now, it was 68 left then.

Q. In going down on the mantrip during this three-year period I have inquired about did either you or the men under you carry any tools with them?

A. Yes, we carried hangers and wedges.

Mr. Burr:

I didn't hear you, Mr. Scruggs.

The Witness:

My men has carried hangers and wedges.

Q. Did you or your men pick up oil at a place close to the man unloading station on your way in?

A. Yes, sir, my men did. The motor runner would pick up oil and dope for the motor and the drill helper would get oil for the drills.

Q. Now, did you, during this three-year period, turn in the time of your men?

A. Yes, sir.

Q. Did you regularly turn in eight hours on your time abstract, whether they were actually working eight hours or not?

A. Yes, they was—unless we had a breakdown and was called outside and then the mine foreman would put down the time we left and had the breakdown.

Q. And did you also follow the rule that you couldn't shoot until ten minutes past three?

A. Yes, sir.

Q. Did your assistants, that is, your muckers and helpers, stay at the drilling place until you started lighting fuses, or did they leave before you started lighting fuses, ordinarily?

A. We stayed until ten minutes after three and the lights went, and then everybody left except me and the drill man and the helpers.

Q. Did you ever make any complaints to the foreman or assistant mine foreman about the crowded condition of the skips?

A. Nothing more than we talked about the skips being crowded from time to time.

Q. How long, in your judgment, when you got out of the mine and were checking off at the end of your shift, did it take the men on the shifts you were to pick up their brass checks again?

A. Well, it didn't require very much time. I would say a minute or two minutes.

Q. Did that mean for the men in your crew or the men that were on the entire day shift?

A. Well, I don't know about the entire day shift because when we would come out on the skip I would come out. We would leave the tally house and go on to the bath house and change.

Q. But you would pick up your brass checks before you went to the bath house?

A. Yes, sir.

Q. And you would turn in your brass checks the first thing after leaving the bath house when you reported for work at the beginning of the shift?

A. When I reported for work at the bath house I turned in my check.

Q. Have you had any part in the negotiations—have you represented the union on any of the negotiations for wage contracts?

A. No, sir.

Q. Were you an officer of any of the unions in 1936 when the strike came right after the company proposed the incentive plan?

A. No, sir.

Q. You have never been an officer of the union?

A. I am an officer at the time, at the present time.

Q. Now?

A. Yes, sir.

Q. What is your position now?

A. Executive Board Member.

Q. How long have you been an Executive Board Member?

A. Well, about a year.

Q. Now, is there any substantial difference between the way men report for a night shift and the way they travel and the things they do for a night shift as compared to a day shift's work?

A. It is practically the same thing.

Q. Practically the same?

A. Yes, sir.

Q. Use the same tally house and the same man trips and the same manways and mine in the seam, stopes and headings?

A. Yes, sir. Of course, it is in the same heading. It might not be in the same stope. I probably might be doing developing work tonight, that is drilling, and then be dragging the next shift following.

Q. When you were paid during the three years that I have inquired about were you paid separately or were you—did you follow in line with other men that were paid?

A. I lined up with the others.

Q. And did any officer or representative of the company at any time after October 24, 1938, discuss with you these receipts that you were signing?

A. No, sir.

Q. Did anybody, whether you were there at the pay window or anywhere else, representing the company ever inform you that the company would use the receipts against any claim you might make for the benefits Congress had conferred upon you under the Fair Labor Standards Act?

Mr. Burr:

I am not renewing my objection to this on the theory that we have got one to all of this.

The Court:

Overruled.

A. No, sir.

Q. Now, after lighting your fuses how did you get out of the mine?

A. Well, we would come back the track where we tram out the ore and back up in there and wait at the man unloading station.

Q. Walking?

A. Walking.

Q. And then would you wait at the man loading station for a skip or would you find a skip waiting for you?

A. Well, we usually have to wait.

Q. About how long, ordinarily, would you have to wait?

A. Well, from five to twenty-five minutes.

Q. Did you have anything to do with when the skip would start from the man loading station to the top?

A. No, sir.

Q. Did you have anything to do with running the skip?

A. No, sir.

Q. Now, in going in did you and your men pick up oil anywhere near the man loading station to use in your drills?

A. Yes, sir, we had to get oil every shift.

Q. You had to get oil every shift?

A. Yes, sir.

Q. And carrying it from the man unloading station or the place near the man unloading station up to the drills?

A. Yes, sir.

Q. About how much oil did your drill use per day?

A. They use about a gallon. We use a gallon can. It might be a little left in the can at the end of the shift.

Mr. Harris:

I believe you can take nim.

Cross Examination.

(By Mr. Burr):

Q. Mr. Scruggs, you say all of your mining experience has been with the Tennessee Company, I believe?

A Yes, sir.

Q. And you have been working for them continuously for the past nineteen years except a few times you were off, I guess, on visits for yourself, I believe?

A. Yes, sir.

Q. And came back and went back to work for them and you have been a head miner for about how long?

A. Well, I have been a head miner ever since that name was used.

Q. Since the incentive plan started?

A. Yes, sir.

Q. You have been a head miner ever since?

A. Yes, sir.

Q. Now, as head miner you have charge and you are the boss over six men?

A. Yes, sir.

Q. Those six men and yourself work in whatever stope or working place you have been assigned to?

A. That is right.

Q. And you generally stay in the place until it is finished and go to another place, or something of that sort?

A. Yes, sir.

Q. As an ordinary proposition?

A. Yes, sir, we usually work out.

Q. Now, the first thing you do is to go to the bath house, of course, and change to your work clothes?

A. Yes, sir.

Q. Then you go down and the next thing you do is to get your carbide?

A. Yes, sir.

Q. And that takes up just a fraction of a second or minute?

A. That doesn't take any time.

Q. That doesn't take any time?

A. Just a short time.

Q. Carbide has always been purchased by the miners ever since you have been working?

A. How is that?

Q. The miners have always furnished their carbide ever since you have been working, and it is their light?

A. Yes, sir, each individual.

Q. And the clothes and the shoes?

A. Yes, sir.

Q. And the next thing you do after you get your carbide you hand your check in?

A. Yes, sir, we check in until six o'clock.

Q. Well, the first skip doesn't go down until about 6:05, does it?

A. Well, I would say it would go down somewhere about that.

Q. Somewhere about that. And the men catch such skip as they see fit to ride on. You are not assigned to a particular skip. You were not and you are not now, for that matter. But I will ask you before May 1, 1941 you took whatever skip that you happened to catch, that you wanted to catch?

A. I do. There was some of the men assigned to each skip.

Q. I am talking about you and your crew. You were not assigned to any particular one?

A. One of my men was.

Q. Which man was that?

A. That is the man that drove the mule.

Q. He was assigned to the first skip?

A. Yes, sir, they asked him to go down on the first skip.

Q. You had a mule driver in your place?

A. At that time.

Q. And just about two mules left in the mine?

A. I don't know at the present time?

Q. Well, along back then?

A. There was some seven or eight or ten.

Q. When was that, Mr. Scruggs, when they had as many as eight mules over there?

A. About three years back.

Q. About three years back. All right, sir. With that exception the rest of them, all that they were required to do was to be at their working place at 6:45?

A. Yes, sir, they were supposed to be there.

Q. They were supposed to be there and they could go down as they pleased? Now, as head of that crew your first duty was to see that the place was safe?

A. My first duty was to see that the men checked in at the tally house.

Q. It was your duty to see that the men left the tally house?

A. Yes, sir.

Q. That was to see whether or not you had a vacancy on your crew?

A. That is right.

Q. But they didn't have any particular skip; they could go on any particular skip they pleased?

A. Except this one man.

Q. Except this one man. I am leaving the mule man out, of course. If there was a vacancy on your crew you would report it to the mine foreman or the assistant mine foreman?

A. Yes, sir.

Q. And he would assign the man to you?

A. If he had him there.

Q. If he didn't have him there would he get him there?

A. Sometimes we had a short crew.

Q. Five men?

A. Yes, sir.

Q. And if that vacancy was filled the mine foreman would fill it?

A. If he could.

Q. If he couldn't fill it you had to work with five?

A. We had to work light.

Q. You wouldn't go down on the man skip with the foreman or assistant foreman, would you?

A. I have.

Q. You have, but I mean ordinarily, usually.

A. No, sir, I usually rode different skips.

Q. Did I understand you to say that the mine foreman and the assistant mine foreman stayed at the tally house until all the men were checked in, or not?

A. Yes, sir, they did at that time.

Q. Well, has that always been the custom that they stayed there?

A. Yes, sir.

Q. Then they didn't ride down on the skip only in exceptional cases. If they stayed on top they didn't ride down.

A. Yes, sir, they would ride a drag to themselves.

Q. A what?

A. They would ride a drag to themselves if there wasn't but a few men left to go down.

Q. You didn't go down with the same crowd every morning, then?

A. No, sir, I wouldn't.

Q. You didn't necessarily go down with the same members of your crew; sometimes they would catch one and sometimes catch another?

A. That is it.

Q. And when you got down to the bottom you didn't walk up to your working place with the same people all the time, did you?

A. No, sir. Probably a few men would be there one morning.

Q. And sometimes somebody else, different companions going down. Would you usually find your men at the stope where you were working when you got there, or would they usually come after you?

A. Well, they would be—the majority of them would be there waiting for me.

Q. The majority of them would be there waiting for you?

A. Yes, sir.

Q. Of course, under the rules and under the practices as head miner they wouldn't go into that place until you had gone in and examined it and declared it safe?

A. Well, they wouldn't go to work until the lights came on.

Q. They would not?
A. No, sir.
Q. That is right. The lights came on at 6:45?
A. 6:45.
Q. And that is when pay began, too, isn't it?

Mr. Harris:
We object to that, if the Court pleases.

Q. Isn't that when your pay was timed, from 6:45?
A. Well, we got paid at the rate down—
Q. At 6:45?
A. They counted it from the tally house at 6:45.
Q. You didn't get but eight hours, did you?
A. That is all.
Q. Well, you didn't go to work until the lights came on, did you?

Mr. Harris:
We object to that question. It is a question for the Court to decide when he went to work.

The Court:
I think that is a question for the Court.

Q. Well, what did you men do until the lights went on?
A. We would stay there and wait for them to come on.
Q. Then you would just stay and wait for them to come on?
A. Yes, sir.
Q. And when the lights came on what did you do?
A. We would go on to the places and begin taking down bad, loose material or prepare to start a drag; clean up.
Q. Where was it that you would stay and wait for the lights to come on, some distance back or where?

A. Two or three hundred feet back.

Q. Two or three hundred feet back from where you went back to see if your place was working before you started drilling?

A. That is right.

Q. And your loading crew would do their work during the day and you and your crew would look after shooting down the ore?

A. I would see after the whole crew.

Q. I know you bossed the whole crew, but you had it kind of divided, didn't you?

A. Not necessarily.

Q. Not necessarily; sometimes one did one thing and sometimes one did another. Now, your lights flashed for shooting at 3:00, did they?

A. 3:10.

Q. And who stayed around there shooting?

A. Me and the drill runners.

Q. And then you and the others, where did they go?

A. They would go on up out of the way of the shots.

Q. Would they go on to the hoodlum?

A. Yes, sir.

Q. Or the loading station. They would just go on up and when they got there they had seats there where they would sit and wait for the skip?

A. No, they have benches.

Q. Benches?

A. Some of them. Some sat on the tracks.

Q. And the first ones there would sit nearest the skips until the benches gave out and then on the track?

A. Yes, sir.

Q. And then they were loaded in accordance with the way they were sitting, just take their turn in the way they were sitting?

A. Each man had—

Mr. Harris:

Wait a minute there. Each man had to—you started out, each man had to do something about the skip.

A. He had to take his turn.

Mr. Burr:

That is what I thought he said.

A. (Continuing.) In the line.

Q. I didn't mean to interrupt you, Mr. Scruggs. If I do you stop me. I thought that is what I understood you to say. Each man takes his turn as the skip comes?

A. Yes, sir. They are not allowed to run in front of one another.

Q. Then you go on out and pick up the check as you go out?

A. Yes, sir, pick up the check as I go out.

Q. Now, you told Mr. Harris that it took your crew just a minute or a minute and a half for all of them to deposit their checks going in. Does it take about the same time coming out?

A. I told Mr. Harris each man. I wasn't speaking about myself.

Q. Each man would take how long?

A. It would take me a minute.

Q. I see. Now, where do you count that from, when he walks from the carbide place, or does it take him that long to hand in the check?

A. It will take him that long after he gets out of the skip.

Q. It will take him that long after he gets out of the skip?

A. Yes, sir.

Q. And after that he goes to the bath house?

A. Yes, sir.

Q. One or two questions about the walking distance. Of course, the walking distance depends on how far away your working place is.

A. Yes, sir.

Q. From the underground loading station. Now, turning in the time of the men, that was your job; you kept these time sheets each day?

A. Yes, sir.

Q. Now, they had you to put down each man's name, his badge number and eight hours in the mine?

A. Eight hours on the time sheet.

Q. And if there were any exceptions, if anything happened, or a man got sick, you would note that on the time sheet and turn that in?

A. If something happened to him that he had to go out at eight o'clock or nine o'clock.

Q. You note that on your report?

A. Yes, sir.

Q. Now, the nineteen years you have been working you have never been paid for traveling time, have you, Mr. Scruggs?

A. No, we have not. We have always—

Q. That is what you—

Mr. Harris:

Wait a minute. You have always, what?

The Witness:

We have always had to take the hours from face to face.

Mr. Burr:

That is right.

Q. Did you finish?

A. Yes, sir.

Q. Have you always done that, taking hours from face to face ever since you have been working there?

A. We have ever since the incentive plan.

Q. Before that?

A. It was ten hours.

Q. And it was ten hours all the while and it was ten hours from face to face?

A. It is what we got.

Q. And since it has been made eight hours—it was made eight hours in 1933—you went on the eight-hour basis?

A. '33?

Q. Since then it has always been on the eight hours?

A. That is what we got paid for.

Q. And the time has run since that time, from May 1, 1941, from 6:45 in the morning until 3:15 in the afternoon with thirty minutes out for lunch?

A. We have to report for work at six o'clock.

Q. Where are you talking about having to report for work at six o'clock?

A. At the tally house.

Q. When you say you report for work you report at the tally house?

A. Report at the tally house.

Q. You didn't include that time from then on until 6:45 in your eight hours?

A. We had to stay at the working place eight hours.

Q. You had to stay at the working place eight hours, and if I understand you, the reporting for work you are talking about is what you did at the tally house?

A. That is where I got my orders, if there was any changes to be made.

Q. What is that?

A. That is where I got my orders if there was any changes to be made, at the tally house.

Q. You mean the changes in the working place?

A. Yes, sir, and the way we might work.

Q. You didn't get those orders very often, did you?

A. We would get them very often if we had a bad top, a dangerous top.

Q. Let's see the places you say you have been working in during the four years to May 1, 1941.

A. How many places?

Q. Yes.

A. I have worked in 63, 65—

Q. 63 and what else?

A. 65.

Q. 65.

A. 67.

Q. 67.

A. And 68 and the 1st right.

Q. 68 and the 1st right. Now, those working places you worked in there over what period of time the two years before May 1, 1941?

A. Those places I just spoke of?

Q. Yes.

A. I have worked in them in the last three years, in different places in the last three years.

Q. You mean the last three years from now?

A. Yes, sir.

Q. From now you are talking about?

A. Yes, sir.

Q. Now, which ones have you worked in since May 1, 1941, so I can know which ones you worked before that time?

A. Let me correct that. You said from May 1st?

Q. Prior to May 1st, the two years just before May 1, 1941. Three years, make it.

A. Three years?

Q. From May 1, 1941, yes.

A. Let me have the question.

Q. Could you tell me in what places you have worked in during the three years just before May 1, 1941?

A. I worked in 63.

Q. All right, sir.

A. 65, 67, 68 and 1st right.

Q. That is the same you gave me a few minutes ago.

A. Yes, sir.

Q. Have you kept pretty well substantially the same crew during all of that time; have you had the same crew working with you?

A. No, sir.

Q. You have changed about?

A. Yes, sir.

Q. Now, what do your men get the oil in?

A. They get it at the oil house.

Q. I say, what do they get it in?

A. Oil cans.

Q. Gallon cans?

A. Gallon cans.

Q. And you use one gallon a day?

A. Yes, sir.

Q. Now, if you run out of oil up in your heading can you send a man back for oil?

A. Yes, sir.

Q. And do do it occasionally?

A. Yes, sir.

Q. If you run out of wedges and hangers you send back for them?

A. Wedges and hangers are kept locked You see the mine foreman.

Q. You see the mine foreman and get a requisition for them?

A. Yes, sir.

Q. But you could do that and did do that?

A. We have.

Q. And the same is true of hangers and hanger steel?

A. Yes, sir.

Q. They were kept locked up, or were they kept in the tool house?

A. They were kept locked up.

Q. And if you wanted to get one of them in the middle of your shift you would send one of your men to the mine foreman to get them?

A. Yes, sir.

Q. Of course, if a man went back in the middle of the shift for oil or anything else he walked back to the place where the oil was, to the tool box, is that right?

A. Yes, sir.

Q. And then he had to walk back with the oil to his working place?

A. To his working place.

Q. So as you stated on the hearing here last January, 1941, you said that the men may be asked to get such supplies or jackhammer steel, oil for the drags and drill, although most of them can get the jackhammer steel underground. Now, who asked them to do that, you or he?

A. I asked the mine foreman where he would run out of oil.

Q. If they could pick it up on the way in?

A. Yes, sir.

Q. I see. Well, of course, if the man picked it up on the way in, why he would get off at the unloading station and walk past the oil place, wouldn't he?

A. Well, I wouldn't have to tell my men. In other words, I wouldn't have to ask the mine foreman to get oil. That would be when they would have to carry oil from the outside.

Q. That would be when they would have to carry oil from the outside. Let's get oil on the inside. If that man, when he gets off at the unloading station and goes to his working place, he has to pass by the place where they keep oil in a drum?

A. Yes, sir, he has to pass by the place they keep oil.

Q. On his way. And then he usually gets a gallon of oil?

A. Yes, sir.

Q. I believe you said on each shift. It doesn't take all six men, of course, to carry that gallon of oil?

A. One man.

Q. One man gets it. Does the same man get it every day, or not?

A. Well it is the same man used on the drill.

Q. Usually the same man, and he will get it—well, he gets it and then takes it along with him to his working place?

A. That is right.

Q. Now, if that can should give out and you needed oil during the day and you sent that man back for oil he would come back to the same place to get the oil?

A. The same place.

Q. And walk back to the same place. How about the wedges and the hammer steel? Did they get that too? I believe you said sometimes as they pass by the tool box, or is that gotten in some other way?

A. We get our wedges and hangers and jackhammer steel at the tool house.

Q. You get your wedges, hangers and jackhammer steel at the tool house. If you need those during the day, you are the boss, you can send the man back to get them, can't you?

A. Yes, sir, I would send them.

Q. And you do send them back. Of course under this incentive plan each head miner tries to keep as far ahead in supplies as he can, doesn't he, Mr. Scruggs, so he doesn't have to stop work?

A. Yes, sir, he tries to.

Q. He wants as many wedges and as many jackhammers as he can get?

A. Yes, sir.

Q. And when you run out you can just send your man back to get them?

A. If they have them.

Q. If they have them. If they don't have them, call on the mine foreman for them?

A. Sometimes they haven't got them in the mine.

Q. They haven't got them in the mine occasionally. How often does that happen?

A. It will happen every three or four months.

Q. Every three or four months, and there are occasions when you would get them on the outside?

A. He would pick up old hangers on the outside.

Q. Pick up old hangers on the outside. Would your men carry them down?

A. Carry them down, yes, sir.

Q. Well, now, about the hangers, do you carry them all at the same time that just once every three months that would happen, or would one carry them or six or seven or how many?

A. He would carry down two.

Q. You mean one man would carry down two?

A. One man could carry down two.

Q. On those occasional times and that would happen about once every two or three months?

A. Yes sir, I would say about every two or three months.

Q. Now, getting them that way kept you from having to wait until the mine foreman sent to the supply house to get them?

A. Yes, sir, kept me from having to wait until he could send and get them.

Q. And you as a head miner could call on the mine foreman for supplies at any time, couldn't you?

A. I did.

Q. And he would supply them?

A. If he could.

Q. If he could not it was handled in the way you told us?

A. We would have to get them outside.

Q. Then you would have to get them if you worked?

A. That is right.

Q. If you didn't have them in your place. Of course, if you had them in your place you could go ahead and use what you had?

A. That is right.

Q. That is right. Now, I believe you said you never got them yourself at all; your men would do that, of course?

A. My men would get them.

Q. Your men would get them. You didn't carry any hangers down on these occasional trips on the man trip yourself; the men would carry them down?

A. That is right.

Q. There would be two of the men you would tell to do it, to get oil, hangers, hammer steel and C-hooks and supplies of that kind at the tool house, you would tell the men to get them?

A. I would tell them.

Q. And you would either send back for them or they would get them on the way up to the loading station?

A. That is right.

Q. You couldn't get mine powder, of course, that way, you had to make a requisition for that?

A. You had to make a requisition for it.

Mr. Harris:

Judge, I don't know how long this business of letting the lawyer testify is going on.

Mr. Burr:

It is cross examination.

The Court:

This is cross examination.

Q. I asked you could you get powder that way?

A. We sent back.

Q. With a requisition, didn't you?

A. That is right.

Q. And that you generally did along about what time of day, Mr. Scruggs?

A. Well, that runs around—well, at the present time—

Q. The way it runs from, do you know, not now, but before May 1, 1941?

A. I would say up to about two.

Q. That was while your work was going on up in your stope, of course, when you sent for the powder?

A. We sent for powder and tools.

Q. Now, did I ask you, Mr. Scruggs, as to when the signal was given for closing the work at your stope? Was that 3:10?

A. 3:10.

Q. Did you always wait until 3:10 to do your shooting?

A. Most of the time. We have a few times left anywhere after three o'clock.

Q. Anywhere, I see, between 3:00 and 3:10?

A. If we had a dangerous stope and we figured that shots from other places might jar it.

The Court:

I can't hear you.

Q. Tell us again.

A. If we was working in a dangerous stope where the top was bad we would try to light in time before somebody else might light and jar the rocks loose at the last hole.

Q. Then you shot and that was the end of any work you did that day except to go out of the mine?

A. After the shots were made.

Q. You came out to the loading station?

A. Came out to the loading station.

Q. And went out of the mine; caught your skip. All right, sir, will you, please, sir, look at this T. C. I. Exhibit 31. I just want to identify this to save putting them all in. You got on each payday, didn't you, a statement of your earnings?

A. Yes.

Q. On a form like this?

A. We do right now.

Q. Well, you have been doing that for a long time, haven't you?

A. Not like this one.

Q. Well, substantially the same?

A. Well, we would get a master statement once a month, and if three paydays would be two like this one.

Q. Well, the master statement gave the same sort of information that this gave?

A. Yes, that gives the stoppages.

Q. That gives what you made and that gives the total amount and what you have got left?

A. That is right.

Q. For instance, using this as an illustration, in September, 1940, you made that week thirty-two hours and your rate was 77 cents an hour as a head miner, guaranteed rate?

A. Was at that time.

Q. So that was the amount that you got. Then you also got a bonus if you made over a certain amount, under the incentive plan?

A. If we loaded over a certain tonnage.

Q. That is what I mean. You got a bonus and you got $23.71, which made your earnings on this payday $50.09, then you had a deduction of $2.30, Alabama Unemployment Insurance, Federal Old Age Benefit Tax and Medical, and you got your check for the balance?

A. Yes, sir.

Q. That is the way it was handled?

A. Yes, sir.

Q. And it has been handled that way all the time except one time, your recollection is, you got a master statement?

A. Yes, sir.

Q. That covered how much?

A. It covered four paydays.

Q. Covered four paydays instead of getting one with each receipt?

A. That is right, we got the master, four paydays.

Q. Well, is it your contention in this case, Mr. Scruggs, that you have not been paid the time you spent in traveling, getting up to your working place?

Mr. Harris:

We object. The claim shows for itself.

Mr. Burr:

I am asking him.

Mr. Harris:

We object to what his contention is. The claim shows what his contention is and his lawyer makes his contention in Court, if the Court pleases.

The Court:

Overruled.

Q. Is that your claim, Mr. Scruggs?

A. That is right.

Q. Now, of course, ever since you have been working there these nineteen years you know that you never have been paid for that traveling time?

Mr. Harris:
He asked him that once before.

Mr. Burr:
No, sir, I don't think so.

The Court:
Well, I will let him answer it.

Q. You know you have never received pay for that traveling time during that nineteen years?

A. I haven't received pay since we went to work on the eight hours.

Q. Well, you had been on ten hours, hadn't you?

A. Well, in a way we were not compelled to work to the minute like we have since then.

Q. You mean on the ten hours when you got through your work you could leave the mine sooner, is that what you mean?

A. Yes, sir.

Q. When did you get on the eight-hour day?

A. '33.

The Court:
I think you have been over that. 1933.

Mr. Burr:
I think now, Your Honor, that is about all I want to ask him. Just one minute.

Q. Just one other thing. You told Mr. Harris that there has been no complaint about the skips, "nothing more than we have talked about the skips being crowded." Who did you talk to?

A. We talked to the man in charge of the skip.

Q. The skip rider?

A. The skip tender.

Q. The skip tender. All right.

A. Or the assistant mine foreman or mine foreman.

Q. Do you remember what assistant mine foreman you ever talked to about it being overcrowded?

A. Mr. Patterson and Mr. Burgess.

Q. And what would be just about what you would say about it, without going into all of the different details?

A. We would tell them there was too many men loaded in the skip.

Q. And what did they say?

A. They would say yes, there was too many in that one, "and we will watch it next time and not put so many in it."

Q. Did you ever speak to Mr. Cameron about it?

A. I never did.

Mr. Burr:

That is all.

Re-Direct Examination.

(By Mr. Harris):

Q. Do you know what the other men were paid that were working in your crew?

A. No, sir, I couldn't say.

Q. Did you mean to say that you got a master statement just one time for one month or over a long period of time you got a master statement once a month?

A. We got a master statement over a month's period.

Q. Yes. And how many years or months was it that they paid you under the master statement?

A. Well, I will say a year.

Q. Now, these time abstracts that you filled out to turn in to the company, how did you get those down into the mine?

A. We had a little wooden box made about one by twelve by fourteen that we carried the sheets in.

Q. Did you carry the sheets down with you on your mantrip?

A. Yes, sir.

Q. As you went down into the mine?

A. Yes, sir.

Q. You stated a while ago, or Mr. Burr asked you another question so fast at the same time that you didn't get a chance to finish it and you got as far as this: "We would ask the mine foreman." Now, what different things would you ask the mine foreman or assistant mine foreman about after reporting for work and even catching the man trip down?

A. Well, we would ask him about different things, probably, that I had ordered before that time, such as if he had gotten my hose pipes, or if he had got me a new drag or things of that kind.

Q. Would you discuss with the mine foreman or the assistant mine foreman the presence or absence of a member of your crew; if a man was short would you discuss it with him?

A. Well, I usually—if someone in the mine would tell me that such and such a man was off, that he was sick, or he was just off, I would report to the mine foreman that this man was off.

Q. Was it your duty to make that report to the mine foreman before you went down in the mine?

Mr. Burr:

We object to the form of the question.

The Court:

Overruled.

Mr. Harris:

I withdraw it.

Q. Were you required to report to the mine foreman that a man was short, at the skip?

Mr. Burr:
I object to that.

The Court:
Overruled.

A. Yes, sir.

The Court:
I didn't get the answer.

The Witness:
Yes, sir, we were required to do it.

Q. I believe I asked you but I want to be sure, were you required to ride a man trip down after reporting at six, or could you walk down in the mine if you wanted to?

A. We was required to ride down.

Q. Mr. Burr asked you if you worked about the same crew these three years. In your best judgment, how many different changes of men in your crew have taken place during the three years from October '38, to May 1, '41?

A. Well, I would say I have worked fifty or more different men.

Q. Fifty or more different men, and the crew since the incentive plan was handed to the miners has been you and six others.

A. Yes, sir.

Mr. Harris:
I believe that is all.

Re-Cross Examination.

(By Mr. Burr):

Q. These crew changes, the head miner, you, I will say, you request changes every now and then, don't you?

A. I have requested a change one time.

Q. Was your request granted, or not?

A. It was, later on.

Q. And the other changes were due to first one thing and another?

A. Absence.

Q. Absence or something of the sort?

A. Absence or something of that sort.

Q. Now, you say that what you would ask the mine foreman there at the tipple house would be you would ask him about hose you asked for and the requisition, whatever you would ask for?

A. Yes, sir.

Q. A hose pipe and things like that?

A. We would order a hose pipe and it would be two or three days before we would get it and we ask him if it had come in.

Q. And he would tell you it had?

A. Sometimes he would and sometimes he would say he didn't know.

Q. Now, I want to ask you this final question: The practices you have been testifying about, the way you got on the skip and the way you deposited the check and took it up and go down and get into your working place, the way you got your supplies, has the same thing been in effect ever since you have been working there, or substantially the same thing?

A. We have always got—

Q. The practices you have testified about have been substantially the same?

A. The same, that is right.

Mr. Burr:

That is all. Come down.

(By the Court):

Q. Mr. Scruggs, what were the hours, the time, you are required to be at the tally house ready to go down in the morning?

A. Six o'clock.

Q. What time are your men?

A. My men are required to be there and check in the numbers to me at six o'clock.

Mr. Harris:

That is all.

Mr. Burr:

Wait a minute.

(By Mr. Burr):

Q. Who required you to be there, that is what I want to find out, at six o'clock?

A. Mr. Cameron.

Q. Did he tell you to be there at six o'clock?

A. Yes, sir.

Q. When.

A. In a meeting when they presented the incentive plan.

Q. He called you head miners in and had a meeting with you?

A. That is right.

Q. And that was when the incentive plan was explained to you?

A. That is right. He called—

Q. Is that the time—

Mr. Harris:

Let him answer.

Q. Go ahead.

A. He called the foremen in at that time and told them about the incentive plan would take effect at a certain date.

Q. Now, is that the time that you say that you were required to be there at six o'clock, is that when you got that?

A. Yes, sir, he told us that all head miners that was chose as head miners was required to be at the tally house at six o'clock to check in the men.

Q. Anything else that he told you?

A. Yes, sir, he told us what the tonnage would be.

Q. Told you what?

A. Told us how much tonnage we would have to get.

Q. Anything else?

A. He told us our crew would be changed from nine to seven.

Q. Anything else?

A. And they was going to pick out the head miners later on.

Q. Anything else?

A. Well, I don't recall just what all.

Q. Was Mr. Patterson at that meeting?

A. Well, I really don't know.

Q. Do you recall who was there besides yourself?

A. At the meeting?

Q. Yes.

A. All the foremen.

Q. Do you remember any of them that were there?

A. There was some fifteen to twenty-five men there.

Q. Do you remember any of them?

A. Yes, sir.

Q. Can you give the names of some you say were there?

A. Well, there was Tobe Webb, and Mr. Crowder, two of the Mr. Crowders, and Mr. Stone and Mr. Moore and several colored foremen.

Q. Now, I want to get the time of that as near as I can. Was that before the incentive plan started?

A. That was before the incentive plan was started.

Q. Now, how long was it before the incentive plan started?

A. It was fifteen days, maybe, before.

Q. Was it at that meeting that the explanation was made to the Smelters Union men and they declined to work under the incentive plan, or was it before the strike or after the strike?

A. This was before the strike.

Q. So this meeting you are talking about when you say you were required to be at the tally house at six o'clock was before the strike of '36?

A. That is right.

Q. That is the only way that you ever got any instructions of the sort?

A. Except for the time the mine was shut down and the crews were changed.

Q. But that is the only time you got instructions from Mr. Cameron to report at the tally house at six o'clock, the head miners?

A. Yes, sir.

Q. Now, don't you know, Mr. Scruggs, that the head miners, all of them, never have reported at the tally house at six o'clock?

A. Well, I have.

Q. I am talking about all of them. You were first asked about any others.

A. Well, I wouldn't say about that because that wasn't none of my business.

Q. Well, you could look around there and see?

A. I could see a good many.

Q. You never have, as a matter of fact, reported at all at six-o'clock, have you?

A. Thereabouts.

Q. What do you mean by thereabouts?

A. Ten or fifteen minutes after six. At first I reported there that late.

Q. Now, some of your men went down in the mine and were down in the mine then, weren't they?

A. Well, no, they usually waited on me.

Q. Well, did they wait on you?

A. Yes, sir.

Q. Have they always waited on you since you have been head miner?

A. No, sir.

Q. When was it they first waited on you?

A. Two and a half years ago.

Q. You mean to say that you and your men got together at the tally house and you checked them in and you all rode down on the same skip, do you or not?

A. We didn't get together. One man walked over and handed me his check and walked over and caught the skip.

Q. Is that all he did, to hand you his check?

A. Yes, sir.

Q. What did you do?

A. I waited until my crew got there.

Q. You waited until your crew got there and handed in your check?

A. Yes, sir.

Q. And then you got your vacancies supplied?

A. Yes, sir.

Q. And that is all you did?

A. That is what we did.

Q. And that is what you call reporting for work, checking your crew in?

A. Yes, sir.

Mr. Burr:

That is all.

Re-Direct Examination.

(By Mr. Harris):

Q. And during that whole three years when you reported at six o'clock did you have a skip tender for the skip there?

A. Yes, sir.

Q. And did the company wait until 6:30 or 6:45 or did they start running that skip within a few minutes after six?

A. They started running a few minutes after six.

Q. And you say you would at some times get there at 6:10, but ordinarily what was your time that you got there when you were on day shift?

A. Six o'clock.

Mr. Harris:
That is all.

The Court:
I want to ask him: Were you dressed for mining when you got there?

The Witness:
No, sir.

The Court:
You changed?

The Witness:
When I got at the bath house.

The Court:
From your business dress to your work clothes?

The Witness:
Yes, sir.

Re-Cross Examination.

(By Mr. Burr):

Q. You always caught the first skip down, didn't you?

A. No, sir.

Q. What skip did you catch?

A. Well, I would catch maybe the second skip one time and maybe it would be the last one, the next skip or the fourth one.

Mr. Burr:

I see. All right, come down.

The Court:

Your men, did they all go down before you did, as a rule?

The Witness:

Most of them. Probably there would be one that didn't get down.

The Court:

All right. We will take a recess for a few minutes.

(Thereupon, the statements of earnings of the witness Lem Scruggs, for one week of the month of September, 1940; showing incentive plan earnings and deductions, was identified as T. C. I. Exhibit No. 31.)

The Court:

Who will you have?

Mr. Harris:

Call Asberry Howard.

2461 ASBERRY HOWARD (c), being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. What is your full name?

A. Asberry Howard.

Q. How old are you Asberry?

A. Thirty-five.

Q. Where were you born?

A. I was born in Autaugaville, Alabama

Q. And how high did you go in school?

A. I went through the eighth grade.

Q. How long have you been working in ore mines in the Birmingham District?

A. Seventeen years.

Q. You say you are thirty-five years old now?

A. Yes, sir.

Q. So you began working in the mines when you were eighteen?

A. That is right, yes, sir.

Q. Have you done all your work for one company, or have you worked for different companies?

A. I worked some for different companies.

Q. What different ore mining companies in this district have you worked for, Asberry?

A. I worked at the Republic a short time and about a year at Sloss.

Q. And then all the rest of the time at the T. C. I.?

A. Yes, sir.

Q. What kind of work did you do at the Republic?

A. I was hand loading down there, first mucked.

Q. What did you say you did at this mine?

A. At the first mine I fist mucked.

Q. Asberry, just what is meant by the phrase, "fist mucked"?

A. The phrase of "fist mucked" is you take a shovel and go down and get it and throw it up that way.

Q. How is that?

A. You take a shovel and you have got to scoop it down here and get a load and throw it up in the car. That is called fist mucking.

Q. You did fist mucking for the first company. Now, what did you do for the second company?

A. For the second company was the Tennessee Company. I was first employed there as a mule boy.

Q. How long did you work as a mule boy?

A. Just short of two years.

Q. Well, now has all that work for the Tennessee Company been in the same mine, you say, or have you worked in different mines?

A. I worked at No. 4 Muscoda, No. 6 Muscoda and No. 11 Ishkooda.

Q. Now, where was it you were a mule boy?

A. That was at Muscoda No. 4.

Q. Two years then after you finished your work as a mule boy at Muscoda No. 4 what work did you do, and where?

A. I taken extra track work at No. 4.

Q. What do you mean by extra track work?

A. That was that I caught extra days on the track crew when the regular man wasn't there, why I caught a shift on the track crew.

Q. You mean you didn't have a regular job all the time, and if a man on the regular job didn't show up they would notify you to be there and work?

A. Yes, that is right. I usually done that.

Q. Then what was your next job after your extra track work?

A. Was a carpenter helper.

Q. At Muscoda?

A. At Muscoda No. 4.

Q. How long did you work as a carpenter helper, approximately?

A. I worked as a carpenter helper approximately five years, in the neighborhood of that.

Q. So all of that time has been at No. 4?

A. All of that time at No. 4.

Q. Well, now, as a carpenter helper at No. 4 did you work outside the mine or inside the mine, or both?

A. I worked inside the mine practically all the time. I was working on the outside some, square-setting the slope, just a short while I imagine.

Q. Then when you finished your work as a carpenter's helper what did you do, and where?

A. I began as a mucker at No. 4 mine.

Q. Now, were you a fist mucker there?

A. I was working on the mechanical loader at No. 4 mine.

Q. How long did you work as a mechanical loader at No. 4?

A. I worked, I imagine, around two years.

Q. And then what did you do, Asberry, after you worked as a mucker at No. 4, what was the next job you had?

A. The next? That is all I done there at No. 4. That was my last time.

Q. Then where did you go from No. 4?

A. I went—

Q. No. 6?

A. No, sir. Let's see. There was a shut-down and at the No. 4 they had shifts divided into No. 1, 2 and 3, and that is the period of time during that time I worked a short period at No. 6.

Q. About how many months did you work at No. 6?

A. I don't know just how long I worked at No. 6. The biggest time I worked at No. 4.

Q. How long have you been working at No. 11?

A. I have been working at No. 11 since October 10, 1938.

Q. And what kind of work have you done at No. 11 since October 10, 1938?

A. I first was a section helper. I was working on the mechanical loader and then as a section helper there why I also drove a mule. That was my duty to get this mule and get him to the working place.

Q. How long did you have to work the mule? I don't mean per day, but how many months was it that you had charge of the mule?

A. I had charge of the mule from the 10th of October until May. I mean the 10th of October, 1938, until about May, '40, in that period.

Q. And from May, '40, up to May 1, 1941, what kind of work did you do?

A. I still was a section helper. Well, I was a section helper but I didn't have to fool with a mule.

Q. You have never been a head miner, then?

A. No, sir.

Q. Have you ever been a drill man?

A. No, sir, I have never been a drill man; just drilled a few shifts.

Q. Then your work has been loading ore into the cars?

A. Yes, sir.

Q. And at first you loaded with a shovel?

A. Yes, sir, that was at Republic, that is right.

Q. And now, all your work at Ishkooda you loaded with a mechanical loader?

A. Yes, sir.

Q. Now, as a section helper are you in charge of the mechanical loader, or is some other man in charge over you as to the mechanical loader, or did you have anybody in charge of it?

A. It is another man in charge of the mechanical loader.

Q. Now, Asberry, beginning on October 24, 1938, up until May 1st, this year—I am not talking about anything after May 1st, this year—what time did you report at the mine for work?

A. From ten minutes till six until six o'clock.

Q. Now, when you reported for work where did you report?

A. I reported at the tally house.

Q. And did you turn in anything at the tally house or get anything at the tally house when you reported for work at ten minutes till six or up until six o'clock?

A. I turned in something at the tally house and got something at the tally house.

Q. All right, what did you turn in there?

A. I turned in a brass check.

Q. And did that have your number on it?

A. Yes, sir.

Q. And was that something that you had bought or something that somebody had given you?

A. Well, they gave me that check-in number when I was first employed with the Tennessee Company.

Q. And did you have any other kind of number with the Tennessee Company besides that check-in number?

A. Yes, sir, I had a badge number.

Q. Well, what was the badge number used for, Asberry?

A. A badge number was used, what I would say for the outside; that is, when you went to get your pay you had to have this badge on or show it to the paymaster.

Q. And when you reported for work you had to turn in your brass check?

A. That is correct.

Q. Now, you said you turned in something when you reported for work and you got something. What was it you got?

A. I got some carbide.

Q. And how much of that would you get?

A. I just would get a can.

Q. Did you always pay the same price for this can of carbide?

A. No, sir, it varies.

Q. Well, is there one price for the even can and another price for the odd can, or is it the other way?

A. They just cut you so much this time and so much the next time. That is what I mean by it varies.

Q. That is what I am getting at. You understood my question all right. What did they cut you one time for a can?

A. I want to answer it this way: I don't know what they cut for a can. They cut by the estimate, by the two weeks.

Q. Now, how much did they cut for one two weeks and how much for another two weeks?

A. Some time it runs as high as probably thirty-five or forty or maybe more and then it comes down maybe about twenty cents, as low as twenty cents.

Q. Would that happen, that variation, when you had done the same amount of work and used the same amount of carbide?

A. Yes, sir.

Q. Well, after you had got your carbide then where would you go?

A. I would just maybe walk a little further out on the platform there and get ready to catch the skip.

Q. Now, who was your section foreman or head miner during these three years you have been mucking there that I have asked about.

A. Mr. C. C. Hammett.

Q. When you got there from ten minutes to six on up until six did you hand your brass check over to Mr. Hammett or did you hand it into the window yourself?

A. Sometime I handed it to Mr. Hammett and sometime I put it into the tally house window.

Q. Now, did you have a regular skip which you caught to go in, any regular man trip?

A. For a long period of time I caught the first man trip down.

Q. I am talking about in the past three years, since October, '38.

A. From October, '38?

Q. Yes.

A. Until along about May, '40, I caught the first drag down each shift I worked.

Q. Well, did you just make up your mind to catch the first drag or did somebody tell you to catch the first drag?

A. My head miner told me to catch the first drag, in order that I could go and get the mule, and have the mule there by the time the other men went to work.

Q. Now, just what time did the first drag run?

A. The first drag usually ran around six o'clock.

Q. Now, was that drag a drag in which only two or three men rode, or a greater number rode?

A. A greater number rode.

Q. Would you say it was a crowded drag ordinarily when you went down?

A. Yes, sir.

Q. Did you ever get mashed in it?

A. Oh, yes, sir.

Q. How many men ordinarily would you say went down on that first drag?

A. The first drag, I would say, sometimes around thirty-five to thirty-six, along in there.

Q. Well, now, did they have any men on the outside of the drag riding down at the same time at that time at that mine?

A. No, sir.

Q. Did they have any on this skip, did they have a basket or anything in front or behind where they put tools at this mine?

A. No, sir.

Q. You didn't have a skip tender riding in a chair on the front or behind on the way down?

A. They had a chair there for somebody to ride there for a skip going down, but there was no basket for any tools that I know anything about.

Q. Did they have a bail on that skip on the man trip?

A. Yes, sir, they have a bail on that skip.

Q. Well, what was that bail, what was it made out of?

A. The bail was made out of the same material that the skip is made out of to my best judgment.

Q. It is made out of metal?

A. Yes, sir.

Q. Well, what was the bail used for during those three years that you were riding?

A. Now, the bail on that skip—the skip had a swing door, you might say. That bail kept it closed, and when it went into the tipple that bail went up and the door opened, but when the man loading drag was loaded there was men that rode the bail all the time; two or three rode the bail all the time.

Q. Did you ever see any hangers or wedges or drill steel in the bail as the man trip went down or as it came out?

A. No, sir, I did not.

Q. Did you, while you were on top and before you caught the man trip, ever get any orders from your head miner as to what you should do or where you would go?

A. I did.

Q. Did you ever have the section foreman—I mean the mine foreman or the assistant mine foreman—give you orders as to where you would go or what you would do there before you caught the first man trip?

A. No, sir, the mine foreman or the assistant didn't.

Q. Didn't give you orders?

A. No, sir.

Q. Well, when you would get there ten minutes to six or six o'clock, would you see the mine foreman or assistant mine foreman around there?

A. Yes, sir.

Q. Now, who, if anybody decided when this man skip would go down, the first skip would go down, who decided when they had a load and were ready to go?

A. Why it was some time the man outside, when it was filled up and nobody else could get in it, but there was a skip tender there to slack it off.

Q. Did you have any tools to handle yourself during those two years that you were taking care of the mule; would you handle any tools going in or coming out of the mine?

A. No, sir, I didn't.

Q. Then after you no longer had to get there and take the first trip to look after the mule, did you have any work to do which required you to take any kind of tools or implements into the mine other than your carbide lamp?

A. Not into the mine.

Q. Did you in your work have anything to pick up on the way from the man unloading station to your mechanical loader?

A. I did.

Q. Well, now, what did you have to pick up and where did you pick it up?

A. What I had to pick up, some time bars, hangers, wedges, jackhammer steel and sometimes oil.

Q. And sometimes oil?

A. Oil, yes, sir.

Q. Where would you pick up the bars, wedges and jackhammer steel?

A. At the tool house.

Q. About how far was that from the man unloading station?

A. The tool house from the man loading station is about nine hundred—about six hundred feet, I guess, five or six hundred feet.

Q. And how far, during those three years that I have asked about, was it from the man unloading station to your mechanical loader?

A. Now, it varied.

Q. Do you remember the headings that you worked in?

A. I do.

Q. All right, now, name the headings you worked in and then we can look at the map and see something about how far they were.

A. I worked from 63 left and 65 left to the first northeast haul.

Q. Now, which one of those was the farthest away from the man unloading station?

A. The northeast haul?

Q. How far was that from the man unloading station?

A. To the working face it is around four thousand feet, between thirty-five hundred and four thousand feet.

Q. And the shortest one that you worked at in those three years, in your judgment, about how far was the walking distance from the man unloading station to your mechanical loader?

A. Well, I imagine that closest one was close to about —was about two thousand feet, I imagine.

Q. Well, when you carried these hangers or wedges or jackhammer steel did you have any kind of box or sack to carry them in, or did you just carry them in your arms or in your hands?

A. We carried them in our hands.

Q Did you on your way out, after you had finished with your mechanical loader, carry anything out with you other than your carbide lamp?

A. No, sir, I did not.

Q. Now, when you had finished working with the mechanical loader and had walked back to the man loading station, did you have any regular man trip assigned to you, during those three years, for you to catch in going out of the mine?

A. No, sir.

Q. Did you know from day to day what man loading trip you would ride out of the mine?

A. For a long period of time I could just about tell. I couldn't exactly tell but I could just about tell.

Q. Well, for that long period which man loading trip did you catch?

A. The last one.

Q. And what time of day would you catch your last one?

A. It would—to my best judgment it would be about 3:40 or 3:45 sometimes.

Q. Then when you got up to the top and got off the man skip or got out of it where would you go to check out?

A. I would go to the tally house.

Q. And what would happen there when you checked out, what would you get there?

A. I would get my brass check back again then.

Q. Could you go in that mine during any part of that three years without having turned in that brass check?

A. Well, I will have to answer that this way: You could go down there without it but you would have to call back, just like you would forget it.

Q. Yes.

A. Men have forgot their check. I say I have forgot to check.

Q. Then what would happen when you forgot your check, how would you get in?

A. Well, I went on down but I took the 'phone and called back.

Q. And reported to the tally house that you had passed by without putting in a check?

A. Yes, sir.

Q. Did that happen very often?

A. No, sir.

Q. Did they discipline you for that?

A. No, sir.

Q. Now, suppose you lost your brass check did they give you another one, or did you have to buy another one?

A. They would give you another one.

Q. Did they change your number if your brass check was lost, or give you another one of the same number?

A. Another one with the same number?

Q. Now, during this period that you have been working out there with the Tennessee Company have the colored men been allowed to join unions?

Mr. Burr:

We note a special objection to that, if Your Honor pleases.

A. Ask that again, please.

Mr. Burr:

I didn't hear Your Honor rule.

The Court:

Overruled.

Mr. Burr:

We take an exception.

A. What, please?

Q. I say, during the time that you have been working out there have the colored men been allowed to join unions, I mean the International Union of Mine, Mill and Smelter Workers?

A. Yes, sir.

Q. Are you a member of the union of the International Union of Mine, Mill and Smelter Workers?

A. Yes, sir.

Q. How long have you been a member of that union, Asberry?

A. Ever since it was organized, in '33.

Q. And what is the number of the union you belong to?

A. Muscoda 123.

Q. Muscoda?

A. 123.

Q. Muscoda 123?

A. Yes, sir.

Q. And you work at Ishkooda, don't you?

A. Yes, sir.

Q. And the name of the union at Ishkooda is Muscoda 123?

A. No, sir, it is the Ishkooda local at Ishkooda and Muscoda 123 is at Muscoda.

Q. Where is your membership?

A. At Muscoda.

Q. And that is the one you have been a member of constantly since 1933?

A. Yes, sir, all the time since '33.

Q. Now, have you ever been an officer of that union?

A. Yes, sir.

Q. What different jobs have you held in the union?

A. I have been on local grievance committees and relief committees and Recording Secretary and now Vice President.

Q. As a member of the grievance committee what officials or representatives of the company would you meet with to take up small grievances?

A. The local superintendent.

Q. And who was the local superintendent that you took that up with?

A. Mr. Ewing Carter.

Q. Is that still the man that you take up grievances with, if you have any small grievances?

A. Yes, sir.

Q. Now, is there anybody else on the committee of your union, on the grievance committee besides you?

A. Yes, sir.

Q. Who are some of the other men that have been on your grievance committee?

A. May I ask this question?

Q. Sure.

A. You are talking about all, from the various times?

Q. No, just the last three years.

A. Just the last three years?

Q. Yes, to the present time.

A. On the local grievance committee at one time, Mr. Pete Dulaney was on there and Mr. R. H. Martin and Mr. Bob Clifton and Walter Ward, Ewing Lanier, and maybe one or two more. Now, I don't mean that these served at every meeting but I mean that some time they were on there and some time they were not.

Q. That was the local grievance committee?

A. Yes, sir.

Q. What was the name of the other committee that you served on?

A. Well, I served on the general committee too, the general committee on grievances, but that has been since '38.

Q. You mean before '38 or since?

A. Since.

Q. What is the general grievance committee?

A. The general grievance committee is a committee that takes things higher; if your have done reached no agreement with the local committee then it goes on up to the general committee, then it goes on up to this highest authority.

Q. All right. Now, were you in the 1936 strike; did you go out on a strike?

A. I did.

Q. And when the strike ended and the men were put back to work did you go back to work?

A. No, sir.

Q. How long was it after that 1936 strike ended before the company put you back to work?

A. October 10, 1938.

Q. Were you one of the undesirables?

A. Yes, sir, that is what they say.

Q. During that two years that you were not at work for the Tennessee Company did you have a job somewhere else?

A. Yes, sir.

Q. Now, then, when you had grievances that were not settled with the local grievance committee and you took them up with higher authority who did you take them up with?

A. First to Mr. Ball.

Q. And did you ever sit in meetings with Mr. Ball?

A. Yes, sir.

Q. Do you remember what year it was that you sat in the first meeting with Mr. Ball?

A. No, sir, I don't know the year exactly but it was since '38.

Q. Now, in those meetings did the union men have a stenographer or did the company have a stenographer that took down what was said?

A. The company had a stenographer and the union didn't have a stenographer.

Q. Did the unions ever ask to be allowed to have their stenographer there in any meeting while you were there?

A. No, sir, not at a meeting whilst I was present.

Q. And then after the meetings were over were you as a committeeman furnished with the minutes of the meeting?

A. Yes, sir, I would get a copy of the minutes.

Q. All right, did you after getting these copies, did you all ever, or you or any other member of the committee ever make complaint that things had been left out of the minutes or the minutes were not complete?

A. Yes, sir, that complaint has been made.

Q. Well, now, did those minutes that were handed to you always show everything that had been talked about during the meeting?

A. No, sir.

Q. Tell whether or not there was every, any occasion in those meetings where anybody would say, "Off the record", did you ever hear that phrase in those meetings?

A. Yes, sir.

Q. And when they would say, "Off the record", did the stenographer stop writing or did he keep right on writing?

A. He stopped.

Q. Who have you heard tell the stenographer in those meetings, "Off the record"?

A. I have heard Mr. Carter and Mr. Ball say, "Off the record."

Q. Was that a frequent or an infrequent occurrence?

A. I would say frequent.

Q. Did you keep a set of all those minutes that were written up by the company's stenographer and turned over to you, did you keep a set of them?

A. No, sir, I wouldn't—for a period of time I would have them to look over and make my report back to the body. I would look over them. But here lately I did get a copy of those minutes.

Q. And keep them now?

A. And keep them now.

Q. How long ago was it that you started keeping your copies?

A. Well, it hasn't been very long. It has been less than a year.

Q. Now, in the meetings with Mr. Ball and Mr. Carter and the members of this higher—this committee, general committee, I believe you call it—

A. Yes, sir.

Q. Did you ever have any discussions about the rates of pay the men were getting?

A. Yes, sir.

Q. Did you have any discussion about the hours of work?

A. No, sir.

Q. Was there any discussion at any meeting that you attended when the question of pay for the time spent between the tally house and the face and the time spent between the face and the tally house was taken up?

A. No, sir, I don't remember a meeting that I was in at that time.

Q. You don't remember that ever being discussed at any meeting you were in?

A. No, sir, not discussed at no meeting that I was present.

Q. When the strike of 1936 came what mine were you working at?

A. When the strike of 1936, I was at No. 4 mine, I think.

Q. And then when they put you back to work two years later did they put you back there or did they switch you to Ishkooda?

A. They switched me to Ishkooda.

Mr. Harris:

That is all. You can take him.

Cross Examination.

(By Mr. Burr):

Q. Asberry, I understood you to say you had been working in the ore mines about seventeen years?

A. That is right.

Mr. Harris:

There is one thing I forgot, Mr. Burr, if I may bring it out.

Mr. Burr:

All right.

Direct Examination (Continued).

(By Mr. Harris):

Q. During the period just before the incentive plan was handed to your union, how many members did your union have?

A. We had pretty close—it was between eight and nine hundred. I will say. We had a good membership at that time.

Q. Then after the strike in 1936 and before the end of 1936, say along in December, '36, how many members did your union have?

A. Along ~~in December of~~ 1936 I imagine we had about ten working members.

Q. And how about in 1937?

A. 1937, for a period of time we had about five.

Q. What do you mean by working members?

A. Members that were working for the company over there at the mine or on the outside.

Q. Then after the Fair Labor Standards Act was passed in 1938 did your membership go back up?

Mr. Burr:

We object to the form of that question. I don't suppose it was contended that the Fair Labor Standards Act had anything to do with the increase, of course.

The Court:

Well, ask him when it went up.

Mr. Harris:

I will change it, Judge.

Q. Did your membership go up in 1938 or in 1939?

A. It began to increase in 1938.

Q. Did it begin to increase before the Chicago settlement or after the Chicago settlement?

A. After the Chicago settlement.

Q. All right. Then after the Chicago settlement did you have any company union out there any more?

A. Yes, sir.

Q. Have you got a company union out there now?

A. Not on the job.

Q. Then in 1939 did the membership of the union increase or stay like it was in '38?

A. It increased each year.

Q. Increased each year since 1938?

A. Yes, sir.

Mr. Harris:

You can take him.

Cross Examination (Resumed).

(By Mr. Burr):

Q. How many members have you got now, Asberry?

A. Oh, we have got around a thousand.

Q. Around a thousand now. That is in your local at Muscoda you are talking about?

A. Yes, sir.

Q. Now, you say it began to increase after the settlement was made in Chicago?

A. That is right.

Q. Since then it has kept increasing until you claim now you have got a thousand at Muscoda?

A. Yes, sir.

Q. Did you go to Chicago; were you one of the ones that went up there?

A. No, sir, I didn't go.

Q. Did you have anything to do with negotiating that settlement on that trip, did you have anything to do with that negotiation?

A. No, sir.

Q. But you were vice president of the local when they came back and reported and got your consent to the contract, that that settlement had been made? They submitted it to you, didn't they?

A. I don't know exactly whether I was vice president, but I was there.

Q. You say it was submitted?

A. Yes, sir.

Q. To the local before it was executed?

A. No, sir.

Q. Before it was signed?

A. No, sir.

Q. Wasn't it?

A. No, sir.

Q. You mean your representatives just went up to Chicago and made an agreement and signed it and didn't come back here and submit it to your local?

A. I mean they gave it to the local when they came back.

Q. Already signed?

A. Already signed.

Mr. Harris:
Let him finish.

Mr. Burr:
I thought he had finished.

A. (Continuing.) It was already signed.
Q. It was already signed. And what else happened?
A. Let me go back a little further.
Q. No, I want you to stay right where you are.

Mr. Harris:
Well, I object to him stopping him. He has got a right to answer.

Mr. Burr:
Read the question.

(Question read by the reporter.)

Mr. Burr:
Now, go back further and read the questions and his answers.

(The four preceding questions and answers of the witness were read by the reporter.)

Q. And what else happened? What else happened after the contract was signed and they came back from Chicago?
A. After the contract was signed in Chicago why we accepted it and we went back to work.
Q. Well, do you mean that you agreed to it after they had signed it? Is that what you mean by you had accepted it?
A. I mean that—I mean we went by it.
Q. How?

A. I mean we went by it.

Q. You went by it?

A. Yes, sir.

Q. Well, now, did or did not the officers of the union that went to Chicago, when they came back did they call a meeting of your local and submit to you a contract which had not been signed and ask for your authority to sign it; did that happen or not?

A. Ask that question again.

Mr. Burr:

Read the question.

Q. (Question read.)

A. It didn't happen. It did not happen as to the signature. They brought—it did happen that they brought one back but it was already signed.

The Court:

That is what you answered in the beginning, wasn't it?

The Witness:

Yes, sir.

Q. And you went back to work under that contract?

A. Yes, sir.

Q. Was it read to you?

A. Yes, sir, it was read.

Q. Item by item and section by section?

A. I wasn't following him but he said he read all of it. To my best judgment he read it.

Q. He read it?

A. Yes, sir.

Q. And you worked under that contract from that time until the next one was signed?

A. Yes, sir.

Q. And when the next one was signed you worked under that one, is that right?

A. There is not no next one. There is not no other one, just that one and no more.

Q. You are still working under the last one?

A. Yes, sir.

Q. Of course, you don't know what happened; you didn't go to Chicago, I believe you said?

A. No, sir, I didn't go to Chicago.

Q. Now, when you were working for the Republic Company—that is where I believe you said you started to work—you were what you call a fist loader or a hand loader?

A. Yes, sir.

Q. That is, you didn't use a mechanical loader, you used a pick and shovel?

A. That is right.

Q. That is right, and then you stayed there a very short time. How long a time did you stay at Republic? You said a short time.

A. Well, I don't know exactly. It was a short time.

Q. How long? Was it a year or a month?

A. I imagine it was somewhere around three months.

Q. Somewhere around three months?

A. Somewhere along in there.

Q. Where was it, at Raimund or Spaulding?

A. Raimund.

Q. Then you say you worked at Sloss for about a year?

A. Not after I left Raimund.

Q. Then where did you go after you left Raimund?

A. I went back to the T. C. I. mine.

Q. Is the T. C. I. the first company you ever worked for, or the Republic?

A. The T. C. I.

Q. You worked for the T. C. I. and then went to the Republic?

A. Yes, sir.

Q. What did you do, your first work with the T. C. I. before you went to the Republic as a mucker?

A. I was a mule boy.

Q. A mule boy?

A. Yes, sir.

Q. Then when you came back after working about a year at the Republic you went back to the T. C. I.?

A. I didn't work that long.

Q. Well, a shorter time than you worked at the T. C. I.?

A. Yes, sir.

Q. What did you do at this time with the T. C. I.?

A. When I came back at that time I was a mucker.

Q. A mucker over at the T. C. I. at that time?

A. Yes, sir.

Q. Then you went back to the Sloss; is that the way it was?

A. Yes, sir, after I pulled off in '36.

Q. Then you went to the Sloss and worked about a year?

A. Yes, sir.

Q. Then you came back after the settlement was made in '38 on October 10th, you went back to work over in Ishkooda?

A. Yes, sir.

Q. At No. 11 mine?

A. Yes, sir.

Q. And you have been there since?

A. Yes, sir.

Q. Now, how long have you been working, Asberry, with a mechanical loader?

A. All of my experience?

Q. No, no, since October 10, '38?

A. Since October 10th I worked right around it until possibly some time in June of 1940. What I mean I worked around I was one of the men in there to load.

Q. That is what I mean. I am trying to find out how much of the time have you worked with the mule since you went back to work and how much with the mechanical loader.

A. Well, I worked with the mule from the first job I got until some time in May, 1940.

Q. What did you use the mule for, in hauling ore or what?

A. We used the mule to pull the empty cars to the heading.

Q. And at that time you were working around the mechanical loader also, is that right?

A. Yes, sir.

Q. Do you know how many mules they had in that particular mine at that time?

A. No, sir, I don't know.

Q. Had a very few, didn't they; most everything was on a straight mechanical loading system?

A. They had eight or ten.

Q. Eight or ten?

A. Maybe somewhere along in there, maybe up. It wasn't none under eight at that time, I don't think.

Q. Did you ever quit using the mule?

A. Yes, sir.

Q. Now, when did you go on a straight mechanical loading system?

A. Some time in May of 1940.

Q. Now, your head miner was Mr. C. C. Hammett?

A. Yes, sir.

Q. He was your boss?

A. Yes, sir.

Q. Has he been your boss ever since then?

A. Yes, sir.

Q. Is he your boss now?

A. Yes, sir.

Q. When you reported, when you came to the portal of the mine there, you deposited your check or sometimes gave it to Mr. Hammett, is that what I understood you to say?

A. Yes, sir, sometimes I put it in the window and sometimes I gave it to Mr. Hammett.

Q. Then would you go down in the mine before him or after him usually, ordinarily?

A. A period of time I went ahead of him always.

Q. That was the time you went to get the mule, as I understand?

A. That is right.

Q. I am asking about the time after you quit going to get the mule, would you go in ahead of him or behind him, sometimes one and sometimes the other?

A. Sometimes I would go in behind him and sometimes I would go in ahead of him.

Q. Would you pick the drag that you would ride on during that period of time yourself, get the one that you wanted to ride on?

A. Just during that period of time.

Q. That is the period of time I am asking you about. I don't care anything about the mule time. Just remember I am asking you about the mechanical loader time. During that time you would ride any drag you wanted to, or not?

A. Yes, sir, I rode the one I could get.

Q. Well, would you get there at six o'clock during that period of time or get there at 6:10 or 6:15, or what time would you get there?

A. Well, I would sometimes get there around six o'clock or 6:10.

Q. Well, did you get there after 6:10 during that period of time any, or not?

A. No, sir, I don't think I did.

Q. You would say between 6:00 and 6:10?

A. Yes, sir.

Q. Then if a drag wasn't loaded you would catch the first drag after you got there?

A. Yes, sir, sometimes.

Q. Well, if you didn't catch the first load would you wait for the next load, or how did you handle that?

A. Yes, sir, if I didn't catch the one that went down that time I would catch the next one.

Q. And then when you got to the bottom how would you go to your working place, walk to it?

A. Yes, sir, I would walk pretty close to the working face.

Q. You wouldn't go in there until the head miner had made it safe?

A. Well, yes, sir. I went in there before it was made safe.

Q. Would you help make it safe; would they call on you sometimes to help make it safe?

A. Yes, sir.

Q. That is when you would go in there before it was made safe, when the head miner would instruct you to help him?

A. Yes, sir, in picking up something I would go right on behind him with some of the tools that they had to use.

Q. I see. Now, the tools that you said you took up there that you got at the tool house, you said that you picked up sometimes a hammer, jackhammer or hammer steel and wedges. Did you make anything else?

A. I didn't name the jackhammer.

Q. You didn't name the jackhammer. What did you name that you picked up? What did you pick up sometimes on your way to work?

A. I picked up bars.

Q. That is a quarrying bar?

A. Yes, sir.

Q. All right, what else?

A. I picked up hangers.

Q. All right, what else?

A. I picked up jackhammer steel.

Q. And what else?

A. I picked up wedges.

Q. Anything else?

A. I picked up oil.

Q. You didn't get the oil at the tool house, did you?

A. You see it is just grease—it is a little further than the tool house.

Q. Let's stay with the tool house place.

A. All right.

Q. Is there anything else you ever picked up from the tool house?

A. Yes, sir, I have picked up the tripod leg from the tool house.

Q. When did you carry the tripod leg from the tool house?

A. I carried it on an occasion when the drill man left word one had been broken and to carry one down.

Q. How often did that happen?

A. It didn't happen often.

Q. Well, about how often?

A. Well, it happened once since we have been down in the bottom. I imagine that has been once in a year.

Q. It happened once since you have been down in the bottom?

A. That is right.

Q. And who did you say told you to pick up that tripod leg?

A. My head miner told me to get it.

Q. Your head miner told you to get it?

A. That is right.

Q. Now, when you would pick up—your head miner would tell you—you were under his orders directly?

A. Yes, sir.

Q. Well, when you were up in the heading, in the stope, would you run out of wedges or jackhammer steel and the head miner sent you down to get them?

A. No, sir.

Q. Did he send anybody else down to get them?

A. No, sir.

Q. Did he send them to get anything when you were working up there in the heading?

A. Yes, sir.

Q. What did he send you to get?

A. I went back and got a tripod leg.

Q. Is that the time you got the tripod leg?

A. No, sir, this is a different time.

Q. A different time. All right.

A. I have got bolts that goes in the tripod leg, water, fittings and things of that type.

Q. In other words, when he told you to go back and get anything you went back and got it, of course?

A. Yes, sir.

Q. And those are some of the things he told you to go back and get?

A. Yes, sir.

Q. You tried to keep a supply of hammer steel and wedges on hand in the working place all the time, didn't you?

Mr. Harris:

We object. He can't know what the head miner tried to keep.

Mr. Burr:

I asked the witness, who was there.

The Court:

Do you know?

A. Ask that question again, please.

Q. You generally kept a supply of these tools as far as you could up in the working place, didn't you?

A. Yes, sir.

Q. Now, when you picked up the articles that you have mentioned, I will say the quarrying bar and the wedges and the hammer steel, would you get all of those on the same day or different days?

A. Different days.

Q. Every day you went up by the tool house you wouldn't pick up a quarrying bar, would you?

A. No, sir, not every day.

Q. You wouldn't pick up jackhammer steel every day?

A. No, sir.

Q. And you wouldn't pick up wedges every day?

A. No, sir.

Q. And sometimes when you have picked up these articles other members of the crew didn't pick them up?

A. That is right.

Q. And the head miner never did pick them up at all, did he?

A. Yes, sir.

Q. The head miner picked them up, your head miner?

A. Yes, sir.

Q. Didn't he generally tell you all to stop and pick them up?

A. Sir?

Q. Didn't he generally tell you all to stop and pick them up?

A. Oh, yes, sir, he told us to stop.

Q. But he is the one that told you to stop and pick them up?

A. That is right.

Q. Now, by stopping and picking them up as you went up to your working place that saved you, if you got short during your working hours, from coming back down there and getting them and carrying them back down to the working place, that is right, isn't it?

A. That is right.

Q. Asberry, I don't exactly understand your union work as a member of the committee. Do you belong to the Muscoda union but you work at Ishkooda?

A. That is right.

Q. You have kept your membership over there at Muscoda all the time?

A. That is right.

Q. And this grievance committee that you have served on, is that the Muscoda committee that you have served on?

A. The local committee.

Q. The local committee, that is what I am talking about, the local committee at Muscoda.

A. That is right.

Q. And that is the committee that handles with Mr. Carter, the superintendent at Muscoda, grievances, requests or complaints of the men that work at Muscoda?

A. That is right.

Q. In other words, your committee didn't have anything at all to do with the Ishkooda operations?

A. No, sir.

Q. But over in Ishkooda where you work you have a grievance committee that handles with Mr. Cameron grievances, requests and suggestions on the Ishkooda work and union, is that right?

A. That is right.

Q. On that committee has been Mr. Patterson; has he been the man over there, Mr. Sizemore or Mr. McBrayer, are they the ones that have been on the committee at Ishkooda?

A. I couldn't name the Ishkooda committee.

Q. You couldn't name the committee?

A. I wouldn't try, no, sir.

Q. Do you know any of them?

A. No, sir, I don't know exactly.

Q. Don't know any of them at all, but your grievance experience has been over with Mr. Carter?

A. That is right.

Q. At Muscoda?

A. That is right.

Q. Now, this general committee—let me see if I understand that—is the committee that represents all the mines?

A. Yes, sir.

Q. About how long have you been on that committee?

A. I haven't been on that committee very long.

Q. About how long?

A. I have been on there since we went back to work in '38.

Q. Now, who else is on that general committee that you are a member of?

A. The presidents, vice presidents and financial secretaries.

Q. They are all ex officio members of the general committee, then?

A. Yes, sir.

Q. That is who they are, and they meet with Mr. Ball, do they?

A. Yes, sir.

Q. And when you have those meetings do the local superintendents meet with you too?

A. Yes, sir, sometimes, most times.

Q. Then you said you go to the highest authority if you can't get matters straightened out with Mr. Ball satisfactorily, you go on up to the president of the company?

A. That is my understanding. I have never been any further than Mr. Kelly.

Q. You haven't gotten any further than Mr. Ball?

A. Mr. Kelly.

Q. Mr. Kelly? He is the man that succeeded Mr Vance in charge of the Industrial Relations Department?

A. That is right.

Q. So the highest authority that you have been to is Mr. Kelly of the Industrial Relations Department?

A. Yes, sir.

Q. But you have been that high with the general committee?

A. You say I have been that high?

Q. Yes.

A. Yes, sir.

Q. All right. Now, I understood you to say that sometimes complaints had been made that something had been left out of the minutes. Now, were you talking about the minutes of the local Muscoda committee that you belonged to, or were you talking about the minutes of the general committee that you belonged to?

A. I am talking about both.

Q. All right. Let's take up the general committee first. Well, I believe you told Mr. Harris that in none of the meetings, either with the general or the local committee, the portal to portal matter never was discussed at all, according to your recollection?

A. No, sir, the portal to portal wasn't discussed in either one of these meetings.

Q. That is what I understood you to say, when he asked you what was left out. I believe you also told him that at none of these meetings was there ever any discussion about the hours of work. There was about the rates of pay but not about the hours of work. Is that what you told Mr. Harris?

A. When it came down to drawing up this last contract we didn't discuss hours of work.

Q. Well, did you discuss hours of work—you didn't discuss hours of work when you drew up the Chicago contract because that came back here already signed, wasn't it, before you knew anything about it?

A. I will answer it came back signed but I won't say it was before I knew anything about it.

Q. Well, you didn't discuss it, did you, in any meeting because that was done in Chicago, wasn't it?

A. I didn't hear anybody discuss it.

Q. You didn't hear anybody discuss it in any meetings with Mr. Kelly or Mr. Vance or Mr. Ball?

A. I wasn't in any of those meetings, so I didn't hear it.

Q. You didn't hear that?

A. No, sir.

Mr. Burr:

I think that is all I want to ask him.

The Court:

Anything further?

Re-Direct Examination.

(By Mr. Harris):

Q. Asberry, do you recall whether or not there were two different papers brought back from Chicago, one a contract and the other a stipulation, about this company union?

A. Yes, sir.

Q. Now, are you clear in your own mind as to whether it was the stipulation that was brought back from Chicago that was signed, or whether it was the contract that was brought back signed?

A. It is my best understanding the company presented one agreement and the men refused that; asked them could they do no better, then authority was given a committee to go up there and get the best they could get, and sign it.

Q. And did that committee come back with a stipulation about the company union and a contract?

A. They did.

Q. Now, what does one of those tripod legs weigh that you carried?

A. Let's see. I have a very slight estimation of that. I don't hardly know, but it is something about that long (indicating) and it has got a small hole in it, and it is made out of what I would call iron.

The Court:

Well, tell him. He asked you what it weighed. What is your best judgment?

The Witness:

Well, I guess it would weigh around twenty pounds.

Mr. Harris:

I think that is all.

Re-Cross Examination.

(By Mr. Burr):

Q. Just one question. You said you got the tripod leg once when the head miner sent you back from the heading, one time to get a tripod leg that you remembered, and you went and got it and brought it back, and then you said on another occasion he told you to pick up one at the tool house. Was it the same weight leg on both occasions, would it weigh about the same thing, about the same kind of thing?

A. Yes, sir, it was the same tripod leg.

Mr. Burr:

That is all.

Mr. Harris:

That is all I want to ask him.

The Court:

All right, come down.

Mr. Harris:

Now, if the Court pleases, I have some other issues of the Ore Miner published by the Tennessee Company, which I did not ask any of your witnesses to identify, Mr. Burr, and if you raise that as an objection—

Mr. Burr:

No. I would suggest this, that I never have seen them. If you are going to use any more, give us an opportunity to look at them and probably there will not be any formal objection. I don't mean that any of them are admissible, but I would like to look at them and see whether there are any other objections besides the one I made.

Mr. Harris:

I had intended to use this time to read them to the Court and not put on any other witnesses this afternoon.

Mr. Burr:

All right, if you want to identify them now and we can make our objections later after we have an opportunity to see them.

The Court:

All right, we can do that.

Mr. Burr:

In other words, I don't want to raise any point if they show on their face that it is an issue of the paper. I don't make any point on that at all.

Mr. Harris:

The first one that I identify is the January, 1939, issue of The Ore Miner.

The Clerk:

That will be Defendants' Exhibit 13.

(Thereupon, said January, 1939, issue of The Ore Miner was identified as Defendants' Exhibit 13.)

Mr. Harris:
The December, 1939, issue of The Ore Miner.

The Clerk:
Defendants' Exhibit 14.

(Thereupon, said December, 1939, issue of The Ore Miner was identified as Defendants' Exhibit 14.)

Mr. Harris:
The April, 1939, issue.

The Clerk:
Defendants' Exhibit 15.

(Thereupon, said April, 1939, issue of The Ore Miner was identified as Defendants' Exhibit 15.)

Mr. Harris:
The June, 1939, issue.

The Clerk:
Defendants' Exhibit 16.

(Thereupon, said June, 1939, issue of The Ore Miner was identified as Defendants' Exhibit 16.)

Mr. Harris:
The December, 1938, issue.

The Clerk:
Defendants' Exhibit 17.

Mr. Burr:
What month?

Mr. Harris:
December, 1938. Have I already introduced that? I don't think so. Maybe that is the one. Maybe that is a duplication. I don't want any duplications. Will Your Honor indulge us a second?

The Court:
Yes.

Mr. Burr:
If you are getting these others, leave them out overnight so we can check them.

Mr. Harris:
Yes. Now, be sure to leave our little tabs because it will show what has been introduced.

Mr. Burr:
Yes, I won't bother them at all.

The Court:
Now, you haven't offered that last one?

Mr. Harris:
No, sir, because I introduced December, '38, yesterday, Your Honor.

The Court:
I mean it wasn't taken down just now?

Mr. Harris:
No, sir.

Mr. Burr:

Are you offering the whole issue or the numbers, particular numbers?

Mr. Harris:

I offer the numbers.

Mr. Burr:

Where you have got it, call it.

Mr. Harris:

And on the back you will find a little tab, showing what the article is and what the information is.

Mr. Burr:

And then we can check then.

Mr. Harris:

And then the next one is November, 1938, issue.

The Clerk:

Defendants' Exhibit 17.

(Thereupon, said November, 1938, number of The Ore Miner was identified as Defendants' Exhibit 17.)

Mr. Harris:

Now, if the Court pleases, I also have a matter that I want to take up at this time. We had a subpoena issued. I beg your pardon. I want to introduce—I mean mark for identification also the May, 1939, issue of The Ore Miner.

The Clerk:

That will be Defendants' Exhibit 18.

(Thereupon, said May, 1939, number of The Ore Miner was identified as Defendants' Exhibit 18.)

The Court:
All right.

Mr. Harris:
Each has tabs, stickers, on there. You gentlemen can check those overnight if you will.

I had a subpoena issued at near the close of the plaintiffs' case, that is, as to certain documents and information which the evidence indicated was in the possession of the plaintiffs. I had a subpoena issued for Mr. Bail as an official of the Tennessee Company and for the Tennessee Company to produce certain documents. Mr. Burr handed me some objections.

Mr. Burr:
Motions, it is, under the rule, objections to the issuance of the subpoena.

Mr. Harris:
I don't know whether Your Honor would want to take that up now or take it up in the morning.

The Court:
We will take it up now.

Mr. Harris:
Since he has the objections.

Mr. Burr:
Judge, you can see what the general objections are. Since we filed those objections that subpoena was served, I think, day before yesterday and was made returnable the next day. It calls for a good deal of the matters

that we are producing in the course of the trial. For instance, we produced today all of the minutes of the Ishkooda Division. When we get to Wenonah I expect to produce all of those. When we get to Muscoda I expect to produce all of those.

The Court:
What is he calling for?

Mr. Burr:
He is calling for stuff—let's see what he is calling for: Maps with figures indicating the progress made in each heading of the iron ore mines of the Tennessee Coal, Iron and Railroad Company since 1936. Now, Your Honor will remember—while I don't think there is any obligation on us to produce that sort of map—we will have to make it up—we have already produced and is already in evidence maps showing in different ones the progress each year and in every mine.

The Court:
I think that is all in evidence.

Mr. Burr:
Yes, sir. The next is statistics showing the change in the rates of pay of the men working in the iron ore mines of the Tennessee Coal, Iron and Railroad Company, through the years since it has been in operation. Well, that would be calling for us to go back and get statistics for probably fifty years, that I can't see possibly could have any bearing on this case.

The Court:
I think that goes back too remote.

Mr. Harris:
Where is the subpoena?

Mr. Burr:

I am reading from it now. The next is all proposals, agreements, contracts, and requests submitted to the Tennessee Coal, Iron and Railroad Company in writing by your ore mine employees or by any representatives of said employees, relating to terms of employment, hours and working conditions and copies of all your replies thereto between January 1, 1933, and the date hereof. I think all have been submitted that we have got. I tried to get all of them.

The Court:

I remember you tried to get them.

Mr. Burr:

And that has all been offered in evidence. The next is all records, minutes, and correspondence recording or relating to conferences and meetings with your ore mine employees or with any representatives of said employees at which there was mentioned or discussed payment for any part of the time spent daily by said employees prior to reaching or after leaving the face. Well, we have produced all I know anything about. If there are any more I will try to find them.

Mr. Harris:

Which number are you reading?

Mr. Burr:

No. 4. I don't suppose Your Honor wants to accept the evidence—

Mr. Harris:

We are going too fast. You say you don't suppose Your Honor wants to do something. I don't know what the ruling is or anything else.

Mr. Burr:

Well, you have asked me to produce all records, minutes, and correspondence recording or relating to conferences and meetings with your ore mine employees or with any representatives of said employees at which there was mentioned or discussed payment for any part of the time spent daily by said employees prior to reaching or after leaving the face.

Mr. Harris:

I say that we are entitled to those.

Mr. Burr:

I say we have produced all of those that we know anything about.

Mr. Harris:

I say that I have subpoenaed Mr. Ball to produce all that he has.

Mr. Burr:

He has produced all that he knows anything about. Mr. Ball, do you have any others?

Mr. Ball:

No, sir, that is all I remember.

The Court:

Well, that answers it.

Mr. Harris:

Of course, that answers it.

Mr. Burr:

Well, I want to make that with this qualification: Mr. Ball says it is all he can remember. I am going to have to make a thorough search.

Mr. Harris:
I gave you a complete list.

Mr. Burr:
Well, he furnished the minutes and I checked them against mine. That is all past.

The Court:
That is what they are now producing.

Mr. Burr:
I shouldn't be required to do any more than I have done. Now, 5 is: "Records for all your ore mine employees of total ore production for the following periods: (a) the year 1923, (b) the year 1933, (c) the year 1940, and (d) January 1, 1941, to date, by month; all tipple and other tonnage records of production of ore in your mines for each year and each month between October 24, 1938, and the date hereof."

7. "All working diagrams and maps of your red ore mines described in the complaint showing: (a) the ventilation system in the mines; (b) the haulage system in the mines; (c) the locations of present operations at the face, (d) manways, passages and haulageways used by your employees in going to and from the face, giving distances, slopes, gradients, and descriptions of manways and passages."

8. "All records of blast furnace loadings for each year and each month since October 24, 1938."

9. "All production schedules for each year and each month since October 24, 1938."

10. "All studies made by you or on your behalf of the ventilation, air conditions, and the dust counts in your

red ore mines and all analyses of occupational hazards and studies of methods of preventing accidents in your red ore mines since 1925 to date."

Now, if Your Honor will hand me my objections I would like to read them. Of course, Your Honor is familiar with the rule. Have we got a copy of the rule?

The Court:

It is moved to quash it, and the Court is governed by whether the subpoena is unreasonable and oppressive.

Mr. Burr:

"Unreasonable and oppressive or condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable costs of producing the books, papers, or documents."

Now, I might state that this dragnet was served on Mr. Ball one day to produce them in Court the next day. Now, the things that can be produced we have already produced relevant to this case and are producing them as the case proceeds. A lot of these things as shown by the motion are in his custody and he tells me to produce them would probably take clerks and drays, examinations of months and days. I think that sort of subpoena is oppressive.

The Court:

I think so, Mr. Burr.

Mr. Burr:

Now, I will state this: I am willing to produce anything in the world that I can that is reasonable.

The Court:

I want to be reasonable about this too. I don't want to be burdensome about this.

Mr. Harris:

I don't want to be burdensome.

The Court:

Colonel Harris, you didn't prepare this, did you?

Mr. Harris:

Yes, sir, I went over this. It is not the subpoena that had been prepared ~~before~~ the case had been brought. There were twenty-two different items in the subpoena before the case entered the trial. I went over that subpoena and checked with the developments of the evidence that had been produced here as to what I thought was available and that they could produce. For instance, we have maps with figures made—let's take them one by one—maps with figures made indicating progress in headings of the iron ore mines of the Tennessee Coal, Iron & Railroad Company since 1936. I think the gentleman has already furnished that since the subpoena has been served.

The Court:

That has already been done.

Mr. Burr:

Yes, I think we did that voluntarily. I don't think we had to do it. We were not required to do it. It cost us money to do it.

Mr. Harris:

Second: Statistics showing the change in the rates of pay of the men working in the iron ore mines of the Tennessee Coal, Iron & Railroad Company, through the years since it has been in operation. Now, of course, we don't expect the Tennessee Company to hire any auditors to go back and make calculations. If they have those statistics already prepared it would be a very simple matter.

Mr. Burr:

I don't know what statistics you are talking about. I couldn't understand that question. The company was incorporated and been in business almost before I was born.

The Court:

Showing the change in the rates of pay of the men working in the ore mines?

Mr. Burr:

Yes, sir. They have been changed. Statistics—I don't know what sort of statistics he is talking about.

The Court:

I am wondering if the company hasn't got a statement or record showing what they paid throughout certain years.

Mr. Burr:

Well, what relevancy would they have in this case? Why should we be called on to get it up and present it the next day?

The Court:

That is not the question before us.

Mr. Harris:

Talking about the availability.

Mr. Burr:

I don't know what you mean by statistics. If he will tell me in a reasonable length of time he wants to know the changes in wages—we gave them all during this period of time. We started back in '33.

Mr. Harris:

You mean to state to the Court that you have already introduced tabulations showing the rates of pay of every year and of every underground ore miner since 1933?

Mr. Burr:

No, sir, I don't mean to state anything of the sort.

Mr. Harris:

I thought that was what you said.

Mr. Burr:

No, no, I didn't. I said any change in rates of pay where increases were granted.

Mr. Harris:

That is exactly what I asked for, showing the rates of pay.

Mr. Burr:

No, sir. It shows in the contracts.

The Court:

In the iron ore mines of the Tennessee Company?

Mr. Burr:

There are nine separate iron ore mines.

The Court:

You mean the same rate of pay all during the year, isn't it all the same?

Mr. Burr:

Yes, sir, I think it is all here.

The Court:

I don't think we will go back that far.

Mr. Harris:

Such limit as to years as Your Honor thinks is reasonable.

Mr. Burr:

Well, I don't believe we ought to be called on to respond to a subpoena like that. I ask that this subpoena be suppressed and then if he gets out one that is reasonable let's take that up. I have never had one served on me that required us to get out twenty-two things.

The Court:

I will pass on this tomorrow morning.

Mr. Burr:

If he will serve us a reasonable subpoena—

Mr. Harris:

Your Honor, in making your decision, you take No. 5 about records of production, they introduce evidence by word of mouth as to production, and at the same time we just put a man up there and show what production ~~has been and~~ what it has not been, when they have the records and statistics showing, and every human memory is fallible.

Mr. Burr:

If he wants our records of production I would be glad to give them to him.

Mr. Harris:

I think No. 5 and No. 8 and No. 9. I think the way they introduced their evidence No. 5, No. 8 and No. 9 unquestionably ought to be furnished.

Mr. Burr:

We are asking Your Honor to pass on our motion as the subpoena was served.

Mr. Cooper:

Judge, I would like to point out here the subpoena to produce served by us calls for a large amount of similar data, and we would like to also oppose the motion to quash filed by the plaintiffs, at the same time.

The Court:

I thought that was already agreed upon.

Mr. Cooper:

No, sir, our subpoena was served first. It was served a week or two ago. We delayed bringing up that until we got nearer our own case.

Mr. Burr:

And we have a motion to suppress that one. Your Honor can take them both and pass on both of them.

The Court:

I think so.

Mr. Burr:

I had time to prepare my motion to quash the other one, the first one, but the other one was sort of in the air. I just had to take it between moments.

The Court:

Everybody be back tomorrow morning at 9:30 and Court is adjourned until then.

(Thereupon, at 4:10 p. m., July 24, 1941, Court adjourned until 9:30 A. M., July 25, 1941.)

July 25, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:

All right, gentlemen.

Mr. Burr:

There were two additional issues of the "Mining Ore" that were introduced yesterday,—

The Court:

Yes, sir.

Mr. Burr:

—that I was to have time to read over.

The Court:

Yes, sir.

Mr. Burr:

I read them over, and I don't see they were any different from the ones that had been previously introduced, and I make the same objection and take the same exception I did to the others.

The Court:

Mr. Burr, I do not remember what you mean.

Mr. Burr:

It is the iron ore—the "Ore Miner" Magazine.

The Court:

Certain pages.

Mr. Burr:

Yes, sir.

Mr. Harris:

I checked certain pages,—indicated to him certain pages for him to look at, and I haven't yet offered them in evidence, and I don't intend to, take up the time of the Court to read them. At some opportune time, either today's session or another session, I will specifically identify those portions—I am not offering the whole magazine, but I will merely identify the pages and portions I do offer. I will not take the time to read them. We laid the predicate with Mr. Ball for the other issues, and I understand—

Mr. Burr:
We don't question that. As I understand they are in with my objection and exception.

The Court:
I will let them in now—.

Mr. Harris:
I will select them and point them out for your information.

The Court:
Yes, point them out.

Mr. Harris:
Shall I call a witness?

The Court:
Yes.

Mr. Harris:
Mr. McBrayer.

2513 L. H. McBRAYER, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. What are your initials, Mr. McBrayer?
A. L. H. McBrayer.
Q. H as in—
A. Yes, sir.

The Court:
How do you spell it?

The Witness:
M-c-Brayer.

Q. Mr. McBrayer, how old are you?
A. I will be 33 in September.
Q. Where were you born?
A. Georgia.
Q. How long have you been living in Alabama?
A. About 31 years.
Q. How high did you go in school?
A. Through the seventh—
Q. Through the seventh grade?
A. Yes, sir.
Q. You will have to talk a little louder, Mr. McBrayer, so we can hear you.
A. Yes, sir.
Q. What mine of the Tennessee Company do you work in?
A. Number 13, Ishkooda Division.

The Court:
What?

The Witness:
Number 13, Ishkooda Division.

Q. How long have you been working at Ishkooda 13?

A. It will be 14 years in October.

Q. Did you ever work at Number 11?

A. Yes, sir.

Q. Mr. McBrayer, what jobs have you had at Ishkooda Number 13 since October 14, 1938?

A. Been on the skip tender job.

Q. Steadily?

A. Yes, sir.

Q. What does the skip tender do?

A. He assists in hauling the mun and pulls the ore.

Q. How does he assist? What actual, physical labor about the skip does he do?

A. He gets the skip off the side track and rides the first skip down. He bells the first skip inside.

Q. Is that skip pulled by a cable? You get it off the side track by a cable?

A. Yes, sir.

Q. Pull it—bring it out of the main slope by a cable?

A. Yes, sir.

Q. Do you ride the skip or do you handle the engine that turns the drum that pulls or lowers the skip?

A. I ride the skip.

Q. Whereabouts do you ride the skip? What part of the skip do you ride on?

A. Ride in the chair on the back of the skip.

Q. Do you have any control over the skip after it starts motion going down or coming out of the mine slope?

A. No control over the skip only I handle a signal. If anything should happen I could give a signal, but I have no way of stopping the skip.

Q. Are there any brakes on it you could use to stop it?

A. No, sir.

Q. How do you give a signal? If anything happens going down or coming out how do you give a signal?

A. We have a signal rod on the back of the skip, and there is a cable going down by the side of the track, and you take that rod and touch the cable and it would give a signal.

The Court:

You mean a danger signal?

The Witness:

Yes, sir, a stop signal.

Q. This rod you use, how long is it?

A. I would say about thirty inches long.

Q. Is it a metal rod?

A. Yes, sir.

Q. And there is an electric cable running along down the main slope? Is that cable on the side or up in the roof?

A. It is on the side.

Q. And then when you touch that cable with your rod then what happens at any other place?

A. The engineer gets a signal.

Q. What kind of a signal does he get?

A. It depends on how you touch it with the rod. If you touched it one time he would just get one signal, which is a stop signal.

Q. Well, does he get a bell or horn or what, a buzzer?

A. It is a horn.

Q. It is a horn?

A. Yes, sir.

Q From October 24, 1938, up to May 1, 1941, what time did you report for work as a skip tender?

A. Six o'clock.

Q. Did you have a brass check?

A. Yes, sir.

Q. What did you do with your brass check when you reported for work?

A. I would hang it on the board,—check in board.

Q. At the tally house?

A. Yes, sir.

Q. Now, when you reported for work at six o'clock, did you report in work clothes, or did you have to change your clothes after that?

A. In work clothes.

The Court:

What was your answer?

The Witness:

I reported at the tally house with my work clothes on.

Q.. With your work clothes on?

A. Yes, sir.

Q. During the time you have been there as skip tender have you worked all the time on day shift, or do you alternate between day and night?

A. We alternate between day and night.

Q. During those years have the seen you have seen reporting at the tally house reported in their work clothes or reported in their ordinary clothes?

A. They report at the tally house with their work clothes on.

Q. Now, this skip you operate at Number 13 is owned by the Tennessee Company?

A. It is.

Q. You are hired by the Tennessee Company?

A. I am.

Q. None of them men or any of these Unions had anything to do with hiring you or selecting you or paying your wages?

A. They did not.

Q. When you reported at six o'clock and turned in your brass check what is the first thing you do with your skip?

A. The first thing we do would be to pull the skip off the side track.

Q. Then what do you do with it?

A. We make a test run.

Q. Talk a little louder, please.

Do you always make a test run?

A. Yes, sir, always make a test run unless the split shift crew had been using the skip and then the test run,—it would not be necessary.

Q. All right. After making the test run what did you do with the skip?

A. Started lowering the men.

Q. And about what time during those three —

The Court:

Start doing what?

The Witness:

Lowering the men.

Q. What time, during those three years I have mentioned, would you start your first trip lowering men?

A. I would imagine around three or four minutes after six o'clock.

Q. And how long would it take you to lower the men to the man unloading station and pull the skip back up?

A. Around seven minutes.

Q. How fast, in your best judgment, does that skip travel when it is loaded with men on the way down this main slope?

A. I would imagine around twenty miles an hour.

Q. Does it come back out at the same speed or at a different speed?

A. No, sir; it comes out faster because it is empty.

The Court:
Because it is what?

Q. I can't hear you.

The Witness:
Because it is empty.

Mr. Burr:
Because it is empty.

The Court:
Can you talk louder?

The Witness:
Yes, sir.

The Court:
What time does the first skip go down?

The Witness:
About three or four minutes after six.

Q. Now, does anybody, any employee of the company or officer of the company tell you when to start your first skip down with men?
A. Yes, sir.
Q. Who gives you orders?
A. The assistant mine foreman.
Q. In the three years that you have been there, has it or not been customary—I mean the three years I inquired about,—has it or not been customary for the mine foreman or the assistant mine foreman to be there at the beginning of the shift to tell you when to start your skip?
A. It has.

Q. Do you decide what men are to get on the skip or does the assistant mine foreman or mine foreman decide what men are to get on the skip?

Mr. Burr:

We object to that question. That question assumes the mine foreman or assistant mine foreman makes that decision. Let him tell how it is done.

Mr. Harris:

I will change it.

Mr. Burr:

No one may make that decision.

Mr. Harris:

I will change it.

Q. How is it decided when to load the skip?

A. The assistant mine foreman decides when they have a load and he tells them when they have a load or when they haven't a load.

Q. How many men are lowered ordinarily on the first man trip on that skip?

A. I don't know. I have never counted them, but I would imagine around thirty-five.

Mr. Burr:

We don't think imagination would be—

The Court:

What is your best judgment?

The Witness:

I would say around thirty-five.

Q. How many man trips do you run at the beginning of the shift?

A. Usually four.

Q. Do the other man trips—do they carry more or less men than the first man trip?

A. They are—the first one, as the general rule, is the heaviest loaded.

Q. Then, your best judgment the other trips have how many men on there?

A. Thirty, or may be over.

Q. On the skip that you ride is there any place either at the front or back of the skip for any kind of tools or wedges, any other thing to be carried?

A. No, sir.

Q. In your hearing the men did not—do the men have electric lights or carbide lights at number 13?

A. They have carbide lights.

Q. Now, do all the men that ride with you into the mine have carbide lights?

A. Yes, sir.

Q. Has that been true during the three years you have been there?

Mr. Burr:

Judge, to save time there is no dispute about the carbide lights. It has been proven by every witness we put on and by every witness they put on.

Mr. Harris:

I just wanted to be sure they all had carbide lights.

Mr. Burr:

There is no doubt about that. It has been proven by them and by us.

Mr. Harris:

It broke the chain of thought I had. Will Your Honor indulge me just a minute?

The Court:

Yes, sir.

Q. Have you, in carrying these men down on your skip or bringing them out on your skip, ever seen, during those three years, any of them with any kind of tools, and if so, state if they were going in or coming out on your skip?

A. I haven't paid much attention to that, but I have seen them carrying hangers down. I believe that is about the only thing.

Q. Do you—when do you start pulling the ore?

A. Just as soon as we finish hauling the men.

Q. When do you finish hauling the men on the day shift?

A. I imagine around six-thirty.

Q. When you say "imagine" do you mean that is your best judgment?

A. Yes, sir. My best judgment would be somewhere close to six-thirty.

Q. On this shift, any particular shift of yours, have you ever kept account of how many loads of ore you have hoisted out of the mine during a shift?

A. Yes, sir.

Q. Now, since May first, what would be an ordinary average of the number of ore cars that you would hoist during a shift?

A. I don't know as I would be able to give an average on it.

Q. Well, tell whether or not 200 tram loads would be as much as the average shift for you or would it be less or would it be more?

A. 200 would be less than an average.

Q. What, in your judgment, would be an average run?

A. Over what period of time?

Q. Over a shift?

A. I really don't know hardly how to answer that question.

Q. All right. Now, what time—you report at six o'clock?

A. Yes, sir.

Q. What time do you report off work and pick up your brass check at the tally house?

A. Around three-forty to three-forty-five.

Q. You mean now? Since May first?

A. No, sir.

Q. You worked from six until three-forty or three-forty-five?

A. Yes, sir.

Q. Well, did you get over time during that period?

A. I got paid for nine hours,—nine and a half hours pay. You see I am a nine hour man.

Q. Nine and a half hours pay?

A. Yes, sir.

Q. I didn't hear the rest of it.

A. I am a nine hour man. I work nine hours and they pay me time and a half for an hour which makes nine and a half hours for which I get paid.

The Court:

You pick up your check when?

The Witness:

About three-forty-five.

Q. What about your lunch period? When do you eat your lunch?

A. That is prior to May first?

Q. Yes, sir, prior to May first.

A. Between eleven and eleven-thirty.

Q. Did you take time off to eat or do you continue to hoist ore while you are eating?

A. I take time off to eat.

Q. How much time off?

A. Between twenty and thirty minutes.

Q. Well, were you working out there when you were on a ten hour shift or a nine hour shift? I mean the men working in the mine,—not you, but the men working in the mine.

A. The men were on an eight hour shift.

Q. That is since 1938?

Mr. Burr:

No; that is since 1933.

Mr. Harris:

I will bring it out.

Mr. Burr:

I am just telling you.

Mr. Harris:

I am going on the last three years.

Q. When did you say you first started there as a skip tender?

A. I don't know that I could give the date, but I imagine around nine years I have been acting as a skip tender.

Q. All right. When you first went to work there as a skip tender nine years ago, state how many hours in the shift the underground ore miners were working?

A. They were working ten.

Q. All right. What time of day did you report at the tally house when they were on a ten hour shift?

A. At six o'clock.

Q. What time did you start carrying the men down in the mine on a ten hour shift?

A. The same time we do now. It might vary just a little.

Q. All right. And on a ten hour shift what time did you start bringing the men out of the mine?

A. The best I can remember on what was around four-fifteen or four-twenty.

Q. And you finished at what time?

A. Around four-forty-five.

Q. And on the eight hour shift, up to May first, you would finish around three-forty-five, I believe you said.

Mr. Burr:

No,—

A. That is correct.

Q. Now, did you work out there at any time when the underground miners were on a nine hour shift?

A. No, sir.

Q. The change was from a ten to an eight?

A. It was.

Q. Well, since May first what time do you check in at the tally house?

A. Check in at six o'clock.

Q. And what time do you check out at the tally house?

A. Between ten and fifteen minutes after two, I would say.

Q. What, if any, differences are there in the way that you have operated the skip since May first, and the way you were operating it during the month of April of this year?

A. It is practically the same.

Q. Now, during this period from October, 1938, to May 1, 1941, was the mine running and the men working on five days a week?

A. They were.

Q. Did that apply to both the day shift and the night shift?

A. That is right.

Mr. Harris:

You may take him.

Cross Examination.

(By Mr. Burr):

Q. Mr. McBrayer, you have been a skip tender for about nine years, I believe you said?

A. I believe that is about right.

Q. And all the time you have served as skip tender has been at Number 13, is that right?

A. No, sir, 11—

Q. 11 and 13?

A. Yes, sir.

Q. About how long—were you at 11 first or 13 first?

A. Number 13 first.

Q. And about how long did you serve as skip tender there?

A. I couldn't hardly answer that—

Q. We don't care exactly, but just your best judgment?

A. The only time I was at Number 11 was when 13 was down,—when they had us all down there,—all three crews.

Q. The only time you were down there was when they spread the work during the depression?

A. Yes, sir.

Q. The operation is about the same at Number 11 as at Number 13?

A. Yes, sir.

Q. You have been at 13 for the last several years, I suppose?

A. Yes, sir.

Q. About how long would you estimate you had been on that same job at 13 continuously, just your best judgment?

A. Oh, I would imagine about seven years.

Q. The men, of course, go in the mine with their work clothes, as you told Mr. Harris?

A. They do.

Q. They change from their street clothes to their work clothes at the bath house?

A. Yes, sir.

Q. They come to the bath house at different times and bathe at different times and come to the bath house at different times?

A. The majority of them come around six o'clock.

Q. I didn't ask you about the majority of them. You run the skip until six-thirty, don't you, Mr. McBrayer?

A. Yes, sir.

Q. I am asking you before May 1, 1941?

A. Yes, sir.

Q. You ride on a chair on the back of the skip?

A. Yes, sir.

Q. The first thing you do in the morning is to get the skip off the side track?

A. Yes, sir.

Q. And if the split shift crew has not been using it, you make a test run with the skip?

A. Yes, sir.

Q. If the split crew has been using the skip, it is not necessary to make a test run?

A. No, sir.

Q. But it is your business to be there about six o'clock, and ~~if it~~ is necessary, to make the test run?

A. Yes, sir.

Q. You start hauling the men down about six-four, I believe you said?

A. That is about right.

Q. That is your judgment?

A. I haven't timed it. We have to make the safety run. That would vary. I imagine an average would be about six-four.

Q. Did you ever keep time over a long enough period of time to get an average, or is that your best judgment about it?

A. I did at one time.

Q. For how long did you keep it?

A. For about two weeks.

Q. Do you know about when that was?

A. No, sir, I don't. It would be in the three year limit.

Q. Would you say in '38 or '39?

A. I don't know.

Q. Did you keep that memorandum?

A. I haven't got them with me.

Q. Do you recollection what that memorandum showed as to the average?

A. About four minutes after six.

Q. You say it would take about six or seven minutes for a round trip?

A. That is just my best judgment.

Q. I know. You never timed that?

A. No, sir.

Q. You ran how many?

A. Four.

Q. Four?

A. Yes, sir.

Q. And the first one would hold about thirty-five, and the remainder somewhere between thirty and thirty-five?

A. That would be my best judgment.

Q. I know you haven't counted them, but that is just your best judgment?

A. Yes, sir.

Q. I believe you say the assistant mine foreman told you when to start the skip?

A. Yes, sir.

Q. He would make up his mind when the skip had enough and tell you when to start it?

A. He did. That applies to the first trip.

Q. That applies to the first trip?
A. Yes, sir.
Q. And not the others?
A. No, sir.
Q. After the first trip anybody—
A. Why, I didn't start only the first trip. The mine foreman would give the signal after that.
Q. You mean you didn't operate all the skips?
A. No, sir. We have two rappers on each shift.

The Court:
Two what?

The Witness:
Two skip tenders.

Q. You would run one trip and your buddy that worked opposite you ran the other?
A. Yes, sir.

The Court:
I don't understand that. I understand his buddy was on the other shift.

Mr. Burr:
No, sir, on the same shift.
Q. You have two skips?
A. No, sir, we have one skip, but we have two skip tenders on day and night.
Q. Suppose you take the first one down, we will say.
A. Yes, sir.
Q. Would you take the second or who was that?
A. My buddy would take the second one if I took the first one.
Q. How did you do that? Did you change at the bottom? Did you change at the bottom?

A. No, sir; we would both stay at the bottom.

Q. One of you would ride down and stay there and send the skip out?

A. Yes, sir.

Q. And the other would ride down with that skip and you would send it up again from the bottom?

A. That is right.

Q. That is the way it was done?

A. Yes, sir.

Q. The time you are talking about you rode about half of the skips down on your shift and your buddy rode the other half down?

A. No, sir; I rode one down and the other he rode it.

Q. You divided it?

A. Divided those two.

Q. Were there four of you?

A. No, sir.

Q. There were four trips?

A. Yes, sir.

The Court:

Who rode the other trips?

The Witness:

Generally a head miner.

Q. Neither one of you rode the other ones?

A. No, sir.

Q. That is the way it was?

A. Yes, sir.

Mr. Burr:

I don't know whether I get it or not. I may be thick headed this morning.

The Court:

I get what he says. I know what he says, but I don't know what he means.

Q. You take the first one down?

A. Yes, sir.

Q. And your buddy the next one?

A. Yes, sir.

Q. And somebody else would take the third and fourth one down?

A. Yes, sir.

Q. Where would you be?

A. I would be down handling the skip at the bottom.

Q. How long did you remain there?

A. Until they got through hauling the men.

Q. Sir?

A. Until they got through hauling the men.

Q. You hauled no ore with the men?

A. No, sir.

Q. Then, when you got through hauling the men did you go out and commence hauling ore?

A. Yes, sir.

Q. And at the end of the shift you would take the men out?

A. Yes, sir.

Q. Did you do it the same way, you and your buddy alternate?

A. I would generally ride the first one and my buddy would ride the second one. Most anybody would ride the others.

Q. Most anybody would ride the others?

A. Yes, sir.

The Court:

Mr. Burr, I don't know what he was doing while the third and fourth trips were being hauled. What was his buddy doing during that time?

The Witness:

He might go out to a little time shack and make out a report where he had examined the skip.

The Court:
Did you make out a report?

The Witness:
Sometimes I did; didn't but one of us do that.

The Court:
That he had examined the skip?

The Witness:
Yes, sir.

The Court:
To see it was in good repair?

The Witness:
Yes, sir.

The Court:
Did you do that every morning?

The Witness:
Yes, sir.

Q. During the time you have been there have they been using the same skip or same kind of skip?
A. Yes, sir, same kind of skip.
Q. And used it in the same way?
A. I would say in the same way; yes, sir.
Q. The way you handle the skip, you sit in the chair and have this piece of rod, and if you want the skip to stop you hit the cable one time?
A. Yes, sir.
Q. This cable carries thirty-two volts?
A. I don't know; it is small.
Q. And the way you do that, you hit that with a rod and it blows a horn down in the engine room?

A. Yes, sir.

Q. And one means stop?

A. Yes, sir.

Q. And what else—

A. Eight bells is to notify the engineer there are men on the skip.

Q. When you are talking about one that is hauling ore?

A. No, sir; that is when you want to stop.

Q. When you are hauling men you hit it eight times?

A. Yes, sir.

Q. That let's him know it is a man trip and ready to start?

A. Yes, sir.

Q. And, if, while you are going down, anything should happen for any reason and you wanted to stop you would give one signal?

A. Yes, sir.

Q. And coming back out, if you wanted to start you would give five?

A. No, sir.

Q. What is it?

A. Eight and four.

Q. What is the eight for?

A. You give eight for the engineer to know there are men on the skip, and the four signal is to pull out slow.

The Court:

If you give the eight signals he doesn't do anything until he hears from you further?

Mr. Burr:

That is right.

The Witness:

That is right.

The Court:

And then when he gives the four signal that means for him to pull out of there slowly?

The Witness:

Yes, sir, that is right.

Mr. Burr:

That is right.

Q. Now, you are familiar with these rules, page 52:

"No one must get on man skip or cage while it is in motion or until eight bells signal has been given and permission to get on has been given by man in charge of skip. No one must get off of skip or cage until it comes to a dead stop.

"Riding on skips is strictly prohibited except on regular man trips and in emergency cases, and then only on authority of mine foreman.

"When hoisting or lowering man trips, skips must be free of tools and material."

You are familiar with those rules, are you?

A. I have those, yes, sir.

Q. Now, you said you had occasionally seen the men carrying hangers on the skip?

A. I have.

Q. Has that been occasionally?

A. Well, it has been on several occasions.

Q. On several occasions? About how many times would you say it has been in the last three years, say, prior to May 1, 1941?

A. I wouldn't hardly know how many times, but—

Q. Just some idea; five or ten?

A. It would be more than that.

Q. Ten or twenty? Just how many times over that period of time, would you say?

A. Oh, possibly forty or fifty—

Q. Possibly forty or fifty?

A. Over that period of time.

Q. Now, when you have seen that during those forty or fifty times in the last three years would there be just some of the men that rode the trip that had hangers?

A. Yes, sir.

Q. It wouldn't be all of them by any means?

A. No, sir.

Q. How many would you say—when you noticed hangers on the skip during that period of time how many men had them, would you say, in your best judgment?

A. I wouldn't know just how to answer that; may be one, or two or three, may be not over one.

Q. May be not over one?

A. No, sir.

Q. Now, did you say anything to them about not carrying them?

A. No, sir.

Q. Did you call the foreman or assistant foreman's attention to it that they were carrying them?

A. No, sir. He was sitting—

Q. I am just asking you did you tell him?

A. No, sir.

Q. He was sitting—go ahead,—I will let you tell it if you want to.

A. He was standing closer to the men than I was.

Q. Do you know whether he saw them?

A. No, I don't know.

Q. Do you know whether the head miner or the fellow that carried them got permission to carry them on account of their needing sharpening or straightening?

A. No, I don't know.

Q. All you know is what you saw on the skip during that period of time?

A. Yes, sir.

Q. And going back beyond the three years, did the same thing happen before that?

A. Yes, sir.

Q. Just about in that same way?

A. Yes, sir.

Q. It has been going along that way all the time—

A. Yes, sir.

Q. Since you have been there?

A. Yes, sir.

Q. I call your attention—getting back to these signals, —page 21 of the defendants' Exhibit 1, and ask if these are the signals that were used in handling the skip:

One long ring—stop.

A. Right.

Q. One short ring —Warning Signal when lowering?

A. Right.

Q. Two rings—hoist.

A. Yes, sir.

Q. Three rings—lower.

A. Yes, sir.

Q. Four rings—hoist slowly?

A. That is right.

Q. Five rings—Lower slowly.

A. Yes, sir.

Q. One long ring and two short rings—hoisting sinking ship (skip).

The Court:

What is that?

Mr. Burr:

I don't know.

Q. What is a sinking ship (skip)?

A. It is a little skip on behind the regular skip when they are slabbing ore.

Q. Hauling materials?

A. No, sir.

Q. Eight rings—man on skip?

A. Yes, sir.

Q. Get Assistant Engineer on Platform. What does that mean?

A. I can answer that. That is a different department from what I am.

Q. All right.

A. They require an assistant mine foreman to be on the tower before a skip is moved.

Q. That is in case of accident to the engineer or anything like that?

A. Yes, sir.

Q. Twelve rings—Skip derailed. Do not move skip on this signal?

A. Yes, sir.

Q. Those are the rules for the signals that you gave?

A. Yes, sir.

Q. Now, you went to work at six o'clock in the morning, did you?

A. Yes, sir.

Q. Is that when you worked started?

A. Yes, sir.

Q. Is that when your time started on your pay check for which you got your nine hours, started at six o'clock?

A. Yes, sir.

Q. And they have been on an eight hour schedule there since about 1933 or '34, haven't they, Mr. McBrayer?

A. I think it was sometime in '33.

Q. Sometime in '33?

A. Yes, sir.

Q. All right. Now, ever since that time the computation of your time began at six o'clock?

A. Yes, sir.

Q. And you had half an hour for lunch?

A. Supposed to have it.

Q. Well, you had it, took it when you wanted it, ate it?

A. Yes, sir.

Q. You said you took from twenty to thirty minutes for lunch?

A. Yes, sir.

Q. Then the pay time, the computation of it,—you told Mr. Harris you generally got out from three-thirty to three-forty-five as well as you could remember?

A. No, sir; three-forty to three-forty-five.

Q. Three what?

A. Three-forty.

Q. Three-forty?

A. Yes, sir.

Q. You got paid for eight hours straight time? What was your salary, do you remember, figured upon before May 1, 1941, during those years?

A. Per hour?

Q. Yes, sir, per hour?

A. Sixty and a half cents an hour.

The Court:

Is that sixty?

The Witness:

Sixty and a half cents an hour.

Q. You got that for eight hours?

A. Yes, sir.

Q. And for the extra hour you got an hour and a half?

A. That is right.

Q. That is right. You have been getting that all the time you have been working that long?

A. Yes, sir, since the eight hour—

Q. That is what I am talking about.

A. Yes, sir.

Q. Now, since May 1, 1941, you go in at the same time in the same way?

A. Yes, sir.

Q. Aren't you required to report a little earlier now than you were before?

A. After May first?

Q. Yes, sir.

A. Yes, sir. I report to work at five-forty-five.

Q. Five-forty-five now?

A. Yes, sir.

Q. And you come out now at three-forty-five; is that right?

A. No, sir.

Q. What time?

A. We start pulling the men at one-forty-five.

Q. Well, I mean one-forty-five. You start at one-forty-five? That is what I mean when I said three. You start pulling them at one-forty-five and you are through by what time?

A. I would say ten or fifteen minutes after two.

Q. Ten or fifteen minutes after two?

A. Yes, sir.

Q. And you pay now runs until two-forty-five?

A. Yes, sir.

Q. With half an hour for lunch?

A. They don't give us skip tenders any lunch period now.

The Court:

Don't get any lunch period?

The Witness:

No, sir.

Q. Since May 1, 1941?

A. No, sir.

Q. Mr. McBrayer, you have belonged to the Smelters Union since what time, please, sir?

A. Since August, 1933.

Q. Have you ever served on any committees, grievance committee at Ishkooda or been an officer of the union at Ishkooda?

A. Yes, sir.

Q. What committee have you served on prior to May 1, 1941, and what office have you held?

A. I hold an office as Financial Secretary, and I have only served on the local and general grievance committees.

Q. You have served on both the local and general grievance committees?

A. Yes, sir.

Q. The local committee is the one that handles the local requests and complaints and grievances?

A. Yes, sir.

Q. That the individual employees want the committee to bring up for them?

A. Yes, sir, with the local superintendent.

Q. With the local superintendent?

A. Yes, sir.

Q. That is with Mr. Cameron here?

A. Yes, sir.

Q. Have you been on that committee all the time since 1933 up to May 1, 1941?

A. No, sir, I haven't been on it all the time. I don't believe I could give you the date I began serving.

Q. You couldn't give me the date you began serving?

A. No, sir.

Q. How long have you been on that committee the best of our recollection?

A. Oh, two or three years.

Q. That is two or three years prior to May 1, 1941?

A. Yes, sir.

Q. The general grievance committee is the one that took up questions you couldn't adjust with your local superintendent with Mr. Ball and Mr. Kelly?

A. That is right.

Q. And you have served on that committee how long?

A. The same length of time I have served on the local committee.

Mr. Burr:

That is all, Mr. McBrayer. Thank you, sir.

Re-Direct Examination.

(By Mr. Harris):

Q. Mr. McBrayer, there is one thing about the skip that I still don't understand. When it gets to the bottom at the man unloading station who gives the signal for it to stop? Take the first skip down—

A. If the barn man is not hanging around there the engineer generally just stops it himself.

The Court:

The barn man?

The Witness:

Yes, sir, stable cleaner.

Q. Now, as you ride,—take that first skip down into the mine,—when you approach the man unloading station do you give any signal while approaching it on the skip to let the engineer know you are getting close to the man unloading station?

A. No, sir.

Q. And when you arrive at the man unloading station do you give him any signal to let him know you are the place to stop?

A. No, sir.

Q. Well, now, you said something about somebody else being there who would give him a signal to stop, that he had the skip at the right place for the men to get out.

A. Well, sometimes the stable cleaner would and then sometimes nobody at all would. It would stop itself.

The Court:
Can he tell from the drum or cable where it is?

Mr. Burr:
There is an indicator, isn't there?

The Witness:
Pretty close.

Q. Pretty close?
A. Yes, sir.

Mr. Burr:
That is up on the hoist.

Q. How far would it vary if there was no man there to give him a signal to stop?

Mr. Burr:
We object to that. He assumes it was necessary to give him a signal.

The Court:
If he knows.

Mr. Burr:
He assumes there should be somebody there to give him a signal.

Mr. Harris:

I don't assume anything of the kind. I asked him how close it would stop.

A. It depends on the engine he had. Some would stop closer than others. It wouldn't vary over two or three feet to a skip length with any of them.

Q. All right. If the stable man was standing there, what kind of signal would he give to the engineer to stop the skip?

A. He would just give one signal.

Q. How would he give it?

A. Pull on the rope that is connected to the signal latch.

Q. When you give your bells or signal do you pull on that rope or use that rod you brought with you down on the skip?

A. Coming down on the man trip?

Q. Yes.

A. The assistant mine foreman would give the eight bells, and the skip tender that rode the first trip down would give the five bells so the engineer would know when to lower. That would be mostly to test out that signal.

Q. I don't think you understand me. Coming down in the bottom of the mine slope after having brought the first man trip down, what sort of signal is given to the engineer to pull the empty skip out?

A. Give him four bells, four signals.

Q. How do you give it to him?

A. By pulling on the cord tied to the signal latch.

The Court:

Tied to what?

The Witness:

That is a cord down there that is tied to—I don't know what you call it.

Mr. Burr:
Switch?

The Witness:
I call it a latch.

The Court:
Latch or switch?

The Witness:
Yes, sir.

Q. You give him a signal to indicate the men have gotten off and the skip is empty and it is now time for him to pull it out?
A. Yes, sir.
Q. Now, take when you are hauling the men out of the mine: You give him eight signals to tell him the men are getting on the skip, do you?
A. That is right.
Q. Then; when they have gotten on the skip and it is full and ready to pull out, how many signals do you give him?
A. Give him four.
Q. Now, where is it that the mine foreman comes in with the signal you mentioned awhile ago; is that going down on the first skip or coming out on the first skip?
A. The mine foreman—the assistant mine foreman gives the eight bells for the men to load up in the skip, and the mine foreman rides the bail of the skip out on the first trip and he gives the four.
Q. That is coming out of the mine?
A. Yes, sir.
Q. Going down in the mine on the first one, does the assistant mine foreman ride that trip with you or does he stay out on top?
A. He stay out on the top.

Q. Does the assistant mine foreman on the first trip down have to pull a rope or give any kind of signal to the engineer to start that first trip down?

A. No, sir. He gives the eight signals for the men to load in the skip.

Q. Who gives that?

A. The assistant mine foreman.

Q. How does the assistant mine foreman know the skip is full and they should start pulling it down or lowering it?

A. When it gets full.

Q. I mean the hoisting engineer. I don't mean the assistant mine foreman. That was a slip of the tongue.

A. Oh, the hoisting engineer?

Q. How does he know it is loaded?

A. When he receives the five signals after having gotten eight.

Q. Who gives the five?

A. On the trip down?

Q. Yes, sir.

A. The skip tender.

Q. Do you give that signal with the rod with which you reach out and touch the wire?

The Court:

Does he use that rod?

Q. Do you use that rod every time to give those signals as you go down?

A. No, sir.

The Court:

That is what I thought.

A. Just on the first trip.

Q. On any trip do you carry that rod with you to give a danger signal if anything happens?

A. The man that is on it, yes.

Q. Now, you said something about an engineer being required to be somewhere. What was that you started to say?

A. That was an assistant engineer.

Q. What does he have to do with the skip?

A. Not anything at all.

Mr. Harris:

I think that is all.

Re-Cross Examination.

(By Mr. Burr):

Q. The assistant engineer, on this signal, gets on the platform?

A. Yes, sir.

Q. That is a safety measure, isn't it?

A. Yes, sir.

Q. So if anything happens to the engineer he will be there?

A. Yes, sir.

Q. And the engineer, when he is stopping his skip down at the underground unloading place, he has an indicator on his engine that shows him it is down at the bottom?

A. That is right.

Q. They don't have to have a signal to stop; they can stop on the indicator on the engine?

A. Yes, sir, he needs one.

Q. He gets that from some one on the skip?

A. No, sir; it is pretty hard to get it from the skip.

Q. Somebody gets off and gives the signal?

A. Sometimes on that first trip the stable cleaner will give it and sometimes he gets no signal until he stops. When the skip tender gets off he will give the signal then.

Q. And you say he will stop in two or three feet of the same place?

A. Something like that; some of them a little further.

Mr. Burr:

That is all.

The Court:

Mr. McBrayer, when do you get off from work since May first?

The Witness:

Since May first?

The Court:

Yes, sir.

The Witness:

I hand in my brass check at five-forty-five. That is the beginning of the shift.

The Court:

That is in the morning?

The Witness:

Yes, sir.

The Court:

When do you get off in the afternoon?

The Witness:

It will vary. It will run, I will say, ten or fifteen minutes after two.

Mr. Burr:

And you are paid up until two-forty-five?

The Witness:
That is right.

Mr. Smith:
Your pay starts when you put the brass check up there and runs until you get back?

The Witness:
It does.

Mr. Smith:
And all the operating men of that skip, their pay starts when they hang up their checks?

The Witness:
Yes, sir.

Mr. Smith:
Ends when they pick them up that evening?

The Witness:
Yes, sir.

Mr. Smith:
That is the men handling the skip and getting you men down to your unloading station?

The Witness:
Their pay starts at six o'clock.

Mr. Burr:
Of course, they get the nine hour pay just like you do?

The Witness:
Both the skip tenders.

Mr. Burr:
That is what I say, both the skip tenders.

The Witness:
Yes, sir.

Mr. Burr:
Come down.

(Witness excused.)

Mr. Harris:
Call Mr. Scott.

Mr. Burr:
Could we have three or four minutes recess now before we start?

The Court:
Yes, I think we had better take a recess.
What are your initials, Mr. Scott?

Mr. Scott:
W. A.

The Court:
We will take a few minutes recess.

(Thereupon proceedings were in recess from 10:30 A. M., to 10:40 A. M., at which time proceedings were resumed as follows:)

The Court:
All right.

2549 W. A. SCOTT, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. This is Mr. W. A. Scott?
A. Yes, sir.
Q. How old are you, Mr. Scott?
A. Forty-five.
Q. Where were you born?
A. Parkwood.
Q. Parkway, Alabama?
A. Parkwood.

The Court:
In Bessemer?

The Witness:
Yes, sir.

Mr. Burr:
In Bessemer, yes, sir.

Q. How high did you go in school?
A. Tenth grade.
Q. What position do you hold?
A. Hoisting engineer.
Q. For what company?
A. Tennessee Coal, Iron & Railroad Company.
Q. What mine do you work at?
A. Number 13 at Ishkooda.
Q. How long have you been working at Number 13 at Ishkooda?
A. Well, ever since '36, at 13.
Q. When did you first start working for the Tennessee Company?

A. March 19, 1917.

Q. What did you do then?

A. When I started to work I worked under Mr. E. M. Ball as Superintendent and Mr. Will Fowler as Mine Foreman at Number 11 as sinking hoist engineer.

Q. Now Mr. Ball is now your present General Superintendent?

A. General Superintendent, yes, sir.

Q. And your present Superintendent is—

A. Mr. C. B. Cameron.

Q. The gentleman sitting there?

A. Yes, sir.

The Court:

You say you started in 1917?

The Witness:

Yes, sir.

Q. You ran an underground mucking hoist first?

A. Yes, sir.

Q. How long was it before you changed to something else?

A. Oh, about three months.

Q. What did you do then?

A. Went to drill helper at number 12.

Q. Well, did you keep on working as a drill helper, working in the mines, or did you follow any other kind of work?

A. No, sir; I started to drilling about three months after I started drill helping.

Q. Was that in 1917?

A. Yes, sir.

Q. Did you work there through 1917 and 1918?

A. No, sir. I went to the Army on September 17, 1917.

Q. Well, when did you get out of the Army?

A. March—I forget the date—March, in 1919?

Q. After that two year shift—two year hitch in the Army, did you go back to working for the Tennessee Company?

A. I did.

Q. Where did you work then?

A. Well, I worked at two places, number 11 and number 12, as slope track foreman.

Q. How long—did you work as a skip tender at either 11 or 12?

A. Yes, sir, number 11.

Q. And then you say you worked as a slope track foreman?

A. Yes, sir.

Q. Was that inside or outside?

A. Yes, sir; inside.

Q. Well, did you do any outside work?

A. Well, I went to skip tending after I went off the slope track foreman's job. I skip tended about twelve months, and came outside on the machinist force as crusher repairman.

Q. How many mines have you worked at at Ishkooda?

A. All four of them, 11, 12, 13 and 14.

Q. Is the way they lower them in the mine and bring them out of the mine now the same as it was back in those days?

A. Well, in those days no one was allowed to ride the skip except the skip tender and mine foreman.

Q. I mean in the last three years?

A. Oh, yes.

Q. Substantially the same?

A. Yes, sir.

Q. At all four mines do they hand in a check in reporting for work and take up a check at the end of the shift?

A. I couldn't say about that. I don't have anything to do with that.

Q. At your own mine?

A. No, sir. I don't have to check in.

Q. What is your job?

A. Hoist engineer.

Q. You don't have to check in or check out, either one?

A. No, sir.

Q. Where is your hoisting engine? Where are you located on that?

A. Where am I located on the engine?

Q. Where is the engine located?

A. Down in the engine room about 200 or 250 feet from the tally house.

Q. What do you hoist?

A. Men, ore, and lower timbers and pull out materials, load material.

Q. Can you tell when you are hoisting men and when you are hoisting ore?

A. I can?

Q. How do you know the difference between hoisting men and hoisting ore?

A. Well, in lowering men or hoisting men I get an eight bell signal. That notifies me they are loading the men, and I am not supposed to move the skip until I get a five bell signal or a four bell signal to lower or pull.

Q. What is the four for?

A. That is to hoist.

Q. And five is—

A. To lower them.

Q. To lower them?

A. Yes, sir.

Q. What sort of signal do you get to let you know you are through hoisting men?

A. In the afternoon?

Q. Yes.

A. Well, they generally give me a ring off signal, they can it, or, if the slope track crew is going to use the skip, they signal me back to hitch to the larry, the timber larry.

Q. What is the signal to notify you you have finished hoisting men out of the mine?

A. They don't usually give me a signal if they are going to use the skip. If they are not going to use it they give me a ring off signal, several bells. That is, they put the skip on the side track and give me the signal.

Q. Before May 1, 1941, what time did you report for work?

A. Now,—seven o'clock.

Q. Not now—

A. I understand; seven o'clock.

Q. From October 24, 1938 to May 1, 1941, what time did you report for work?

A. Seven o'clock.

Q. Is there anybody to run the hoist engine while you are not there?

A. Yes, sir.

Q. Who starts lowering the men a few minutes after six?

A. We have four crews on the engine. There are two crews in the engine house all the time. The one—we work on split shifts.

Q. What?

Mr. Burr:

They work on split shifts.

A. The one on the morning,—the seven to eleven shift starts lowering them in.

Q. What is your tour?

A. From seven to three.

Q. From seven to three?

A. Yes, sir.

Q. You had another man with you?

A. Yes, sir; assistant engineer.

Q. Then the man who lets the men down in the mine on the day shift would get off at seven o'clock?

A. That is right.

Q. And in those years that you were there—I mean in those three years that I have asked you about, you would later lower the men into the mine yourself or pull them out?

A. No, sir, not on the day shift.

Q. What about the night shift?

A. Well, I do on the night shift, the beginning of the afternoon shift, at night.

Q. When is that?

A. What time do I go to work?

Q. When do you start lowering the men and hoisting them?

A. Six o'clock.

Q. How long, during those three years, did it take you to finish lowering the men?

A. Twenty-five to thirty minutes.

Q. And when you pulled them out, how long did it take you?

A. About the same.

Q. From the place where you were at the hoisting engine could you see the men getting on or getting out of the skip?

A. No, sir, I can not.

Q. Now, before May 1, 1941, how long did it take you to run a man trip, a round trip man trip?

A. All the way from five to six or seven minutes.

Q. Since May 1, 1941, has there been any difference in the time that it took?

A. There has, yes, sir.

Q. What is that difference?

A. Well, I make a round trip now—they load up the men; I lower them to the man unloading station and I am back outside in five minutes.

Q. Did you do that under orders from anybody?

A. I did.

Q. Who gave you those orders?

A. The Master Mechanic, Mr. J. E. Williams.

Q. What orders were those he gave you?

A. To speed up the man trips.

Q. Now, were you working as a hoisting engineer at any time while the underground men were working on a ten hour shift?

A. I was.

Q. Now, on that ten hour shift were you working in the day time or on the night shift?

A. Rotated just like I do now.

Q. When the men were on a ten hour shift and you were the hoisting engineer for the day shift, what time did you start lowering the men into the mine?

A. Six o'clock.

Q. Then, when they weren't on an eight hour day shift and you were on day what time did they start lowering them in the mine?

A. Six o'clock.

Q. Now on a ten hour day what time, did they start bringing them out of the mine?

A. My best recollection, around four or four fifteen; I don't remember.

Q. And before May 1, 1941, when they were on an eight hour shift, what time did you start bringing the men out of the mine?

A. Before May first?

Q. Prior to May first.

A. Three-fifteen.

Q. So, on an eight hour shift the men were underground just one hour less than they were on a ten hour shift?

A. Yes, sir.

Q. Have you examined the skips at number 11 and 13 both?

A. Do I examine them?

Q. Have you seen them, examined them?

A. Yes, sir.

Q. Are they substantially the same?

A. They are.

Q. Do you recognize those (handing witness pictures) as the skips that you have been lowering—

A. Yes, sir.

Q. —and hoisting out at number 13?

A. Yes, sir.

Q. All right.

Mr. Burr:

Let me see those. Have they already been identified?

Mr. Harris:

Yes, sir. They have already been introduced.

The Court:

When you were on a ten hour day basis what time did you get your last men—what time did you quit work, four-forty-five?

The Witness:

Well, I quit work at three o'clock.

The Court:

When you were on a ten hour shift?

The Witness:

Yes, sir.

The Court:

When did you finish bringing the men out? When were the men brought out?

The Witness:
Well,—

The Court:
Did you bring them out before you quit?

The Witness:
No, sir.

The Court:
When was that, four-forty-five?

The Witness:
Yes, sir, the best of my recollection that is the way it was.

The Court:
You started about four-forty-five bringing them out, or do you know?

The Witness:
No, sir, I couldn't recall the time back there.

The Court:
You started carrying them down at six o'clock in the morning?

The Witness:
Yes, sir.

Q. Well, now, I am uncertain about your answer on hauling the men out of the mine when they were working on a ten hour shift.

Did you ever, as hoisting engineer, haul them out of the mine when they were working on a ten hour shift?

A. Well, I couldn't recall that; I don't remember.

Q. How long have you been a hoisting engineer?

A. Eighteen years.

Q. And you have been working out there as a hoisting engineer for eighteen years?

A. Yes, sir, as an extra hoisting engineer and extra compressor man.

Q. Well, you worked steadily as a hoist man and extra man about eighteen years?

A. No, sir; about two years as extra hoist.

Q. All right. What were those two years?

A. You mean where I worked?

Q. That you were extra and not regularly at it?

A. At 13—all four places.

Q. What two years were they? Were they 1922 or 1920 or 1925? When were they?

A. Oh, I beg pardon. Back in 1920, 1923, 1921 and 1922.

Q. Then you were a hoisting engineer lowering the hoisting the men when they were on a ten hour shift, were you?

A. Yes, sir.

Q. And did you, during that time, lower men into the mine?

A. I did.

Q. Did you do it on the day shift or night shift or both?

Q. All right. On the day shift, when they were lowered by you into the mine when did you start lowering them?

A. Six o'clock.

Q. On the day shift, when you started pulling them out of the mine on a ten hour shift, when did you start pulling them out?

A. I couldn't recall that time.

Q. What?

A. I can't remember—

Q. Didn't you tell me awhile ago that you started pulling them out at four-fifteen?

A. I did not.

Q. Just before the Judge asked you a question?

A. No, sir, I did not.

Q. You don't remember that?

A. Not four-fifteen, no, sir.

Q. What time was it you told me awhile ago you started hoisting the men out when they were on a ten hour shift?

A. Well, I just couldn't recall the time.

Q. How many years did you hoist men out while they were on a ten hour shift?

A. I don't know; about four or five years.

Q. And you can't tell us what time of day you hoisted men out for four or five years that they were on a ten hour shift?

A. Well, the best of my recollection it was around four-fifteen.

Q All right. Now, when they were on a night shift, ten hours, during those four or five years what time did you start hauling them out?

A. Beg your pardon. I didn't get it.

Q. When you were hauling a night shift out of the mine during the time they were on a ten hour shift, what time did you start hauling them out?

A. The same thing four-fifteen.

Q. Four-fifteen in the morning?

A. Yes, sir.

Q. And did you start lowering them at six o'clock in the evening?

A. Yes, sir.

Q. So that the difference between the time the men were underground on a ten hour shift and the time they were underground on an eight hour shift was about an hour and ten minutes when you were hoisting them, wasn't it?

A. That is rght.

Mr. Harris:
That is all.

Cross Examination.

(By Mr. Burr):

Q. Mr. Scott, do you recall about when they went on an eight hour shift? It was about 1933, wasn't it, about that time?

A. That is when the underground men went on an eight hour shift:

Q. That is what I am talking about, underground?

A. Yes, sir.

Q. You didn't work underground?

A. No, sir.

Q. You were on the surface?

A. Yes, sir.

Q. You have been on an eight hour shift all the time?

A. Since March 15, 1930.

Q. The engineer during that time have always been on three shifts?

A. Yes, sir.

Q. Eight hour shifts?

A. Yes, sir.

Q. Continuously?

A. Yes, sir.

Q. During the time the men were working underground, producing, there was a split between that time while the material men and that sort of people work?

A. Yes, sir.

Q. Of course the engine had to operate to haul the material men and material while the producers couldn't work or didn't work?

A. Yes, sir.

Q. You work has been eight hours all the time?

A. Yes, sir.

Q. You started your day's work, I believe you said, at six o'clock whether eight hours or ten hours?

A. No, sir.

Q. What is that?

A. Seven o'clock.

Q. Seven o'clock?

A. Yes, sir.

Q. When you hauled men into the mine—

A. We did work for a time from six to two.

Q. Let's take on the ten day shift—did you start letting the men in the mine around six o'clock?

The Court:

You mean ten hour?

Mr. Burr:

Yes, sir.

The Court:

You said ten day shift.

Mr. Burr:

Ten hour shift.

Q. You commenced letting the men down in the mine about six o'clock?

A. Yes, sir.

Q. Under the eight hour shift you commenced letting them down about the same time?

A. Yes, sir.

Q. On the ten hour shift they didn't have lunch underground or had it on their own time?

A. I don't know. I don't think they did.

Mr. Burr:

That has been proven, your Honor.

Q. On the ten hour shift you commenced bringing them out, you say your recollection is, about four-fifteen?

A. Yes, sir, on the ten hour shift.

Q. On the eight hour shift your best recollection is you commenced bringing them out at three-fifteen?

A. Yes, sir, three-fifteen.

Q. The time you are giving is the time they went underground and the time they came out and you are not giving anything about when they were at the face?

A. No, sir.

Q. You don't know anything about that?

A. No, sir.

Q. You don't know whether their work time ran on the ten hour shift from six-thirty to four-thirty without lunch?

A. No, sir.

Q. And on the eight hour day from six-forty-five to three-fifteen with lunch?

A. Yes, sir.

Q. From where you are you can't see them at all?

A. No, sir.

Q. Do you know when those pictures were taken that were shown you?

A. No, sir.

Q. All you are identifying, that is the skip?

A. Yes, sir.

Q. You don't know whether that is the way the men get on?

A. Yes, sir, that is about the way they get on.

Q. You have seen them get on?

A. Yes, sir.

Q. It has always been that way they got on?

A. Yes, sir.

Q. Has there been any change in that skip or the way the men get off or get on since you have been working there?

A. No, sir, not that I know of.

Q. That has always been the same way?

A. Yes, sir.

Q. Now, you operate those skips both for men, hauling ore and material by signal?

A. Yes, sir.

Q. Do you have an indicator on your engine?

A. Yes, sir.

Q Does that indicator show you when you get down to the man unloading station?

A. It does.

Q. Do you have to be signalled when to stop it when you get—went it gets down there or do you use both?

A. Use both.

Q. Use both?

A. Yes, sir.

Q. But you can stop it by the indicator?

A. Yes, sir, absolutely.

Q. You have read these rules, of course, Mr. Scott?

A. Yes, sir.

Q. Your hoist engineer's signals?

A. Yes, sir.

Q. That is what you go by as far as you can?

A. Yes, sir.

Q. You are familiar with them and you follow them?

A. Yes, sir.

Mr. Burr:

I believe that is all I want to ask Mr. Scott.

Mr. Harris:

That is all.

The Court:

You are excused.

(Witness excused.)

The Court:

Who will you have?

Mr. Harris:
Is Mr. Giglio over here?

A Voice:
Yes, sir.

Mr. Harris:
Come around.

2566 TONY GIGLIO, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Court:
How do you spell your name?

The Witnes:
G-i-g-l-i-o.

The Court:
What is your given name?

The Witness:
Tony.

(By Mr. Harris):

Q. Is that man that just moved over and got behind Mr. Burr your Superintendent?

A. Yes, sir.

Q. The man who just left Mr. Burr was not your Superintendent?

A. No, sir.

Q. How long have you been working for the Tennessee Coal, Iron & Railroad Company?

A. I started working for them February 8th, in 1937.

Q. How old are you?

A. Twenty-four.

Q. Where were you born?

A. Pratt City.

Q. How high did you go in school?

A. About the ninth grade.

Q. Where do you work?

A. Muscoda, Number Six.

Q. What kind of work do you do?

A. Well, I have been working on a timber crew and trip rider.

Q. How, at Muscoda Number Six, do you get down in the mine?

A. On the skip.

Q. Can you walk down? Are you allowed to wadk down in Muscoda Number Six, or do you have to ride a skip?

A. You can walk, I guess. I never walked. I rode the skip.

Q. Now, what time, from October, 1938 up to May 1, 1941,—what time did you report for work in the morning?

A. Well, sometime I had to go to the supply house and I would turn in my check number to the board—carry it up to the tally house from five-thirty to six o'clock.

Q. Five-thirty up to six o'clock?

A. Yes, sir.

Q. And what time, during those three years, from October, 1938, to May 1, 1941, would you get your brass check at the end of your shift?

A. Well, sometimes it would be three-thirty, twenty minutes to four, fifteen minutes until four, something like that; all depended on what skip we catch.

Q. All depends on what?

A. What skip we catch.

Q. How many—is that the kind of skip that is used out at Muscoda? (Exhibiting picture to witness.)

A. Yes, sir.

Q. Talk a little bit louder please, Mr. Giglio?

A. Yes, sir.

Q. Is that skip—is that the sort of skip you and the men at Muscoda Number Six have been reiding out of the mines on from October 24, 1938, up until May, 1941?

A. Yes, sir.

Q. How many men—

Mr. Burr:

Have you identified that? Are you going to offer it in evidence or not?

Mr. Harris:

It is the same one.

Mr. Burr:

It is the same one?

Mr. Harris:

Yes, sir.

Q. How many men would ride ordinarily in that skip going down into the mines?

A. They would ride around 35 or 40.

Q. How many coming out?

A. About the same.

Q. In riding down into the mine or coming out of it in that skip could you stand erect, or did you have to bend or stoop, or did you have to squat?

A. You had to bend going down to get clear of the roof.

Q. To get clear of the roof?

A. Yes, sir. There were places you can stand.

Q. Some places you can't stand?

A. Yes, sir.

Q. Have you ever during the last three years ridden down in that skip when anybody in the skip with you was hurt?

A. Yes, sir.

Q. When was that?

A. I think it was July 15th.

The Court:

What year?

The Witness:

This year; '41.

Q. On July 15th this year?

A. Yes, sir.

Q. Were you going down in the mine or coming out of the mine?

A. Coming out of the mine at the end of a shift.

Q. Who was the man that was hurt?

A. I think it was a Payne boy.

Q. Payne boy?

A. Yes, sir.

Q. How close was he to you?

A. He was right in back of me.

Mr. Burr:

Your Honor understands we have our usual objection to this line of testimony?

The Court:

Yes, sir.

Mr. Burr:

We except. It happened on July 15th this year.

The Court:

July 13th?

Mr. Burr:
15th, I understood him to say.

Mr. Harris:
July 15th.

The Court:
That is what I understood him to say. I thought you said 13th.

Mr. Burr:
15th.

—

Q. Was he holding to you?
A. I was up against him. When he fell out he fell up against me.

The Court:
Talk louder.

A. When he got hit he fell against my shoulder, and the fellow next to me says, "Is he hurt?" I asked the boy if he was hurt and he didn't give me no answer. I told the fellows next to me to give him more room; he was hurt.
Q. Was that coming out of the mine?
A. Yes, sir, at the end of the shift.
Q. Coming out at the end of the shift on the way to get your check at the tally house?
A. Yes, sir.
Q. Did you notice after you got up out of the mine—did you look at him?
A. Yes, sir.
Q. Where had something in the slope hit him?
A. Well, he got hit on his forehead. It was bleeding.
Q. Was he unconscious when you—
A. Yes, sir.

Q. —when he got up there?

A. Yes, sir. We brought him in the tally house and called an ambulance.

Q. During the three years you have been at—out at Muscoda, the whole time,—I mean from October, 1938 to May 1, 1941, on those trips going in and coming out on the skip were the conditions any different, so far as you know, from what they were on July 15th this year?

A. No, sir.

Q. Have you seen Mr. Payne in Court since you have been up here today?

A. No, sir.

Q. Do you know whether he is still in the hospital?

Mr. Burr:

We—

A. I think he is in the hospital. I am not sure.

Mr. Harris:

You can take him.

Cross Examination.

(By Mr Burr):

Q. Tony,—that is your name, I believe?

A. Yes, sir.

Q. You don't mind me—I can call you that name better than I can the other, and I knew you wouldn't mind.

A. No, sir.

Q. How long have you been working for the Tennesee Company?

A. I started about four years ago.

Q. Been riding this skip all the time?

A. Yes, sir.

Q. Going in and coming out every day?

A. Yes, sir.

Q. The same kind of skip?

A. Yes, sir.

Q. You say you were present when Mr. Payne got his head hurt?

A. Yes, sir.

Q. This was on July 15th?

A. Yes, sir.

Q. The month we are in now?

A. Yes, sir.

Q. How many were on that skip, if you don't mind; just your best judgment?

A. I figure around 35 or 40.

Q. You didn't count them?

A. No, sir.

Q. Just taking a wild guess at it?

A. Yes, sir.

Q. Anyhow, it was about the usual skip load for coming in or coming out?

A. Coming out.

Q. Do you always ride in with Payne?

A No, sir.

Q. You don't know who you are going to ride in with?

A. No, sir.

Q. Or come out with?

A. No, sir.

Q. That is the way you always do; just catch the skips as they run?

A. Yes, sir.

Q. If you wanted to you could catch the first skip?

A. Yes, sir

Q. And if you wanted to there was a later one?

A. Yes, sir.

Q. Of that 35 or 40 he was the only one to get his head hit?

A. Yes, sir.

Q. He got hit because he raised his head up and touched it on the roof?

A. Yes, sir.

Q. If he had kept his head down he wouldn't have gotten hit?

A. No, sir.

Q. You didn't get hit?

A. No, sir.

Q. No one else got hit?

A. No, sir.

Q. It is an electrically lighted skip?

A. Sir?

Q. Electric lights up and down there?

A. Yes, sir.

Q. No one else got hurt?

Mr. Harris:

He has asked him that.

The Court:

Yes, sir.

Mr. Burr:

I wanted to be certain. I haven't taken much time, your Honor. I am getting along mighty fast.

The Court:

Go ahead.

Q. That is the only time you saw anybody get hurt on that skip?

A. Yes, sir, that is the only one I ever saw. I heard—

Q. We don't want to get into what you heard. You haven't seen any?

A. No, sir.

Q. And you have been riding back and forth all the time?

A. Yes, sir.

Q. You don't know how badly Payne was hurt? You haven't seen him since?

A. No, sir.

Q. You say you could walk down the slope if you wanted to, but you preferred to ride, didn't you?

A. Yes, sir.

The Court:

Did he say that?

Mr. Burr:

Sir?

The Court:

Did you say you could walk down there if you wanted to?

The Witness:

I said they didn't allow us to walk down there, but you could walk if you wanted to.

The Court:

Don't allow you to?

The Witness:

No, sir, but ride the skip down. But I say I have walked on the slope, and have walked down—

Q. Have walked down on the slope to the place where you were working?

A. Yes, sir. I worked on the slope track crew for awhile, and I have walked down on the slope to where we were working.

Q. It is the rule the men ride?

A. Yes, sir.

Q. They all ride?

A. Yes, sir.

Q. You say sometimes you commenced work—you said something that happened between five-thirty and six o'clock, sometimes you went to the supply house. What is that, Tony? I don't understand that.

A. Lots of times we would go down there, get our saw sharpened, get an ace, get some washers.

Q. You mean before you went to work you would go down to the supply house?

A. Yes, sir.

Q. And get your saws?

A. Yes, sir.

Q. Or axe?

A. Yes, sir.

Q. Something of that sort?

A. Yes, sir.

Q. When you did that you couldn't catch the six o'clock skip?

A. No, sir.

Q. You would catch a later skip?

A. Yes, sir.

Q. And get to the work place later than the other men?

A. Yes, sir.

Q. And your time—your pay time would start at six-forty-five in the mine; is that when it started?

A. Well, you see I had to check in, and I would give a fellow the check number to check me in and I would go by—

Q. You would go by and check in?

A. Or have somebody check in for me.

Q. What time—it didn't take long to leave your check?

The Court:

What did you do that for? What time did you do that?

A. I usually get to the bath house—

The Court:

What time did you get to the tally house?

The Witness:

At that time, before we went on this new time, about fifteen or twenty minutes of six.

The Court:

You say you would go get washers and saws?

The Witness:

Yes, sir.

The Court:

And you did that before you went to the supply house?

The Witness:

I got those at the supply house.

Q. By checking in all you did was leave your check at the tally house?

A. Or give it to a fellow.

Q. You didn't go by yourself but gave it to a fellow?

A. So they would know I was there.

Q. So they would know you were there?

A. Yes, sir.

Q. And then you would go down to the supply house?

A. Yes, sir.

Q. And get whatever you wanted to get?

A. Yes, sir.

Q. And then go to the slope and catch a skip and go down in the mine?

A. Yes, sir.

Q. And when you got there the men would be already there?

A. Yes, sir.

Mr. Burr:

That is all.

Re-Direct Examination.

(By Mr. Harris):

Q. When you told Mr. Burr a man could walk down that slope was it your meaning that it was not too steep to keep him from walking? Is that what you meant?

A. Yes, sir; what I meant, they could walk if they wanted to.

Mr. Burr:

There isn't any question—may it please the Court, there isn't any question but what they rode the skip.

The Court:

I want to ask him a question.

Mr. Burr:

Yes, sir.

The Court:

Is it against the rules for the men to walk down the slope?

The Witness:

Yes, sir, I think that is against the rules.

Mr. Harris:

That answers it. That is all.

Re-Cross Examination.

(By Mr. Burr):

Q. I want to ask you one question. When you go to the supply house to get things do you take them up in a truck?

A. Yes, sir, sometimes. I have taken them up in my car.
Q. You have got a car?
A. Yes, sir.
Q. There is a truck there you can take them up on?
A. Yes, sir.
Q. And you do do that?
A. Yes, sir.

Mr. Burr:
That is all.

(Witness excused.)

Mr. Harris:

Call Charlie McDaniel.

2577 CHARLIE J. McDANIEL, being called as a witness, and being duly affirmed, testified as follows:

Direct Examination.

(By Mr. Harris):
Q. What is your name, please, sir?
A. Charlie J. McDaniel.
Q. How old are you, Mr. McDaniel?
A. Forty-four.
Q. Where were you born?
A. In Clay County near Goodwater, Alabama.
Q. How high did you go in school?
A. I went approximately two weeks.

The Court:
Went to school two weeks?

The Witness:
Yes, sir, when I was about eight years old.

The Court:
How old are you?

The Witness:
~~Forty four.~~

Q. What kind of work do you do?
A. I am head miner.
Q. For what Company?
A. Tennessee Company at Number 9 Mine.
Q. Number 9 Mine?
A. Yes, sir.
Q. Wenonah?
A. Yes, sir.
Q. How long have you been working under Red Mountain over here?
A. I went to work in 1923, the 14~~th~~ of June.
Q. When you started to work what Company did you work for?
A. I worked for the Tennessee Company at Number 9.
Q. What kind of work did you do for that Tennessee Company, Mr. McDaniel, when you first went there?
A. I went to work as pipe man.
Q. Will you, in order to save time, just start and tell the Court the different kinds of work you have done in the mines and when you did that kind of work for the Tennessee Company?
A. It would be impossible for me to do that. I could give approximately—
Q. All right; approximately?
A. Well, I went to work in '23 as a pipe man. I worked as a pipe man for about four or five weeks, and they promoted me to a skip tender. I was on a skip tender about two or three months, and they put in mechanical loaders.

They put me on a mechanical loader as a drag runner, and I was on that job about, the best I remember, five or six months. I was made a skip tender at Number 10, and I went to work for the mine foreman at number 10, and I was there about five or six months and I decided I wanted a drag back, and I went to work for another mine foreman at another mine, Number 8. I was there just a few days and Number 8 shut down, and I was transferred to Number 7 as a mucker.

The Court:
That is another Division?

The Witness:
The same Division,—7, 8, 9 and 10 is all Wenonah.

The Court:
That is Wenonah?

The Witness:
Yes, sir.

I stayed at Number 7 two or three years, the best I can remember, and then they transferred me to number 8, and I was there about a year, and at that time they put me on as a section foreman. I believe it was in 1928. I was on as Section Foreman about eight or nine months. They put me on—in the reduction of forces they put me back down as skip tender, and sometimes in that length of time, —I forget what year it was—they started Number 10 and they put me at Number 10 as Section foreman and I was there until that mine shut down in just a few months. The fact of the matter, I have been on pipe, drill helping, mucking, section foreman, track helping, and approximately everything in the mine.

Q. And how long have you been a head miner?

A. I have been a head miner since 1938. They named it head miner, it is the same as section foreman, but they changed the name under the incentive plan as head miner.

Q. What were you in 1933 when the Union began to be organized in this district?

A. I was skip tender.

Q. At which mine?

A. I was at Number 8 at that time.

Q. Did you become a member of the Union in 1933?

A. Yes, sir.

Q. Have you been a member of the union from that time on up to the present time?

A. Yes, sir.

Q. As a member of the Union have you served in official capacities for the union?

A. Yes, sir.

Q. When did you first become an officer of the union?

A. In September, 1933.

Q. And what office did you hold?

A. President.

Q. Of what union?

A. Wenonah 157.

Q. How long did you stay president?

A. Until some time in 1938; it was after October, 1938,—after we went back to work.

Q. Now, were you president of the union at the time the incentive plan was handed to the men?

A. Yes, sir.

Q. And were you a head miner then in 1936,—I mean a Section foreman?

A. Yes, sir.

Q. And out at Wenonah how many men constituted a crew before they put the incentive plan into effect, and how many men constituted a crew after they put it into effect?

A. In heading work there was a mine mancrew where you had two drills. Where there was one drill there would be an eight man crew—I mean a seven man crew where there was eight drills—I mean one drill.

Q. Was that before the incentive plan went into effect?

A. Yes, sir.

Q. Immediately upon the incentive plan going into effect, what constituted those two crews by numbers?

Mr. Burr:

That has been proven by us. There has been no denial of it. You can go ahead if you want to.

The Court:

Well, we have had a lot of cumulative testimony. Go ahead.

A. Well, after they started on that incentive plan, where there were two drills there was a foreman and six men. Where there was one drill they cut off one man.

Q. Now, you had a strike in 1936, didn't you?

A. Yes, sir.

Q. When the men went back to work in 1936, did you go back to work?

A. No, sir.

Q. How long was it before you went back to work for the Tennessee Company?

A. It was in October, 1938.

Q. Was that after a settlement, money settlement of claims with the Tennessee Company?

A. Yes, sir.

Q. Now, were you one of the undesirables in that settlement?

A. Yes, sir.

Q. Did you attend any meetings on that settlement either here or anywhere else?

A. I attended a meeting in Chicago and Washington.

Q. Now, when you went to Chicago—do you remember what month it was when you went to Chicago?

A. August or September. It was just before we went back to work. We went to work in October, and it was just a very short time we went to work after we was in Chicago.

Q. Now, where did you meet in Chicago, and who was there representing the Tennessee Company and the United States Steel Corporation?

A. We met in the Palmer Building.

Q. Palmer Hotel or Palmer Building?

A. Yes, Palmer Hotel. I think it was a Mr. Vance--he was the Labor Relations something—in other words, Mr. Vance of the Tennessee Company and Mr. Moseley, the Vice President of the Raw Materials, I understood, and there were two men there I never met before. I understood they were lawyers.

Q. For the company?

A. For the company.

Q. At that Chicago meeting was a contract signed or not?

A. No, sir.

Q. Was there a stipulation signed there?

A. In Chicago?

Q. Yes.

A. No, sir.

Q. After leaving the Chicago meeting, where did the Union representatives go?

A. To Washington.

Q. Was there a contract signed in Washington?

A. No, sir.

Q. Was there a stipulation signed in Washington?

A. Yes, sir.

Q. And was that stipulation a stipulation dealing with the undesirables and putting them back to work?

A. Yes, sir.

Q. Then was the contract signed after the stipulation?

A. It was signed here in Birmingham.

Q. All right. Did you—You did not bring the contract back to Birmingham already signed?

A. No, sir.

Q. Do you recall about how long it was after you got back to Birmingham before the contract itself was signed?

A. I don't know exactly, but approximately thirty days, I would think it was. It was very shortly.

Q. And where was it signed?

A. It was signed in the Brown-Marx Building.

Q. Do you know whose office it was signed in?

A. I am thinking it was Mr. Vance's at the time. I don't know whether it was Mr. Kelly's or Mr. Vance's, but it was in that office.

Q. Now, when you went back to work after this two-year lay-off you had, did you go to work as a head driller—head miner?

A. I went to work as a head miner.

Q. Been doing that ever since?

A. Yes, sir.

Q. Have you been head miner in one particular mine ever since October, 1938?

A. No, sir,—

Q. Well, have you moved back—

A. No, sir; they put me back in Number 11 mine at Ishkooda Division, and I was there about two years, and I was transferred to Number 8, and I was there three or four months, and then I was transferred to Number 9 and I am at Number 9 now.

Q. Have the mines, since October, 1938, been running on a five day week in the Birmingham district?

A. No, not all the time. In 1939 they went down as low as two days a week.

Q. How long did they stay as low as two days a week?

A. Through the summer,— several months, and also in 1940 they went down in the summer to two or three days a week.

Q. The rest of the time was it on five days a week?

A. Yes, sir.

Q. And were the shifts eight hours or something else during that period?

A. Eight hours.

Q. Now, were you working in the mines when they were on a ten-hour shift?

A. Yes, sir.

Q. When they were on a ten hour shift what time did you report for work at the mine? If you were on the day shift, what time did you report for work at the mine?

A. Around six o'clock.

Q. Hand in your check? Did you have to hand in a brass check?

A. Yes, sir.

Q. Has that been true of every mine of the Tennessee Company you worked for, that you handed in a brass check?

A. Yes, sir.

Q. And what time of day—when you were on a ten-hour day shift, what time of day did you light your fuses?

A. Around 4-10.

Q. Now, when you were on an eight hour shift, what time of day,—I am talking about the day shift,—did you check in and leave your brass check at the tally house?

A. Around six o'clock.

Q. And on the eight hour day up before May 1st this year, what time of day did you light your fuses?

A. At 4:10. On the eight hour you said?

Q. On the eight hour shift.

A. 3:10.

Q. What time did you light on the ten hour day?

A. I got confused on that. 3:10 was on the eight hours and 4:10 on the ten hours.

Q. All right. And after you lighted your fuses—

The Court:

When do you start on eight hours?

Mr. Harris:

Six o'clock.

Q. The starting time, as I understand you—

Mr. Burr:
He said he went in the mine at six o'clock.

Q. The starting time when you reported for work was six o'clock both on the eight hour shift and ten hour shift?
A. That is right.
Q. And the present time—

The Court:
Where were you when you reported?

The Witness:
At the tally house.

The Court:
That is when you gave him your brass check?

The Witness:
That is up until this here May 1st went into effect. You could go to checking in a lot of times before six o'clock. We would go in and hang up our numbers,—the white men did. The white men, a lot of them, go in the tally house and hang up their numbers, and especially the head miners.

Q. That was before six o'clock?
A. Yes, sir, but they stopped that after May 1st.
Q. When you were on a ten-hour shift, the man trip started down at what time on the day shift?
A. They would run a safety when the six o'clock whistle blowed, and then around six o'clock—approximately five minutes after, they would run a man trip.
Q. Now, on the eight hour day, what time did the first man trip go?
A. The same way. After May 1st—

Q. We are not worrying about May 1st. Let's not get into May 1st now.

A. All right.

Q. I am talking about the time prior to May 1st.

From October 24, 1938, up to May 1, 1941, in both cases, the last thing you do at the face is to light the fuses and then you get out?

A. Yes, sir.

Q. Now, was there any difference in the length of time it took the company to get you out of the mines when you were on a ten-hour shift, and the length of time it took them to get you out of the mine on an eight hour shift?

A. I don't know of any difference.

Q. Now, has there been any difference as to the speed with which you move from the tally—from the mouth of the mine to the working face since May 1, 1941 and the three years prior to that time?

A. They run the safety drag now before six o'clock, and as soon as a skip load can check in, which will take a minute or a minute and a half, somewhere around that, a minute or two minutes,—as fast as they check in they load the skip.

Q. Do the skips run at the same speed they did before May 1st?

A. If they have speeded up any, I can't tell it.

Q. Now, in your work as head miner from October 24, 1938, to May 1, 1941, did you, before getting on the skip to go down into the mine, check in your men or receive their checks or report to the assistant mine foreman or do anything else before you caught the skip, the man trip going down?

A. Before May 1st?

Q. Yes.

A. When I was at Number 11 I would take the men's numbers sometimes, and sometimes they would hand them in to the assistant mine foreman.

Q. All right. Now, at the other mines, how about it?

A. Well, at Number 8 the Section Foreman don't have nothing to do with checking the men, or rather, at Number 9.

Q. Who checks them in—I believe—

A. It is either—I think the mine foreman—

Mr. Burr:

If he doesn't know—

Q. If you don't know—

A. I am thinking it was the mine foreman at Number 8, and I know the mine foreman checks them in at Number 9.

Q. At Number 9 do the men carry any tools or any implements with them down on the mantrip other than their electric light? Are electric lights used there?

A. No; they have carbide.

Q. Carbide?

A. I don't believe I have seen but one man carrying anything down on the skip on the inside of the skip since I have been there, but I have seen men carrying some stuff down on the bail.

Q. What is the bail?

A. It holds the door of the skip shut. When you pull it up it stands up and lets the door come open.

Q. It makes a kind of trough where you can put tools or anything—

A. No, sir; the man just holds it with his hand. There is no trough on it.

Q. Out at Wenonah Number 9, did the men, during the time you were working there, start the mantrip down or did some officer or representatives of the company start the mantrip down?

A. The skip tender would run the safety drag and then when the—the first man trip, the assistant mine foreman rides. He rides this chair on the back of the skip.

Q. Well, when you get to the man unloading station, how far was it from the man unloading station at Number 9 to the place where you actually drilled while you were out there?

A. I have worked in two places since I have been there.

Q. All right; give each one of them.

A. In the first one I would estimate it around a thousand or maybe 1500 foot.

Q. All right; how—

A. In the place I am in now,—well, it is three or four hundred foot,—five hundred foot—three or four hundred foot closer.

Q. Now, at Wenonah do you use the drills that are operated by compressed air?

A. Yes, sir.

Q. Where do you get your oil?

A. At the tool house; the men does.

Q. Well, where is that tool house?

A. It is about 400 foot from the loading station.

Q. The man unloading station?

A. Yes, sir.

Q. And do they get that as they are on their way from the man unloading station to the heading or stope where you are working?

A. Yes, sir, practically all the time.

Q. What about wedges and hangers or hackhammer steel at Wenonah?

A. You want it how or—

Q. Up to May 1st; I want it—

A. Up to May 1st?

Q. Yes.

A. You would get them at the tool house as you go down.

Q. Where was that?

A. The same place as the oil house.

Q. Underground?

A. Oil house and tool house at the same place.

Q. As you go down?

A. Yes, sir.

Q. You would get them as you go down?

A. Yes, sir.

Q. Did the men carry them in their arms, or would they be hauled up on tram cars, or how?

A. They would carry it in their hands until they—hangers or bars, carry them on their shoulders until they got in the headings. It was against the rules to carry them on your shoulders in the headings.

Q. What was the reason for not carrying them on the shoulders? Aside from the rule, what was the reason?

A. Well, the trolley wire,—they were afraid you might contact it with the trolley wire.

Q. Do you know how many volts that trolley wire carried?

A. No, I don't.

Q. Well, from October, 1938, to May 1, 1941, at both the mines,—all three of the mines you worked at, was that method of getting the things up to the working face substantially the same?

A. Yes, sir.

Q. Now, after the men had finished drilling and had started out of the mine, did they, during those three years from October, 1938, to May 1, 1941, carry any of those same tools back to the tool house with them?

A. No. A hanger is not--when they get through with a hanger, it is broke or bent so it can't be used any more. Maybe the point is broke off and it can't be used any more. The same thing with the wedges. The jackhammer steel—the men were supposed to carry that back and swap it for a sharp one at the tool house. The bars had to be carried back to be sharpened.

Q. Now, in mining—in drilling, what, in your judgment is the air pressure that is needed for efficient operation in the iron ore deposit in this district?

A. Well, it is just according to how the company is wanting ore. If they are wanting lots of ore, the more air they give you the more ore you are going to get, and if your air runs around 80 or 90 pounds, you will get more drilling than when it is around 40 or 50. When all the drills get started in the day, that slows your air down. I have seen it where your drills would hardly rotate, and you would drill only five or six holes to one drill. You see when you have got good air and you are drilling in a heading, I have drilled in this short time we have got now, from 12 to 13 or 14 holes.

Q. Now, what is the difference between development work and narrow work—I mean and stope work?

A. Well, the narrow work—development work is a place you are—in a man way we usually drive them 14 foot and a haulage way varies, owing to the condition your ground is in, from 12 to 14 foot. You might get a little bit over, but they usually drive them around 14 foot, and a heading is drove 20 foot.

Q. Well, can a drill crew with the same kind of drills and mechanical loaders produce more ore in narrow work than it can in the heading or stope or is it the other way around?

A. Oh, a man can't break a third hardly as much ore—he can't break a third as much ore in a 14 foot place as he can in a stope with the same amount of holes.

Q. In other words, the same amount of drilling will produce more ore in the stope than it will in the narrow work?

A. Oh, naturally.

Q. Have you had any conferences with the officials of the Tennessee Company during the time you have been an officer of the company other than the Chicago trip,—an officer of the union,—other than the Chicago trip and the time you signed the contract with Mr. Vance?

A. Yes, sir.

Q. What committees were you on that caused you to have those conferences?

A. Well, I served on the committee called Local Committee, to take it up with the Division Superintendent, grievances, and then I served on the general committee to take up cases when they were not handled satisfactorily with him with the general superintendent, and the committee on negotiating contracts, they used the same general committee.

Q. Did you have discussions with these officers of the Tennessee Company, or did you put everything in writing and have no discussion?

A. You mean the grievances or the contracts?

Q. The contracts. I am not worrying about the grievances.

A. Well, now, we would put it in writing to start with, and naturally we would discuss it with them, and then maybe come with a counter proposal, and sometimes it was just—just oral.

Q. Now, when, so far as you know, was the first time you participated in any discussions with the Tennessee Company asking for pay for what is called in this case portal to portal or collar to collar, or pay other than on a face to face basis? When was the first time, so far as you recall, that discussions betweeen the union and the officers of the Tennessee Company began on that subject?

A. 1934.

Q. And who were those discussions with?

A. The first one was with Mr. Gregg.

Q. Mr. Gregg?

A. The president of the Tennessee Company.

Q. And what did the union ask at that time?

A. We asked for six hours in the first proposal we made to him, and then we—they refused that,—and then we compromised with him on seven hours and travel time one way.

Q. They agreed to put you on a seven hour shift, and pay you traveling time one way, or do you mean you made them an offer of that?

A. We made them an offer of that.

Q. Well, what did they do with that?

A. They didn't accept that.

Q. They didn't accept that?

A. No, sir.

Q. Then, when was the next time that the matter was taken up with them?

A. In 1935.

Q. Who did you take it up with then?

A. We taken it up with Mr. Gregg.

Q. What did the Union ask then?

Mr. Burr:

I would like for Mr. Harris to inquire whether or not what they presented at that time was in writing or not,—

Mr. Harris:

I will.

Mr. Burr:

So I will know whether or not to make my objection.

Q. In 1935, was the union request in writing?

A. It was.

Q. It was?

A. Yes, sir.

Q. And then when was the next time after 1935?.

A. In 1936.

Q. Was that request in writing?

A. It was.

Q. And then when was the next time, the next one?

A. That was the last one.

Q. In 1936, after the strike was over and the men had gone back to work, did you continue to be a member of the union while you were not at work?

A. Yes, sir; I was president right on.

Q. Did you discharge your duties as president right on; I mean you attended—

A. I did.

Q. Now, how about the membership of your union after the incentive plan went into effect? Did it increase or decrease?

A. Oh, it decreased. It got to the place where I didn't have no grievances to take up.

Q. What do you mean—

A. They all turned into the company union.

Q. And how long was it—you didn't have anything to take up; they all turned into the company union?

A. I made a statement they all—practically all.

Q. How long did that condition last?

A. It lasted until 1938 when we went back to work.

Q. During that period, in your union, how did the attendance, in numbers, of men compare at the meeting with what they were before this strike was over?

A. Give me that question again.

Q. Well, I mean your attendance at the meetings prior to the incentive plan, and your attendance at the meetings after the incentive plan, how did it compare?

A. Oh, I would estimate there was 75 or 80 percent more men who was attending the local before the strike than there was attending about four or five months after the strike.

Q. Now, when you said a while ago that you had no grievances during that period of '36 and '37, and up until you went back to work in 1938, did you mean that you had no members to speak or to have grievances for; is that what you meant?

A. I meant we had very few, and the ones we did have were scared to make a grievance.

Q. Oh. How many—as you recollect, how many men were there on the undesirable list?

A. There was close to 200 that was left off, but they didn't all of them file charges against the company to go back to work.

Q. How many of them went back to work; do you know?

A. Around 150. I don't know exactly.

Mr. Harris:

You can take him.

Mr. Burr:

Judge, it is adjourning time now.

The Court:

Well, let's go on.

Mr. Burr:

I would have to split it, Your Honor. I would rather come back earlier, if you will allow me to. I have made a dinner engagement I would like to keep if it is not inconveniencing the Court.

The Court:

I had planned to adjourn at 12:15.

Mr. Burr:

Well, we can come back fifteen minutes earlier.

The Court:

We will adjourn now until 1:30.

(Whereupon, at 12:00 o'clock M., July 25, 1941, a recess was had until 1:30 P. M. of the same day.)

After Recess, 1:30 P. M.

2597 CHARLEY J. McDANIEL thereupon resumed the stand, and testified further as follows:

The Court:
All right, Mr. Burr.

Cross Examination.

(By Mr. Burr):

Q. Mr. McDaniel, I believe you have been working for the Tennessee Company off and on pretty well continuously since June, 1923; was that the date?

A. Yes, sir.

Q. And you have worked at the various jobs that you have told us about—

A. Yes, sir.

Q. Over that period of time?

A. Yes, sir.

Q. And I believe you said that when the union was organized and you joined it in August, 1932, I think you said, you were skip tender?

A. Yes, sir.

Q. Is that right?

A. Yes, sir, that is what I was.

Q. And when—just before the strike of 1936 you were a section foreman, I believe you said?

A. Yes, sir.

Q. And then after you came back in 1938, you came back as a head miner?

A. Yes, sir.

Q. Which is the same job under the incentive plan that the section foreman used to be under the old system?

A. Yes, sir.

Q. Since 1938 you have been at Wenonah all the time, have you?

A. No, sir.

Q. You were down at Ishkooda?

A. I was at Ishkooda a while.

Q. At Ishkooda a while?

A. Yes, sir.

Q. You have been at Wenonah most of the time?

A. No, sir. I was at Ishkooda most of the time.

Q. The conditions you told Mr. Harris about this morning, the method of handling the skip and so forth,—

A. Yes, sir.

Q. —and working,—

A. Yes, sir.

Q. —so far as you know, they were about the same at most of the places?

A. Yes, sir.

Q. Now, I want to ask you first about the ten hour day and eight hour day. They went on the eight hour day in 1933?

A. Yes, sir.

Q. Previous to that time—just previous to that time they were on the ten hour day except for a short time they were on nine hours?

A. I don't remember the nine hours.

Q. Well, I will confine my questions to ten hours.

A. Yes, sir.

(By Mr. Burr):

Q. Now, you recall testifying when Mr. Pressman was here and had the hearing here in this same room?

A. Yes, sir.

Q. I will ask you if Mr. Pressman didn't ask you these questions, and I will ask you if you didn't make these answers, and I will ask you if they are not correct now: I am not asking this for impeachment, but just to save time, because I think it is the same now.

"Question: Now, as far as the company men were concerned, how were they paid back about 1923?"

And you answered that, "They were paid ten hours per shift; started at 6:30 and ended at 4:30.

"Question: You say starting at 6:30. Did they go down or did the drag go down any earlier or any later than they do now?

"Answer: They start at the same time; they started at the same time then as they do now."

That is correct, isn't it? The drag started about the same time?

A. The drag started at six o'clock instead of six thirty.

Q. You said here 6:30.

A. If I am not mistaken, he was asking me as to the time our work started.

Q. That is what I am asking you, now; the time you were getting paid for there, didn't it start at 6:30 and end at 4:30?

A. That is the way it was.

Q. In other words, you didn't get paid for traveling time then? You just got paid for the time you spent at work, not counting the traveling time?

A. We didn't get paid for the traveling time that I know of, except we were in there from the time we go in until we come back out. I don't know whether you would call it traveling time or not. I don't, absolutely.

Q. Well, I will ask you this: The trip went in about six o'cock just like it did up to May 1, 1941?

A. That is right.

Q. The skip generally went down a few minutes after six o'clock; they brought it out of the side track and made the test run like you testified?

A. That is right.

Q. And the men loaded then and went to their working places and walked and worked and came back and caught the trip out; the work time started at 6:30 in those days and ended at 4:30; is that right?

A. That is what I understood.

Q. That is what you understood?

A. Yes, sir.

Q. Under the eight hours, when they went to eight hours in 1933, they went down the same time, about 6:05, and your blasting time was at 3:10; under those conditions the shooting was at 3:10?

A. Yes, that is right.

Q. Then, after that time the men caught the skip and went out?

A. Yes, sir.

Q. And the work day, what you were paid for, now, I am talking about, ran from 6:45 in the morning until 3:15 in the afternoon?

A. That is on eight hours?

Q. Yes, sir.

A. That is right.

Q. And under the eight hours you had thirty minutes off for lunch?

A. Yes, sir.

Q. Under the ten hours you took lunch on your own time?

A. I guess you would call it your own time. One man ate at the time and run the job.

Q. I mean you took it on the company's time?

A. I guess it was the company's time. We didn't have no regular stopping time.

Q. You just ate when you could during the work period?

A. Yes, sir.

Q. Now, then, under the eight hour period this is true, is it not, that you testified when you testified here before, just reading your words.

"Work at the face actually starts at 6:45 when the company turns the power on. The juice is cut off at 3:10 P. M., as a signal to us to get ready to blast. At 3:15 the shift ends, and the first man trip starts up. The last men reach the surface about ten minutes to four, maybe a little later than that."

Now, is that about the way it was under the eight hour system?

A. That is right.

Q. That is right. Now, to get back to the time—about your blasting time, Mr. Pressman asked you these questions and you made these answers—

The Court:
Mr. Burr,—

Mr. Burr:
Yes, sir.

The Court:
I am not going into that. You cross examine the witness according to his testimony.

Mr. Burr:
All right, sir. I thought that was the quickest way to do it.

The Court:
You say you don't introduce it for the purpose of impeachment?

Mr. Burr:
No, sir. I do it to get through quicker.

The Court:
I think it will take up longer.

Mr. Burr:
I don't think it will. I think I have gotten through with those two things pretty quickly.

The Court:
If it will expedite it—

Mr. Burr:
I think it will.

The Court:
All right; go ahead.

Mr. Burr:
I can do it the other way, if you wish.

The Court:
I was just thinking it will take longer.

Mr. Burr:
No, sir, I don't think so. I will ask it this way, though.

Q. Mr. McDaniel, when you went on the eight hour day, when did your blasting begin?
A. When we were on the eight hours?
Q. Yes.
A. At 4:10.
Q. Now, when you were on the eight hour day—
A. Just a minute. When we went on eight hours?
Q. While you were on eight hours.
A. Well, we blasted at 3:10 while we were on eight hours.
Q. I didn't—
A. I had ten hours in mind.
Q. I didn't catch you saying it myself or I would have corrected you myself.

It was at 3:10,—you blasted at 3:10 on the eight hour day?

A. That is right.

Q. When you were on the eight hour day, what time were you supposed to start work at your working place or working face, whatever you called it?

A. When the lights went on?

Q. That was a quarter to seven?

A. Yes, sir.

Q. You determined the time to start to work by when the generator went on; is that the way you determined it?

A. That is the time we started producing.

Q. That is what I mean. And the juice went on at what time?

A. 6:45.

Q. 6:45?

A. Yes, sir.

Q. Now, the men who catch the first drag in, do they regularly or automatically get the first drag out?

A. No, sir.

Q. Well, do they—there is no specified drag you ride in either going in or coming out?

A. No, sir.

Q. Catch the one you get on?

A. The first men there catch the first one coming out.

Q. Catch the first one coming out?

A. The men at the loading station catch the first skip unless it is a head miner. Sometimes they let them get by. They have three lines of men at the Number 9 loading station.

Q. Don't the head miners and drill runners have to stay the longest in the places to help shoot?

A. Yes, sir. The drill helpers do stay there in most of the places.

Q. About how many of your crew are involved in the shooting?

A. There are only two,—it is the same amount. When there are two drills—they don't keep the helper there when there are two drills. When there is one drill the helper has to stay there. I am talking about my place.

Q. At your place—

A. I have only one drill man. The drill helper has to stay there.

Q. I am talking about your place; the drill man and the helper—

A. Not all the time. Sometimes I have two drill men.

Q. Sometimes you and the drill man stay to do the shooting?

A. Yes, sir.

Q. And the others leave? They are through before you shoot?

A. After we holler for the drill men to light, the other men leave the heading now.

Q. That is what I say.

A. Yes, sir.

Q. So they get down to the hoodlum always before you do?

A. Yes, sir.

Q. Now, as I understood you, you said when you were at Number 11,—when you worked there, sometimes you would deposit the checks of the men in your crew, some of them, for them?

A. That is right.

Q. But you said at eight and nine you had nothing to do with depositing the men's checks?

A. Yes, sir.

Q. Is that right?

A. That is right.

Q. Each man deposits his own check?

A. Yes, sir.

Q. And that has been customary all the time you are talking about?

A. Since I have been back the last few months.

Q. Eight and nine—I am not talking about the last few months. I am talking about prior to May 1, 1941.

A. That is right.

Q. That is the only period I am asking you about.

You say at Number 9 you have only seen one man carrying anything down in the skip?

A. That is all I remember. I saw one man carrying some jackhammer steel.

Q. Carrying some jackhammer steel?

A. Yes, sir.

Q. Do you know when that was?

A. I don't remember exactly, no, sir.

Q. Just your best—

A. It has been in the last two or three months.

Q. You say occasionally you have seen some of the men set something on the bail—that is a little place on the front of the skip or rear of the skip?

A. The bail is on the front.

Q. But you have seen occasionally some of the men holding in their hand—What kind of supplies was that? Was it some hammer—hammer steel?

A. I have seen the electricians carry down some stuff and I have seen—

Q. Wait a minute. That is an underground man?

A. Underground electrician.

Q. He is not a member of a producing crew?

A. Not a producing crew man.

(By Mr Burr):

Q. What have you seen him carrying down?

A: I have seen him carrying his electrician's—

The Court:

I don't think that is material.

Mr. Burr:

All right.

Q. Is that what you were talking about when you told Mr. Harris you saw some of them set something on the bail and carry something on the bail sometime?

A. Yes, sir, that is right.

Q. Now, the oil house is right at the tool house, I believe you said?

A. Just joining it.

Q. Just joining it?

A. Yes, sir.

Q. Now, did the men over there at Wenonah get the oil out of the oil drums; is that what they have there?

A. Yes, sir, they have drums, light oil, and one is the drag oil,—black oil.

Q. Are they in the same place?

A. Same place.

Q. Whenever oil is needed they get it in gallon cans?

A. Some few places have gallon cans. Most of the places have a quart or half gallon can.

Q. What did your crowd use?

A. At the present time—

Q. Not now.

A. Practically all the time we have had a quart or half gallon can.

Q. A quart of half gallon can?

A. I won't say which one. It is between the two sizes, I am thinking.

Q. You say the men would stop at the pump or oil drum and get their cans filled?

A. On the way to work?

Q. Yes, sir.

A. Yes, sir.

Q. Did they bring their can up on the shift before?

A. The shift before—well, the opposite shift usually brings it up and leaves it there.

Q. Does he hide it or leave it there with the men?

A. I have seen them hide them. I have seen them—different mine foremen work different ways.

Q. Your men have brought them and sometimes have left them there, and sometimes hide them where they would be sure to get them the next morning?

A. I have seen them do that.

Q. The wedges and hangers and jackhammer steel, that is the other three articles you have seen carried on the way up to the working places the next morning?

A. Way up—it is the way down. It is the way down.

Q. To the working place is what I am talking about.

A. Yes, sir.

Q. Did you ever have to do that yourself or did your men do it?

A. If I could see my men they would do it, but I have picked them up myself.

Q. Occasionally?

A. Occasionally.

Q. But very seldom?

A. But very seldom. I put that on the men.

Q. You tell them to do it?

A. Yes, sir.

Q. You put it on them?

A. Yes, sir.

Q. You are, of course, the boss of them?

A. That is right.

Q. When you get the in the heading you give them directions and supervise everything they do, either the drill part of the crew or the loading part of the crew?

A. That is right.

Q. Neither the mine foreman or assistant mine foreman go up in the heading with you when you go in in the mornings?

A. No, not in the morning. They come in during the day.

Q. How often do they come in, about once a day? How often do they come in during the day?

A. At the present time?

Q. Prior to May 1, 1941.

A. You want at Number 11?

Q. Any mine you work in.

A. At Number 11 mine, I was in 63, and the assistant mine foreman would come through one morning and the mine foreman the next. He would usually get in my heading—I was the second place from the top, and he would usually get in my heading usually around eight or nine o'clock.

Q. All right.

A. At Number 9—Number 8, I was at one of the furtherest places away, and I don't know what time he would get in my place,—sometimes right about noon. At the present time, Mr. Scott—

Q. I don't care anything about the present time.

A. We moved up in another heading.

The Court:

Go ahead.

Q. At all times they came up there, you knew that during the day one of them would be there after the crew had gone to work?

A. Yes, sir.

Q. Whatever time they came, once a day they came?

A. Yes, sir.

Q. When they were not there you were the head man there?

A. Yes, sir.

Q. You gave instructions to your men?

A. Yes, sir.

Q. If you ran out of oil or material, would you send back to the oil house or the tool house to get some and bring it back?

A. Yes, sir. If the other crew hadn't carried the oil back I would send back,—had to do it.

Q. And—

A. I say send back,—if the drill man needed oil, he doesn't have to ask the head miner. I can send his drill helper.

Q. That is understood?

A. Yes, sir.

Q. And, if you need wedges or hangers or jackhammer steel, you can send back for it?

A. We can send back for it, but that won't happen once in six months.

Q. But you can do it?

A. We can do it.

Q. The men pick them up in the morning—that is self-evident. There is no use asking that question.

A. One thing I didn't give you on that. At this time, but it is different from what it was,—

Q. I am not interested in what it is now.

The Court:

We are not going into what it is now.

The Witness:

I am talking about,—

The Court:

From May 1, 1941, we are not going into it.

The Witness:

About two months before May 1st, we changed.

Q. Well, if there was anything you wanted to say—

A. I want to say what you all want me to say. I don't care what I say.

Q. Well, if there was anything changed—

A. About March, I believe it was, or April, they stopped this tool house from opening. The mine foreman gave orders for not opening the tool house for about a couple of months before we went on this collar to collar, and about two months we would ride the drag—the mine foreman at my place gave orders not to open this tool house about two months before we went on this collar to collar, and then after we went on this collar to collar, they started opening it again.

The Court:

When would it be opened?

The Witness:

After the first drag—

The Court:

I mean after he gave orders for it not to be opened, when was it opened?

The Witness:

6:45; after the juice came on. We would have to send back for hangers and wedges.

Q. I don't know whether I understand that or not. Let me see if I do. You mean about in March they wouldn't let the tool box be unlocked until 6:45?

A. That is right; about March or April.

Q. So, from March until they changed in May or April,—

A. May 1st.

Q. Until May 1st, they locked the tool box so the men couldn't get any of these supplies before 6:45?

A. That is right.

Q. So that the—when that happened then you would have to send the men back when you ran out after 6:45 or let them wait there untl 6:45 to get it?

A. I wouldn't let a man wait there.

Q. You would send them back?

A. I would send them back if I had to have something.

Q. After they locked the tool box you would send them back during the shift if you needed anything?

A. Yes, sir.

Q. What you don't need—how much oil do you use a day in your place, or did you, prior to this time?

A. They usually use a can full a shift, fill their lubricator once. Sometimes, too, you have a lubricator that is out of fix,—too much oil going through. That will use more oil. Of course, if they have a gallon can, they won't hardly use it during a shift.

Q. Use about a gallon can on two shifts?

A. Something like that.

Q. So, where you have a gallon can, only one man would pick up the oil?

A. Yes, sir.

Q. The same thing is true of the jackhammer steel and wedges?

A. Maybe one man would get hangers and wedges and bars,—one man would get one bar.

Q. A bar wouldn't be sharpened but about once every two weeks?

A. Something like that. It is according to what kind of ground you are in.

Q. The wedges and jackhammer steel,—about how often do you get the jackhammer steel?

A. A man needs jackhammer steel after drilling at least two shifts. Sometimes we don't get them that often.

Q. When you get—

A. They require us to water our holes. You can't drill and water a hole. The jackhammer will not rotate.

Q. So you would need steel every two shifts?

A. Yes, sir.

Q. Of course, you didn't need a jackhammer so frequently?

A. A jackhammer is liable to last a year or maybe longer.

Q. That is kept in the place?

A. That is kept in the place.

Q. The hangers, about how often would you need hangers?

A. Well, it is just according to the kind of hangers you would get. At Number 11 they didn't make nothing like as good hangers as they did at Wenonah. At Number 11 they used a third more or twice as many at Number 11 as we did at Wenonah—

Q. Well, at Wenonah—

A. I judge they would get—I don't hardly know. It is all owing to the men you have on a block.

Q. I know.

A. You have a sorry man on a block, and he will ruin it, maybe, in a few minutes. If you have got a good man—

Q. I am just trying to get an average used by your crew?

A. About two hangers a week; I wouldn't be positive.

Q. The wedges were about as big as your hand?

A. No, they weren't as wide as three fingers; about as wide as two fingers, and thin.

Q. They also depended on how the men used them, whether they were wasteful with them or not?

A. Yes, yes.

Q. Of course, being the head miner of the producing crew, you tried to keep a supply of these light tools there if you could?

A. Yes, we would keep them there if we could. Sometimes we couldn't get them for the job.

Q. If you couldn't get them, if they were not there for the job, you would see the mine foreman and have them sent to you?

A. We would ask for what we wanted.

Q. Then he would issue a requisition and have them sent to you?

A. He would have them sent to the mine and we would get them.

Q. He would send them to you?

A. Get them at the tool house, get dope for the drills, hammer handles, pick handles, sometimes a hose pipe the men would carry it down. I don't know how many different things we handled that way.

Q. You handled those things that way and sometimes you would ask for them and they would be sent down during the shift?

A. Yes, sir.

Q. Now, I want to ask you a few questions about your experience on these grievance committees you told Mr. Harris about.

A. Yes, sir.

Q. Now, first, as I understand, you, first, in addition to being president of the union for the time you have told us, you were a member of the local grievance committee. That is the one that takes up the matters with the local superintendent?

A. Yes, sir.

Q. Then you also were a member of the general committee; that takes up things the local management can't settle, and also matters of negotiation of contracts and everything that applies in a general way to the mines?

A. Yes, sir.

Q. You were on these committees since 1933?

A. I was off a little while resting in 1938, but I have sat in all the negotiations about contracts we have had.

Q. I believe the first one you sat in on in which you made any suggestions to the company was in 1934. Were you present at the one in 1933 in Mr. Gregg's office when a committee of seven called on the president to present a number of requests? Were you on that committee or not?

A. I don't remember it.

Q. Can you look at Exhibit Number 5—

A. We met Mr. Gregg in 1933, but I don't remember—

Q. Look at Tennessee Exhibit Number 5 and probably that will refresh your recollection as to whether or not you were present when those requests were made. Look at it and see if you were present when that happened.

A. I read mighty slow.

Q. Would you rather I would read it to you?

A. I will read it, but it will be slow.

Q. When you have read enough to answer the question, you can answer it, or read it all through, if necessary.

A. I don't remember.

Q. You don't remember that one?

A. No, sir.

Q. All right. This one here, Tennessee Company's Exhibit 6, is the one in 1934. I will ask you if this is the one you referred to as being the one in 1934 signed by M. C. Anderson and yourself?

A. I don't know, sir. I signed different ones. Let me see.

Mr. Harris:
Said what?

Mr. Burr:
He said he signed different ones and didn't know. Let him look at it and see if that is the one.

A. It is signed M. C. Anderson, C. J. McDaniel, and Jones.

Q. Well, it is dated in 1934?

A. 1934? Let me see it. I am positive I was on that in 1934.

Q. Was it Mr. Perry or Mr. Gregg that handled this one; do you recall?

A. No,—seems to me Mr. Perry taken over then.

Q. Mr. Perry in 1934?

A. I believe he had.

Q. Now, do you recall what the discussion was? Was the discussion in reference to this paper that you presented at that time?

A. Yes, sir.

Q. Well, now, do you remember that anybody said a word—

A. You said that paper. I am not positive that is the paper we presented, but we presented him a paper.

Q. Have you got any other papers you kept copies of?

A. No, sir.

Q. Have you kept them at all? Have you got the copies of the one you presented?

A. About all the papers I received was given to the Labor Board.

Q. I am not talking about those.

A. I am talking about copies we had.

Q. Have you got any at all?

A. I am not the president now.

Q. You didn't keep copies, I don't suppose?

A. Not of those, of the meetings up there, I didn't.

Q. Well, do you remember this paper I have just shown you? Do you remember it?

A. I remember presenting a contract to them in '34—

Q. Do you remember—

A. —and sitting there discussing the contract with the company.

Q. With Mr. Perry?

A. Yes, sir.

Q. Do you remember what was in that contract?

A. Well, I remember some of it. I don't know whether I remember it or not.

Q. What was in it?

A. I remember in the first contract we presented to the company we asked for six hours a day.

Q. When was that presented?

A. In 1934.

Q. To Mr. Perry?

A. To Mr. Perry or Mr. Gregg, whichever one was the manager—the president at that time.

Q. You asked for a six hour day?

A. Yes, sir.

Q. What else? The check off?

A. Yes, sir.

Q. What else in that same contract?

A. We asked for the check-off system.

Q. All right.

A. And I think it was ten cents raise. I am not positive,—I think it was ten cents raise.

Q. Did you ask for anything else?

A. We asked for Union recognition, I know.

Q. All right, sir. Is that all that was discussed that you can recall at that particular time?

A. At this particular time that is all that I would remember.

Q. When was the next one, in 1936? In 1935? That was 1934.

A. The next one was in '35.

Q. Sir?

A. The next one was in '35.

Q. I will ask you, please, sr. to look at Tennessee Exhibit 9—rather, 9-A,—look at that and state whether or not that is the one you presented in 1935, and presented it to Mr. Ball? You can look at the minutes if you wish to. Let's see if you were there. Yes, Mr. Charley McDaniel. Read the minutes, Mr. McDaniel, and then glance at that and see if that is the one you presented in 1935.

The Court:

Are you going to ask him to examine all your past minutes and everything?

Mr. Burr:

I am going to ask him if these are all he knows about. Mr. Harris—

The Court:
I think you had better let him get off and examine them and go on with another witness.

Mr. Burr:
I will be glad to do that.
You can come down.

The Court:
We will be all afternoon.

Mr. Burr:
Your Honor, I am certainly entitled to cross examine on what was brought out.

The Court:
You have a right to do that. Give him all you have got.

Mr. Harris, we will finish him when he looks those over.

Mr. Burr:
This will conclude my cross examination of him after he looks these over.

The Court:
Will you take up another witness?

Mr. Harris:
May I inquire—the reason I make this inquiry is to determine who I shall call as a witness,—How late does Your Honor intend to run this afternoon?

The Court:
Oh, 4:30 or 5:00.

Mr. Harris:
Well, I will take Ward Jefferson.

2621 WARD JEFFERSON (C), being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Court:
What is your name?

The Witness:
Ward Jefferson.

The Court:
How do you spell it?

The Witness:
W-a-r-d.

Mr. Burr:
Will you tell me what mine he is from?

(By Mr. Harris):
Q. What mine are you from, Ward?
A. Number 8 Wenonah.
Q. How old are you, Ward?
A. 43 years old.
Q. Where were you born?
A. Lowndes County, Alabama.

Mr. Burr:
What is his name?

Q. W-a-r-d J-e-f-f-e-r-s-o-n; is that right?
A. Yes, sir.

Q. How far did you get in school?

A. Through the eighth grade.

Q. How long have you been working for the Tennessee Company?

A. Between 23 and 24 years.

Q. What mines did you work at?

A. I worked at all four of them.

Q. You mean at Wenonah?

A. Yes, sir.

Q. Mines 7, 8, 9 and 10?

A. Yes, sir.

Q. For the period October 24, 1938, up to May 1, 1941, where were you working?

A. I was working at Number 9 for a short period.

Q. Well, during the last three years where have you been working?

A. Number 9 and Number 9.

Q. Which one was it you worked at for a short period? I didn't—

A. Number 9.

Q. Most of the time was at Number 8?

A. Yes, sir.

Q. Now, when you were working at Number 8 during the past three years, was the company running Number 8 on a five day week?

A. Yes, sir.

Q. What was the nature of the work you did at Number 8, Ward?

A. Head miner.

Q. How many men did you have under you from October, 1938, on up until May 1st?

A. One time six men and one time seven, with myself.

Q. You have mechanical loaders at Number 8?

A. Yes, sir.

Q. From October, '38, to May 1, '41, what time did you report for work on the day shift?

A. Fifteen minutes to six,—to six o'clock.

Q. Did you have brass checks—

A. Yes, sir.

Q. —at Wenonah Number 8?

A. Yes, sir.

Q. Did you turn them in at the tally house?

A. Yes, sir.

Q. Then did you take those checks of the men in your crew or did each man hand in his own check?

A. Each man handed in his own check number.

Q. And after handing in your check number and before getting in the man skip, did you talk to the mine foreman or assistant mine foreman?

A. Yes, sir.

Q. Did either one of them or not give you orders or directions or instructions between the time you checked in and the time you caught your man trip?

A. They did.

Q. Was that a usual and ordinary thing, or unusual thing?

A. Well, it was pretty usual.

Q. Well, in going down on the mantrip at Wenonah Number 8, did you have anything to do with how the man skips would run, the trips would run?

A. No, sir.

Q. Who did the directing, if any directions were given, as to when the first man trip should go down?

A. The mine foreman or assistant mine foreman.

Q. Did the Tennessee Company have anybody to do the work of a skip tender at Wenonah Number 8?

A. They did.

Q. Did the skip tender ride the first skip down there or the second trip down there, or which trip?

A. Ride the first one.

Q. And in going down at Wenonah Number 8, did the men have any—did they stand up erect or did they crouch or bend over?

A. No, sir, they didn't stand up correct.

Q. What?

A. Didn't stand up correct.

Q. How did the men—what position did they get in in going down on the man trip?

A. How did they get in?

Q. I mean what position did they take after they got in?

A. Oh. They would be bending over sometimes, and on their knees sometimes.

Q. And at Wenonah Number 8, about how many men did it take to fill a man trip?

A. From 30 to 32.

Q. Did the men have anything to do with the operation of that skip after it started moving until it got to the man unloading station?

A. No, sir.

Q. Then at Number 8 after you got off at the man unloading station, tell whether or not you or the men in your crew picked up anything at any place about the man unloading station on your way to the face at the beginning of your shift?

A. You mean at the man unloading station?

Q. What?

A. You mean after you get off the skip at the man unloading station?

Q. What is that?

A You mean after you get off the skip at the man unloading station?

Q. That is right.

A. Yes, sir, we would pick up the time sheet and sometimes the jackhammer steel at the unloading station—

Mr. Burr:
Not so fast.

The Court:
What is that?

The Witness:

All the time, every shift, I would have to pick up a time sheet, a book I keep the time in, and sometimes, I would have a jackhammer bit we used, and some of my men or me would have to carry to the working place.

Q. Would there be anything you would take from the oil station or tool house at the man loading station up to the face?

A. Yes, sir, at the tool house.

Q. What would you get?

A. We would get jackhammer steel, bars, water fittings and wedges and hangers and oil and pipe.

Q. When you finished blasting and started out of the mine, did you or your men carry anything from the face?

A. Yes, sir.

Q. What did you carry out?

A. Oil can back to the tool house.

Q. Now, when you came out on your way out of the mine and you got to the hoodlum, was there anybody there to tell the men how to get on the skip or who to get on?

A. Yes, sir.

Q. Who was that?

A. The assistant mine foreman or foreman.

Q. Did the—did anybody give a signal for the skip to pull out after it was loaded?

A. Yes, sir.

Q. Who would give that signal?

A. The skip tender.

Q. And after you got to the top station, you and your men on the way out, as you were getting to the end of your shift, did you go anywhere to do anything or get anything after you got to the top?

A. No, sir.

Q. Now, what about your check that you put in at the beginning of the shift?

A. We had to check them out.

Q. You picked up your checks at the end of the shift?

A. Yes, sir.

Q. Now, since May 1, 1941, did you have the same check system there?

A. Yes, sir.

Q. You turned in a check?

A. Yes, sir.

Q. At the beginning of a shift?

A. Yes, sir.

Q. And picked up the check at the end of the shift?

A. Yes, sir.

Q. Did they have a time clock?

A. No, sir.

Q. For you to punch?

A. No, sir.

Mr. Harris:

Will Your Honor indulge me just a second?

The Court:

Yes, sir.

Q. Now, the skip that the men rode down in at the Wenonah Number 8, did that go on level ground?

A. No, sir.

Q. Did it go on an incline that was smooth, or was the incline itself up and down?

A. Up and down.

Q. And as they rode down in that skip, what effect did going up and down on these inclines have on the way the men were standing or their position in the skip?

A. Kind of jar them or shake them, I should say.

Q. Have you any idea or judgment as to how fast that skip traveled?

A. Well, if I was going to judge, I would say about twenty or twenty-five miles an hour, as near as my judgment can tell.

Q. How high, in your judgment, was the roof above the top of that manskip in the main slope? About how high would it average?

A. From six to twelve inches in places; some might be a little taller.

Q. I will ask you to look at this picture and see if that is the same kind of man skip you used at Wenonah?

A. Yes, sir.

Mr. Harris:

That is the same one that has been introduced.

Mr. Burr:

Yes, sir.

Q. Now, after getting off the man skip at the hoodlum in Number 8 going up to the face where the drilling was done by you and your crew, how far, in your judgment, did you have to walk at Wenonah Number 8?

A. I should say about a mile.

Q. Now, was walking at Number 8 in places—I mean could you walk erect all the way from the time you got off at the hoodlum until you got up to the drilling place?

A. No, sir.

Q. Was the walking level?

A. No, sir.

Q. Well, just describe to the Court what kind of walkways and the condition of the walkways that you and your crew traveled from the hoodlum to the drilling place?

A. It was rough. In the manway—that is what we traveled,—there were rocks two or three feet, and then filled in. And then driving the man way, they would leave bumps in there, some two to three feet. We would have to step over them and then up and down, some two to three feet.

Q. How about the roof in those man ways?

A. In places you would have to lower your head in going under to keep from bumping your head.

Q. How about climbing up hill and down hill going from the hoodlum to the drilling place?

A. That is pretty fine in places.

Q. It is what?

A. Pretty fine in places; some places you have to bow your head.

Q. Do you have to climb up any hills going from the hoodlum to the drilling place?

A. No, sir; it is going down hill.

Q. It is going down hill?

A. Yes, sir.

Q. When you lit your fuses and started out, you are climbing up hill that mile?

A. Yes, sir, all the way.

Q. Now, Ward, from October, 1938, up until May 1st, what time did the lights blink on at the beginning of a shift?

A. What do you mean? For coming on?

Q. What time did the juice come on at the beginning of the shift?

A. The juice would be on when I would get to my working place.

Q. What?

A. The juice would be on when I would get to my working place.

Q. You say you reported for work at six?

A. Yes, sir.

Q. And by the time you had ridden the man skip and walked that mile the juice would be on at that place?

A. That is right.

Q. Were you working at Number 8 when they were on a ten-hour shift?

A. No, sir.

Q. Were you working for the Tennessee Company at all when they were on a ten hour shift?

A. Yes, sir.

Q. Where were you working?

A. Number 7 mine.

Q. What time did you report for work then?

A. From 5—five minutes to six, until six o'clock.

Q. What time did you blast on the ten hour shift?

A. All the way from 4:10 to 4:20.

Q. And on the eight hour shift what time did you blast?

A. From 3:10 to 3:15.

Mr. Harris:
You can take him.

Cross Examination.

(By Mr. Burr):

Q. You say you have been working out there about 23 years?

A. Between 22 and 23 years.

Q. Been riding on the same kind of skips all that time?

A. Yes, sir.

Q. Been walking on the same sort of walk ways all that time?

A. No, sir.

Q. Been getting better the last several years, haven't they?

A. Not at the mine I work in.

Q. What?

A. Not at the mine I work in now. I work at a different mine.

Q. Have they gotten better or worse in the one you are working in?

A. Getting worse.

Q. What mine is that?

A. Number 8 Wenonah.

Q. What place are you working in at Number 8?

A. 143.

Q. Is that 143 right or left?

A. No, sir.

Q. Just 143?

A. Yes, sir.

Q. How long have you been working at 143?

A. Around seven months.

Q. How do you get to 143? You get off at the man-loading station and what haulage way do you use?

A. I walk the right manway.

Q. Walk the right manway?

A. Yes, sir.

Q. Any tracks on it or not?

A. Any tracks?

Q. Yes, sir.

A. Not on this side of the powder house.

Q. On the other side of the powder house?

A. Yes, sir.

Q. Do they use that to haul the ore down?

A. On the other side of the powder house.

Q. To the rotary dump?

A. Yes, sir.

Q. Was it electrically lighted?

A. Yes, sir.

Q. Was the main slope electrically lighted?

A. Yes, sir.

Q. Were you section foreman when the incentive plan came in?

A. No, sir.

Q. What were you doing?

A. Drill runner.

Q. What were you when the strike came on?

A. Drill runner.

Q. When you went back to work you went back to drilling?

A. Yes, sir.

Q. And have been made a head miner since?

A. Yes, sir.

Q. How long have you been a head miner?

A. A little better than two years.

Q. You say you have had six men sometimes and seven sometimes?

A. Yes, sir.

Q. Are your men white or colored?

A. All colored.

Q. You are the head man in your crew?

A. Yes, sir.

Q. When you go down in the skip—you say you report for work at six o'clock?

A. Yes, sir.

Q. That is when you turn your check in?

A. Yes, sir, five minutes to six and six o'clock.

Q. That is when you turn your check in?

A. Yes, sir, six o'clock.

Q. That is what you are talking about?

A. Yes, sir.

Q. Do you always get there for the first drag?

A. Yes, sir.

Q. You never do catch anything but the first drag?

A. Catch the second drag.

Q. You catch the second drag?

A. Yes, sir.

Q. The first drag leaves about 6:05 or 6:10?

A. About two or three minutes after six.

Q. The second drag leaves about seven or eight minutes after that?

A. Something like that.

Q. So you say you leave the top at what time?

A. About 6:10.

Q. And you get down—I understood you to tell Mr. Harris—how long does it take you to get down to your man loading station?

A. Well, about 6:12 or 6:14, something like that.

Q. You mean it takes two minutes to go down?

A. Two or three minutes.

Q. And it takes how long to get to your working place?

A. About fifteen or twenty minutes.

Q. About fifteen or twenty minutes?

A. Yes, sir.

Q. You spoke of getting to your working place after the juice is on?

A. Sir?

Q. You spoke of getting to your working place after the juice is on; that is what you just said?

A. The juice is on before I get there.

Q. The juice is on when you get there?

A. Yes, sir.

Q. You know as head miner it is your first job when you get there to see your place is safe?

A. Yes, sir.

Q. So your men can't go to work up at the face until you get there, can they?

A. No, sir.

Q. So, if the juice goes on at 6:45, we will say, what time do you get up there?

A. I get up there sometimes about ten minutes—

Q. Say ten minutes of seven?

A. Something like that.

Q. Sometimes as late as seven?

A. Well, on conditions.

Q. I don't care about the on conditions. Sometimes you get there as late as seven?

A. No, sir.

Q. Do you get there five minutes of seven?

A. It haven't happened yet.

Q. You get there ten minutes of seven?

A. Twelve to ten minutes of seven.

Q. Then you and the drill helper any anybody else that you call on go up to make the place safe?

A. Yes, sir.

Q. Then you and your drill helper go to boring holes in the face to shoot down the ore, and the other people begin making ready the mechanical loader, putting the skidder block up and so forth?

A. Yes, sir.

Q. That is the way you work?

A. Yes, sir.

Q. And you work on then until in the afternoon when you get ready to shoot?

A. Yes, sir.

Q. You have a regular time for shooting?

A. Yes, sir.

Q. You shoot, about all of you, at a regular time; you shoot when the warning signal is given about 3:10?

A. About 3:10 or 3:15 when I shoot.

Q. The warning signal is given at 3:10?

A. That is the warning signal.

Q. And you shoot when the warning signal is given?

A. Yes, sir.

Q. After the warning signal?

A. Yes, sir.

Q. Who do you keep there with you to help you?

A. The drill man and drill helper.

Q. The rest of them go down to the hoodlum?

A. Yes, sir.

Q. When do they leave?

A. When the lights wink.

Q. When does the lights wink?

A. At 3:10.

Q. They leave at 3:10?

A. Yes, sir.

Q. The only work they do from 3:10 on, if you call it work,—we will call it that for the purpose of this question,—one of them carries an oil can?

A. Yes, sir.

Q. That is an empty oil can?

A. Yes, sir.

Q. He takes it down and leaves it and picks it up the next morning when he comes back?

A. Yes, sir.

Q. Does that oil last two shifts?

A. Operating two drills it will sometimes give out in a day.

Q. If it gives out you send down and get some oil?

A. Yes, sir.

Q. You can send whenever you please?

A. Yes, sir.

Q. You are the boss in that particular place?

A. Yes, sir.

Q. If you need drill steel or a quarry bar or jackhammer steel or wedges or hangers or anything else, you can send the men down to the tool house to get them?

A. Yes, sir.

Q. But you found it easier to pick up these light tools in the morning?

Mr. Harris:

I object to that.

The Court:

Overruled.

Q. You have found it easier to pick them up in the morning than to send the men back after them?

A. The can?

Q. Yes, sir, and the jackhammer steel and wedges and hangers?

A. In some cases.

Q. In some cases?

A. Sometimes the can don't be there.

Q. What is that?

A. Sometimes somebody have all the cans.

Q. If you need the wedges it is easier to pick them up in the morning?

A. We don't never send back for no wedges.

Q. You don't ever send back for wedges?

A. No, sir.

Q. Well, whatever you do send back for, your jackhammer steel or quarry bars or anything else?

The Court:

Do you send back for them in some cases?

The Witness:

Yes, sir, sometimes.

Q. You can do it whenever you need them?

A. Yes, sir.

Q. You can send for your wedges?

A. We don't never need them.

Q. You don't need them because you pick them up before you get there?

A. We get them on our way going down.

Q. You want to have them up there? You want to have a full supply as you go all the time?

A. Sure.

Q. Don't you know at times you head miners and your crews—you are so anxious to have these things on hand all the time at the working place, the fellow that got there first picked them all up and there wouldn't be any there for those that got there late and they had to lock the box?

A. I don't understand you. You mean my box?

Q. The tool box where you get these things.

A. My box.

Q. No, the box where you get these things.

A. I don't know about that.

Q. You don't know about that?

A. No, sir, I don't know about that.

Q. You do know you try to have your men and the crew that work with you to have a full supply of these various things, jackhammer steel and wedges and hangers and so on on hand all the time?

A. Yes, sir.

Q. And if you stopped up there and sent a man for them, it would cut into your production?

The Court:

I think that is arguing with the witness.

Mr. Burr:

I think so myself.

The Court:

We will take a recess for a few minutes.

(Thereupon proceedings were in recess from 2:35 P. M. to 2:45 P. M., at which time proceedings were resumed as follows:)

(By Mr. Burr):

Q. Wade, you are—

Mr. Harris:

Ward.

Q. Ward, you are familiar with the company rule book all the employees get?

A. Yes, sir.

Mr. Smith:

A little louder.

Mr. Burr:

I asked him if he was familiar with the company rule book all the employees get, and he said, "Yes, sir."

Mr. Smith:
Yes, sir.

Q. Are you familiar with Rule 10 on page 8, "If you are injured no matter how little, tell your foreman about it right away and go to the doctor."

A. Yes, sir.

Q. You are familiar with that rule?

A. Yes, sir.

Q. You are familiar with the rule to tell your foreman about any injury your men receive or you receive?

A. Yes, sir.

Q. And you have reported them?

A. Yes, sir.

Q. I want you to tell us during this 23 years if you have ever received an injury on that skip?

A. No, sir.

Q. Have you received any walking up to your working places?

A. No, sir.

Q. Have you ever had any of your men to receive any you had to report?

A. Yes, sir.

Q. How many, and when?

A. Two.

Q. Who was that and when?

A. That was in March, about the 31st day of March.

Q. How did the first one get injured?

A. The first one got hurt hanging a hose pipe on a timber, and a rock—

Q. He was at work, was he?

A. Yes, sir.

Q. I asked you about coming down on the skip?

A. No, sir, I don't remember.

Q. Or walking down the man way?

A. No, sir.

Mr. Burr:
That is all.

Re-Direct Examination.

(By Mr. Harris):

Q. You said you got there at five minutes to six or six o'clock, but that you went down on the second skip?

A. Yes, sir.

Q. Do you know that of your own choice, or do you do it under instructions?

A. I do it under instructions.

Q. Who instructed you to take the second skip?

A. The assistant mine foreman.

Q. Have you been taking the second skip all the time under his instructions?

A. That is right.

Q. Now, when you report for your shift and turn in your check, are you in your working clothes at that time?

A. Yes, sir.

Q. And your crew are in their work clothes when they turn in their checks?

A. Yes, sir.

Mr. Harris:
That is all.

Re-Cross Examination.

(By Mr. Burr):

Q. You get in your work clothes at the bath house?

A. Yes, sir.

Q. You say this assistant mine foreman—what was his name—that gave you instructions about taking the skip—

A. Yes, sir.

Q. Who was he?

A. At the time, Mr. Lynne Eddins.

Q. What is his name, Edmonds?

The Court:

Is it Eddins?

Q. E-d-d-i-n-s?

A. Eddins is the way I pronounce it.

Q. How long has he been dead?

A. I disremember now.

Q. Five or six years?

A. I don't know; not that long.

The Court:

That is not material.

Q. All right.

A. The next one was Tom Clayton.

Q. Mr. Tom Clayton?

A. Yes, sir.

Q. When was it Mr. Eddins gave you instructions about what skip to take?

A. Well, in his lifetime—

Q. When was it?

A. In 1939.

Q. What did he tell you?

A. Me and all my men catch the second trip, or he was going to send us to the superintendent.

Q. You and all your men get the second trip or he was going to send you to the superintendent?

A. Yes, sir.

Q. You and your men went down together?

A. Yes, sir.

Q. Did you walk up to your working place together?

A. Not all the time. We had to stop and get tools.

Q. Did all of them stop?

A. Not always.

Q. How many stopped?

A. Two or three.

Q. Did you stop?

A. Yes, sir.

Q. Did the rest all walk on to your working place together?

A. Yes, sir.

Q. When was it Mr. Clayton gave you instructions?

A. Before May 1st.

Q. How long before May 1st?

A. A couple of months.

Q. What did he say to you?

A. The same thing.

Q. Give us his words.

A. He told me me and my men were going to catch the second drag or else he was going to send us to the superintendent.

Q. Or else he was going to send you to the superintendent?

A. Yes, sir.

Q. Was that the only time he told you that?

A. Excusing Mr. Tom; he told me several times.

Q. Kept on telling you that?

A. Several times.

Q. What do you mean by several times?

A. More than once.

Q. Was it more than twice?

A. More than once.

Q. More than five times?

A. More than once.

Q. That is the best you can say about it?

A. Yes, sir.

Mr. Burr:

Well, you can come down.

(Witness excused.)

Mr. Harris:
Has Mr. McDaniel finished?

The Court:
Are you ready?

Mr. C. J. McDaniel:
Yes.

The Court:
Come around.

Mr. Burr:
Your Honor, he has these papers mixed up.

The Court:
Suppose we take up another witness.

Mr. Burr:
Sir?

The Court:
Are you about ready?

Mr. Burr:
Yes, sir, Your Honor, I handed them to him in order, and I am trying to get them back in order. I am not trying to kill any time.

2645 CHARLEY J. McDANIEL thereupon resumed the stand, and having been previously sworn, testified further as follows:

Cross Examination—Resumed.

(By Mr. Burr):
Q. Have you examined these, Mr. McDaniel?
A. Yes, sir.

Q. Since examining them, I show you first the one in 1934. Do you remember that one?

A. I remember something about that 1934. That isn't all we presented to the company.

Q. You presented something besides that?

A. That wasn't the first we presented.

Q. You did present another besides this?

A. We presented one asking for six hours, and I didn't find that one in there at all.

Q. Where is that one?

A. I couldn't tell you.

Q. What else did it have in it?

A. We asked for six hours and the check off system and recognition of the union; and I am pretty sure a ten-cent raise,—the first one we presented to the company.

Q. Now, what president did you present that one to?

A. The one that was in office in 1934. I don't know which one it was,—Mr. Gregg or Mr. Perry.

Q. Was that before this one or after this one—

A. Let me see.

Q. You signed this one?

A. The one we signed was not presented to the company at all.

Q. Oh; you never presented that one?

A. The one we signed the company gave back to us.

Q. That is your signature?

A. We agreed to this stuff in this contract, but that is not the one we presented to the company.

Q. How did they get it?

A. They made it out themselves.

Q. Isn't that—

The Court:

As I understand, the company drafted it and presented it to them and they signed it.

Q. Do you mean the company presented this to you and you signed it?

The Court:
That is what he said.

Mr. Burr:
He may have said it. If he did I want to ask some questions.

Q. Do I understand this one,—the company wrote this?
A. Yes, sir. I say that is what the company gave back to us.
Q. Let's read it and see.

The Court:
Is it necessary to read it?

Mr. Burr:
Yes, sir. I want to cross examine this witness, Judge.

The Court:
Go ahead.

Mr. Burr:
Yes, sir.

The Court:
Go ahead.

Q. That the company recognize our union and agree to conduct negotiations with our chosen representatives; did the company give you that?
A. They gave us that one there.
Q. Did the company give you one that read this way: "That the company give us the check-off and collection of dues by the company?"

A. I didn't find that on there.

Q. Well, there it is right there. I am not going to read anything that is not on there.

A. I was wrong on the—I didn't see that on there a while ago, but this is—I understand now. This is what we sent the company.

Q. That is what I asked you.

A. That is correct.

Q. That is what you sent to the company April 5, 1934?

A. That is correct.

Q. Who all wrote it? Who wrote it?

A. That is not the contract we got.

Q. You didn't get any contract until 1938, did you?

A. Yes, sir.

Q. These are all proposals prior to 1938?

A. Yes, sir.

Q. That is the one you made at that time?

The Court:

He said that.

Q. Did you make any other along about that time besides this one?

A. If it is not in there about six hours, we made that one. If it is in there about six hours,—that is the first one we made.

Q. Did you make one or two in 1934?

A. My recollection, the first one we made asked for six hours, and then we made a counter proposal and the company turned it down. We discussed that and the company turned it down.

A. I don't know. But I know we discussed that—the six hour day—

Q. How many proposals did you take up to the company in 1934?

A. I don't know how it got there, whether Mr. Horn sent it through the mail—

Q. How many did you sign yourself in 1934?

A. I am not positive. I know I signed one, but I am not positive—the company turned us down, everything we asked for. Whether we went back with another proposal at that time or not, I don't know, but it seems like we did.

Q. Do you remember whether you signed one or two? What is your best recollection?

A. It seems to me two, but I am not positive.

Q. What about 1935? The next one I show you, is this the one you presented in 1935? First, let me ask you how many did you present in 1935?

A. We didn't present but one in 1935, I know.

Q. Is this the one? That is Exhibit Number 9.

A. Yes, sir, that is the one we presented, I am pretty sure, in 1935.

Q. All right, sir. That is the only one you presented in 1935. Now, then, how many did you present in 1936? Did you present any in 1936 or not?

A. We presented—

Q. If you don't remember—Go right ahead.

A. I was trying to think. I know we presented one. When the incentive plan started out it seems we gave Mr. Ball anotner one. I wouldn't be positive. It seems we did present one.

Q. Look at Number 12, which are the minutes of the meeting you held at which the one you presented was discussed, signed by Mrs. Barksdale. He was president of the Local at that time?

A. Yes, sir.

Q. That is his signature there; you know him?

A. I know Barksdale.

Q. Do you know his signature?

A. I don't know his signature.

Q. You recall that meeting?

A. Yes, sir.

Q. You recall that?
A. Yes, sir.

Mr. Burr:
That is Exhibit Number 12.

Q. ~~Now,~~ then, in—I will ask you to look at this one here signed by Mr. Horn as president, May, 1936. Is that the one presented in 1936, the one that is attached there?
A. Yes, sir; I remember that one.
Q. You remember that one?
A. Yes, sir.
Q. That is the one you presented in 1936?
A. Yes, sir.

Mr. Burr:
That is Tennessee Company's Exhibit Number 10.

Q. Then in 1938 a contract was made?
A. That is right.
Q. That is the one you made in Chicago,—discussed in Chicago?
A. It was discussed in Chicago.
Q. Is this what happened, to go over it hurriedly? You had meetings in Chicago and discussed the settlement of the case before the National Labor Relations Board?
A. Yes, sir.
Q. And discussed the question of a written agreement?
A. Yes, sir.
Q. You wrote out both in Chicago?
A. No, sir.
Q. Which one was written out in Chicago?
A. The stipulation.
Q. Where was the working agreement written out?
A. In Birmingham, I suppose.
Q. Where?

A. Here.

Q. Are you certain about that?

A. I am pretty sure the company wrote it out there because we agreed in Chicago—when we asked for a contract, in agreeing to settle and compromise these cases, they offered to give us practically the same thing as the steel workers, and we asked for the same as the United Mine Workers, and they said they couldn't do it. We asked for the check-off system and a seven hour day, and they said they couldn't do that and would give us the one the steel workers had. When we came back there was nothing to do but sign the one with the steel workers.

Q. Did you bring one back here with you?

A. No, sir.

Q. It is signed by Mr. Robinson.

A. That is true. There was no negotiation to that. When we got back to Birmingham we went in and signed it.

Q. Just signed it without any discussion whatever?

A. The same one the steel workers had.

Q. To refresh your recollection, Mr. McDaniel, don't you know that you and Mr. Pressman, the General Counsel, and others that represented the Union, sat down in Chicago with Mr. Vance and Mr. Moss and Mr. Ben Rawlins,—sat down and agreed on the stipulation and agreed on the contract, and the stipulation had to be carried to Washington and submitted to the National Labor Relations Board for their approval, and the contract to be brought back and submitted to your locals for their approval; isn't that what happened, to refresh your recollection?

A. It was approved to bring back and present to the locals, and we discussed the contract in Chicago and went into it thoroughly, but if any contract was drawn up there at all, I don't remember it. I do remember the stipulation.

We came back to Washington and presented it to the Board and they approved it, and we asked for a contract the same as the United Mine Workers had and they rejected that and said they would give us the same as the steel workers, and we came back and signed it.

The Court:

You have been over that two or three times.

Mr. Burr:

I want to ask this question, and I want you to answer it yes or no:

Q. Refreshing your recollection, Mr. McDaniel, in the Chicago conference at the Palmer House—you stayed there about four days, and you discussed the stipulation and you discussed the contract, and it was understood and agreed that you were to get the contract and the company was to make the stipulation, and you prepared the stipulation and you prepared the contract and you left there and went to Washington and submitted the stipulation for the approval of the National Labor Relations Board and got their approval, and then it was signed, and then the Union people brought the contract back to Birmingham and submitted it to their locals and they approved it and it was signed.

I want to know whether you did that or not, whether that happened or not?

A. Partly did and partly didn't.

Q. Wasn't there two contracts—

A. Wasn't any contract brought back. It was what the steel workers had.

Q. Well, what is your recollection?

A. It was not.

Q. All right.

A. It was understood we would accept the steel workers contract. It was turned over to these people that went to Chicago to settle it. We didn't have to submit it back to the locals.

Q. You didn't have to submit it back to the locals?

A. No, sir. It was in our hands to settle.

Mr. Burr:

That is all.

Re-Direct Examination

(By Mr. Harris):

Q. Mr. McDaniel, this thing marked T. C. I. Exhibit Number 6, on the second page, says:

"9. In view of the fact that the National Industrial Recovery Act was passed for the purpose of employing more men and increasing the purchasing power, we ask for a seven hour day."

Before asking for a seven hour day, state whether or not you had asked for a six hour day?

A. We asked for a six hour day.

Q. All right. In your request for a six hour day, did you ask for pay for the time for going from the mouth to the face and the face back to the mouth?

Mr. Burr:

Was that in writing or not?

Mr. Harris:

I am coming to that.

A. We asked for a six hour day, and the company wouldn't give us that, and then we offered to compromise and give us a seven hour day and travel one way.

Q. All right. When you proposed they give you a six hour day, have you any recollection whether that was in writing or verbal?

A. I am not positive, but I thought it was in writing.

Q. Then, after they rejected that, you made a proposition for a seven hour day and pay for one way?

A. That is right.

Q. I call your attention to the following:

"In view of the fact that the company can force the men to enter and leave the mines at any time stated by the company, we ask the right to enter on our time and leave on the company's time."

Now, that exhibit is dated Bessemer, Alabama, April 13, 1934.

The Court:
What is the number of that exhibit?

Mr. Harris:
That is T. C. I. Exhibit Number 6.

Mr. Burr:
The same one I asked him about.

Mr. Harris:
Yes, sir. I picked it up off the table.

Mr. Burr:
Yes, sir.

Q. How long was it between the time you asked them for a six hour day and made them a compromise proposal of a seven hour day and pay one way?

A. It was—We made the proposal in—

The Court:

What is the difference in time, he asked?

Q. Just how long?

A. I am trying to get it. The first one we made, we made it about a couple of months, thirty or sixty days before the strike. They turned that down and then we came back with the second proposal. I will say thirty—probably less than thirty days, because we came back and gave another one.

Mr. Harris:

That is all.

Re-Cross Examination.

(By Mr. Burr):

Q. Since Mr. Harris examined you, I want to know whether your six hour day proposal was in writing or verbal?

A. I am almost positive it was in writing.

Q. Did you ever ask for five days?

A. We asked for a six hour day.

Q. Who did you discuss it with?

A. I am pretty sure Mr. Gregg,—whichever one was in the office at that time.

Q. Who else was there beside the president?

A. Mr. Ball, I am pretty sure, was present, and the gentleman doing the writing. I don't know his name.

Q. Mr. Bowen?

A. I never heard his name. I suppose he was the president's secretary. Anyhow, he was doing the writing.

Q. And who else?

A. The vice president.

Q. Mr. Abbott?

A. Mr. Abbott.

Q. Anybody else?

A. That is all I remember that was on the company's side.

Q. Who was there with you when the six hour proposition was presented?

A. I don't remember them all, but I remember some of them.

Q. All you remember, please, sir?

A. Myself, Mr. Finch,—at that time he was with the American Federation of Labor,—Mr. Van Jones, Mr. Dick Anderson—

The Court:

Let him go ahead. You asked him for that.

Mr. Burr:

I want to state I—

The Court:

Don't interrupt him.

A. Mr. Dick Anderson. The secretary from Muscoda is dead, I have forgotten his name. He was present. A colored fellow from Muscoda was vice president of the local; I have forgotten his name now. And Will Mahan, and Morris Smith, and either Mr. Pegues or Mr. Coles. I have forgotten which one. That was the general committee.

Q. Mr. Finch wasn't on your general committee at that time, was he?

A. He was from the A. F. of L.

Q. Was he representing the A. F. of L.?

A. He was working for the A. F. L.

Q. To refresh your recollection, when Finch and Coles were there, they were both representing the government?

A. Not in 1934.

Q. Were Finch and Coles there in 1934?

A. If Coles was present at this meeting,—I am not certain he was there,—but if he was there, he was vice president of the union.

Q. What was Finch doing there?

A. He was representing the American Federation of Labor.

Q. Were you jointly presenting a demand?

A. We were all in the American Federation of Labor at that time.

Mr. Burr:
That is all.

The Court:
Come down.

(Witness excused.)

Mr. Harris:
Call Percy Kirby.

2656 PERCY KIRBY, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. How old are you, Mr. Kirby?

A. Thirty-seven.

Q. Talk a little louder, please, sir.

A. Thirty-seven.

The Court:
What are his initials?

Q. P-e-r-c-y K-i-r-b-y?

A. Yes, sir.

Q. Where were you born, Mr. Kirby?

A. Jefferson County.

Q. How high did you go in school?

A. Through the seventh.

Q. What business do you follow?

A. Mining.

Q. What company?

A. T. C. I.

Q. What mine?

A. Number 10, Wenonah.

Q. How long have you been working at Number 10 at Wenonah?

A: Since November 2, 1938.

Q. During that period, November 2, 1938, up to May 1, 1941, was the Wenonah Mine working on a five day a week basis?

A. Yes, sir, but they didn't work five days all the time.

Q. Yes, sir. Were there two summers—three summers in which they didn't work the five days?

A. I believe there were two.

Q. Now, what is your work?

A. Head miners.

Q. What was your work at Number 10 on November 2, 1938?

A. Head miner.

Q. Do you work alternately on day shift and night shift?

A. Yes, sir.

Q. On November 2, 1938, what time did you report for work in the morning, day shift?

A. Around six o'clock.

Q. And if you were on the night shift did you report at six o'clock in the afternoon?

A. Yes, sir.

Q. When you reported for work in the morning or in the evening, dependent on whichever shift you were on, did you hand in your check at the tally house?

A. Yes, sir.

Q. At the time you handed in your check were you in your work clothes?

A. Yes, sir.

Q. How did you go down in the mine at Wenonah Number 10?

A. In the skip.

Q. Who ran the skip, the company or you?

A. The company.

Mr. Burr:

Now, is there any dispute about that at all?

Mr. Harris:

I don't know.

The Court:

Go ahead.

Mr. Harris:

I want to make a stipulation as to this.

Q. What time, after you got there, did the skip start down?

A. Well, at that time they usually ran a safety run, and had the skip ready to go at six o'clock.

Q. Between the time you turned in your check and the time you caught the skip, did you ever receive orders from the mine foreman or assistant mine foreman?

A. Yes, sir.

Q. Did you, at Number 10, turn in the checks of your men, or did the men turn in their own checks?

A. They turned in their own checks.

Q. How many men rode down the skip at Number 10?

A. Well, at that time there were around 35.

Q. How far was it from the man unloading station where you got off the skip to the place where you were drilling?

A. I should say between two and three thousand feet.

Q. Did you or your men, in going down into the mine on the skip, carry any tools, wedges or hangers or any other material besides your carbide lights?

A. Well, I have on a few occasions carried jackhammer steel down.

Q. After you got off at the man unloading station at Number 10, did you or any members of your crew pick up anything on the way to the drilling place?

A. Yes, sir; we had oil to pick up, and when we could get them, we had hangers and wedges and jackhammer steel to pick up, and in case it was needed, we would get an air hose or water hose or water fittings, and such as that.

Q. Then, at the time you blasted and started out of the mine, did you and your men carry anything along with you out of the mine?

A. Well, we would have our oil cans, and in case we carried anything down like jackhammer steel or bars, we would have to carry something back in place of it. In other words, we would have to carry a dull steel or dull bar.

Q. In walking from the manloading station to the place where you were drilling, were you able to walk erect?

A. Well, there was one place below the hoodlum at Number 10 on the left manway where you have to stoop to keep from bumping your head.

Q. The rest of the way you can walk erect at Number 10?

A. Yes, sir.

Q. Now, in going down that main slope or riding up that main slope, can you stand erect in the skip at Number 10?

A. No, sir, you cannot.

Q. What position is normally and habitually used by the men in riding the skip in and out of the mine at Number 10?

A. They have to lay over against each other to keep their heads below the top of the skip. There is a sign up there that says, keep your head below the top.

Q. At Number 10 during those three years, what was the blasting time on the day shift?

A. From 10 to 15 minutes after 3:00.

Q. Were you working there when they were on the ten hour shift?

A. I wasn't working at Number 10.

Q. Were you working for the T. C. I.?

A. Yes, sir.

Q. At what mine were you working?

A. Well, I worked at Number 9 most of the time, but I had worked at 8 and 7.

Q. At Number 7—were you there when they were on the ten hour shift?

A. Just an extra shift is all. I didn't work there regularly.

Q. If you didn't work there regularly, I don't want to ask you about it.

A. I worked at Number 8 regularly.

Mr. Harris:

You can take him.

Cross Examination.

(By Mr. Burr):

Q. How long have you been working for the company, Mr. Kirby?

A. A little better than 17 years.

Q. Did you ever work for any other company, or has all your work been with the Tennessee Company?

A. All my mining has been with the Tennessee Company.

Q. That is what I mean. All your mining work.

A. Yes, sir.

Q. How have been a head miner how long,—since the incentive plan went in?

A. I have been head miner since then. I worked in the same job before.

Q. As section foreman?

A. Yes, sir.

Q. About how long have you been section foreman?

A. Except times when there was a reduction in forces, if I am not mistaken, since 1927.

Q. Since 1927?

A. Latter part of 1927 or 1928.

Q. So, as a usual thing, you have been head miner or section foreman since that time?

A. Yes, sir.

Q. You have been riding the same skip all that time?

A. Yes, sir.

Q. Been handled the same way?

A. Practically.

Q. And you have been walking over the same walkways going to your working places?

A. Yes, sir, unless there were different places.

Q. That is what I say. You have been walking to your working places?

A. Yes, sir.

Q. And coming back and catching the skip and going out?

A. Yes, sir.

Q. The same height roof, the same or practically the same, or different?

A. Been practically the same.

Q. Been practically the same all the time?

A. As far as the roof—

Q. It has been electrically lighted?

A. Back when I first went to work it wasn't electrically lighted.

Q. Do you recall when it was electrically lighted, the slopes and haulage ways, about when it was?

A. No, sir, I don't believe I can.

Q. It has been a good many years ago?

A. Yes, sir.

Q. As head miner and section foreman, you were the boss of your crew in the room or stope where you worked?

A. Yes, sir.

Q. When you first got to the mine you deposited your check?

A. Yes, sir.

Q. Got your carbide first?

A. Yes, sir.

Q. Deposited your check?

A. Yes, sir.

Q. Did you go down on the first skip regularly, or catch any skip you pleased?

A. I have caught the first skip more over the period of time.

Q. Did you catch the first skip regularly, or any skip you pleased?

A. It worked backwards and forwards.

Q. Sometimes the first and sometimes the second and sometimes the third?

A. Occasionally.

Q. Occasionally the third?

A. Yes, sir.

Q. You say sometimes the mine foreman or assistant mine foreman would give you some orders at the top. What kind of orders would that be?

A. Well, probably—

Q. Not probably; what would it be?

A. Pertaining to the roof or conditions at the place. Maybe the opposite shift—

Q. Don't make any maybes. Give me the particular instances, what they said?

A. I can't five the dates.

Q. I don't want the dates. I want to know what would be said.

A. They would say, "There is bad top in your place."

Q. Is that all they would say?

A. "Watch it", or "We will send a timber man."

Q. That is about what they would say, there is bad roof in your place and watch it and there would be a timber man in there?

A. Yes, sir.

Q. What other instructions?

A. They would tell me my rope had come and it was on the nuck, and I would get it.

Q. What would they say?

A. Just say, "Kirby, your rope has come, and it is on the nuck down there, and you can get it now."

Q. What other instructions did they give you?

A. I don't recall—

Q. Is that all they would give you?

A. Maybe little things about a drill—

Q. Tell me what they were. It is so easy to say, "They gave me instructions." Tell me what the instructions were—

Mr. Harris:

We object to him arguing with the witness.

Mr. Burr:

It is so easy to say, "They gave me instructions." I want to know what they were.

Q. Anything else?

A. If the drill was broke down, sometimes the other shift would leave a note it was on the running board.

Q. They would say the drill was broke down and it was on the running board?

A. Yes, sir.

Q. Anything else?

A. I don't remember now.

Q. Was that every morning or just occasionally?

A. Occasionally, I suppose.

Q. When they found out something had happened to your roof or rope, they would tell you the next morning when you went down?

A. Yes, sir.

Q. You knew you had to quarry your roof down every morning?

A. Yes, sir.

Q. That was your first job?

A. Yes, sir.

Q. Aside from what you have told us the assistant mine foreman told you, or the mine foreman told you, all you did in the way of work was to get your carbide and lay your check down?

A. That is at the outside.

Q. That is what I mean, at the outside.

A. At the outside.

Q. Then you rode down and got off and walked to your working place?

A. Here the last few years we have to get our time sheets.

Q. The head miners get that?

A. Yes, sir.

Q. That is a sheet of paper?

A. No, sir, it isn't.

Q. A little book, what they call a brief case?

A. Yes, sir.

Q. How much would it weigh?

A. It is made of wood, about that big (indicating).

Q. Not as heavy as mine?

A. No, sir.

Q. How many sheets did it have in it?

A. A pad in the bottom and a sheet on top to keep it from getting red.

Q. You carried that along and walked along?

A. Yes, sir.

Q. Did you get anything else?

A. No, sir. I would tell the men to get that.

Q. The extent of you getting anything was your time sheet in that little brief case?

A. Yes, sir.

Q. You would tell your men to get what they needed in the way of wedges and hangers and jackhammer steel?

A. I have toted hangers down.

Q. You would tell your men what to get?

A. Yes, sir.

Q. When you got to your working place you were the boss up there except as the mine foreman or assistant mine foreman came around?

A. As far as the heading crew, yes, sir.

Q. If you ran out of anything up there, you sent some of your men back to get it?

A. I could.

Q. You did, didn't you?

A. Very seldom.

Q. The reason you didn't do it, you had your men pick it up on the way in?

A. Yes, sir.

Q. And kept from running out?

A. Yes, sir.

Q. You had the right to send them back?

A. Yes, sir.

Q. But picking up this light stuff on the way up it saved time walking back and going back and saved the time of doing that for producing ore?

A. Yes, it will save—
Q. Yes.
A. Yes.

Mr. Burr:
That is all I want to ask him.

Mr. Harris:
That is all, Mr. Kirby.

(Witness excused.)

Mr. Harris:
Call Mr. Littleton,—Mr. George Littleton.

2667 GEORGE LITTLETON, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):
Q. You spell your name L-i-t-t-l-e-t-o-n?
A. Yes, sir.
Q. And your first name is George?
A. Yes, sir.
Q. How old are you, Mr. Littleton?
A. Forty-one.
Q. Sir?
A. Forty-one.
Q. Where were you born?
A. I was born at Clanton, Alabama.
Q. How high did you go in school?
A. Third grade.
Q. How long have you been an ore miner?
A. Well, my first experience in ore mining was about 1912 or '13.

Q. Where was that?

A. T. C. I., Muscoda,—known as Reeders at that time.

Q. You say you are forty-one?

A. Yes, sir.

Q. And your first experience was in '12 or '13?

A. Around '13.

Q. Well, what did you do as a 13 year old boy in the mine?

A. Drove a mule.

Q. And what is your job now?

A. I am a head miner.

Q. How long have you been a head miner for the T. C. I.?

A. Well, I was a head miner from about 1923 or '24 to about '28, or probably the first of '29, and then I left over at Muscoda, and then I came back there in 1937, in February.

Q. And have been a head miner ever since?

A. Yes, sir.

Q. And at Muscoda 6?

A. Yes, sir.

Q. At Muscoda Number 6, from October 24, 1938, to May 1, 1941, what time did you report for work on the day shift?

A. At six o'clock.

Q. Where did you report?

A. At the tally house.

Q. How did you report?

A. Well, I reported ready to go to work.

Q. Did you have a brass check at Muscoda?

A. Yes, sir.

Q. Did you turn it in?

A. Yes, sir.

Q. At the end of your shift did you pick up your brass check?

A. Yes, sir.

Q. What time in the day, during those three years, on the day shift, did you turn in your brass check?

A. In 1937, Mr. Harris?

Q. No, in 1938. I am only interested in '38.

A. In '38?

Q. Yes.

A. I would put a check in about six o'clock in the morning, and when we checked out, we checked out from about 3:30 until ten minutes of four in the afternoon.

Q. All right. When you put your check in at the tally house, were you in your work clothes?

A. Yes, sir.

Q. At Muscoda Number 6, did any mine foreman or assistant mine foreman ordinarily appear there at the mouth of the mine or at the tally house before the first man trip went down?

A. Yes, sir.

Q. And did you receive any orders or instructions from him before you caught the man trip?

A. Well, there were times I would talk to the mine foreman about the condition of my place. Maybe I would need timbers, or probably I would need some kind of equipment, rope or track or anything pertaining to the operation of my place I knew I needed, I would discuss with my mine foreman, yes, sir.

Q. How about the members of your crew? Suppose you were a man short.

A. If I was a man short and knew there was a good man out there, I would ask the mine foreman for permission to work him at times. He usually gave us permission to work anybody we wanted to.

Q. Well, what time did the man trip run down at Muscoda Number 6?

A. Well, usually a minute and a half or two minutes after six, after the whistle blows,—as soon as the men could load up.

Q. At mine Number 6, after you got off at the man unloading station, did they have any tool house or supply house near the station?

A. No, sir.

Q. Was there any tool house or oil station where you picked up anything on the way in?

A. There was a place there where we got oil for the drill or the motor, but they changed that system there, that oil proposition. The management decided to put a drum of oil around the face of each heading or near such place.

Mr. Burr:

Mr. Littleton, will you repeat that, please? I didn't get it.

The Witness:

They changed the system of handling the oil at Muscoda. The oil system we carried it up in cans. The management decided we wasted so much oil—I believe the mine foremen requested it, or Mr. Carter,—anyway, they put a barrel of oil in each place where they wouldn't waste it. Sometimes I had a drum of oil in my heading which I have had since the first of the year. The boys in the next heading would run out and come down and get it.

Q. Was that change made about the first of this year?

A. It has been six or seven months.

Q. How about the wedges and hangers and jackhammer steel?

A. We have had different systems on that.

Q. Well, since October 24, 1938?

A. At times the men had to go to the supply house and get them, and then we had hangers up at the carbide house, and there have been times when they sent the hangers down to the timber tunnel. They had a man down there, Mr. Burgess,—he was the powder man,—and he would divide those hangers out in equal numbers.

Q. Divide them out among whom?

A. Each of the head miners; give them a certain number of hangers, say four or five, and 25 or 40 wedges.

Q. How about the jackhammer steel? Did he issue that too?

A. We had different systems on our jackhammer steel. Ordinarily we carried our jackhammer steel out and carried them to the bath-house, and then carried them to the supply house and a exchanged them out.

Q. Was the supply house inside or outside at Number 6?

A. Outside.

Q. Did you work steadily for the Tennessee Company, or did you ever work for any other company?

A. Back when I was telling you about I believe I did drive a mule at Raimund for a short period of time. I know I did work there at Raimund for a short period of time.

Q. In the skip at Number 6 Muscoda, how many men ordinarily ride on the man trip down?

A. Well, I couldn't say positively going down. I would say around 38 men or 40.

Q. Who gives the signal, or direction, if any, for the skip at that time to go down?

A. Well, the assistant mine foremen.

Q. And do the men riding in the skip have any control of it as it goes down?

A. Well, the man in the chair, he can stop the skip by a signalling device. They have one on the back and one on the front of the skip. Otherwise there would be no control of the skip by any man on the skip.

What I mean by stopping, Mr. Harris, he can give a signal to the engineer if he seen anything—

Q. I see.

A. —that it was necessary to stop the skip for.

Q. Now, on the skip at Muscoda Number 6, did you have anything on there to carry tools down with?

A. Well, we did have a bucket or a tough, I will say, built about—oh, approximately two feet long maybe a little longer,—I wouldn't be sure about it, and maybe about eight or ten inches wide, and about eight inches high. It hung on the bail,—had a couple of arms that fit over the safety ropes. We used that for a while to carry down hangers and wedges and drill steel. Then we—we didn't use that thing very long. I couldn't say just exactly how long.

Q. You put the tools in the basket you spoke about?

A. Well, whoever would bring them up, he would just drop them in there whenever that system was in use.

Q. Well, would that be miners or drill helprs or members of the production or service crews?

A. What I know about would be when they brought jackhammer steel. That would be section helpers,—hangers and wedges.

Mr. Harris:

You can take him.

Cross Examination.

(By Mr. Burr):

Q. Mr. Littleton, you have been head miner or section foreman about how many years?

A. I was stoper foreman—I believe it was known as stoper foreman, from about '23 to '27 or '28. I have been a head miner since it went in regularly.

Q. Well, you have been the head miner in the working place, either stoper foreman or section foreman or head miner during all this time?

A. Yes, sir

Q. The head miner went in when the incentive plan went in?

A. Yes, sir.

Q. During that period of time you had ridden in the same skip?

A. Yes, sir.

Q. It has been handled in the same way?

A. Yes, sir.

Q. You have been walking after you got off the skip at the man loading station to your place of work?

A. Yes, sir.

Q. Do you recall when the electric lighting system was put in there?

A. It was put in there when the mechanical loaders were put in there. I couldn't say the time.

Q. About 1923, wasn't it?

A. I couldn't say.

Q. Been there a good many years?

A. Yes, sir, been there some time.

Q. The first thing you did, you went to the bath house and changed your clothes?

A. Yes, sir.

Q. Then you went over to the tally house—

A. Well,—

Q. —Got your carbide first? I am talking about the general things. I will get back to this tool handling matter later. Did you do anything else from the time you got your carbide—Did you do anything else from the time you bathed and got your carbide?

A. You have got me mixed up, Mr. Burr. You say from the time I bathed,—

Q. Let me start over. You changed your clothes?

A. Yes, sir.

Q. And then you got your carbide?

A. Yes, sir.

Q. Did you go down to the carbide house?

A. Sometimes I had some jackhammer steel to pick up.

Q. Sometimes you got your jackhammer steel at the carbide house?

A. Yes, sir.

Q. That was just one system they had?

A. Yes, sir.

Q. Just forget all the systems. I will come back to that later.

A. Yes, sir.

Q. You would get your carbide and then go deposit your check?

A. I would get my carbide and walk up to the mine, yes, sir.

Q. Is that the time, if you saw you had a vacancy in the crew and saw a good man, you asked the mine foreman for that man?

A. If I knew a man would be off and I saw a good man, I would ask the mine foreman for that man.

Q. You wanted a good man to help you out on your production?

A. Yes, sir.

Q. If you wanted to know about the conditions in your place you talked to your mine foreman about it?

A. Yes, sir.

Q. That was for your own convenience?

Mr. Harris:
We object to it. That is a conclusion.

Mr. Burr:
I am asking him for a fact.

The Court:
Mr. Burr, you made the statement after he answered.

Mr. Burr:
Will you read that back?

(Thereupon the reporter read as follows:

"Question. If you wanted to know about the conditions in your place, you talked to your mine foreman about it?

"Answer: Yes, sir.

"Question: That was for your own convenience?")

A. Well, I wouldn't necessarily say it was for my own convenience. It would be—what I would talk to the mine foreman about would be about the management of the place,—different things, whatever he wanted to tell me or whatever I wanted to know, and lots of times he would probably give me different instructions.

Q. What sort of instructions did he give you?

A. Lots of times probably we were moving up, the stope was moving up, and the mine foreman would tell you, "You go down and start moving up today," or "Go down and tear that chute up today,"—different things that came up, different situations. The opposite shift out there might leave a note out there about something we wouldn't know about, and he would tell us what to do about it.

Q. Those were the character of instructions he gave you?

A. Yes, sir.

The Court:

When was that done?

The Witness:

Sir?

The Court:

When were those instructions given you?

The Witness:

Well, I would probably talk to him on top in the morning while I was waiting for the man trip to start down.

Q. Did you bring the matter up with him, or he with you?

A. Sometimes it would be vice versa. Sometimes I would go to him and sometimes he would come to me.

Q. Was that every morning?

A. It wasn't every morning, no, sir, because those cases don't arise every day.

The Court:

I want to ask you this question:

Was that before or after you checked in?

The Witness:

Sometimes we would be talking before I checked in and sometimes afterwards.

Q. And what you were talking about would be about the condition of your place?

A. Yes, sir, about the operation of the place.

Q. Of your place?

A. Yes, sir.

Q. They keep using the word "check-in". Is the checking in you talk about just handing your check in; is that what you mean by checking in?

A. Just handing my brass in.

Q. Handing your brass in and hanging it up on the board?

A. Yes, sir.

Q. Each man hands in his own brass?

A. Hands it in to the window and the head miner or mine foreman or assistant mine foreman hangs it up.

Q. You said there were several systems since you had been there with respect to hanger steel and wedges and tools like that.

The first system, back in the old days, they had a man down at the timber loading place,—is that where they had the man?

A. The old system—we are working on a different system now. We are working up on the hill. We had a tool house—

Q. I am talking about the old system.

A. Well, on the old system we had a tool house. It was about 94, I believe.

Q. Was that tool house underground?

A. Yes, sir, underground.

Q. Near the manloading station?

A. I believe the manloading station was a heading—about one or two headings from there.

Q. Was the next system after that when they just brought the material of that kind down and the service crew deposited it on the lumber yard and they had some man there to hand it out to keep it from being wasted?

A. The next system I can tell you about was in 1937 when I came back. Then we went to the blacksmith shop and swapped our steel out. Then they commenced bringing it up to the carbide house.

Q. When was the time they swapped it out—

A. It was about 1938 the timber man issued it at the timber tunnel.

Q. Was there a time when they brought it down and just put it on the running board or timber hard and the men came by and got it and carried it up to the working places?

A. The time I am talking about they just issued it.

Q. Didn't that result in the head miners requesting Mr. Carter to put in another system because the ones that got there first got most of the material?

A. I don't know about that. I don't recollect about Mr. Carter, but they talked to the mine foreman about the system.

Q. There was a good deal of waste, and the ones that came in late wouldn't find it?

A. I couldn't say about that; I usually rode the first or second trip.

Q. Then you got a good supply?

A. Yes, sir, I got four or five or six hangers.

Q. Did you have a good supply at your place?

A. Yes, sir; I usually kept them.

Q. After that they started having those hangers and wedges at the carbide house?

A. I don't know whether it was after or before, but they had them there at one time.

Q. The way they handled it up there, they would make a requisition up there—

A. The mine foreman would give us a requisition.

Q. You would get a requisition, and the men would get it—

A. No, sir. I didn't turn it over to my crew. I would meet my men at the carbide house and get the requisition filled and then myself and possibly two or three of my men would carry the stuff out.

Q. And put it in that basket you have described?

A. Well, when that basket was in use, we did, and the rest of the time we put it in the skip or put it on the bail.

Q. Put it on the bail?

A. Yes, sir.

Q. How long did that custom continue?

A. I couldn't say. It continued a good long time.

Q. How many members of your crew did it take to help you take that stuff down?

A. It depended on what you got.

Q. About how many?

A. Two or three.

Q. You didn't get it every morning?

A. No, sir.

Q. About how many times a month would you have to get a requisition?

A. Well, we would usually get it about twice a month.

Q. About twice a month?

A. Yes, sir.

Q. A section helper is the name that is used for the men that work for you?

A. Yes, sir.

Q. They are not service crews?

A. The men that work in the stope.

Mr. Burr:

That is all.

The Court:

You are excused.

(Witness excused.)

Mr. Harris:

Call Hugh Stewart.

2681 HUGH STEWART, being called as a witness, and being first duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. How old are you, Mr. Stewart?

A. Thirty-two.

Q. Where were you born?

A. In Texas.

Q. How high did you go in school?

A. Ninth grade.

Q. What business do you follow?

A. Mining.

Q. What mine?

A. Muscoda Number 4, T. C. I.

Q. How long have you been at Muscoda Number 4?

A. Well, I have been there since October 1, 1938, the last time.

Q. When you reported for work while working on the day shift at Muscoda Number 4, what time did you report?

A. Around six o'clock.

Q. Did you have a brass check?

A. Yes, sir.

Q. Did you turn it in anywhere?

A. To the timekeeper or mine foreman.

Q. Where did you turn it in?

A. At the tally house.

Q. At the time you turned it in would you be wearing your work clothes?

A. Yes, sir.

Q. Did you have any regular skip from October 24, 1938, to May 1, 1941, that you took to ride down at Number 4?

A. Well, the general rule the first or second drag.

Q. Did you or your men carry tools down on the man trip with you?

A. Yes, sir, we carried—when we needed material we would carry it in a metal container fastened on the bail of the skip, and before we got there it was thrown inside the skip.

Q. Did Number 4 have a supply house all to itself, or did Number 4 and Number 6 have a common supply house?

A. Well, I don't know about Number 6. I imagine they got all their supplies where we got ours, at the supply house below the shop.

Q. Did you go or send men to the supply house to get things to carry down with you as you entered the mine?

A. Yes, sir, I have, and I have gone there myself and gotten supplies.

Q. Well, after checking in at the beginning of your shift, and before you caught the man trip, did you, during those three years, receive orders from the mine foreman or assistant mine foreman as to your work or operations?

A. Yes, sir. I have at times,—not every day, but there would be timber cut or the other shift had left a note about bad top or needing timbers or something, or we were discussing moving up the place.

Q. At Number 4, did they have an oil station or tool box down near the man loading station?

A. Yes, sir, for quite a while, and up until, I will say, the last year, there was an oil station about 150 feet across the slope from the manloading platform at the bottom.

Q. On the way in to your drilling place did either you or your men pick up anything at that unloading station?

A. Yes, sir, the motor runner or drill runner would get a supply of oil about every other day.

Q. How about the tools, the jackhammer steel and hangers and wedges?

A. There have been times when, at Number 4, the mine foreman—

Mr. Burr:

I can't hear you.

A. I say there have been times at Number 4 mine when the mine foreman would order up wedges or hangers, but very seldom there was a man there to give them out. Sometimes we would get bars—very seldom we would have to bring bars in at the end of the working shift and hide them and pick them up when we came in on the next shift and go to the powder house and swap out.

Q. What time did you blast when you were on the day shift? What time did you light your fuses?

A. You mean the past three years?

Q. Yes.

A. Around 3:15; that was the instructions.

Q. And what time did you get to the mouth and pick up your check?

A. Coming out?

Q. Coming out.

A. Well, I will say the best of my judgment 3:30 to 4:15.

Q. No regular time?

A. Well, we would run around four o'clock. I always rode the last drag out.

Q. How far was your working place from the man loading station?

A. Well, I couldn't give you the exact footage, but—

Q. Well,—

A. —around twenty minutes peart walk,—maybe three-quarters of a mile, more or less.

Q. Well, were you walking down hill going in or were you walking up hill going in?

A. Well, there was, I imagine, a two percent variation in the grade until we get to the material way and catch another mine car going up the material way. Then it is practically level. It will vary some two or three percent.

Q. Could you walk standing erect going from the man-loading station to the working face?

A. Yes, sir.

Q. How was the footing? How was it underfoot in this particular mine?

A. Well, the ground was about level. You were walking in the middle of the track; about like walking on a railroad track out here where it is covered with slag,—about like that.

Mr. Harris:

You can take him.

Cross Examination.

(By Mr. Burr):

Q. Mr. Stewart, how long have you been either a head miner or section foreman or stope foreman?

A. Well, Mr. Burr, the best of my recollection about nine or ten years.

Q. Nine or ten years?

A. Ever since '31 or '32, somewhere around there.

Q. Before that what were you? Were you a driller?

A. Drill runner before that and before that I was drill helper, and before that I did practically every kind of mining labor there was—

Q. In the mine?

A. Timber helper, track helper, pipe.

Q. During all that time have you been getting into the mine and your working place the same way, riding down on the skip and walking to your working place?

A. Yes, sir.

Q. Up until May 1, 1941, when you were working ten hours a day, you were paid on ten hours a day, and when you were working eight hours a day you were paid on eight hours from the time you got to your working place?

A. I don't quite get you there.

Q. Let's start with eight hours; that is back far enough. That was about 1933 you began working eight hours?

A. Back under N. R. A.

Q. Your pay began at 6:45 in the morning?

A. I don't know when it began, Mr. Burr. I checked in about six o'clock.

Q. You didn't get paid from six o'clock?

A. Got paid for eight hours.

Q. The juice was turned on and work at the face began at 6:45?

A. What is that?

Q. The juice was turned on and the work began at the face at 6:45?

A. Mr. Burr, always, as a general rule, the electrician rode the first drag down. He didn't start the generator until he got there.

Q. You didn't have a regular time to turn on the generator?

A. No, sir.

Q. About what time did you start it?

A. If he caught the first drag; I imagine it was about 6:15; if he missed it and caught the next one it would be about 6:25. Of course, there have been times—

Q. What time did you get to your working place?

A. If I rode the first drag, at about 6:30.

Q. If you caught the second drag, what time did you get there?

A. About ten minutes later. There have been times I rode the last drag, being outside talking to the mine foreman, and I would run a little late.

Q. You would get there between 6:30 and 7:00 o'clock?

A. Yes, sir.

Q. When you got through shooting in the afternoon—you shot at 3:10?

A. On the eight hours.

Q. That is what I am talking about, the eight hours. You had lunch on the company's time?

A. Well, that was the company's rule. Sometimes we shot before that.

Q. You shot before three o'clock?

A. Not before three o'clock.

Q. About three o'clock?

A. About that.

Q. You think you shot about three o'clock?

A. Well, about that.

Q. That is the last thing you did? After you shot, you went on to the hoodlum and caught the drag out you got there in time to catch?

A. Yes, sir.

Q. Of course, your helpers,—I mean by that the loading part of the crew,—they oftentimes left the place even before you shot?

A. I try to make it a practice to get them out of the way before I blast so I would know they would be safe.

Q. If you blasted on an average at three o'clock, they would leave a little before three o'clock?

A. Well, about five minutes.

Q. They would get down and be in position to catch the first drag out that ran about 3:15?

A. Well, probably. Sometimes they would have to carry some bars down. They had to carry the oil cans.

Q. What was the place you worked at you said you thought was about three-quarters of a mile away?

A. The left man way, it was known then. Now it is known as the south haulage.

Q. The south haulage?

A. Yes, sir.

Q. Have you been in that place some time?

A. Since October 1, 1938.

Q. Now, of course, as head miner, you are in charge of your crew while you are in the stope?

A. Yes, sir.

Q. And the mine foreman or the assistant mine foreman—they don't come up there except maybe once a day, or about how often do they come up there where you are?

A. They try to make it a practice of coming once a day, but there have been times maybe I wouldn't see them but once a week.

Q. Sometimes you wouldn't see them but once a week?

A. Yes, sir.

Q. And when they would come they always came after you started to work, I suppose?

A. Yes, sir, it was always after we had started to work

Q. Now, when you were working up there, if you would happen to run out of oil or wedges or hangers or jackhammer steel or quarry bars, you would send your men back to get it?

A. I never did make a practice of running out.

Q. That is what I am getting at—

A. It wasn't my job to run out.

Q. In order not to run out of the material, back before they put it in the carbide house, when it was taken down there, you would get there with your crowd pretty early in the morning and endeavor to get your share of it?

A. How was that?

Q. When they brought it down before they started putting it in the carbide house—

A. Very seldom they brought it in there.

Q. When they brought it you would get your part of it?

A. They would issue us out about three hangers and about a dozen and a half wedges.

Q. How often was that done?

A. Up prior to May 1st, about three times a month, the best of my knowledge, on our shift.

Q. You mean three times—

A. My buddy, he uses the same wedges I do. They might have done that on the other shift; I don't know.

Q. You got them for a while at the supply house, didn't you?

A. At the shop.

Q. At the shop?

A. Yes, sir.

Q. That opened at 6:30?

A. Yes, sir.

Q. When you got them from there you would send one of your men down to the supply house or shop and he would be there at 6:30 when they opened and get what you needed and either bring it up on the truck or bring it up himself, and carry it down; is that the way you did it?

A. No, sir.

Q. How did you do it?

A. I would always make it a practice, on the night shift I would get a requisition for this material, for the hangers and wedges and E-hooks, and take it to the supply house and bring it back and put—take it in my car and put it in the back end and carry it up and throw it out and tell my men, "There it is, carry it down. I have done my part of it."

Q. That is the way you did it?

A. Yes, sir.

Q. How often did you do that?

A. Around once a month, I imagine; sometimes not that often. They would go by there—

Q. How many of your men would it take, after you have done your part, for them to do their part?

A: Oh, about three or four.

Q. That would be sometimes longer than a month apart?

A. Yes, sir.

Q. All right. Then there was a time there when they kept a supply of these C-hooks and hangers and wedges at the carbide house; do you remember that?

A. Well, as a rule ever since the incentive plan was put on they would be kept there. But that is the reason we had to go to the supply house after them. They didn't keep a supply on hand. I don't mean each and every month I had to go to the shop or supply house, because sometimes I could get them at the carbide house.

Q. When you got them at the shop you couldn't get them until 6:30?

A. I just told you I never got them in the day time.

Q. Wasn't there a time when you had to get a requisition from the mine foreman and get them at the carbide house?

A. How is that?

Q. Wasn't there a time when you had to get a requisition from the mine foreman and get them at the carbide house?

A. I have always had to have a requisition to get them anywhere.

Q. But you got them in the carbide house?

A. Yes, sir.

Q. How long did that last?

A. How long did that last?

Q. Yes.

A. Well, ever since the incentive plan has been in effect up until a short time ago.

Q. Is that the same time where they had this basket on the front of the skip they put this stuff on when they would bring it from the carbide house?

A. I don't think they had that basket on there so long. The best of my knowledge,—I wouldn't be positive,—there was an accident caused by material—the men trying to load up on the skip, someone jumped on a piece of material and that was why that basket was put on the bail.

Q. Did anybody tell you why it was put there?

A. Sir?

Q. Did anyone tell you why it was that basket was put there?

A. It seems like somebody did.

Q. Who told you that?

A. I don't remember just who did.

Q. Do you remember whether or not the head miners requested Mr. Carter to have it done so they wouldn't be without stuff by the other head miners getting more than their share down below?

A. How do you mean that?

Q. Do you know whether or not the placing of these supplies at the carbide house and the putting of the baskets on the skips followed some complaints from the head miners made to the mine foreman about not being able, at the underground place, to get sufficient of the supplies, because other head miners were getting there first and getting most of them?

A. Well, it was my understanding, Mr.—

Q. Well, do you know about that or not?

A. Well, I couldn't—I don't—I haven't seen it put in writing anywhere, Mr. Burr.

Q. I know, but who told you about the understanding? You said you had some understanding about it.

A. I understood it from the management.

Q. Who was it? That is what I want to get?

A. I don't recollect whether it was Mr. Carter,—it might have been. I was around the office a right smart. The way I understood it—

Q. I want to know who you understood it from first.

Mr. Harris:

He has answered.

Mr. Burr:

I don't think he has.

The Court:

He said it may have been Mr. Carter.

Q. If it wasn't Mr. Carter, who was it?

A. I couldn't say.

Q. Was it the mine foreman?

A. No, it wasn't the mine foreman.

Q. Was it Mr. Ball?

A. No.

Q. What did Mr. Carter tell you, if it was Mr Carter? What did he tell you?

A. Well, it was beneficial—the way it was—when the incentive plan went into effect, it would be beneficial to the men to have their supplies and everything right there and change clothes and come out and get their carbide and wedges and hangers and things and go right on to work, and they wouldn't have to be running down to the supply house to get them, or here and yonder, and sending a truck up to Number 6 with a can of wedges, fifty or seventy-five, and the same thing at Number 4. The first head miner or crew up there got the majority of them.

Q. You get that understanding, do you know, from Mr. Carter?

Mr. Harris:
He didn't say that.

Mr. Burr:
He said—

The Court:
You said you didn't know?

The Witness:
Yes, sir.

The Court:
Do you know?

The Witness:
No, sir.

Q. That is the understanding you had about it?

A. Yes, sir.

Q. Mr. Stewart, the oil, for instance, just as an illustration you say it one time they had an oil station down there where the men would take their cans and get the oil?

A. About 150 feet across from the man loading place.

Q. And later at your mine they changed that and put the oil drums up nearer your working place?

A. I kept on after the mine foreman—I couldn't say about the other places because I am practically off in a mine by myself—

Q. About your own place, then?

A. I kept on after the mine foreman to get oil up there, and about a year and a half or a year ago the mine foreman decided to put it up there. I mentioned it to Mr. Carter once when he was there. I don't know whether he recollects it or not, but I do.

Q. How long have you had a drum up there?

A. About a year.

Q. The way you got it before that, one of your section helpers would bring the empty can down at the end of the shift and hide it at the oil house, or leave it there somewhere, and when he came back on the next shift he would get that can filled and carry it on back to his working place. Is that the way you did it?

A. Yes, sir.

Q. If oil gave out or wedges gave out during the day, you could send your men to get them?

A. I never did let that happen.

Mr. Burr:
All right; that is all.

Mr. Harris:
That is all.

(Witness excused.)

Mr. Harris:
Call Mr. R. E. Lemley.

2695 R. E. LEMLEY, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. What is your name?

A. R. E. Lemley.

Q. How old are you?

A. 29.

Q. Where were you born?

A. Jefferson County.

Q. How high did you go in school?

A. Through the seventh.

Q. What work do you do?

A. I am a skip tender.

Q. Where?

A. Wenonah, Number 7 mine.

Q. How long have you been a skip tender at Wenonah Number 7?

A. About two years.

Q. What did you do before you became a skip tender at Number 7?

A. I was a skip tender at Number 9.

Q. Is Number 9 very far from Number 7?

A. About three quarters of a mile.

Q. During the two years you have been skip tender at Number 7, up to May 1, 1941, what time did you report to work in the morning on the day shift?

A. At six o'clock.

Q. If you were on the night shift did you report at six o'clock in the afternoon?

A. Yes, sir.

Q. Is the only difference—the substantial difference between the day shift and the night shift the mere matter of time when they start?

A. Yes, sir.

Q. When you reported for work at six o'clock, did you have any way—any brass check or anything you handed in to anybody?

A. Yes, sir, I had a brass check.

Q. Where did you hand it in?

A. At the window.

Q. The tally house window?

A. Yes, sir.

Q. At the time you did that were you in your work clothes?

A. Yes, sir.

Q. As skip tender at Number 7, what time, during these two years, did you start running the skip?

A. Six o'clock.

Q. How many trips did you run to get the men down into the mine?

A. About four.

Q. Did your skip haul service men and production men?

A. Yes, sir.

Q. That skip out there—have you seen the pictures that we have of the skip here?

A. No, sir, I haven't.

Q. Did you see these men illustrate the other day how they rode the skip?

A. Yes, sir.

Q. Up here in Court?

A. Yes, sir.

Q. Did they illustrate it the way the men on your skip rode it?

A. No, sir.

Q. Is that the kind of skip you had at Wenonah Number 7 (exhibiting picture to witness)?

A. Yes, sir.

Q. What is the difference between the way they illustrated they rode on their skip and the way the men on your skip rode their skip?

A. The men in our skip didn't get quite as low. In other words, they hooked themselves more like this (illustrating).

Q. Did any of the men in your skip squat as low as they did?

A. Yes, sir, the first three men.

Q. How about the next three?

A. They faced them.

Q. And how about the next three?

A. They would lock around their waists this way (illustrating).

Q. And would they lock around the waist that way clear back to the end of the skip?

A. Yes, sir.

Q. Was that the usual and customary way of riding the skip?

A. Yes, sir.

Q. During these three years was the company running Number 7 on a five day week?

A. Yes, sir.

Q. What time did you start hauling the men out of the mine?

A. About 3:15.

Q. What time did you finish?

A. About a quarter to four.

Q. Did the men carry any tools with them on your skip?

A. Yes, sir, I have seen them carrying tools.

Q. Did you have a pail at the end of your skip for the men to put tools in?

A. No, sir, we did not have.

Q. What tools have you seen them carrying during the two years you have been out there at Number 7?

A. I have seen them carrying jackhammer steel.

Q. Who would let you know, if anybody let you know, when it was time to start down into Number 7?

A. Well, I usually know. My time starts at six.

Q. Usually what?

A. I usually knew my duty.

Q. Did you have to wait for anybody to give you a signal before you started down with your skip?

A. No, sir. We skip tenders attended to that at my mine.

Q. The skip tenders attended to that?

A. Yes, sir.

Q. Well, now, out at Number 7 did you have one of these rods you reach up to touch a wire to signal back to the hoisting engineer if anything went wrong?

A. Yes, sir.

Q. Did you have anything to stop the skip with other than that wire or rod?

A. No, sir. That was all.

Q. Now, as skip tender for those two years, were you paid for eight hours or were you paid for nine hours?

A. I was paid for nine hours.

Q. That means you got eight hours straight time and one hour on time and a half?

A. That is right.

Q. And you went to work the same time the service men and the miners did, and you quit the same time they did?

A. Yes, sir.

Mr. Harris:

That is all; you can take him.

Cross Examination.

(By Mr. Burr):

Q. Mr. Lemley, you have been a skip tender at one mine or another for a good many years, haven't you?

A. No, sir. I have been a skip tender for about—since 1937.

Q. Since 1937?

A. Yes, sir.

Q. Before that time what were you doing?

A. I was running an underground sinking hoist.

Q. Since you have been skip tender you have used the same skip, the same style skip all the time?

A. Yes, sir.

Q. That is just used to haul the men in?

A. And ore.

Q. You don't handle them together?

A. No, sir.

Q. You deposited your brass check the same way the other men did?

A. Yes, sir.

Q. You have been getting time and a half over the whole period of time—you have been a nine hour man?

A. Yes, sir.

Q. The signals you give—you don't start the skip or stop it at all, but when you want to start or stop it you give the required signals the rules require you to give?

A. Yes, sir.

Q. And that gives a signal to the engineer and he handles it and starts and stops it?

A. Yes, sir.

Q. You had a half hour for lunch?

A. Yes, sir.

Mr. Burr:

All right; that is all. Wait a minute.

Q. You say you got paid for nine hours? You started to work at what time now?

A. Six o'clock.

Q. And the first thing you did was to make a test trip?

A. That is right.

Q. You had to get the skip off the side track and test it out?

A. Yes, sir.

Q. And then after that you started to work hauling the men down?

A. Yes, sir.

Q. That was your job?

A. Yes, sir.

Q. And then you continued—you took the skip down. Did you come back with it or not?

A. No, sir. I would carry the first trip down, always.

Q. Then when you carried the first trip down to the bottom, then what work did you do?

A. When the men unloaded I would send the skip back.

Q. Then what did you do down there?

A. I would stay until the next load of men arrived.

Q. Then what did you do?

A. I unloaded them and sent the skip back.

Q. And you continued to do that until all the men were down?

A. Yes, sir.

Q. Then what did you do, start hauling ore?

A. Take this safety body off and start hauling ore.

Q. You quit hauling ore about what time?

A. 3:15.

Q. And then you took the men out at 3:15?

A. Yes, sir.

Q. Are you on the outside or inside when you quit hauling ore?

A. Inside.

Q. And then you hauled the men how long?

A. Until about a quarter of four.

Q. 3:45?

A. Yes, sir.

Q. That would be the end of your day's work?

A. Yes, sir; sidetrack the skip.

Q. And you had thirty minutes for lunch?

A. Yes, sir.

Q. You got paid on nine hours basis; eight hours straight time and one your time and a half over time?

A. Yes, sir.

Mr. Burr:

That is all.

(Witness excused.)

Mr. Harris:

If the Court please, I believe that is all,—It may be I have overlooked something,—but I think that is all the witnesses I expect to call from the T. C. I., and then that one matter further which I mentioned—I will point that out on Monday or Tuesday.

Now, I am going ahead with either the Sloss or—

The Court:

I don't believe we will take up another witness today. We took up a matter here yesterday afternoon I am ready to pass on.

Mr. Harris:

So far as I am concerned, my motion was—

The Court:

These demands made to produce,—where is the original? That is made by Republic Steel Corporation.

Mr. Burr:

What is that?

The Court:

That is the Republic Iron & Steel Company.

Mr. Burr:

To do what?

The Court:

It is a subpoena directed to the Republic Iron & Steel Company, a subpoena requesting them to produce certain matter.

Is that to the Republic Iron & Steel Corporation?

Mr. Burr:

I guess it is. I never had seen one—

The Court:

They are alike. There are three, Tennessee Company, Sloss and Republic.

Mr. Burr:

That is right. That is the first one that was filed?

The Court:

Yes, sir.

Mr. Burr:

By the administrator?

The Court:

Yes, sir. Then here is one directed to the Tennessee Coal, Iron & Railroad Company and Mr. E. B. Ball as general superintendent of the Tennessee Coal, Iron & Railroad Company.

I think—Number 1 has been answered, I think. That is with reference to the notations on that map.

Mr. Burr:
Yes, sir.

The Court:
"Maps with figures indicating the progress made in each heading of the iron ore mines of the Tennessee Coal, Iron & Railroad Company since 1936.

"2. Statistics showing the change in the rates of pay of the men working in the iron ore mines of the Tennessee Coal, Iron & Railroad Company through the years since it has been in operation."

Well, I think that is most too far-reaching and goes back too remote. I think probably it would be all right for the last ten years.

Mr. Harris:
Well, I will modify it and ask for—

The Court:
It is not so set out here. I have my doubts whether I can limit it—

Mr. Harris:
I have my doubts about it too.

The Court:
I thought there might be an agreement.

Mr. Burr:
My motion is to quash this subpoena.

The Court:
Well, it is granted as to Number 1 and refused as to Number 2,—No; I should say it is refused as to Number 1 and granted as to Number 2.

Mr. Burr:
What is Number 2?

The Court:
That is asking for the change in the rates since the company was organized.

Mr. Burr:
Would Your Honor read it to me so I can—

The Court:
"Statistics showing the change in the rates of pay of the men working in the iron ore mines of the Tennessee Coal, Iron & Railroad Company through the years since it has been in operation."

Mr. Burr:
Does Your Honor—

Mr. All:
Isn't that the one you are going to grant the motion—

The Court:
I just said I was going to grant the motion. It is refused as to three.

Mr. Burr:
What is three?

The Court:
Have you got a copy of these?

Mr. Burr:
No, sir.

The Court:
All right. I will read it.

"All proposals, agreements, contracts, and requests submitted to Tennessee Coal, Iron & Railroad Company in writing by your ore mine employees or by any representatives of said employees, relating to terms of employment, hours and working conditions, and copies of all your replies thereto between January 1, 1933, and the date hereof.

Mr. Burr:
I stated to Your Honor yesterday we have offered every one in evidence we have got. That has already been done.

Mr. Harris:
The reason I asked it was on account of the proposition of the six-hour day one.

Mr. Burr:
There has never been a six-hour day one.

Mr. Harris:
There certainly has.

The Court:
If you have it, produce it.

Mr. All:
You don't mean this to apply to the Sloss?

Mr. Harris:
I only addressed the subpoena to the Tennessee Company.

The Court:
Tennessee Coal, Iron & Railroad Company.
Four,—this is granted, Mr. Burr, if you can produce it.

Mr. Burr:

All right, sir. If we have got it we will be glad to produce it.

The Court:

"4. All records, minutes, and correspondence recording or relating to conferences and meetings with your ore mine employees or with any representatives of said employees at which there was mentioned or discussed payment for any part of the time spent daily by said employees prior to reaching or after leaving the 'face'."

Well, now, you have already—

Mr. Burr:

Yes, sir, we have offered that and are going to offer all the others for each division.

The Court:

If you have any more—

Mr. Burr:

Yes, sir, that is all right.

The Court:

"5. Records for all your ore mine employees of total ore production for the following periods: (a) The year 1923, (b) The year 1933, (c) The year 1940, and (d) January 1, 1941, to date, by month; all tipple and other tonnage records of production of ore in your mines for each year and each month between October 24, 1938, and the date hereof."

The motion is refused as to Number 5.

Number 7,—it is refused,—which reads:

"All working diagrams and maps of your red ore mines—"

Now, there is some of that that has probably been furnished on your maps.

Mr. Burr:
That—is that refused?

The Court:
No, I am going to grant this. I think they are entitled to know the ventilation system.

Mr. Burr:
We have described it.

The Court:
Can't that be indicated on the maps?

Mr. Burr:
Does Your Honor mean you want us to go back and get the maps and indicate it on the maps?

The Court:
"All working diagrams and maps of your red ore mines described in the complaint showing:

"(a) The ventilation system in the mines;

"(b) The haulage systems in the mines;

"(c) The location of present operations at the 'face';

"(d) Manways, passages and haulage ways used by your employees in going to and from the 'face', giving distances, slopes, gradients, and descriptions of manways and passages."

Mr. Burr:

To get all he asks for in that thing there would probably take—I don't know what he wants with it. It looks to me like it is an imposition on anybody to get up that sort of stuff.

The Court:

Seven is granted.

Eight is refused,—that is refused on seven, I should say.

Eight, your motion to quash is granted, which reads:

"All records of blast furnace loadings for each year and each month since October 24, 1938."

Mr. Burr:

Our blast furnace loadings—

The Court:

I am granting your motion to strike that on the ground it reads, "All records of blast furnace loadings." It don't say what, coal, iron, or dolomite.

Mr. Harris:

That is my fault, Judge.

The Court:

The motion is granted as to nine, which reads:

"All production schedules for each year and each month since October 24, 1938."

Mr. Burr:

Production schedules?

Mr. Harris:

Judge, I withdraw that as to nine, because it is not clear.

The Court:
It covers other things other than ore.

Mr. Harris:
I withdraw that.

The Court:
The motion to quash is granted.
Number 10, the motion to quash is granted.
Number 11, the motion to quash is granted.

Mr. Harris:
Did the reporters take down what the Judge said?

Mr. Burr:
If I have got it right, I have got 3, 4, 5, and 7 are the ones you said you wanted me to produce if we have them.

The Court:
I have granted the motion to quash Number 2. That is with reference to statistics—

Mr. Burr:
If Your Honor will tell me which ones you said for me to produce—

The Court:
Three.

Mr. Burr:
Four?

The Court:
Four.

Mr. Burr:
Five?

The Court:
Five.

Mr. Burr:
Seven?

The Court:
Seven.

Mr. Burr:
Any others?

The Court:
That is all. Here is—as to each of the companies.

Mr. Burr:
I want to take an exception, of course, as to each one you have required.

The Court:
All right, sir.

Mr. Burr:
I call attention to the fact, I don't see just how, on a motion of this sort,—it looks like to me a subpoena that is burdensome—I don't see how it is that you can take a subpoena that is burdensome and let someone decide which should be produced.

The Court:
I am looking at it from that standpoint too.

Mr. Burr:
It is the whole thing—,

The Court:
The Tennessee Company has its records for several years, many years for that matter?

Mr. Burr:

We have them ever since we have been running, I suppose.

The Court:

These things that have been called for and have been granted, I can't see it would be any great hardship to get those figures.

Mr. Burr:

I don't know what they want. It is so uncertain and so indefinite—Of course, the ones about the minutes, I understand, but to come and ask about schedules,—I don't see—then, the point Your Honor has already ruled six or seven items are burdensome. Then, how can you take a subpoena we are moving to quash as a whole—

The Court:

Six or seven out of a dozen.

Mr. Burr:

You have sustained a motion to quash all of the items of the subpoena, except three, four, five and seven.

My motion to quash is as to the whole subpoena.

The Court:

Those paragraphs, I don't think, are burdensome.

Mr. Burr:

We haven't asked for those paragraphs to be quashed. We asked to quash the whole subpoena.

Mr Harris:

You move to quash the whole subpoena?

The Court:

Then I overrule the motion as to each part.

Mr. Burr:
And then we take an exception.

"Records for all your ore—"

I want to find out what we are after.

Mr. Harris:
I object to him holding us here while he tries to find out what a subpoena means. He has studied it and filed objections, and the Court has ruled on it.

Mr. Burr:
I want to obey the Court, if I can.

The Court:
Read that one.

Mr. Burr:
"Records for all your ore mine employees of total ore production for the following periods: (a) The year 1923, (b) The year 1933, (c) The year 1940, and (d) January 1, 1941, to date, by month;—"

The Court:
That is plain, isn't it?

Mr. Burr:
It is not to me. It says, "Records for all your ore mine employees of total ore production."

Mr. Harris:
I want the production for each mine.

Mr. Burr:
It says, "Production for all your ore mine employees."

The Court:

Let me see that.

Mr. Burr:

If that is not plain English, I can't read it.

Mr. Harris:

That is very clear.

The Court:

"Records—" Just a minute,—"Records for all your ore mine employees of total ore production for the following periods: (a) The year 1923, (b) The year 1933, (c) The year 1940, and (d) January 1, 1941, to date, by month; all tipple and other tonnage records of production of ore in your mines for each year and each month between October 24, 1938, and the date hereof."

That is total ore. That is just a record of total ore mined by your employees.

Mr. Harris:

That is all I want. I don't care how much Tom Jones produced and how much Bill Smith produced.

Mr. Burr:

Construing it that way, does Your Honor want me to bring here in Court the records—

The Court:

It don't ask for the records. It just asks for the figures.

Mr. Harris:

I just want the totals.

The Court:

The records that show the totals of the mines. You don't have to have all your books, I shouldn't think.

Mr. Burr:

You want me to bring—is it down now where I can bring the total of the production for each year from 1923 on to 1940?

The Court:

Yes, sir, and it says, "month" down at the last.

You have got that tallied up by months and years, I imagine. I never have seen them.

Mr. Burr:

I haven't either.

The Court:

I am sure you have.

Mr. Burr:

I am sure if we get them we will have to tally them up.

The Court:

No; you have got your total production for each year, a company like the Tennessee Company.

Mr. Burr:

Now, seven. "All working diagrams and maps of your red ore mines described in the complaint showing:

"(a) The ventilation systems in the mines."

"All working diagrams and maps."

Does that mean we have to bring in every diagram and map—

The Court:

Whatever you have made. You don't have to go and make them.

Mr. Burr:

Well, suppose we make four or five a year? What do they want to know? Do they want a present map of our ventilation system?

The Court:

Yes, sir.

Mr. Burr:

Is that all he wants?

The Court:

That is one thing.

Mr. Burr:

Anything else?

The Court:

I don't remember the question.

Mr. Burr:

"7. All working diagrams and maps of your red ore mines described in the complaint showing:

"(a) The ventilation systems in the mines;"

"(b) The haulage systems in the mines—"

The Court:

That means where you haul your ore.

Mr. Burr:

Does it mean working diagrams and maps now of all these we have had since we started operating the company?

The Court:

I take it up to May 1, 1941.

Mr. Burr:

Since the company started operating?

The Court:

No; probably as of May 1, 1941.

Mr. Burr:

It doesn't say that.

The Court:

Let's see what it says.

Mr. Burr:

It says, "All working diagrams and maps of your red ore mines."

I think the burden is on a man, when he asks for a subpoena, to show what he wants.

The Court:

I think your ground there is well taken.

Mr. Harris:

Judge, we are not asking and we don't mean—

The Court:

I think it would be burdensome to bring all the maps.

Mr. Harris:

I don't want anything except as of the date of the subpoena. I am not interested in the diagrams ten or fifteen years ago.

Mr. Burr:
That is what he asked for.

The Court:
"All working diagrams."

Mr. Harris:
That is present working diagrams,—not old diagrams.

Mr. Burr:
I haven't got the least idea in the world what that thing means.

Mr. Harris:
I am not asking for—.

Mr. Burr:
If what he wants is a map of our present ventilation system, of our present haulage system, why, we can get it for him, but that is not what he asked for.

The Court:
I think, Mr. Burr, on further reflection over it, it reads, says, "All working diagrams,"—not all work, but all working diagrams—

Mr. Burr:
So I am to know what we are to do, does Your Honor construe it to mean we bring as of the present time the maps showing—

The Court:
In the recent past.

Mr. Burr:
What date?

The Court:

In other words, I don't think you have to go to any work furnishing them. What you have, bring them.

Mr. Burr:

Any maps we have prepared—

The Court:

Up until the time of the service of this subpoena.

Mr. Burr:

Ed, do you understand what he means?

Mr. E. M. Ball:

They are already in evidence.

The Court:

Do they show the ventilation system?

Mr. E. M. Ball:

All we will have to do is take a pencil and mark them.

Mr. Burr:

We will work that out by Monday.

The Court:

These others,--there are three others.

Mr. Burr:

That was issued by the intervener?

Mr. Cooper:

That was issued by the intervener. I think I have marked on that what is identical.

The Court:

Number 1—

Mr. Cooper:

That is identical with the request you have just ruled on.

The Court:

I overrule the motion to quash.

Also as to Number 1 and Number 2, I overrule the motion to quash.

Mr. Cooper:

We have abandoned Number 3.

The Court:

Number 3 it is granted.

Number 4, motion to quash is overruled.

5, the motion to quash is granted.

Number 6, the motion to quash is overruled.

Number 7, the motion to quash is overruled.

Motion to quash Number 8 is granted. That is out.

And also on Number 9,—the motion to quash Number 9 is granted.

The motion to quash paragraph 10 is overruled.

Motion to quash paragraph Number 11 is granted.

Motion to quash paragraph 12—Now, that is of production schedules for each year, and that is too broad.

Mr. Cooper:

Yes, sir, that is—

The Court:

It is granted as to that, Number 12.

Number 13,—motion to quash Number 13 is refused. I mean it is denied and overruled. That is as to schedules and records of development work in your red ore mines since October 24, 1938. I think perhaps that has been shown on the maps.

Mr. Burr:

I don't know what it means. We have given them a map showing it. What does the word, "schedule" mean? I don't know.

Mr. Cooper:

I think that has a very definite meaning among the operators.

Mr. Burr:

If it has, I haven't learned it in thirty years.

The Court:

14, the motion is granted.
15, the motion is granted.
16, the motion is overruled.
17, the motion is overruled.
18, the motion is granted,
19, granted.
20, overruled.
21, overruled.
And motion to quash 22 is granted.

Mr. Cooper:

Judge, I think in 22 we particularly refer to certain studies.

Mr. Burr:

Your Honor, we take an exception to the overruling of the motion as a whole, just as we did in the other, and a separate exception to the overruling of our motion as to the sections you have said we should answer.

The Court:

All right.

I think that is all now.

Tomorrow is Saturday. We want to have Court in the morning. I would like to run up until about one o'clock, or 12:30.

Mr. Burr:
Judge,—

The Court:
In other words, here is the thing, Mr. Burr: It looks like we will be in this case a good while this summer.

Mr. Burr:
Judge, we had better come out alive when we get through with it.

Mr. Harris:
I can tell you what I think we can do.

Mr. Burr:
He has finished with his mines.

Mr. Harris:
With Tennessee.

Mr. Burr:
He has Sloss and Republic.

Mr. Harris:
What I think it would do, it would expedite the—what we can do,—with the couple of days we had intended culling out our witnesses. We had planned to work Saturday and Sunday. I think we can save the time of the Court and everybody if I have an opportunity to check on my Sloss and Republic witnesses,—I think I can save time.

However, if Your Honor wants to go ahead.

The Court:

Well, if it suits both of you—

Mr. Harris:

It will save time.

Mr. Burr:

He is not only entitled to it, but I think you will have a doctor's certificate if we—

The Court:

We have been doing pretty good. We—

Mr. Burr:

The hours we haven't been working here, we have been working outside. I have been in my office every night since this thing started, and I have worked every Sunday since this thing started.

Mr. Harris:

Leaving out the interests of the lawyers, I think we can serve the interests of the Court by having an opportunity of talking to the witnesses. We have gone much more rapidly than I expected to go today. I have finished with the Tennessee Company mines.

The Court:

Then we will not have Court tomorrow, and adjourn until 9:30 Monday morning.

(Whereupon, at 4:50 P. M., July 25, 1941, an adjournment was had to 9:30 A. M., July 28, 1941.)

July 28, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:

I want to say to counsel about the rulings on the subpoenas duces tecum the other day that since the Attorney General has requested all District Judges to furnish him with a copy of all rulings under the new procedure, I think it would be better for the litigants to have what I ruled on put in a written order and signed, and each one of you given a copy. That will be as of Saturday.

Are you ready?

Mr. Harris:

Call Mr. Lilly.

2718 ATLEE LILLY, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Court:

What is your name?

The Witness:

Atlee Lilly.

The Court:

Atlee Lilly?

The Witness:

Yes, sir.

The Court:

L-i-l-l-y.

The Witness:

Yes, sir.

(By Mr. Harris):

Q. Mr. Lilly, how old are you?
A. Twenty-eight.
Q. What—Where were you born?

The Court:
~~What?~~

The Witness:
Sir?

The Court:
How old did you say you were?

The Witness:
Twenty-eight.

Q. Where were you born?
A. Born in Tempson, Texas.
Q. You work for the Sloss-Sheffield Steel & Iron Company?
A. Yes, sir.
Q. I will ask you to look at this picture—

Mr. All:
Let me see it.

Mr. Harris:
I will show it to you in just a second.

Q. Do you recognize that as the picture of one of the mantrip cars at the Sloss Mine?
A. Yes, sir. I can tell you every man on there.

Mr. Harris:
We offer in evidence, if the Court pleases, as Defendants' next exhibit—

The Clerk:
Defendants' 19.

Mr. Burr:
Is that just general 19, or the Sloss Company.

The Court:
19 for the Sloss Company.

The Clerk:
No, sir, Defendants' Exhibit.

Mr. Harris:
As to the Sloss Company, I suppose.

The Court:
Exhibit 19?

Mr. Harris:
Yes, sir.

The Court:
For all defendants?

Mr. Harris:
We are offering it for all defendants, but I assume the conditions in the Sloss Company wouldn't have any bearing on the conditions in the Tennessee Company.
We think they all have a bearing.

Mr. Harris:
You think it has a bearing on all?

Mr. Burr:
Yes, sir.

Mr. Harris:
I thought you were asking me to limit it as to the Sloss Company.

Mr. Burr:
No, sir. I just wanted to get the number.
We would like to know when the picture was taken.

Mr. Harris:
It was taken in the past two weeks.

Mr. Burr:
By whom?

Mr. All:
By whom was that picture taken?

Mr. Harris:
Well, I am not ready to go into that yet.

(Thereupon photographs, showing a loaded man car was marked Defendants' Exhibit No. 19.)

Q. Mr. Lilly, have you ridden on that mantrip at the Sloss Company?
A. Yes, sir.
Q. Is that the man trip that goes down the main slope into the mine?
A. Yes, sir.
Q. What mine is it?
A. Number 2.
Q. Were you riding on that man trip during the present month?
A. Yes, sir.
Q. When you received an injury?
A. Yes, sir.

Mr. All:
We object to that, if the Court please.

The Court:
Overruled.

Q. Were you going in the mine or coming out of the mine?

Mr. All:
The same objection.

The Court:
Overruled.

A. Coming out.
Q. I notice you have a bandage—

Mr. All:
May it please the Court, to save time, may it be agreed I have an objection and exception to all these questions?

The Court:
That is understood.

Mr. All:
On behalf of all these plaintiffs?

The Court:
That is understood.

Q. I notice you have a bandage on your head. Is that the injury you received coming out on the mantrip from Sloss Mine Number 2?
A. Yes, sir; that is part of it. It has gotten well now.
Q. Was that man trip you were riding on the same one that had been in use out there since 1938?

A. The one I was riding wasn't.

Q. How long had the one you were riding on been in use?

A. Since the last contract was signed, since May 1st.

Q. Was it like the ones that had been in use there?

A. Yes, sir.

Mr. Harris:

You can take him.

Cross Examination.

(By Mr. All):

Q. Mr. Lilly, how long have you been working out at the Sloss Company?

A. Soon will be five years.

Q. Soon will be five years?

A. Yes, sir.

Q. How do you ride on this man trip? Do you stand up or sit down?

A. Sit down.

Q. Were you sitting down when you got hurt?

A. Yes, sir.

~~Q. How did~~ you get hurt?

A. You have to bend over going under the rocks. I thought I was out from under the rocks, the row of rocks, and I raised up and got my head hit.

Q. How long have you been riding that trip, Mr. Lilly?

A. Since May 1st on that trip.

Q. I mean ones just like it.

A. Since I have been at Sloss.

Q. How long have you been at Sloss?

A. Five years.

Q. Have you been riding under the same roof you got hurt on on this occasion?

A. Since May 1st, the same roof.

Q. I mean have you been riding on man cars just like that?

A. Yes, sir.

Q. In the same place you were riding ~~in when you got~~ hurt?

A. No, sir; since May 1st.

The Court:

You mean to say you hadn't been riding on that slope except since May 1st?

The Witness:

Yes, sir.

Q. You never rode in there before?

A. No, sir.

Q. Anybody else get hurt on that trip?

A. No, sir.

Q. You haven't gotten hurt any other time since May 1st, have you?

A. No, sir.

Q. You haven't seen anybody else get hurt in there since May 1st, have you?

A. I have seen them bump the top. They haven't gotten injured.

Q. Who have you seen get injured in there?

A. A fellow by the name of Coe.

The Court:

Coe?

The Witness:

Yes, sir.

The Court:

Coe or Cole?

Mr. Quinn:
Coe.

The Witness:
I don't know.

Q. You say he didn't get hurt?
A. He said he bumped his neck, but he wasn't off.
Q. Do you know whether anybody reported it?
A. No, sir.
Q. When was that?
A. It has been two or three months ago.
Q. Who else?
A. Mr. Gleason.
Q. Who is he?
A. A fellow that works out there.
Q. What does he do?
A. Tram engineer.
Q. Did he hurt himself?
A. He bumped his head, skinned his head a little bit, but he didn't—
Q. He worked on the tram at that time?
A. Yes, sir.
Q. When was that?
A. That was two or three months back. I couldn't recall the date.
Q. Now, how did you get in the mine before May 1, 1941?
A. Walked.
Q. Walked?
A. Yes, sir.
Q. You didn't ride the trip at all?
A. Rode the first one. This was the second trip.
Q. This was the second trip?
A. Yes, sir.
Q. Did you walk all the time before?
A. After I got off the first trip, I did.

Q. I mean by that during all the four or five years you worked there, you never had ridden on this first trip?

A. Second trip.

Q. Well, had you ever ridden on the first trip before?

A. Rode the first trip all the time.

Q. Rode the first trip all the time?

A. Yes, sir.

Q. And you never got hurt on that first trip?

A. No, sir.

Q. Never did?

A. No, sir.

Q. What is your kind of work, Mr. Lilly?

A. Drag engineer.

Q. What is that?

A. Drag engineer.

Q. That is, you are one of the production men?

A. What?

Q. You are a production man?

A. Drag engineer.

Q. Is that in the headings, work in the headings?

A. Stopes.

Q. Stopes? What had been your mining experience before you went to Sloss?

A. None.

Q. Never worked anywhere else?

A. No, sir.

Q. What kind of work have you been doing since you went to Sloss?

A. Drag engineer most of the time.

Q. All the time?

A. About four years; tram engineer before then.

The Court:

Is that all?

Mr. All:

I believe that is all.

Re-Direct Examination.

(By Mr. Harris):

Q. When you talk about the first trip and the second trip, do you mean by the first trip the one you first get on when you go down into the mine?

A. Yes, sir.

Q. And by the second trip do you mean a different ride in a different part of the mine?

A. Yes, sir.

Q. Have they started running man trips in a part of the mine since May 1st in which they were not running man trips before May 1st?

A. Yes, sir.

Q. And it was in this new portion of the mine where they now haul the men that you were injured?

A Yes, sir.

Mr. Harris:

That is all.

Re-Cross Examination.

(By Mr. All):

Q. Let's get that straight again. The company was not running that second trip on which you got hurt before May 1, 1941, was it?

A. Before the last contract was signed.

Q. That is what I mean, before the last contract was signed?

A. No, sir.

Q. Before May—sometime in 1941 or '40. When did they start running the trip in that part of the mine where you claimed to have gotten hurt?

A. It was after the last contract was signed. I don't know the date.

Q. That was in 1940?

A. The second man trip was not running until the contract was signed. Then they put it on.

Q. Until the last contract was signed the company did not operate the man trip in that part of the mine in which you claim you got hurt?

A. No, sir.

The Court:
Is that all?

Mr. All:
That is all.

Mr. Harris:
That is all.

(Witness excused.)

Mr. Harris:
Call Jesse Gaines.

2727 JESSE GAINES (C), being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):
What is your name?

A. Jesse Gaines.

Q. How old are you, Jessie?

A. 43.

Q. How high did you go in school?

A. The ninth grade.

Q. How long have you been working in and around the ore mines in the Birmingham District?

A. Off and on since 1914.

Q. What company do you work for now?

A. Sloss-Sheffield Steel & Iron Company.

Q. Have you been working for them since October 24, 1938?

A. I have.

Q. What kind of work were you doing from October 24, 1938, up to May 1 this year?

A. Head miner.

Q. What mine were you working at during that period?

A. Number 1 mine.

Q. What is the name of it? Is it—is that the name it goes by, Sloss Number 1?

A. Yes, sir.

Q. How far is it from Number 2?

A. Oh, approximately a half a mile.

Q. Now, in your work for the Sloss Company as head miner, did you work all the time on a day shift or all the time on a night shift or did you alternate?

A. You mean the last three years?

Q. Yes.

A. Day shift.

Q. You have been working on a day shift?

A. Yes, sir.

Q. Now, in the last three years when did you report at the mine on your day shift?

A. About six o'clock.

Mr. All:

We object, if the Court please.

The Court:

What is that?

Mr. All:

We object to that on the grounds we have interposed to other similar questions; on the ground it calls for a conclusion—

The Court:
Overruled.

Mr. All:
And on the other grounds we have assigned. Except.

The Court:
Overruled. What did he say?

Q. Now, when you got on—

The Court:
When did he report?

The Witness:
About six o'clock.

Q. When you got on the company's premises, where was the first place that you went to?

A. Went to the change house.

Q. What did you do at the change house?

A. Well, we pulled off our—pulled off my clean clothes and put on my work clothes.

Q. And then from the change house where did you go?

A. Goes to Number 2 slope.

Q. And when you got to Number 2 slope, did you have, during that three years, any regular place to which you went?

A. Yes, sir; we went by the tally house.

Q. What did you do when you went by the tally house?

A. Well, I would tell the boss man, "I am here."

Q. And who was the boss man that you would tell, "I am here," a mine foreman or an assistant mine foreman?

A. ~~Well,~~ the mine foreman, and sometimes the section foreman.

Q. And when you told him, "I am here," what, ordinarily, would the section foreman or mine foreman or assistant mine foreman to whom you gave that information,—what did he ordinarily do?

A. Well, on an average he would ask me if all my crew was there, and if for any cause my place was down he would tell me where to go and work that day or go back home or whatever instructions he thought were suitable for the day.

Q. Now, did you have a brass check which you handed in at the tally house?

A. No, sir.

Q. Now, did this section foreman or mine foreman or assistant mine foreman have any time book in his hand or pocket when you said, "I am here"?

A. He did.

Q. What did he ordinarily do when you said, "I am here", with reference to that book?

A. Well, he would check my name.

Q. Then after he checked your name in the book where did you go from the tally house, Jesse?

A. Go to the mouth of the slope.

Q. Go to the mouth of the slope?

A. Yes, sir.

Q. Well, what kind of miners' lamps did you use out there at the Sloss Company?

A. Carbide.

Q. Where would you get your carbide?

A. Well, now, I have bought it at the commissary, at other stores,—private stores. A man can buy it where he pleases.

Q. When you reported to the section foreman or mine foreman and said, "I am here," did you have your lamp on?

A. If I didn't have it on it would be in my pocket.

Q. And have carbide with you?

A. Yes, sir.

Q. Then, when you got up—after you had had these conversations with the mine foreman or section foreman, when you got up to the mouth of mine number two, what did you do then?

A. Well, I waited for the man trip. If the man trip was at the bottom I would wait for it to come back to the top. When it come back to the top I would load up.

Q. Now, the man trip out at the Sloss Company,—I will ask you to look at that picture.

Does that represent the kind of man trip that was in use in the Sloss Company from October, 1938, until May 1, 1941?

A. Yes, sir.

The Court:

Is that the same picture?

Mr. Harris:

Same picture.

Q. When you—Up and between October, 1938, and May 1, 1941, how many of those little cars were in a trip?

A. Six.

Q. And how many men rode on each one of the little cars?

A. Ten.

Q. Now, have they put on more cars or taken off cars since May 1st?

A. Put on more.

Q. How many?

A. Two.

Mr. All:

What did he say?

Mr. Harris:

Two.

Q. Do those extra cars also carry ten men each?

A. Yes, sir.

Q. So, before May 1st, they hauled 60 men down at a trip?

A. Yes, sir.

Q. And now, since May 1st, they haul 80 men down at a trip?

A. Yes, sir.

Q. Jesse, when you got close to the man trip cars, could you get on any car you wanted to, or did you have any instructions about what car to get on?

A. The white men always rode the same car. I didn't ask to get onto that one. I could get in any of the others I wanted to.

Q. What do you mean by the same car?

A. The car the rope was hitched to.

Q. It was hitched to the back end going down?

A. Yes, sir.

Q. You say the white men had the first car?

A. That is right.

Q. And the colored men had the other car?

A. Any below that.

Q. Jesse, in your best judgment, during those three years, what percentage did you colored men make of the total number of employees out at that mine?

Mr. All:

We object.

A. Well, approximately 85 or 90 per cent.

Q. And in your best judgment, how many men, both white and colored were working in the mine out there during those three years?

A. About 460 to my knowledge, or a little bit more.

Q. Now, when you walked up to the mouth of the slope preparatory to getting on a man trip car at the beginning of your shift, was there any fence or enclosure or any kind of gate or anything of that sort you went through?

A. Going down?

Q. Going down.

A. No, sir.

Q. You didn't have any bull pen at the top going down?

A. No, sir.

Q. Now, after the men were on these cars, was any signal of any kind given for the man trip to start?

A. Well, ordinarily the chainer, he do the giving of the signals for the trip to be lowered or hoisted, and when the men would load up, then the chainer would signal the engineer off. He would give him the man trip signal and down we would go.

Q. Now, was that chainer employed by the men or employed by the Sloss Company?

A. Employed by the Company.

Q. How did he give a signal, Jesse, to the engineer at the Sloss Mine?

A. Well, we have two signal wires that run all the way from the bottom of the slope to the engine room, and he had a sharp instrument, something like an ice pick,—it wasn't an ice pick, but something in that shape, he would place on one wire and hit the other like that, and give a signal.

Q. And after he would do that the man trip would start?

A. Start down.

Q. When, during those three years, did the man trip start down?

A. About—Between 6:15 and 6:20.

Q. How long did it take ordinarily to ride from the mouth of the mine to the first man unloading station on that man trip?

A. About eight minutes.

Q. When you got to the man unloading station, then what did you do?

A. Well, we would unload and go on the yard to the foreman's desk. If we needed any supplies we hadn't reported outside, we would report to him what we needed during the day.

Q. You say you would go on the yard. What do you mean by the yard?

A. In going down the slope from the top to the bottom, we would go down to 48. When you get to 48, you had a level place like that. You call that the yard. That is where the foreman has his desk. He is standing there, and in the evening he receives reports from the men and takes orders in the morning.

Q. How far was the yard from the man unloading station?

A. Oh, about fifty or sixty feet.

Q. How far was that yard where you got further orders from the drilling place where you started your drilling?

A. It was approximately a mile. In my judgment, every bit of a mile.

Q. Now, Jesse, how did you get from the yard to your drilling place up until a few months ago?

A. I walked.

Q. In walking, were you going uphill or down hill or on level ground?

A. On all three.

Q. How—have you any judgment as to how much higher the high place in the mines—the highest place is than the lowest place in that mine?

A. Well, the longest hill going from Number 1 back into Number 2 is something like three—3,000 or 3500 feet long over all, the whole hill from the top to the bottom, 84.

Q. Is that a hill that goes on like a straight plank, or does that hill go up and down as you climb?

A. Well, you go on one place that is kind of level like but I would say on an average it was about a 20 degree slope, the principal part of the way.

Q. Then, when you get to the top of that hill, do you walk on a level to your drilling place, or do you start down hill again?

A. No, sir. When I got to the bottom of that incline I went up another a little bit steeper than the one I just went down, but not quite as long as that one.

Q. The first hill you go down the hill?

A. That is right.

Q. And then you get in a valley?

A. Yes, sir.

Q. And then start up a hill to your drilling place?

A. That is right.

Q. Jesse, you say you bought your carbide—

A. Yes, sir.

Q. To use in your lamp?

A. Yes, sir.

Q. Did you buy the lamp yourself or did the Sloss Company buy it?

A. I bought it.

Q. Now, what else during the three years from October 24, 1938, to May 1, 1941, did you buy or furnish yourself or you crew in drilling for ore at the Sloss mine?

A. Well, I bought caps and shoes for myself.

The Court:

What?

The Witness:

Caps and—

Q. What do you mean by caps,—the caps you used in the dynamite or a cap you use on your head?

A. On my head.

Q. Was that a safety cap?

A. Yes, sir.

Q. What about safety shoes?

A. Well, I don't wear the safety shoes, but I bought the other shoes which I wear.

Q. In your crew did you have mechanical loading or fist mucking?

A. Fist mucking.

Q. Did your fist muckers on your crew—what tools do they use?

A. 18-pound rock hammer, picks and shovels.

Q. Well, did the Sloss Company furnish the rock hammer, the pick or the shovel?

A. No, sir.

Q. Did you buy them?

A. Yes, sir.

Q. Did you buy them down underground in the mine or did you buy them from the Sloss supply house out on the surface or did you buy them from hardware stores?

A. Well, I bought them from both the commissary and the hardware stores.

Q. Is the commissary down underground or out on top?

A. Out on the top.

Q. How far is the commissary from the mouth of the mine?

A. About half a mile.

Q. When you bought picks and shovels and hammers here in town or at the commissary, how did you get those picks, hammers and shovels into the mine and to the place where your fist muckers would use them?

A. Well, I have carried them down, and in some cases they have been sent down, but from habit for the past three years I have carried most of mine down.

Q. Now, did you have any wear and tear on your shovel handles or your pick handles or your hammer handles?

A. Yes, sir.

Q. About how long would a shovel handle last without breaking?

A. Well, ordinarily a shovel handle will last about two months, and if—

Q. And if a shovel handle breaks does the Sloss Company furnish you with another shovel handle?

A. No, sir.

Q. What method is used and was used during those three years to get you another shovel handle?

A. Well, I buy another handle and put it in or either buy another shovel.

Q. Where did you put the handle in the shovel?

A. Well, on an average there is always some fellow standing around to meet you at the mine and ask you to let him do things like that,—couldn't do anything else much, and we would give him that kind of work to help him a little.

Q. You mean he would fix it outside the mine?

A. Yes, sir.

Q. And how did it get in to you at your drilling place?

A. We would carry them in.

Q. Would the same thing apply to your hammer handles and pick handles?

A. The same thing.

Q. Did the Sloss Company, underground, at the yard or anywhere else, have a place where they would furnish you with pick handles, hammer handles, or shovel handles?

A. Not to my knowing.

Q. Did you use in your work during those three years any other tools besides shovels, picks and hammers?

A. Well, we used drills.

Q. How about wrenches? Did you use any wrenches?

A. Stillson wrenches.

Q. Stillson wrenches?

A. Yes, sir.

Q. Did the Sloss Company furnish you the Stillson wrenches?

A. No, sir.

Q. You mean you or your men had to buy those yourselves?

A. I had to buy them.

Q. Well, how—did you buy those Stillson wrenches at the commissary, the hardware stores, or in the commissary?

A. Well, I bought some at each place.

Q. And how did you get the Stillson wrenches down in the mine?

A. Carried them down.

Q. Has that been true for the last three years?

A. Yes, sir.

Q. What did you use—in getting ore out of the earth, what is a Stillson wrench used for?

A. That Stillson wrench is used to connect your pipe. As you advance your place you will need about a joint of pipe a week. A Stillson wrench will catch anything round. A monkey wrench will slip, but a Stillson wrench would not. We would use that to connect anything round.

Q. In your drilling did you use air hose and water hose?

A. We did.

Q. When you needed to lengthen your air hose or wates hose, did the Sloss Company have a man to come around and lengthen them for you, or did you or some member of your crew do it yourself?

A. Well, both. Lots of times when we needed pipe they would tell us to go through—I may say 86 or 85,—whatever place was robbed, and get you some pipe and carry it over.

Q. Would that be on your way in they would tell you that?

A. Yes, sir.

Q. And then when you carried it on in your place, you joined it together with the other line?

A. I did.

Q. Now, what happened on other times? You say lots of times they did that. What happened on other times?

A. Lots of times we would need pipe and I would tell them and the pipe man would come. When he was there he would connect up the pipe for us.

Q. Now, what about your—what did you use for explosive to break the ore loose from the ore bed?

A. That is dynamite.

Q. How much of that did the Sloss Company furnish you each day?

A. Not any.

Q. You had to buy the explosives you used to crack the ore?

A. Yes, sir.

Q. How much explosives would you buy from the Sloss Company on an average shift?

A. A box.

Q. What did they charge you for a box?

A. $6.66

Mr. All:

We object.

The Court:

Overruled. Sixty cents a box?

The Witness:

$6.66 a box,—50-pound box.

Q. And when you bought that explosive from the Sloss Company, did you get it outside the mine or inside the mine?

A. Inside.

Q. Whereabouts inside the mine did you get it?

A. Well, for a long while the powder house was over about sixty-two or—three at Number 1. I wouldn't say just where—one or the other of those places. The magazine was in one of those old robbed places, but the last year or so it has been moved over, I believe, about 78 right, Number 2.

Q. Well, for the last year or two the powder magazine has been at 78 right. How far is that powder magazine from the place where you were actually drilling that ore or doing your work?

A. Oh, it is half a mile or possibly a little more.

Q. Now, when did you pick up this dynamite you were buying from the Sloss Company?

A. The drill helper picked it up on his way to work each morning.

Q. Picked it up on the way in?

A. That is right.

Q. Well, how did he carry a fifty pound box?

A. Well, he carried it in what we call a crocus sack, bagging sack, oat sack, anything like that.

Q. Is that the usual way all the men got their dynamite to their drilling places, by carrying it in a crocus sack?

Mr. All:

We object. He can't testify to other parties unless he knows.

The Court:

Unless he knows.

Q. Well, did you see other men with crocus sacks?

A. Yes, sir.

Q. Did the Sloss Company furnish you with those crocus sacks?

A. No, sir.

Q. Now, did the men pick up those crocus sacks at the powder magazine, or did they bring the crocus sacks into the mine with them?

A. They would bring them in with them.

Q. And if the crocus sacks wore out did the Sloss Company give you new ones, or did the men have to get their own crocus sacks again?

A. They would bring them in with them.

Q. Well, those crocus sacks,—how long did they last?

A. Well, that depends on whether they got wet or not. If you keep one dry it may last three weeks, something like that.

Q. If you get one wet?

A. They will tear out in a day or two. The burden of the powder will go to pressing those netted parts apart and the dynamite will go to falling out.

A. Yes, sir, and then you have to have a new one.

Q. Dynamite doesn't go off by itself; you have to have something to set it off?

A. Yes, sir, as far as I know.

Q. What did you use to set off your dynamite?

A. Well, blasting caps, Number 6.

Q. Well, how much blasting caps did the Sloss Company furnish you during those three years?

A. Not any.

Q. What did they charge you for the blasting caps?

Mr. All:
We object.

The Court:
Overruled.

A. A penny apiece.

Q. And how many blasting caps would you use in each hole you drilled, Jesse?

A. One.

Q. How many holes did you drill on an average each day?

A. Well, that depended on how much the fellow that went off the night shift,—how much he drilled. In an eighteen foot heading they have what they commonly call a block out. In other words, if you drill to much muck you have a blockout. We drilled to avoid a blockout, Sometimes we drilled six, sometimes twelve, and sometimes eleven.

Q. In other words, the night shift and day shift head miners drilled enough holes and shot enough holes so the fellow that followed him would have a day's operation,—a shift's operation?

A. That is right.

Q. And how did you get those miners' caps—those dynamite caps up to the drill place?

A. The helper brought them along with his powder.

Q. The helper brought them along with his powder?

A. Yes, sir.

Q. Well, did he carry those dynamite caps in a sack with the dynamite? How were they carried?

A. Well, in his pocket. He would generally put them in his shirt pocket.

Q. Now, how much fuse on an average, in your tour of duty, during those three years, did you use?

A. Well, it averaged one hundred feet a day. Sometimes I used more and sometimes less, but on an average I used one hundred feet a day.

Q. Did the Sloss Company furnish that to you?

A. Yes, sir, for sixty cents a hundred.

(Laughter in the Court room.)

The Court:

Order in Court. Maintain order; maintain order.

Q. You mean sixty cents a hundred feet?

A. Yes, sir.

Q. How did you get that fuse and where did you get it?

A. The drill helper also brought the fuse.

Q. Did he get that at the supply house where he got the dynamite up at 78?

A. Yes, sir.

Q. Did you use a tripod or column drill during those three years?

A. A tripod drill.

Q. The company furnished that, didn't it?

A. Yes, sir.

Q. Now, the drill steel that went into your drill, did the company furnish that?

A. Yes, sir.

Q. When it got dull, did the company sharpen it?

A. Yes, sir.

Q. Well, how did you get your drill steel for the big drill during those three years, Jesse?

A. Well, when I would go down in the morning on my way to work, I would go by the steel box, and if they had any steel there left over from the night shift, I would take it and carry it on with me.

Q. Well, when you were on your way to work, you mean; on your way to the drilling place?

A. To the drilling place, that is right.

Q. Now, when you left the drilling place to start out of the mine, if you had any dull steel, how did you get that back in the hands of the Sloss Company so they could sharpen it?

A. Now, before I left out they had a rule you had to bring your dull steel to the box and swap it in for sharp steel.

Q. You mean after you shot, on your way out you would take the dull steel along with you and leave it at the box?

A. No, sir, not after I shot. After the night shift—he would take the dull steel. I would look in the box to see if there was any sharp steel, and then the helper and myself would take the dull steel and bring it back and swap it out.

Q. You mean by a box—is that a box you had?

A. No, sir, the company's box,—a steel box they had there about eighty-seven, I believe it is,—a steel box where they keep sharp steel at.

Q. Did they keep sharp steel there?

A. Yes, sir, when they had it.

Q. What I don't understand is where you got your dull steel you were going to turn in for your sharp steel?

A. Now, the night shift works tonight.

Q. Yes.

A. I would get him his set.

Q. Yes.

A. He would use it tonight.

Q. Yes.

A. Now, the general rule, he will not send his steel out because I may not get any tomorrow.

Q. All right.

A. When we go in in the morning, we would take that dull steel to the box and exchange it for sharp steel.

Q. You have already been to your drilling place before you pick up the steel?

A. Usually, nine times out of ten.

Q. Now, as to your jackhammers—did you use them there in the Sloss mine?

A. Yes, sir, used them in the mine, but not at my particular place of work.

Q. You don't use the jackhammers?

A. No, sir, I don't have anything to do with them.

Q. All you used was the big drill?

A. The big drill.

Q. Jesse, you say you reported around six o'clock in the morning. Now, what time during those three years, and you know what three years I mean, do you?—From October 24, 1938, to May 1, 1941?

A. Yes, sir.

Q. What was the regular time, if they had a regular time for shooting?

A. 3:10.

Q. Who lit the fuses in your drilling place?

A. I did.

Q. What did you light them with, a match?

A. Carbide light, lamp.

Q. The same light you had been carrying around and furnishing the light to work with all during the shift, you used to light the fuses?

A. Yes, sir.

Q. All right. When you have lit your fuses at 3:10, during that period of time, where did you go and what did you do?

A. Well, I would go back to the man loading station and come out.

Q. All right. Now, as you went back to the man loading station—your distance, you say, was about a mile you walked, or half a mile, or what?

A. About a mile; possibly a little bit better than a mile.

Q. Now, going back to the man loading station after putting in this shift of drilling, were you walking mostly uphill or mostly downhill?

A. Mostly uphill.

Q. Well, when you and your crew got to the man loading station, what, ordinarily, was the physical appearence of you and your crew with reference to sweat when you got there?

Mr. All:

We object to that.

The Court:

I overrule the objection.

A. Pretty hot,—pretty hot and sweaty.

Q. And when you get there how do you get out of the mine after you get to the man loading station?

A. Well, around on the colored side we had what we called a bull pen. In other words, there were four or five or six—well, probably a dozen benches scattered out around there, and the bull pen comes from a big lot thing down to man's size,—one-man size,—principally, the most of the time, we would wait around there and our business was getting out the best way we could,—big pushing around there.

Q. Did the bull pen end at a gate or chute you went through before you could step on these man trip cars?

A. Ended at a gate.

Q. Ended at a gate?

A. Yes, sir.

Q. Well, was there any representative of the Sloss Company there when the men were getting ready to get on the man trip to tell them how many could get through the gate, or how many could ride?

A. Yes, sir.

Q. Who was the man that stayed there at the man chute leading from the bull pen to the man trip to tell them when they had enough and when they didn't have enough?

A. Usually one of the section foremen.

Q. What did he do? Did he merely talk to them or hold up his hand to give a signal to show no more men could come through the chute?

A. Well, both; he would hold up his hand and speak too.

Q. All right. After the man trip had loaded and the man trip had started out, you men in the bull pen would wait, would you, if you hadn't caught the first man trip, for the second man trip?

A. That is right.

Q. Well, did that section foreman ride that first trip out, or did he or some other representative of the Sloss Company stay there to supervise the men getting on the second man trip?

A. He stayed there.

Q. He stayed there?

A. Yes, sir.

Q. Well, how did they signal—How did they give a signal to the engineer to pull out the man trip?

A. The chainer always stood up there by the section foreman, and he would say, "Let's go, chainer."

Q. The section foreman would say, "Let's go, chainer"?

A. Yes, sir.

Q. When the section foreman said, "Let's go, chainer," what did the chainer do?

A. He would bell him up,—signal to him.

Q. Did he pull a rope or signal him with that ice pick you told about?

A. Signal with the pick.

Q. You have worked in the mines of other companies?

A. Yes, sir.

Q. You have heard of what they call a skip tender?

A. Yes, sir.

Q. Is that skip tender the same thing as what they call a chainer in the Sloss mines?

A. Same thing identically.

Q. Well, when you get on the top—when you get on the man trip and get to the top, was there anybody there to check you out?

A. No, sir. We didn't have to check out.

Q. Now, on your walk after you left the man unloading station going to the drilling place, did you walk in man ways alone, or did you walk part of the time in haulage ways?

A. Haulage ways.

Q. Well, now, when they are bringing—letting a string of empties down into the mine, does a man ride on those empties, or do they come unattended?

A. Well, that depends on the condition of the roof.

Q. Well, on your going down this hill into the valley that you mentioned, is there any part of the hill you walk on a track?

A. Yes, sir.

Q. What part of that distance would you say that you walk on a track?

A. Well, for the first twelve or fifteen hundred feet, we walked down a track, and then—

Q. All right. In walking down that track how is the footage along which you walk?

A. Well, in some places it is pretty fair and then in some it is pretty rough.

Q. What do you mean by rough? What makes it rough?

A. Well, over on the Number 1 side we constantly have roof falls, stuff falling from the roof, and cleaning it up, they clean up where the chain can go through, and consequently that leaves a rough place in there for a fellow to walk on.

Q. You mean by a roof fall, some slate in the roof falls down on the track?

A. Yes, sir.

Q. When it falls down on the track, how do they get it off?

A. That depends on the size of the fall. I have known them at times to blast that fall to get it small enough for men to handle. At times I have known them to break it with a hammer. By men breaking it or shooting it up so the men can get it out of the way.

Q. The axle—I mean the wheels of those tram cars run on steel rails?

A. Yes, sir.

Q. And about how high do those rails come above the cross ties they are fastened to?

A. Oh, about six inches.

Q. Then, how high above the steel rail is the axle of the tram car?

A. Oh, it is about four or five inches.

Q. Well, will the tram cars clear rock in the track?

A. Provided they are not too large.

Q. What size rock have you seen it clear as it rolled along the track?

A. Well, it wouldn't clear a rock over ten inches, I would say.

Q. You mean ten inches high?

A. That is right.

Q. When these rock falls occur from the roof and the men clear things up along this passage way, do they take out all the rock on the track or do they leave some in there?

A. Well, they take out some and leave some.

Q. And that is in the places you have to walk as you go along?

A. Yes, sir.

Q. And when you are walking along do you ever have these tram cars coming from behind,—going in the same direction you are going?

A. Yes, sir.

Q. Do they have any system of signals to give you warning that a trip of tram cars is coming?

A. No, sir.

Q. Well, if you are ~~walking~~ into your work how do you know when a tram car trip is coming?

A. Well, now, in walking down this slope, I believe you are talking about—

Q. That is right.

A. In walking down that slope you have to listen for the cars.

Q. All right. When you listen and hear the cars coming, what do you do to avoid being run over?

A. We make it for the nearest opening to get out of the track.

Q. How far away, in your judgment, can you hear them coming?

A. Oh, you can hear them for three or four hundred feet.

Q. Well, how do these cars—you said a while ago you go down hill into a valley, and then you start uphill. How do these cars get over this valley?

A. Well, now, they let the cars off down the hill with enough speed to go over the flat.

Q. Suppose it hadn't enough speed and didn't go over the flat; what happened?

A. Then the car would stop.

Q. Then what would happen?

A. The engine would hoist them back and give them another running start and they would go through.

Q. Now, in this Sloss mine that you are talking about, do they run electric locomotives all over the mine to haul the tram cars out to the tipple or the unloading station?

A. Not all aver the mine, no, sir.

Q. Well, what do they use to move these loaded ore cars out when the places are too steep for electric locomotives?

A. Hoisting engine.

Q. How many different hoisting engines have they down in the Sloss mine that they use to pull ore cars?

A. Two to my knowledge.

Q. All right. Where are those hoisting engines located?

A. Now, do you mean—you mean the different kinds of engine? That is what you mean?

Q. Yes.

A. What I meant by two, we had an air hoist and an electric hoist.

Q. All right, tell us. Do you have a hoist air engine pulling the trams and pulling the cable which pulls the cars up?

A. That is right.

Q. How many places down in the mine are so steep they have these hoisting engines to pull the cars up?

A. There is 55 hoist, number 1 hoist at the main slope, 87 or 8 right hoist, number 1, and 86 right, number 1, and there may be some more. I couldn't remember just now.

Q. Jesse, do you get a ride to any of these places after you leave the man unloading station?

A. No, sir.

Q. Do you know of any place in the Sloss mine where they haul the men again after they get off at the man unloading station going in?

A. You go down to the first unloading station and then walk up an incline about five hundred feet to 55 hoist and then is where there was that second trip to lower you down to 74.

Q. When was that second trip put on to lower you down to 74?

A. Well, it was sometime shortly after September 16th last year.

Q. How long a ride do you get on that?

A. Oh, I will say about 1500 feet.

Q. All these hoists have cables that are fastened to the cars?

A. Yes, sir.

Q. Now, if—when you have stepped aside to let a trip of cars go on by, do the men get out and start walking while the cable is going on out, or do you have to wait until it is all out and the cable is quiet, not moving?

A. Well, you see when you go down to 74 the same fellow that is up above on the same cars, he waits until the trip passes by him before going out, but the fellow on the bottom car, he usually gets off and goes ahead.

Q. I understood you to say a while ago that there was no system of checking the men out of the mine out at the Sloss Company.

Well, during these three years have you known of instances where men were left in the mine and didn't get out at the—when they had finished their drilling or blasting?

A. Yes, sir.

Q. And what happened in those cases?

A. Well, whenever a fellow missed the last drag in the evening he waited until the night shift come down and then he would come out on the trip they went down on.

Q. Now, then, while you men are there in the bull pen during these three years, have you at any time had to wait while the chainer kept hauling ore out of the mine before he started hauling the men?

A. In the evening?

Q. Yes.

A. Yes, sir.

Q. How long have you had to wait during those three years while they kept hauling ore trips out instead of hauling the men out?

A. Well, that time kind of varied a little. Sometimes it varied around five or ten minutes. In other words, the chainer at quitting time—sometimes the foreman would tell him to pull another trip; sometimes he would tell him to pull two more.

Mr. Harris:

If the Court please, if Your Honor is going to take the customary recess—

The Court:

We will.

Mr. Harris:

I will take up another phase when we come back.

The Court:

We will recess for a few minutes.

(Thereupon proceedings were in recess from 10:35 A. M., to 10:45 A. M., at which time proceedings were resumed as follows:)

(By Mr. Harris):

Q. Jesse, during this three-year period was the Sloss Company running for the most part on a five-day week?

A. Yes, sir.

Q. Now, in going into the mine at the Sloss are there any electric wires or cables overhead at any of the places where you and your crew walk in going to and from the drilling place to the man-loading station?

A. Yes, sir.

Q. How many different places, if any, would you say there were where a man would have to stoop to avoid coming into contact with those wires, if there are any at all?

A. Well, going from—up in my place there were about two places where we would have to stoop.

Q. Now, are those wires exposed at any point along the part you walked under?

A. Yes, sir.

Q. In going into this mine does the air stay the same temperature from the time you get off at the man unloading station until you get to your drilling place, or do you notice any change one way or the other?

A. Yes, sir, there is a change in it.

Q. As to temperature, what change do you notice and where does it take place?

A. Well, it gets hotter as you go further—deeper into the mine. The circulation is not as good there as it is out on the main haulage.

Q. Jesse, in the Sloss mines where these four hundred men are working during the years inquired about have there been any water closets or underground privies or anything of that kind there?

C

Mr. All:

We object.

A. No, sir.

Q. At what point, if any, as you go into the mine, do you first detect the odor arising from human dung or excreta in the mine?

A. Well, we got off at 48 and walked—go down one side approximately 500 feet and turn down the incline, and from there you smell the odors, and from there on until your working place, with the exception on back about 300 feet from our working place.

Q. Well, now, how great a distance is it you detect that odor?

A. I would say, starting at the top of the incline, the first old, robbed out place, to where it ends, it would come closer to being three quarters of a mile than anything else.

Q. Three quarters of a mile?

A. Yes, sir.

Q. You told us when you reported, at six o'clock, but I don't think you have told us what time during those three years you got back on top.

A. Well, anywhere from 3:45 to 4:05.

Q. During those three years how were you paid for your work at the Sloss mine?

A. On the tonnage system with the exception for the last contract,—I mean last September,—up until last September.

Q. All right. From October, '38, until September last year, what measure was used to determine how much money you, Jesse Gaines, got?

A. Well, there were two things involved.

Q. What were they?

A. First, in the 18-foot places they pay yardage, $9.90 a yard, and your tonnage.

Q. I didn't hear you. Talk louder.

A. Yardage and tonnage.

Q. Yes.

A. In these development places it takes so much powder to shoot they give you a little yardage to help pay that powder bill.

Q. A development place, is that wider or narrower than the ordinary stopes where you work?

A. Narrower; 18 feet back to 12.

Q. Can a miner produce as much ore in a narrow place as he can in a wider place?

A. No, sir.

Q. What is the difference between a narrow place and ordinary work in a stope; what is the percentage increase;

A. Ordinarily, in a vein of ore nine feet thick and about eighteen feet wide, you drill out, and you break about thirty-five or forty tons. Sometimes you would break a little more and sometimes not so much, but on an average thirty-five or forty tons.

Q. In a wider place, how much can you break out?

A. Well, on a mechanical loader, a man can take the same amount of hoes and break out about a hundred tons.

Q. From October 24, 1938, up until September 1, 1940, you were on a tonnage basis?

A. Yes, sir.

Q. What did you, as a head miner, get for the ore that came out of your place?

A. 15.3.

Q. What?

Mr. All:

May it please the Court, I want to call your attention to this: There isn't any reason for oral testimony where it is conflicting with the written testimony; and I want to object to that. If there is any written contracts—

The Court:

I can't hear you.

Mr. All:

I say if there is anything in writing which shows what he gets per ton, I would object to his oral testimony.

There is no use having him speak from recollection when he doesn't absolutey know, and I think that ought to be avoided.

Mr. Harris:

I am not interested in—

The Court:

He can testify to what he gets.

Mr. Harris:

Yes, sir, he can testify to what he gets.

Mr. All:

I think—

The Court:

That is what he is asking about.

Mr. All:

I think he is asking what the contract provides for.

The Court:

I think he ought to be limited to what he gets, what he is paid.

Mr. Harris:

That is what I am trying to bring out, Your Honor.

Mr. All:

We except.

Q. My question is from October 24, 1938, up to September 1, 1940, what did you get paid a ton for the ore that you got out with your crew?

A. 15.3,—15 and three-tenths.

Q. You mean 15 cents and 3/10 of a cent a ton?

A. Fifteen cents and 3/10 of a cent a ton.

Q. ~~All~~ right. Now, you had fist muckers?

A. That is right.

Q. Let's take this illustration: Suppose on Monday 20 tons of ore were hauled away from the place where your shift—your crew was working.

On that 20 tons that were hauled, you would get 15 3 cents a ton?

A. That is right.

Q. How were you—did you have a drill helper?

A. Yes, sir.

Q. How as he paid, on a tonnage basis?

A. 13.9.

Q. Did you have fist muckers?

A. Yes, sir.

Q. All right. How were they paid?

A. The same way.

Q. 13.9?

A. 13.9.

Q. Now, Jesse, during that period of time up to September, 1940, suppose you shot down thirty tons but your crew only loaded twenty tons.

What did you get pay for?

A. Twenty tons.

Q. Then, the next crew, the night shift that followed you, if they loaded it, they would get pay for it?

A. That is right.

Q. Now, Jesse, suppose you went in the mine, up to September, 1940, and you and your crew produced one tram load of ore during the entire shift.

How much did you get paid for?

A. One ton.

Q. One tram load?

A. That is right; one ton.

Q. Is a tram load one ton or two tons?

A. Approximately two tons. Get paid for two tons,—whatever that car had on it.

Q. Well, during that period from October '38, to September, 1940, were there ever any occasions when you and your crew would produce as little as ten tons of ore?

A. Yes, sir.

Q. Then you got paid for how much?

A. What we produced.

Q. Jesse, did anybody for the Sloss Company during the period from October 24, 1938, up until May 1, 1941, ever come around to your crew and take your time that you were in there?

A. Not at my place, they didn't.

Q. Did anybody ever wait outside, so far as you know, and take your time whenever you got out of the mine from October 24, 1938, up to May 1, 1941?

A. Not to my knowledge.

Q. Has anybody ever told you you were being paid on a time basis, anybody representing the Sloss Company?

A. No, sir.

Q. From October 24, 1938, to September 1, 1940, as I understand it, you were paid on absolutely a tonnage basis?

A. That is right.

Q. You and your crew?

A. Yes, sir, that is right.

Q. Now, what difference, Jesse, did they make in the way they paid you after September, 1940, up until May 1st, 1941?

A. Well, in our contract which took effect the 16th of September, we had in fist mucking places a 90 percent guarantee. In other words, we base on thirty-five tons, a five man crew in an eighteen foot place. Ninety percent of what thirty-five tons would figure at 15.3,—I would get 90 percent of that as a guarantee.

Q. And were you ever paid on that guaranteed basis after September 1, 1940, and before May 1, 1941?

A. I don't think I was. I run that much tonnage, and they didn't have to pay me.

~~Q. Now, after—~~

Mr. All:

Wait a minute. What is that answer?

(Thereupon the last given answer, as above recorded, was read by the reporter.)

The Witness:

I run enough tonnage to cover the guarantee and they didn't have to pay me. You run it yourself and they don't have to pay you.

Mr. All:

You always earned it?

The Witness:

From our contract date—you said when?

The Court:

September to May 1st, you said.

The Witness:

From September to May 1st, principally.

Q. You shot enough your ore and your crew hauled out enough ore where you got more than your minimum guarantee?

A. I made my guarantee.

Q. You made your guarantee?

A. Yes, sir.

Q. All right. On May 1, 1941, did the Sloss Company put in any clock system at the top of the mine where you punched a clock?

A. Yes, sir.

Q. Do you punch a clock as you go out?

A. Yes, sir.

Q. Has there ever been a clock there from October 24, 1938, up to May 1, 1941, so far as you know of or recall?

A. No, sir.

Q. Jesse, when the Union was organized in this district did you join it?

A. Yes, sir.

Q. What year was it that you joined the union, Jesse?

A. It was somewhere in the spring or summer,—I would not be exact about the month,—of 1933.

Q. Have you been a member of the union all the time since that time?

A. Yes, sir.

Q. What union do you belong to?

A. Sloss Local 109.

Q. Are you an officer of that union?

A. Yes, sir.

The Court:

What union is that?

Mr. Harris:

Sloss Local 109.

Mr. Lipscomb:

International Union of Mine, Mill & Smelter Workers.

Mr. Harris:

Oh, I didn't understand your honor.

Q. Was that union affiliated with the A. F. of L. or C. I. O.?

A. Formerly it was affiliated with the A. F. of L., but when the split happened in organized labor, it went in the C. I. O.

Q. All right. Were you a member of any of the committees of your union representing your union in negotiations with the officers of the Sloss Company?

A. Yes, sir, commencing in 1933, I was.

Q. Were you on a scale committee or grievance committee or general committee?

A. Both.

Q. Both?

A. Yes, sir.

Q. On the general committee, with what representatives of the Sloss Company did the committee meet and confer?

A. We met with the Vice President and General Manager, and on up to Mr. Hugh Morrow.

Q. Back in 1934 were you a member of the general committee then?

A. Yes, sir.

Q. And as a member of that general committee in 1934, did you have any meetings that year with the officers of the Sloss Company?

A. Yes, sir.

Q. In those meetings, Jesse, did the Union have a stenographer to take down what was said by the Union and what was said by the officers of the Sloss Company?

A. No, sir.

Q. Did the Sloss Company have a stenographer to take down what was said at those meetings?

A. Well, some they did and some they didn't.

Q. Did you have any discussion with the officers of the Sloss Company as to keeping minutes of those meetings?

A. Yes, sir, once or twice we have.

Q. Well, what was said by the representatives of the Sloss Company when you discussed keeping minutes?

Mr. All:

We object to that.

The Court:

Overruled.

A. Well, they stated they were opposed to us bringing in a stenographer on the ground what went on in the meeting might fall into the wrong hands, people that didn't work for the best interest of the union neither of the Sloss Company.

Q. What representative of the company told you that?

A. I think Mr. Ben Davis was the one that told us that.

Q. Did you ever discuss with the representatives of the Sloss Company the question of a six hour day?

A. Yes, sir.

Q. And who was the person or persons representing the Sloss Company when you took up a six hour day with them?

A. Mr. Marshall.

Q. Was anybody else there for the company?

A. Mr. Marshall, Mr. Davis and—I believe they were the two we talked to.

Q. Well, do you remember—was that in 1934?

A. In 1934.

Q. Do you remember who was there as representatives of the union?

A. The president, Mr. Hill, Mr. W. A. O'Neal, Mr. Gilbert and I believe Martin Walker, colored, and James Knox, and myself.

Q. Well, when you asked Mr. Marshall—what was he at that time?

A. Vice President and general manager.

Q. Of the Sloss Company?

A. Yes, sir.

Q. When you asked him—

Mr. All:

Do you mind asking him whether that was in writing or whether it was oral?

Mr. Harris:
No, I don't mind.

Q. When you were having these discussions with Mr. Marshall, the thing I am asking you about, was that in writing or was that just talk back and forth?

A. Well, it was a combination.

Q. A combination?

A. Some in writing and some general conversation that followed.

Q. Did you have a conversation with him about the six hour day?

A. We did.

Q. All right. Did you ask him for a six hour day?

A. We did.

Q. Just tell the Court, as well as you can recall, exactly what Mr. Marshall said when you all asked him for the six hour day?

A. He had a pretty long story to tell. Do you want the whole story?

Q. Tell us what he said. We want to find out what happened.

Mr. All:
We object; illegal, irrelevant, incompetent and immaterial.

The Court:
Overruled.

A. He said—first, he went all over Red Mountain and outlined the past so far as the rule of the mountain was concerned.

He left there and went up—I believe he said the Eastern seashore where they sell most of their pig iron—

The Court:
Where they do what?

The Witness:
Sell most of their pig iron, on the eastern seashore.

The Court:
Oh. All right.

The Witness:
And he discussed the unfair freight rate, and I think he discussed the Pittsburgh plus, and then I think he went up in the Lake Shore Region and discussed the mining up there. Then he went all over the United States, every mining company, I reckon, on record, and he went over in Spain and talked about mining around Joppa, over in there—

Mr. Burr:
Around what?

The Witness:
Joppa,—J-o-p-p-a.
He told us lots of beautiful stories. Finally, he said, Mr. Davis and I are from a field where the wages are much higher here, and that is what we don't like, the low wage scale, but the Sloss Company has sent us in here not to set the pace, but to work with the competitors in this field, and we feel we are too small a company to try to set the pace.

The Court:
Try to do what?

The Witness:
To try to set the pace.

And then he told us even the powerful United Mine Workers that had already won recognition, they didn't have a six hour day. Consequently, he thought our request was foolish.

Q. In that conversation, was anything mentioned about being paid for going in and coming out of the mine?
A. There was.
Q. Did you all ask for that?
A. We did.
Q. What did he say?

Mr. All:
Let's find out, if the Court please, whether or not that was in writing.

The Court:
I understood he was asking about a conversation. He is asking about a conversation.

Mr. All:
I want to know whether the conversation was based on a written proposal.

Mr. Harris:
I don't care what it was based on. I want to know what was said.

Mr. All:
I want to ask him that question.

The Court:
I am permitting the discussion to go in.

Mr. Harris:
I object to him interrupting my examination of the witness.

Q. When you asked Mr. Marshall for going in and coming out,—pay for going in and coming out, what did he say?

A. He said it was on a national scale and the Sloss Company didn't propose to step out and set the pace.

Q. I failed to ask a while ago before October 24, 1938, was there ever any time during all these years you were working for the Sloss Company that you were ever paid on anything except a tonnage basis up to October 24, 1938?

A. Yes, sir, for a while when I trammed for the company.

Q. When was that? What year was that?

A. I believe that was about '31 and some portion of '32.

Q. What do you mean by trammed for the company?

A. Well, the mechanical loader at present is on a tonnage basis just like the other part of the time. At that time the company operated the mechanical loaders. They furnished everything and naturally whatever you produced was the company's. The man that trammed on the loader was paid so much a day.

Q. How were you paid back there when you worked on those mechanical loaders?

A. I was paid by the day.

Q. What time of day did you report then?

A. At 6:30.

Q. Where did you report at 6:30?

A. At the tally house on top.

Q. And what time of day did you get out on top?

A. Well, back in there there wasn't so much concern about that. It was the amount of ore. We had to tram so many tons of ore. We had to tram twelve. If we trammed twelve and didn't have no throw-offs and got through in time to catch the 4:30 drag, we caught it.

Q. Well, was 4:30 the drag you caught?

A. 4:30 was drag time.

Q. Now, Jesse, when Mr. Marshall told you they were not there to set the pace and turned down the request for a six hour day and pay going in and out, did you representatives of the union ask for anything different from that?

A. Yes, sir; we asked for a seven-hour day and pay one way.

Q. Did you have any discussion with him about that?

A. Yes, sir.

Q. And what did you say when you asked him for a seven-hour day and pay for one way?

A. That was impractical.

Q. He told you that was impractical?

A. Yes, sir.

Q. And then what was the next thing after that; after you asked for a seven-hour day and pay one way, what was the next thing you all talked over with them?

A. An eight hour day.

Q. And when do you recall you had your conversations with him about the eight hour day; what year was that?

A. Well, that conversation started the first year and continued every year on down until now.

Q. Well, during this time, during these years, did you have any discussion about your wages, your rates of pay?

A. Yes, sir.

Q. The first time you all met what did you ask for and what did he say about your rates of pay?

A. You mean in 1934?

Q. Yes, in 1934.

A. Well, as I said, he said he didn't feel like the Sloss Company, being as small as it was, would be required—we were asking too much to ask them to set the pace in establishing a wage scale; they were going to follow suits with the other companies.

Q. Follow what?

A. They were going to follow suits with the other companies; whatever the other companies did they were going to do.

Q. Did he ever tell you after that they had changed their policy and were not going to follow suit with the other companies?

Mr. All:

We object on the ground it is leading and calls for a conclusion, and illegal, irrelevant, immaterial and incompetent.

The Court:

Overrule the objection.

Q. Did you understand the question?

A. Yes, sir. To my knowledge he did not tell us that.

Mr. All:

You say he did not?

The Witness:

Not to my knowledge, he didn't.

Mr. All:

Yes.

The Court:

Jesse, what did your wages amount to when you were working on the tonnage basis at 15.3 per ton?

The Witness:

A day?

The Court:

A day? What did your average wages run?

The Witness:

It figured around $4.60,—$5.00 sometimes. It varied according to the show we had. If a fellow had a good show and we loaded over thirty-five tons it increased fifteen—

The Court:
What did a driller receive, get?

The Witness:
It ran around four thirty-five,—four eighty. In other words, my wages ran 82 cents ahead of his.

The Court:
What did a fist mucker receiver?

The Witness:
The same thing.

The Court:
The same thing?

The Witness:
Yes, sir.

The Court:
These things you had to buy, the tools, picks and hammers a shovels and powder and caps and fuse, was that charged to you individually or you and the other men?

The Witness:
Me individually.

The Court:
You had to buy that out of these earnings?

The Witness:
Yes, sir.

The Court:
In other words, you had to pay for these things?

The Witness:

Yes, sir; everything that went into the heading showed on my statement.

Q. Who was your general superintendent out at the Sloss Company in the last two years?

A. Mr. Davis.

Q. Now, did you ever have a conference with a man by the name of Costner?

A. Yes, sir.

Q. What office did he have with the Sloss-Sheffield Steel & Iron Company?

A. I believe he was general superintendent—

Q. What is that?

A. I believe he was general superintendent over both ore and coal mines.

Q. Is that Mr. Costner there sitting back of Mr. All?

A. Yes, sir.

Q. How long have you known him, Jesse?

A. Ever since he was put over the ore mines division. I don't know just how many years that was. I haven't kept accurate account, but since he has been over the ore mines division out there I have been knowing him.

Q. Have you had conversations with Mr. Costner about collar to collar plans?

A. Yes, sir.

Q. Well, when did you first talk collar to collar with Mr. Costner?

A. Well, we mentioned collar to collar—I think that originated in the last twenty-four months. I think that is the first time I heard collar to collar originate, which is just using traveling time, but in the last twenty-four months I have mentioned it to him quite frequently.

Q. All right. What did he say about collar to collar?

A. Well, in our last—just a day or two before we started negotiations for our last contract, we had a grievance that was turned in to us by the pump men over at

Number 1. Those pump men have to walk in and out, and they felt like if they had to walk in and out they should have some little extra compensation for it, and we mentioned to him about giving that particular crew traveling time, and in a long discussion that followed he said for that particular crew, starting Monday morning, they could go on this collar to collar day.

Q. All right. Then, on Monday morning—thereafter—between that time and Monday did you have another conversation with Mr. Costner?

A. Well, I think that following Friday before that Monday we got word in the mine he wanted to see us when we got out of the mine.

Q. Did you go to see him?

A. Yes, sir.

Q. What did he say?

A. He said, "I will have to take my contract today back on the pump men."

Q. Was that all he said?

A. We asked him why. That was the next question. He said, well, the legal adviser told him he couldn't do it.

Q. What year and what month was that, Jesse?—

A. That was—right off hand—In September of last year.

Q. September of 1940?

A. Yes, sir.

Mr. Harris:

You can take him.

Cross Examination.

(By Mr. All):

Q. Jesse, you say you have been working for the Sloss Company for how many years?

Mr. Harris:

There is one question I neglected asking him, Ernest, if you don't mind before you start.

Mr. All:
Yes, sir.

Mr. Harris:
In reference to some of the questions the judge asked you about taking it out of your wages, wasn't there an allowance for powder cost? Did not you get some sort of allowance from the company for powder besides the tonnage base?

The Witness:
Well, we had an allowance of about ten or eleven cents a ton, but in narrow work our powder always overran that allowance of 11 cents a ton. You can't shoot in narrow places for 11 cents a ton.

Mr. Harris:
That is all.

The Court:
Take the witness.

Q. You say you have been working for the Sloss Company how long?

A. Approximately 14 years.

Q. You said you worked at Mine Number 1, for a while?

A. That is right.

Q. When did you stop working at Mine Number 1?

A. I haven't stopped working in Number 1.

Q. I thought you said you were working in Number 2.

A. Go down through Number 2 and back into Number 1.

Q. So you are working in the same mine you have always worked in?

A. Not always.

Q. What slope is this mine worked from? What slope is it worked from?

A. We go down in Number 2 and then back over in Number 1.

Q. How long have you been head miner?

A. Since 1935.

Q. So, from 1935 right up to the present time, you have been a head miner?

A. Yes, sir.

Q. Were the conditions as you have described them in answer to Mr. Harris' questions between October 1938 and May, 1941,—did those same practices exist prior to 1938,—from 1935 to 1938?

A. Yes, sir.

Q. So what you have said dates back—dates back behind 1938?

A. Well, I wasn't asked questions behind 1938.

Q. I know you haven't been asked, but I am asking you now.

A. The questions I answered referred back to 1938.

Q. But I am asking you to refer it back to 1935. It was the same?

A. Yes, sir.

The Court:

Will you answer the question?

Mr. Harris:

He answered way back there and said it went back to 1935.

The Court:

Go ahead.

Q. I want to get it clear.

A. Yes, sir.

The Court:

Yes, sir; go ahead.

Q. I am asking you from 1935 to 1938, were the practices the same as they were from 1938 to 1941?

A. Practically the same.

Q. Practically the same?

A. Yes, sir.

Q. All right. You stated that the first thing you did,—I am going back to 1935; all the way from 1935 to 1941,—that you went to the bath house first; is that right?

A. That is right.

Q. And then you changed clothes?

A. Yes, sir.

Q. And then you went from there to what point?

A: Went to Number 2 slope.

Q. To Number 2 slope?

A. To Number 2 slope.

Q. All right. What did you say you did there the first thing?

A. Well, we go up to the tally house and tell the mine foreman or the section foreman, I am here.

Q. Was that before you got the carbide—

A. Sometimes—

Q. Or after you had gotten the carbide?

A. After I had bought my carbide.

Q. Well, it was after you got it?

A. Yes, sir.

Q. Did you have your carbide with you when you did that?

A. Yes, sir.

Q. All the time?

A. Yes, sir.

Q. You went over there, and what you did, when you walked up to him, you said, "Here am I;" that is all, isn't it?

A. Naturally I didn't have no conversation to hold with him unless there was something I wanted to order or something I wanted to ask him about.

Q. It was very seldom you had anything you wanted to order or wanted to ask him about? That didn't occur every day, did it?

A. Not at the tally house.

Q. I mean when you walked up and said, "Here am I"—you didn't do that every day, did you?

A. I said, "Here am I", every day.

Q. All right. Now, you did that for yourself?

A. Yes, sir.

Q. Did each member of your crew walk up to him and say, "Here am I," just like you did?

A. Sometimes they did and sometimes they would tell me, "Check me in over there. Tell him I am here."

Q. Well, as a rule would they go up and tell him, "Here am I", every man?

A. Principally they did.

Q. What do you mean by, principally they did?

A. Part of the time.

Q. Part of the time?

A. That is right.

Q. Well, when you said, "Here am I," that was about the end of it unless you had something, wanted to get some requisition or had something to ask about the place; isn't that right?

A. What I said to him?

Q. What?

A. I say the conversation that went on between the foreman and myself, that was about the end, unless he asked me something else or something I particularly wanted to ask him about.

Q. Well, you didn't ask him about things every morning? Principally you said, "Here am I", and that ended it? You knew where your working place was?

A. That didn't end all I done.

Q. What?

A. That didn't end all my duties on the top.

Q. I didn't ask you about that. I said it ended your conversation with the foreman?

A. I say it ended it unless I wanted to order something or he wanted to say something to me.

Q. That didn't happen often?

A. As often as was necessary.

Q. How often was it necessary?

A. That depended on what I needed.

Q. Needed what?

A. A man working needs tools to work with, needs pipe, water hose,—

Q. You talked some to him if you needed anything?

A. That is right.

Q. If you didn't need anything you didn't talk to him then?

A. Not to a great degree.

Q. Now, what were the things you needed in your heading?

A. Drill, air hose, water hose, shovels, picks, hammers.

Q. How long would a pick handle last?

A. Ordinarily a pick handle would last a couple of months.

Q. How long would a pick last?

A. They are about the same. Under the same conditions, the same amount of work, they will last about the same time.

Q. You mean the handle will last as long as the pick?

A. No, I don't mean that.

Q. That is what I am asking you. You didn't buy a whole pick because the handle wore out?

A. That depends on what you use the pick for.

Q. What did you use it for?

A. To pick ore with.

Q. Did you buy a whole pick when the handle wore out?

A. No, sir. When we needed a handle we bought a handle.

Q. How many handles would a pick wear out?

A. One at a time.

Q. You know what I am talking about, don't you? How many handles—if you don't understand that, let me ask it this way: You go and buy a pick today, and every time the handle wears out you buy another handle and put it in the pick?

A. That is right.

Q. How many handles would you have to buy before that pick wore out?

A. I wouldn't try to answer that. I never have wore one out down to the eye. Some fellows steals them. Mine have gone on somewhere else.

Q. I am not talking about wearing it down to the eye. I am talking about like you use it.

A. What is your question?

Q. I am not talking about wearing it down to the eye. I am talking about where it is no longer useful for the purpose of you using it, or you think it is no longer useful?

A. Well, it would last twelve months.

Q. It would last twelve months, and you say sometimes somebody would steal one?

A. In cases.

Q. You mean somebody on the shift opposite you?

A. Yes, sir.

Q. In that case you would have to get another pick?

A. That is right.

Q. Now, let me ask you about your shovels, the same question about your shovels?

A. How long a shovel would last?

Q. Yes.

A. Ordinarily used, a shovel would last above sixty days.

Q. You mean the shovel or the handle?

The Court:

You asked him about the shovel and he answered it, Mr. All:

Mr. All:

Well, I want to be sure—

The Court:

He has answered your question. I don't mean to be dictatorial at all.

Mr. All:

Judge, I understand you don't, but the only thing is this—

The Court:

You asked him a simple question and he answered it.

Mr. All:

I appreciate your situation. I know you are not being dictatorial.

The Court:

The question has been answered. Go ahead.

Q. All right. Now, what about the drills? How often would you have any occasion to talk to the foreman at the top about the drills?

A. Well, very often we have that to do, because—

Q. How often?

A. Do you want to know the reason why?

Q. You answer the question. You are suiting me all right. I asked you how often—

The Court:

You answer his question. You pay attention to what he asks and answer his questions. Don't make any side remarks either. Just answer his questions.

Let's go ahead.

Mr. All:
Read the question to him, please.

The Court:
Read him the question.

(Thereupon the reporter read the question last propounded as above recorded.)

A. That depended on what happened to the drill on the shift previous to mine.

Q. I am asking you, Jesse, about how often would anything like that come out on an average?

A. Two or three times a week, maybe.

Q. Two or three times a week?

A. More or less.

Q. Then you might happen to say something to him about an air hose or water hose or someting of that sort?

A. Yes, sir.

Mr. Harris:
Talk louder, Jesse. I don't hear you sometimes.

The Court:
Talk louder so we can all hear you.

Q. All right. Now, what was your working place in 1935 when you first became head miner over there?

A. The bottom of Number 1 slope.

Q. All right. How long did you continue—did that continue to be your working place?

A. I believe until the latter part of 1936 or the first part of 1937.

Q. So that you went there practically every day?

A. Except when the place was falling or working.

Q. Well, that was very seldom?

A. Well, it wasn't so often.

Q. Yes. All right. Now, you went from that place to what place next in 1936?

A. I believe it was 88 Right.

Q. Now, from the time you went there how long did that continue to be your working place?

A. Oh, for a little better than a year.

Q. For a little better than a year?

A. Yes, sir.

Q. You had made no changes in working places during that period of time?

A. Not regular.

Q. Any changes you made were very seldom?

A. Yes, sir.

Q. Was that right?

A. Yes, sir.

The Court:
I can't hear you.

The Witness:
That is right.

The Court:
Talk out.

Q. All right. After you left there, what became your working place?

A. They taken me off in a place they called 90 left cross.

Q. When was that?

A. I believe that was in September—it was either August or September of 1938.

Q. All right. Now, how long did that continue to be your working place?

A. A little better than a year.

Q. You didn't change working places within that year, did you?

A. Not regular.

Q. Well, I mean—you didn't change working places once a month, did you?

A. Well, I didn't keep an accurate count of changes, of just how often, but as I say, if I went down and found anything wrong with that place—

Q. Well, during that period if that was not your working place from day to day it was due to some unusual occurrence?

A. That is right.

Q. Now, what was your next working place after that?

A. No, the number of that next working place, I have never known what it was, but it was just a break through to straighten out a room.

Q. When did you go there?

A. I went there on the first day of December of last year.

Q. You mean 1940?

A. That is right.

Q. So, you have mentioned behind that all the places you have worked in from '35 up until now?

A. Yes, sir.

Q. You are still working there?

A. No, sir. I broke that place through, and they sent me further up to break another places through from Number 1 to Number 2, an air course—haulage way.

Q. Jesse, you never have been paid since you were over there for travel time, have you, collar to collar, portal to portal?

A. Well, you mean up to the present time?

Q. Up to the present time,—up to May 1, 1941.

A. Up to May 1st?

Q. Up to May 1, 1941.

A. No, sir, have not.

Q. They never have had a rate set for traveling time, have they?

A. Not to my knowing.

Q. Don't you know they haven't?

A. Not to my knowing.

Q. All right. Now what time from 1935, on up to 1941, —what time were you due to get into your heading or your stope where you were drilling and working up before May 1, 1941?

A. Seven o'clock.

Q. Seven o'clock?

A. Yes, sir.

Q. And your work time ended at 3:15, didn't it?

A. 3:10.

Q. 3:10? You mean it ended for the muckers at 3:10?

A. Yes, sir, at the working place.

Q. At their working place?

A. Yes, sir.

Q. They left at 3:10?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. So they started at 7:00 at their working place and ended at 3:10?

A. Yes, sir.

Q. All right. What time did you drill over that period from 1931--from 1935 to May 1, 1941?

A. That was my regular occupation, drilling.

Q. What is that?

A. Drilling was my regular occupation.

Q. What time did you start drilling?

A. Well, by the time you get up and quarry and make things safe, it would be around 15 minutes to eight. That depends on the nature of the place when you went in. Sometimes you would have a lot of quarrying to do and sometimes not so much.

Q. You say 15 of what time?

A. Eight.

Q. Fifteen minutes of eight?

A. Yes, sir.

Q. You had a rule over there you had to make the place safe for the muckers to work?

A. Yes, sir.

Q. You followed that rule?

A. Yes, sir.

Q. In other words, you and the drill man were supposed to test the roof with a bar?

A. I was the drill man. The head miner in an eighteen-foot place is the drill man.

Q. Well, you tested the roof?

A. Yes, sir.

Q. For yourself and the muckers and everybody else?

A. Yes, sir.

Q. To see if it was safe to go to work?

A. Yes, sir.

Q. What time did you shoot?

A. At 3:10.

Q. 3:10? Before you lit your fuses the other men in the heading had to get out

A. Yes, sir.

Q. I mean they had to get out for safety reasons?

A. Well, they didn't get out ahead of me. Lots of times they would stand there until I lit the holes and we would all go out together. As long as they were in front of me I was satisfied because there was nobody behind.

Q. You say you would go out together?

A. Most of the time we would. I would light and me and my crew would go out together.

Q. Did you go in together?

A. Sometimes we would and sometimes there would be a little variation.

Q. There wasn't any rule you would all catch the same trip going down?

A. No, sir, we didn't have to catch the same trip.

Q. And as a rule—very often the different men in different crews caught different trips?

A. I would rather speak about my own men.

Q. You don't know about the other men. Is that what you mean? Is that the reason you say you would rather not speak about the other crews?

A. You asked me directly about my own crew.

Q. You said you preferred not to speak about the other crews. You said you would rather not speak about them. Is it because you don't know? Is that the reason?

A. I would rather speak about what pertains to my crew.

Q. You don't know about the others?

A. I saw them all right.

Q. I am not asking you about that. Didn't members of the same crew constantly go down on different man trips in the morning?

A. Mr. All, I just can't remember it.

Q. What?

A. I can't remember it.

Q. You can't remember it?

A. No, sir.

Q. How many could go down in one car?

A. Sixty,—ten on one car.

Q. Well, did they have a special car for your crew?

A. Not necessarily.

Q. How many men in your crew?

A. Five.

Q. How many men in most of the hand loading crews?

A. Five.

Q. Don't you know when your crew went down each morning that the ten men that went down in the car didn't all belong to two crews?

A. Yes, sir.

Q. Did they or not?

A. Well, usually they were mixed up. We had company men and all in there.

Q. That is what I say; they were mixed up?

A. Yes, sir.

Q. They were mixed up as between crews; your crew got on separate trips?

A. Yes, sir.

Q. That is right, isn't it?

A. That is right.

Q. And some of them would get there in time for the first trip and some in time for the second trip, and some in time for the third trip, wouldn't they?

A. Yes, sir. They had to be or else they wouldn't have made—

Q. I am asking you—I want to get your unqualified answer. I say sometimes some of your men would come in time to catch the first trip, and some of them would not come in time to catch the first trip and would catch the second trip, and some would come at a time they had to catch the third one?

A. That is right.

Q. What did you say?

A. That is right.

Q. That is right?

A. Yes, sir.

Q. And the same thing that was true of your crew was true of all the other crews, wasn't it?

A. I reckon so.

Q. Don't you know it is so? What? Don't you know it is so?

The Court:
What is your answer?

The Witness:
I say—

The Court:
What is your answer?

The Witness:

Well, that is true.

Q. All right. That is all I wanted to ask you. Now I believe you stated that up to about 1940 there was only one interval, one space in the mine where you rode; is that right?

A. Going down?

Q. Yes; there was only one ride?

A. That is right.

Q. And that man trip went down from the top to what point?

A. 48.

Q. That is where you rode?

A. Where we unloaded, 48.

Q. From that point on the men went to their various working places?

A. Yes, sir.

Q. I mean the production crews went to their various working places throughout the mine?

A. Yes, sir.

Q. And some of them had very short distances to walk, and others had longer distances to walk?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir, that is true.

Q. You stated with respect to tools the pick was yours, the shovel was yours and the bar was yours?

A. I didn't say the bar.

Q. The bar was not yours?

A. No, sir.

Q. The bar was the company's?

A. Yes, sir.

Q. And the drill was the company's?

A. Yes, sir.

Q. What else,—the hose was the company's, the water hose and air hose and pipe and things of that sort were the company's?

A. Yes, sir.

Q. What tools were there that belonged to you? When I say you, I mean the head miner.

A. Shovels, picks, hammers.

Q. Hammers?

A. Stillson wrenches.

Q. Shovels, picks, hammers and Stillson wrenches?

A. Stillson wrenches.

Q. Your caps?

A. Yes, sir.

Q. And your clothes?

A. Yes, sir.

Q. Now, you have stated about the life of these particular tools?

A. Yes, sir.

Q. And I believe it is true that when you bought those tools originally you didn't have to buy them from the company? You could if you wanted to, but you needn't; that is right, isn't it?

A. That is right.

Q. And the company would take them down to your working place for you, or you could take them down?

A. I have carried them down, and at times I have had them sent down.

Q. What is that?

A. I say I have carried them down and at times I have had them sent down.

Q. The company would take them if you requested it?

A. Yes, sir, they carried them at times.

Q. I say if you wanted them to do that then they would take them?

Mr. Harris:

He can't testify what they would or wouldn't do He has testified what they did.

The Court:

I sustain the objection.

Q. They never refused to take them?

A. No, sir, they didn't tell me they wouldn't take them.

Q. Every time you asked them to take them they took them?

A. No, sir, not all the time.

Q. How many times did that occur?

A. Well, several times from 1935 up to now I carried my shovel and the foreman would just tell me to carry it on down with me.

Q. When you took a pick or shovel down or anything else down, you were done taking them down until you needed another one?

A. Yes, sir.

Q. That is right, isn't it?

A. Yes, sir, that is right.

Q. Now, you spoke of getting off at this man unloading station and going to a yard, didn't you?

A. Yes, sir.

Q. Now, what was that yard that you are talking about?

A. Well, when the man trip goes down from the top the first stop for the men to unload is down at 48 or very close to [illegible]. When you get to the 48 you hit that flat right there. In that flat around the man loading station was the yard, and they have a desk where the mine foreman sits.

Q. The men had to go through that yard?

A. Yes, sir.

Q. They had to go through there to get to their work?

A. Yes, sir.

Q. Where was it you say you got your powder?

A. At the powder magazine.

Q. Where was that?

A. It was over about 62 or 63 left, number 2. I wouldn't be sure about the heading, but about there, somewhere along there.

Q. That powder magazine opened about 7:00 o'clock?

A. Sometimes it would open a little before 7:00 and sometimes at 7:00.

Q. I mean the rule was 7:00 o'clock?

A. About 7:00.

Q. What?

A. About 7:00 o'clock.

Q. About 7:00 o'clock, and when—when you got there and got there at seven o'clock, that was the time you lost from your working time at the face, wasn't it?

Mr. Harris:

We object to that, if the Court please. That is argumentative.

Mr. All:

Well, you have asked him—

The Court:

I think that is a question to be determined—

Q. Who got the powder?

The Court:

—by the Court.

A. The drill helper.

Q. You had five men in your crew?

A. Yes, sir.

Q. And one man got the powder?

A. That is right.

Q. It didn't take but one man to get the powder?

A. One man.

Q. How much would you use a day?

A. On an average I used a box a day.

Q. A what?

A. On an average I used a box a day.

Q. A box contained how much?

A. Fifty pounds.

Q. Fifty pounds? Where did you say you got the fuse and caps?

A. At the magazine.

Q. The same time you got the powder?

A. Yes, sir.

Q. As a rule that was at 7:00 o'clock?

A. Yes, sir.

Q. The same man that got the powder got the caps?

A. Yes, sir.

Q. The caps were small?

A. Yes, sir.

Q. You could stick them in your vest pocket or shirt pocket?

A. Well, on an average that is the way my helper brought them, in his pocket.

Q. Now, Jesse, you were paid more on account of the fact you owned your own tools, weren't you?

Mr. Harris:

We object to that, if the Court pleases. He couldn't know.

Mr. All:

Well, he might.

Mr. Harris:

That calls for a conclusion as to why the company set the rate,—you were paid more on account of the fact you owned your own tools. He couldn't possibly know.

The Court:

Sustained.

Q. You have always furnished the tools, haven't you; those tools you have been talking about?

A. I have bought picks and shovels and hammers and wrenches,—Stillson wrenches since I have been there.

Q. You traded with the company on the idea you owned the tools?

Mr. Harris:
We object to what basis he traded on. It calls for his state of mind.

The Court:
Well, I think it is apparent that is what he did. He went to work on that basis.

Mr. Harris:
Yes, sir.

The Court:
And furnished his tools.

Mr. All:
Yes, sir.

The Court:
He stated—

Q. With respect to your—Pardon me, Judge.

The Court:
That is all right.

Q. With respect to your wages, did you get some consideration on account of the powder you used?
A. Yes, sir.
Q. How much was it?
A. $9.90 a yard.
Q. Do you get a statement of it?
A. Yes, sir; it shows on your statement the amount of yardage you mine, and what it would amount to.
Q. And what it would amount to?
A. Yes, sir.

Mr. All:
Judge, just one second.

The Court:
Yes, sir.

Q. All right, Jesse. Mr. Harris asked you about you working on a tonnage basis, and I think you answered a question that if you only produced one ton that you got paid for one ton; is that what you said?

A. Yes, sir,

Q. I will ask you how many times you worked over there you didn't produce more than one ton?

A. Well, every time I turned off a place,—that is, when I worked out one place and they moved me to another place, that is the day I don't produce a ton.

Q. They pay you for the other kind of work that day?

A. Sir?

Q. They pay you for the other kind of work that day when you are not producing?

A. They pay the yardage.

Q. The day you are not producing you are working on a yardage basis?

A. Yes, sir.

Q. And get paid on a yardage basis?

A. Yes, sir; that is the way it was.

Q. He asked you about two crews being opposite each other, one a night crew and one a day crew. I don't know whether I understood you or not. If you were on a day crew you loaded what the night crew had shot down?

A. Yes, sir.

Q. And the night crew loaded what you had shot down?

A. Yes, sir.

Q. Did you mean to say there was some limitation on your day's work or your production by what the opposite crew had shot down?

A. Yes, sir.

Q. Well, now, if that night—have you ever had the night crew or the opposite crew shoot down so much as to keep your tonnage down, and if they did, didn't you make make kick to somebody and rectify it?

A. No, sir, I haven't had them shoot down so much they kept my tonnage down, but I have had them shoot down so little is kept my tonnage down.

Q. What did you do?

A. I would go in there and drill all day and try to get enough shot down so if he makes a bad shot the next night I will have something to load.

The Court:

As I understand, you are paid on what you load and not what you blast?

The Witness:

Yes, sir. If the night shift—

The Court:

You are paid on what you actually load?

The Witness:

Yes, sir.

Q. You are the boss of both crews, aren't you? If the night shift didn't shoot down enough ore, that night shift was yours?

A. Supposed to be, but really I wasn't.

Q. Wasn't you the boss?

A. I was working in there, but I wasn't the real boss.

Q. You were paid for what they did?

A. If he shot down all the ore, if he was clear and it was my yardage, I got paid for it.

Q. You were the boss; you had charge of it?

A. I was supposed to be, but I wasn't.

Q. You mean because you were not there?

A. No, sir. What I mean is this: I would tell him to do something, but the night foreman would tell him, "I am boss down here. Jesse ain't the boss."

Q. You mean they could reduce your tonnage by failing to shoot the ore down?.

A. The tonnage that was left was what I got out.

Q. You worked as dilligently before 1941 as you do now?

A. Yes, sir.

Q. Your crew was just as good before this 1940 contract as it is now?

A. Yes, sir.

Q. And you work as long hours?

A. Yes, sir.

Q. You say since this 1940 contract you have never come under thirty-five tons?

A. I said my guarantee. I didn't say thirty-five tons.

Q. You said 90 percent?

A. Ninety percent of what 35 tons would come to at 15.3.

Q. You never have come—since you were put on this basis with a guaranteed tonnage, you have never come under the guarantee?

A. I run an average of 37 tons. What I mean by that, I may fall down a little bit today, but over a period of a week or two I go ahead and average up.

Q. You are ahead of the guarantee then?

A. I don't know about it being ahead of it, but they haven't had to pay me anything directly—I mean individually so far.

Q. Now, in this—after you leave the man unloading station and start to your working place, you say you walk all the way in—

A. Yes, sir.

Q. —the haulage ways, or part of the way in man ways?

A. Haulage ways.

Q. All the way in haulage ways?

A. Yes, sir, haulage ways.

Q. Those haulage ways have got a track in them?

A. Yes, sir.

Q. And have got cross ties on the track?

A. Yes, sir.

Q. That track is filled up—that space between the cross ties on the track is filled up so it is about flush with the top of the cross ties?

A. In some places it is, and some it is not.

Q. I mean as a rule.

A. In some places it is and in some places it is not.

Q. In the places it is not, it is pretty nearly so?

A. Well, I would say pretty near so.

Q. Pretty near so. All right. Now, you told Mr. Harris that the ore trips—the ore skips were run on that haulage way on which you walk?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Well, in the morning—in going down, was it?

A. In the morning when we would go down and walk 500 feet approximately and turn down that first incline, oftentimes the man trip slacks empties off behind us; I mean going down there to see if there was any ore standing there before we got down the hill.

Q. How often does that happen?

A. Every morning.

Q. Just one time?

A. Every morning.

Q. How many times would a trip pass you before you got to your working place?

A. Sometimes pass me three times.

Q. Well, suppose you didn't leave your working place until you were supposed to leave there at 3:15 in the evening; you wouldn't encounter trips on the track?

A. Not at 3:15, not coming out.

Q. If you stayed in your working place until 3:15, until your working time was over, you wouldn't encounter any ore skips on the track, would you?

A. Not coming out.

Q. Not coming out?

A. No, sir.

Mr. All:

Judge, I am about—I don't want to forget anything, if Your Honor will pardon me just a minute.

Q. You say there was a man at the top to supervise the loading?

A. Yes, sir.

Q. And there was a man at the hoodlum, the man loading or unloading station, to supervise the loading?

A. Yes, sir.

Q. And he would give the signal indicating it was a man trip, and the signal to move up or let down as the case might be?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

Q. And while you were waiting for these trips, you sat down?

A. Yes, sir; we had benches there in our side where we could sit down.

Q. There are seats in the hoodlum where you can wait coming out?

A. Yes, sir.

Q. Now, in coming out, the various men from the various working places in the mine reached the hoodlum to come out at various times; some come too late to catch the first trip and catch the second trip?

A. Yes, sir.

Q. And some came too late to catch the first two trips and go out on the third trip?

A. Yes, sir.

Q. Just like going down in the morning?

A. Yes, sir.

Q. Is that right?

A. That is right.

Q. You said that there were electric wires above the walkway. I understood you to say that on that account there were two places where the men would have to stoop?

A. Yes, sir.

Q. Am I correct in that? I don't want to misquote you, but I thought I took down correctly what you said.

A. You are correct.

Q. I am correct? There were wires above?

A. Yes, sir.

Q. There were two places going to your working place where a man would have to stoop?

A. Yes, sir.

Q. All right. Now, I want to ask you where those places were or are.

A. Right at the nuck, at the place where I am working now. They put in a big air receiver to force the water up and there is a wire hanging there unless it has been taken up since I have been up there.

Q. How long has it been hanging there?

A. I guess a month or so.

Q. When you answered Mr. Harris' question, were you talking about the last month or so, or about the last three years?

A. Well, both.

Q. I will ask you about the last three years now. Where were those two places where you had to stoop?

A. Now, there was a place—

Q. Well, just mention one of them.

A. The place I have mentioned now hasn't been there three years. The place I did mention was right down the track about three or four hundred feet where there is a switch, one going this way and one that way. It stays there all the time.

Q. Where is that with reference to the nuck?

A. It is in the nuck I turned off before I went to the place where I am at now.

Q. You don't have to walk under that, do you?

A. Yes, sir.

Q. Isn't that in somebody else's working place?

A. I go in there too.

Q. You mean you go through it?

A. Yes, sir.

Q. Now, for what distance—for what distance is it advisable to stoop?

A. Oh, possibly 15 or 20 feet.

Q. About as far—a little further than from me to you?

A. Well, about fifteen feet, in my judgment.

Q. Well, how far do you think it is from me to you?

The Court:

Never mind the argument.

Mr. All:

Judge, I just want—

The Court:

Tell him to point out.

Mr. All:

Judge, that is just my way of asking it.

The Court:

It is wrong; it is wrong.

Q. How far is fifteen feet?

A. Fifteen feet is about back to your chair there.

Mr. All:

That is exactly what I had asked him.

The Court:

Well,—

Mr. All:

I just asked him in a different way.

Q. Where is the other place you had to stoop?

A. Right below the place I turned off, right before the 8th of this month.

Q. How long has that existed?

A. It has existed since we had a fall and tore the wire down. They didn't replace it.

Q. When was the fall?

A. It was about a day or so before the close of June.

Q. You mean this last June?

A. This last June.

Q. You didn't have to stoop there before last June?

A. Not at that place.

Q. I am talking about at that place.

A. No, sir.

Q. Is that a trolley wire?

A. Well, it is a wire—we call it a trolley. It is the one the motor wheel—motor pole is in.

Q. You have to go under the trolley wire?

A. Yes, sir; it is hanging right over the outer rail of the tracks.

The Court:

How high above the track is the trolley wire?

The Witness:

Well, the last day I worked there I had to bend my head to go under it. I am not so high.

Q. It has been there since June?

A. About the last two or three days of June.

Q. About a month ago?

A. About a month ago.

Q. Where is the other place you have to stoop? One of them is about ten or fifteen feet in that place. Where is the other place?

A. As I say out at the nuck where they turned off and put an air receiver there to pump water in and push the air up. There was one place there at that place unless they have remedied it since I have been up here.

Mr. Harris:
He has been into that before, Judge.

The Court:
I will let him ask how long it has been there.

Q. How long has it been there?
A. Well, it has been there—you know I told you they put me to driving a neck, and shooting that neck off it broke that wire and it has been hanging down ever since.
Q. When was that?
A. I went in there on the first day of last December.

The Court:
All right; that is sufficient.

Mr. All:
All right.

Q. During that work time—during this five years from '35 to May, 1941, you had—what was the length of your lunch period?
A. Didn't have any.
Q. What?
A. Didn't have any.
Q. Didn't have any lunch period?
A. No, sir.
Q. You didn't eat?
A. Between—just at chances.
Q. Don't you know the contract provided fifteen minutes for lunch period?

Mr. Harris:
We object to what the contract provides. It speaks for itself.

Mr. All:
I want to see if he is familiar with the contract.

The Court:
Overruled.

Q. Don't you know the contract specified fifteen minutes lunch period?
A. I am not disputing that, but we didn't take it.
Q. You didn't take the lunch period?
A. None of the tonnage men had the fifteen minute lunch period. The lunch period was taken up by the company men; they took it. We fellows working by the ton, we worked on through.
Q. You were the boss of your men, weren't you?
A. Yes, sir, in a small way.
Q. You mean you couldn't stop for lunch—
A. Not—
Q. —and your men couldn't stop for lunch?
A. I won't say they couldn't take it, but they didn't do it.
Q. Don't you know it is the contract—

Mr. Harris:
We object to what is in the contract.

Q. All right, Jesse.

The Court:
What is it you want? Do you want him to answer?

Mr. All:
Yes, sir, I would like for him to answer it. I want to see if he is familiar with the contract.

The Court:

What is the question?

Mr. All:

I want to know if he is familiar with the fact that under the contract he could stop for lunch.

Mr. Quinn:

Your Honor, he has answered it two or three times.

The Court:

Go ahead and answer it.

A. I say I am not disputing it was in the contract, but the condition that kept us from taking it—

Q. What was that? What conditions kept you from taking it?

A. All right. If we stopped for lunch that would automatically stop the run all the way to the top.

The Court:

Stop what?

The Witness:

Stop the run, the production, and whenever we didn't get our 35 tons the foreman got on us about it, how come we didn't get it. He would reprimand us for it, how come we didn't get it.

Q. The runs were stopped fifteen minutes for lunch?

A. Yes, sir, that was the contract.

Q. All right.

The Court:

All right.

Q. You said something, Jess, about a conversation with Mr. Costner about collar to collar. That was in connection with some pump men's grievance about traveling time?

A. Yes, sir.

Q. And you said that Mr. Costner said that particular crew could go on collar to collar?

A. Yes, sir.

Q. He said that on Friday, and the next day told you he would have to call it off?

A. Yes, sir.

Q. Or sometime after that he would have to call off the collar to collar?

A. I didn't say he told us that on Friday.

Q. Whenever it was.

A. On Tuesday.

Q. When was it he told you that particular crew could go on collar to collar?

A. The following Monday.

Q. How long was it before he said he would have to call it off that he had told you that crew could go on collar to collar?

A. On the Friday following that Tuesday,—it was on Tuesday he told us they could go on Tuesday, and then on Friday we got word he wanted us to come by the office.

Q. When was that?

A. It was September last year, but I wouldn't say the date.

Q. September, 1940?

The Court:
Are you going to ask him about that?

Mr. All:
I had asked him about it.

The Court:
You interrupted him just now.

Mr. All:
Judge, I didn't consciously interrupt him.

Q. Go ahead and tell what you wanted to say.

A. On Friday we got word to come out of the mines and go by the office, that they wanted us at the office; didn't say what he wanted.

We went in there and Mr. Costner was sitting there, and he said, "I called you fellows here to tell you I will have to change the ruling on that collar to collar appointment.

Q. And that was when you were talking about, in September, 1940?

A. Yes, sir.

Q. Now, you said in 1934 after you joined the union and got to be a committeeman that you made—the committee made some six hour proposal, six hour a day proposal.

A. Yes, sir.

Q. Was that in writing?

A. As I said, I wouldn't just say it was exactly in writing, but in the conversation that followed, in the negotiations I know it was discussed.

Q. You belonged to the committee, didn't you?

A. Yes, sir.

Q. Do you know whether the committee took something in writing, the six hour a day proposal in writing to the company?

A. I wouldn't say we took it in writing, but we carried them a proposal and it was discussed.

Q. What do you mean by carrying a proposal?

A. Like I would take something in my hand, and took it to you.

Q. You took a proposal then?

A. Yes, sir.

Q. That proposal had to be in writing, didn't it?

A. The one we handed him had to be in writing. This proposal—.

Q. The one you handed him—Who was it you were talking about?

A. I don't know whether the president or some of the other board members.

Q. Board members?

A. It was presented by the committee as a whole to him.

Q. To him? To whom?

A. Mr. Marshall.

Q. The proposal you presented to him—

The Court:
You have been over that.

Mr. All:
Judge, I don't think I have.

The Court:
Yes, you have.

Q. The proposal you handed to him, did it have the six hour day in it?

A. I wouldn't say—

The Court:
What you handed him was in writing?

The Witness:
Yes, sir.

The Court:
All right; it was in writing.

Q. That was the six hour proposition?

A. Yes, sir.

Q. It was in writing?

A. Yes, sir, it was in writing.

Q. Have you got a copy of it?

A. We didn't keep no copy,—I didn't.

Q. Jesse, of course you demanded the six hours and travel time at the same time?

A. No, sir, we didn't demand anything. Mr. Marshall asked us, "Are these requests or demands?"

We told him it was requests.

He said, "If they are demands, I will tell you to get out the door."

Q. Then you said Mr. Marshall told you about some national basis?

A. Yes, sir.

Q. What was that?

A. He started in the district and outlined ore mining in this district, and he said it had never been practicable in this district, and then he went up north in what he said was the Eastern Seaboard where they sell most of their pig iron, and not practical up there, and then went up in the Lake Shore Region and said it was not practicable up there.

Q. You talked to him at some length?

A. We listened to him. I wasn't familiar with the history of mining—

Q. Well, you—

Mr. Harris:

Let him finish.

Q. Go ahead.

A. The history of mining he was outlining, I wasn't familiar with it.

Q. You knew when he said the Lake Shore Region he meant up in Michigan and Minnesota and Wisconsin?

A. After he explained it I did.

Q. He explained it hadn't been practicable up there?

A. That is what he said.

Q. And hadn't been practicable in other regions?

A. Yes, sir.

Q. And he couldn't start it down here?

A. That is what he said.

Q. That was in 1934?

A. Yes, sir.

Q. Then you said after that you proposed something else?

A. Yes, sir.

Q. What was that?

A. After he turned down this proposal we had several other meetings with him then going up to May 1st of the same year.

Q. That was 1934?

A. Yes, sir.

Q. All right.

A. In each proposal—in each conference we had with him, we would approximately go over the same thing. We finally asked for a seven hour day and pay one way, and we didn't get that.

Q. What was it he said about national there in connection with that?

A. Sir?

Q. What was it he said about the seven hour day and pay one way?

A. It wasn't practicable; no company was doing that and he didn't think the Sloss Company would put it in ahead of any other company.

Q. What was it he said about that strong union?

A. He said, "You are asking more than the United Mine Workers." He said, "The powerful Mine Workers is already recognized, and they only have an eight hour day. You ask for too much and you can't get it."

Q. You know who he was talking about?

A. Yes, sir.

Q. Who was it?

Mr. Harris:

We object to that. Everybody knows who he was talking about.

Q. The coal miners union?

A. The coal miners union, yes, sir.

Q. Yes.

Mr. All:

I believe that is all, Judge.

Re-Direct Examination.

(By Mr. Harris):

Q. Jesse, when you would start down in the mine of a morning, did you have any duties with respect to any other crew than your own?

A. No, sir.

Q. Did they ever have you to check other crews in when they were going down of a morning?

A. No, sir.

Q. Did they ever have you to load the man trips and assign men to the man trips as they went down in the morning?

A. No, sir.

Q. And were the cars that went down confined entirely to tonnage men or did they have tonnage men and company men both on them?

A. All.

Q. Now, in going there of a morning at six o'clock would you ordinarily find just one man trip load waiting there, or would you usually find that the men as a whole were there?

A. The men as a whole.

Q. On a tonnage basis, the quicker you got to your drilling place the quicker you got started making money?

A. That is right.

Q. And when you were on a tonnage basis without a guarantee and you got to your drilling place, did you wait until seven o'clock to start drilling,—I mean preparing your place, or did you start just as soon as you got there?

A. As soon as I got there.

Q. Now, this question of yardage and tonnage; suppose your crew produced ten tons of ore, would you get paid for ten tons of ore and for yardage both for the same shift?

A. Yes, sir, provided, as I said to start with, that yardage is mostly absorbed in shooting powder. You are allowed 11 cents a ton, but you can't shoot narrow work for 11 cents.

Q. If you produced ten tons of ore, what did you get paid for?

A. Ten tons.

Q. Have you got any of those slips they ever paid you where they showed how many tons you produced?

A. Yes, sir.

Q. Have you got any of them at home?

A. Yes, sir.

Q. Did they keep showing on those slips on up to May 1, 1941, the number of tons produced?

A. Yes, sir, in some—once in a while your statement wouldn't show the amount of tons; not every time, but sometimes.

Q. What did it show in places of the tons?

Mr. All:

We object to that. The statement is the best evidence?

A. Well, it would just show the money.

Mr. Harris:

All right. I think that is all, Your Honor.

Mr. All:

That is all.

(Witness excused.)

The Court:
We will convene at a quarter of two. Everybody is excused until then,—a quarter of two.

Court is adjourned.

(Whereupon, at 12:25 P. M., July 28, 1941, a recess was had until 1:45 P. M. of the same day.)

After Recess, 1:45 P. M.

The Court:
Who will you have?

Mr. Harris:
Call Mr. J. W. Gilbert.

2815 J. W. GILBERT, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):
Q. Are you Mr. J. W. Gilbert?
A. Yes, sir.
Q. How old are you?
A. Forty.
Q. Where were you born?
A. Bessemer.
Q. How high did you go in school?
A. About the Eighth.
Q. What kind of work do you follow?
A. Mining.
Q. What company do you mine for?
A. Sloss-Sheffield Steel & Iron Company.
Q. How long have you been working for them?

A. Since December, 1929.

Q. What kind of work have you done for them?

A. Well, at present I am head miner.

Q. Well, what did you do for them when you first started?

A. I was drag engineer when I first started.

Q. How long were you drag engineer?

A. About—about three years.

Q. Then what did you do?

A. Head miner.

Q. So you have been a head miner since 1931?

A. No; I will say about '34.

Q. About '34?

A. Yes, sir.

Q. Well, since October, 1938, whereabouts have you worked?

A. You mean what places in the mine?

Q. What mine have you worked at?

A. Number 2, Sloss.

Q. How far is that from Ruffner?

A. Really, I have never been to Ruffner, but I would judge it is about ten mines, twelve, something like that.

Q. Well, when you—along in October, 1938, and from that time up to May 1, 1941, were you working on the day shift or night shift?

A. Day shift.

Q. What time would you report at the change house every morning?

A. Well, I usually get to the bath house anywhere from —about fifteen minutes until six.

Q. And what did you do after you left the bath house?

A. I would go on up to the tipple, to the mines.

Q. Well, when you got up to the tipple, did you pick up carbide there?

A. No, sir.

Q. Where did you get the carbide for your lamp?

A. I would usually buy it—sometimes at the commissary, and sometimes I would wait and get it the next morning when I was coming on to work, and get it at some store.

Q. Would you have your carbide and lamp when you left the bath house?

A. I would have them when I left the bath house.

Q. When you got to the tipple, did you turn in any brass check?

A. No, sir.

Q. When you got up there, did you make any report to anybody you were there?

A. The foreman.

Q. The mine foreman?

A. Yes, sir.

Q. What time during those three years from October, 1938, to May 1, 1941, did you report to the mine foreman you were there?

A. It would run along about six o'clock.

Q. As head miner did you have any particular drag you could catch?

A. They usually run three or four. I didn't catch any particular one at any time.

Q. Did you have any instructions from the mine foreman or assistant mine foreman or section foreman as to what drag you should take going into the mine?

A. Yes, sir.

Q. What drag did they order you to take?

A. We were at one time ordered to catch the first drag.

Q. Well, how long was the period you were under order to catch the first drag?

A. I couldn't say unless it is still in force up to May 1st.

Q. Well, do you still catch the first drag up to May 1, 1941?

A. No, sir.

Q. When did you quit catching the first drag?

A. Well, very few times I had an opportunity to catch the first drag going in.

Q. Why?

A. Well, seeing about supplies and men:

Q. Well, when you reported to the mine foreman, did he have any tally sheet or book or anything else that he made any record in when you reported you were there?

A. He had a time book..

Q. And then after you reported you were there you said you had other things to see about that kept you from catching the first drag?

A. Well, yes, sir, I had—.

Q. Well what—name some of the things you had to see about that would keep you from catching the first drag.

A. Naturally, as a head miner, we would have to see about our crews, see what the night shift had done, whether they had had any breakdowns or anything, order the necessary parts we needed.

Q. Well who did you find out from—From whom did you find out whether there had been a breakdown?

A. As a usual thing the night crew would leave a report.

Q. Where did you get it?

A. I don't know who they would leave it with. I would usually get it from the mine foreman or assistant mine foreman.

Q. You would find out from the mine foreman or assistant mine foreman whether there had been any break downs on the night shift?

A. Yes, sir.

Q. What about your crew, did you find out whether you had a crew from anyone, or did you report to the foreman, whether or not you had a crew?

A. As a usual thing, when I seen I had a crew, I would usually report to the foreman.

Q. After you reported to the foreman, what did you do?

A. Why, then, we would go and get the man trip.

Q. What did you do about getting supplies? What supplies did you have to get?

A. Well, we had hangers and wedges and such things.

Q. Well, what did you do? What did you have to arrange about getting hangers and wedges and such things?

A. Well, as a usual thing—I can't say how far back, but as a usual thing they delivered hangers and wedges up to the mine. They had a box they put them in and we went and got them out of the box.

Q. Was that on the way in?

A. Yes, sir.

Q. How far was that box from the place where you boarded the man trip?

A. Oh, about—between 30 and 50 feet.

Q. Did you carry them with you down on the man trip?

A. Yes, sir.

Q. Did you have any pail or bucket or basket to put such things in?

A. No.

Q. During your work with the Sloss Company did you buy any tools yourself?

A. Yes, sir.

Q. What tools did you buy?

A. We buy our hammers, shovels, picks and wrenches.

Q. What about your powder?

A. Well, we have that—we buy—that is charged to the head miners.

Q. Well, tell whether or not your drill helper or anybody in your crew used a sack or anything else in which to carry the dynamite from the magazine to the drilling place?

A. They used a sack.

Q. Where did the miners in Sloss Number 2 from October 24, 1938, to May 1, 1941, get the oil for their drills?

A. They would get their oil underground, I would say about halfway to their working places.

Q. When did they get it?

A. After they got down to the first landing.

Q. Was that a daily occurrence?

A. Usually is for the drill runners.

Q. Now, did you have anything to do with any other crew when you started into the mines in the morning?

A. No, sir.

Q. Did you have anything to do with starting the man trip down?

A. No, sir.

Q. Who determined when the man trip would go down?

A. Well, the chainer handled the man trip. He knew what time to run it.

Q. Well, who determined whether or not they had a load?

A. The chainer.

Q. Now, in coming back out of the mine, as you approached the end of your shift, could you get on any man trip that you wanted to?

A. Yes, sir.

Q. How did you get to the man trip?

A. Well, we usually walked then.

Q. Well, did you go through a bull pen or did they have a bull pen for the white people?

A. No, sir, we didn't go through a bull pen.

Q. Did you have anything to do with determining when the man trip started out—

A. No, sir.

Q. —towards the top?

A. No, sir.

Q. When you got out to the top was there anyone there to catch your time or check your time as far as you know?

A. Well, there was usually someone there, but they never checked you out.

Q. They never checked you out?

A. No, sir.

Q. Now, in the place where you were working from October 24, 1938 to May 1, 1941, approximately how far did you walk from the main man unloading station?

A. I would say it is—would be between three and five hundred feet. I don't know exactly.

Q. Well, coming back at the end of the day, were you walking—after you had fired your shots,—

A. Yes, sir.

Q. On the way out would you be walking downhill or uphill?

A. No, sir; uphill.

Q. What would you say was the pitch of that slope that you were climbing on the way out?

A. It varies a little bit. I would say, to average it up all the way, would be between 20 and 24 degrees.

Q. Well, when you—ordinarily when you fired your shots, would you be—you and the members of your crew, at the end of the drilling, would you be wet with sweat or otherwise?

A. You mean when we quit work?

Q. When you quit drilling.

A. Well, some of them would be and some of them wouldn't.

Q. Now, when you arrived at the man unloading station after walking, what would be the condition of the men with reference to a sweaty condition?

A. You would be pretty hot when you got there.

Q. Has there been any change in the way the men are carried into the mine since May 1, 1941, and what it was from October 24, 1938, up to that time?

A. Yes, sir; there has been some changes.

Q. What changes have been made at Sloss?

A. Well, in last—in the fall of last year they put on another man trip on the inside.

Q. All right. That was in the fall of last year?

A. Yes, sir.

Q. That was down underground?

A. Yes, sir.

Q. After you left the main unloading station?

A. Yes, sir.

Q. Then they put in another man trip down there?

A. Yes, sir.

Q. That man trip was pulled by a hoisting engine, I suppose?

A. Yes, sir.

Q. With a drum?

A. Yes, sir.

Q. Now, on May 1st what changes were made?

A. Well, about—on May 1st about the only changes I know was they went on from collar to collar and they added some more cars to the man trip.

Q. Well, did they give you any directions about the time you were to report or check in to go down on the man trip?

A. Yes, sir.

Q. What change in directions were given?

A. Well, the change that was made was that I ride the last drag inside in the morning, check in and ride in the last drag in.

Q. Well, do you know whether or not on or about May 1st they assigned certain men to the first trip and certain men to the second, and certain men to the third just as they assigned you to a certain trip?

A. Yes, sir.

Q. But they had that stagger system there?

A. No, sir.

Q. Not before May 1st?

A. No, sir.

Q. From October 24, 1938, to May 1, 1941, as a usual thing, did all the men report at the mouth of the mine around six o'clock in the morning or did they come in at various and sundry times?

A. Well, they didn't all report there at the same time. They kept on up until about the time for the last drag.

Q. Well, at six o'clock, as a usual thing, how many men would you find were there that reported around six o'clock?

A. I would say the majority of them were there.

Q. The majority of them were there?

A. Yes, sir.

Q. Now, since May 1st they have a time clock, don't they?

A. Yes, sir.

Q. Before that had you ever seen a time clock there? Did anybody ever check up on your time or get your time when you were leaving?

A. No, sir.

Q. Either underground or up on top?

A. No, sir.

Q. How were you paid for the years from October 24, 1938, to May 1, 1941?

A. Paid on tonnage.

Q. What price did you get for a ton?

A. A head miner gets 4½ cents a ton, and he has a powder allowance in there.

Q. He gets an allowance of 4½ cents a ton for powder?

A. No, 11 cents for powder, and he gets 4½ cents for his ore.

Q. Then your price was 15½ cents per ton?

A. That is right.

Q. And that was your price from October, 1938, up until what time?

A. That is my price now. You see, we had a raise here not so long ago. They raised us to that price.

Q. Well, what was it before they raised it to that price?

A. It was 15.1 cents.

Q. Now, then, from October, 1938, up until May 1, 1941, suppose you and your crew produced four tons of ore; how much would you get paid for on that shift?

A. Let me get that straight. Up until '41?

Q. Yes, up to May 1st this year,—up until September, 1940, before the guarantee went in; suppose your crew produced four tons of ore on a shift; how much would you get paid for?

A. That is all we got paid for.

Q. Then, in September, 1940, did you get a minimum guarantee?

A. Yes, sir, we had a minimum guarantee.

Q. Now, what was the minimum guarantee on which you were paid after September, 1940?

A. I can't be positive about that, but it was around six dollars.

Q. Well, did you—do you know whether or not you have been paid on that guarantee any time or whether you have merely been paid what you earned on a tonnage basis?

A. Well, since the guarantee has been in effect, why, I—me and my crew has usually made ours.

Q. You usually made your minimum?

A. Yes, sir.

Q. Now, during all those years that you were working out there before 1938, were you working on a tonnage basis?

A. Not all of them. There was some little time that we were on day work.

Q. How long did that last?

A. I believe that was—that was while I was running a drag engine. It lasted about—I believe about two years.

Q. Now, during that time when you were on day work, what time did you go into the mine?

A. About—anywhere between six and six-thirty.

Q. And what time did you get out on top?

A. Anywhere from 5 to 7.

Q. From 6 to 6:30 you went in, and you would get out from 5 to 7?

A. That is right.

Q. How many hours would you get paid for when you were in the mine from 11 to 13 hours,—11 to 12½ hours?

A. I believe at that time we were getting paid for nine hours.

Q. Getting paid for nine hours and being in any time from 11 to 12 hours?

A. Yes, sir.

Q. Now, have you ever been a member of a service crew?

A. Service crew?

Q. Yes. What is the difference between company men and production men?

A. A company man, you might say is a maintenance man. The production man is the one that gets the ore, gets it loaded.

Q. Now, from October 24, 1938, to May 1, 1941, did the maintenance men go down in the mine on the man trip with the production men?

A. Yes, sir.

Q. And did they come out on the man trip with the production men?

A. Yes, sir.

Q. They did?

A. Yes, sir.

Q. What kind of work was done—maintenance work done in that mine from October, 1938, to May 1, 1941?

A. There were all kinds of work to be done to operate the mine, maintenance of the drags, track work, timber work.

Q. Did the company furnish the tools with which those maintenance men worked?

A. I can't say. I think they do.

Q. Did you ever notice any of those maintenance men carrying tools down with them on the man trip, on the drags?

A. At times I believe I have seen them carrying shovels and hammers.

Q. Did the maintenance men have to use carbide lights the same as the production men?

A. Yes, sir.

Q. The maintenance men, did they just work down in the mine at the man unloading station, or did their work from time to time carry them into the mine?

A. They went all over the mine.

Q. All over the mine?

A. Yes, sir.

Mr. Harris:

You can take him.

Cross Examination

(By Mr. All):

Q. Mr. Gilbert, you have been working for the Sloss Company for how long, did you say?

A. Since '29, December.

Q. Since 1929?

A. Yes, sir.

Q. Now, how long have you been a head miner?

A. I believe it was in 1934 that I went on as head miner. I won't be positive, but I think it was in August, 1934.

Q. And that was out at Sloss Number 2?

A. Yes, sir.

Q. Now, Mr. Gilbert, Mr. Harris has asked you about the practice and your practice in a general way since—between October, 1938 and May 1, 1941. Do you understand?

A. Yes, sir.

Q. Well, I want to ask you if those practices which you have testified about and which I will ask you some more, existed prior to 1938 and as far back as 1934 in the main?

A. Yes, sir, they did.

Q. The same thing?

A. Practically.

Q. Now, when you first became head miner, where was your first working place?

A. In 74 left, Number 2.

Q. 74 left?

A. Yes, sir.

Q. At that time did you operate—I mean by you, your crew,—operate a mechanical loader, or were you—did you use the shovels?

A. Mechanical loader.

Q. Mechanical loader. How many men at that time—while you were in that first heading, how many men were there in your crew?

A. At that time there were nine.

Q. Nine?

A. Yes, sir.

Q. They were assigned to particular jobs according to their fitness?

A. Yes, sir.

Q. Now, what were they?

A. They were drag engineer, drillmen, drill helper, muckers.

Q. Did your nine men include yourself or exclude yoursef?

A. With myself.

Q. With yourself?

A. Yes, sir.

Q. How many of each classification did you have in your crew?

A. We have two drill runners, two drill helpers, one drag engineer, and three muckers.

Q. Three muckers?

A. Yes, sir.

Q. Now, how long did you continue to work in that working place, that first working place that you were assigned to?

A. It must have been about three years.

Q. About three years in that one place?

A. Yes, sir.

Q. And there were few days that you didn't work in that heading, weren't there, Mr. Gilbert; I mean relatively few days?

A. Well, unless there was an off day or something like that and we had company work or something like that to do.

Q. What I mean by that, the days you worked you worked, you would say, nearly all of them in that heading?

A. That is right.

Q. Or in that working place?

A. Yes, sir.

Q. Now, during those three years, did you have in the main practically your same crew?

A. We had some changes off and on.

Q. You had some of them that stayed with you throughout the whole period?

A. That is right.

Q: Quite a number of them?

A. You might say half of them were with me all the time.

Q. And the others were there some considerable time during that period, those that were not there during the entire time?

A. Well, I had some men during that period that didn't stay with me but a short time, and then I had some that stayed all the way through.

Q. Then, after you moved from that working place, what was the next heading or stop or working place you were assigned to?

A. 79 left.

Q. 79 left?

A. That is what we call it.

Q. That is a little further down?

A. Yes, sir.

Q. And how long did you remain in that working place continuously?

A. I think I was in there about two years.

Q. About two years?

A. Maybe a little bit longer.

Q. So that you would say in neary all of your working days during those two years you were working in that working place about as consistently as you were working in the other one for those three years?

A. Yes, sir.

Q. Did you have during those two years nine men,—not the same nine men, but nine men in your crew?

A. No, sir.

Q. How many did you have?

A. We had eight.

Q. Eight? So you had a reduction of one man?

A. Yes, sir.

Q. What capacity was the man that was left off?

A. Drill helper.

Q. So you had one less driller?

A. Yes, sir,—drill helper; not driller.

Q. Sir?

A. Drill helper; not driller.

Q. Drill helper?

A. Yes, sir.

Q. Now, what was the next working place?

A. 86 right, Number 1.

Q. Number 1, 86 right?

A. Yes, sir.

Q. How long did you remain continuously in that heading?

A. Up until the present.

Q. Up until the present time?

A. Yes, sir.

Q. And you are still there?

A. Yes, sir.

Q. So that, during your whole experience, you have been in three headings practically continuously?

A. That is since I have been a head miner.

Q. That is what I mean, since 1934.

A. Yes, sir.

Q. Now, the first thing you did when you went to the mine in the morning was to change your clothes?

A. Yes, sir.

Q. Then you went over to the tipple or the mouth of the mine?

A. That is right.

Q. And most of the time you had brought your carbide with you?

A. Yes, sir, we brought it with us.

Q. And you said over there you reported to whom, the foreman?

A. Yes, sir.

Q. Mr. Gilbert, you just reported to him to tell him you were there that day?

A. Yes, and to find out the working conditions and things like that; see what the night shift had done.

Q. See what the night shift had done?

A. Yes, sir.

Q. What do you mean by that?

A. See what ore they had run; if they had had any breakdowns or anything; what was the trouble.

Q. Well, you found a breakdown or trouble very occasionally, didn't you?

A. Well, we have it once in a while.

Q. Reasonably seldom? Sir?

A. We have it once in a while.

Q. Well, about how often would you say?

A. Well, that would be kind of hard to say how often they are off handed. Some of them were close together and sometimes be a good while apart.

Q. Sometimes six months apart?

A. No, I don't think six months apart.

Q. Have more on the night shift than on the day shift?

A. Beg pardon?

Q. Have more of that sort of thing on the night shift than on the day shift?

A. No, I can't say we did.

Q. That sort of thing wasn't a daily occurrence?

A. No, not daily.

Q. It didn't happen every other day, did it?

A. Not regularly every other day.

Q. Well, now, what else would you find out?

A. Well, if we needed anything we generally ordered it from the supply house, or we seen about hangers or wedges or pulleys or things like that.

Q. I am talking about his ordering you,—I am talking about what you were doing with him?

A. With the mine foreman?

Q. Yes.

A. We would stick around and see if we had a crew; see the mine foreman about—

The Court:
Talk louder.

Q. What would determine what you had to do?

A. Well, from the time we left the bath house and went up to the tipple to see the mine foreman to find out what happened on the night shift we would be looking for our crew to show up at the same time, and we would see about hangers—

The Court:
Hangers?

The Witness:
Hangers or wedges or bolts or anything we needed.

Q. What do you mean by seeing about them?

A. If there were any up there we would get them.

Q. Well, suppose you had some down there—

The Court:

Let him—go ahead.

Q. —what would you do then?

A. You mean in the mine?

Q. Yes, sir.

A. We needed them to work with.

Q. Did you see about them every day?

A. No, not every day.

Q. That is what I am trying to get. How often would you have to have a hanger?

A. I would say we would get some two or three times a week. We tried to get some every time we were up there.

Q. To try to keep a supply ahead?

A. Sure.

Q. You wanted to keep a supply ahead?

A. Sure.

Q. You mentioned something else in addition to the hangers and wedges,—get them every day?

A. Well, we got them about every day,—about like we got the hangers; got them with the hangers.

Q. You mentioned something else?

A. Bolts.

Q. Get them every day?

A. Got them with the hangers.

Q. Every day?

A. Not every day.

Q. When you got them one man would take them down?

A. Not hardly.

Q. Two men could carry them?

A. Two men could carry them.

Q. Take them in their pocket?

A. No, couldn't take them in their pocket.

Q. How did they take them?

A. In their hands.

Q. They could put bolts in their pocket?

A. Yes, sir, they could.

Q. They could carry wedges in their pocket?

A. By tearing their pockets out.

Q. I mean there wasn't any particular weight to any of them?

A. Well, yes. They are not light.

Q. What do you mean by not light? How much would they weigh?

A. I couldn't say about the bolts and wedges, just what they would weigh. A hanger, I imagine, would weigh—I don't know exactly,—two or three pounds, along there,—four.

Q. Well, the bolts and wedges weighed a lot less than that?

A. Yes.

Q. They didn't weigh anything much?

A. Well, they weighed enough if you put two or three of them together, you wouldn't want to carry them in your pocket.

Q. You said something about a breakdown in the heading with the night crew. What sort of breakdown did you have in mind?

A. Well, we have machinery there, the hoisting engine, have the loader, what we load ore with, drills.

Q. To what extent would that sort of thing change your plans for the day?

A. Well, it just depends on how bad it was and what it was. It wouldn't throw us off but an hour or two, sometimes, and maybe all day sometimes.

Q. Wouldn't go down at all that day?

A. If we knew about it on the outside.

Q. Suppose it wasn't bad?

A. We would go down and wait for it to be fixed.

Q. Who would fix it?

A. A mechanic; sometimes we would help him.

Q. Well, delays and things of that kind were very infrequent, weren't they?

The Court:

You have been over that.

Mr. All:

I don't remmember it, Judge.

The Court:

You have been into it minutely. You have asked him minutely about that.

Q. Now, he asked you about the powder. Where did you say you got the powder from?

A. From the powder magazine.

Q. That was near the first man unloading station?

A. Well,—no it is not close to it: On Number 2 side, I would judge, to begin with, before they moved the magazine, it was about half way.

Q. And that place opened about seven o'clock?

A. I couldn't say because I don't go by the magazine, —very seldom I go by there.

Q. You never went by there yourself during the seven years—

A. Yes, I have been by there.

Q. But you don't do it frequently?

A. Not often.

Q. Probably not once every six months?

A. Well, I went by oftener than that.

Q. But you don't know what time it opened?

A. No, not exactly, I don't know what time it was opened.

Q. Caps were gotten in the same place?

A. Yes, sir.

Q. It was not necessary for but one man to go by there?

A. Yes, sir, on a drag sometimes two men went by.

Q. But not all the time?

A. Pretty well all the time.

Q. Now, you have mentioned the oil. Where did you get the oil?

A. At the first landing.

Q. How many men got that?

A. The drill runner.

Q. Just one man out of the crew?

A. Yes, sir.

Q. Was that every day or every other day?

A. Usually every day.

Q. How much would you get?

A. It was just owing to the can we had. Maybe half a gallon one time, and sometimes maybe two gallons.

Q. That was there so you could get the oil as you needed it?

A. Yes, sir, but we usually got it as we went in so we wouldn't have to send back.

Q. That was the reason you got it as you went in, to avoid having to send back?

A. Well, in a way it was, to save time going back; just having to travel the same distance twice.

Q. Now, after you reported and told the mine foreman you were there, you didn't have to talk to the mine foreman about having to get a hanger or bolt or anything of that sort; that wasn't necessary to get the hanger or bolts?

A. Yes, sir, it was necessary.

Q. You couldn't get them without talking to him?

A. Yes, sir. I would get the key from him to get them out of the box.

Q. He had a key?

A. Yes, sir.

Q. During the time you were over there, Mr. Gilbert, you were never paid for travel time, were you?

A. Not that I know anything about it.

Q. Well, you would know it if you had, wouldn't you?

Mr. Harris:
Well, we object to that; it is argumentative.

The Court:
It is argumentative.

Q. Well, I will ask you if you know whether you were paid for travel time or not,—

The Court:
He has already said he hasn't been that he knew about.

Q. Now, what time during those several years from 1934 on until May 1, 1941, did you report at your working place to begin the day's work?

Mr. Harris:
We object to that; calls for a conclusion as to what—

Mr. All:
I am cross examining the witness.

Mr. Harris:
No; wait a minute.—"report at the working place to begin your day's work"?

Mr. All:
That is what I want.

Mr. Harris:
The question when he begins the day's work is the question for the Court to decide. If he means the area around the working face—

The Court:
Specify where you mean.

Q. Well, to begin your productive work?

The Court:
Specify what you mean.

Q. What time did you get into your working place?

The Court:
Answer the question.

A. What time did I get to the working face?
Q. Working place, yes, sir.
A. Well, our work usually began when we left the bath house.

Mr. All:
I move that answer be excluded as not being responsive.

Mr. Harris:
I object to it being excluded.

Mr. Burr:
He said he began his work at the bath house.

Mr. Harris:
After he left the bath house.

Mr. All:
I move to exclude that as not being responsive.

Mr. Harris:
Well, I think it is responsive, if the Court please. Let's see the question.

Q. Mr. Gilbert,—

Mr. Harris:
Wait a minute. Let's see—

Mr. All:
I will withdraw that and ask him another question.

Q. You know what I mean by working place?
A. I know what you mean by working face.

The Court:
What?

Mr. Harris:
Mr. All didn't listen to the answer.

Mr. All:
He said, "I know what you mean by the working place."

The Court:
He said, "working face."

Q. All right; the working face; that is where you do your work?
A. That is where I start the producing of ore.
Q. Well, what time did you get to your place where you start the production of ore during those years I am talking about?
A. From '34 to '38?
Q. From '34 to '41, until May, '41.
A. Well, we usually got there around seven o'clock.
Q. That was the time you were supposed to get there, wasn't it?

Mr. Harris:
We object to whether he was supposed to get there under a tonnage basis.

Q. Under the custom? That was the time it was the custom to get there?

Mr. Harris:

We object. It is a question of what he did.

The Court:

It is not a question of the custom; it is what he did.

Mr. All:

Well, I want to raise my point.

Q. That was the custom and practice, for you to get there at seven o'clock?

A. Anywhere between 6:30 and 7:00 o'clock.

Q. What time did you leave?

A. The top of the ground?

Q. Yes, sir.

A. We usually left—

Q. No, the bottom of the ground coming back; went did your work stop at the face?

A. Well, along in 1934 on it has varied. It has come down some to what it was in '34.

Q. Well, just tell us when it came down and what were the circumstances under which it came down, Mr. Gilbert, up until May 1, 1941?

A. Well, we began to get shorter hours. At first, back before 1934, we were working ten hours.

Q. I am talking about since '34.

A. We come down to nine hours.

Q. What time did you get to the working face when it was ten hours?

A. Oh, practicaly the same time.

Q. What time was that?

A. Between 6:30 and 7 o'clock.

Q. What time did you leave?

A. When we were working ten hours we left when we could.

Q. Did you work under the eight hour system or ten hour system in '34?

A. I believe the eight hour system taken affect in '34.

Q. Well, didn't you get to your working place at 7 o'clock; wasn't that the requirement and the rule, to get there at 7 o'clock; to leave the top so you could get to your working place at 7 o'clock?

A. I will tell you; I couldn't be sure back then whether it was 7 o'clock or not, but I know we was always there before seven.

Q. Well, what was the shooting time in the afternoon for the day shift?

A. Back then I believe it was four o'clock.

Q. I am talking about under the eight hour system.

A. Oh, the eight hour system—

Q. Forget the ten hour system.

A. —it was 3:10.

Q. Sir?

A. 3:10.

Q. 3:10?

A. Yes, sir.

Q. So your were at the face for eight hours?

A. Yes, sir.

Q. Now, who left first, you and your drill men or the muckers and the other members of the crew?

A. The drag crew usually leaves out a little ahead of the drill men.

Q. How far out?

A. Well, just ahead of them; if they are loading a trip at quitting time they will go out almost together.

Q. Catch the same trip out?

A. No, sir, not always.

Q. Very seldom?

A. Well, I would say my crew do not hardly ever catch the same trip. Some ride the first and some the second and some the third.

Q. That is true throughout the entire period?

A. Something like that.

Q. I mean ever since you have been head miner?

A. Yes.

Q. And it is true that the men caught various trips, depending on what time they got there going in just like coming out?

A. Yes, sir; I would have some of my crew ride the first drag down and probably catch the last one out.

Q. I am talking about going down; you didn't catch the same drag going down?

A. Not always.

Q. And very seldom you did?

A. Well, the majority of them rode the same drag.

Q. Usually the first one or the second one?

A. First one.

Q. You didn't go on the first one usually?

A. Not always.

Q. Mr. Harris asked you if now, since May 1st, you didn't have some men scheduled to catch the first drag, and some men scheduled to catch the second trip, and you said yes; is that right?

A. Yes, sir.

Q. I believe you testified to that, didn't you?

A. Yes, sir.

Q. Then he followed that with this question, "You had no stagger system before May 1, 1941, did you?" and you said, "No."

A. I think that is right.

Q. What did you mean by that?

A. You mean what did I mean by no stagger system?

Q. Yes, sir, in answer to his question.

A. Well, at that time all the men couldn't ride on one man trip, and naturally if there was more than a man trip load up there, somebody had to wait until the next one.

Q. All right. I will ask you another thing. Some of them were not there; some of them came later; you have testified to that?

A. Some of them weren't there to ride the first trip.

Q. And some of them were not there to ride the second one either?

A. I would say the majority of them were there to ride the second trip.

Q. That is not exactly answering my question. I said some of them were not there, and I didn't ask you about the majority?

A. There may be a few straggler not there.

Q. And they took the stragglers down like the others?

A. Oh, yes; they got on the man trip like the others.

Q. Now, Mr. Harris asked you about the maintenance men and if they had any tools to carry down, and your answer was like this, "I have seen them carry a shovel or hammer or something like that."

That is what you testified?

A. Yes, sir.

Q. That was very, very seldom?

A. I can't say it happened—I haven't paid so much attention to it. I haven't noticed it so much because I haven't anything to do with the maintenance men.

Q. You have noticed it a very few times in seven years?

A. I have noticed it a good many times.

Q. A good many times in seven years?

A. Yes, sir.

Q. You have noticed it how many times, would you say, in seven years?

A. I don't know.

Q. Give us your very best idea.

A. I would say I would notice it once a week, something like that. Sometimes it might be a month. I didn't pay no attention to the maintenance men.

Q. You say once or twice a week or two weeks you might probably notice it?

A. Yes, sir.

Q. Or twice a month?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

Q. Now, was the powder magazine open in the morning?

Mr. Harris:

He has gone into that. He has stated he didn't know.

Mr. All:

I believe you are right.

The Court:

You have been over that.

Mr. All:

I did that inadvertently.

Q. Now, Mr. Gilbert, Mr. Harris asked you this question, that you were on strictly a tonnage basis with no minimum guarantee up until, I believe he said, 1940. I believe you said 1940, didn't you?

A. I believe that is right, 1940.

Q. Then he said, "Suppose at that time you produced four tons of ore, and how would you be paid?" and you said you would be paid for four tons of ore.

A. That was back before the guarantee taken effect.

Q. That is what I mean?

A. Yes, sir.

Q. How many times would you say you didn't get out but four tons of ore during seven years?

A. Well, I would say that in the seven years, if you are going back that far, there were lots of times I didn't get out four tons.

Q. What were the general nature of the circumstances under which you got out less than 25 or 30 or 40 tons of ore?

A. Probably have a break down or fall.

Q. How often did that happen?

A. It is kind of hard to answer about how often it would happen.

Q. It is very unusual, isn't it?

A. Oh, it is not unusual to have a fall or breakdown.

Q. I am talking about to the extent it would materially decrease your tonnage so you wouldn't get but a few tons of ore?

A. Well, going back seven years, it happened quite often.

Q. Well, how many times would you say in seven years?

A. Oh, I couldn't keep up with it in seven years.

Q. A dozen times?

A. More than that.

Q. Twenty?

A. Seven years, I wouldn't say less than fifty, noway.

Q. In seven years?

A. Yes.

Q. Now, during that time you did some other sort of work, didn't you?

A. Well, I did work—

Q. If you had that sort of a breakdown?

A. You mean I did some other work in there?

Q. Yes.

A. Outside of my place?

Q. You had your day's work somewhere else?

A. Sometimes we stayed in there and helped fix the breakdown and clean up the fall.

Q. Well, you got paid for it?

A. Not then.

Q. Not when?

A. Back in 1934.

Q. Say in 1935?

A. It was later than that before we got any compensation whatever for that kind of work.

Q. Well, when? How far back?

A. I would say it was up near '38.

Q. Mr. Gilbert, what is your average earnings a day now?

A. At present?

Q. Well, during the past three years, four years.

A. I couldn't say back that far.

Q. You make ten or fifteen dollars a day, don't you, ten or twelve dollars a day?

A. Some days less.

Q. Not much less?

A. Yes, a lot of times I have made less.

Q. How much less? I will ask you if your average hasn't been from $12 to $17 net per day?

A. For how long a period?

Q. Well, for the last three or four years?

A. No, sir, I don't think it would that far back.

Q. Well, what about the last year?

A. Well, for the last year it might.

Q. Well, would it for that period?

A. How much did you say?

Q. $12 to $17 a day.

A. I wouldn't say seventeen.

Q. Well, what would you say? I said from twelve to seventeen dollars.

Mr. Harris:

Judge, we object. They no doubt have the records and know what they paid the men. Let the records show what they made.

Mr. Burr:

We want the Court to know it.

The Court:

Let him answer it.

A. Well, maybe some days I made a little more than that, and some days less.

Q. Would you say that much on an average?

A. I couldn't tell you on an average. I could tell you monthly. Some months I make more and some less.

Q. Well, how much do you make a month then on an average?

A. I don't know exactly. I would say around $250 a month for a year, something like that, the past year; somewhere along there.

Q. You have always been a very good producer, haven't you, Mr. Gilbert?

Mr. Harris:

We object; that is immaterial.

Q. I mean by that prior to the time that the minimum was put in, your minimum guarantee was put in? During the time you worked in the same heading with the same number of men and in a great many instances the same men, you produced as much tonnage before the minimum was put in as you did afterwards?

A. No, sir, not always.

Q. I don't mean always. I mean on an average.

A. Sometimes we did. We had longer hours. Sometimes we didn't.

Q. Mr. Gilbert, I don't want to ask you the same question over but I am talking about on the average.

Mr. Harris:

We object, Judge. I think the man is trying to answer his question.

The Court:

Well, he can answer it.

A. Well, speaking for myself, I think the past year and a half or two years I have managed to stay above the guarantee.

Q. Above what? The present guarantee?

A. Not the present; the one—

Q. But prior to the time of the guarantee period, your tonnage was above what the guarantee period became later?

A. Not always.

Q. I mean as often as it has been since, hasn't it?

Mr. Harris:

Well, that question is not intelligible.

Mr. All:

Let's see if the witness understands what I mean.

A. I don't quite understand your question.

Q. Well, we will say this: What is the minimum now,—the minimum now?

A. My minimum now, at the present, is $7.36.

Q. $7.36?

A. That is right.

Q. Where does the guarantee start so ~~far~~ as tonnage is concerned?

A. When does it start?

Q. Yes, what tonnage.

A. Well, the guarantee starts under eighty tons.

Q. Under eighty tons?

A. That is right.

Q. In other words, if you get eighty or under, you get this $7.36?

A. Yes, sir.

Q. If you get over that you get a premium which is added to the $7.36; that is right, isn't it?

A. You get your regular rate of tonnage.

Q. What I am asking you is this: For sevral years prior to the time that minimum was put in, if you and your crew did not average in excess of 80 tons?

A. No.

Q. What did you average?

A. There has been months—In '34, as I was telling you, I went for months I didn't draw a dime.

Q. Went what?

A. Went for months I didn't draw a dime.

Q. What was the matter?

A. Just couldn't make it. That is what I am telling you now,—through breakdowns and falls.

Q. We will take that same period where you have no more breakdowns and no more falls; wouldn't your crew work just as diligently and just as efficiently as it has since 1940 when the minimum was put in?

The Court:
He has answered that.

Mr. All:
Sir?

Mr. Harris:
He has answered it, I understood.

Mr. All:
What did he answer? I don't think he has.

The Court:
Go ahead and answer it.

A. While we were working, certainly they did.

Mr. All:
That is what I mean. I believe that is all, Judge.

Re-Direct Examination.

(By Mr. Harris):

Q. What time did you arrive on top during the period when you reported at the tally house or reported to the foreman around six o'clock? Coming out what time during that period would you arrive on top?

A. I would usually get out anywhere from fifteen to four until four o'clock.

Q. From a quarter of four up to four o'clock?

A. Yes, sir.

Mr. Harris:
That is all.

Mr. All:
That is all.

The Court:
Come down.

(Witness excused.)

The Court:
We will take a recess for a few minutes.

(Thereupon proceedings were in recess from 2:45 to 3:00 P. M., at which time proceedings were resumed as follows:)

The Court:
Who is your next witness?

Mr. Harris:
John Hill.

2853 JOHN HILL, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. Are you John Hill?

A. Yes, sir.

Q. How old are you, Mr. Hill?

A. Thirty-six.

Q. Where were you born?

A. Calera, Alabama.

Q. How high did you go in school?

A. Third grade.

Q. What business do you follow?

A. Electrician.

Q. For what company do you work?

A. Sloss Company.

Q. How long have you been working for the Sloss-Sheffield Steel & Iron Company?

A. Since 1920.

Q. When you first started working for the Sloss Company in 1920, what work did you do?

A. Pumper.

Q. Pumper?

A. Yes, sir.

Q. Was that out on top or down underground?

A. Down underground.

Q. What mine were you pumper in?

A. Number 1.

Q. How far is Number 1 from Number 2?

A. About three quarters of a mile.

Q. Is the situation such now that men working in Number 1 mine go in the mine through Number 2 and then walk over to Number 1?

A. Yes, sir.

Q. What do they use the mouth of Number 1 for, the slope of Number 1?

A. The pumpers go in and out the mouth of Number 1.

Q. When you were a pumper, how far did you work from the mouth of the mine?

A. About three quarters of a mile.

Q. When you finished your tour of duty as a pumper, what was the next job you had?

A. Electrician.

Q. And have you been an electrician for the Sloss Company ever since?.

A. Yes, sir.

Q. Does your work as an electrician carry you into a limited part of the mine or all over the mine?

A. All over the mines, practically.

Q. Has that been true ever since you became an electrician for them?

A. Yes, sir.

Q. Are you what is called a service man or a production man?

A. Service.

Q. Service man?

A. Yes, sir.

Q. Now, in your work for the company have you observed the other service men, the timber men and the track men and the maintenance men in and about their work over this period of years?

A. Yes, sir.

Q. Well, has there work carried them in a limited portion of the mine or has it carried them all over the mine?

A. Well, the most of it all over the mines.

Q. Now, Mr. Hill, let's start back when you were a pumper. You were about 15 or 16 years old then?

A. Fifteen.

Q. While you were a pump boy down in this mine, what time did you report to work each morning?

A. Six o'clock.

Q. Was that up on top or down at the pump?

A. Up on top.

Q. How did you get from the top to the pump?

A. Rode a trip.

Q. Then, after you had finished with your pumping on that shift, what time did you get to the top of the mine?

A. Six o'clock.

Q. You mean you were underground twelve hours?

A. Yes, sir; well, from the time I started from the top until I got back was twelve hours.

Q. Were you then working on an eight hour day?

A. No, sir; I was working twelve hours.

Q. And you were getting paid for twelve hours?

A. Yes, sir.

Q. That lasted until you were seventeen years old; is that right?

A. Something like that, yes, sir.

Q. Then, at seventeen when you became an electrician, what time would you get to the mouth of the mine?

A. For a short while I worked outside and inside. The days I had to go inside I reported out there about seven o'clock.

Q. The days you had to go inside what time did you get back out to the top?

A. 4:30.

Q. How many years did that last?

A. Up until 1929.

Q. What change took place in 1929?

A. They ~~went off~~ of ten hours to nine hours somewhere in there. About 1930 they went off—somewhere close—About 1929 or 1930.

Q. Well, when they went on to nine hours in 1929 or '30,—left ten and went to nine, what time did you get to the mouth of the mine and what time did you get back on top?

A. Around six o'clock?

Q. You got there to work in the morning?

A. Yes, sir.

Q. What time did you get back on top?

A. Sometimes 5:30, 6:00 o'clock, ~~6:30, 7:00~~ o'clock, somewhere along there.

Q. All right. What was the next difference in your time of reporting and your time of getting out on top?

A. In twenty—in 1934 we went on eight hours.

Q. When you went on eight hours in '34, what time did you report at the mouth of the mine?

A. Somewhere around six o'clock, five or ten minutes after six.

Q. And on that schedule what time did you get out—back on top?

A. From 3:30—along about 3:30 or 4:00 o'clock.

Q. Well, that would be—from six o'clock or a few minutes after to twelve would be six hours, and then to 3:30 or 4:00 would make it nine and a half or ten hours. You mean in 1934 when you were on what is known as an eight hour day, from the time you entered the mine until you got out nine and a half or ten hours had passed?

A. Yes, sir.

Q. But you were paid for what?

A. Eight hours.

Q. For how many years did that way of counting eight hours last?

A. Until 1937, if I don't make ~~no mistake~~.

Q. In 1937, what change took place?

A. We went to work at six o'clock and fifteen minutes taken away from the lunch period, and made us get off earlier, and the man trip supposed to go on at 3:15, and hoisted out at 3:20.

Q. You would be out on top what time then?

A. About 3:30 on the first man trip.

Q. So you would go there at six and get out at 3:30?

A. Yes, sir, the first trip.

Q. Well, suppose you didn't catch the first man trip.

A. About a quarter of four or four.

Q. Was that still another eight hour day?

A. Yes, sir.

Q. From 1937 on how long did that last?

A. Up until we went on this portal to portal and put in the clock system and all that.

Q. You mean from October—October 24, 1938, on up to May 1, 1941, you have been reporting up there around six o'clock?

A. Yes, sir.

Q. And getting out around 3:30 to a quarter to four, and what were you being paid for, for how many hours?

A. Eight hours.

Q. Well, when you reported as a service man, a company man, during the period from October 24, 1938 to May 1, 1941, did you have anybody to tell you where to go before you went down in the mines?

A. Yes, sir, anything in the way of a breakdown, what the night shift left undone, I was told, and told what materials to carry, or the mechanic would bring it up there for me to carry it down.

Q. Who would tell you that?

A. ~~The mine foreman~~ would usually have a list and would tell me what drag and so on was down.

Q. Well, did he tell you what man trip to ride down into the mine?

A. No, sir.

Q. But as I understand, he would tell you places to go after you got down into the mine, is that it?

A. Yes, sir.

Q. Did you have any orders or directions for him as to what man trip you would catch coming out of the mine during those three years?

A. No, sir.

Q. Well, did you always catch the same man trip coming out?

A. No, sir, not every time.

Q. What would be the occasion for catching a different man trip one time out than another time out?

A. Well, the foreman had a list—all the white fellows that would come up there, he would take their names, and he would let 25 out. If you were not in that number of 25 you would have to wait for the next trip.

Q. I see. Did the foreman count the next twenty-five men for the second trip, or did you have that many white men working there?

A. Didn't have that many.

Q. If you were there, you were certain of catching not later than the second trip coming out?

A. Yes, sir, you would catch around the second trip coming out.

Q. Well, in your work as an electrician, what machines do you work on down underground?

A. All kinds of different ones, traveling motors, drag motors, hoisting engine motors, trolley wires, light wires, cables.

Q. Well, do they have a trolley wire going down the main slope before you get to the man loading station?

A. No, sir.

Q. Where do the trolley wires start after you get in the mine?

A. 79, Number 2.

Q. Those trolley wires furnish the current to pull what motors?

A. The traveling motors, and some of the hoisting motors were on it, and some of the mechanical drags, electrical mechanical loaders.

Q. You have electrical mechanical loaders down there?

A. Yes, sir, all electrical.

Q. How many hoist engines were electrical?

A. They have about twelve, I think, electric hoists.

Q. What kind of hoists are the others?

A. Air hoists.

Q. Compressed air hoists?

A. Yes, sir.

Q. Now, how many electric motors did you have down there?

A. Five.

Q. And did you have—

A. Five electric traveling motors.

Q. Yes. Those were operated from the trolley wires?

A. Yes, sir.

Q. You have more electric hoists to pull the ore up the steep places, and then you have electric motors to pull it on the level places?

A. Yes, sir.

Q. Well, how steep a grade—according to your observation, how steep a grade becomes a limit on an electric motor?

A. I wouldn't say. We have some pretty steep grades the motor comes up.

Q. Well, the hoists—are there some and still steeper grades where you use the hoist?

A. Yes, sir.

Q. How about those grades, how steep are those?

A. Well, I would say about twenty degrees pitch; some of them are steeper than the others. It is not the same.

Q. Well, the trolley wires down throughout this mine, are they protected so there is no danger to the men from the time they start down in the mine or start out of the mine?

A. No, sir.

Q. Have you any idea or judgment as to how many exposed places there are in those trolley wires in this mine?

A. There is, I would say, around 12,000 feet of wire, and there is none of it but about 250 feet that has a sheathe on it.

Q. What do you mean by a sheathe?

A. A ceiling like in a house put on it to protect from anything hitting it, like steel on a man's shoulder. There would be a trough, in that shape (indicating) in a trough.

Q. How much of that wire, about, do you say is protected?

A. About 250 feet.

Q. And 12,000 feet of wire in the mine?

A. Yes, sir.

Q. And all except that 250 feet where a man carrying a quarry bar could hit it is exposed?

A. Yes, sir.

Q. Is that low enough to where it will reach a man, say, five feet ten inches tall carrying a quarry bar?

A. Yes, sir; reach him if he didn't stoop.

Q. How many places in the mine would you say the wire would reach him if he didn't stoop?

A. There are several.

Q. Do you walk in and around about these places where you go to work, or do you always ride?

A. I ride the main trips—I don't ride the motors. I ride the trips.

Q. Do you walk the man ways and haulage ways of the mine?

A. Walk the haulage ways. We don't have any manways except in crossing from Number 1 to Number 2.

Q. How do you find the footage?

A. Rough.

Q. What made it rough?

A. Tracks, falls, moving a track there and leaving a rough place for a man to walk on.

Q. How is the temperature in the mine? Is it the same from the main man loading station on out to the furthermost stope?

A. No, sir.

Q. How does it vary; does it get cooler the further in the mine you got or does it get hotter?

A. Gets hotter.

Q. Does it get better or get worse?

A. Gets worse.

Q. Where would you say you first noticed the odor of human dung after you leave the man loading station?

A. Going in Number 2 I would say from 62 and on.

Q. How long have you been a member of a union out there?

A. Eight years and a little over.

Q. What union do you belong to?

A. Sloss Local 109 or Mine, Mill & Smelter Workers.

Mr. Harris:

Mr. All, have you your original exhibit of the various proposals—

Mr. All:

You mean that we introduced in evidence?

Mr. Harris:

Yes.

Mr. All:

I think we have.

Mr. Harris:

I would like to have, if you don't mind, all the originals that you introduced in evidence on the various proposals.

Mr. All:

Here they are right here.

Q. Now, as a member of the union, have you been merely a member or have you been both a member and an officer?

A. I have been an officer.

Q. What different official positions have you held?

A. I have been president of the local.

Q. What?

A. President of the local.

Q. Now, were you an officer when the man skip was derailed in the mine or were you just merely a member of the union, or was that before the union was organized?

A. What skip are you speaking of, the break loose?

Q. The break loose?

A. That was long before we organized.

Q. Was that a man trip that broke loose?

Mr. All:

We object to that, if the Court please.

The Court:

I don't see the materiality of it.

Mr. Harris:

All right.

Q. In 1934 did you have any dealings or negotiations with any of the officers or representatives of the Sloss-Sheffield Steel & Iron Company?

A. Yes, sir.

Q. You heard this witness, Jess Gaines this morning?

A. Yes, sir.

Q. You have known him how long?

A. All the time.

Q. Were you and Jesse on a committee that talked with Mr. Marshall or Mr. Ben Davis or any other officers along in '34?

A. Yes, sir.

Q. Now, in your first conversation with the officers of the Sloss Company in 1934, did you and they discuss the question of a six hour day?

A. Yes, sir.

Q. Did you discuss the question of being paid for both going in and coming out of the mine?

A. Yes, sir.

Q. Now, at the time you discussed that with them in 1934, had you submitted a written proposal asking for a six hour day, and for pay both ways, or do you know?

A. We had a proposal that we had talked—that we had it in writing. We sat on one side of the table and the company sat on the other side of the table and talked. The company had one. The company held theirs and we held ours, and they were never presented.

Mr. Burr:
What is that?

Mr. Harris:
He said they sat on one side of the table and the company sat on the other side of the table, and they had theirs and the company had theirs and they were never presented.

Q. You mean they were not exchanged?

A. No, sir.

Q. In that conference what was said when you asked for the six hour day and pay both ways?

A. For a number of reasons he said he would not or could not do it; they were a small company and they couldn't be the one to lead out on a proposition like that.

Q. Now, did they have any stenographer taking down what was said at these meetings you had with them?

A. No, sir.

Q. Did the question of having a stenographer ever come up at these meetings you had with them?

A. Yes, sir.

Q. What was said about that?

A. The company said they didn't want and didn't have any one, and they didn't think we should request one either; that the proposals and things they presented, that they presented us, they wanted them back, wanted them destroyed, didn't want them out in the open or nothing like that for everybody else to know their business.

Q. Well, when they handed them to you, did you give them back to them?

A. Yes, sir, some of them, and some of them we destroyed them like they said.

Q. Do you recall how long it was before the Sloss Company ever had a stenographer there to take down the negotiations or discussions?

A. They only had one at a conference we had there in the Sloss office at Bessemer, I know anything about.

Q. When was that?

A. That was in 1934, right after the strike.

Q. They had a stenographer there then?

A. Yes, sir, the company had one.

Q. Well, did they give you a stenographic report of the minutes of that conference?

A. Yes, sir, the action on what he granted,—Mr. Ben Davis did,—he gave us that in writing.

Q. He gave you a stenographic report of what was granted?

A. Yes, sir.

Q. But did he give you a stenographic report of what was said?

A. No, sir.

Q. Then, in 1935,—1934 after this first proposal of six hours and travel both ways, did you make him a proposal of a different nature?

A. Yes, sir.

Q. What was the nature of the next proposal you made?

A. The next proposal we made was with all the ore mines on the mountain together. We made a proposal there.

Q. What was the proposal?

A. Seven hours.

Q. And traveling—

A. Travel time was discussed.

Mr. Harris:

Have you got that proposal, Mr. All?

Mr. All:

Yes, sir. I reckon that is it.

Q. I will ask you to look at Sloss Exhibit Number 1, and see if that appears to you—Take paragraph 8:

"In view of the fact that the company can force the men to enter and leave the mines at any time stated by the company, we ask the right to enter on our own time and leave on the company's time."

A. Yes, sir.

Q. Now, I notice a signature to that, John Hill.

A. Yes, sir.

Q. Is that your signature?

A. Yes, sir.

Q. Does that appear to you to be in the same way you presented it to them?

A. No, sir. There was a whole lot more on it. It was a big form; there was a whole lot more of it.

Q. This has pages numbered 1, 2 and 3. What do you mean by it had a whole lot more on it?

A. There was a big lot of pages. In other words, that signature on there—we are not allowed by the local to sign one name that way and send it in. The committees have been three and seven. There has never been a one-man committee in our local.

Q. Do you know of any occasion in all your experience with the union of which you are still a member where one man on the committee signed for the whole committee?

A. No, sir.

Q. You say that is your signature on this page which is marked page 3?

A. Yes, sir.

Q. Well, what did they do about that? Did you get your seven hour day and you enter or leave on their time?

A. No, sir.

Q. What was said to you about that? Did you get a reply in writing?

A. No, sir, just the regular thing, about the same statement they had given to the other.

Q. Then, did you make them another proposition?

A. Eight hours was discussed, and asked we go one way on our time, and discuss the eight hours and traveling on the company's time one way.

Q. Were you in the negotiations representing the union when a man named Richardson was here from Washington?

A. Yes, sir.

Q. Did you get a copy of the letter of understanding that the company wrote to Mr. Richardson or to Madame Perkins?

A. To Mr. Richardson or to Madame Perkins one; I don't recall just which.

Q. Well, the company didn't give you a contract at that time, in that year, did they?

A. No, sir.

Q. In 1935 did they give you a contract?

A. No; sir.

Q. When was the first year the Sloss-Sheffield Steel & Iron Company gave you a contract?

A. You mean our local a contract? Sloss Local a contract?

Q. Yes.

A. In '40, I think it was.

Q. 1940?

A. Yes.

Q. What year was it, if any, since 1934, that you have had a strike at the Sloss Company?

A. It was in '34.

Q. How soon after this—these negotiations about hours and traveling time was it that you had the strike?

A. Well, some of it was two or three months before, and some of it was just before the strike.

Q. And when you went back to work—when was it in 1934 you went back to work? I will change the question if you don't know exactly the date. How long did the strike last?

A. Two months.

Q. Well, when you went back to work did you get your seven hour day?

A. No, sir.

Q. Did you get travel time one way?

A. No, sir.

Q. So far as you know, has the Sloss Company ever paid you or ever taken into account in paying you the time consumed in entering and leaving the mine?

A. Since when?

Q. Up to May 1, 1941?

A. Not in the last two or three years, they haven't.

Q. Since October 24, 1938, up to May 1st?

A. No, sir.

Mr. Harris:

You may take him.

Cross Examination

(By Mr. All):

Q. Mr. Hill, you say you have been with the company since 1920?

A. Yes, sir.

Q. You started as pumper?

A. Yes, sir.

Q. And then you became electrician two years later?

A. Yes, sir.

Q. Have you been following the same—electrician's job practically ever since?

A. Yes, sir.

Q. During a part of that time you worked ten hours and sometimes nine hours and sometimes eight hours?

A. Sometimes twelve hours. I started off on twelve hours.

Q. That was for your particular job?

A. Yes, sir.

Q. But they had a ten-hour period there for the miners?

A. Yes, sir.

Q. And then a nine hour period, during which there was a nine hour day?

A. That is right.

Q. And then eight hours?

A. That is right.

Q. And you say your recollection is the eight hour period commenced about 1934?

A. No, sir, somewhere along in 1933, the last of '33.

Q. And after that eight hour period the miners and inside men were paid on the basis of eight hours?

A. Yes, sir.

Q. Now, during that period of time you had the men—the miners at the face,—I mean those on productive work, their work commenced at about seven o'clock?

A. Five to seven, the last one. We had an agreement with the company. The last one was five minutes to seven.

Q. The last one?

A. We had a talk on it. There was a negotiation because all the other men on Red Mountain was out before we got in and the company moved it up to five minutes to seven.

Q. Before that time it was seven?

A. Yes, sir.

Q. When was it changed to five minutes of seven?

A. In—the best I can recollect in '40,—1939.

Q. And that change from the time they were required to put in at the face or their working places at seven was changed to five minutes to seven,—that change was made at the request of the men?

A. At the request of the men.

Q. At the request of the men?

A. Yes, sir.

Q. Now, then, what was the quitting time?

A. 3:10.

Q. 3:10. Now, 3:10 was the hour that the shooting commenced, wasn't it?

A. Yes, sir, after then it was.

Q. After when?

A. After we got the change to the five minutes to seven.

Q. Before you got the change to five minutes of seven when was the shooting time?

A. 3:30.

Q. 3:30. Then you say there was some change made about the lunch period?

A. Yes, sir, for the company men.

Q. You mean by that men similarly situated to you?

A. Yes, sir.

Q. I am talking about the men at the face?

A. No, sir.

Q. The production crews—

A. No, sir, there was no change—

Q. I mean about the five minutes to seven.

A. Yes, sir, they were to go to work at the face at five minutes of seven.

Q. And quit at 3:10?

A. Yes, sir.

Q. And the company men quit at 3:10?

A. Yes, sir.

Q. There was a change in there by giving you a lunch period?

A. Fifteen minutes lunch period.

Q. And that accounts for the difference between 3:10 and 3:30?

A. Yes, sir.

Q. And I—In going down and coming out, Mr. Hill, there was no particular man trip for the particular men to take up to May 1, 1941, was there?

A. Just the first ones there are the first ones coming out.

Q. The first ones there were the first ones out; if you didn't get there to catch the first one, you would catch the second, and if you didn't catch the second one you would catch the third one?

A. Yes, sir.

Q. And that was true of the service men and production men?

A. Coming out.

Q. And there was no particular trip, no staggering of the trips, of the men in the trips going down up until May 1, 1941?

A. If a man didn't catch the last trip they didn't run a special trip. The foreman would tell him to go home and come back the next day and he would miss a shift.

Q. They were not required to get on any particular trip?

A. No, sir, but anybody knew it was going to be crowded. If there was—if it was too crowded, the last ones, they couldn't all get on.

Q. Nobody was required to get on any particular trip?

A. No, sir.

Q. You spoke about trolley wires being protected, that there are trolley wires in the mines exposed for about 12,000 feet?

A. Yes, sir.

Q. And protected for about 200 feet?

A. That is right.

Q. Am I quoting you correctly?

A. That is right.

Q. Whose duty is it to look after those exposed wires to see that they are safe?

A. Well, we did have a safety man. We have no safety man now at the present time. Mr. Jefferson Sides was safety man up until about six or seven months ago.

Q. Regardless of what they called him—

A. He was safety man.

Q. —he was supposed to keep the places safe?

A. To report to the company. The company would get the material and make them safe.

Q. Hasn't that been your job at times?

A. No, sir, not buying the materials.

Q. I mean from the standpoint of looking after the wire?

A. I put up what they bought.

Q. They do have a man to look after that?

A. Yes, sir.

Q. And to see whether the exposed places were safe?

A. Yes, sir.

Q. And as a matter of fact, all upkeep of them?

A. I wouldn't say that was his job, to look after them. He was there to look after anything—he was supposed to be—safety inspector is what he was called.

Q. I mean by that he was looking after the safety of the various parts of the mine?

A. Yes, sir, supposed to be.

Q. That is what his duty was, wasn't it?

A. Yes, sir.

Q. Now, you said something about there being some places in the mine, talked about these wires where the men would have to stoop down?

A. Yes, sir.

Q. Now, can you tell us how many places of that sort there were in the mines?

A. You mean where a man has to stoop in the mines?

Q. To avoid the trolley wire?

A. All the way from 79 to the turn to go down in second right it is low, and then you go a piece—

Q. You mean all the way?

A. All the way.

Q. From where?

A. From 79 nuck with the exception of about a 200 foot space.

Q. You mean you have got to stoop going all that way?

A. Yes, if you are toting anything.

Q. I am not talking about where you are toting anything.

A. No, I don't have to stoop only where you go under the trolley. The trolley runs one side of the track.

Q. How many places do you have to stoop?

A. You have to cross under the trolley wire three times in 79.

Q. What distance do you have to walk as you cross under it each time?

A. There are two double trolley wires there, side tracks. You have to walk and stoop and stay out of the way about a hundred feet.

Q. That is the first one?

A. Yes, sir.

Q. Now, Mr. Hill, what do you mean by a hundred feet? I will ask you to point out something in here about a hundred feet. I believe you said a hundred feet.

The Court:
Did you say three hundred feet?

The Witness:
No, sir, one hundred feet.

Mr. All:
He said 100 feet.

A. Oh, it would be from the corner of that building to that corner over there.

Q. That—you mean diagonally across this Court Room?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Where is the second one? You said there were three.

A. Turning off 79 and going into 80 there is another place as you turn to go off in there.

Q. All right. Do you have to stoop if you are not toting anything?

A. Yes, sir.

Q. How far do you have to walk stooped?

A. Just a short—you don't have to stoop but for about five or six feet.

Q. About three steps?

A. Yes, sir.

Q. What about the third place?

A. It is at the second right in 80.

Q. All right. For what distance do you have to stoop there?

A. Well, I would say the way it comes in there a man would have to stoop there for about 20 or 30 feet.

Q. About 20 or 30 feet?

A. Yes, sir.

Q. Of course, all the men in the mine don't have occasion to go by all those places?

A. No, sir. There are part of the men that go that way. That is the Number 2 side of the mine. Most all of them go that way that work on the Number 2 side of the mine.

Q. Those are the places you had reference to talking to Mr. Harris, and those are the places in the mine where you say the trolley wires are low enough for a man to have to stoop?

A. He has to stoop all the way. Mr. Harris asked me how far it was not sheathed and I answered him about 200 or 250 feet out of the 12,000 feet.

Q. Well, you answered all the places where a man would have to stoop in the mine?

A. In the Number 2 side.

The Court:

Not in all the mine?

The Witness:

Just the Number 2 side.

Q. I understood you to make your answer to all the mine.

The Court:

What is that?

Mr. All:

I understood Mr. Harris asked him to name the places in all the mine.

The Court:

Not all the mines?

Mr. All:

No, sir, in this mine.

The Court:

All right. That is what he said.

A. In Number 1 mine there are—

Q. In Number 1 mine?

A. Yes, sir.

Q. You have named the places in Number 2 mine?

A. Yes, sir.

Q Number 2 is operating now?

A. Number 1 is operating too.

Q. How many places in Number 1 mine?

A. I would say about three.

Q. Where are they?

A. In 87, down in the straight there would be about 100 feet down there where a man would have to stoop.

Q. How far would he have to stoop?

A. I would say the way it is now there he would have to go 100 or 150 feet to dodge the trolley wire.

Q. If he was not toting anything?

A. Yes, sir.

Q. Where is the other place?

A. I don't know the number of the place. It is on the track—it is on the straight up there.

Q. Can you tell us the place? Can you describe the place?

A. It is 89 or 88 where the place is. I am not positive of the number of the place.

Q. And you say you have been going all through that mine for quite a number of years?

A. Ever since electrical equipment has been put in the mine.

The Court:

How far do you have to walk stooped right under that last place you have described?

The Witness:

Just across one track.

Q. Mr. Hill, how tall are you?

A. Six feet.

Q. How many accidents from contact with electric wires in there have you seen since 1934, we will say?

A. Well, I haven't seen anybody hauled out or anything like that. I have seen a man get knocked down with a trolley wire several different times.

Q. Well, how many in the last ten years?

A. Well, I would be scared to say. I think I have saw as many as ten or fifteen men knocked down hitting it at different times.

Q. In the last ten years?

A. In the last ten years.

Q. How long—did they quit work?

A. For a while.

Q. What do you mean by a while?

A. Sit down and kind of get over the jolt.

Q. You mean for a few minutes?

A. Yes, sir.

Q. Well, those wires can be seen if a man is looking out for them, can't they?

A. Yes, sir, they can be seen.

Q. They can be seen and they have got safety rules that require the men to look out for things of that sort?

A. No, I don't know whether they have been told to look out for it or not. I usually look out when I gets up there in there. The rest of the time—

Q. You haven't run into them; have you?

A. No, sir. I have gotten into them.

Q. I know, in your work, but you haven't run into them otherwise?

A. No, sir.

Q. And you are over six feet tall?

The Court:

He didn't say that. He said six feet.

Mr. All:

I didn't get that, Judge. I don't see it makes any difference. He is above the average height.

The Court:

Well, he said six feet.

Mr. All:

I don't make any point on it.

The Court:

There is no point with me. You should accept his answers if you are going to ask him specific questions.

Is there anything else?

Q. Now, Mr. Hill, you have said, I believe, that in 1934, in the early part of 1934, that your committee met with some of the representatives of the company and made a proposal for a six hour day and for payment for travel time both ways?

A. I won't say that was in 1934. It was sometime in the last of 1933 or '34, somewhere close in there when the year was out. I will not say what date it was.

Q. How long was that after your union was organized?

A. A short time, a month or two.

Q. Do you remember about when your union was organized, your local was organized?

A. Sometime in the summer of 1933, sometime along in July, I think. I will not say exactly. Sometime in the summer of 1933.

Q. How long after that negotiation took place before you made the proposal for the day to be a seven hour day and for the men to come in and out on the company's time?

A. It wasn't so long.

Q. Well, how many days or weeks or months?

A. Four or five months.

Q. Who was present, you say, at the time you discussed the six hour day with the representatives of the company?

A. Mr. Marshall and Mr. Davis.

Q. And who of your local, members of the union?

A. Myself, O'Neal, Jesse Gaines, Martin Walker, Will Boyd, Walter Gilbert and Tony Cosper.

Q. Now, were you going as members of the union?

A. No, sir.

Q. Who did you go there representing?

A. The Sloss employees.

Q. The Sloss employees that first time?

A. All the time up until 1940.

Q. All the time up until 1940?

A. Yes, sir.

Q. Before going did this committee prepare a written six hour day proposal with traveling time both ways?

A. They had it written out.

Q. Did you have it typewritten or was it written in pen and ink?

A. Typewritten.

Q. Did you keep it or destroy it?

A. We destroyed it.

Q. When did you destroy it?

A. As soon as we got the one the company presented to us.

Q. Did you accept the one in 1913—I mean in 1933?

A. No, sir. I am speaking of the letter of understanding with Mr. Richardson,—with Mrs. Perkins.

Q. You kept that first six hour proposal until Sloss wrote the letter to Mr. Richardson?

A. Until we got that.

Q. Until you got that?

A. Yes, sir.

Q. In the meantime you had made the seven hour proposal?

A. The seven hour proposal and the check off and the traveling time was what the first strike was about.

Q. Well, who prepared that paper?

A. I can't recall; myself and different officers of the locals on Red Mountain.

Q. You mean all the locals on Red Mountain?

A. It was a uniform agreement we proposed to all the companies.

Q. You proposed it to all four companies, didn't you?

A. Yes, sir.

Q. It was all typewritten, wasn't it?

A. All seven officers. I think there were seven officers signed to it from Red Mountain.

Q. It was a typewritten paper?

A. Yes, sir.

Q. Or a carbon copy of the other one?

A. Yes, sir.

Q. It was the same typewritten document?

A. The same thing.

Q. For each company?

A. Yes, sir.

Q. Were you present when that was prepared?

A. Most of the time, yes, sir.

Q. Were you present when it was written or dictated or composed?

A. Part of the time I was and part of the time I wasn't.

Q. Who was responsible—who was the real draftsman?

A. Well, the financial secretaries of the different locals.

Q. Who proposed the language?

A. All of us proposed it, all of us together. We met in the C. I. O.,—A. F. of L. it was at that time,—A. F. of L. council hall at Bessemer and prepared it.

Q. Was it dictated or written out in longhand first?

A. Written out in longhand.

Q. Who wrote it out in longhand?

A. I think Mr. Smith and some of the financial secretaries of our locals got together and got it typewritten. I don't know who typed it after they got it in longhand.

Q. You say there were several pages?

A. Yes, sir, thick.

Q. How many pages would you say there was?

A. It was a pretty thick proposal.

Q. How many pages would you say there was of it?

A. There were ten or twelve pages of it.

Q. Mr. Hill, I show you Sloss Exhibit Number 1. Do you understand? This is addressed in the original to Sloss—it is addressed in blank and finally written out in the original to Sloss. It consists of 22 pages, followed by this sentence:

"Respectfully submitted" and "In Witness Whereof we hereunto subscribe our names as the chosen representatives of more than ninety percent of your employees," with "John Hill" on it.

Read that and tell me what was left out of there that was put in there.

A. That would be a little hard to do.

Mr. Harris:

Mr. Hill, if it is agreeable to Mr. All, suppose you start with the first paragraph and read it aloud to the Court.

The Witness:

I would have to read too slow. I don't remember this at all. The company said they would destroy the one they had and we would destroy ours. I don't know how they got this. I never signed my name by somebody.

Q. What is in—

A. There is some things here that was in the proposal.

Q. What were some of the things that was in the proposal that is not there?

Mr. Harris:

I have my doubt of the witness' ability to read. I want him to read it to the Court. He went to the third grade in school.

Suppose you start at the start and read it to the Court.

Mr. All:

May it please the Court, I would like to examine the witness. I don't think the statement he only went to the third grade in the school—

The Witness:

I can read it, but it will take me some time to spell it out.

Mr. Harris:

The way the questions were framed, I don't know whether the witness understood—

The Court:

He was asked if there was anything in the proposal that was not in there.

The Witness:

The guarantee on here don't check with the one we gave to the company.

Q. You say that is not the instrument you gave to the company?

A. No, sir, not with my name on it.

Q. That is not your signature?

A. Yes, it is my signature.

Q. Well, how many pages were on it when you signed it?

A. There were several of them on here.

Q. What was the last numbered page?

A. I would say it run along about 10 or 12.

Q. Now, look here, Mr. Hill: This instrument has got three pages. One, two,—this is two, and it is numbered two, and at the end of page two there is nineteen, see, and there is a broken sentence there with the word "straighten" and "out" on the other page, page three, and at the end of that there is a "Respectfully submitted" and your name signed to it.

A. I don't know—

Q. You signed that, didn't you?

A. Yes, sir, that is my signature.

The Court:

All right; we have been over that.

Q. You still say that isn't the paper that was submitted?

A. No, sir; I can't say it is the paper that was submitted.

Q. Can you say it wasn't?

A. There is some of it in there we asked from the company. I know that. There is some in there we didn't.

Q. Well, are you willing to testify that is not all of it?

A. Yes, sir, we will.

Q. Compare these two now. Here is—So you will understand this, here is Bessemer, Alabama, April 13th, just like that. This is Tennessee Company's Exhibit 6. Tennessee Company written into it with three pages signed by these gentlemen.

A. It is signed too.

Q. Yes, but there is only three pages, and read it and see if it isn't exactly the same as that one.

Well, Mr. Hill, without putting you to the trouble of reading them, you know that the same thing was handed to all four companies, don't you?

A. Yes. That is the same thing.

Q. The same thing?

A. Yes, sir.

Q. Well, when you said that the company signed no contract with the union until 1938,—until 1940, what did you mean?

A. I mean recognizing us as the Sloss Local 109 of the Mine, Mill & Smelter Workers.

Q. You didn't mean—you remember these contracts of 1937 and 1938,—1936, 1937 and 1938 where you signed as the committee—

A. Sloss employees.

Q. As employee representatives over here?

A. Yes, sir.

Q. That is your signature there, is it not?

A. Yes, sir.

Q. In 1938?

A. Yes, sir.

Q. And that is your signature on that one, isn't it?

A. Yes, sir.

Q. You mean it didn't have the union itself as a party instead of these employee representatives; is that what you meant?

A. The company recognized us as employees.

Q. The parties made the contracts; you made the contracts?

Mr. Harris:
I think that is a legal conclusion.

The Court:
Sustained.

Q. You were one of the negotiating committee each time?

A. Yes, sir.

Q. All the way through?

A. Yes, sir.

Q. And a great many others at the same time?

A. Yes, sir.

Q. Who appointed you as an employee representative to negotiate the contracts; your local?

Mr. Harris:
We object to that.

The Court:
Overruled.

A. I was asked by the local. The company appointed me as their employee, the way that come about. That is the only way you can get it.

Q. Who selected you to negotiate the contract with the company? Didn't your local vote on it and select you?

A. Yes, sir, I was asked by the local to negotiate an agreement with the company.

Q. The local voted on it and elected you as a committee?

A. I was president of the local. Naturally I was elected.

Q. The others were elected, the other members of the committee?

A. No, sir, the other members at that time were appointed.

Q. You appointed them as president?

A. Yes, sir.

Q. To serve on the committee?

A. Yes, sir.

Mr. All:
That is all.

Re-Direct Examination.

(By Mr. Harris):

Q. Did your union go by the name of employee representatives?

A. No, sir.

Q. Did you have any stationery, "Employee Representatives, John Hill, President."

A. No, sir.

Q. Did you suggest to the company you were employees' representatives, or did the company tell you they would deal with you as employees' representatives?

A. That is the only way the company would deal.

Q. How long was it after you started trying to organize the union before you got a contract that recognized you as a union?

A. 1940.

Q. That is, your local?

A. Yes, sir.

Q. I show you a book. It has got on it Sloss-Sheffield Steel & Iron Company, 1937.

Did the company ever give you a book of rules like that?

A. Yes, sir.

Q. They gave it to every man when they hired him or gave it to him later?

A. No, sir; they gave it to him at the office. Some of them have been out there a long time. They gave out some here not long ago from the office.

Q. Do you know whether or not the 1937 book of rules is the book in force?

A. I haven't seen any since.

Q. You haven't seen any later one?

A. No, sir.

Mr. Harris:

We offer in evidence, if the Court pleases, page 30 of the Book of Rules under the heading, "Rules for Handling Man Trips."

The Court:

Page what?

Mr. Harris:

Page 30.

The Clerk:

That will be defendants' Exhibit 20.

Mr. Harris:

And also the first—

Mr. All:

What rule is that?

Mr. Harris:

Those rules—paragraphs numbered 1 to 12, the first ten on page 30, and 11 and 12 on page 31 under the general heading, "Rules for handling man trips."

(Thereupon Rules 1 to 12, pages 30 and 31 of the Rule Book of the Sloss-Sheffield Steel & Iron Company for 1937, were marked Defendants' Exhibit No. 20.)

Q. Mr. Hill, how much voltage is there in those electric wires?

A. 275.

Mr. Harris:

That is all.

The Court:
All right.

Mr. All:
That is all.

(Witness excused.)

The Court:
Who will you have?

Mr. Harris:
I can probably take a short witness, if the Court pleases.

The Court:
All right.

Mr. Harris:
Mr. Elmer Thompson.

2891 ELMER ELLIS THOMPSON, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By the Court):
Q. Your name is Elmer Thompson?
A. Yes, sir.

(By Mr. Harris):
Q. What is your full name?
A. Elmer Ellis Thompson.
Q. How old are you, Mr. Thompson?
A. Thirty.
Q. Thirty what?

A. Thirty.

Q. Where do you work?

A. I work at Sloss ore mines.

Q. What kind of work do you do?

A. I run a hoist engine.

Q. How long have you been working for the Sloss Company?

A. Since February of 1937.

Q. What work have you done for the Sloss Company?

A. I first run an electric locomotive, and then I run what was called 79 engine, and at the present I run what is called 55 engine.

Q. Was 79 engine and 55 engine hoist engines or electric locomotives?

A. They are hoist engines.

Q. Now, are you what is known as a company man or production man?

A. I am a company man.

Q. In 1938, up through May 1, 1941, what time did you report at the mouth of the mine?

A. I reported around five o'clock.

Q: What shift were you working on?

A. Night shift.

Q. And have you worked on the night shift all the time?

A. Yes, sir.

Q. You reported at the mouth of the mine around five o'clock in the afternoon?

A. Yes, sir.

Q. Well, what time would they start underground with you?

A. We started underground at 5:15.

Q. On the night shift—

A. Yes, sir.

Q. —did you ride the man trip out that the day shift did?

A. Yes, sir.

Q. The same man cars?

A. The same man cars.

Q. On the night shift, did you have anything to do with telling the operatives of the man trips when to start or when to stop or anything about it?

A. No, sir, I didn't.

Q. All right. When you reported at that time what time would you be back out on top at the end of your shift?

A. It was usually from twenty minutes until three until three o'clock.

Q. How many hours were you being paid for during that time, from October, '38, to May 1, 1941?

A. Well, a part of that time I was paid for eight hours. That was when I was running the 79 engine up until April 1 of '40. And from April 1 of '40 they started paying me two hours extra a week,—paid me 42 hours a week.

Q. What did you do during the time that you were paid extra?

A. I was supposed to have cleared up the main yard of a trip of empties, where they put a trip of empties in, I dropped a trip of empties back on the load track so they could have an extra trip and could pick up the man trip.

Q. While you were switching those empties around, did it delay getting the men out of the mine or did it speed up getting the men out of the mine?

A. Well, it was supposed to have been put in there where they could pick up the man trip on time.

Q. And how many minutes did you ordinarily spend in that after April, 1940?

A. Well, I would spend around 15 minutes doing that.

Q. Well, now, did you—while you were working on the big engine did you haul ore from—to the mouth of the mine?

A. No, sir.

Q. Did you haul ore at any place in the mine—from any place in the mine to a pocket or tipple down underneath?

A. On 55 engine. I hauled ore from what is called 74 yard to 48 yard.

Q. How long a haul is that?

A. Well, the total haulage, I imagine, is 23 or 24 hundred feet.

Q. Then did there come a time when, in addition to hauling ore that twenty-three or twenty-four hundred feet that you hauled men that distance?

A. The way the engine is situated, since October of '40,—the engine sets up on the hill—it is around six or seven hundred feet from 48 yard, and the men walk up this hill and load up on the man trip up there within two hundred feet of the engine, and then I haul them down the rest of the distance to 74 yard.

Q. Now, when they got up there—did they have any regular time to get there?

A. Just as quick as they could get off the trip from the top and walk up this hill and get on.

Q. All right. Suppose you had ore to haul, did you stop hauling ore to haul the men, or did the men wait for you to get through hauling ore to haul them?

A. In the evening the man trip was already on the siding, and I had to haul men as quick as I got down there. In the morning we had to quit hauling ore to pull the men out.

Q. Did you quit hauling the ore so the men were not delayed, or did they have to wait?

A. Had to wait.

Q. How long did they have to wait?

A. I have known them to wait for 20 or 25 minutes.

Q. You were hauling ore?

A. Yes, sir.

Q. You got paid for that time for hauling ore?

A. Yes, sir.

Q. Did you ever hear of those men getting paid for that time they were sitting around while you were hauling ore?

Mr. All:
We object to that; argumentative and facetious.

The Court:
Overruled.

A. No, sir, I never heard of them getting paid.

Mr. Harris:
You can take him.

Cross Examination.

(By Mr. All):
Q. You hauled men—
A. Yes, sir.
Q. —and that was part of your job?
A. Yes, sir.
Q. You operated the engine to haul the men on the man trip?
A. Yes, sir.
Q. And you operated the engine to pull the ore skip?
A. The ore trips.
Q. The ore trips?
A. Yes, sir.
Q. The Sloss Company didn't use the ore skip to haul the men, did they?
A. No, sir; they used a special man trip.
Q. Special man trip?
A. Yes, sir.
Q. So you worked there—you started at the top,—you were working on top?

A. No, sir, I worked underground.

Q. I am talking about when you started hauling the men down? Where do you start hauling them?

A. I start hauling them from my engine.

Q. I know, but you start from hauling the men down—you are hauling the men down while they are riding down?

A. I operate the engine while they are being hauled.

Q. Did you ever operate the man haulage from the top of the mine?

A. No, sir.

Q. I misunderstood. Your work has been on this second interval in the mine where men are hauled?

A. Yes, sir.

Q. And you operate the man trip, and when you get through with that you are working hauling ore?

A. Yes, sir.

Q. And that man trip starts to operate at what time?

A. You mean the second man trip?

Q. Yes.

A. It would take—

Q. When did they start operating that second man trip?

A. You mean what time of the year?

Q. Yes, when did they commence it?

A. They started in October of 1940.

Q. They started in October of 1940?

A. Yes, sir.

Q. So that is when this job of yours started?

A. Of operating the man trip, yes.

Mr. All:

I believe that is all, Mr. Thompson.

Mr. Harris:

That is all, Mr. Thompson.

The Court:
You are excused.

(Witness excused.)

The Court:
Court is adjourned until 9:30 tomorrow morning.

(Whereupon, at 4:15 P. M., July 28, 1941, an adjournment was had to 9:30 A. M., July 29, 1941.)

July 29, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:
All right, gentlemen, you may proceed.

Mr. Harris:
Call Mr. Parker.

2898 FRANK PARKER, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

The Court:
What are your initials?

The Witness:
Frank Parker.

(By Mr. Harris):
Q. How old are you, Mr. Parker?
A. Thirty-four.
Q. Where were you born?

A. Kilgore, Alabama.

Q. Where do you work?

A. Ruffner Mine, Sloss-Sheffield Steel & Iron Company.

Q. How long have you been working at Ruffner Mine?

A. Almost two years.

Q. When did the Ruffner Mine start actual production of ore the last time?

A. July 1, 1940.

Q. What work did you do out there before it started production of ore on July 1, 1940?

A. Carpenter work.

Q. In your carpenter work were you working both inside and outside the mine?

A. Yes, sir.

Q. Did you have occasion to see the conditions on or about July 1, 1940, when they started producing ore?

A. Yes, sir. I don't go in after July 1st.

Q. I said on or about July 1st when they started producing.

A. Yes, sir.

Q. What was the condition of the mine with reference to water or dragging the ore through the water at Ruffner?

A. Well, they had to drag the ore—

Mr. All:

We object, illegal, irrelevant, incompetent and immaterial; not sufficiently restricted as to what would be pertinent in this case.

The Court:

Yes.

Mr. Harris:

Well, they started operating July 1, 1940, and I asked him about July 1, 1940, when they opened it up.

Mr. All:
Well, he said—

Mr. Harris:
I will change it.

Q. On July 1, 1940, when they started operating the mine, what was the condition of the mine with reference to water?
A. It was still in the mine.
Q. Whereabouts?
A. Different places.
Q. Since July 1, 1940, when they started producing ore, what work have you done out there?
A. Lamp house.

The Court:
What?

The Witness:
Lamp house man.

The Court:
Lamp house man?

The Witness:
Yes, sir.

Q. We don't know what a lamp house man is, Mr. Parker. Will you tell us?
A. Well, my job is to give the lamps out to the miners.
Q. What kind of lamps?
A. Battery lamps.
Q. Do the Sloss mines furnish the battery lamps to the miners?
A. They do, but they charge them for them.

Q. Do they furnish lamps to the production men and service men both?

A. I didn't understand you.

Q. There was a lot of coughing. Do they furnish lamps to the production men and service men both?

A. Yes, sir.

Q. What time do you go to the lamp house?

A. Before May 1st, I went at six o'clock.

Q. Did you start issuing lamps at that time?

A. Yes, sir.

Q. What time did you finish?

A. By 6:30.

Q. How many mine trips did they run out there?

A. Two.

Q. What time did the first go in?

A. Six o'clock.

Q. What time did the second go in?

A. Beg your pardon,—6:30.

Q. The first one went in at 6:30?

A. Yes, sir.

Q. What time did the second one go in?

A. 6:15.

Q. 6:15, the second one?

A. I beg your pardon,—15 minutes to 7:00.

Q. What are these lamps you furnished to the men? Are they mine lamps?

A. Battery lamps.

Q. What do they weigh?

A. I judge about six or eight pounds.

Q. How do they carry the lamps?

A. On their caps, and they have about a two-inch belt and two hooks and the battery slips down there.

Q. When you were working there before May 1, 1941, did you stay to take up the lamps?

A. No, sir. I quit at 2:30.

Mr. Harris:

You can take him.

Cross Examination.

(By Mr. All):

Q. These miners use the battery lamps instead of the carbide lamps?

A. Yes, sir.

Q. And whatever it weighed, they carried the battery with them?

A. That is right.

Q. They were just in lieu of carbide lamps?

A. Yes, sir.

Q. They wore the lamps on their hats?

A. Yes, sir.

Q. You say you haven't been working in the mines since July 1, 1940?

A. No, sir.

Mr. All:
That is all.

(Witness excused.)

Mr. Harris:
Call Mr. Horsley.

2902 ERNEST HOUSTON HORSLEY, being called as a witness, and being duly sworn, testified as follows;

Direct Examination.

(By Mr. Harris):

Q. How old are you, Mr. Horsley?

A. Thirty-one.

Q. Where were you born?

A. Near Oneonta.

Q. What business do you follow?

A. Driller.

Q. What kind of driller and what kind of mine?

A. In the ore mine, Ruffner Mine.

Q. Of the Sloss Company?

A. Yes, sir.

Q. How long have you been a driller for them?

A. Ever since about the 15th of last September.

Q. Is the driller the same as a head miner?

A. Yes, sir, up there it is.

Q. You don't call them head miners at Ruffner?

A. Call them drillers, because the drill man, he is responsible for his place.

Q. Now, from September 15, 1940, until May 1, 1941, did you continue to work there as a driller?

A. Yes, sir.

Q. How many men did you have in your crew?

A. Well, when I first started I had two muckers and myself.

Q. Well, then, did your crew change?

A. Later on they gave me another mucker.

Q. And do you work with a mechanical loader or fist mucking at your place?

A. Fist mucking at the present time. I worked on the mechanical loader just a few days,—not very long.

Q. And your drill crew was just four men?

A. Yes, sir.

Q. Up to May 1st?

A. No, sir.

Q. Never more than four men?

A. Including myself.

Q. Yes, sir. Now, from September, '40, to May 1, 1941, what time did you report at the change house?

A. Around six o'clock.

Q. Did the Sloss Company furnish you a bath house free of charge out there?

A. No, sir. They charged us.

Q. Well, what did they charge you for the use of the bath house?

A. Forty cents a month.

Q. Well, after you dressed and put on your work clothes in the bath house, where did you go?

A. I went to the supply room, blacksmith shop on the hill about—

Q. Is that near the mouth of the mine?

A. Well, it is about halfway from the mouth of the mine to the bath house.

Q. Well, when you got up there, did you hand in a brass check to anybody?

A. No, sir, I did not.

Q. Did you report to anybody you were there?

A. No more than any supplies there I used.

Q. How did you know what time to be up at the mouth of the mine?

A. Well, when I went there I didn't know anything about the condition of the mine, and Mr. Ellard told me to always report about six o'clock so I could get the supplies.

Q. Who is Mr. Ellard?

A. Mr. Claud Ellard. He was superintendent at that time.

Q. Did the men in your crew report at six o'clock?

A. Usually about six o'clock.

Q. Did they change their clothes at the bath house?

A. Yes, sir.

Q. How did you get in the mine at Ruffner?

A. On a man trip.

Q. What time did the man trip go down?

A. 6:30, the first one.

Q. Do you know Mr. Parker?

A. Yes, sir.

Q. Did Mr. Parker issue you battery lamps out there?

A. Yes, sir, he did.

Q. He would issue them to you in the morning when you went in—.

A. Well, we got our lamps at the bath house. The bath house and light house was combined.

Q. Was Mr. Parker there when you came off your shift?

A. No, sir, he wasn't there.

Q. He got off at 2:30. What time did you get out at the end of your shift and turn in your battery light?

A. Yes, sir; it was around four o'clock.

Q. Is that since—That is during the period from September up to May 1st?

A. Yes, sir.

Q. Now, up to May 1st did they have any electric clocks or any other clocks you punched to show when you went on and came off?

A. No, sir, they did not.

Q. Have they got it now?

A. Yes, sir, they have.

Q. As you went down in the mine did you carry any tools of any sort with you?

A. Well, we carried our bits and fuses and dynamite caps and things of that kind we had to work with during the day.

Q. Did you, as drill man, have to pay for your fuses, dynamite and dynamite caps, picks and shovels, shovel handles, pick handles, and things you wore out when you needed a new one?

A. No, we didn't have to pay for anything except our lights and bath house.

Q. That is all you had to pay for at Ruffner?

A. Yes, sir.

Q. What is the length of time it takes you to go, at Ruffner, from the mouth of the mine to the man unloading station?

A. Well, it would take about five minutes, I guess, to go down, and we had to walk part of the way.

Q. How did you go down? Did you have these cars with seats on them so that ten men rode on them facing out like they did at Sloss Number 2?

A. No, sir. Up here we have the plain cars they ride in. I imagine they are about eight feet over all.

Q. You mean a tram car?

A. Yes, sir.

Q. Does that tram car have any seats in it for the men to rest on?

A. No, sir, don't have.

Q. Is it a tram car used to haul ore out of the mine?

A. Yes, sir.

Q. Is that ore out there wet or muddy or dry?

A. Part of it is wet and part dry.

Q. What is the condition of the tram cars when you get in them in the morning to go down?

A. Well, they are sometimes wet and sometimes dry.

Q. How many men ride in those tram cars?

A. Six.

Q. And how many cars to a trip?

A. Eight.

Q. Did they use that before May 1st?

A. Yes, sir.

Q. After you get off the tram cars, how far do you have to walk to get to your drilling place?

A. Well, I was the furtherest down. At that time I imagine it was seven or eight hundred feet. I wouldn't be positive.

Q. Is that a new working or an old working that has been reopened?

A. It is an old place that has been reopened up.

Q. In going from the man unloading station to your drilling place do you walk standing up straight?

A. Not all the way down. There are a few places you can stand up straight.

Q. How is the footing? It is uphill or downhill?

A. It is pretty steep.

Q. How is it with respect to smoothness or roughness?

A. I wouldn't say it is smooth. It is pretty rough and slippery down there.

Q. How is it with respect to moisture?

A. It is pretty wet where I have to walk to my place.

Q. Do they have any pumps there to pump the water out?

A. Down on the bottom below where I work they have a large pump there to pump the water out.

Q. During this time from September, 1940, up to May 1, 1941, were you paid on a tonnage basis or a time basis?

A. Well, we were paid by the hour.

Q. And you went in there at six and got out at what time?

A. We usually left the top about 6:30 on the man trip.

Q. Yes, sir, and you got out at what time?

A. It was around four, sometimes afterwards.

Q. And your many hours did you get paid for?

A. Eight hours.

Q. Was that true all the way up to May 1st?

A. Yes, sir.

Mr. Harris:

You can take him.

The Court:

I want to ask him one question.

Mr. All:

All right, Judge.

The Court:

Was this supply house right at the mouth of the mine?

The Witness:
No, sir. It was about 400 or maybe 450 feet from the mouth of the mine.

The Court:
What kind of building—was there a building at the mouth of the mine called the tally house?

The Witness:
No, sir.

The Court:
Where did you check in?

The Witness:
We always got our supplies at the blacksmith shop and supply house. That is all combined. We got our supplies and walked on over there.

The Court:
I didn't understand you.

The Witness:
We got our supplies at the blacksmith shop and supply house, which was all combined. We got our supplies and walked over to the mouth of the mine.

(By Mr. Harris):
Q. Did anybody come through the mine to take your time?
A. Yes, sir. Mr. Smith was the bank boss. He would come through.
Q. Did he come to take your time at the end of the shift?
A. No, sir, he wasn't hardly ever there at the end of the day.

Q. Did he take your time before the day was over?

A. Yes, sir, I suppose he did. I never did see him take up any.

Q. When you got out of the mine at the end of the shift, did anybody take your time?

A. No, sir. We went on to the bath house and turned in our lights.

Q. Were they working at that time five days a week?

A. Yes, sir. Sometimes they would have other work to do on Saturday.

Q. But they were working five days a week?

A. Yes, sir.

Mr. Harris:

That is all.

Cross Examination.

(By Mr. All):

Q. Your work, speaking in mining language, was at the face?

A. Yes, sir.

Q. And you got paid at that time for eight hours?

A. Yes, sir.

Q. You gave eight hours work for eight hours pay, eight hours at the face?

Mr. Lipscomb:

We object to that. That is what the Court is to decide.

Q. Were you paid for eight hours at the face?

A. Yes, sir, I was supposed to work eight hours at the face.

Q. These bits you were talking about, were they detachable bits, drills?

A. Yes, sir, detachable bits.

Q. How many did you take?

A. Five.

Q. In a bunch?

A. Yes, sir.

Q. How large were they?

A. The largest one was about two and a half and the smallest—

Q. What do you mean by two and a half?

A. Across; we used the four cornered bits out there.

Q. Carried them in your pockets?

A. No, sir, have a wire to string them on.

Q. A wire?

A. Yes, sir.

Q. Take the dynamite caps and fuses, which you say is—

A. Yes, sir, the caps and fuses.

Q. —what you took in the mine with you?

A. Yes, sir.

Q. That is the supplies you got?

A. Yes, sir.

Mr. All:

That is all.

The Court:

Come down.

(Witness excused.)

Mr. Harris:

I believe that is all with reference to the Sloss Mines at this particular time.

If that is agreeable with the Court, I will let Mr. Cooper put on a little evidence for a few minutes.

The Court:

Yes, sir.

Mr. Cooper:
Come around, Mr. Wheeler, please.

2911 GEORGE S. WHEELER, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Cooper):

Q. How old are you, Mr. Wheeler?

A. Thirty-three.

Q. Where were you born?

A. Tacoma, Washington.

Q. By whom are you employed?

A. United States Department of Labor, Wage and Hour Division.

Q. Mr. Wheeler, have you ever visited any of the ore mines in the Birmingham Region, especially those operated by the T. C. I., Republic Steel Corporation and the Sloss-Sheffield Steel & Iron Company?

A. Yes, sir.

Q. When did you do that and which mines did you visit?

A. I visited the Sloss Number 2 mine on July 9, 1941; the Number 4 Mine, Muscoda, T. C. I., July 10th; Number 6—

The Court:
I thought you asked him just about the Sloss Company.

Mr. Cooper:
No, sir, I asked him whether he went into the mines of either the T. C. I., Republic or Sloss.

The Court:
All right.

Q. Have you finished enumerating the mines?

A. No, sir.

Q. Just finish enumerating them.

A. Yes. Number 6 on July 11th; Number 8 on July 15th; and the Republic Raimund Mine on July 17th.

Q. On each of these visits to the mines, Mr. Wheeler, were representatives of the company owning the particular mines you visited present?

A. Yes.

Q. On the trips through the T. C. I. mines, was anything said to you by representatives of the T. C. I. as to each mine—

Mr. Burr:
We object to that question.

Mr. Cooper:
I haven't finished the question.

The Court:
Let him finish.

Mr. Burr:
I beg pardon.

Q. Was anything said to you with respect to whether the means and methods which you visited, saw and utilized were the same as those utilized by the miners in getting to the face and back?

Mr. Burr:
We object.

The Court:
Overruled.

A. Yes.

Mr. Burr:

So I will not have to interrupt Mr. Cooper, may it be understood we have an exception to each of these visits to the mines on July 9th, 10th, 11th, 15th and 17th, as illegal, irrelevant, incompetent and immaterial and not having anything to do with the issues in this case?

The Court:

Yes, we will have that understanding.

Mr. Burr:

I just want to keep from interrupting.

The Court:

Yes, sir.

Mr. Burr:

That is for each plaintiff.

The Court:

Yes, sir.

Q. On your visit to the Sloss Mine was anything said —substantially the same said to you by representatives of the company?

A. Yes, sir.

Q. And on your visit to the Republic Mine was substantially the same thing told you by the representatives of the Republic Company?

A. Yes, sir.

Q. Did these officials also state that those means and modes utilized by you on your trip were the same as those utilized by the men prior to May 1st?

A. Yes.

Q. On these trips did you supervise the taking of any photographs?

A. Yes, I did.

Q. Were these photographs, when taken by you, subsequently developed by you or did you have them developed?

A. Yes, sir, I had them developed.

Q. Are these photographs accurate representations of the various objects in and about the mines you have named and the scenes they purport to represent?

A. Yes, sir.

Q. As each picture was taken, Mr. Wheeler, did you make a notation of it—an accurate notation of the place and subject matter of the photograph?

A. Yes.

Q. Will you state what steps—do you have those notes with you?

A. Yes, sir, I do.

Q. Will you state what steps you took to identify the photographs as to the particular subject and place after they were developed?

A. Yes. After each day's trip into the mine I had the photographs taken on that day developed and immediately identified each picture from my notes and attached to the picture a slip of paper identifying that particular picture.

Q. State whether or not you subsequently numbered the photographs so as to correspond with the numbers in your notes which you testified about?

A. I did.

Q. Mr. Wheeler, will you take these photographs which I hand you—I believe they begin with the T. C. I., and state whether or not these are the photographs about which you have testified?

A. Yes, they are.

Q. Take them now one by one, will you, please, and state to the Court what each photograph represents?

A. This is a picture of the—

Mr. Burr:

Will you identify that so we can know what—

Mr. Cooper:

I am going to offer it in evidence and I think I can save time, if the Court please—

The Court:

You can identify them.

Mr. Cooper:

I am going to identify them as a group and then offer them separately.

The Court:

You ought to identify them.

Mr. Harris:

Have they got an exhibit number on them?

The Court:

I think they should be identified.

Mr. Cooper:

I thought I could save time by identifying them as a group.

Mr. Burr:

We would want them identified.

The Court:

I think they should be identified.

Mr. Cooper:

All right. I will do it that way.

The Clerk:

They will be Intervener's Exhibits 1 to 6.

(Thereupon a group of photographs were marked, separately, Intervener's Exhibits No. 1 to 6, both inclusive.)

Q. Will you state what the photograph I show you marked Intervener's Exhibit 1 for identification is?

A. That is a view from the bath house of the tipple of Number 4 Mine, T. C. I., Muscoda, Number 4.

Mr. Cooper:
Do you wish to see this, Mr. Burr?

Mr. Burr:
No, sir.

Mr. Cooper:
We offer this in evidence as Intervener's Exhibit No. 1.

Mr. Burr:
I suppose my objection covers that?

The Court:
Yes.

Mr. Burr:
But if not, I want to interpose an objection, separately and severally, as to each picture offered.

The Court:
Yes, sir.

Mr. Burr:
Let me have them as you get through.

(Thereupon a photograph showing a view of the tipple of Number 4 Mine, T. C. I., Muscoda, taken from the bath house, was received in evidence as Intervener's Exhibit No. 1.)

Q. Will you identify Intervener's Exhibit Number 2?

A. Yes, sir. That is Muscoda Number 4, the men standing waiting for the man skip.

Mr. Burr:

Of course, we object to his statement as to what the men were standing there doing. The picture shows itself, I assume.

Q. Did you see—

The Court

Well, do you know?

Mr. Cooper:

Pardon me.

Q. Did you see these men aboard the skip shortly after this picture was taken?

A. Yes, sir.

Mr. Cooper:

We offer that picture in evidence as Intervener's Exhibit Number 2.

(Thereupon a photograph showing a group of men at the entrance to Mine Number 4, T. C. I., Muscoda, was received in evidence as Intervener's Exhibit Number 2.)

Q. Will you identify the picture marked Intervener's Exhibit Number 3?

A. That is Muscoda Number 4, the same location, showing the men in the man skip.

Q. Was this picture taken in the open before the skip entered the portal?

A. Yes, sir.

Mr. Cooper:
We offer that as Intervener's Exhibit 3.

Q. Will you identify—

Mr. Burr:
I would like to have those, please, sir.

The Witness:
That is the skip tender riding in front.

The Court:
That is the skip tender riding in the front?

The Witness:
Yes, sir. The wire you see in the picture is the signal wire.

Mr. Burr:
We object to that.
What was the last number you offered?

Mr. Cooper:
Three.

(Thereupon a photograph showing a group of men in a man skip at Mine Number 4, Muscoda, T. C. I., was received in evidence as Intervener's Exhibit No. 3.)

Q. Did you ride this skip down represented on the photograph marked Exhibit 3?
A. Yes.
Q. Were you able to remain standing as the men shown in this picture are standing during the entire trip?
A. No. We had to bend over and keep our heads below the level of the skip.

Q. I believe you identified the skip tender for the Judge?

A. Yes.

The Court:

Yes.

Q. Will you identify Exhibit 4, please?

A. This is a picture of men getting into the man skip at Muscoda Number 6.

Mr. Cooper:

We offer that as Intervener's Exhibit Number 4.

(Thereupon a photograph showing men getting into the skip at Muscoda Mine Number 6, T. C. I., was received in evidence as Intervener's Exhibit Number 4.)

Q. Will you identify the photograph marked Exhibit 5, please?

A. This is a picture—

The Court:

I want to ask a question about this one.

Mr. Cooper:

All right, sir.

The Court:

Were they getting into the skip in the mine, at the man loading station?

The Witness:

This was at the man loading station at the tipple of the mine before going in.

The Court:
Before going in?

The Witness:
Yes, sir.

Q. Did you identify the one you have marked 5?
A. This is a picture of men jumping into the ore skip at Muscoda Number 6.

Mr. Cooper:
We offer that as Intervener's Exhibit No. 5.

(Thereupon a picture showing men jumping into the man skip at Mine Number 6, Muscoda, T. C. I., was received in evidence as Intervener's Exhibit No. 5.)

Q. Will you identify photograph Number 6, please?

The Court:
Are you properly marking them as we go?

The Clerk:
I have them all marked on the back.

Q. Go ahead.
A. This is a loaded ore skip—man skip ready to start in the mine.

Mr. Burr:
Where is that?

The Witness:
Muscoda, Number 6.

Mr. Cooper:
We offer Exhibit Number 6.

Q. Did you see it begin to descend immediately after this picture was taken?

A. Almost immediately afterwards.

(Thereupon a photograph showing a loaded man skip at Mine Number 6, Muscoda, T. C. I., was received in evidence as Intervener's Exhibit No. 6.)

Q. Now, I believe these photographs are of a different mine.

Will you take the one at the top marked Intervener's Exhibit 7 and begin with it and identify it, please, sir?

Mr. Burr:

Is this a new series?

The Witness:

That is—

Q. What mine are these from, Mr. Wheeler?

A. Tennessee Coal, Iron & Railroad, Number 4, this first picture. That is the heading, Number 87, Number 4 mine.

Q. Mr. Wheeler, did you see men working beyond this point—in which direction was the photographer looking?

A. Looking towards the face of the stope.

Q. And you saw men working beyond this point?

A. Yes.

Q. Digging?

A. Yes, sir.

Mr. Cooper:

We offer that as Number 7.

Mr. Harris:

What mine is that? I didn't get it.

The Witness:
T. C. I. 4.

(Thereupon a photograph showing heading Number 87 in Mine Number 4, Muscoda, T. C. I., was marked Intervener's Exhibit 7, and received in evidence.)

The Court:
Now, is this a stope?

The Witness:
That is a heading.

The Court:
A heading, isn't it?

The Witness:
The car in the background is opposite the stope, you see.

Q. Will you identify the photograph marked 8, please?
A. This is the 7th right heading in the number 2 haulage way in T. C. I. Number 4 Mine.

Mr. Cooper:
We offer this as Exhibit Number 8.

(Thereupon a photograph showing 7th right heading in number 2 haulage way, Number 4 Mine, Muscoda, T. C. I., was marked Intervener's Exhibit No. 8, and was received in evidence.)

Q. Can you tell us in which direction this figure—this man was looking at the time the picture was taken?
A. He was walking down the heading and towards the stope.

Q. Do you recall what that object is he appears to be stepping over?

A. That is a wench rope or hoisting rope.

Q. Will you identify the photograph marked Number 9, please?

A. This is taken from the location looking in the opposite direction—

Mr. Burr:
Is this Number 9?

Mr. Cooper:
Yes, sir.

A. That is at the 7th right heading in Number 2 haulage looking towards the portal down the haulage way.

Mr. Cooper:
We offer this as Exhibit Number 9.

(Thereupon a photograph taken at 7th right heading in Mine Number 4, Muscoda, T. C. I., looking towards the portal of the mine was marked Intervener's Exhibit No. 9, and was received in evidence.

Q. Mr. Wheeler,—

Mr. Burr:
What mine is that in?

Mr. Cooper:
T. C. I. 4.

Mr. Burr:
7th right, number 2 haulage?

The Witness:
Number 2 haulage, 7th right heading.

Mr. Burr:
7th right heading, Number 2 haulage.

Q. Mr. Wheeler, at this point where this picture was taken, was anything said to you by the company officials about the grade?
A. Yes.
Q. What was said to you and by whom?
A. That is about a six or seven percent grade, according to Mr. McKenzie, the Division Engineer.

Mr. All:
Is that nine?

The Witness:
Yes, sir.

Q. Identify Number 10, please.
A. Number 10 is the Number 2 haulage at 3rd left, which is considerably nearer the portal,—the same haulage way but much closer to the portal.

Mr. Burr:
Number 2 haulage, what heading?

The Witness:
At Number 3 left.

Mr. All:
What mine?

Mr. Burr:
Still in Mine Number 4, are you?

Mr. Cooper:
Yes, sir. We offer Exhibit 10 in evidence.

(Thereupon a photograph taken at 3rd left, Number 2 haulage, Mine Number 4, Muscoda, T. C. I., was marked Intervener's Exhibit No. 10, and received in evidence.)

Q. Will you take Number 11 next, please?

A. Number 11 is at heading 89, first upset, looking towards the face. The picture shows the scraper loader, mechanical loader in the background.

The Court:

At the face?

The Witness:

This—

~~The Court~~:

You mean it is—

The Witness:

This is pulling ore out from the face, which is up in the stope. This shows the opening to the stope.

Mr. Cooper:

We offer in evidence Intervener's Exhibit Number 11.

(Thereupon a photograph taken at 89 heading, first upset, looking towards the face, in Mine Number 4, Muscoda, T. C. I., was marked Intervener's Exhibit No. 11, and was received in evidence.)

Q. At that point, Mr. Wheeler, did any official of the company say anything to you with respect to what men walked along the track shown in that picture?

A. Yes. The crew that works in the stope and the man who—

Mr. Burr:

I can't hear you.

A. —runs the scraper loader go past that point to the stope.

Q. I believe the stope is to the right off from the car?

A. Yes, sir.

Q. Did the men say anything to you at about what point on that photograph the men were required to be by 6:45 A. M.?

A. The scraper loader,—the man that runs the scraper loader was supposed to be at the scraper loader and the head miner and drill men who worked in the face are supposed to be at the face or getting their tools in a box beyond this point.

The Court:

Mr. Cooper, isn't this bringing in hearsay testimony?

Mr. Cooper:

No, sir. He is stating what an official told him.

Mr. Burr:

He uses the word official. Was any official down there?

Mr. Cooper:

Representatives?

Mr. Burr:

Well, I would like to know what representatives you are talking about.

The Witness:

Mr. J. L. Parsons, the mine foreman.

Mr. Cooper:

We intend to show what was specifically told him.

Mr. Burr:

We object. It is not only the grossest sort of hearsay, but it is after the event of the thing for which this case is being tried.

The Court:

Overruled.

Q. And this represents—Did Mr. Parsons tell you at what point the men were supposed to be prior to May 1, 1941?

A. That related to prior to May 1st.

Q. Will you identify Number 12 next, please?

A. This is the northeast left manway at the lower end of the run around at the bottom of the slope. The run around is the car dump where the ore is dumped into the skip.

Q. Did Mr. McKenzie, who, I believe you said, was an engineer of the company, accompany you—

The Court:

Just a minute. What did you say this is?

The Witness:

That is a man way, part of the left man way.

The Court:

That is where the men have to go?

The Witness:

Yes, sir.

The Court:

Walk along?

The Witness:

Yes, sir.

The Court:

That is a passage for the men?

The Witness:

Yes, sir.

Q. Do you know or were you told whether or not beyond this point the tool house was located?

A. The tool house is located at the back end of that in the background.

Q. Were you told by Mr. McKenzie what that distance is from the point where you were to the tool house?

A. It is about 200 or 250 feet.

Q. Did Mr. McKenzie say anything to you with respect to the service men who have to walk that distance?

A. The service men at that point have already picked up their tools at the tool house.

Q. You are speaking now of prior to May 1, 1941?

A. Yes, sir.

Mr. Burr:

Does Your Honor think statements made as to what happened prior to May 1, 1941, on the trip made during the trial of this case to a representative of the government is admissible evidence in this case?

The Court:

Yes, I think it is.

Mr. Burr:

All right, sir. We want to call your attention to it and take an exception.

Mr. Cooper:

We offer in evidence the photograph marked Exhibit 12.

(Thereupon a photograph taken in the northeast left manway at the run around in Number 4, Muscoda, T. C. I., mine, was marked Intervener's Exhibit No. 12, and was received in evidence.)

Q. That was number 12. Will you identify Number 13, please?

A. This is a picture taken in Muscoda Number 6. It is the 5th right south auxiliary heading looking up the slope from the stope towards the portal.

Mr. Cooper:

We offer that picture in evidence.

(Thereupon a picture taken in Mine Number 6, Muscoda, T. C. I., at 5th right auxiliary heading was marked Intervener's Exhibit Number 13, and was received in evidence.)

Q. Can you identify the figure shown in that picture?

A. That is Mr. Guyton, works superintendent of the T. C. I.

Q. Was anything said to you with reference to the grade of the haulage way shown in the picture?

A. That is about a six degree slope.

The Court:

Six?

The Witness:

Yes, sir.

Q. Take Number 14 next, please, sir.

A. This is the 6th left heading from the northeast haulage. It is about 300 feet from the lunch table.

Mr. Burr:

That is in mine Number 6?

The Witness:
Yes, sir.

Mr. Burr:
That is 6 what heading?

The Witness:
Six left heading on the northeast haulage.

Q. In which direction is this facing, Mr. Wheeler?
A. That is facing the portal.
Q. Are you able to identify the objects lying between the ties at this point?
A. That is muck.

Mr. Burr:
I can't hear you.

The Witness:
That is muck and slate, ore and slate.

Mr. Cooper:
We offer that picture in evidence.

(Thereupon a photograph taken at 6th left heading on the northeast haulage way in Mine Number 6, Muscoda, T. C. I., was marked Intervener's Exhibit No. 14, and was received in evidence.)

Q. Take Number 15 next, please.

The Court:
You say this is the haulage way.

The Witness:
And a man way.

The Court:
And a man way?

The Witness:
All these pictures are taken in places where the men walk.

Q. Number 15 next, please.
A. Number 15 is taken in Number 6 mine. It is the man way from the rotary dump to the east haulage, about 1200 feet long.

Mr. Cooper:
We offer this as Number 15.

(Thereupon, a photograph taken in Number 6 Mine, Muscoda, T. C. I., showing the man way from the rotary dump to the east haulage, was marked Intervener's Exhibit No. 15, and was received in evidence.)

Q. Mr. Wheeler, did the representatives of the company accompanying you state anything with respect to the grade at this point, the grade in this man way?
A. The grade in that man way varies from about five degrees to 17 degrees.
Q. Take number 16, and state whether or not that is the same mine?

Mr. Burr:
What is that you are referring to now?

Mr. Cooper:
16.

Mr. Burr:
Still in Number 6?

Mr. Cooper:
No, sir. I believe this is a different mine.

A. This picture is taken in T. C. I. Number 8, Wenonah. It is the right manway looking through the door at the hoodlum at 106 heading.

The Court:
Looking through from—

The Witness:
The door on the hoodlum or manloading station.

The Court:
Is there a door there?

The Witness:
Yes. This next picture shows the door.

Q. Before you get on to the next picture, can you identify those figures on that picture?

A. Yes, I can. Mr. Guyton is in the picture, and Mr. McKinney and Mr. Mitchell of the T. C. I., and the camera man for the T. C. I.

(Thereupon a photograph showing the right manway in Number 8 Mine, Wenonah, T. C. I., was marked Intervener's Exhibit No. 16, and was received in evidence.)

Q. Next I believe, is Number 17.

A. This is looking back towards that door at the same point, 106—

Mr. Burr:
I can't hear you, Mr. Wheeler.

The Witness:
That is looking back towards the door at the same point, 106 heading.

The Court:
Sixteen?

Mr. Cooper:
That is 17.

Mr. Burr:
106?

The Witness:
Yes, sir.

The Court:
Is this after he leaves the hoodlum?

The Witness:
Just after you leave the hoodlum. The hoodlum is in the background.

Mr. Cooper:
We offer Exhibit Number 17 in evidence.

(Thereupon a photograph taken at 106 heading, looking towards the man loading station in Mine Number 8, Wenonah, T. C. I., was marked Intervener's Exhibit No. 17, and was received in evidence.)

Q. Take Number 18 next, please, sir.
A. This picture is taken in the same right manway about four or five hundred feet from the hoodlum.
Q. Mr. Wheeler, how was the walking as you found it at this point where the picture was taken?

Mr. Burr:
We want to put in a special objection to that, how Mr. Wheeler found the walking.

The Witness:
I think the picture speaks for itself.

The Court:
What is that?

The Witness:
That is built up—

Mr. Burr:
In view of Mr. Wheeler's answer, I want to withdraw my objection.

A. The men walk past this point towards the figure in the background. They go past this point built up of steel rails. The air is pulled under there.

The Court:
The men go under there—

Mr. Burr:
I want him to answer the question he asked him.

The Court:
What question?

Mr. Burr:
He said the pictures speak for themselves. I want him to answer the question.

The Witness:
You want me to answer it?

Mr. Burr:
Yes, sir.

The Witness:
Rather rough going.

Q. The picture 18—

Mr. Burr:
Which is the one you are asking him about—

The Witness:
This is the same way.

Mr. Burr:
What is the number?

Mr. Cooper:
We are still on 18. He hasn't identified 19 yet.

Mr. Burr:
That is the one he says is rather rough?

Mr. Cooper:
That is right.

The Court:
All right.

Mr. Cooper:
We offer Exhibit 18 in evidence.

(Thereupon a photograph showing a view in the right manway of Mine Number 8, Wenonah, T. C. I., was marked Intervener's Exhibit No. 18, and was received in evidence.)

Q. Did you state the length of the particular manway?

A. That manway is about 2500 feet long.

Q. Do you know the grade at this particular point?

A. That grade varies again from about five to 20 degrees, perhaps a little bit more.

Q. I believe Number 19 is next.

A. This is a view of the same man-way, slightly further down the hill.

Mr. Cooper:

We offer that as Number 19.

(Thereupon a photograph showing a view in the right man way of Mine Number 8, Wenonah, T. C. I., was marked Intervener's Exhibit No. 19, and was received in evidence.)

Q. In which direction does that photograph look?

A. That is looking back up the hill towards the hoodlum.

Q. You walked by this point on your visit?

A. Both going down into the mine and coming back up.

Q. Take Number 20 next, please, sir.

A. Number 20 is a picture taken at the foot of the same man way looking up the hill.

Mr. Cooper:

We offer this as Number 20.

(Thereupon a photograph taken at the foot of the right man way of Mine Number 8, Wenonah, T. C. I., was marked Intervener's Exhibit No. 20, and was received in evidence.)

Q. Now, at the point where this picture was taken, were you near the foot of the hill?

A. That was within twenty feet of the foot of the hill.

The Court:

This is Exhibit 20?

Mr. Cooper:

Yes, sir.

Q. Were you told what men walked this particular hill represented in this picture?

A. Yes.

Q. What were you told, and by whom?

A. It is one of the main man ways which the miners walk both going to and coming from work.

Q. Who told you that?

A. Mr. McKenzie told us that,—Mr. Mitchell also.

Q. All right, sir. Take Number 21 next.

A. This is the left manway in the same mine, Number 8.

Mr. Burr:

Mine Number 8 you are in now?

The Witness:

Yes, sir.

Mr. Burr:

When did you get in 8? I thought you were in 4 all this time.

The Witness:

No, sir. I said—

Mr. Cooper:

At number 16.

Mr. Burr:

That is right, number 16.

The Court:
Is this going in 8?

Mr. Cooper:
We are still in 8.

The Witness:
Still in 8. We were talking about the right man way This is the left man way. This is a shorter man way,—about 1,000 feet long.

Mr. Cooper:
We offer that as Exhibit Number 21.

(Thereupon a photograph showing a view in the left man way, Mine Number 8, Wenonah, T. C. I., was marked Intervener's Exhibit No. 21, and was received in evidence.)

Q. Number 22 next.
A. This picture is taken at 143 left man way in Number 8 mine looking towards the face.

Mr. Cooper:
We offer that as—

Mr. Burr:
Part of the left heading, did you say?

The Witness:
No, left man way, 143 heading.

Mr. Cooper:
We offer that as Exhibit Number 22.

(Thereupon a photograph showing a view of 143 heading, left man way, Mine Number 8, Wenonah, T. C. I., was marked Intervener's Exhibit No. 22, and was received in evidence.)

Mr. Cooper:

Hand me the next series of pictures, please. I think they are Sloss-Sheffield.

Mr. Clerk, will you mark those for me, please?

Q. Will you identify Number 23, please, sir, and tell us at what mine—.

A. That is Sloss Red Ore Mine Number 2.

Mr. Cooper:

We offer this Exhibit Number 23.

(Thereupon a photograph showing a view at the tally house of Sloss Red Ore Mine, Sloss Company, was marked Intervener's Exhibit No. 23, and was received in evidence.)

Q. Will you tell us who these figures are on the picture, please?

A. Those are miners in front of the tally house.

Q. Had they checked in at the time this picture was taken?

A. No, sir.

Mr. Burr:

Of course, we object to the use of the words "Checked in" like they have been using them all the time.

The question before the Court is what they do. Of course, this man can't know whether they had checked in prior to May 1, 1941.

Overrule the objection.

Mr. Burr:

We except.

Mr. All:
We except.

Q. All right. The next one, Number 24.
A. This is another group of miners at the same point.

Mr. Cooper:
We offer this as Number 24.

(Thereupon a photograph showing a view of a group of miners at the tally house of Sloss Red Ore Mine Number 2, Sloss Company, was marked Intervener's Exhibit No. 24, and was received in evidence.)

Q. Take the next one, Number 25.

Mr. All:
Wait just a minute, Mr. Cooper. Go a little slower.

Mr. Cooper:
I beg your pardon. I believe 24 was the last one.

Mr. All:
I believe it is.

Mr. Cooper:
Did you see that one, Mr. All?

Mr. All:
I have seen both of those. You are getting to 25 now?

Mr. Cooper:
25 now, yes, sir.

Mr. All:
All right.

The Witness:
Are you ready now?

Mr. Cooper:
Yes, go ahead.

Mr. All:
Yes, that is right.

Mr. Cooper:
Yes, 25.

The Witness:
This is a group of men ~~after they have~~ punched the time clock.

Mr. Burr:
I can't hear you.

The Witness:
This is a group of men after they have punched the time clock going towards the portal of the mine.

Q. Are these men emerging from the building in which they punched the clock?
A. That is right.

Mr. Cooper:
I offer that as Exhibit Number 25.

(Thereupon a photograph showing a view of a group of men near the mouth of Red Ore Mine Number 2, Sloss Company, was marked Intervener's Exhibit No. 25, and was received in evidence.)

Mr. Cooper:
Do you want to see that, Mr. All?

Mr. All:
Go ahead. That is all right.

Q. Take Number 26 next, please, sir.
A. This is a group of men sitting on the man cars, and one man going down to the forward cars at the same mine, same portal.

Mr. Cooper:
We offer that as Exhibit Number 26.

(Thereupon a photograph showing a group of men sitting on man cars at the portal to Red Ore Mine Number 2, Sloss Company, was thereupon marked Intervener's Exhibit No. 26, and was received in evidence.)

Q. Mr. Wheeler, were there any cars parked ahead of this group,—these two cars which were shown on this picture?
A. There were four cars out of sight down the hill.
Q. Did you see men load on these cars parked down below?
A. Yes, sir.

The Court:
Were they loaded?

The Witness:
Yes, sir.

The Court:
Four cars below these two?

The Witness:
Yes, sir.

The Court:
Eight cars in all?

The Witness:
Eight in all.

The Court:
That is Exhibit Number 27, is it?

Mr. Cooper:
That is Number 26, Judge.

Q. Will you take Number 27, please, sir?
A. This is taken down in Mine Number 27, 48 slope curve, 81 right.

Mr. Cooper:
We offer this as 27.

(Thereupon a photograph showing a view in Sloss Red Ore Mine Number 2 at 48 slope curve, 81 right, Sloss Company, was marked Intervener's Exhibit No. 27, and was received in evidence.)

Q. Mr. Wheeler, is that an incline going up in the picture?
A. Yes, sir, that is a grade going up.

The Court:
Where did you say it was taken?

The Witness:
That is a man way, a haulage way.

The Court:
Going to work or coming from work?

The Witness:
Looking towards the face, to work.

The Court:
How far is that from the face where they work?

The Witness:
That depends on where they were going.

The Court:
How far is it from the collar of the mine?

The Witness:
That is at the foot of the slope, about 400 feet, I believe, from the man unloading station, something like that.

Q. Take Number 28, please, sir.
A. That is 89 left—left 3.
Q. What are these—

Mr. All:
I didn't hear the last you said.

The Witness:
That is at 89 left 3.

Mr. All:
What do you mean by left 3?

The Witness:
That is the notation I have. Perhaps Mr. Costner can clear that up.

Mr. Cooper:
If there are any questions like that, Judge, they can ask them later.

The Witness:
I think that is 89 heading.

Mr. Cooper:
We offer this exhibit Number 28.

(Thereupon a photograph showing a view at 89 heading, left 3 in Sloss Red Ore Mine Number 2, Sloss Company, was marked Intervener's Exhibit No. 28, and was received in evidence.)

Q. Mr. Wheeler, what were these men doing at the time this picture was snapped?
A. They were cleaning up rock, breaking rock which had fallen from the roof.
Q. Did your trip proceed beyond this point at which this picture was taken?
A. No, sir, it did not.
Q. Why—Why did you stop at that point?

Mr. All:
We object to that.

Q. Were you told anything by the representatives of the company with respect to the conditions beyond that point?

Mr. All:
We object to that on the further ground—

The Court:
Overruled.

Mr. All:
—It can't have anything to do with the interpretation of the language we are concerned with.

The Court:
It is a question of how the men got down there.

Mr. All:
This happened on the 9th day of July, as I understand—

The Court:
Yes, sir.

Mr. All:
—since this trial started.

The Court:
Yes, sir.

Mr. All:
I just want the objection, Judge, it has nothing to do with the case.

The Court:
Overruled.

Mr. All:
Except.

A. The roof condition was very bad, and it was not considered safe for us to go beyond that point by Mr. Costner.

Q. Take Number 29, next, please, sir.
A. That is 88 left, Number 2 slope.

Mr. Cooper:
We offer this as Number 29.

(Therfeupon a photograph showing a view in Number 2 mine, Sloss Company at 88 left Number 2 slope, was marked Intervener's Exhibit No. 29, and was received in evidence.)

Q. Will you state whether or not that is water photographed there right between the ties—

A. Yes.

Q. Mr. Wheeler?

A. Yes, sir.

Q. How was the footing at this point where this picture was taken?

A. It was slippery, both on the ties and on the rock.

The Court:

Where was this taken?

The Witness:

That was taken near 88 heading.

Mr. Burr:

88 what?

The Witness:

88 left. That was near the far point of the mine where the men were working. There was one stope active beyond that,—15 men.

The Court:

What mine is this?

The Witness:

Sloss Number 2.

Q. Were you told whether the men passed that point on the way to the face?

A. Yes; eight men on the day shift and seven at night.

Q. Number 30 next, please, sir.

A. This is in the Sloss Mine looking up the main slope towards the point at which the men unload when they come down in the morning or on the incoming shift. The man standing up in the muck at the upper right hand part of the picture is at the lower point of the unloading— where the men get off. The first car stopped there and the men unloaded above that point.

Mr. Cooper:
We offer that as Number 30.

(Thereupon a photograph showing a view on the main slope of Mine Number 2, Sloss Company, was marked Intervener's Exhibit No. 30, and was received in evidence.)

Q. Mr. Wheeler, did you see the man represented on that picture climbing up to the point which you state is the point at which they load?
A. Yes.

The Court:
Was there any platform in there at all?

The Witness:
Not at that point.

The Court:
Is there any platform for them to get on?

The Witness:
They don't get on. They are unloading there. It is a very steep slope, about 30 degrees,—25 degrees. They get off the first car about where that man is standing.

Q. Will you give me the series for the Republic, please?
A. (Witness hands pictures to Mr. Cooper.)

Mr. Cooper:

The clerk will mark these, please.

Q. Will you take these, beginning with Number 31, and state—identify number 31 and state whether that is a different mine from the mine about which you have just testified?

A. Yes. This is a picture of an ore car—man trip car in Number 2—Pardon me,—Number 1 slope of Raimund Mine of the Republic Steel Corporation.

Mr. Cooper:

We offer that as Exhibit Number 31.

(Thereupon a photograph showing a man trip car at Number 1 slope, Raimund Mine, Republic Steel Corporation, was marked Intervener's Exhibit No. 31, and was received in evidence.)

Q. Mr. Wheeler, on that photograph, when that photograph was taken, did you count the men on that skip?

A: Yes. There are 25 men on that skip. I was standing in the open—

The Court:

Down—

A. —down underneath there.

Q. They boarded by a ladder?

A. Yes, sir. There is a ladder on the inside also in the upper right hand corner.

Q. Is this the skip that you rode down on?

A. Yes, sir.

Q. Take Number 32 next, please, sir.

A. That is a picture taken looking down the left man way of Number 1 slope just after you leave the hoodlum.

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Mr. Cooper:
We offer this as Number 32.

(Thereupon a photograph showing a view looking down the left man way of Number 1 slope, Raimund Mine, Republic Steel Corporation, was marked Intervener's Exhibit Number 32, and was received in evidence.)

Q. I would just like to ask you, Mr. Wheeler, if you know the height of the man way at this place?
A. The roof at the point at which Mr. Butler is standing is about five feet.
Q. Do you know the elevation at that point?
A. That is minus 640 feet,—below sea level.

The Court:
640 feet below sea level?

The Witness:
Yes.

The Court:
In that mine?

The Witness:
At that point.

The Court:
What mine is that?

The Witness:
This is Republic Steel Corporation, Raimund mine.

The Court:
Raimund mine?

The Witness:
Yes, sir.

The Court:
How much is it where they get off the man trip?

The Witness:
That is right at the hoodlum at the corner of a bench.

Mr. Cooper:
Shall I go ahead, Mr. All?

Mr. All:
Yes, sir; go ahead.

Q. Will you identify Number 33 next, please?
A. This is the same man way looking back from about 100 feet down the hill towards the hoodlum.

Mr. Cooper:
We offer that as Exhibit Number 33.

(Thereupon a photograph showing a view in the left manway of Number 1 slope, Raimund Mine, Republic Corporation, was marked Intervener's Exhibit No. 33, and was received in evidence.)

Q. Will you identify Number 34, please?
A. That is the same man way about four or five hundred feet further down.

Mr. Cooper:
We offer this exhibit Number 34.

Mr. Burr:
Four or five hundred feet down?

The Witness:
Four or five hundred feet down from the hoodlum.

Mr. Burr:
Down from the hoodlum?

The Witness:
Towards the scales.

(Thereupon a photograph showing a view in the left Remanway of Number 1 slope, Raimund Mine, of the Republic Steel Corporation, was marked Intervener's Exhibit No. 34, and was received in evidence.)

Q. Do you know the height of the roof at that point, Mr. Wheeler?

A. That is under five feet.

Q. How far did that continue?

A. Just a short ways. There are a series of faults in the man way where the rock of the roof comes down.

Q. How far did this type of footing represented here continue?

A. Oh, there was about 700 feet, something of that sort. It would be that way and then start again or stop, change character.

The Court:
This is still in that same mine?

The Witness:
Raimund Mine.

Mr. Cooper:
These pictures are arranged in series, Judge, by mines.

Q. Will you identify Number 35, please?

A. Number 35 is about half way down that man way, which is about 2,000 feet long.

Mr. Cooper:
We offer this photograph as Exhibit Number 35.

(Thereupon a photograph showing a view of the left man way of Number 1 slope, Raimund Mine, of the Republic Corporation, was marked, Intervener's Exhibit Number 35, and was received in evidence.)

The Court:
Does anybody want a morning recess?

Mr. Burr:
I am always ready for a recess.

The Court:
All right; we will have a few minutes recess.

Mr. Burr:
All right, sir.

(Thereupon proceedings were in recess from 10:40 A. M., to 10:50 A. M., at which time proceedings were resumed as follows):

Mr. Burr:
What is this number now?

Mr. Cooper:
36.

Q. Will you identify Number 35, Mr. Wheeler?
A. Yes. That is a point in the same—

Mr. Burr:
Same mine?

A. —mine, and the same man way. That is about 500 feet from the bottom of that slope.

Mr. Cooper:
We offer this as Exhibit Number 36.

The Court:
Where did you say this is?

The Witness:
That is in that same man way in the Republic Mine, about 500 feet from the slope, in the man way.

The Court:
In other words, this is—

The Witness:
It is further on down that man way from the hoodlum.

(Thereupon a photograph showing a view in the left man way of Number 1 slope, Raimund Mine, Republic Steel Corporation, was marked Intervener's Exhibit No. 36 and was received in evidence.)

Q. Take Number 37, please, sir.
A. This is the same man way nearer the bottom.

Mr. All:
Nearer what?

The Witness:
The same man way nearer the bottom.

Mr. Cooper:
We offer Number 37.

The Court:
How high is the top there?

The Witness:
The top there is well above a man's head,—about 10 or 12 feet, I believe, at that point.

(Thereupon a photograph showing a view in the left man way of Slope Number 1, of Raimund Mine of Republic Steel Corporation, was marked Intervener's Exhibit No. 37, and was received in evidence.)

Q. Will you identify Number 38, please?
A. This is the same man way, but starting back up the hill after the low point in the mine. It looking towards the steps at the fault.

Mr. Cooper:
We offer this as Number 38.

(Thereupon a photograph showing a view in the left man way of Slope Number 1, Raimune Mine, Republic Steel Corporation, was marked Intervener's Exhibit No. 38, and was received in evidence.)

Q. Will you tell us, Mr. Wheeler, whether or not that is water indicated in the middle of the picture?
A. Yes, that is water running down the man way.
Q. What is the direction of the flow at that point?
A. Towards the photographer.
Q. Do you have any idea of its depth?
A. Oh, it varied. It wasn't over two inches deep,—a little stream.

Mr. Burr:
I can't hear you.

The Witness:
It is a little stream running down there not over two inches deep.

Q. In other words, you were still headed into the mine at this point?
A. Yes, sir.

Q. Did those steps go all the way up the hill indicated in this picture?

A. No, they don't.

Mr. Cooper:
Judge, you saw those steps?

The Court:
Yes.

The Witness:
The hill continues after the top of the steps.

Q. Was there anything said to you by a representative of the company, and identify him if there was, as to whether the men walked up these steps represented on that picture, Exhibit Number 38?

A. Mr. B. C. Jones, Assistant superintendent, told us—

Mr. Burr:
Is this 38?

Mr. Cooper:
Yes, sir.

A. —that about 100 men walked up those steps.

Q. Did Mr. B. C. Jones accompany you on this entire visit?

A. Yes.

Q. Did Mr. Jones or anyone else say anything to you with respect to the elevation of the top and bottom of that hill shown on the photograph introduced as Number 38?

A. Yes, sir, the scale house, which is level with the man way, and just before we get to that picture, is at minus 700 feet or 60 feet below the hoodlum, at which we started in this man way in which we taken the picture, and the hill goes up—

Q. I am speaking of 38 and not 39.
A. The hill which you asked me about—
Q. Yes.
A. —continues to a point at 90 left where there is a hoist, and the elevation there is minus 450 feet, or 250 feet above the scale house at the bottom of the hill.

The Court:
Go ahead.

Mr. Cooper:
We offer Number 38.

Q. Take Number 39, please.
A. That is a picture of the steps going up that hill.

Mr. All:
That is 39?

Mr. Cooper:
Yes. We offer that as Exhibit Number 39.

(Thereupon a photograph showing a view of steps in Raimund Mine, Republic Steel Corporation, was marked Intervener's Exhibit Number 39, and was received in evidence.)

Q. That is the same steps shown in Number 38?
A. Yes.
Q. Do you know the number of steps?
A. About 107.
Q. Did I ask you whether the water flows down the steps represented in Number 38?
A. Yes.

The Court:
Did he say he had answered it?

Mr. Cooper:
He said yes.

The Witness:
The water does flow down them.

Q. Identify Number 40, please, sir.
A. This is a picture in the Raimund Mine of 87 haul way, looking towards the scales at 109.

Mr. Cooper:
We offer that Exhibit Number 40.

(Thereupon a photograph showing a view in the Raimund Mine of the Republic Steel Corporation of 87 haul way, taken at heading 109, looking towards the scales, was marked Intervener's Exhibit Number 40, and was received in evidence.)

Q. Would you tell us whether the roof was measured at that point, Mr. Wheeler?
A. Yes. Mr. Jones and I measured the roof at that point, and it is 69 inches from the middle of the ties to the steel cross beam or steel set.
Q. 69 inches?
A. Yes, sir.
Q. Do you know the height—is this a trolley wire at the right upper part of the picture?
A. Yes, it is.
Q. Do you know the height of that wire at that point?
A. Five and a half feet.

Mr. Burr:
I didn't hear you.

Mr. Cooper:
Five and a half feet.

The Witness:
Five and a half feet.

Q. Take Number 41 next, please, sir.
A. This is in the Republic Mine, 101 left haul way.

Mr. Burr:
One hundred what—

The Witness:
One hundred and one left haul way at 21 stope.

Mr. Cooper:
We offer this as Number 41.

(Thereupon a photograph showing a view of 101 left haul way from 21 stope in Raimund Mine, Republic Steel Corporation, was marked Intervener's Exhibit Number 41, and was received in evidence.)

Q. Let me ask you, Mr. Wheeler, whether or not that is water in the middle of the photograph here?
A. It is.
Q. Do you have any means of measuring its depth?
A. I saw a locomotive go through there and the water was about half way up on the small wheels.
Q. Was anything said to you at this point by any of the officials or representatives of the company with you at that time, and identify him, if so, with respect to how many men passed this point daily?
A. Mr. Wesson, the mine foreman who accompanied me throughout the trip, told me there were 30 men went by there to and from work each day.
Q. Take number 42 next, please.
A. This is a continuation of the same general walk way at 100½ left, and it is an old track way near 101 left haul way at 29 stope.

Mr. Cooper:
We offer this as Number 42.

(Thereupon a photograph showing a view at 29 stope near 101 left haul way in Raimund Mine, Republic Steel Corporation, was marked Intervener's Exhibit Number 42, and was received in evidence.)

Q. Can you tell us what those objects are in the middle of the walk way there?

A. The track way is torn up, and those are cross ties and steel rails and spikes and muck and slate.

Q. Take Number 43 next.

A. This picture is taken in the right man way leading to Number 1 slope and the same mine, Raimund Mine, of the Republic Steel Corporation.

Mr. Burr:
Taken in what man way?

The Wintess:
In the right man way—

Mr. Burr:
That is a different man way?

The Witness:
Yes.—leading to the Number 1 slope.

Mr. Cooper:
We offer this as Exhibit Number 43.

(Thereupon a photograph showing a view in the right man way leading to Number 1 slope of Raimund Mine, Republic Steel Corporation, was marked Intervener's Exhibit No. 43, and was received in evidence.)

Q. Mr. Wheeler, did any of the officials of the company on the trip with you say anything at this point with reference to the elevation at the top and bottom of the hill shown on that photograph?

A. Mr. Jones, the assistant superintendent, informed me that the elevation at the top of the hill was minus 400, or about 200 feet above the elevation at the compressor which is further in the mine and back down the hill.

Q. Mr. Wheeler, on each of these trips about which you have testified, did you meet by pre-arrangement with the representatives of the company who went with you before you entered—

The Court:

I have a question about that exhibit. What exhibit is it; 43?

Mr. Cooper:

43, yes, sir.

The Court:

How far is that scene there from the hoodlum?

The Witness:

43?

The Court:

43.

The Witness:

That is about 700 feet, I think—

The Court:

How far is it from the end of the way? You call it the bottom.

The Witness:

Well, when you get down to the bottom—

The Court:
Then you branch—

The Witness:
—you branch off in all directions. The furtherest point—

Mr. Burr:
I can't hear you.

The Witness:
The furtherest point from which we walked to that point was about a mile.

Mr. Burr:
Furtherest point where was about a mile?

The Witness:
From which we walked in that mine to that point at which the picture was taken, was about a mile.

Mr. Burr:
You mean this picture here, 43, was the furtherest point to which you went?

The Witness:
In the mine?

Mr. Burr:
Yes.

The Witness:
Yes. Pardon me. Say that again.

Mr. Burr:
The furtherest point to which you went?

The Witness:

No. The picture at the steps is fairly close to the hoodlum.

Mr. Burr:

What distance are you talking about? You gave the judge some distance.

The Witness:

I understood the judge asked me how far it was from that picture at the steps to the furtherest point in the mine.

The Court:

Yes, sir; how far the men had to walk?

The Witness:

I am not sure about that. All I know is we walked about a mile from one of the places where the men work to that point.

The Court:

And you say it is about 750 feet from the steps to the hoodlum?

The Witness:

Something like that,—a relatively short distance.

The Court:

All right.

Q. Mr. Wheeler, I asked you whether you met by prearrangement prior to beginning each of these trips through the mines with the representatives and officials of the company who went with you on each trip?

A. Yes, sir, we did.

Q. And those representatives who met with you on each trip accompanied you throughout each trip?

A. Yes, sir; that is throughout each particular mine.

Q. And your testimony in reference to information given to you by these men refers to the representatives who met with you and accompanied you throughout the mines?

A. That is correct.

Mr. Cooper:

Before I finish with Mr. Wheeler,—that is about all I want to ask him,—I would like to state I may have omitted to offer formally all the photographs as we went along. I wish to offer them formally.

Mr. Burr:

Do I understand you have offered all you expect to offer?

Mr. Cooper:

Yes, sir.

Mr. Burr:

May it please the Court, we wish to reserve the cross examination of Mr. Wheeler until we can make a check of the photographs he has identified against the photographs we have taken. I didn't expect them to get to him this morning. We haven't these parties who went with him here. I am expecting them to come into my office at five this afternoon to check that.

The Court:

All right.

Mr. Burr:

May I ask, Jerome, is that all you expect to examine Mr. Wheeler about?

Mr. Cooper:
Yes, sir.

Mr. Burr:
All right, sir. I just didn't want to have to take two bites at it.

(Witness excused.)

Mr. Harris:
Call Mr. Butler.

2952 JOHN BUTLER, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Court:
What are your initials?

The Witness:
John.

(By Mr. Harris):
Q How old are you, Mr. Butler?
A. Forty-four.
Q Where were you born?
A. Calera, Alabama.
Q. Calera, Alabama?
A. Yes, sir.
Q How high did you go in school?
A. Seventh grade.
Q. Where do you work?
A. Raimund mine.
Q. What company?
A. Republic?

Q. What kind of work do you do at Raimund?

A. I am a contractor.

Q. How long have you worked as an ore miner for the Republic Company?

A. Ever since '36.

Q. Where did you—

Mr. Burr:
Will you wait just one minute for me?

Mr. Harris:
Surely.

Mr. Burr:
All right; go ahead.

Q. When did you first start to working for the Republic—

A. In—

Q. 1936, you said?

A. In 1936.

Q. What work did you first do?

A. I first went to work as pipe man underground.

Q. Well, how long did you work as a pipe man?

A. Well, about three or four months.

Q. And then what did you do?

A. I went to contracting.

Q. Now, had you been in the mining business before you went to work for Republic?

A. Yes, sir.

Q. What mines had you worked for?

A. I worked for the Gulf States Steel at Shannon Mines.

Q. Had you worked at any other mine besides the Gulf States Steel and Republic?

A. I worked for Woodward Iron Company.

Q. Any other?

A. No, sir.

Q. Now, on October 24, 1938, were you a contractor at Republic?

A. Yes, sir.

Q. Well, what do you mean by the word "contractor"?

A. Well, we—a contractor is a drill man, and he does the drilling and the shooting of the ore that is loaded. He has charge of the place. They give him a heading or either a stope, and he is the contractor. The drill man is the contractor.

Q. Now, at Raimund, do you have the mechanical loaders—

A. We—

Q. —or do you have the fist mucking?

A. We have both.

Q. Well, in October, 1938, on up to May 1st this year, did your crew work with a mechanical loader, or did they do fist mucking?

A. The first of 1938 I was on a fist mucking place. I have been on a mechanical loader about eighteen months.

Q. All right. Well, now, what time of day did you go to the bath house on your way in the mine?

A. From 5:15 to 5:30.

Q. Was that from October, '38, to May 1st?

A. Yes, sir.

Q. And what time of day did your crew and the other miners who were working on the day shift begin to gather around the bath house or in the bath house?

A. Well, around five o'clock,—from 4:30 to 5:00 o'clock.

Q. Now, at Raimund, did you have any brass checks?

A. Yes, sir.

Q. Did you have both a badge number and a brass check?

A. Yes, sir.

Q. Now, as you left the bath house, did you have on your work clothes?

A. Yes, sir.

Q. Did Republic charge you anything for the use of the bath house?

A. Fifty cents a month.

Q. Well, when you would leave the bath house, where did you go, Mr. Butler?

A. To the tally house.

Q. And who would you see up at the tally house?

A. Well, we would see the mine foreman and time keeper.

Q. Well, what did you do or say with reference to the time keeper up there?

A. Well, I would always give him my number in the morning.

Q. You mean you handed him a brass check, or you called out your number, or which?

A. No; I handed him a brass check.

Q. And did the members of your crew hand the timekeeper a brass check, each for himself, or did you hand in the brass checks for the members of your crew?

A. They handed it each for themselves.

Q. Then, after handing your brass checks to the timekeeper, what did you do?

A. Well, I would go down into the hoodlum and go down the slope and get on the man trip.

Q. Well, did you have anything to make a light as you went down?

A. Yes, sir; we got a battery light.

Q. Where did you get that?

A. At the other end of the tally house.

Q. Well, did you get the battery light before you handed in your check to the timekeeper or did you get it afterwards or did you have any rule about it?

A. We didn't have any rule about it. Sometimes I would get it before I checked in. If they were crowded around the window I would go over and get my light,—just a step or two.

Q. What kind of light did they use at Ruffner during those three years?

A. I don't know.

Q. I mean at—

Mr. Burr:

Raimund.

Q. —Raimund.

A. At Raimund we used a battery light.

Q. Did they company furnish them or rent them to you?

A. They rented it to us.

Q. What did they charge?

A. They were two prices, a six cent light and an eight cent light.

Q. Six cents and what?

A. Six cents a day and eight cents a day, two types of light.

Q. Two types of light?

A. Yes, sir.

Q. Well, what size are those lamps? What would the lamp and battery weigh?

A. About seven pounds.

Q. Well, how do you carry them?

A. We have a belt that goes around us with a strap on it and a hook on the back of the battery that this strap goes through, and you buckle it around you.

Q. All right. Now, then, when did the first man trip start down at Raimund?

A. Five o'clock.

Q. Which man trip did you ordinarily catch?

A. I would ordinarily catch around anywhere from ten minutes to six until six o'clock.

Q. And what time of day did you come out of the mine?

A. I would get back to the tally house anywhere about five to ten minutes of four.

Q. And would you then turn in your battery and your lamp and take up your check?

A. Yes, sir.

Q. Now, on the way into the mine, did you walk or did you go on a man trip?

A. Well, we walked from the bottom of the hill—what they call down in the bottom, the steep going, we walked from there to the working places.

Q. Well, what kind of cars were used for man trips at Raimund?

A. Well, in the afternoon coming back, we would ride about a mile back to Number 2,—from what they called the foot of the hill back to Number 2.

Q. All right. The kind of man trip cars is what I am asking about. What kind of cars are those they run from the mouth of the mine to the hoodlum? What kind of cars did you ride in going from the mouth of the mine down to the hoodlum?

A. Oh, we rode in a man skip.

Q. What kind of a skip is that?

A. Well, it was—in other words, it was a kind of square box, and had a lattice along on each side of it and—I don't know—it must have been fifteen feet long, I would say.

Q. Well, was it made out of steel?

A. Yes, sir.

Q. Well, what did it have on the floor?

A. It had a lattice on the floor.

Q. Well, did that car go down into the mine on—any part of it was a steep slope?

A. Yes, sir.

Q. Do you know what degree the slope was it went down on?

A. I have heard it said that it was fifty degrees.

Q. Now, how many men from October 24, 1938, would you ordinarily have in that man skip on the way into the mine?

A. Anywhere from thirty to thirty-five.

Q. Well, Mr. Butler, how did the men in that man trip stand or arrange themselves to keep from being crushed as they went down this fifty degree slope?

A. Well, for—before—there was part of that time, about the last year, they put railings, banisters, across the skip and you can lean against them and take a kick, catch against them to hold yourself off of them.

Q. What were they made out of?

A. Something like a two inch iron pipe.

Q. You mean a round, iron pipe that went from one side of the man skip to the other?

A. Yes, sir.

Q. And how many of those iron cross pieces did they put in?

A. There were three bars.

Q. Now, you say, "take a kick." What did you mean by "take a kick?"

A. Well, I would hold against it.

Q. You mean in order to keep these men from pressing your stomach against the iron bar—

Mr. Burr:
We object to Mr. Harris—

Q. —did you—I haven't finished.

Mr. Burr:
You had gone far enough.

Q. You would take a kick—

Mr. Burr:
Just a minute.

Mr. Harris:
I hadn't finished my question.

Q. —take your feet against the iron bar and hold against the iron bar?

Mr. Burr:
We object to that question.

The Court:
Overruled.

Mr. Burr:
We except.

A. Yes, sir.

Q. Was that kick taken by just one person or each group of men against the iron bar?

A. If there would be three of us standing against this iron bar, we would all three catch a kick.

Q. How about the next iron bar?

A. They would catch a kick. Those above us would catch a kick.

Q. Would those in that position, next to the iron bar ordinarily ride in that position, you say catching a kick, ride from the mouth of the mine to the man unloading station in that position?

A. Yes, sir.

Q. You say they put the bars in when?

A. I would say about a year ago.

Q. About a year ago?

A. I think so.

Q. Before they put the bars in how did the men that were down at the lower end of that skip, as it was going down the slope, what means did they use to keep from being crushed?

A. They would be down back against the back end of the skip and they would hold up, and, of course, each man would hold up all the could to keep from mashing. They would hold to the side with one hand.

Q. What about those in the middle, what did they hold to?

A. Those in the middle couldn't do anything—

Q. Was there three seated cross ways?

A. Three or four.

Q. And the three at the lower end had a kick on the end of the skip, is what you testify?

A. In other words, they would be at the back end, and they would have a place against it.

Q. Show the judge up there on the board.

A. If I was on the back end, I would get a kick like this and hold up, and some others would lean against me, and I would hold against him and hold up.

Q. You three men would have your backs against the lower end of the skip?

A. Yes, sir.

Q. Well, suppose you were an end man. There would be three of you. You would be in the middle?

A. That is right.

Q. All the way up the skip from the lower end to the top end, was there anything for that middle man to grab against so his weight would not be coming down on the middle man that had the kick?

A. No, sir.

Q. The men on the side, was there anything for those men to take a kick on?

A. Yes, sir, there were three slats of iron, about one by four and they would catch to that and hold,—take a brace on the lattice and hold up.

Q. You mean there was lattice work on the floor so when they started down these steep places they could hold against that?

A. Yes, sir; they could brace with their feet.

Q. During the time you were working there from October 24, 1938, to May 1, 1941, in going in, did you ever see anyone who was mashed or injured on that skip you have described?

A. Yes, sir, I did.

Q. Who did you see that was mashed or injured?

A. Mr. Eady got a couple of ribs broken.

Q. Now, when did Mr. Eady get a couple of ribs broken?

A. Now, that was just before or a short time after they put those banisters across, if I make no mistake.

Q. You call them banisters; it is those two inch bars you are talking about?

A. Cross pieces.

Q. All right. Who else got hurt?

A. Mr. Kendrick fell one afternoon as he went to get in the skip.

Mr. Burr:

I didn't get that name.

The Witness:

Kendrick.

Q. What Kendrick was that?

A. Rufus Kendrick.

Q. Did he fall getting out of the skip or getting in the skip?

A. Getting in the skip.

Q. In getting in that skip do you enter from the sides or ends, or do you jump down in it?

A. We enter from the door. There is a steel door. It is on hinges, and you can pull it back open and step up into the end of the skip and go down all the way down to the bottom.

Q. Now, how far is it you ride on that skip going into the mine?

A. Well, I judge it would be about 2500 feet.

Q. How many minutes does it take from the time the skip starts moving until the time it stops at the main man unloading station?

A. I would say around six minutes,—five or six minutes.

Q. When you start off at Raimund, who starts the skip?

A. Well, you first come into the bull pen—

Q. When you first what?

A. Come into the bull pen up at the tally house—you walk down and come into the bull pen.

Q. What is the bull pen?

A. It is a place underground we have got bannisters up, walled off for us to go in there to catch the skip. You are counted out of these into the slope and you walk down the slope about 100 feet, I would say, and catch the skip.

Q. Is that bull pen fences in?

A. Yes, sir. It is underground. There is a partition there and a place here for the white and a place there for the colored.

Q. Does every person that works in the mine have to go through that bull pen before he gets to the skip?

A. He does.

Q. Now, when he get into the bull pen, you said something about somebody counting them out.

A. Yes, sir.

Q. Who counts them out?

A. The mine foreman or assistant mine foreman counts them out.

Q. And when he counts them out does he give any directions to the skip tender, or chainer? Which do you have out there, a skip tender or chainer?

A. We don't have none.

Q. You don't have either one?

A. No, sir.

Q. When the mine foreman or assistant mine foreman counts the men out, where do they go?

A. They go down and get on the skip.

Q. How do you get the skip started?

A. The last man on the skip shuts the door. He has a rapping stick, and somebody reaches over and raps it off.

Q. Has that system obtained since October 24, 1938, to May 1, 1941, or taking them in the bull pen and the mine foreman or assistant mine foreman counting them out into the skip?

A. Yes, sir.

Q. Now, after you have gotten your carbide and reported to the timekeeper—

A. We don't get carbide.

Q. I mean your light. After you have gotten your light and reported to the timekeeper, and before the mine foreman counts you out through the bull pen, did you ordinarily have any dealings of any sort with the mine foreman or assistant mine foreman as you were going into the mine?

A. Yes.

Q. Well, now, what would be the occasion for your conversation or dealings with the mine foreman or assistant mine foreman before you went in the mine?

A. Well, I would look on the board and see if I had a crew, or if any of my muckers were off I would ask for another man.

Q. Who would you ask?

A. The mine foreman.

Q. Well, did he tell you before you got on the man trip or wait until you got down in the mine and tell you?

A. Tell me before I got on.

Q. All right. Did you ever have any questions to discuss with him before you went through the bull pen?

A. No; that was about all unless something happened to the place or something like that.

Q. What do you mean by something happening to your place?

A. Well, probably had a fall in it, something like that.

Q. Would he tell you about that?

A. Yes, sir.

Q. What was the rule and custom,—if you had a fall in your place on the day shift, did you leave word with the foreman so he could tell the night shift that followed you, and if the night shift man had a fall, did he leave word with the mine foreman or assistant mine foreman so he could tell you about it?

A. Yes, sir; he would leave word if my place didn't work.

Q. What about needing any tools of equipment? Did you ever pick up any of that on top and take it down with you?

A. We bought our tools outside.

Q. Well, what tools did you buy?

A. Our shovels and picks and rock hammers is about all we had to use.

Q. After you bought them outside how did you get them down to the place where you were drilling or blasting?

A. I would get a requisition from the mine foreman and go to the supply house and get them and bring them back and carry them down with me.

Q. Did you have to buy any powder out at Raimund?

A. Yes, sir.

Q. Did you buy that underground or on top?

A. I bought it underground.

Q. How far did you go from the man unloading station before you got to the magazine where you got your powder?

A. Well, there was different magazines. They were located in different sections of the mine, and the magazine I got powder from was located at 103 motor pit for a good long time.

Q. Would you get your dynamite at any particular time?

A. We had a certain hour to get it,—from 11 o'clock until 12 o'clock.

Q. Now, what about your drills and wedges and hangers out at Raimund; where did you get those?

A. Well, I didn't have to get those. My crew got those.

Q. Now, with a man-loading crew you didn't need any hangers?

A. No, sir; not with a hand mucking place.

Q. And what time in the shift did your crew get the wedges that they would need?

A. They would get them every morning.

Q. Well, now, the drill bits?

A. I got those every morning.

Q. Well, did you need wedges if you didn't have a mechanical loader?

A. No, sir.

Q. Now, you had a bull pen at the top of this main slope. Did you have one at the bottom?

A. Yes, sir.

Q. Well, when you were on the way out,—

A. We had two bull pens at the bottom.

Q. You did? And how did the men go through the bull pen at the bottom on the way out?

A. Well, at the foot of the hill—what they call the foot of the hill at Number 1, we would come down what they called the steep going where those steps is at and come on into the bull pen and we would stay there until the man trip come.

Q. Are you talking about the man trip that carried you up to the mouth of the mine?

A. No, sir.

Q. Now, I haven't gotten over, Mr. Butler, to that other haulage way down underground. I am talking about the man trip that came down that main slope.

A. Well, we walked in the morning all the way in to the work.

Q. Sir?

A. We walked in the morning all the way into the work, but we would ride part of the way back in the afternoon.

Q. Yes, Mr. Butler, but what I am talking about now, I am talking about the ride down the main slope, and you coming out from the bottom of the main slope, and I am talking about the bull pen, if there is one there, at the bottom of the main slope ~~where the~~ man trips stop.

A. Yes, sir.

Q. Is there one there?

A. Yes, sir.

Q. How are the men worked through that bull pen?

A. Well, there is a right hand bull pen and a left hand bull pen. The whites are on the right and the colored on the left. Coming off the bull pen—

Q. Is there anyone there to control you as you come off the skip?

A. The mine foreman.

Q. Does he call them out as he does on top?

A. The same way.

Q. And when he has counted out enough, what does he do?

A. He says, "That is enough," and sticks up his hand and nobody else goes out.

Q. When, from October 24, 1938, until May 1, 1941, did the first one of those man trips start out from that first bull pen at the foot of the slope?

A. I would be afraid to say as to the first one. I can only speak for the one I caught.

Q. Which one did you catch?

A. I would say anywhere from 15 minutes to four until four o'clock.

Q. All right.

A. I will say anywhere from 3:30 to four o'clock. If I had good luck and got through I would get over there by 3:30 and start up.

Q. Now, after you passed from the hoodlum, how did you get, from October 24, '38, up to October 1, 1941, to your working place?

A. Walked.

Q. How far would it be?

A. Just about two miles, I would say.

Q. Would it be on level ground or down dale or how would it be?

A. It would be part up grade and part down hill.

Q. Is the place where you are working the one that has that 107 steps in it?

A. Yes, sir.

Q. Did you, in your travel, climb those 107 steps?

A. Yes, sir.

Q. Were they wet or dry?

A. They were wet.

Q. Now, in this mine you were in out there, has there been with reference to walkways, stopes, man ways, haulage ways,—are those mines in the same general shape and condition during the month of July that they were during the month from October 24, 1938, until May 1, 1941?

A. Well, practically.

Q. Now, then, after you climb 107 steps, do you then have to climb any more steps?

A. No; that is all.

Q. Well, now, on your way out in the evening do you get a ride?

A. We did up until May 1st; we got a ride part of the way.

Q. Well, where did the ride start and where did it end on the way out?

A. Well, it would start along about the bottom of those steps. There was another bull pen there we come over to and get into the bull pen and catch the locomotive motor and it would pull us over to Number 2 in the evening going back.

Q. Was that locomotive motor a motor that had been hauling ore?

A. Yes, sir.

Q. Did they have a regular schedule whereby, when you arrived at your bull pen near the steps, that you would know the exact time you would be able to step on that man trip and go out?

A. Well, it wasn't a regular schedule.

Q. Well, did you ever arrive there during those three years and have to wait any length of time before you could get your ride?

A. Yes, sir, I have waited as high as thirty-five and forty minutes.

Q. While you were waiting for the ride, what would the cars you were going to ride on be doing?

A. The cars I was going to ride in would be over in the side track. They wouldn't put them over until the run was over.

Q. What do you mean by a run?

A. After they had hauled all the ore they were going to haul that day they would pick up those cars over at Number 2 and bring them down to Number 1 and we would get in the man cars.

Q. And after you would get in the man cars you would be carried how far?

A. About one mile.

Q. And after the man cars let you out on that trip, how far did you have to walk before you got on the skip that took you out?

A. I would say about four or five hundred feet.

Q. During this time, from October, '38, up until May 1, 1941, did anybody come through the mine taking your time—

A. No, sir.

Q. Down in the mine?

A. No, sir.

Q. How were you paid?

A. I was on tonnage, tonnage rate.

Q. Now, what rate did you get a ton for your work?

A. Well, it run from 24 to 36 cents a ton, different rates—different places—different widths of places would have different rates.

Q. Which carries the higher price?

A. The narrow widths.

Q. The narrow work?

A. Yes, sir.

Q. And from October, '38, to May 1, 1941, were you paid all the time on a tonnage basis?

A. I was.

Q. Now, suppose you produced twenty tons on a shift and your pay was made,—how many tons would you get paid for?

A. Twenty tons.

Q. Suppose you produce ten tons; how many would you get paid for?

A. Ten tons.

Q. Did the number of tons that your crew produced always determine the amount of your pay?

A. That is right.

Q. Well, suppose you didn't get out any tonnage at all?

A. Didn't get no credit.

Q. Well, did you have any times down there during the past three years where you didn't get out any tonnage?

A. Yes, sir.

Q. Did you have any days where neither you nor your crew made any money at all?

A. Yes, sir.

Q. Did that occur very often?

A. Well, not often.

Q. Well, in your work did you have good days and bad days?

A. Yes, sir, I did.

Q. Now, the men on your crew, were they paid on a tonnage basis too?

A. They was.

Q. How often have those tonnage prices changed since October 24, 1938, up to May 1, 1941?

A. They haven't changed.

Q. They have been the same?

A. Yes, sir.

Q. Now, what did the muckers that worked with you get a ton?

A. Forty-two cents,—42½ cents a ton.

Q. Well, how did you know which mucker had shoveled the most ore?

A. Each mucker had a number of his own, a check number, his number,—

Q. Yes.

A. —and he had one of my numbers and one of his numbers.

Q. Yes.

A. When he would load a car he would put my number on it and also his number. The scale man could tell by the numbers whose ore it was.

Q. Suppose you had three-fist muckers and they brought you three cars in a trip,—suppose you had two fist muckers and they brought you three cars in a trip and—

A. Yes, sir.

Q. —say Bill Smith loads the first car,—

A. Yes, sir.

Q. —and Tom Jones the second one.

A. Yes, sir.

Q. Then what would they do? Did they sit still?

A. No, sir, they split.

Q. How would they tell who would get credit?

A. Each one of them would hang his number on the side and the weighman would divide that tonnage with them, and they would also hang my number on there.

Q. Now, before May 1, 1941, when, as to the hour of the day, would you start drilling?

A. Well, I would usually start around 8:30, 8:00, 8:15 or 8:30,—as soon as I could get in and get my place quarried out, get my hose pipes drug up. It would take me about an hour and a half to get started.

Q. And when would you shoot?

A. Three o'clock.

Q. Now, since May 1st, when do you actually start your drilling?

A. About eight or 8:15.

Q. And when do you shoot?

A. 1:15.

Q. Now, did—was there any rule of the company before May 1st with reference to the time of the day you could do your shooting?

A. There was.

Q. Suppose you had sharp drills and good air and drilled your holes quickly and were through drilling and were ready to shoot at 1:00 o'clock, before May 1st could you shoot then or did you have to wait until the 3:00 o'clock time?

A. I had to wait until 3:00.

Q. In your walking into the mine and out of the mine could you stand up all the time, stand up straight?

A. No, not all the way.

Q. How many places would you say you had to duck your head?

A. Well, there were several.

Q. Well, how about the trolley wires in Raimund? Were there any places where you had to watch out for trolley wires?

A. Yes, sir.

Q. How many of these would you say you passed during those three years?

A. Well, back in the workings, in the headings, and on the haul ways, in the haul ways from the place back from 87 practically you had to watch all the way over. If you didn't you would butt into it.

The Court:
Do what?

The Witness:
Butt into it, hit it with your head.

Q. Now, ordinarily, during those three years before May 1st, were you drilling right up to three o'clock or ordinarily did you finish your drilling before three o'clock?
A. Ordinarily I would have drilled all I wanted to drill by twelve o'clock.
Q. And then what did you do from twelve o'clock until three?
A. Just fool around.
Q. What?
A. Just fool around,—wait until shooting time.

Mr. Harris:
You can take him.

Cross Examination.

(By Mr. Burr):
Q. Mr. Butler, you mean that ordinarily you would get through your work by twelve o'clock and then just fool around?
A. That is correct.
Q. Didn't have any drilling or loading or anything else to do and you would be through?
A. No, sir; I could get my drilling, what amount of drilling I wanted to do, by twelve o'clock,—11:30 or 12:00 and drag my outfit out to a safe place.
Q. By that time your work was over, by twelve?
A. Yes, sir.

Q. And from that time on you talked and entertained the boys?

A. Yes, sir.

Q. And did as you pleased?

A. Yes, sir.

Q. You started to work at the face during that time about 8:15?

A. I would be ready to go to drilling about that time.

Q. About 8:15?

A. Yes, sir.

Q. All right. How long did you say you had been working for the Republic Company, since 1936?

A. Since '36, that is right.

Q. You have been working in that same mine all the time?

A. That is right.

Q. Been working in the same place or have you changed places?

A. I have changed places.

Q. About how many places have you worked in there since you started working there?

A. Let me see.

Q. Can you remember where they are?

A. I first worked in 102, ninth stope.

Q. 102, ninth stope?

A. I went to 102, 11th stope.

Q. That is a stope in the same heading?

A. No; that is a stope above.

Q. All right, sir.

A. I stayed in that place, I would say, eight months.

Q. All right.

A. I went from there to 101, 31st stope.

Q. And stayed there about how long?

A. I worked that place out in about four months.

Q. When that place was worked out where did you go next?

A. Come back to 101, 28th stope.

Q. And how long before you worked that out?

A. I worked it out in about four months.

Q. All right, sir.

A. Then I come to 101, 27th stope, if I make no mistake. I believe that was the number.

Q. And you stayed there about how long?

A. About three or four months in that place.

Q. It looks like it took you about that long to finish a stope?

A. Yes, sir.

Q. All about the same length of time?

A. Yes, sir.

Q. All right, sir.

A. Then I moved around in 101 cross, I believe they call that place, to 36 stope.

Q. Take you about the same time to work that out?

A. Practically.

Q. About four months?

A. Yes, sir.

Q. Anywhere else up to about May 1, 1941?

A. Then I worked out three stopes in this section, 101 cross.

Q. You have been practically all the time in 101?

A. And 102, yes, sir.

Q. So your way of getting to the place of work from the top of the mine has been substantially the same?

A. That is right.

Q. Sometimes you have had to go a little further?

A. That is right.

Q. But that is the only difference, you have gone the same way?

A. Yes, sir.

Q. Everything you have done has been pretty much the same?

A. That is right.

Q. The mining has been systematic and regular?

A. Yes, sir.

Q. The tally house—what you call the tally house is the little house they have at the entrance of the mine?

A. That is right.

Q. And I believe you say what you do there, you hand in your check number?

A. Yes, sir.

Q. Now, the man that get it is a tally man?

A. Timekeeper.

Q. Does he keep your time?

A. Yes, sir.

Q. All he does is indicate whether or not your check is handed in; isn't that all he does?

A. No; he works in the time office.

Q. Do you know he keeps the time you are in the mine?

A. Tonnage time.

Q. Tonnage time?

A. Yes, sir.

Q. In other words, he gets the tonnage as it comes out?

A. He gets the tonnage sheet when it comes out.

Q. That is what you get your pay on?

A. That is right.

Q. As far as going in the mine, you hand him your check number?

A. That is right.

Q. That is all that is done there?

A. Yes, sir.

Q. I believe you said by looking at your board you could see whether you had a vacancy in your crew?

A. That is right.

Q. Sometimes you knew without looking at the board?

A. Yes, sir.

Q. Somebody might have told you he would be away?

A. Yes, sir.

Q. Fishing or sick or such a matter?

A. Yes, sir.

Q. And you would tell the mine foreman you had a vacancy?

A. Yes, sir.

Q. Has he at times called your attention to a vacancy if he noticed it first?

A. Yes, he has.

Q. In other words, the main thing is to get you a man?

A. Yes, sir.

Q. Does he supply you a man?

A. If there is one he can get, he will say, "Go over to Mr. Butler's crew."

Q. If there isn't one there, he will phone down below and get a man off the service crews?

A. No, sir. We don't use no service men in hand mucking.

Q. He will get a man somewhere?

A. Yes, sir, there will be one show up.

Q. Show up down at your place later on?

A. Yes, sir.

Q. How long have you been mining?

A. I went—

Q. In other words, with other people? How long have your been a miner?

A. I started to mining in 1916.

Q. Went to mining in 1916?

A. Yes, sir.

Q. Worked in various mines?

A. Yes, sir.

Q. Worked in Shannon, Mines?

A. Yes, sir.

Q. Shannon was the mine they had in Shades Valley?

A. Yes, sir.

Q. Went down in a shaft?

A. Yes, sir, a pitch.

Q. And when you got to the bottom you turned off to your various headings?

A. Yes, sir.

Q. Do you recall how long that shaft was?

A. Three thousand feet.

Q. When you worked at these other mines, were they slope mines?

A. They were slope mines.

Q. At all the mines you ever worked at it would be the business of the miner to furnish the lamps, whether it was carbide or electric lamps?

A. No,—we furnished carbide, but we never furnished no battery lamps.

Q. But your furnish your light?

A. Yes, sir; I bought a light.

Q. You got your carbide wherever you pleased?

A. Yes, sir, with the exception of Gulf States Steel. They gave us the carbide.

Q. The Gulf States Steel?

A. Yes, sir.

Q. Over at Shannon?

A. Yes, sir.

Q. The only difference between the carbide and electric lamp, the company rents you a light?

A. Yes, sir.

Q. Was that done at Woodward—the only place you have rented lights has been at Raimund?

A. That was the only place.

Q. That was the only place?

A. Yes, sir.

Q. You always got your light; had to have it to work in the mine?

A. Yes, sir.

Q. Can't work down there in the dark, can you, Mr. Butler?

A. No, sir.

Q. In the same way you furnish your clothes and shoes?

A. I do.

Q. I believe you say over at Raimund you bought your shovels and picks and things of that kind?

A. Shovels and picks and hammers and Stillson wrenches.

Q. Bought your tools, picks, shovels and hammers and wrenches?

A. And wrenches, yes, sir.

Q. I believe you said when you wanted to buy anything you would get a requisition and go to the supply house?

A. That is right.

Q. Did you always get it at the supply house when you were working for the company?

A. I did.

Q. Did you always go there and get it yourself or send one of your muckers, one of your men?

A. I have gone and gotten it myself and sometimes I sent my muckers.

Q. Just whichever was most convenient to you?

A. Yes, sir.

Q. You couldn't get into the supply house in the morning until the supply house opened?

A. No, sir.

Q. You would get them and take them to your men?

A. Give them to my men.

Q. Give them to your men up there and they would carry them up there?

A. Yes, sir.

Q. That has always been customary?

A. Since I have been there.

Q. And customary at other places where you have worked? That has been the practice in the district where you have had to get those tools always?

Mr. Harris:

We object. He can't tell what has been the practice always. The Tennessee Company—

A. At the mines where I have worked.

Q. I am talking about your work, Mr. Butler.

A. Yes, sir.

Q. I am not asking you about anything else.

You get your powder at the underground magazine station?

A. Yes, sir.

Q. And the caps, I suppose, you get them there too?

A. Yes, sir.

Q. And the underground magazine stations are moved as the mine progresses over at Raimund?

A. This mine at Raimund, it hasn't been moved up from 1936 up until May 1st.

Q. They are moved every now and then?

A. They have moved them since May 1st.

Q. I believe you say you got your dynamite and caps, powder, supplies,—there was a regular hour you sent for them?

A. Yes, sir.

Q. Between 11 and 12?

A. Yes, sir. I would go or send a man.

Q. That was during the regular shift?

A. Yes, sir.

Q. Between 11 and 12?

A. Yes, sir.

Q. Did you have any wedges when you were hand mucking?

A. No, sir.

Q. You didn't have any drill when you were hand mucking?

A. I had the big drill.

Q. You didn't have the small drills?

A. Jackhammer drill.

Q. You didn't have to put in hangers for the mechanical loader?

A. No, sir.

Q. The only drills you used were the tripod drills?

A. The tripod drills.

Q. Now, the way you described it going down the man skip in the morning with the exception of these pipe that they put up there,—I believe you said three in the car, was that right? I don't recall.

A. That is correct.

Q. With the exception of those three pipes, the practice has been the same all the time since you have been there?

A. That is right.

Q. In other words, you have been riding down the same way, going down the same way?

A. That is right.

Q. You said something about Mr. Kendrick getting hurt there once.

A. Yes, sir.

Q. That is Mr. Rufus Kendrick?

A. Yes, sir.

Q. He weighs close to 390 pounds, doesn't he?

A. I don't know how much he weighs.

Q. Great big man?

A. Big man.

Q. Did he get hurt getting in the skip or getting out?

A. Getting in.

Q. Were you there when he got hurt?

A. No, sir.

Q. Then you don't know—

A. I saw him afterwards.

Q. You saw him afterwards. Did he sprain his ankle?

A. He said he slipped and dislocated his shoulder.

Q. Were you there when Mr. Eddy got hurt?

A. No, sir.

Q. You are responsible—in going down—you are the boss of your crew up in the stope, aren't you?

A. I am.

Q. And outside of the few times the mine foreman or assistant mine foreman might come around to inspect your work during the shift always you are in sole charge there?

A. Yes, sir.

Q. You are there most of the time by yourself, you and your crew?

A. Yes, sir.

Q. You have to be responsible for the work and are responsible for the work?

A. Yes, sir.

Q. And if you get short of a shovel or get short of dynamite, you can send your men wherever you want and get it?

A. If you get short of a shovel you have to buy it outside.

Q. Would you send a man out to get it?

A. No, sir.

Q. You would wait until the next shift?

A. Yes, sir.

Q. Is there any stuff you have to send out for?

A. No, sir; there is nothing I have to send out for.

Q. If a shovel breaks you go on and use what you have got?

A. Yes, sir.

Q. And—

A. I have drill steel, four, six, eight and ten.

Q. I see.

A. If I break them, I have to go back to the drill shop—

Q. Do you send them or go yourself?

A. No, I usually go myself. If I stop them I stop the pay.

Q. You go yourself?

A. Yes, sir.

Q. Do you have a driller?

A. No, sir, I am the driller.

Q. You would go yourself?

A. Yes, sir.

Q. Leave somebody in charge?

A. If I have—if I am on a mechanical loader I would have a drill helper.

Q. When you were hand loading—

A. The muckers would stay there and muck on during that time.

Q. How many muckers did you have at that time?—

A. I had anywhere from three to four, just whatever I needed.

Q. Well, as the contractor in charge of these stopes wherever you worked, if you got hurt or any of your men get hurt, it was your duty to turn in an injury slip?

A. It was their duty to turn in their own slip.

Q. You would turn in your own slip?

A. Yes, sir.

Q. To the mine foreman?

A. Yes, sir.

Q. Have you ever turned in a slip for any injury?

A. Yes, sir.

Q. What was that?

A. Well, one day I was sticking a hanger and the hammer glanced and hit me—

Q. Was that at your working place?

A. Yes, sir.

Q. I don't care about that. Did you ever turn in any injury for yourself while you were riding down in the skip?

A. No.

Q. Or while you were walking the steps or haul ways?

A. No, sir.

Q. So far as you know did any of your men ever get hurt riding the skip and turn in any injury slip for it?

A. No.

Q. So far as you know, did any of your men get hurt walking down the steps or haul ways and turn in any slip for it?

A. No.

Q. You heard of Mr. Eddy and Mr. Kendrick—

A. I saw them myself.

Q. After they were hurt?

A. Yes, sir.

Q. Mr. Eddy was the mine foreman?

A. I said Eady. He was a service foreman.

Q. Mr. Kendrick was some other sort of workman?

A. He was a steel sharpener underground.

Q. Mr. Kendrick, I believe, was president of your local during a large part of this time; is that the same Kendrick?

A. Not since I have been there.

Q. All right, sir. I want to ask you about this thing you call the bull ~~pen~~.—The first bull pen you said anything about was up at the top near the entrance of the mine?

A. That is right.

Q. Is that just before you go into the mine?

A. It is after you go into the mine.

Q. After you go into the mine?

A. Yes, sir, it is—

Q. That is a fence or gate of some kind?

A. No. Just say inside those banisters (indicating in Court room) would be the bull pen and that gate would be where you would go out on the slope.

Q. I see. And they used that to see there were not too many on a slip at the time?

A. That is right.

Q. And that is all it was used for?

A. That is right; that is all.

Q. It was a protection against the weather too, wasn't it?

A. Protection against the weather, yes, sir. We could go in there.

Q. Got you out of the rain if it happened to be raining?

A. Yes, sir.

Q. That is what you mean by Mr. Harris' repeated questions of counting you in or counting you out?

A. That is right.

Q. The mine foreman or assistant mine foreman, as you say, after he saw there were sufficient come in there to ride, would shut the gate?

A. Yes, sir.

Q. He would let you in as you stood there?

A. No.

Q. What?

A. You would have to get in line.

Q. Just like when you are lined up at a mess hall, you take your plate, and come around, or a cafeteria where you get in line and come in?

A. Take your turn.

Q. That is the same thing that happens down below?

A. That is right.

Q. Same kind of a bull pen?

A. Yes, sir.

Q. They did, at that mine, have a place for the colored and a place for the white?

A. Yes, sir.

Q. And had a dividing place along the rail?

A. That is true.

Q. You didn't go down with your crew; you caught different skips?

A. Yes, sir.

Q. Different people rode down on different skips and rode out on different skips?

A. Get the one you caught; yes, sir.

Q. Where did you get with your crew; generally up at the stope where you worked?

A. Yes, sir.

Q. They would find you there or you would find them there?

A. Sometimes one way and sometimes the other.

Q. Just depending on what skip you caught?

A. Yes, sir.

Q. Just go on—

A. They would go ahead most of the time and drag the pipe line—

Q. That was not right there at the face?

A. No, sir.

Q. You quarried the face?

A. Yes, sir; I worked right at the face.

Q. Did that for your own protection?

A. Yes, sir.

Q. After the mine foreman or assistant mine foreman got a skip load, they generally designated someone to handle the skip?

A. No, sir.

Q. Just anyone?

A. Just anyone. They would say, "Rap it," and they would rap it and away she would go.

Q. The skip had a safety catch on it?

A. At Number 2.

Q. This skip that has got a top on part of it, did you ever ride in that?

A. I have since May 1st.

Q. You didn't before May 1st?

A. Yes, sir.

Q. In other words that skip didn't exist until they made changes under this May 1st ruling?

A. Yes, sir.

Q. And they are using it temporarily, or do you know about that?

A. I don't know about that temporarily.

Q. Now, you know this skip here, Exhibit Number 31, which has been presented in evidence; that is out at this new place. What slope is that?

A. That is Number 1.

Q. And previous to May 1st everybody went down Number 2?

A. Yes, sir.

Q. And previous to—since May 1st it has been used at Number 1?

A. Yes, sir.
Q. Wasn't used before May 1st?
A. Not for hauling them in.
Q. It was an ore skip and used for that purpose then?
A. Yes, sir.

Mr. Burr:
Judge, I think I am nearly through.

The Court:
All right.

Q. Now, in riding out of this place you were telling about, did you say you rode from the foot of the hill?
A. Yes, sir.
Q. From the foot of the hill? That was down in the mine, not in main slope?
A. That was on the main haulway, not on the main slope.
Q. Not on the main slope?
A. No, sir.
Q. As I understand, those of you that used it walked down into the mine?
A. Walked down and got in a bull pen—
Q. That is coming out?
A. Yes, sir.
Q. You don't ride at all going in?
A. No, sir.
Q. You walk in?
A. Yes, sir.
Q. And coming out you get to this place—what do you call it?
A. All I know is the mule lot.
Q. What?
A. When we get down the steep to the mule lot.
Q. That is a locomotive?
A. Yes, sir.

Q. A lot of the men walk out instead of riding out?

A. They walk rather than wait.

Q. Some of them walk out after the man trip is there?

A. No; they wouldn't walk then.

Q. Isn't it a fact most of the time they walk out instead of using the man trip?

A. Well, for a long time they didn't run the man trip regularly. They did run two, and then cut down to one.

Q. Wasn't that because the man didn't use it?

A. The company didn't run it on time.

Q. They walked out?

A. They got in that bull pen and couldn't get out and would have to stay until the run was over.

Q. Didn't the grievance committee, of which you were a member, take that up with the company and request them to change the schedule?

A. We did take it up.

Q. Did they change the schedule?

A. They would run it for a week and then run late.

Q. Then you would take it up with them again?

A. We took it up about twice.

Q. And then they would get late again?

A. Yes, sir.

Q. And you would take it up again?

A. No, sir.

Q. Do you recall how far back that has been?

A. I couldn't say.

Q. Just about?

A. The last two years.

Q. Would you say it was as far back as a year?

A. I wouldn't be positive—

Q. Just your best recollection. I don't want you to be positive.

A. It could have been over a year. I am certain it was over a year ago.

Q. You are still using the same way of going in and out of the mine?

A. No, sir. It is walking all the way out now.

Q. It is walking all the way out now?

A. Since May 1st.

Q. I mean coming out now, do you walk out the same way you used to walk in?

A. No, sir.

Q. How do you come out?

A. We come the first man way, Number 1. The men come that way, and the other men go out over 83 hill, Number 2.

Q. Are their walk ways the same as they were previous to May 1, 1941?

A. No. This walk way used to go that way, but it had been condemned and they had a fan house—

Q. They have fixed it up and use it as a walk way?

A. They use it.

Q. Are the walk ways you walk on now any smoother than they were before May 1, 1941?

A. This south man way is not as smooth.

Q. It is even worse than it was before May 1, 1941?

A. I wouldn't say—

Q. Not any better?

A. Not any better.

Q. The steps are not any steeper?

A. No, sir.

Q. The steps are not any steeper than before May 1, 1941?

A. They haven't been there long.

Q. About how long?

A. About a year.

Q. Those steps were put there on account of a fault?

A. Yes, sir.

Q. Do you know yourself how big that fault was or how thick it was?

A. I do not.

Q. But after that fault was struck, why, in order to get over into the ore—Let me have a picture of those steps.

The Court:
Exhibit 39.

Q. Now, those steps, you say, have been there about a year, you think?
A. That is about right.
Q. Are those wooden steps or concrete steps or what?
A. They are concrete steps.
Q. They are concrete steps?
A. Yes, sir.
Q. Have they got a railing on the side?
A. They have.
Q. And you walk up and down them?
A. Yes, sir.
Q. They walk up and down them?

The Court:
About the only way you could walk, isn't it?

Mr. Burr:
Yes, sir, that is what I say.

Q. On account of the fault, you couldn't get over—
A. The main haul way, slope A, is over here about thirty feet to the left.
Q. Could you travel it?
A. We did use it.
Q. What is that haulage way?
A. That is where all the ore goes down.
Q. Does it run pretty regularly when they are hauling the ore?
A. Yes, sir.
Q. It is against the rules of the company to walk on the main haulage way?
A. That is correct.
Q. That is for the safety of the men?
A. Yes, sir.

Q. Now, you say you have been paid on tonnage since you have been a contractor and that there are some days where you would not be able to get any tonnage and, therefore, didn't get any pay, you and your men:

Mr. Butler, when there is a rock fall or anything of that sort and you are not able to work at producing ore, you are paid by the hour, aren't you, for cleaning up stuff of that sort; that is true, isn't it?

A. Yes, sir.

Q. Now, I just want to have some idea of—What is your—what has been your average earnings down there, say, per month, during the past two years, net to you?

A. Oh, I wouldn't—I might say a hundred and fifty dollars a month.

Q. Well, is that your best judgment of what it is?

A. That is correct.

Q. Net to you a hundred and fifty dollars a month. What is the average earnings of—your muckers all get the same?

A. Yes, sir.

Q. Everybody in your crew except you get the same?

A. Yes, sir.

Q. What is the average earnings per day of your muckers?

A. I don't know.

Q. Have you got any judgment about it at all?

A. I wouldn't say.

Q. Isn't it four or five or six dollars a day?

A. Some of them make four or five or six dollars a day.

Q. Isn't it averaging about that?

A. I wouldn't say about their average, because I don't have anything to do with their time or pay whatever.

Q. I see. Now, never in your experience as a miner since you have been mining in Alabama,—you have never received any pay for the time you spent in traveling to and from the place where you produced the ore, have you, Mr. Butler?

A. I have not.

Q. And the custom and practice in all the mines you have ever worked in during all that period of time has always been not to pay the men for any time spent in traveling to and from the place where they produce the ore?

Mr. Harris:

We object to that question in that form for the reason the evidence affirmatively shows he has always worked on a contract basis, so the question of travel time while he was working on a contract basis, before the Wage and Hour Law went into effect, wouldn't have anything to do with it.

Mr. Burr:

Yes, it would, Your Honor.

The Court:

Overrule the objection.

Mr. Burr:

Answer the question.

A. What is it?

Mr. Burr:

Read it, Mr. Carr.

(Thereupon the reporter read the question last propounded as above recorded:)

Mr. Harris:

Same objection.

The Court:

Overruled.

Mr. Harris:
Except.

A. Yes, sir.
Q. That is true?
A. Yes, sir.
Q. Have you ever worked in any other mines other than the ore mines in Alabama?
A. I have worked in the coal mines.
Q. You have worked in the coal mines?

Mr. Harris:
We object to the coal mines.

Mr. Burr:
I want to ask him and get it in the record.

Mr. Harris:
Don't answer any questions until I object.

Mr. Burr:
I want to go up and ask him a few private questions.

The Court:
All right.

(Thereupon Mr. Burr whispered to the witness.)

Mr. Burr:
We offer to ask him, if Your Honor please, the same general questions I have asked other witnesses in reference to conditions in these coal mines right here.

Mr. Harris:
We object.

Mr. Burr:
Showing he has worked in coal mines and ore mines and vice versa, and we offer to make the showing. I will not set out the showing at length. I can tell you what he told me.

Mr. Harris:
What is the use of whispering and then blabbing?

Mr. Burr:
What is that?

Mr. Harris:
What is the use of whispering and then blabbing?

Mr. Burr:
I don't—

Mr. Harris:
I will withdraw the word, "blabbing" if you don't like it.

Mr. Burr:
I can put it in a showing.
I whispered to Mr. Butler to protect him.

The Court:
I will sustain the objection.

Mr. Burr:
We except in the same way we did before.

The Court:
Yes, sir.

Q. Did you ever work in any other area or mine other than in Alabama?
A. Not other than Alabama.

Mr. Burr:
That is all.

Re-Direct Examination.

Mr. Harris:
I can finish in two or three questions.

(By Mr. Harris):

Q. These hundred and seven steps were put up about a year ago, you say?

A. Yes, sir.

Q. Did the men climb that steep place before the steps were put there?

A. Yes, sir. They had a cable.

Q. They had a cable they caught hold of and pulled themselves up?

A. Yes, sir, and they had some ties. They were not uniform.

Q. I can't hear you.

The Court:
Talk louder.

A. They had some ties spiked across there and you could get up those pretty fair. It was full of rocks and water running over it all the time.

Q. Suppose you had drill steel and hose pipe—

A. You didn't get it below the place. We got it above.

The Court:
I don't understand the cable. Did it pull you up?

The Witness:
No, sir, it was stationary.

The Court:
You pulled up by it?

The Witness:
Yes, sir.

Q. The service men, would they go down on the man trips with the production men?
A. They did.
Q. And come out mixed up with the production men at the same time?
A. They did.
Q. You used one phrase in connection with Mr. Burr's questions. You used two words, and then stopped—

Mr. Burr:
I don't remember interrupting him.

Mr. Harris:
You didn't do it with any malignant purpose.

Mr. Burr:
If I had stopped him, you would have stopped me.

Q. What did you mean by getting your count?
A. I mean if you were thirty and I was thirty-one, I stayed there.
Q. You mean were you counting out numbers, or was the mine foreman counting as you passed by?
A. The mine foreman was counting as you passed by.
Q. Was he counting to himself or out loud?
A. He would count 1, 2, 3, 4, and so on until he got to 30. Sometimes he would count to himself. He didn't all the time.

Mr. Harris:
That is all.

Mr. Burr:
That is all.

The Court:
We will adjourn until two o'clock.

Mr. Harris:
I do want to ask one question. Can I ask it now?

The Court:
Just a moment. Order in Court.

Q. This cable you are talking about was just a hand rail?
A. It was about an inch and seven-eighths wire cable.
Q. It served as a hand rail?
A. Yes, sir.
Q. You didn't pull up with both hands?
A. You had some footing under you you could step up, but you were liable to slip and slide.
Q. That is during the period of time you told us you hadn't been hurt in that mine at all?
A. That is right.

Mr. Harris:
That is all.

The Court:
Court is adjourned until 2:00 o'clock.

(Whereupon, at 12:30 P. M., July 29, 1941, a recess was had until 2:00 P. M. of the same day.)

After Recess, 2:00 P. M.

Mr. Harris:
I want to recall Mr. John Butler for a moment.

3001 JOHN BUTLER thereupon resumed the stand, and having been previously sworn, testified further as follows:

Re-Direct Examination—Resumed.

(By Mr. Harris):

Q. Mr. Burr asked you what you made. I show you a printed sheet of paper with printed on it, "Republic Steel Corporation, Report of Earnings for Income Tax Purposes and Receipt for F. O. A. B. Tax Deductions. Employee's Name: John Butler. Period covered: 1940."

Did the Republic Steel Corporation furnish you with that?

Mr. Burr:

Let me see that. Let me see what you are talking about.

(Mr. Harris hands paper to Mr. Burr.)

Mr. Burr:

All right.

A. They did.

Q. And it shows earnings to be reported for income—

Mr. Burr:

Well, it shows what it shows.

Q. Over at the left it has F. O. A. B. Tax, $18.40. Did they pay your Federal Old Age Benefit Tax for your?

A. Yes, sir.

Q. And did they pay at the rate of a one percent tax?

A. Yes, sir.

Q. On your net income?

A. Yes, sir.

Q. So, when it shows your old age benefit tax was $18.40, that means your income was $1,840?

Mr. Burr:
We object.

A. Yes, sir.

Mr. Burr:
It is net income he payed tax on.

Mr. Harris:
We offer that.

Mr. Burr:
We have an objection to that. I want to ask him a question or two.

Mr. Harris:
Mark that as the next exhibit number.

The Clerk:
Exhibit 21,—it is 21.

(Thereupon a sheet headed "Republic Steel Corporation, Report of Earnings For Income Tax Purposes," and covering the period of 1940, was made Defendants' Exhibit No. 21, and was received in evidence.)

Q. Now, I have another one—

Mr. Burr:
What exhibit is that?

The Clerk:
21.

Q. I have another, the same name, John Butler, period covered, 1939.

Did the Republic Steel Corporation give you that?

A. They did.

Mr. Harris:
I offer that in evidence.

The Clerk:
Defendants' Exhibit 22.

(Thereupon a sheet headed "Republic Steel Corporation, Report of Earnings for Income Tax Purposes," and covering the period of 1939, was marked Defendants' Exhibit No. 22, and was received in evidence.)

Q. In the computation of your pay did the Republic Company have charges of any kind which they deducted from your gross earnings?
A. Powder expenses.
Q. And what was the price at which they deducted powder from your earnings?
A. $1125.
Q. You mean that was, for a particular year, $1125?
A. That was for the 1940 year.
Q. Do you happen to remember how much they deducted for powder in '39?
A. No, sir; I can't recall that.

Mr. Harris:
All right. You say you want to see those?

Mr. Burr:
When you get through I want to ask him a question about them.

Mr. Harris:
I am through.

Mr. Burr:
Your Honor understands we object to the last one just like we did the first one.

The Court:

Yes.

Re-Cross Examination.

(By Mr. Burr):

Q. Mr. Butler, you got a statement every two weeks or every week?

A. A pay statement?

Q. Yes, a pay statement.

A. Every two weeks.

Q. That statement was attached to a receipt which you signed and handed in?

A. You got a statement and signed it and handed it in at the window and got your pay.

Q. You got a statement and you would take that and go to the pay window and sign the receipt and get the money that was coming to you?

A. In an envelope.

Q. Now, do you know what your net payments amounted to in the year of 1938?

A. One was $2800, one was sixteen hundred and something, and the other eighteen hundred and forty.

Q. This was all they put on there; the expenses to be reported for income tax were $2,369.29; that is all on there?

A. Yes. That was what I was cut for Federal Old Age Pension.

Q. That hasn't anything to do with this entire item?

A. That was my gross earnings without any powder.

The Court:

What is the amount.

Q. Down here, "Earnings to be reported for income tax, $2,969.76."

A. That was gross and not net.

Q. You say your net earnings was how much?

A. They gave me powder receipts for $1125, which I turned in against this when I made out my income.

Q. You turned that in against this when you made out your income?

A. Yes, sir.

Q. But your receipts will show the amount you got each pay day?

A. Yes, sir, what I drew.

Mr. Burr:
That is all.

Mr. Harris:
Come down.

(Witness excused.)

Mr. Harris:
Call Louis Tarrant.

3005 LOUIS TARRANT (C), being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):

Q. How old are you, Louis?

A. Thirty-nine.

Q. Where were you born?

A. Born in Dallas County, near Marion, Alabama.

Q. How high did you go in school?

A. Eighth Grade.

Q. Do you work for the Republic Iron & Steel Corporation?

A. Yes, sir.

Q. How long have you been working for them?

A. I have been working for them my last time since '29.

Q. '29 or '39?

A. '29.

Q. Have you ever seen that book of rules for the prevention of accidents, ore mines and quarries, Birmingham Division, Republic Iron & Steel Corporation?

A. Yes, sir.

Q. Dated November 1, 1935?

A. Yes, sir.

Q. Would you say that was the book that was in effect from '35, up to May 1, 1941, or do you know?

A. I don't know, but it was one just like that.

Q. What is your best judgment? Is that the one or not?

A. My best judgment, that is the one.

Mr. Harris:

I will ask you to mark this for identification, please.

(Thereupon a booklet entitled, "Rules for the Prevention of Accidents, Ore Mines and Quarries, Birmingham Division, Republic Iron & Steel Corporation," was marked for identification Defendant's Exhibit No. 23.)

Q. What kind of work do you do for the Republic Company?

A. I am a drill man. They commonly call them contractors.

Q. You have a crew under you?

A. Yes, sir.

Q. White or colored?

A. Colored.

Q. How many in your crew?

A. I have two men on day shift and three men on night shift.

Q. Do you work sometimes on the night shift?

A. No, sir, only day. The men work at night.

Q. Do you have charge of the night shift and day shift?

A. Yes, sir.

Q. You don't work both shifts yourself?

A. It is drilled in the day and load ore at night, and two muckers go back in the day and load the ore the other muckers don't load.

Q. Is there any other man that drills and shoots in the stope where you work or are you the only driller and shooter there?

A. I am the only driller and shooter there.

Q. What they muck at night and muck in the day time is the ore you shoot down?

A. Yes, sir.

Q. Now, on the day shift from October 24, 1938, up until May 1, 1941, what time would you reach the change house every morning?

A. I would usually leave around six o'clock, five minutes to six, along like that.

Q. Did you have any brass check?

A. Yes, sir.

Q. Where did you leave it?

A. We deposited it in the tally house on the top near the collar of the mine.

Q. All right. Where would you get your electric battery?

A. I got it right at the—Well, the tally house and battery house is all adjoining. Got it there close by where we checked in.

Q. All right. Now, then, when you got ready to go down on the trip, did the colored men get in the same bull pen as the white men or were they counted out in the same bull pen, or get in different ones?

A. We got in the same bull pen, but there was a separate compartment in there for the white and colored, the white to the right and the colored to the left.

Q. Did anybody count the colored men out as they left the bull pen?

A. Yes, sir.

Q. Who did that?

A. Usually the mine foreman,—the section foreman or general foreman.

Q. And coming back out the mine did anybody count you out of the bull pen?

A. Yes, sir.

Q. Who did that?

A. The section foreman usually would count us, —not the same one, but one of the others.

Q. How far did you have to walk from October 24, 1938, up until May 1, 1941, after you left the main man-loading station?

A. My best judgment, I would say it was around two miles,—about two miles.

Q. Up hill and down hill?

A. Up hill and down hill.

Q. When you finished shooting at the end of the day and walked that two miles back to the main man loading station, would you and your crew be dry or wet with sweat?

A. Be very hot, be wet when you would make that trip.

Q. What time did you get out on top?

A. Usually, after shooting at 3 o'clock, get out on top anywhere from 3:50 to, you might, 4:05, something in that neighborhood.

Q. What time would you say you turned in your brass check at the mouth of the mine?

A. Around six o'clock.

Q. And you picked up your brass check around 3:50 or 4 o'clock?

A. Yes, sir.

Q. Louis, during that period were you paid on a time basis or on a tonnage basis?

A. Paid on a tonnage basis.

Q. Did you have any yardage work that you did for the Republic Company on which they paid you if you were not producing on a tonnage basis?

A. No, sir; didn't pay any yardage at all.

Q. Well, suppose you had bad conditions in your stope, a rock fall, did you have to clear that up so you could work?

A. Yes, sir. Usually myself and my crew would clear that up, but if you are on that a whole day they usually pay you a day rate.

Q. Usually what?

A. If you were on it a whole day they would pay you a day rate, and if not, so many hours for cleaning up.

Q. Suppose you were on it three hours, and during that three hours you were not mining ore; would they pay you anything?

A. Usually have a drill man,—if you have a drill man, they would tell him he could go on drilling and the muckers would get it cleaned up in three hours. You can have drilling and shooting going on for the next shift, but they would pay the men that were cleaning it up,—they would pay them for three hours work.

Q. Take yourself and three men, what is your average day's work?

A. Myself and three men, they will load six cars. Myself, I will do the drilling and drill around eight hours.

Q. How much does a car hold out there around Raimund?

A. They are using steel cars now which they estimate will hold not less than four tons.

Q. So you and your two men would get around 24 tons?

A. Yes, sir.

Q. And the night men, the three muckers, what would they get a shift?

A. Usually the three muckers would get around 35 or 37 tons.

Q. All right. If, on a Monday and Tuesday night you produced 67 tons, and on Wednesday and Thursday you produced 41 tons, would you make as much on Wednesday and Thursday as you did on Monday and Tuesday?

A. No, sir.

Q. When you got your pay did the company pay you by check or by folding money or hard money?

A. They paid me in folding money, and, of course, less than a dollar, they paid me in hard money.

Q. Pay you in an envelope?

A. Yes, sir.

Q. I notice that envelope is dated July 15, 1941. Is that the envelope that the Republic Steel Corporation paid you with—

A. Yes, sir.

Q. On July 15, 1941?

A. Yes, sir.

Q. Now, how often did they pay you, every week or every two weeks?

A. Every two weeks.

Q. Did that represent two weeks pay?

A. Yes, sir.

Q. I notice at the top of that it has the word "Hours", and a blank; over at the left it has, "T. T."

A. Yes, sir.

Q. Do you know when they started putting "T. T." on your envelope?

A. Since May 1st.

Q. Since May 1st?

A. Yes, sir.

Q. Before May 1st, do you recall getting any envelope where they had anything on your time?

A. Not unless I had worked some hours, had gotten some hours.

Q. Did you ever get any hours?

A. Occasionally along I would get some hours.

Mr. Harris:
We offer this as the Defendants' next exhibit.

The Clerk:
Defendants' Exhibit No. 24.

Mr. Burr:
We object to that and take an exception.
Twenty-four, you say?

The Clerk:
It is 24, yes, sir.

Mr. Burr:
Let me see it, please, sir.

Go ahead, Crampton.

(Thereupon a pay envelope issued by Republic Steel Corporation to Louis Tarrant, dated July 15, 1941, was marked Defendants' Exhibit No. 24.)

Q. Louis, when did you join the union?
A. I first joined the union when it was organized in 1933.
Q. Have you been a member ever since?
A. No, sir. For a period of approximately 14 months I was out of the union.
Q. Were you at work then?
A. Yes, sir, I was working.
Q. What year was it for 14 months you were out of the union?
A. That was probably from February of 1934 until the end of 1935.
Q. Now, in 1936—were you an officer of the union in 1935? I will change my question.
A. No, sir. I was just a member in 1935.

Q. Well, was the membership, the attendance in 1936, better than it was in 1935?

A. It was better in '35 than it was in '36.

Q. Was the attendance as good in '37 as it was in '36?

A. The attendance was better in 1936 than it was in 1937.

Q. How many men on an averaged in 1937, would you find at a union meeting?

Mr. Burr:

Your Honor understands we have an objection to all these questions, and exception.

The Court:

All right.

A. How many men in a meeting, did you say?

Q. Yes, just on an average?

A. Usually, round at that time, four or five or six of us.

Q. At a meeting?

A. Yes, sir.

Q. And then in 1938 did your membership or the attendance increase?

A. Along about in 1938, I think that I recall—along at the time of the settlement of the T. C. I. controversy through the Labor Board, our membership began to increase, and, of course, since that time it has increased very much.

Q. Louis, do you recall any single pay day that you have worked for the Republic Steel Company where your pay for the whole period was figured on a time basis?

A. No, sir.

Mr. Harris:

You can take him.

Vol. V

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 409

TENNESSEE COAL, IRON & RAILROAD COMPANY, SLOSS-SHEFFIELD STEEL & IRON COMPANY AND REPUBLIC STEEL CORPORATION, PETITIONERS,

vs.

MUSCODA LOCAL No. 123, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 4, 1943.

CERTIORARI GRANTED NOVEMBER 15, 1943.

VOLUME V.

TRANSCRIPT OF RECORD

UNITED STATES
CIRCUIT COURT OF APPEALS
FIFTH CIRCUIT.

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Appellant,
versus
MUSCODA LOCAL No. 123, ETC., ET AL.,
Appellees.

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
Appellant,
versus
SLOSS RED ORE LOCAL No. 109, ETC., ET AL.,
Appellees.

REPUBLIC STEEL CORPORATION,
Appellant,
versus
RAIMUND LOCAL No. 121, ETC., ET AL.,
Appellees.

Appeals from the District Court of the United States for
the Northern District of Alabama.

(ORIGINAL RECORD RECEIVED APR. 4 '42.)

Cross Examination.

(By Mr. Burr):

Q. Louis, when did your first mining experience begin, about when?

A. My first mining experience began in 1918.

Q. Was that with the Republic Company?

A. The Republic Company.

Q. Your whole experience has been with the Republic Company?

A. No, sir. I have worked briefly for the Woodward Iron Company and about seven years for the Sloss-Sheffield at Sloss Ore Mine.

Q. Has all that experience been in the ore mines?

A. With the exception of a brief period in 1921 I worked for the Empire Coal Company at Hull.

Q. With the exception of that time your experience has been in the ore mines on Red Mountain?

A. Yes, sir.

Q. And mostly with the Republic Company?

A. And mostly with the Republic Company.

Q. And you have been with the Republic Company this last time continually how long?

A. I have been continuously with the Republic Company about the last twelve years.

Q. And before that you worked with the Republic Company off and on?

A. Yes, sir.

Q. And before that was most of your time with the Republic Company?

A. I started as a kid with the Republic Company in 1918, and I worked a while and they shut down and I went to Sloss and then came back to Raimund and worked until now.

Q. When you worked at Sloss, where did you work?

A. I worked in Number 2 mine.

Mr. Burr:

Let me have Exhibit 23 you introduced there.

Q. This rule book here, Louis, Mr. Harris showed you bears the date of November 1, 1935. Do you know whether or not it has been revised several times since then, or more than once since then, or any time at all?

A. No, sir, I couldn't definitely say. I know we have added some rules since that time. I don't know whether they have been printed or not.

Q. You don't know whether this is the rule book in force in 1940 or not?

A. No, sir, I couldn't say.

Q. Or 1939 or 1938?

A. It looks like the one.

Q. The back of it, you mean?

A. Yes, sir.

Q. Have you read this all the way through?

A. Not all the way through.

Q. Have you read it at all?

A. Not this particular one.

Q. Have you had this particular one?

A. I don't know—

Q. Where is your book?

A. I don't know where it is.

Q. This isn't your book?

A. I don't know.

Q. Have you given Mr. Harris your book?

A. No, sir.

Q. Did you give anybody your book?

A. I think I gave Mr. Lipscomb my book.

Q. When did you give it to him—

Mr. Harris:

We object to that.

Mr. Burr:

I am trying to find out whether it is the right book.

The Court:
Has it got—

Mr. Burr:
I know this is not the right book. The book has been revised.

Mr. Harris:
Give them to us. We will be glad to have them.

Mr. Burr:
You haven't asked for them.

The Court:
He testified on direct examination that was the only one he knew about.

Mr. Harris:
All we want is the book. If he will give us the latest one—

Mr. Burr:
I never have failed to give you anything yet you asked for.

Mr. Harris:
I haven't offered it in evidence.

Mr. Burr:
You haven't offered it?

Mr. Harris:
No. I merely put it in for identification because I wasn't sure it was the last book.

Mr. Burr:
Well, I didn't know that. If I had known that I could have saved all this examination.

Q. Louis, you were a driller—you were in charge of how many muckers, did you say?

A. Well, I am charge directly of two muckers on the day shift. However, there are three muckers work in my place at night.

Q. When do you shoot, in the afternoon?

A. Yes, sir, in the afternoon.

Q. At what time?

A. Now?

Q. No, before May 1, 1941?

A. Three o'clock.

Q. You shoot at three o'clock?

A. Yes, sir.

Q. Then do you go off at three o'clock?

A. Yes, sir.

Q. Was that the end of your shift?

A. Yes, sir.

Q. Then the muckers that came on after you loaded during the night what you had shot?

A. Yes, sir.

Q. Then you and two other muckers went back the next morning and you drilled and they loaded?

A. Yes, sir.

Q. That is the way it was done?

A. Yes, sir.

Q. Now, is that the same practice that you have been engaged in during the two years before May 1, 1941?

A. Yes, sir.

Q. Now, is that the same practice that you have been engaged in during the two years before May 1, 1941?

A. Yes, sir.

Q. In a general way have you been doing it in the same way ever since you have been working there?

A. Yes, sir.

Q. Substantially the same?

A. Yes, sir, substantially the same.

Q. You have been riding the same sort of skip and depositing your check in the same way and walking to your working place in the way way and doing your work in the same way?

A. Practically the same.

Q. And getting paid in the same way?

A. I suppose so.

Q. Now, these divisions or parts there that Mr. Harris refers to as the bull pen, there is one on top, isn't there, or near the top?

A. Yes, sir.

Q. That is where the men go in just before they take the cage, before they take the man trip?

A. Yes, sir.

Q. That protects you from the weather?

A. Yes, sir, it protects you from the weather.

Q. That place is just like this room,—I know it is not as pretty and hasn't got these walls, but it has a gate there?

A. Yes, sir.

Q. And what you mean by Mr. Harris' question of counting out, they will let the number in that it will take to load the drag; the mine foreman or assistant mine foreman counts the men as they come in to see there are not too many to go on the drag; is that what you mean?

A. Well, they will let as many come in as wants to come in, but letting them out—

Q. That is what I mean, where he lets them out to get on the skip.

A. Yes, sir.

Q. That is where he does the counting?

A. Yes, sir.

Q. How many does he let on a skip?

A. Usually thirty or thirty-one or two.

Q. And when he gets over that he holds up his hand and stops the others from coming in, or he may say, "We have got a load"?

A. Yes, sir.

Q. That is the counting that is done?

A. Yes.—

Q. Just counting numbers?

A. Yes, sir, sure.

Q. When you deposit your check there it is hung up on a nail to indicate where your working place is?

A. Yes, sir.

Q. And you get your lamp at a point nearby, I believe you said?

A. Yes, sir.

Q. It takes just a fraction of a minute to do those two things, doesn't it, Louis?

A. Yes, sir, takes a little while.

Q. Just a very short while?

A. Yes, sir.

Q. Now, on this tonnage basis that you have told Mr. Harris about in answer to his questions, you say you and your crew generally got out six cars?

A. Usually six cars.

Q. Is that on the shift? Is that on the one shift, or what?

A. On the one shift. On the day shift. I was only speaking about the shift I work on.

Q. I see. Well, would they get out about that many on the night shift too, load about that many?

A. Usually they would get out nine at night and six in the day. Of course, in the course of a month there would be bad days.

Q. That is true. Sometimes you would have good days and sometimes bad days?

A. Yes, sir.

Q. But the usual course of things was six in the day and nine at night?

A. Yes, sir.

Q. This envelope you have shown us where you were paid off, I believe you said, twice a month?

A. Yes, sir.

Q. During this period of time?
A. Yes, sir.

Mr. Burr:
Has this been offered in evidence?

Mr. Harris:
Yes, sir, I offered it in evidence.

Q. This one here that is identified as Defendants' Exhibit 24, that is for the pay period ending July 15, 1941, isn't it, Louis?
A. Yes, sir.
Q. Before you got this you got a statement?
A. Yes, sir, I got a statement.
Q. The statement showed your earnings, how they were estimated and what the total amount was?
A. Yes, sir.
Q. And showed the deductions that came off?
A. Yes, sir.
Q. And showed how much cash you were to get?
A. Yes, sir.
Q. And you would take that statement and go to the pay window and sign a receipt and get your money in an envelope like this?
A. Yes, sir.
Q. All the statements had about the same thing on them, leaving out the T. T. for the present? It showed the date, the 26 $114.60, so many tons and so much yardage at $7.20; what would that yardage be for?
A. That is the recent raise of ten cents on the hour.
Q. That is what that is; that is the ten cent raise that went in effect on April 1st—
A. Yes, sir.
Q. —this year?
A. Yes, sir.
Q. That is the total, and your deduction showed the F. O. A. B. tax and Alabama unemployment tax and the

other deductions taken off that and the amount you got in cash?

A. Yes, sir.

Q. That shows you made that two weeks period $162.14, and your deduction was $95.20, which consisted of tax $1.09, tax 90 cents, checks on store thirty-eight forty, commissary thirty-four eighty-five, and miners' supplies?

A. Yes, sir.

Q. That is the tool and powder you bought?

A. Yes, sir.

Q. And a safety lamp?

A. Yes, sir.

Q. The balance in cash was $66.94?

A. Yes, sir.

Q. Would you say that was a pretty good average month for you, Louis? Is that about the way you averaged?

Mr. Harris:

Average two weeks.

Q. Average two weeks; is that about the average; is that about the way you averaged?

A. A pretty good average, more or less.

Q. I mean about the average?

A. About the average.

Q. About the average?

A. Yes, sir.

Q. Of course, the statement that you turned in would show all these items, opposite each place on the statement?

A. I didn't understand you.

Q. The statement you turned in to get your envelope and the money there showed all these items itemized on the statement?

A. Yes, sir.

Q. I understood you to say about your union attendance—I am not particularly interested in it, but I understood you to say after the men learned about the settlement of the T. C. I. Labor Relations Board Case your attendance began to increase?

A. Yes, sir.

Q. That is when you got your uplift?

A. Yes, sir; that is when they began to come back.

Mr. Burr:
That is all.

Mr. Harris:
That is all.

(Witness excused.)

Mr. Harris:
Call Mr. Powell.

3023 VIRGIL POWELL, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

The Court:
What are your initials?

The Witness:
Virgil Powell.

(By Mr. Harris):

Q. How old are you, Mr. Powell?

A. Thirty-one.

Q. Where were you born?

A. Parkwood, Alabama.

The Court:
How old did you say you are?

The Witness:

Thirty-one.

Q. Where do you work?

A. Raimund.

Q. How long have you been working at Raimund for the Republic?

A. Eight years.

Q. What?

A. Eight years.

Q. What kind of work do you do?

A. Run a hoist engine.

Q. Is that a production man or a company man?

A. It is a company man.

Q. How long have you been running a hoisting engine?

A. Approximately five years.

Q. Were you running a hoisting engine out there in October, 1938?

A. Yes, sir.

Q. And continued to run it up until May 1, 1941?

A. Yes, sir.

Q. Where was your hoisting engine during that period of time?

A. It is in the bottom of the mine at the storage pocket.

Q. Near the ammunition dump or near some other pocket?

A. It is a storage pocket where all the ore is dumped in.

Q. Storage pocket?

A. Yes, sir.

Q. I misunderstood you. I thought you said stores. How far is that from the mouth of the mine?

A. About 2500 feet.

Q. Well, do you work on the day shift or the night shift?

A. Day shift.

Q. Now, starting in October, 1928,—October 24, 1938, what time did you show up at the mouth of the mine at the beginning of your shift?

A. Around six or six fifteen.

Q. Well, did you have any brass check that you turned in to anybody?

A. Yes, sir.

Q. To whom did you turn your tag in as a service man, a company man?

A. The timekeeper.

Q. Where was he?

A. He was inside the tally house.

Q. Did you have any regular man trip you caught down in the mine?

A. Usually I would go down around 6:20 or 6:30.

Q. Then, when you had completed hoisting and had traversed the mine on the way out, what time would you pick up that brass check in the afternoon?

A. Around 3:30.

Q. So that from the time you entered the mine at 6:15 you were underground until around 3:30?

A. Yes, sir.

Q. Did that obtain all the time from October 24, 1938, up until May 1, 1941?

A. Well, sometimes it would vary a little bit one way or the other.

Q. Well, did the service and the company men in that mine catch the same man trip the production men did?

A. Yes, sir.

Q. And came out together, came back out on the same man trips with the production men?

A. Yes, sir.

Q. In pulling ore where you are, did you, during those three years, pull any man trip with your hoist?

A. Not with the hoist. I did with the motor.

Q. You mean with an electric motor?

A. Yes, sir, electric locomotive.

Q. You had an electric locomotive ~~you~~ hauled them with?

A. Yes, sir.

Q. Where did you haul the men?

A. I hauled them from the waiting place over on the man—they called it the mule lot where an old mule barn was. They have a waiting station there. I would go and pick them up and carry them to Number 2.

Q. Well, did you have any regular time to go and pick them up?

A. Well, as soon as the run was over, as soon as we stopped pulling the ore.

Q. And did you have any regular time for the run to be over?

A. Well, it was supposed to be, but occasionally we pulled until five minutes after three,—sometimes one or two trips past three.

Q. How long did it take to pull a trip?

A. Well, around five to eight minutes.

Q. Well, if you pulled two trips after three, that meant those men were at the mule road waiting for you to get through pulling ore cars and switch them and get the man cars and pull them out after that?

A. Yes, sir.

Q. When you worked that overtime you got paid for it, didn't you?

A. Yes, sir.

Q. Now, when you got to the hoodlum on the way out, would you, as a company man, be counted out just the same as the production men by a mine foreman or somebody else?

A. Yes, sir.

Q. Was that true of all the service and company men?

A. Yes, sir.

Mr. Harris:

You can take him.

Cross. Examination.

By Mr. Burr):

Q. Mr. Powell, was your first experience—did your first experience in the ore mines begin just three years ago, or had you worked previous to that time?

A. Well, I had worked August, 1933, to December, 1933, there.

Q. In the same mine?

A. Yes, sir.

Q. Same sort of work?

A. Well, I was running a motor at that time.

Q. That was August, 1933, until when?

A. December, 1933.

Q. Was that a motor inside the mine—

A. Yes, sir.

Q. —that you ran?

A. Yes, sir.

Q. Then, with that exception, all your work has been running this hoisting engine?

A. Well, I did work at Spaulding while I was away from Raimund.

Q. You worked over at Spaulding?

A. Yes, sir.

Q. When did you work at Spaulding?

A. That was '33 until about the latter or first part of 1937.

Q. Was that before Spaulding reopened this last time?

A. Yes, sir.

Q. All right, sir. When you were operating this hoist engine—Does that hoist engine haul the ore?

A. Yes, sir.

Q. From the different working places to the rotary dump or the storage place?

A. No. The locomotive brings it in there on the yard and when it goes back I handle the cars to the pocket.

Q. You pick it up and handle it to the pocket?

A. Yes, sir.

Q. And you also handle—After the run is over you handle the cars for the purpose of hauling the men what they call up the hill?

A. Occasionally.

Q. Is that what you call the mule lot?

A. Yes, sir.

Q. There have been no mules there in quite a long time?

A. They used to have mules—

Q. There haven't been any mules there since you have been working there?

A. Yes, sir; there have been mules there since I have been working there.

Q. When were the mules there?

A. In 1936.

Q. That didn't have anything to do with you hauling the men?

A. No, sir; they had been moved from this lot. It was old.

Q. You rode down on the man skip just like everybody else did?

A. Sometimes we would have to brace ourselves to hold the next man above us off us.

Q. I understand you braced yourself to hold people off you, but you rode down like everybody else did?

A. Yes, sir.

Q. And always did ever since you have been going down there?

A. Yes, sir.

Q. And when you got down to the bottom—what you did at the top was deposit your check?

A. Yes, sir.

Q. And got your lamp?

A. Yes, sir.

Q. And then got on the skip, after being counted on there—You mean by that the mine foreman would let go through the gate the number they wanted on the skip so as not to be over crowded?

A. Yes, sir.

Q. Something of that sort?

A. Yes, sir.

Q. That is what you mean by being counted out?

A. Yes, sir.

Q. Then you rode down?

A. Yes, sir.

Q. Your hoisting engine was about how far from the place you got off the skip?

A. It was half a mile or better.

Q. Did you walk over there?

A. Yes, sir.

Q. You got to the hoisting engine, and that is the first actual work you did, when you got to the hosting engine?

A. Yes, sir.

Q. Then you commenced running that engine and ran it for eight hours?

A. Yes, sir.

Q. If you ran it over eight hours you got paid for it, didn't you?

A. Not every time.

Q. Well, whenever—

A. If we ran as much as an hour overtime, we got paid for it. If you just ran five or ten minutes over time, we didn't.

Q. Do you know what days you were five or ten minutes over? Did you keep any record of it?

A. No, sir.

Q. Did you ever make any report to anybody you were five or ten minutes over?

A. No, sir.

Q. Well, that was just occasionally?

A. Well, it happened sometimes once or sometimes twice a week.

Q. Is that the time you say the run wouldn't be over?

A. Yes, sir.

Q. Is that what kept you five or ten minutes over?

A. Yes, sir.

Q. Those were the same occasions on which you say that men at the loading station, if they were there, were delayed five or ten minutes?

A. Yes, sir.

Q. I see. Was the loading station in sight of where your hoisting engine was running?

A. No, sir.

Q. Then, of course, you don't know as to what time they got to the loading station or how many got there or how many were gone, or anything about that?

A. No, I don't know.

Q. All you know, you were occasionally delayed five minutes or so in order to finish the run?

A. Yes, sir.

Mr. Burr:

I believe that is all.

Mr. Harris:

I think that is all, Mr. Powell.

(Witness excused.)

Mr. Harris:

If the Court please, except for the introduction of documents, and which may require perhaps one or two witnesses,—I want to check up,—it has been a rather long case, and I proceeded as fast as I could in the introduction of my evidence, and I want to check the records,—that substantially completes the witnesses I want to put on. I don't mean to close my case now, because the defendants are trying it as a unit, but I make this statement as notice to the other gentlemen, so to speak.

And I also told the gentlemen on my side of the table this morning I thought I would be through, for the most part, with my case by Your Honor's afternoon recess, and I presume they are ready to go on.

There are a number of documents I have asked the gentlemen for in a subpoena, and, of course, I want to study them tonight. Mr. Burr has arranged to have some of them brought here this afternoon.

Mr. Burr:
I will have the minutes for you tonight. We haven't finished with the maps.

The Court:
I think we had better have a few minutes recess.

Who will take up next?

Mr. Smith:
We have some witnesses.

The Court:
We will take a three or four minute recess.

(Thereupon proceedings were in recess from 2:50 P. M. until 2:55 P. M., at which time proceedings were resumed as follows:)

Mr. Spencer:
Mr. Headrick, please.

3032 W. R. HEADRICK, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Smith):

Q. What is your name, please, Mr. Headrick?

A. Headrick.

The Court:

What are your initials?

The Witness:

W. R.

Q. Mr. Headrick, what company do you work for?

A. T. C. I.

Q. How old are you?

A. Forty-seven.

Q. How long have you been working for them?

A. About five years this last time.

Q. Five years?

A. I worked off and on for about twenty-five years.

Q. What has been your experience in ore mines since you began to be a miner?

A. Well, I have been in the mines all my life.

Q. All your life?

A. Yes, sir.

Q. What mines?

A. The Republic people and T. C. I.

Q. The Republic people and T. C. I.?

A. Yes, sir.

Q. Ore mines?

A. Yes, sir.

Q. What mine are you at now?

A. Number 4.

Q. Number 4?

A. At Muscoda.

Q. At Muscoda?

A. Yes.

Q. You have been there five years?

A. Yes, sir.

Q. This last time?

A. Yes, sir.

Q. You have been there since October 24, 1938?

A. Yes, sir.

Q. What is your occupation there?

A. Service foreman.

Q. Service foreman?

A. Yes, sir.

Q. Tell the Court what the duties of a service foreman are.

A. Well, I am laying track.

Q. Laying track?

A. Yes, sir; anything that comes necessary.

Q. You are all over the mine?

A. Yes, sir.

Q. Where do you report in the morning at the beginning of the shift?

A. At the tally house.

Q. What time do you report there?

A. Six o'clock.

Q. Six o'clock?

A. Yes, sir.

Q. That is the time you hang up, I believe, the brass checks?

A. Yes, sir.

Q. In the meantime you have been to the bath house and got your carbide light?

A. Yes, sir.

Q. And you hang up your check?

A. Yes, sir.

Q. Now, from that time, Mr. Headrick, just what do you do?

A. Well, we—after we check in, why, we catch the first skip that comes handy, usually.

Q. What time do you check in, six o'clock?

A. Six o'clock.

Q. Yes, sir.

A. We go down and then we leave the man unloading place and go out in the territory to our working place.

Q. How long does it take you to get from the top of the mine to your man unloading place?

A. Some thirty or forty minutes.

Q. Some thirty or forty minutes?

A. Yes, sir.

Q. You mean from the top of the mine to the man unloading place?

A. I thought you meant from the tally house.

Q. From the tally house to the man unloading place?

A. Yes, sir.

Q. About how long?

A. About 25 to 30 minutes to our working place,—

The Court:

He is not asking you that.

Q. I am asking you about how long from the time you leave the mouth of the mine until you get to the man unloading station?

A. Oh, that is some five minutes.

Q. Five minutes?

A. Yes, sir.

Q. You will unload there?

A. Yes, sir.

Q. And go to your working place?

A. Yes, sir.

Q. Where is your working place?

A. Well, at different places. Possibly we will go over to one place one day and the next day to another.

Q. Where do you get your orders to go when you leave the top of the mine?

A. At the tally house.

Q. Who gives you your orders?

A. The mine foreman or assistant mine foreman.

Q. The mine foreman or assistant mine foreman?

A. Yes, sir.

Q. As to where you are to go when you leave the man unloading station?

A. Yes, sir.

Q. That takes you all over the mine?

A. Yes, sir, different places.

Q. What time do you leave the mine coming back?

A. You are not speaking of the present time?

Q. Up to May 1st?

A. We will generally check out around a quarter of four.

Q. Now, since May 1st?

A. Sometime around four o'clock.

Q. Since May 1st what time do you check out?

A. We check out now around 2 and 2:30,—between 2 and 2:30.

Q. Are you familiar with the operations up there when the man skip starts going down in the mine?

A. I think so.

Q. Who has charge of the man skip?

A. The assistant mine foreman.

Q. The assistant mine foreman?

A. Yes, sir.

Q. Does he give the men orders where to go and what to do there?

A. Yes, sir.

Q. Do they have any tools with them they carry down on that man trip?

A. Yes, sir, we used to have to carry down our new tools we went to the supply house and got, such as picks and shovels.

Q. Does that apply to the service crews too?

A. Yes, sir. I am speaking of my crew.

Q. Speaking of your crew?

A. Yes, sir.

Q. The men that actually do the mining, do they take down—

A. Yes, sir; they took down hangers and wedges and necessary tools to do their work with.

Q. They stopped by the man unloading station?

A. Yes, sir.

Q. From the man unloading station to where they go to mine the ore, do they take any tools?

A. Yes, sir, their new stuff, such as wedges and hangers and such as that.

Q. Did they have their lights, carbide lights they used there?

A. Yes, sir.

Q. Now, just what do you carry down, your crew and you?

A. Well, we carry down when we need it—our supply of tools runs short, we carry down picks and shovels and hammer handles, pick handles.

Q. What part of the skip did you carry those in?

A. Well, we had a little basket under the bail, that hung under the bail of the skip, and we would put our tools in that little basket.

Q. At the top of the mine, before the skip started out, where did you get those tools from?

A. At the supply house.

Q. How far is the supply house from the top of the mine or collar of the mine there?

A. Oh, I would say some four hundred feet.

Q. You would carry them over there and put them in this bail?

A. Yes, sir.

Q. When you got to this man unloading place, you would take those tools out of the bail?

A. Yes, sir.

Q. And carry them to wherever you needed them?

A. Yes, sir, to our working place.

Q. What tools did you mostly carry to do your work with?

A. Picks, shovels, hammers, hammer handles—

Q. How many were in your crew during that time?

A. Well, it ranges from six to twelve.

Q. Six to twelve?

A. Yes, sir.

Q. Now, what orders—you were the head of that crew?

A. Yes, sir.

Q. What orders did you give those men on that crew at the top of the mine?

A. I didn't give them any orders at the top. I waited until we got to the bottom and unloaded and told them where to go.

Q. Did anybody give you orders where to go at the top of the mine?

A. Yes, sir.

Q. Suppose you had a vacancy in your crew; what would you do about that?

A. If there was an extra, I got him and put him on the crew.

Q. Who would you speak to about getting that man?

A. Well, the mine foreman or tally house man at the check in usually.

Q. Then after that you went down to the man unloading station?

A. Yes, sir.

Q. From the top of the mine?

A. Yes, sir.

Q. Then you were in charge of the crew from that point on?

A. Yes, sir.

Q. What orders did you give them in reference to their working places and tools?

A. I would take them and we would go to our working place,—take our tools.

Q. Did you have any directions where your working place would be? What part of the mine?

A. Yes, sir; I knew where I was going.

Q. You knew?

A. Yes, sir.

Q. Knew that at the top?

A. Knew that at the top.

Q. When you got down there and you got unloaded you directed your crew where to go?

A. Yes, sir.

Q. And you carried these tools, you and your crew, to these places where you and your crew would work?

A. Yes, sir.

Q. And that was during the period from October, 1938, up to May 1, 1940?

A. Yes, sir.

Q. 1941, I mean.

A. That is right.

Mr. Smith:
That is all.

Cross Examination.

(By Mr. Burr):

Q. Mr. Headrick, you say you have been working for the Tennessee Company off and on for twenty-five years; is that right?

A. Yes, sir.

Q. You have also worked for the Republic Company?

A. Yes, sir.

Q. Which one of those companies have you worked the longest for, do you think?

A. For the Republic.

Q. For the Republic?

A. Yes, sir.

Q. About how many years did you work for the Republic Company?

A. About 13 or 14 years.

Q. And you say you have been in the mines working practically all your life?

A. Yes, sir.

Q. Has it all been in the ore mines?

A. Yes, sir.

Q. Out here on the mountain?

A. Yes, sir.

Q. Just those two companies?

A. Just those two companies.

Q. Have you always been what they call a company man, that is, on a day rate, hourly rate?

A. Yes, sir; I have done a little bit of everything.

Q. But your principal work has been on service crews?

A. Yes, sir.

Q. For how long now have you been a foreman of the track crew out at Muscoda Number 5?

A. Five years.

Q. Five years. Now, during all the period of time you have worked on service crews out there, has the custom and practice been about the same, the way you handle your job and your men, as you told Mr. Smith?

A. Up until May—

Q. We will forget May 1st.—Up until then it has always been the same?

A. Yes, sir.

Q. You would go to the tally house every morning? You had to go there to get down in the mine?

A. That is right.

Q. You got your carbide and have always gotten it?

A. Yes, sir.

Q. The company sells it there?

A. Yes, sir.

Q. Then you have a check and you turn the check in?

A. Yes, sir.

Q. Now, your work as track man—do you work in the same place more than one shift, or do you have a job you don't have to be told to go back to you know you haven't finished?

A. Most of the time it is that way.

Q. That is what I thought. Most of the time you don't have to ask—it is only when you have finished your job you have to ask the foreman where your next place is?

A. No, the foreman—something might happen between shifts.

Q. And if he wants to change you he would tell you?

A. Some breakdown or wreck or tear-up in a different locality of the mine, he would tell me every morning where we were supposed to work.

Q. He would know about that from the report he got from the other shift?

A. Yes, sir.

Q. He would tell you and it was your business to tell your men?

A. Yes, sir.

Q. You say you would catch the skip it was convenient to catch?

A. That is right.

Q. You would go down—you would always assemble your men at the tool house?

A. Yes, sir.

Q. That tool house was pretty close—how far from the underground man loading station?

A. At the present, I would say it is 150 feet.

Q. You say at the present: you mean for the past three or four years—

A. No, it has been changed.

Q. Where was it during the period before May 1, 1941?

A. I would say about the same distance.

Q. You would get off the skip you came down on and go to the tool house?

A. Yes, sir.

Q. Would you meet all your men there when you got there or would they sometimes come after you got there?

A. Sometimes they would be there and sometimes they would come afterwards.

Q. There was no schedule?

A. No, sir.

Q. No settled rule?

A. No, sir.

Q. They caught whatever skip was convenient?

A. Yes, sir.

Q. Your work time started at the tool house at 6:45?

A. Yes, sir.

Q. That is when your pay started?

A. Yes, sir.

Q. You waited there until 6:45, and then you went to the place where you had been told to go?

A. No, sir. We didn't pay any attention to the time. After we got there—we all went on to our working place after we all got together.

Q. After you all got together?

A. Yes, sir.

Q. When you left your tool house depended on what time your crew got together?

A. Yes, sir.

Q. That is where you waited for your crew?

A. Yes, sir.

Q. That is where you got them together?

A. Yes, sir.

Q. And your pay started at 6:45?

A. Yes, sir.

Q. Up until May 1st?

A. Yes, sir.

Q. What time did you quit laying track?

A. The mine foreman, as a rule, gave us about fifteen minutes to come from our working place to wherever we put our tools.

Q. Come from your working place to the tool house?

A. Yes, sir.

Q. What time were you supposed to be back to the tool house, around three o'clock?

A. Yes, sir, three o'clock.

Q. Three o'clock?

A. Yes, sir.

Q. You would get back to the tool house at three?

A. Yes, sir.

Q. And then you would deposit your tools there, would you?

A. Yes, sir.

Q. And then go down and catch the first skip out—

A. When they turned you aloose. You went in rotation in the bull pen.

Q. You went in this bull pen? They would let the ones that got there first go out first?

A. That is right.

Q. Line them up on those seats?

A. Yes, sir.

Q. And I imagine you, being the foreman,—you would probably get down after your crew; you would have to stay behind to see that everything was in order?

A. As a rule I did.

Q. And you would always make out the report on your men?

A. Yes, sir.

Q. Turn it in each day?

A. Yes, sir.

Q. If you worked over time or your men worked over time you would make out that statement?

A. Yes, sir.

Q. And give it to the foreman?

A. Yes, sir.

Q. And they would get paid for overtime?

A. Yes, sir.

Q. On time and a half?

A. Yes, sir.

Q. You talked about getting tools. That—the tools wore out?

A. Yes, sir.

Q. You would have to get new picks sometimes?

A. Yes, sir.

Q. And new shovels sometimes?

A. Yes, sir.

Q. And you would have to get new handles for your hammers sometimes and a new hammer sometimes?

A. Yes, sir.

Q. As a good foreman, you tried to make picks and shovels and hammer handles last as long as you could, of course?

A. I did.

Q. It wasn't every morning you had to get these articles?

A. No, sir.

Q. When you had to get them would you send a man down to the tool house?

A. I would send a man to the tool house, or two.

Q. Depending on what was needed?

A. On what was needed, yes, sir.

Q. Would you get a requisition from the mine foreman?

A. Yes, sir.

Q. These were replacements?

A. Yes, sir.

Q. The tools you could still use you would leave in the tool box every evening?

A. Yes, sir.

Q. They would go to the supply house and get these replacement tools?

A. Yes, sir.

Q. They would bring them up on a truck if they wanted to?

A. If convenient, yes, sir.

Q. They had a little truck up there that would bring them up, and then they would get on the skip and go on down and join you at your place?

A. That is right.

Q. The supply house was never unlocked until 6:30 in the morning, between 6:30 and 7:00?

A. I think so. I never did go myself. I sent them.

Q. You sent them?

A. Yes, sir.

Q. That meant the man couldn't get the tools until it was opened about 6:30 or 7:00, and then he would have to carry them how far?

A. Some 400 feet.

Q. And then wait and catch a skip?

A. Yes, sir.

Q. Before getting on down to your tool box?

A. Yes, sir.

Q. How many men did you say there were in your crew, Mr. Headrick?

A. It runs from six to seven; it is owing to the number of men.

Q. You had a track crew?

A. Yes, sir.

Q. There were a number of other crews?

A. Yes, sir.

Q. They were handled about in the same way your crew was?

A. Yes, sir.

Q. You said something to Judge Smith about some of the producing crews, that you saw them sometimes carry wedges and hangers?

A. I did.

Q. They put those in that same little basket in front there; that is where they put them?

A. They did.

Q. That basket was about how big?

A. I would say about three foot long, about 15 or 18 inches—I would say 18 inches wide.

Q. Of course, I don't suppose, Mr. Headrick,—you don't know personally except what you saw—

A. No, I never measured it.

Q. I don't mean that. You never worked in the stopes with the producing crews?

A. Not in the last years.

Q. You don't know the conditions under which they carried the wedges down or who made the arrangements or anything about that, I don't suppose?

A. No. That belonged to the stop fellows.

Mr. Burr:

That is all.

Re-Direct Examination

(By Mr. Smith):

Q. Mr. Headrick, let me ask you this: When you go to the tally house, you have been to the bath house first?

A.—Yes, sir, to change clothes.

Q. You report there to the tally house in your work clothes?

A. Yes, sir.

Q. And hang up your brass check?

A. Yes, sir.

Q. And then you catch the skip down as you testified before?

A. That is right.

The Court:

What time did you hang up—take your check up; what time did you get up on the ground?

The Witness:
In the afternoon?

The Court:
Yes, sir.

The Witness:
From fifteen minutes of four until four o'clock.

Mr. Harris:
I want to ask him one question if I may.

The Court:
Yes, sir.

(By Mr. Harris):

Q. Mr. Burr asked you if the customs and practices are substantially the same. As I understand, you are a track man?

A. Yes, sir.

Q. I will ask you if for the period October 24, 1938, up to the present time in Mine Number 4, the conditions of the track in the main haulage ways and main passage ways and the main slope have been substantially the same?

A. Well, yes, I would say so.

Mr. Harris:
That is all.

Re-Cross Examination.

(By Mr. Burr):

Q. You walk over them, don't you, Mr. Headrick?

A. Sir?

Q. You walk over those haulage ways and passage ways and slope?

A. Yes, sir.

Q. You have never been hurt on any of them?

A. No, sir.

Q. You get along all right?

A. Yes, sir, I get along pretty well.

Q. About as good walk ways as you find in any mine?

A. Yes, sir.

Mr. Burr:
That is all.

The Court:
I want to ask one question. You say you check in about six o'clock in the morning?

The Witness:
Yes, sir.

The Court:
And you are paid from 6:45 every morning?

The Witness:
Yes, sir.

The Court:
You are not paid from six to six forty-five?

The Witness:
No, sir.

The Court:
How many hours are you supposed to work?

The Witness:
Eight hours.

The Court:

And all over that you get time and a half?

The Witness:

Yes, sir.

The Court:

You do not get any pay when you check in at the tally house?

The Witness:

No, sir.

(By Mr. Burr):

Q. When you talk about checking in you mean turning in your check?

A. My check number that I work under.

Q. And all you do from the time you get there and check is is what you have told us?

A. Yes, sir; I don't do anything. I may have the men to do something. I figure after I checked in I was subject to orders and the men were subject to my orders.

Q. You felt that way?

A. Yes, sir; that is the way it is.

Q. All you do is you change your clothes?

A. Yes, sir.

Q. And deposit your check?

A. Yes, sir.

Q. And get your carbide?

A. Yes, sir.

Q. The mine foreman tells you what to do?

A. Yes, sir.

Q. And you send your men to the supply house?

A. Yes, sir.

Q. And they get the tools?

A. Yes, sir.

Q. And they join you inside?

A. Yes, sir.

Mr. Burr:

That is all.

Re-Direct Examination.

(By Mr. Smith):

Q. After you get off at the manloading station you and your men get your tools and take them to where you work, do you wait until 6:45 to go to work?

A. No, sir; we didn't pay any attention to that.

Q So, from the time you checked in up there until 6:45, you do what you have testified here?

A. Yes, sir.

Mr. Smith:

That is all.

Mr. Burr:

That is all.

Mr. Harris:

It seems when I was asking you a question I was guilty of a slip of the tongue. I didn't mean to limit it to May 1st.

Up to the present time the conditions have been the same in the haulage ways, passage ways and main slope?

The Witness:

I would think so, Mr. Harris.

Mr. Harris:

All right; that is all.

(Witness excused.)

Mr. Smith:

Come around, Mr. Fred Trammell.

3052 FRED H. TRAMMELL, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Smith):

Q. Your name is Mr. Fred Trammell?

A. Yes, sir.

Q. Do you work for the Tennessee Coal, Iron & Railroad Company?

A. Yes, sir; I work at T. C. I. Number 6 at Muscoda.

Q. T. C. I. Number 6 at Muscoda?

A. Yes, sir.

Q. How long have you been working there, Mr. Trammell?

A. Since May, 1922.

Q. Since May, 1922?

A. Yes, sir.

Q. How old are you?

A. Thirty-seven.

Q. Thirty-seven. What jobs have you held during that time, Mr. Trammell?

A. Well, there have been a number of them.

Q. Well, let's recite them briefly.

A. Everything from hoisting engineer up to the present job.

Q. What is the present job?

A. The occupation is known as underground dispatcher.

Q. How long have you been an underground dispatcher?

A. Since May 1, 1936.

Q. Since May 1, 1936?

A. Yes, sir.

Q. What are the duties of the underground dispatcher?

A. Mostly looking after the transportation and haulage of the ore and materials.

Q. Ore and materials?

A. Yes, sir.

Q. Do you have anything to do with the hauling of the men?

A. No, sir.

Q. You don't have anything to do with what is called the man—

A. No, sir; that is all on the slope.

Q. Mr. Trammell, what time do you report there in the morning?

A. Well, I usually leave home about 5:30 and arrive at the bath house about ten minutes to six or a quarter of six.

Q. Then you change to your work clothes?

A. Yes, sir, and I get to the slope as near six o'clock as I can and always check in at six o'clock.

Q. You check in by depositing this brass check?

A. Yes, sir.

Q. And will your duties start right there?

A. I have four, sometimes five locomotive motormen and four trip riders.

Q. How many are there in your crew?

A. Eight usually.

Q. You are the head of your crew?

A. Yes, sir.

Q. Do you assemble this crew there at the tally house?

A. Most of the time. If any of the boys are going to be absent they usually send word by some of the other boys.

Q. Who is your superior boss there at the tally house?

A. The mine foreman and superintendent, and two assistants are under the mine foreman. I take orders from any of them.

Q. Do they give you orders there at the tally house?

A. Sometimes; not every morning.

Q. Since October 24, 1938, describe where you go and what orders you receive from him—

A. I don't go any place, but each crew reports to the other shift showing what has been done the previous shift and what is to be done—

Q. Is that report turned over to you?

A. No, sir. The mine foreman has it.

Q. The mine foreman has it?

A. All material is landed at the unloading station about 200 feet—

Q. Just a minute. When you report there does the mine foreman give you this sheet as to your work—

A. No, sir. He will tell me what he wants me to do.

Q. You have your crew there with you, and what man trip do you take?

A. Usually the first one; sometimes the second or third one.

Q. Where do you go from there?

A. To the material station.

Q. Is that near the man unloading station?

A. It is about 200 feet from it.

Q. When you get down there with your crew, what do you do?

A. It is our duty to get the drill steel, drills and such as that, dynamite, out to the headings before the men start.

Q. When you go down from the tally house do you carry any material, your crew?

A. No, sir.

Q. You get your material down in the mine?

A. Yes, sir.

Q. Near the man unloading station?

A. Yes, sir.

Q. How do you get that material to the places where you are actually—

A. If there is a drill or rope or skidder block or anything like that that is needed in a certain heading,—probably been broken down the night before,—the mine foreman will give me orders where to send those particular items to, and while we are loading the drill steel I will load these tools with the drill steel and mark them and tell the motor runner where to carry them to.

Q. What time does your pay start down there?

A. 6:45.

Q. What time does your crew go to work down there?

A. It varies. Very seldom we all ride the same trip. The man trip they get off of,—they go from there immediately to their locomotive.

Q. About what time do they go to work?

A. It runs from 6:15 to 6:45.

Q. And at 6:45 your pay starts?

A. Yes, sir.

Q. How long are you and your crew in the mine until you come out?

A. Well, they pull all us off at 10:30 and have thirty minutes for lunch time and start back at 11:00. It is very seldom we get all the locomotives at the station and placed properly that come in with the different trips before three o'clock. Usually we go to the man loading station about 3:05 to 3:10.

Q. What time do you get out?

A. About 3:20 if I catch the first trip.

Q. If you don't catch the first one?

A. About 3:30 if I catch the second trip; ranges from that time until 4:00 o'clock.

Q. Did you carry on these motor trips down there any of the hooks or materials for the miners going down on that trip?

A. Yes, sir, quite often.

Q. The miners, would they have them in their possession, or how would they carry them?

A. They would have brought them down with them from the outside, or either get them at the timber tunnel where the material station was.

Q. Where is the material station?

A. Just below the man loading station where all materials are unloaded.

Q. Are unloaded?

A. Such as timbers and steel and everything that is being used.

Q. And the men get that material there to carry it to the place of work?

A. Yes, sir, such as hangers and wedges, and sometimes they will bring them down on the man trip with them, and rather than carry them to the working places with them,—

Q. That is from the tally house?

Mr. Burr:

Judge, let him finish. I want to hear his answer.

The Court:

Go ahead.

Mr. Burr:

What were you trying to say?

Mr. Smith:

I think ~~you heard it the~~ first time.

The Witness:

Sometimes a man would bring down jackhammer steel or hangers or wedges. If they didn't need them the first thing they would leave them there at the material station for me to ship to them. If they needed to start with, they would take them on with them.

Q. If they needed them, they would carry them in with them?

Mr. Burr:
The Judge ought not to lead the witness.

Mr. Smith:
Mr. Burr has led more witnesses than I have.

The Court:
Go ahead.

Q. Repeat what you said.

A. I said if a crew brought down something they didn't need to start work with in the heading, and didn't need to carry it with them to the heading, they would leave it there with me at the material tunnel station to ship out to them, but if they needed it they would probably carry it on with them.

Q. Have you seen the actual producing crews, that is, the men that actually get out the ore—

A. That is the head miners and drillers and muckers?

Q. Have you seen them carrying material from the tally house down in the mine and from the man loading station to where they work?

A. I have quite frequently.

Q. Was that a frequent occurrence?

A. It was, up to May 1st.

Q. They have abandoned that practice since May 1st?

A. They have an underground supply house.

Q. Before May 1st—

A. They kept hangers and wedges and C-hooks in a supply house there at the bath house.

Q. How far was the bath house from the tally house?

A. About 2300 feet.

Q. And they would bring that material over to the tally house and put up their checks, and catch the man trip with that material?

A. Yes, sir.

Mr. Smith:

I believe that is all.

Cross Examination.

(By Mr. Burr):

Q. Mr. Trammell, you have been working for the Tennessee Company about how many years off and on?

A. I worked a year, and then I railroaded a while and then went back. Since I railroaded, Mr. Burr, and went back, since then, it has been 18 or 19 years.

Q. Has all your mining experience been with the Tennessee Company?

A. Every bit of it.

Q. You have worked as hoisting engineer and through—

A. Most all occupations underground.

Q. And how long have you been the underground dispatcher?

A. Since May of 1936.

Q. Now, Fred, I wish you would tell me what the duties of the underground dispatcher are, so the Court can understand what you have down there.

A. Well, it is a kind of central bureau of information, I think, the way they handle it, but mostly it is up to the dispatcher to direct the motors after the trips of ore, and keep the time of the trams and trips, and report it out to the office on the distribution sheets.

Q. It is almost the same job as a railroad dispatcher has outside?

A. Yes, sir. I take the calls of the head miners, take the number of cars he runs, see that he has empty cars, and keep up with the motormen and trip riders.

Q. Have you a crew under you?

A. Just the motormen and trip riders.

Q. Motorman and trip rider, the three of you?

A. Yes, sir.

Q. When you got to the mine after you changed your clothes at the bath house—I believe way back yonder when you started to working they made you pay for that bath house?

A. I think there was a fee of fifty cents a month.

Q. How many years have they been giving it to you free?

A. I couldn't say, Mr. Burr. I think through '28,—'26 or '28 when it was abandoned.

Q. And I guess, like everybody else, you got your carbide?

A. Yes, sir.

Q. You got that every day?

A. Sometimes a can will last a day, and sometimes get three days out of it if you didn't use it much.

Q. Then you deposited your check?

A. Deposited the brass check at the tally house.

Q. Both of those things you have been doing ever since you have been there?

A. Yes, sir.

Q. In the same way?

A. Yes, sir.

Q. And as far as you know, everybody else has done it in the same way?

A. If they go underground they have got to check in by brass check.

Q. By checking in you mean depositing the brass check?

A. Yes, sir.

Q. I believe you said you caught whatever skip down you could conveniently catch?

A. Most of the head miners and men in charge of crews caught the first trip down.

Q. If you didn't get there in time for the first trip, that threw you to catch a later trip?

A. Sometimes, but I usually took the first trip down.

Q. Does your crew go down with you, or take a later skip?

A. As a rule the trip riders and motor runners knew we have got to get this drill steel out, and they catch the first or second skip.

Q. When you get down there where do you go, you and your two men?

A. The locomotive pit is about 200 feet from this timber tunnel and the four motor runners go to the locomotive pit and put their trolley poles up. These motors are run in the motor pit for inspection.

Q. How far is that from where you get off the skip?

A. About 200 feet; it switches out to the material yard.

Q. How is that walking, bad walking or good walking?

A. Good walking.

Q. Have you been riding down on that same kind of a skip all these years?

A. Yes, sir.

Q. Mr Trammell, have you ever had any injuries happen to you while you were riding down on that skip?

A. Well, I got a bump on my head one time, but fortunately I was not injured.

Q. How did you get your head bumped?

A. Just forgot to stoop for a low place on the slope.

Q. But you were not injured fortunately?

A. No, sir.

Q. About this drill steel, is that the heavy drill steel, the steel for the tripod drills?

A. Yes, sir. It consists of four pieces in a set, four, six, eight and ten feet long.

Q. It is your job to get it delivered to the different headings?

A. The motor runners and trip riders carry it out and place the new steel in every heading and pick up the dull steel.

Q. You say the men have sometimes brought down themselves in that basket on the skip hangers and wedges. Did you mention anything else?

A. I didn't mention it, but the service men have brought hitch cutters and the production men have brought steel for jackhammers.

Q. With the exception of the wedges, hangers and C-hooks, the rest of that stuff was at the blacksmith shop?

A. Yes, sir.

Q. And for a while they kept a supply of the wedges, hangers and C-hooks at the bath house?

A. At the bath house.

Q. In other words, the whole crew did not come up every morning with a lot of hangers and wedges and C-hooks?

A. One man would get the requisition and he would get the stuff and stand there until he saw a member of his crew, and they would carry them and put them in the basket.

Q. That basket was large enough to carry both lots?

A. Yes, sir.

Q. How big was it?

A. About four foot long and about a foot wide.

Q. When they got to the bottom with the hangers and wedges and stuff of that kind, I believe you say sometimes in preference to having your crew bring them up they would take them up themselves?

A. Yes, sir. They might have six hangers and fifty wedges and they would take one hanger and two or three wedges and leave the rest of them for me to send in.

Q. You don't mean fifty wedges to go to one heading?

A. They order them sometimes three hangers and twenty-five wedges; three or four hangers and forty or fifty wedges.

Q. I guess the number they get depend on the head-miner and the crew?

A. Sometimes, if a hanger is pulled, they never find the wedge. It is destroyed or lost in the ore. It just depends on how well they are cared for.

Q. Was there a good deal of energy spent on the part of the mine foreman in seeing they had hangers and wedges and so forth?

Mr. Smith:

We object to that.

The Court:

Overruled.

Q. How about that?

A. He tried to keep them supplied, gave them a requisition whenever they wanted it, but he would try to keep down the cost to see they didn't use too many.

Q. I just want to ask you one or two questions, and then I am through. Your pay day began at 6:45; is that right?

A. As a rule.

Q. As a rule? You were paid by the hour?

A. Yes, sir, eight hour basis.

Q. Ran from 6:45 to 3:15 in the afternoon, with fifteen minutes for lunch?

A. Yes, sir.

Q. That is the way it ran during these years?

A. Yes, sir.

Q. That didn't include the time you spent riding down and back from your working place?

A. No, sir. It was the policy face to face.

Q. Has that always been the policy out there, face to face?

A. As far as I know.

Q. For everybody?

A. For everybody.

Q. Sometimes, if you got down there before 6:45, you started looking after locomotives?

A. Most always we started doing what we knew had to be done.

Q. Most days you got off at three o'clock?

A. Three o'clock ordinarily, and sometimes a motor wouldn't be in until five minutes after three.

Q. Then your work was over?

A. Yes, sir.

Q. And you went on out?

A. I had to carry my sheets by, and the mine foreman usually took time to check them and see how the drilling had been carried out.

Q. That was the sheet showing—

A. The powder and drilling and use of supplies.

Q. Of course, your crew didn't have to do that?

A. No, sir. When they put their locomotives in the pit, they went on.

Mr. Burr:

That is all.

Re-Direct Examination.

(By Mr. Smith):

Q. Fred, the condition you have described there was from October 24, 1938, until May 1, 1941, this year, when they put in the collar to collar plan?

A. Yes, sir.

Q. Mr. Burr said your work day was over at 3:00 o'clock. What time did you actually get out of the mine?

A. As far as pulling ore was concerned, we usually quit pulling ore around three o'clock, but we went to the man loading station and waited until the rappers and skip tenders—

Q. What time—

The Court:

Let him answer.

A. The skip tenders would run up to 3:15 and start pulling man trips, and if we left on the first man trip we would get out about 4:20 or 21. It took seven or eight minutes to run a man trip. If we didn't catch the first one it would throw us that much later on up to 4.00 o'clock.

Mr. Smith:

That is all.

(By Mr. Harris):

Q. Was the general condition as to the roof and slope and haulage ways, and general conditions as to the traffic substantially the same from October 24, 1938, up to the present time?

A. Practically, Mr. Harris, yes, sir.

Mr. Harris:

That is all.

Re-Cross Examination.

(By Mr. Burr):

Q. They were practically the same for years back?

A. The way that was done, the haulage ways would get dirty, and on a week end or Saturday night we would put a crew there to what we called scrap the haulage ways.

Q. That was always done?

A. Yes, sir.

Q. But it has been substantially the same all the time, the condition of the haulage ways and so on?

A. Practically the same.

Q. Fred, I want to ask you a frank question. You were in and over that place?

A. In and about the mine?

Q. Yes, sir.

A. I would go about them.

Q. Were any of those places attended with any handicap in walking?

Mr. Harris:
We object.

Mr. Burr:
This is cross examination.

The Court:
Sustained.

Mr. Burr:
They have asked about the condition.

The Court:
I haven't let him give any conclusions.

Mr. Burr:
We except.

The Court:
You can go ahead and ask it. He can describe the condition. All right. Let him tell the condition.

Q. Was it hard to walk or difficult to walk?

A. I will answer my judgment. Some of the places where they had bad falls and they pulled the slate out and stored it on the side of the track, some were in worse condition than others. Some were fair and some were bad.

Q. Did that depend on—

A. Depended on the kind of top they had in the particular heading. Some places were bad and some were not so bad.

Q. Would that be cleaned up?

A. When they got a chance in there, have a shift off, an off night, they would send a crew in there and clean this stuff up.

Q. That was not a part of your work?

A. No, sir.

Mr. Burr:
That is all.

Mr. Smith:
That is all.

(Witness excused.)

Mr. Smith:
Call Mr. Palmer.

3067 FRANK PALMER, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

The Court:
Is your name Palmer?

The Witness:
Yes, sir.

The Court:

What is your given name?

The Witness:

Frank.

(By Mr. Smith):

Q. Mr. Palmer, how old are you?

A. Thirty-six.

Q. Thirty-six?

A. Yes, sir.

Q. How long have you been in the ore mining business?

A. Oh, since January, 1937.

Q. Who have you worked for since that time?

A. T. C. I.

Q. What mine?

A. Number 6, Muscoda.

Q. Number 6, Muscoda?

A. Yes, sir.

Q. Mr. Palmer, what duties have you performed there with reference to the ore mining in Number 6 since you have been there?

A. Except for two days, I have been a motor inspector or electrician.

Q. Motor inspector or electrician?

A. And helper. That is a motor inspector's helper.

Q. What position do you hold now?

A. Motor inspector.

Q. How long have you been motor inspector?

A. Oh, around—September, I think, in 1937,—September or October.

Q. September in 1937 continuously up until May 1st of this year?

A. Yes, sir, continuously. Oh, during slack times I might have been demoted to helper for a few weeks.

Q. Now, what are your duties as motor inspector down in the mines?

A. Well, my regular duties are to take care of heading inspection work, that is, moving up electrical equipment when the face of the heading is advanced, and when that work is caught up to help the other electricians on service lines and breakdowns.

Q. Do you have a crew of your own?

A. Only a helper.

Q. What time do you report there for work, Mr. Palmer?

A. Are you referring to prior to May 1st?

Q. Prior to May 1st; from October 24, 1938, up to May 1st of this year?

A. I usually got to the tally house around 6:25.

Q. Did you go to the bath house first?

A. Yes, sir.

Q. And then what time did you say you got to the tally house?

A. I went to the bath house about six, and get to the tally house about 6:20 or 25.

Q. Did you turn in your brass check?

A. Turned in my brass check.

Q. And then get your carbide?

A. There was a time when I first went there when the carbide was kept at the slope. It was later taken down to the bath house.

Q. Who did you work under?

A. There was an electrician in charge of our crew.

Q. You had an electrician in charge of your crew?

A. Yes, sir.

Q. What did you call him?

A. He had the same title I did, motor inspector, for a good long while.

Q. Did you report to him at the tally house?

A. No, sir. At the tally house I turned in my check to the timetaker, but I would see him at the bath house or the tally house.

Q. When you turned in your check, what skip did you take?

A. The first one I could get on.

Q. Then where did you go?

A. Underground.

Q. To the man unloading station?

A. Yes, sir.

Q. Where did you go from there?

A. To the motor pit, which was down the hill, I guess, a hundred and fifty or two hundred feet.

Q. From the man unloading station?

A. Yes, sir.

Q. What did you do then?

A. If there were any locomotives come in and I didn't have any work elsewhere, I would help them check them over to see if they were all right.

Q. Where did you start your work?

A. If I had any work to do out in the headings, and any material to take, I would usually wait until I got an opportunity to go out there on a motor.

Q. Did you ever take any material down with you?

A. How is that?

Q. Did you ever take any material down with you?

A. Yes, sir.

Q. Quite often or infrequently?

A. Well, in my case I didn't go often, but usually the helper went.

Q. The helper?

A. But the helper went as often as two times, sometimes three times a week,—usually twice each week.

Q. Go where, Mr. Palmer?

A. They would go from the bath house down to the electric shop and then to the supply house. Some of the material would come from both places.

Q. And bring the material to the mouth of the mine?

A. Yes, sir. The procedure we usually followed was that our supervisor would tell us in the bath house what materials that we had to get and order someone to get them. The helper would go by the electric shop and get it out handy to the truck, and walk down to the supply house with the requisition. The supply house was opened at 6:30. We would get our materials and come past the electric shop and pick up those there.

Q. When did you get to the top?

A. In that case the last man trip had run. If it was not too late I would get a skip right away.

Q. How long would it take you to assemble all that stuff you took there and get it down in the mine?

A. It depended on the amount. I suppose an average of ten minutes would do it.

Q. Ten minutes?

A. Sometimes it would be a good bit more.

Q. After you got it to the mine, did you carry it down in the man skip?

A. Yes, sir, because the fact I was riding it would make it a man skip. It is the same skip all the time.

Q. You would carry it on the ore or man skip?

A. It is the same vehicle, the same drag.

Q. Where would you deliver that material underground?

A. Take it in to the motor pit where we are going to use it.

Q. What?

A. Take it in to the motor pit where we are going to use it.

Q. Take it in to the motor pit where you were going to use it?

A Or keep it on storage.

Q. How far is the motor pit from the man unloading station?

A. Oh, I should say a hundred and fifty or two hundred feet.

Q. Would you take it directly to the motor pit?

A. Yes, sir.

Q. How did you take it, on a car?

A. In our arms.

Q. In your arms?

A. Sometimes made two or three trips.

Q. What time did your pay start?

A. 6:45.

Q. 6:45?

A. Yes, sir.

Q. You reported at 6 o'clock and did the things you have described between then and 6:45?

A. I have done that.

Q. What time would you get out of the mine?

A. Well, the first man trip would run about three fifteen about, and I would usually get on the first or second. I averaged about the second one, I guess.

Q. What time did you get out of the mine?

A. I would say about 3:25.

The Court:
What is the last question?

The Witness:
I said I got out about 3:25.

The Court:
Out of the mine?

The Witness:
Yes, sir.

The Court:
About what time?

The Witness:
About 3:25.

Q. That is if you caught the first trip?
A. First to the second.
Q. First to the second?
A. I usually averaged about the second.
Q. That would put you out about 3:25?
A. About 3:25, average.
Q. What time did they turn on the juice down in the mine?
A. The generators are set to be turned on by clock. It is automatic. The clock is set for 6:15.
Q. So the juice is set to be turned on at 6:15?
A. 6:15 unless the clock runs slow.

Mr. Smith:
I believe that is all.

Cross Examination.

(By Mr. Burr):
Q. Mr. Palmer, how long have you been working for the Tennessee Company?
A. Since January, 1937.
Q. Had you ever done any mining work previous to that?
A. Oh, I did work for a while,—less than a month for Woodward Iron Company in 1926.
Q. Your mining experience has been exclusively, you might say, with the Tennessee Company?
A. Yes, sir.
Q. And during that time your work has been motor inspector?
A. Except the first two days I worked. I worked with the brattice crew two days.
Q. Which is the higher, motor inspector or helper?

A. Well, a motor inspector is higher than a helper.

Q. Did you rank the same as the foreman, both when you worked as a helper and a motor inspector?

A. You mean as—you mean the same electrician in charge of our crew?

Q. No, the same rank.

A. Yes.

Q. In the electrical department?

A. Yes, sir.

Q. You rank as an electrician in the electrical department, and you draw your day rate on the particular job you have in that department?

A. Yes, sir.

Q. You are now and for some little time have been a motor inspector?

A. I have been a motor inspector most of the time.

Q. It has been your business to inspect these motors to see if they are in shape?

A. That is part of my duty.

Q. What else do you have to do?

A. Move up the electrical equipment and lines in the working places as they are advanced, trolley lines, telephone lines, light wires.

Q. Do you have anything at all to do with the production crews?

A. Not a thing except repair the motors.

Q. Repair the motors?

A. Yes, sir.

Q. All right, sir. After you get your change of clothes at the bath house, as a usual thing, and I will come back and ask you about the details later,—I am just leaving that out for the present,—as a usual thing you go to the tally house and deposit your check,—get your carbide and deposit your check. Is that right?

A. That is right.

Q. Then you go down in the mine on this skip, the same kind of skip you have been riding all the time?

A. Yes, sir.

Q. And I believe you say you generally caught the first skip?

A. You mean in going down?

Q. The first skip, I believe you said?

A. No, I am usually pretty late in going down. I don't know how many trips had run before I went down, but I usually left the top about 6:20 to 6:25.

Q. You got to the tally house, you said, after changing clothes, around about 6:20 or 6:25?

A. Yes, sir.

Q. So you are catching one of the late drags?

A. Yes, sir.

Q. When you get down—get to the bottom, how far do you have to go to your working place?

A. You mean the direction and turns I make?

Q. Yes, sir; you go about how far?

A. I guess about a hundred and fifty or 200 feet to the motor pit. That is where I get my tools.

Q. Is that where your tool house is?

A. A box where I keep my own personal tools.

Q. Do you have a key to that box?

A. Yes, sir.

Q. Do you, as a motor inspector, have a box?

A. Yes, sir.

Q. Does each motor inspector have a box?

A. Yes, sir, he and his helper.

Q. Then the first thing you do is go and get your tools?

A. Yes, sir.

Q. Then where do you go from there?

A. It all depends on what kind of work is being done; that is, whether there are any headings to be moved up or bonding the track. Sometimes we can prepare a good bit of that in advance. That keeps me pretty well busy working between times.

Q. What time would you usually say you get to your tool box, just a rough estimate?

A. Oh, I should say around 6:30, maybe a little before or a little after,—average around 6:30, I guess.

Q. To go back, I want to ask you something about the tools you get at the supply house. You say you will usually meet the electrician probably at the bath house?

A. Yes, sir.

Q. And if he needs any tools, he will give you a requisition for them, or order?

A. No, sir,—

Q. Just tell you what he will need?

A. Mr. Powell usually writes a requisition if you need anything from the supply house. Electrical equipment comes, as a rule, to the electric shop and that is where we pick it up. There are things we get from the supply house that are not tools, but materials and supplies.

Q. Do you know what you need, or will someone tell you?

A. He usually tells me what he has ordered.

Q. What he has ordered?

A. What he has coming in. He orders it and sees it is down there.

Q. It is special material?

A. Usually.

Q. Do you go and get it yourself, or send someone?

A. My superior does the sending. He usually sends helpers.

Q. Sometimes he sends you?

A. Yes, sir.

Q. If he sends you you will go down to the supply house and get the materials?

A. If there are any materials from the supply house I get it.

Q. It opens at 6:30 in the morning, I believe you say?

A. Yes, sir.

Q. Do you take it up in a truck to the entrance of the mine?

A. As a rule.

Q. How do you carry it down; on a late drag, you say?

A. Usually.

Q. They run an extra drag for you?

A. I am not the only one. There are others.

Q. For those that are late they run an extra drag?

Q. And you take it down and take it where it has to go?

A. That is right.

Q. You generally get through with your work in the afternoon about what time? When I say work, I am not talking about coming out of the mine; I mean your actual work as a motor inspector.

A. By that I am assuming you mean with my work in the motor pit?

Q. Yes; when you lock your tool box.

A. Yes. I guess that would be around a quarter of three to three fifteen sometimes.

Q. Any where from a quarter of three until three fifteen?

A. Yes, sir.

Q. Then, after you lock your tools up, do you go down to the unloading station and catch the drag out?

A. Yes, sir. However, I usually go in there about three o'clock.

Q. You wait for the first drag that runs about 3:15?.

A. The first one I can get.

Q. There are so many ahead of you at 3 o'clock you can't always get the first one?

A. Can't get the first one.

Q. By three o'clock the waiting place was pretty well filled, was it?

A. It was as a rule.

Q. How many will that place hold they have seats for there? Have you got some idea?

A. I would have to guess. There are two benches—

Q. To the best of your judgment.

A. One would hold, I guess, about forty men. The other might hold about fifty or fifty-five.

Q. I see. I believe you said you left your tool box about three. I am not sure I got that time right.

A. About three.

Q. About three, and you would walk down there and get there about three what?

A. Will you repeat that, please?

Q. How long would it take you to go from your tool box down to the bull pen, some of them call it?

A. We call it the hoodlum.

Q. The hoodlum?

A. About a minute.

Q. And when you get there, you will find that many ahead of you?

A. Sometimes I would find ten or twelve, sometimes one or two, sometimes forty, sometimes I would find a hundred.

Q. And you would catch the first drag if you could, and if you couldn't you would catch the first one you could catch?

A. That is right.

Q. Now, your pay runs from—during all this time has run from 6:45 in the morning until 3:15, with half an hour out for lunch?

A. That is right.

Q. And that has been the practice there ever since you have been there?

A. Yes, sir.

Q. I believe that is the only place you have been to amount to anything,—

A. Yes, sir.

Q. So I need not ask you about that.

This tool box you have, you and the others, where you put your individual, personal tools, is that what you might call your headquarters? Is that where you go?

A. Yes, sir. That is where we return. That is at the motor pit.

Q. That is at the motor pit, and that is where your time starts, at the motor pit?

A. Yes, sir.

Q. And you come back to the same place in the afternoon and get there about three o'clock?

A. Yes, sir.

Q. You say you were very seldom sent, but usually the helper was sent for these materials—

A. That is right.

Q. —that they got out of the supply house?

A. Yes, sir.

Q. And how frequently did you say that happened that anybody was sent out for them?

A. Two or three times a week.

Mr. Burr:

That is all.

Re-Direct Examination.

(By Mr. Smith):

Q. Let me ask you this: You have contacted your superior before you got to the tally house?

A. Yes, sir. I see him in the bath house every day in the world. We change side by side.

Q. You discussed the day's work?

Mr. Burr:

Don't lead him.

A. Yes, sir.

Mr. Burr:
As much as I like you, I don't want you to testify.

Mr. Smith:
That is all.

(By Mr. Harris):
Q. You stated about a change of classification,—you didn't have electricians; you had motor inspectors. When was your change of classification?
A. It took effect, I think, June 1st.
Q. June 1st this year?
A. I think so.
Q. On how many different types of work did they change the classification out there?
A. There were a good many. I don't know how many.

Mr. Harris:
A great many. That is all.

Mr. Burr:
That is all.

(Witness excused.)

Mr. Smith:
John White.

3082 JOHN WHITE, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Smith):
Q. Your name is Mr. John White?
A. Yes, sir.

Q. How old are you, Mr. White?

A. Forty-seven.

Q. How long have you been in the ore mining business?

A. Since March, 1923.

Q. Since March, 1923?

A. Yes, sir.

Q. Have you spent all that time with the T. C. I.?

A. Yes, sir.

Q. At what mine?

A. Ishkooda Number 13.

Q. Ishkooda Number 13?

A. Yes, sir.

Q. All your mining experience has been in that one mine?

A. That division.

Q. That division?

A. I have worked some at Number 11.

Q. I see. What position do you hold now?

A. Head miner.

Q. Head miner? And how long have you been head miner?

A. Well, I have been head miner before they changed the name. They used to call it section foreman,—about fourteen years.

Q. When did they make the change?

A. About 1936, I believe.

Q. About 1936?

A. Yes, sir.

Q. You have been head miner all the time since October 24, 1936, up to May 1st this year?

A. Yes, sir.

Q. Head miner all the time since October 24, 1938?

A. Yes, sir.

Q. At Ishkooda Mines?

A. Yes, sir.

Q. Mr. White, what time do you report to the mine in the morning?

A. At six o'clock.

Q. You go to the bath house first, I believe?

A. Yes, sir.

Q. And from there to the tally house?

A. Yes, sir.

Q. And when you say six o'clock, you mean you hang up your check?

A. Hang up my check at six o'clock.

Q. Who do you report to when you get to the tally house?

A. I hang up my check and get outside the tally house and check in six men. I work six men.

Q. You check them in yourself?

A. Yes, sir.

Q. You are the head of that crew?

A. Yes, sir.

Q. What do you do after you check in your men?

A. After I check in my last man I catch the first skip I can going underground.

Q. You catch the first skip down?

A. Yes, sir.

Q. Do you come in contact with the mine foreman or assistant mine foreman—

A. Yes, sir.

Q. Before you get on the skip?

A. Yes, sir.

Q. Does he give you any orders there?

A. Sometimes he doesn't and sometimes he does.

Q. Suppose there is a vacancy in your crew—

A. I confer with the mine foreman and he gives me a man.

Q. After you complete your crew by conferring with the mine foreman, you get on the skip?

A. Yes, sir.

Q. Do you carry any material down on that skip?

A. No, sir.

Q. You do not?

A. No, sir.

Q. Where do you get your material?

A. At the underground supply house.

Q. At the supply house?

A. Yes, sir.

Q. How far is that from the underground loading station in the mine?

A. About 200 feet.

Q. About 200 feet?

A. Yes, sir.

Q. What material do you and your crew get there?

A. We get hangers and wedges and C-hooks and jackhammer steel.

Q. Where do you carry those?

A. Sometimes, if we need them right at once, we carry them into the heading, and if we don't need them we leave them at the nuck for the motor to bring up on the first trip.

Q. How far do you have to carry them?

A. Somewhere near 300 feet, I imagine.

Q. What time do you start actual operations down there; that is, commence producing ore?

A. 6:45.

Q. What do you do when you get to your place at 6:45?

A. I go through all the working place and see everything is safe the first thing.

Q. You get there before 6:45 at your working place?

A. No, sir. I get in there at 6:45, and go through all the working place, and see it is safe.

Q. Go through all the working place and see it is safe?

A. Yes, sir, in my heading.

Q. Who goes with you?

A. The drill men.

Q. Do you use any powder and oil down there?

A. Use carbide.

Q. I mean oil in the drill?

A. Yes, sir, use oil in the drill.

Q. And explosives, dynamite?

A. Yes, sir.

Q. Where do you get that?

A. At the underground magazine.

Q. When do you get that?

A. We get that along in the evening before shooting time; send the drill helper after it.

Q. Send the drill helper after it?

A. Yes, sir.

Q. Before shooting time?

A. Yes, sir.

Q. Now, what time do you shoot down there?

A. 3:15.

Q. 3:15? What time do you start out of the mine, get out of the mine?

A. All the way from 3:30 until 25 minutes to 4:00.

Q. 3:30 to 4:00?

A. Twenty-five minutes to 4:00 depending on what skip I catch coming out.

Q. You are paid on an eight hour shift commencing at 6:45 and ending at the end of eight hours?

A. Yes, sir.

Q. You haven't been paid for any travel time, I believe, since you have been there?

A. No, sir.

Mr. Smith:

Your Honor, I am going to make this short. There is a lot of it duplication, and I am not going over it.

The Court:

All right.

Mr. Smith:

I think I am through.

Cross Examination.

(By Mr. Burr):

Q. Mr. White, has all your mining experience been at Ishkooda, did I understand you to say?

A. All the ore mining experience.

Q. All the ore mining experience?

A. Yes, sir.

Q. That covered a period of what time?

A. Since March, '23.

Q. Have you had any experience in other mines than that, other than ore mines?

Mr. Harris:

We object to experience in other mines than ore mines.

The Court:

He can ask if he had experience.

Q. Have you?

A. I have had experience in one coal mine.

Q. In this same district?

A. The same Birmingham district.

Mr. Burr:

I want the same exception—I assume you will object to the coal mines, Mr. Harris?

Mr. Harris:

Yes, indeed.

The Court:

And I will sustain the objection.

Mr. Burr:

And the same question I propounded to the other witnesses along that line, Your Honor.

The Court:

All right.

Mr. Burr:

And the same exception.

Q. Now, Mr. White, before you were a head miner you were a section foreman?

A. Yes, sir.

Q. That was the same job under a different name?

A. Yes, sir, under a different name.

Q. The head miner acquired that name after they put the incentive plan in, and he commenced sharing in the production if he reached a certain point?

A. Yes, sir.

Q. And I will ask you if it hasn't been true, since you have been connected with the mines, wherever you have been connected with the mines, the men have always had their time computed and paid on a face to face basis?

A. Yes, sir.

Q. They never have been paid, to your knowledge, on any portion of the traveling time in going to and from their places of work?

A. No, sir.

Q. Now, the same conditions in reference to depositing —getting your bath—I mean changing your clothes at the bath house, and getting your carbide, and putting your check in at the window and going down and going to your working place has substantially been the same over all these years that you have worked there?

A. Yes, sir.

Q. The checking in you do, both at the top and coming out, you deposit your badge, your check number?

A. How is that?

Q. You deposit your check number as you go in?

A. Yes, sir.

Q. Then you said if there was a vacancy in your crew you would ask the mine foreman sometime for a particular mine; is that the may I understood you?

A. Yes, sir.

Q. You would know a good man and would ask for him?

A. Yes, sir.

Q. And he would, if he could get him, send him down? If he was available he would give him to you?

A. Yes, sir.

Q. Would that man join you right then or would he be sent later?

A. He might have already gone down and they would have to send him word.

Q. Sometimes he might be at the top and you would get him then?

A. Yes, sir.

Q. You would ascertain at the top whether you had a full crew?

A. Yes, sir.

Q. Would you take the checks of the men and deposit them yourself?

A. I took them direct from the men.

Q. You wanted to know whether your crew was there?

A. Yes, sir.

Q. You took them there?

A. Yes, sir.

Q. And the other head miners did the same thing, you say?

A. Most of them did it the same way.

Q. Some of them did it differently?

A. Yes, sir.

Q. Did you go down with all your crew?

A. No, sir.

Q. Did you go afterwards or before that time?

A. The last one I would check in, we would catch about the same trip.

Q. When they got to the bottom, would they go on to the working place, or wait for you?

A. They would go up to a distance of about 200 feet where we keep our lunches and wait for me.

Q. And then you went up together?

A. I would go in front.

Q. And you wouldn't let them go in until you inspected it to see if it was safe?

A. Yes, sir.

Q. And you started working about 6:45?

A. Yes, sir.

Q. And work went on in the usual way throughout the day until the shooting time?

A. Yes, sir.

Q. And you shot at what time?

A. 3:15.

Q. 3:10 or 3:15?

A. 3:15.

Q. Did you always wait till 3:15 to shoot or sometimes shoot before?

A. Might be a minute or two.

Q. Did your men stay until you shot?

A. Those that were necessary did.

Q. What was necessary?

A. Drill man and helper.

Q. And the others left?

A. Yes, sir.

Q. What time did they leave?

A. Just before we shot.

Q. And which ones left?

A. The motor runner and two section helpers.

Q. That left three others?

A. Yes, sir.

Q. They could go ahead down to the hoodlum?

A. Yes, sir.

Q. Now, then, I believe you told Mr. Smith that you didn't take any tools down with you on the skip at all?

A. No, sir.

Q. Have you been riding down on the same skip all these years?

A. Yes, sir.

Q. The same kind of skip, I mean?

A. Yes, sir.

Q. And your men have been riding down in the same skip?

A. Yes, sir.

Q. You are in control of your men, of course, while they are at the working place?

A. Yes, sir.

Q. You are the head?

A. Yes, sir.

Q. You are the boss?

A. Yes, sir.

Q. While you were up in the regular working place—you have a regular time to send for powder?

A. Yes, sir.

Q. That is always during the shift?

A. Yes, sir.

Q. About what time do you send for powder?

A. About 1:30 at that time.

Q. Do you send one man or two men for the powder?

A. It is according to how much I am going to use that particular day.

Q. You are the judge of that?

A. Yes, sir.

Q. How do they bring the powder down there?

A. They have a powder sack.

Q. Is it made for that purpose?

A. Yes, sir.

Q. Hung over their shoulders?

A. Hung over their shoulders.

Q. It is not a crocus sack?

A. No, sir.

Q. I don't believe you pay for the powder, but in the earnings you get a credit on the amount of powder you use?

A. Yes, sir.

Q. Something of that sort?

A. Yes, sir.

Q. That is a part of your incentive earnings?

A. Yes, sir.

Q. Of course, you have to send at a regular time for powder, but if you run out of oil or drill steel gets dull or the drill should break, anything of that sort, have you got the authority to send one of your men down to look after anything like that for you?

A. Yes, sir.

Q. And you do that when it is necessary?

A. Yes, sir.

Q. Now, you mentioned as the only kind of tools that the men sometimes pick up at the underground supply house, I believe you call it—

A. Yes, sir.

Q. That is an underground tool house, is it?

A. Yes, sir.

Q. That is located about how far—

A. About 200 feet, as far as I know.

Q. —from the underground loading station?

A. Yes, sir.

Q. In going to your working place, you and your men, do you walk by that place?

A. No, sir; ride by it.

Q. Do you ride up to your working place?

A. No, sir.

Q. When do you ride by it?

A. Coming down on the skip.

Q. The underground loading station is further down?

A. Yes, sir.

Q. So, when you go up there you go up to that place from where you get off the skip?

A. Yes, sir.

Q. Now, you say in accordance with your preference, if you pick up any wedges or hammers,—I don't mean hammers,—hangers,—is that what you said?

A. Yes, sir.

Q. Or C-hooks?

A. Yes, sir.

Q. In accordance with your preference you carry it up or have it sent up by the motor?

A. If we need it right out at the start of the shift we will carry it; otherwise, we will leave it for the motor to bring it up.

Q. And they bring it right to the heading?

A. Yes, sir.

Q. And they will bring it any time you want them to bring it, won't they, Mr. White?

A. Yes, sir.

Q. That is their duty, and whenever you want them to bring it,

A. Yes, sir.

Mr. Burr:

That is all.

Re-Direct Examination.

(By Mr. Harris):

Q. Are the general conditions as to the height of the roof in the main slope, main haulage ways, the man ways, the walking conditions, the trolley wires, the same up to the present time that they have been since around October 24, 1938?

A. Well, all the places I have been in, sir.

Mr. Harris:

That is all.

Re-Cross Examination.

(By Mr. Burr):

Q. Mr. White, is it your duty as head miner, under the rules, to report at once any injury you may have received or your men may receive?

A. Yes, sir.

Q. Since you have been working there do you recall you have had to report any of your own injuries that have occurred, either on the skip riding down or going to the stope? I am not interested in injuries in the stope?

A. No, sir.

Q. Have you ever reported any for any of your men?

A. No, sir.

The Court:

Mr. White, I want to ask you what time do you check out at night?

The Witness:

It ranges from 3:20 to 25 minutes to four.

The Court:

I can't hear you.

The Witness:

From 3:20 to 25 minutes to four. It is according to what skip I catch coming out. Sometimes I get out on the first trip and sometimes I catch a later one.

(By Mr. Burr):

Q. The extent of your checking out is just getting your badge?

A. Taking it off the board.

Q. And going to the bath house?

A. Yes, sir.

Mr. Burr:
That is all.

Mr. Smith:
That is all.

(Witness excused.)

The Court:
I believe we will adjourn.
Court will adjourn until 9:30 tomorrow morning.

(Whereupon, 4:35 P. M., July 29, 1941, an adjournment was had to 9:30 A. M., July 30, 1941.)

July 30, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:
Who will you have?

Mr. Smith:
James Knox.

3097 JAMES KNOX (c), being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Smith):

Q. Is your name James Knox?

A. Yes, sir.

Q. How old are you?

A. Forty-five.

Q. James, where were you raised at?

A. I was raised in Georgia.

Q. Raised in Georgia?

A. Yes, sir.

Q. How long have you been in the mining business?

A. About seventeen years.

Q. In the ore mining?

A. Yes, sir.

Q. Where have you been working most of the time?

A. No. 11, Ishkooda division.

Q. No. 11, Ishkooda division. How long have you been working there?

A. Right at seventeen years.

Q. Been in the ore mine seventeen years?

A. Yes, sir.

Q. What job have you got in the mine?

A. Drag operator.

Q. Drag operator?

A. Yes, sir.

Q. When you get to the mine in the morning where do you first go when you get there?

A. Go to the tally house, what we call the tally house.

Q. You go to the bath house?

A. Go to the bath house, yes, sir.

Q. What time do you get to the tally house?

A. Usually get there—well, my time is usually about a quarter to six.

Q. Usually about a quarter to six?

A. Yes, sir.

Q. What time did you hang up your check?

A. What are you speaking of? I think I can tell you. Prior to the change what time?

Q. From October 26, 1938, up until May 1, '41.

A. What time I hung up my check?

Q. Yes.

A. Usually check in at the time I got there.

Q. A quarter to six?

A. Yes, sir, about the time I got there.

Q. Then what did you do?

A. Wait for the drag, the man drag.

Q. Would you have anybody there that you worked under that you reported to?

A. That I worked under?

Q. Yes, who was your boss?

A. The mine foreman would be there.

Q. The mine foreman would be there?

A. And the head miner would be there.

Q. You worked directly under the head miner, did you?

A. Yes, sir.

Q. Would you report to him?

A. Not at the tally house.

Q. Where would you report to him?

A. Underground.

Q. You reported to him underground. Who did you report to at the tally house?

A. The mine foreman or the assistant mine foreman.

Q. The mine foreman or the assistant mine foreman; would they tell you where to go or what they wanted you to do?

A. No, sir, they would just hang my brass and I knew what to do.

Q. Just hang your brass?

A. Just hang my brass.

Q. Did you carry any material down with you?

A. Before I was drag operator I would carry hangers or anything like that, jackhammer steel.

Q. Carry hangers and jackhammer steel?

A. Yes, sir.

Q. What else?

A. That is about all that I would carry.

Q. What time would you catch the drag going down?

A. The man trip going down, you mean?

Q. Yes.

A. About six o'clock.

Q. Then you would go down to the man loading station, would you?

A. Yes, sir.

Q. Now, from the man loading station where would you go?

A. Go to the heading in which I worked.

Q. Go to the heading in which you worked?

A. Yes, sir.

Q. Would you carry anything from the man loading station to the heading?

A. Usually you get it at the tool house.

Q. How far is the tool house from the man loading station?

A. Well, it is just two headings down. I don't know the distance between them.

Mr. Burt:

What?

The Witness:

Two headings down from the man loading station.

Q. Two headings down?

A. Yes, sir.

Q. About how far is that, just approximately?

A. I guess—I don't exactly know the distance between the headings. If I knew that I could tell you how far it was.

Q. Just how far it was in your best judgment?

A. I would say about one hundred and sixty feet.

Q. About one hundred and sixty feet?

A. Something like that.

Q. And that is where you got your tools at?

A. Yes, sir.

Q Now, would you and your men carry your tools from that place?

A. Well, now, some of the men carry different things, according to what they were to do.

Q. What would they carry ordinarily, just as a general thing?

A. Hangers, jackhammer steel, wedges.

Q. Wedges?

A. If you needed the jackhammer you would get it.

Q. You would carry that to what place?

A. The heading.

Q. Where you were digging ore?

A. Yes, sir.

Q. How far did you have to walk from that tool house to the place in which you worked, ordinarily?

A. To the place in which I work? Well, I would say it was around, I would say, two thousand feet, probably.

Q. Around two thousand feet?

A. Yes, sir, and maybe five hundred.

Q. Now, when you got to the heading what time were you supposed to go to work, go on up?

A. A quarter to seven.

Q. A quarter to seven?

A. Yes, sir.

Q. That is the actual place of work, where you pick up your tools and go to mining ore?

A. That is right.

Q. And you report there at six o'clock and start the actual work at 6:45?

A. That is correct.

Q. That is, the ore operation?

A. That is correct.

Q. What they call the face of the mine?

A. Yes, sir.

Q. Now, that mine there, are you going downhill or uphill?

A. What do you mean, in the entrance in which I work?

Q. Yes, going to your heading from the man loading station.

A. You go down. I would go down, I would say, probably right at a thousand feet down. Then I turn and go out that way.

Q. A thousand feet down?

A. I turn and go out east then. I go east practically level. I don't go down.

Q. Practically level?

A. Yes, sir.

Q. About how far?

A. The same distance.

Q. Then do you turn again?

A. When I get to the place, the entrance where I work, it is just a small place to turn then and go direct east.

Q. Is that uphill or downhill?

A. It is upgrade.

Q. Upgrade. Now, coming back, when you get through there you come back the same way?

A. Come back the same way.

Q. What time did you leave coming back?

A. About 3:10.

Q. What time did you get to the drag loading station?

A. Well, I couldn't say exactly about what time that I would get to the loading station, but I usually got there time enough to ride the last drag out.

Q. Usually got there in time to ride the last drag out?

A. The last man trip out.

Q. What time on an average would you get out to the tally station?

A. About fourteen minutes till four o'clock.

Q. About fourteen minutes till four?

A. Yes, sir.

Q. And you were paid for eight hours?

A. Yes, sir.

Q. How is the traveling there underfoot, is it rough or smooth?

A. Well, in some instances—on the left side we have just a small manway down, which is pretty fair. On the right side, it is slippery as you go through.

Q. Did you get wet there at times?

A. Nothing but your feet.

Q. That is what I am talking about, the walkway.

A. Yes, sir.

Q. The walkway gets wet?

A. Yes, sir.

Q. Is the trolley line, electric line, overhead there?

A. After you leave the manway going down the haulageways why the trolley line runs there.

Q. That man trip that goes down, how many people do they carry on it?

A. Well, right at thirty, I guess, or thirty-two, somewhere in there.

Q. Now, who has charge of filling up that man trip when it leaves the face and the portal of the mine, when they load up there, who oversees that?

A. When they are going down?

Q. Yes.

A. Well, the skip tender.

Q. The skip tender?

A. Yes, sir, he usually attends to it.

Q. Who usually oversees to the unloading when it gets down to the man loading station?

A. The skip tender.

Q. Now, coming back in the evening who oversees the loading?

A. The skip tender.

Q. Does he indicate how many men should get in there and when to pull out?

A. Well, he counts them out.

Q. Counts them out?

A. Yes, sir.

Q. They are in different places there?

A. Yes, sir, the white folks are on the right side over here and the colored folks are on the left side over there.

Q. What they call the bull pen?

A. Yes, sir.

Q. They go in the gate and get on the skip?

A. Yes, sir.

Q. And he gives the signal to go out?

A. Yes, sir.

Q. What about your oil, where did you get your oil?

A. Got it at the oil house.

Q. How far is the oil house from the place you work?

A. About the same distance to the tool house, on the left side.

Q. Right near the tool house?

A. Yes, sir, just across, the tool house on the right and the oil house on the left.

Q. How did you get your oil up to the place you are drilling?

A. Carry it.

Q. Who took the can back?

A. You keep the can until it gets empty and you carry it back.

Q. On the first trip you get a fresh can?

A. Well, if you need it between times you go get it.

Q. Now, when you get up there at the tally house do you go on down to the bath house?

A. Yes, sir.

Q. And change your clothes?

A. Yes, sir.

Q. Your working clothes?

A. Yes, sir.

Q. Where did you get your carbide lamps?

A. We have our lamp. We keep our own lamps.

Q. You keep your own lamp?

A. But we get our carbide at the tally house.

Q. You got your carbide at the tally house?

A: Yes, sir.

Q. Do you report to the man in charge of the skip there?

A. Well, we check in and get your carbide and then you go there ready for the skip about six o'clock and about six o'clock you catch that skip.

Q. About how many men did you say went down on the drag?

A. Usually, I would say anywhere from twenty-eight to thirty-two.

Q. Anywhere from twenty-eight to thirty-two?

A. Somewhere along there.

Mr. Smith:

Take the witness.

Cross Examination.

(By Mr. Burr):

Q. James, all of your mining experience has been at Ishkood, has it?

A. Well, mostly. I worked just a short time out at Bayview, before they ever got to any coal, just a short time.

Q. With the exception of the short time you worked—that was when they were developing Bayview for a coal mine?

A. Yes, sir.

Q. With that exception your mining experience has been—

A. In the ore mines.

Q. The Ishkooda ore mines?

A. Yes, sir, Ishkooda.

Q. And you have been there seventeen years.

A. Right at seventeen years.

Q. Practically spent your working life in those mines?

A. Well, practically.

Q. How old were you when you started to work in the mine?

A. Well, when I first started to work in the mines I was around sixteen years old.

Q. I guess you have worked at—

A. I have other times since then.

Q. I understand that. You have been working off and on since you were sixteen?

A. Yes, sir.

Q. And been working pretty continuously for the last seventeen years?

A. Working regular.

Q. Working regularly for the last seventeen years?

A. Yes, sir.

Q. Ever since you have started working in the mines you have had different jobs, I guess. You started, probably, as a mule driver?

A. No, sir, I never did drive a mule.

Q. When did you start in as?

A. I started in as a track helper.

Q. You are now what, a mechanical loader?

A. Operator.

Q. Operator?

A. Yes, sir.

Q. That is the fellow that operates the mechanical loader in the stope?

A. Yes, sir.

Q. And you have been at that how long?

A. Well, I have been doing that regularly ever since 1937.

Q. Well, ever since you have been working in those mines you have been paid on a face to face basis, haven't you? You have never been paid for traveling?

A. Been paid for traveling?

Q. Never have been paid for traveling?

A. No, sir.

Q. It has always been you work from the time you got to your working place until you left the working place, either eight hours or nine hours, whichever happened to be in vogue?

A. That is the way I work.

Q. And that is the way everybody else worked, so far as you know?

Mr. Smith:

We object. He can't know what everybody else knows.

Mr. Burr:

I said so far as he knows.

The Court:

Overruled. So far as you know.

Q. That is a fact, isn't it, James, so far as you know that is the way everybody has had their time computed and paid, on the face to face basis, not counting traveling time?

A. Well, I have only been getting paid for eight hours.

Q. Well, that is true of everybody else you know, isn't it?

A. Well, so far as I know anything about, I have only been getting paid for eight hours.

Mr. Smith:

You have been in ten hours.

The Witness:
I have been in there leaving at six o'clock and get back on top at—

Q. When you were—

Mr. Harris:
Let him answer.

Mr. Burr:
I thought I was cross examining the witness.

The Court:
He is cross examining him.

Q. When you were on a ten-hour basis you were paid for ten hours, weren't you, James.

A. Well, I suppose we was. In other words, we usually go down at six o'clock.

Mr. Harris:
Let him finish.

Q. Had you finished? I don't want to interrupt you.

A. We usually go down at six o'clock.

Q. I am not talking about when you went down, James. I am talking about when you came out. What you were paid for when you worked ten hours, you were underground more than ten hours, weren't you, when you got ten hours pay?

A. I don't know that we were in there much longer than when we went in at six o'clock.

Q. Well, the eight-hour day went in effect in 1933, didn't it, that is right, isn't it?

A. That is correct.

Q. And since then you have been paid for your eight hours at the face, not counting your traveling time?

A. Yes, sir.

Q. Now, as I understand, all of this time since you have been in the mine you have always gone to the bath house and changed your clothes, that is the first thing you do?

A. Yes, sir, that is right.

Q. Then you go over and get your carbide?

A. No, sir, we leave the bath house and go by the tally house.

Q. You leave the bath house and go by the tally house and get your carbide?

A. Yes, sir.

Q. You buy your carbide?

A. Yes, sir.

Q. And you get it as you need it?

A. Otherwise, the tally man, we call him, issues the carbide to you.

Q. He issues it to you and charges it to you?

A. That is right.

Q. And you get it when you need it, the carbide?

A. That is right.

Q. You don't need the carbide every day?

A. That is right.

Q. And all you do is that you turn in an empty can and get a full can?

A. That is right.

Q. And it has always been that way ever since you have been working?

A. We have been buying it.

Q. That is what I mean, you have, and other people, the other miners, you see them doing that same way that you are doing?

A. That is right.

Q. I believe you said to Judge Smith that you didn't report to your boss, the head miner, until you got underground, that is right, isn't it?

A. That is when I report to him. Some of them usually checks in to the head miner.

Q. I am talking about you now. You just tell what you did. By checking in you mean handing in the check?

A. Handing in the check.

Q. That is everything you did in the way of checking in, you handed in the check and took it up as you came out?

A. That is right.

Q. Then you went on down on the skip?

A. The first man trip.

Q. Did you always catch the first one?

A. That is right. I would ride the first man trip.

Q. Did anybody out there ever catch any skips except the first one?

A. Well, they had to. Everybody couldn't ride the same one.

Q. Thirty or thirty-two rode a skip?

A. Somewhere along there.

Q. And when you caught that man trip you rode on down to the unloading station?

A. That is right.

Q. And that is the way you have been doing ever since you have been working as a miner there, that is right, isn't it, the same way?

A. That is right..

Q. Then after you got to the bottom of the skip why you went up to your working place, walked up there?

A. Go out to your working place.

Q. The stope. And that is where you reported to your head miner, at the stope?

A. That is right.

Q. In other words, the head miner might not come down on the same skip you came down on at all; he might come on a different skip or some of your crew might come on a different skip; you didn't have to take any particular skip?

A. All of them usually—

Q. I am not talking about what all of them usually did. I am talking about you. When you rode on that skip that you usually took, the first skip, did the head miner ride down with you?

A. Not always.

Q. And some members of the crew did?

A. Some of them might and some might not.

Q. Some of them might and some might not. That is what I am getting at. When you got to the stope where you work the head miner would be there or he might not be there, that is right, isn't it?

A. He usually got there shortly afterwards.

Q. Well, when you got there he usually wasn't there; he came shortly afterwards. Was all of your crew there when you got there, or did they come in at different times, to 6:45?

A. They came in just as the drags came in.

Q. The juice was turned on when?

A. A quarter to seven.

Q. A quarter to seven is when the juice was turned on?

A. That is right.

Q. Now, you say that the oil magazine or drum, I believe you say they kept oil in a drum, didn't they?

A. A great big can.

Q. A can?

A. That is right.

Q. They call it a drum?

A. That is right.

Q. You said when they wanted oil that you have to get the oil; was that a part of your job?

A. If I used oil for my motor I got my own oil.

Q. If you wanted oil for your motor you got your own oil?

A. Yes, sir.

Q. Now, you said if you needed it between times, that is, between getting to the stope and leaving the stope you would go back and get it?

A. If I didn't go back and get it, if anybody was passing I would send and get it.

Q. You would send and get it?

A. Yes, sir.

Q. If you saw anybody passing you would send them to get it for you?

A. Anybody out of the crew.

Q. Anybody out of the crew; you would send one of your crew back?

A. Yes, sir.

Q. And they would go get it and bring it back up?

A. That is right.

Q. Of course, that can of lubricated whatever was needed to be lubricated under there, whatever you needed it for?

A. You used it for whatever you needed it for, any parts about your motor.

Q. Now, then, if you had to send back for your oil, why the man you sent, or if you went for it yourself, had to walk from your working place back to where the oil was and get the oil and then come back to your working place, didn't he?

A. Before we had these traveling motors to carry the cars in the heading I would usually send by the trammer, we call the trammer.

Q. Well, you would send by the trammer sometimes and your man didn't have to go at all?

A. That is one of our men right on.

Q. You would send by the trammer?

A. That is our man right on.

Q. Would he ride down there or walk down there?

A. He would ride the tram car down there.

Q. If you wanted supplies during your shift you would send the trammer and he would ride down and get what you needed and bring it back?

A. If there was a car out and you needed anything he would get it.

Q. On the car?

A. Yes, sir.

Q. He walked down there sometimes, didn't he?

A. He would usually ride down.

Q. Would he ever walk down, or not?

A. In some places.

Q. I believe you said these hammers, sometimes hammer steel, the crew would pick up there at the tool house, jackhammer steel, hangers and wedges?

A. That is correct.

Q. All right. Who was your boss in the heading?

A. Well, you mean prior to that time?

Q. I am talking about before May 1, 1941.

A. Before May 1st, Ira Charlton.

Q. I don't mean the name, the head miner.

A. That is the head miner. That is what you are speaking about.

Q. Well, what I am trying to get at, that was your head boss?

A. I worked under Julius Hicks and Ira Charlton.

Q. I don't care about the names.

A. I thought you wanted to know that. That is the reason I told you.

Q. Well, you understand me now. I want to know whether the mine foreman or Mr. Ball was your boss.

A. My real boss is the mine foreman.

Q. Are you under the head miner, or not?

A. I am under the head miner when I am underground.

Q. That is what I am talking about. And he is the man that gives you orders?

A. Underground.

Q. And you obey his orders?

A. Yes, sir.

Q. And he has got a right to send you where he pleases to work?

A. Well, usually I am placed by the mine foreman.

Q. Placed where?

A. On my job.

Q. Well, you are placed by the head miner. Are you the boss down there or the head miner? If you are the boss, say so.

Mr. Smith:
We object to that.

Mr. Burr:
I want him to answer my question.

The Court:
Just a minute.

Q. Now, James, do you understand what I want to know? Who is the boss when you are working there in the stope, of you?

A. The head miner.

Mr. Smith:
I object to that. He has gone over that. He said the head miner was the boss down there. I object to that.

The Court:
Overruled.

Q. When the head miner gives your orders in the stope do you obey them or not?

A. Yes, sir, I obey them.

Q. If he sends you back for material you go back and get it?

A. Yes, sir, if he tells me to go I go.

Q. Are you the boss of anybody there yourself? Is there anybody under you?

A. No, sir. I am a drag operator.

Q. You are a drag operator?

A. That is correct.

Q. These hangers, I mean the jackhammer steel and the hammers and the wedges, you say you get those sometimes as you go into your working place?

A. Into the working place, yes, sir.

Q. And you sometimes send back and get them, don't you, or go back and get them, don't you?

A. If we need them through the shift.

Q. If you need them through the shift you send back and get them?

A. Through the shift.

Q. And the place where you get them is near the unloading station, where the tools, where the supplies are kept of that sort?

A. Well, I would say something like one hundred and eighty feet or maybe further. It is two headings down.

Q. When you or one of the crew stop by in the mornings and pick up on the way to work jackhammer steel or a hanger or wedges, do all of them stop at the same time or just one man pick it up or two men, or what?

A. Well, it is according to what place you work and the position you have in the stopes. If you are a jackhammer man why tell the tipple you need a jackhammer and you will get it.

Q. Now, wait a minute right there and get through with the jackhammer. If you are a jackhammer man you pick up the jackhammer?

A. If he needed it.

Q. If he needed it during the work he would go back and get it during the shift?

A. That is right.

Q. Then if he needs hammer steel he will pick that up?

A. Sometimes he carries jackhammer steel.

Q. Would that be often or seldom?

A. Not often, but sometimes it will happen.

Q. When he picked up the jackhammer it would be occasional that he picked up jackhammer steel if he needed it, who would be the man that picked it up?

A. He was usually the man that carried it.

Q. Now, the wedges, who would pick up the wedges?

A. Any man of the crew if he needed wedges when he goes in there he would get them.

Q. Any member of the crew that worked there who needed wedges he would get them?

A. Get wedges if he needed any.

Q. What members of the crew would need wedges? The drilling men wouldn't need wedges?

A. No, sir, the drag crew.

Q. That would be confined to the drag crew?

A. Yes, sir.

Q. And they would get them as they needed them?

A. Yes, sir.

Q. And if they needed them as they got out they could get them, or if they needed them during the shift they would send back and get them?

A. Yes, sir.

Q. And the same thing is true of the hammer steel?

A. The same thing.

Q. The oil cans—the way they got the oil is right often a fellow at the end of the shift, if his can would run out about that time he would take his can on out and either leave his can or hide it so he would know where it was and the next morning he would pick it up and get it filled, that is the way it was?

A. I don't know about the hiding part of it.

Q. Well, do you know about the other part of it?

A. I know he would get his oil in the morning.

Q. Well, is that the way he would get it? Would he take his empty can on the way out sometimes and leave it and pick it up the next morning?

A. Leave it at the tool house.

Q. And pick it up the next morning?

A. And pick it up the next morning.

Q. As you stated, to use your own words, if they needed it between times you would go and get it from your working place.

Mr. Burr:

I believe that is all I want to ask him.

The Court:

All right.

Mr. Burr:

There is one other question. Pardon me, Judge Smith.

Q. You said there were some places down there where you got your feet wet sometimes.

A. There are.

Q. You don't have to wear rubber boots, do you, or raincoats, or anything like that?

A. No, sir.

Q. They are not that wet?

A. No, sir.

Mr. Burr:

All right, that is all.

Re-Direct Examination.

(By Mr. Smith):

Q. James, you said a while ago that when you got down in the mine where you commenced operating and digging ere that your boss was the head miner.

A. That is correct.

Q. All right. Now, on top who is your boss?

A. The mine foreman.

Q. The mine foreman is your boss?

A. That is correct.

Q. Are you under his direction at the top?

A. Yes, sir.

Mr. Smith:

That is all.

Re-Cross Examination.

(By Mr. Burr):

Q. Well, James, you have already told Mr. Smith that the mine foreman never gave you orders on the top. All you would do with him on top was to hand him your check?

A. And he tells me wherever I am going.

Q. He would place you by hanging your check up, wouldn't he? You don't mean to tell me that the head miner stops you there and tells you about your work?

A. I didn't say the head miner.

Q. I mean the mine foreman.

A. The mine foreman.

Q. Does he ever stop you and talk to you about your work?

A. The mine foreman takes my brass and tells me what heading to go in.

Q. Didn't you know what heading to go in?

A. Sometimes you don't work in the same heading.

Q. How often do you change?

A. When you are under one head miner you work one place and sometimes you change.

Q. Now, let's see. Where were you working on May 1, 1941?

A. No. 11, working in 66 left.

Q. How long had you been working in that place?

A. I don't know exactly.

Q. Well, about how long, a year or two years, or what?

A. Something like that.

Q. Maybe two years. All right. Now, then, before that two years where did you work?

A. Well, sometimes I might be at different places.

Q. Well, you told us this morning when you misunderstood my question, you said that you had never had but two head miners, as I recall it. You gave me the names of two head miners. Are those the only two head miners you ever worked under?

A. You asked me prior to the time of a certain date and I told you.

Q. Well, what I am asking you now, how many head miners have you worked under there for the last two years prior to that time, we will say?

A. Two; I have worked under two.

Q. Well, how many three years prior to that time?

A. Three years prior to that time?

Q. Yes.

A. Well, in '37 I was under two different ones in the same year.

Q. And since then you have been under two all the time?

A. Well, when they would be there, yes, sir.

Q. Well, if they were not there it was on account of sickness or something of that sort?

A. Sometimes they would be absent.

Q. But you had been working in 66 left about two years prior to May 1, 1941?

A. That is correct, been right there.

Q. And who was your head miner while you were working in 66 left?

A. Julius Hicks and Ira Charlton.

Q. Had two during that time?

A. That is right.

Q. During that period of time did the mine foreman ever tell you every morning that you had to go to 66 left?

A. He didn't ever tell me every morning.

Q. Well, did he ever tell you you had to go to 66 left?

A. Well, plenty of times you would go up there and he would take your number and he would say "66 left."

Q. You mean he would take your number. He had a board there?

A. He had a board there.

Q. And he would say, "66 left," and hang your check up on the board?

A. He would say, "66 left," and hang my check up on the board.

Q. That is the kind of instruction he would give you?

A. Well, he would tell me other things.

Q. What other things did he tell you?

A. Well, he would tell me when I would get to my heading he wanted me to clean up the track.

Q. The mine foreman told you that?

A. Yes, sir.

Q. What mine foreman told you that?

A. Mr. Carson has told me that.

Q. How often in the last two years?

A. Well, he would tell me that and some other things he would tell me.

Q. What else did he tell you?

A. Well, he would tell me about the top, wedging the top.

Q. What else did he tell you?

A. That is all.

Q. Are you sure that Mr. Carson, when you came by there he would tell you to wedge the top?

A. He would tell all of them.

Q. How would he say that, "wedge the top"? You would walk up to the place with your check. Now, what would happen on these occasions when he would say, "wedge the top?"

A. Usually it would be in a bad place.

Q. How?

A. Usually it would be in a bad place and he called me.

Q. And you have been working in bad places all the time?

A. For the last five years I have been in bad places.

Q. Have you ever been hurt any during that time?

A. No, sir.

Q. Now, without reference to what sort of place you were in, what was said between you and the mine foreman when you walked up there and handed in your check, those times when he asked you about the top what did you say and what did he say?

A. I don't know exactly.

Q. I don't want exactly. I want your recollection of it.

A. Well, sometimes—

Q. I didn't say sometimes.

A. Well, he did it all the time.

Q. Well, tell me what he did say.

A. Well, at times he would say, "You fellows be careful in such and such a place," and I would say, "Yes, sir."

Q. He would say, "You fellows be careful in such and such a place"?

A. Yes, sir.

Q. He would be talking to all of you?

A. I would be standing there.

Q. Is that all he would tell you?

A. He would say, "Be careful at such and such a place."

Q. Would that be all?

A. Usually.

Q. How many times in the last two years has he told you that?

A. Several times, told me different times.

Q. I am talking about the times he told you. How many times in the last two years has he said, "You fellows be careful"?

A. I can't remember exactly.

Q. Well, one or five or a hundred or a thousand?

A. I wouldn't say.

Q. You wouldn't say it was over five?

A. I couldn't remember exactly.

Q. You wouldn't say it was over ten?

A. I wouldn't say, but he has told me different times.

Q. You wouldn't say it was over fifty?

A. No, sir.

Q. But that is what he told you?

A. Yes, sir.

Mr. Burr:

All right, you can come down.

The Court:

All right, next witness.

Mr. Smith:

Mr. Evans, A. E. Evans.

3125 A. E. EVANS, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Smith):

Q. Your name is A. E. Evans?

A. Yes, sir.

Q. How old are you, Mr. Evans?

A. Thirty-two.

Q. Where were you born and raised at?

A. Alabama.

Q. Go to the public schools?

A. Yes, sir.

Q. What grade did you go to?

A. Eighth grade.

Q. Do you work for the Tennessee Company out at Red Mountain?

A. Yes, sir.

Q. What mine?

A. No. 4 Muscoda.

Q. Now 4 Muscoda?

A. Yes, sir.

Q. How long have you been working there?

A. Since January, 1937.

Q. What jobs have you had there since you have been there?

A. Well, I started in as a track helper.

Q. A what?

A. A track helper.

Q. What else? How long did you work at that?

A. Well, I didn't work but about two or three shifts on that.

Q. What next?

A. Timber crew.

Q. Timber crew. How long did you work on that?

A. About three months.

Q. Then after that?

A. I went to No. 4 then when it started up and started running a hoisting engine.

Q. No. 4 is one of their old mines?

A. I first worked at No. 6.

Q. How long did you work at that?

A. Well, I went on the extra board. Sometimes I would run a hoist and sometimes a section helper.

Q. Well, you got to be a drag operator?

A. Yes, sir.

Q. Drag operator now?

A. Yes, sir.

Q. How long have you been a drag operator?

A. Well, since February.

Q. February, '41?

A. Yes, sir.

Q. Now, since October 26, 1938, up until May 1, 1941, what time have you been reporting for duty in the mornings on the shift?

Mr. Burr:

Your Honor understands we have got that objection. It is understood all through here. He used the word, "report." I haven't repeated it because I didn't want to waste the time repeating it.

The Court:

Correct.

Q. What time did you get there?

A. Well, I usually get to the bath house at 5:30.

Q. Change your clothes at the bath house?

A. Yes, sir.

Q. Put on your work clothes?

A. Yes, sir.

Q. Where did you go then?

A. Go to the tally house.

Q. What did you do at the tally house?

A. Put my check number in.

Q. What time did you get to the tally house?

A. Just as soon as I got there. That was before May 1st?

Q. Yes. About what time would you put up the check there on an average?

A. Well, about twenty minutes to six or fifteen minutes to six.

Q. Fifteen to twenty minutes to six?

A. Yes, sir.

Q. Then you got your carbide?

A. Got carbide; got it at the bath house.

Q. Who did you work under; who is your head boss?

A. In stopes the head miner.

Q. Who is your boss on the outside?

A. The mine foreman.

Q. Do you report to anybody up there at the tally house in the morning?

A. No, sir, I just hand my check number in.

Q. You just hand your check number in?

A. Yes, sir.

Q. Are you assigned there anywhere by anybody?

A. Well, when I was on the extra board I would come up and the mine foreman would find out a crew was short and he would say, "You are on the board so and so."

Q. If you didn't you would take your regular crew?

A. Yes, sir. If I was on the extra board I didn't have a regular crew. I would just have to watch and find out.

Q. What time did those man skips run between October 26th, '38, and May 1st, '41?

A. Well, it usually ran from five minutes to six on up.

Q. To what time?

A. Until all the men got in.

Q. How many trips did they run?

A. Well, the day shifts ran more than night shifts.

Q. Well, ordinarily?

A. About five skips.

Q. What time did you ride down?

A. The first skip.

Q. That would leave what time?

A. About five minutes to six.

Q. Who would supervise the loading of the man skip there?

A. The assistant mine foreman.

Q. That was your outside boss?

A. Yes, sir.

Q. Then you go from there to your man loading station?

A. Yes, sir.

Q. How far is that down in the mine?

A. Between five thousand and six thousand feet.

Q. I don't mean the farthest place in the mine. I mean the man unloading station down there.

A. You mean from the outside?

Q. Yes.

A. Where we check in and where we unload?

Q. Yes.

A. About five thousand to six thousand feet.

Q. What mine is that?

A. No. 4.

Q. Now, who supervised the unloading down there?

A. Well, I would usually ride a first drag down and the skip tender he rides it down.

Q. The skip tender?

A. Yes, sir, he stops the skip and we unload and he sends the skip back out.

Q. Now, when you got down to the unloading station there, Mr. Evans, what did you do then?

A. Well, if I know where I am going I go straight to the crew I am going to.

Q. You go straight to your place?

A. Yes, sir.

Q. Do you take any tools?

A. If I am not a regular man I don't. When I was on the regular crew I did.

Q. When you were on the regular crew you did take them?

A. Yes, sir.

Q. How long have you been on the regular crew?

A. I have been on the regular crew for the past two years.

Q. So you did take tools with you?

A. Yes, sir.

Q. What tools did you take with you from the man unloading station or at the tool house down to the regular place of operation?

A. We didn't have a regular place. If I was on the top I would take them to the bath house and hide them in the weeds—

Mr. Burr:

I didn't hear that.

A. (Continuing) If I was on the day shift I would take them to the bath house with me and hide them in the weeds; I would take my jackhammer steel and hide them in the weeds outside near the bath house and then the next morning when I changed my clothes I would get my steel and go to the supply house or the steel house.

Q. Was the supply house on the outside of the mine?

A. Yes, sir, below the bath house.

Q. And you would carry those down on the drag with you?

A. Yes, sir.

Q. On the skip with you?

A. Yes, sir.

Q. And then after you got off of the skip you would carry them to your working place?

A. To the working place.

Q. To the place you commenced digging ore?

A. Yes, sir.

Q. How about the place you got oil down there, where did you get your oil at?

A. Well, we have a drum, I guess about five hundred feet from where we work.

Q. You have a drum about five hundred feet from where you work?

A. Yes, sir.

Q. Would you carry your oil on your way to the beginning of your work?

A. Yes, sir.

Q. Carry that with you?

A. Yes, sir.

Q. From where you left your can to the place of work?

A. Yes, sir.

Q. About what time would you get to the place where you actually commenced mining ore?

A. Well, I got there about 6:20 or 6:25.

Q. What would you do between that time and 6:45? I believe the juice comes on down there at 6:45, doesn't it?

A. No, sir, I don't know of any certain time it comes on. Sometimes the electrician will ride a first drag down and sometimes he won't.

Q. What time did you say you got down there in the morning?

A. About 6:20.

Q. What did you do; your regular time commenced at 6:45?

A. Yes, sir.

Q. That is when your pay starts?

A. Yes, sir.

Q. Six-forty-five. After you get down there before 6:45 what do you actually do?

A. Well, if the juice is not on I usually go up in the stope and help them quarry out and take the hangers out.

Q. I am talking about the drag operator now.

A. I take these hangers out and move them away so they can quarry out and set up the drill.

Q. Who indicates to you where to go at 6:45 when the pay starts.

A. No one. Just as soon as the juice is on we are ready to hang up and we start to loading.

Q. What time do you leave the place down there?

A. When the lights go out.

Q. What time is that?

A. Three o'clock.

Q. Three o'clock. You leave at three o'clock?

A. Yes, sir.

Q. How long does it take you to get down to the man loading station?

A. Well, it took me about twelve to fifteen minutes.

Q. About twelve to fifteen minutes?

A. Yes, sir, because I never rushed to get there.

Q. How far would you have to walk?

A. I would say about two thousand feet.

Q. About two hundred feet?

A. Yes, sir.

Q. Then you would get through about three o'clock, you say?

A. No, we got through about 3:15.

Q. About 3:15?

A. Yes, sir.

Q. How long, if you catch your drag promptly, would it take you to get out?

A. Well, if I catch it promptly it would take me about seven minutes to get out, but I never did get it, though.

Q. What time would that put you out?

A. About ten minutes to four.

Q. If you catch the first drag?

A. Oh, no, sir. If I caught the first drag I would be out about 3:30.

Q. But you got out at ten minutes to four?

A. Yes, sir.

Q. You got paid for eight hours?

A. Yes, sir.

Q. You are actually in the mine for what time from the time you leave the top until you get back to the top?

A. Well, from five minutes to six until ten minutes till four.

Q. Well, in your own words what is it?

The Court:

That is clear enough.

Q. I mean the total hours.

A. Well, approximately nine hours and forty minutes.

Mr. Smith:

I just wanted him to make his own calculation. Some of the brothers here have been making a good many of their own. All right, take the witness.

Cross Examination.

(By Mr. Burr):

Q. Mr. Evans, you have been a drag operator about two years?

A. No, sir, since February, 1941.

Q. Just since this past February?

A. Yes, sir, regularly.

Q. Now, then, you say you always caught the first drag down?

A. Yes, sir, when I was on a regular crew I caught the first drag down.

Q. Did all the rest of your crew catch the first drag?

A. Not all of them. Sometimes they didn't get it.

Q. Sometimes the second, third or fourth?

A. It never came out that way. Either the first or second.

Q. Either the first or second. What time did your head miner get to your place; did he get there before you or after you?

A. He wouldn't get there with me. Sometimes he would get there a drag after me.

Q. Sometimes after you?

A. Yes, sir.

Q. You were always the first to get there?

A. No, sir, not always. Usually I am among the first to get there.

Q. Usually you are the first to get there?

A. Yes, sir.

Q. Now, as drag operator what did you do?

A. Well, a drag operator operates the mechanical loader, but the way we work we do anything that comes to hand.

Q. Anything that your head miner tells you to do?

A. Yes, sir.

Q. He is your boss down there in the stope?

A. Yes, sir.

Q. As operator of the drag you haven't got anything to do with the drilling there in the face?

A. No, sir.

Q. That is done by the head miner and the drill crew?

A. Yes, sir.

Q. When you say you catch the first drag about the quickest you can get up to your working place is about 6:20?

A. Yes, sir.

Q. That is, assuming that you leave—I believe you said you generally leave about five minutes to six?

A. Yes, sir, and sometimes leave a little later.

Q. Now, to refresh your recollection on that, Mr. Evans, don't you know that the drag is not taken out of the sidetrack for a test run until nearly six o'clock?

A. The drag is not in the sidetrack.

Q. The skip I am talking about.

A. The skip is not in it.

Q. There is not any skip on it?

A. The split shift, the haul down crew, use it, what we call the haul down crew.

Q. They don't use it all the time?

A. They use it until they change it.

Q. Well, you don't mean it is necessary to make a shift with ?

A. Well, it is on Sunday when no one is using the skip.

Q. They don't take it out until six o'clock?

A. No, sir.

Q. What I am getting at, are you certain that you got away from there at five minutes to six?

A. I did.

Q. Did you set your watch?

A. Yes, sir. Every man that gets in the skip that has a watch tries to set it with the six o'clock whistle.

Q. And sometimes it leaves a few minutes before six, and sometimes after six?

A. Very seldom after six.

Q. And you usually catch the first skip?

A. Yes, sir.

Q. And you say you usually catch the first skip that leaves at six or five minutes to six; how long does it take to go down to the unloading station?

A. I would say it takes about seven minutes.

Q. And you walk how far?

A. About two thousand feet.

Q. And how long does it take you to walk up to the stope?

A. Well, if I walk real fast—

Q. I am talking about what you do.

A. Just natural walking, about twelve to fifteen minutes.

Q. When you get up there then you think that would be around about 6:20?

A. 6:20 to 6:25.

Q. 6:20 to 6:25. Now, did you work during the day until your dragging is over with?

A. That is right.

Q. Of course, you couldn't work after the juice is shut off?

A. No, sir.

Q. The juice is shut off at three o'clock?

A. Yes, sir.

Q. So your work is over with at three o'clock, that is right, isn't it?

A. Yes, sir.

Q. And you have a lunch period of thirty minutes in between?

A. Yes, sir.

Q. And your actual drag operating starts around about 6:45 or 7:00?

A. If the juice is on and we are hung up with the much pile we start dragging then, regardless of whatever time it is.

Q. Well, it can't be before 6:45?

A. No, sir.

Q. Yes. And some can't get up there that early?

A. No, sir.

Q. Some do and some don't?

A. Yes, sir.

Q. Some get there as late as 6:40 or 6:45?

A. No, sir.

Q. Well, they get there at 6:40, don't they?

A. Some get there then, yes, sir.

Q. If they used every minute of the time it would take seven minutes longer than you and take fourteen minutes?

A. Well, different engineers run at different speeds.

Q. Well, they would have to come back up after you got off?

A. Yes, sir.

Q. They run three trips?

A. No, sir.

Q. How many trips?

A. Well, they run about five trips the day shift.

Q. About five trips?

A. Yes, sir.

Q. You say you had some steel that you would take out and hide in the weeds. That would be the steel that was used for the—

A. Jackhammers.

Q. The jackhammers to drill the holes for the hangers?

A. The jackhammers, yes, sir.

Q. That is that small drill, short steel?

A. Yes, sir.

Q. And it is the steel you take out?

A. Yes, sir.

Q. How big is?

A. Well, anywhere from a foot long up to a foot and a half or two feet long.

Q. That steel is taken out and sharpened?

A. It is to replace it, get new steel.

Q. To be resharpened?

A. No, we leave that at the steel shop to be resharpened, and then they will have some for us.

Q. And during the shift if you needed any steel the head miner can send out and get it wherever he pleases?

A. No, sir, I never saw it done.

Q. You never saw that done?

A. No, sir. That was up to the drag crew to keep the wedges and jackhammer steel there, if we had to go outside to get it.

Q. Who would tell you to go out and get it?

A. Well, we would know. If the steel would be dull we would take a bunch out that evening and hide it.

Q. How many would you take out?

A. According to how many needed it.

Q. How often was the steel tempered?

A. Well, I have taken it out as high as three times a week.

Q. Well, how low would it be taken out?

A. Once.

Q. Run from one to three times a week?

A. Yes, sir.

Q. Then you would take it out and hide it in the weeds on the outside?

A. Yes, sir.

Q. Then the next morning you would go get it?

A. Yes, sir.

Q. The supply house opened at seven?

A. Sometimes before.

Q. Mr. Evans, don't you know the supply house never did open up until seven?

A. I am not talking about the supply house. I am talking about the steel house.

Q. The steel house is not opened before?

A. A colored fellow comes there and starts a fire and he opens the door.

Q. Well, the colored fellow would give you steel?

A. Yes, sir.

Q. How often would he do it?

A. Every time I go down there.

Q. You would go down there and the colored fellow would give you sharp steel?

A. Yes, sir.

Q. I am talking about yourself now?

A. Yes, sir.

Q. Then you would carry it down to your place?

A. Yes, sir.

Q. Now, would there be a requisition made for that, or not?

A. No, sir, not when you were swapping, but there would be when you would get new steel.

Q. Now, when you did that would you catch the first drag?

A. No, sir.

Q. You couldn't catch the first drag then?

A. No, sir.

Q. So on those days, on the once a week or three times a week when the steel wasn't tempered right you wouldn't catch the first drag?

A. No, sir.

Q. Catch the second, third or fourth?

A. Whatever drag it was.

Q. Well, what drag would that be?

A. That would be the next drag.

Q. And that would be about when?

A. Probably run about 6:30.

Q. That would take you seven minutes to get down to the bottom?

A. Yes, sir.

Q. And that would put you there at 6:37?

A. Yes, sir.

Q. Then you would walk up to your working place. That would take you another fifteen minutes. That would put you there around 6:52 to 7:00 o'clock, and your time started at 6:45.

A. My time started at 6:45.

Q. That is when you got paid, from 6:45 to 3:15, with a half hour for lunch?

A. Yes, sir.

Q. And has been ever since you have been working there?

A. As far as I know.

Mr. Burr:

That is all.

Re-Direct Examination.

(By Mr. Smith):

Q. Mr. Burr asked you if your work was over at three o'clock. Do you mean you quit operating your mechanical loader at three o'clock?

A. Yes, sir, we quit operating because there was no electricity.

Mr. Smith:

That is all.

Re-Cross Examination.

(By Mr. Burr):

Q. When you were working on this regular crew did you have a seven-man crew?

A. Yes, sir.
Q. Just like the others?
A. Yes, sir.

Mr. Burr:
That is all.

Mr. Smith:
Mr. Praytor.

3143 ARTHUR PRAYTOR, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Smith):
Q. Your name is Arthur Praytor?
A. Yes, sir.
Q. How old are you, Mr. Praytor?
A. Thirty-four.
Q. Where were you raised at?
A. Here in Alabama.
Q. Here in Alabama?
A. Yes, sir.
Q. Did you go through public school?
A. Yes, sir.
Q. Now, Mr. Praytor, how long have you worked with the Tennessee Coal, Iron & Railroad Company?
A. About eighteen and a half years.
Q. Has all of that time been in the ore mining operation?
A. Yes, sir.
Q. At what mine?
A. Well, in Muscoda in general, No. 6 and No. 4.
Q. Generally what?
A. No. 4 and No. 6.

Q. No. 4 and No. 6, Muscoda?

A. Yes, sir.

Q. What different jobs have you had there during those eighteen years? I believe you are a head miner now?

A. Yes, sir, since '37.

Q. Just recite briefly how you came to be a head miner?

A. Well, when I went in the mine I was sixteen years old and I started driving a mule, and then from there I went to running a hoisting engine, and then I went on the timber force, and from there to drill helping and some drilling, and then went to a drag operator and from drag operator to head miner.

Q. How long have you been a head miner?

A. Since '37.

Q. Since 1937?

A. Yes, sir.

Q. And you have been continuously since October 24, 1938, I believe, right up to May 1, 1941?

A. Yes, sir.

Q. Continuously a head driller?

A. Head miner, yes, sir.

Q. I mean head miner.

A. Yes, sir.

Q. Now, Mr. Praytor, just practically what time did you report during the period I have stated to what is called the tally house, bath house and tally house?

A. Well, I usually as head miner, I want to be one of the first men down on the inside to examine my place. I get to the tally house along about fifteen minutes to six.

Q. That is after you have been to the bath house and changed your clothes?

A. Yes, sir.

Q. And you get your carbide at the tally house?

A. At the bath house.

Q. Then you go to the tally house?

A. Yes, sir.

Q. Then what do you do with your brass check?

A. Well, sometimes I hang it on the board myself and sometimes the mine foreman or the time taker would hang it on the board.

Q. Sometimes the mine foreman or the time taker would hang it on the board?

A. Yes, sir.

Q. Now, would you assemble your workers there who worked under you as head miner at the bath house?

A. No, sir.

Q. What was done about that? I mean the tally house.

A. We were given the privilege to hire our own crews, to get the best men we could to produce ore, and after I hired this crew in the same year, '37, I had the same men all the way through and they knew where they was going and they would check in to the time taker or the mine foreman.

Q. Who was in charge of the tally house there in starting off the skips and seeing that the men got in properly?

A. At No. 4 the assistant mine foreman.

Q. How about at the other mines you have worked in?

A. Well, the skip tender usually.

Q. The skip tender usually?

A. Yes, sir.

Q. Now, would the mine foreman give you any orders there with respect to what should be done during the day?

A. Not unless there was some new driving to be done or a rock fall in the mine, or something, why he would caution us about those things.

Q. Something out of the ordinary?

A. Yes, sir.

Q. He was there all the time when you reported to see that the thing started off, and if there was anything unusual he called it to your attention up there before you caught the skip?

A. Yes, sir.

Q. Now, what time would the first skip go down during the time that you have mentioned?

A. Well, sometimes she would leave about five minutes till six up until six o'clock.

Q. From five minutes till six up until six o'clock?

A. Yes, sir.

Q. What skip did you usually ride?

A. As head miner I usually caught the first skip.

Q. As head miner you usually caught the first skip?

A. Yes, sir.

Q. Now, what time did you get down to what is called the man loading station?

A. Well, it will run from—it ran from about five minutes after six, that is, if we left the top at six o'clock, well, we got there at five minutes after six until seven minutes after six o'clock.

Q. It takes five minutes to make the trip to the man loading station?

A. Yes, sir.

Q. After you got down there what did you do?

A. We go directly to our working place.

Q. Would you carry any tools that you had to work with on that trip?

A. Yes, sir, sometimes I have carried hangers and wedges, but usually I directed the crew when to get them and they brought them themselves.

Q. It was either you or your crew that brought them?

A. Yes, sir.

Q. How did you go about directing them?

A. Well, I checked what we needed. If I needed hangers or jackhammer steel I would tell the motor runner that we needed so much steel probably, and he would go up and get a requisition from the mine foreman and when I came in the next morning he would bring it with him.

Mr. Burr:

Who is he?

The Witness:

That is the trammer, one of my crew.

Q. At the man loading station?

A. He would get them outside.

Q. He would get them outside?

A. Yes, sir.

Q. And bring them down to the working place?

A. To the working place, yes, sir.

Q. And your crew, that is the ordinary way that they got them there to your crew?

A. Yes, sir.

Q. How far did you have to walk from the man unloading station to the place where you actually commenced operation?

A. I would say thirty-five hundred feet.

Q. How did you go up there, how did you get up there?

A. We travel down the manway about two hundred feet and then we get on the haulage, we go up the haulage all the way until we turn in our heading.

Q. Is that rough or smooth?

A. We have got walking paths.

Q. Is it up hill or down hill?

A. It is up hill going in.

Q. Up hill going in and down hill coming out?

A. Yes, sir.

Q. Now, what time do you actually start your operation of running the drill and getting ore?

A. Well, we all don't get there the same time. Usually the drag operator and myself are the first men there, ride the first trip.

Q. What time do you get there?

A. Well, ordinarily six-thirty.

Q. What time would your crew actually assemble and get to work?

A. Well, some time it was after a quarter to seven.

Mr. Burr:

I didn't hear that.

The Witness:

I said some time it was after a quarter to seven before all of them would get to the heading.

Q. Now, when you got there at six-thirty—you say you got there on an average of six-thirty?

A. Yes, sir.

Q. Now, what would you do immediately after that, from then on?

A. Usually I would check my place to see if there was any dangerous conditions and what operations would take place so I could direct the men as quick as they got to the heading.

Q. And what time would your juice go on?

A. Well, sometimes the electrician rode the first drag with us and then it would go on about six-ten and sometimes it was later. I have gotten to my heading at six-thirty and it went on by six-thirty.

Q. Quite frequently it never went on before six-forty-five?

A. Yes, sir.

Q. Was that the general rule, it went on more at six-forty-five than it did at six-thirty?

A. Yes, sir, it went on more.

Q. Then you could start operation?

A. Yes, sir, then we could start operation.

Q. What time did you leave your working place?

A. Three o'clock.

Q. Three o'clock?

A. Yes, sir.

Q. And you would go from there, the place where you had been drilling, getting out the ore, to the man loading station?

A. Yes, sir.

Q. And you walked the same distance going back to the man loading station as you did coming in?

A. Yes, sir.

Q. And it was up hill?

A. That was down hill going back.

Q. Down hill?

A. Yes, sir.

Q. Now, when you got to the man loading station how would you get out of the mine?

A. Well, as head miner—well, everybody there was before us because we had to shoot and we had to wait until the last drag usually because we were the last to get to the hoodlum, as we call it, the loading station.

Q. Now, what time would you get to the top of the mine?

A. About, I would say, ten or fifteen minutes till four.

Q. Ten or fifteen minutes to four?

A. Yes, sir.

Q. And then you would go get your check?

A. Yes, sir.

Q. Go get your check?

A. Yes, sir.

Q. And you were paid for eight hours?

A. Yes, sir.

Q. Now, just tell the Court there how many hours you were in the mine from the time you hung up your brass check until you actually got back and took that check up.

A. Well, counting the dinner hour I think we were in the mine nine and a half hours.

Q. Nine and a half hours?

A. Yes, sir.

Q. And you were paid for eight hours?

A. Yes, sir.

Mr. Smith:

Take the witness.

Cross Examination.

(By Mr. Burr):

Q. You say with your dinner time you figured you were inside nine and a half hours?

A. Yes, sir.

The Court:

Mr. Burr, we will take a recess.

Mr. Burr:

Your Honor, just this one question.

Q. You had a half hour for dinner?

A. Yes, sir.

(A short recess was then taken.)

Mr. Burr:

Is Your Honor ready?

The Court:

Yes.

Q. Mr. Praytor, you have been working with them continuously eighteen and a half years at either No. 4 or No. 6?

A. Yes, sir.

Q. Did you have any mining experience anywhere else other than the Tennessee Company?

A. No, sir.

Q. Now, Judge Smith asked you about conditions, the questions you answered to him having reference to the period of October 24, 1938 to May 1, 1941. I want to ask you if substantially those same conditions have existed ever since you have been working there.

A. Yes, sir, they have been substantially.

Q. Practically the same?

A. Yes, sir.

Q. Been quite a few changes every now and then?

A. Yes, sir, as the mine advanced there have been some changes.

Q. Of course, as the mine advanced your walking distance, of course, gets farther away?

A. Yes, sir.

Q. And your experience has been, as you have stated, all the way from mule driver up to head miner?

A. Yes, sir.

Q. Now, as head miner it was your job to see that your working place was safe before you let your men in to work?

A. Yes, sir.

Q. And in order to perform that job you always tried to be there first?

A. I did.

Q. Caught the first drag in order to attend to your work?

A. Yes, sir.

Q. And that is what you usually did when you first got down there?

A. Yes, sir.

Q. And what you always did when you first got down there?

A. Yes, sir.

Q. Now, you say sometimes you would hang your own check on the nail as you went by and other times you would hand it to the foreman?

A. Yes, sir.

Q. Or the tally man, and other times you would hand it to one of your crew to hand in?

A. Well, that has been done.

Q. I believe you said you had the same crew pretty well ever since you have been head miner?

A. Yes, sir.

Q. Have you been working in the same place recently, or not?

A. Well, as we work out a place, of course we go into a new one, but it has been on practically the same haulage ever since I have been head miner.

Q. The same haulage?

A. Yes, sir.

Q. What haulage is that?

A. That is the southwest haulage, No. 4 mine.

Q. Southwest haulage, No. 4 mine?

A. Yes, sir.

Q. Your crew was under you, of course?

A. Yes, sir.

Q. All the time?

A. Yes, sir.

Q. Now, you say that occasionally—well, I will take it this way first: If anything unusual happened in your heading, like a breakdown or anything of that sort, you report that, I suppose, to the mine foreman?

A. I would, directly to him.

Q. Directly to him, and if anything unusual happened between shifts, when you came in why the mine foreman would tell you about it?

A. Yes, sir.

Q. And caution you about it?

A Yes, sir.

Q. And tell you something was done, or something of that sort?

A. Yes, sir.

Q. And then you would go ahead to your work as usual and work in accordance with the condition of the place?

A. The condition of the place and his instructions.

Q. Now, did he give you any instructions other than just telling you what sort of condition the place was in, or not?

A. No, sir.

Q. As you said, he cautioned you about anything unusual?

A. That is right.

Q. Now, I understood you to tell Judge Smith that you would get to your place usually about what time?

A. Six-thirty.

Q. About six-thirty; that would be when you would get there?

A. Yes, sir.

Q. And then your crew would get there any time between then and what time?

A. When the last drag runs.

Q. When the last drag runs. That would throw it there between six-thirty and seven o'clock?

A. It would be seven o'clock sometimes; sometimes it would be five minutes after, according to what time he walked from the loading station to the heading, the time the last drag got down.

Q. And sometimes you didn't actually start work, I believe you said, until after six-forty-five?

A. Well, just according to how many men was there. If the usual number of men was there we started at that time, but if not we wouldn't start until the rest of them got there.

Q. But usually you wouldn't start until seven o'clock?

A. Yes, sir.

Q. Usually the first man would be the head driller?

A. Well, the drag operator and myself was usually the first ones there.

Q. Did the drag operator usually get down with you, about the same time?

A. Yes, sir.

Q. Around six-thirty?

A. Yes, sir.

Q. Now, this same drag operator, he was usually the first one to get through in the afternoon, wasn't he?

A. Well, usually about three o'clock, or just about the time for the lights to go off, and then it was his duty to assist—

Q. Then he would go down to the hoodlum at three o'clock?

A. Yes, sir.

Q. Who stayed with you to shoot?

A. The drill man.

Q. With the exception of you and the drill man they would all leave there?

A. Yes, sir.

Q. As a matter of fact they got through before three, didn't they?

A. They cleaned up and got through but they were not allowed to leave the heading until three o'clock.

Q. You kept them and they were not allowed to leave until three o'clock?

A. Yes, sir. They wasn't allowed.

Q. What time would you say they usually got through with their work?

A. Well, at different times of day, according to how much ore you had shot down.

Q. Well, sometimes as early as two o'clock or two-thirty?

A. They never left the heading.

Q. I know that, but what I am getting at, you say that sometimes they got through with their work and just stayed around until three o'clock?

A. Yes, sir.

Q. What time would be the earliest time?

A. Well, at the first, we obey their schedule there at the first of the drilling to start off shooting. You had a narrow place and you couldn't break very much ore. As you advance your working place you get wider. You would start off breaking eight or ten cars and probably you would break up forty-five or fifty when you got back in your stope, and in case you had eight or ten cars you would get through early.

Q. It all depends on the place and how much ore you had broken up?

A. Yes, sir.

Q. The dead line for your crew was three o'clock?

A. That is right.

Q. And your working time depended on the place and the character of the ore and how much you had broken down?

A. Yes, sir.

Q. Now, during all of this time your pay has run from six-forty-five to three-fifteen?

A. It runs from $6.16.

Q. I don't mean in money, I mean in time.

A. Yes, sir.

Q. Six-forty-five to three-fifteen?

A. It would run anywhere from six-forty-five to three-fifteen.

Q. Now, you mentioned having your crew—you said that you would check how many hangers or wedges, I believe you said, hanger steel, I meant to say—

A. Yes, sir.

Q. That you would need and would give a requisition to some member of your crew?

A. Yes, sir.

Q. Now, then, since you have been working there there have been some variations in where or how you got that requisition filled, haven't there?

A. Well, it has been practically the same.

Q. Well, now, for a while didn't you have to send that requisition down to the supply house to be filled?

A. Well, would go to the shop with it for a while, yes, sir.

Q. And then subsequent to that why they fixed a place up to the carbide house?

A. Yes, sir, the bath house.

Q. The bath house?

A. Yes, sir.

Q. Where you got carbide?

A. Yes, sir.

Q. Now, during that period that you went to the shop for these same supplies you would send one man down to the shop and when the shop opened why he would get them and bring them up to the skip and put them in that basket, or have you got a basket?

A. Got a basket on the bail of the skip.

Q. And bring them down. Of course, he wouldn't catch the first skip?

A. No, sir.

Q. It would be later when he got to your place of work?

A. Yes, sir.

Q. Probably got in at seven or seven-thirty?

A. At some time between six-forty-five and seven-five.

Q. Six-forty-five to seven-five or ten, or what did you say?

A. Seven-five to ten. He usually brought them down on the same drag he came on.

Q. After you got carbide—after you established a place there where you could get them at the same place in the same way, he would pick them up there?

A. Yes, sir.

Q. And bring them down?

A. That is right.

Q. Usually there would be one member of your crew or sometimes two?

A. Sometimes two. If I had more men I would split them up. Say we needed thirty hangers or thirty wedges, I would split them up.

Q. According to how short you were or how much material you needed?

A. That is right.

Q. There was a time there, Mr. Praytor, when the stuff was brought down and put on the timber tongue?

A. Yes, sir, there was.

Q. And when that was done, why you head miners, you were anxious to have as much of that in your heading as you could at a time and keep a full supply, wouldn't you?

A. Yes, sir, so we wouldn't run short.

Q. And during that time if the head miner was the first man that got there, take it off?

A. Yes, sir, maybe leave the other fellow without any.

Q. So it was really at you all's request, that you requested a requisition to the mine foreman?

A. The way it started, they would haul them down and, like you say, some would get it all and others wouldn't have any, and we would go to the mine foreman and ask for a requisition.

Q. Wait a minute. You would ask for a requisition and send for them?

A. Yes, sir.

Q. That would take time from your production, wouldn't it?

A. Well, of course, they would bring them in at the beginning of the shift.

Q. All right, go ahead. Tell me what happened.

A. I said that is the way it started.

Q. That is the way it started?

A. Yes, sir.

Q. Now, of course, as head miner, if you ever did run out of oil or anything else between shifts you would send your men back to get it?

A. They didn't require us to bring it up at the beginning of the shift. That was up to the head miner himself as to what he had his men to do. Sometimes the drag operator would bring the oil out at the end of the shift. Sometimes a gallon of oil runs two or three shifts. Usually while the drill men were setting up and quarrying out he would have time to get us oil, in my own heading any way.

Q. In your heading you run it as it is most convenient to you and your men?

A. Yes, sir.

Q. And, of course, you would send your men at any time you needed it?

A. I could send my men out during the shift any time.

Q. That you wanted to?

A. Yes, sir.

Mr. Burr:

That is all I want to ask him.

Re-Direct Examination.

(By Mr. Smith):

Q. Let me ask you this question here: Mr. Praytor, you said your time ran around ten hours. That is from the time you hang up your hook until you get back?

A. Well, I say, judging. I didn't count the times. I said that is the way I calculated it.

Mr. Burr:

He said nine and a half hours.

Q. Nine and a half hours?

A. Yes, sir.

Q. And you get paid for eight?

A. Yes, sir.

Q. You haven't got any time or time and a half overtime that way, either, have you?

A. No, sir.

Q. Up until now?

A. No, sir.

Q. Has anybody else been paid for that, that you know of?

A. Well, sometimes they have a skip tender and he was paid.

Q. I mean your regular producing crew.

A. No, sir.

Q. Now, you say you have been there seventeen years in the same mine. How far has the mine progressed in that time with reference to having to walk and convenience to getting to your place of work in that seventeen years?

A. Well, I would say the mines have advanced at least a mile.

Q. One mile?

A. One mile in the length of the haulages.

Mr. Burr:

Wait a minute. Let him answer your question.

Q. So when you get in the mine now—

A. I say the length to the bottom of the slope. They were mining on a different system to what they were when I went in the mine. I would say the haulages in length have advanced probably a mile.

Q. The haulages in length have advanced probably a mile?

A. Yes, sir.

Q. In the seventeen years you have been there that mine has advanced farther a mile, that you would have to bring material and walk a mile farther going and a mile farther coming back?

A. Yes, sir.

Mr. Smith:

That is all.

Re-Cross Examination.

(By Mr. Burr):

Q. Just a few other questions. You say the skip tender is a nine-hour man, is that what you mean?

A. Yes, sir, he was a nine-hour man.

Q. He gets paid for the extra hour?

A. Yes, sir, he gets paid for extra time.

Q. I forgot to ask you this question: You said in answer to one of Judge Smith's questions that the skip tender coming out—I believe you said the mine foreman coming out and the assistant mine foreman going in supervised him?

A. At No. 2 mine, where I work, the assistant mine foreman is in charge at both stations.

Q. The assistant mine foreman is in charge at both stations?

A. Yes, sir.

Q. Now, you have got what you sometimes call the bull pen?

A. Yes, sir.

Q. And he sees how many get on the skip and counts them out?

A. Yes, sir, coming out.

Q. He counts them?

A. Yes, sir.

Q. And the same thing going in?

A. Going in they load until they have a load, what he judges is a reasonable load, and then they go ahead.

Q. That is what you mean by supervise?

A. Yes, sir.

Mr. Burr:

All right, that is all.

Mr. Smith:

Come down, Mr. Praytor. Now, if the Court pleases, we have got a number of witnesses back there that I just made up my mind are just absolutely cumulative and I haven't got the heart to impose on the Court, so we are going to close.

Mr. Burr:

Are you gentlemen through?

Mr. Harris:

No, I haven't closed. There were some minutes of meetings between different union committees and officers of the Tennessee Company.

Mr. Burr:

Well, I had those minutes. I just want to be certain.

Mr. Harris:

I haven't got the original subpoena. Does the clerk have it?

Mr. Burr;

Does anybody have a copy of it? If you will let me see a copy, I just want to check and see that I have given them all that we have been asked to give them. You can go ahead, Mr. Harris, if you want to.

Mr. Harris:

Well, first I want to introduce, in the book marked Meetings with Muscoda Committee International Union of Mine, Mill and Smelter Workers—I want to introduce the minutes of February 18, 1936. It has been marked. The pages are not numbered, but the minutes are at the top.

Mr. Burr:

General meeting of what? They are divided into sets.

Mr. Harris:

I will find it for you in just a second.

Mr. Burr:

February what?

Mr. Harris:

February 18, 1936.

Mr. Burr:

The front of it will show you whether it is a general meeting or whatever it is.

Mr. Harris:

The front of this reads on this one—I have got the right one—Meetings with Muscoda Committee, International Union, Mine, Mill and Smelter Workers.

Mr. Burr:

That is right. That is a local meeting at Muscoda.

Mr. Harris:

I don't see it right now, but there are in here minutes of February 18, 1936. If Your Honor will indulge me just a second.

Mr. Burr:

I have a suggestion about those minutes, and I think it would save time, if Your Honor would care to hear it.

The Court:

All right.

Mr. Burr:

We were called on, as Your Honor knows, to present all the minutes we had at Muscoda, Wenonah and Ishkooda and the general meetings that were held with the General Committee, which were always held at Muscoda separately, and we have presented those as far as we know. Now, it seems from Colonel Harris that he is going to offer some special ones selected out of there. I want an objection to each one he offers and an exception to it.

Now, what I want to do is to offer all of them for the sole purpose of having him and us read them all so that we can abridge the record later.

What I am offering them for is to show that in none of these meetings was the question of traveling time presented. I think to put them all in as evidence would be unnecessary and take up too much time and too much record. So I was going to suggest that we just consider all of them in with the understanding that if any special meetings are called attention to by him that I have an exception to that.

The Court:

Are you going to introduce them all?

Mr. Burr:

Yes, sir, for that purpose. What I would do if I offer them all—I wanted to save having to do that—if they have read them all, if I can get a stipulation from them after they have read them that traveling time is not referred to. That is all in the case.

Mr. Harris:

I don't want to make any agreement of that sort because I think a lot of them are not material or relevant, if the Court pleases, and I have gone through and picked out the ones.

The Court:

Let him offer them.

Mr. Burr:

Let him offer them, and I will probably have to examine Mr. Harris. If he has read them, that there is no portal-to-portal discussion in here.

The Court:

Have you any objection to them?

Mr. Burr:

I can't conceive where they are relevant for this purpose—in two or three of these—in other words, I don't think union disputes have got anything to do with this case.

The Court:

What is it you offer?

Mr. Harris:

The first thing I offer is Meeting with Muscoda Committee, International Union, Mine, Mill and Smelter Workers, held on February 18, 1936. Those present were Mr. Ewing Carter, Superintendent, Mr. W. C. McKenzie, Division Engineer, and Mr. M. E. Baird, General Superintendent's Clerk, and the following committee from the Muscoda Local No. 123, International Union of Mine, Mill and Smelter Workers: Mr. B. H. Barksdale, Mr. Pete Dulaney, Walter Ward, Derry Wilson and Louis McCreary. The statements of Mr. Carter and Mr. Barksdale:

"Mr. Barksdale:

We have a nice loading station in No. 6 now and I would like to get a ruling about the men staying in line when they go out to catch the skips."

"Mr. Carter:

Any man that is caught pushing will be disciplined, as men are liable to get hurt."

Mr. Burr:

I have got no objection to that at all.

The Court:

All right, let that in.

The Clerk:

Exhibit No. 25.

The Court:
Exhibit No. 25 of the Defendants.

The Clerk:
February 18, 1936. That will be Defendants' Exhibit No. 25.

(Thereupon, said minutes of February 18, 1936, Meeting with Muscoda Committee, International Union of Mine, Mill and Smelter Workers, of Tennessee Coal, Iron & Railroad Company, were identified as Defendants' Exhibit No. 25.)

Mr. Harris:
I haven't had a chance personally to examine all of these minutes and it may be I would like to have Mr. Ball, if he can take the stand for a few minutes, if the Court pleases. Mr. Ball.

The Court:
What is it you wish? You wish to introduce others?

Mr. Harris:
I have several others I want to ask him about.

Mr. Burr:
You haven't introduced the others?

Mr. Harris:
No, sir, I haven't introduced the others yet. Mr. Ball, take the stand, please.
I believe you have the Muscoda Division there. Let's see if you have that one in the minutes of December 31, 1934. Yes, here they are. I have got them.

The Court:
December 31st?

Mr. Harris:

December 31, 1934.

Mr. Burr:

What list is that you are reading from?

Mr. Harris:

I will identify it for you: Meeting with Muscoda Committee, International Union, Mine, Mill and Smelter Workers, Tennessee Coal, Iron & Railroad Company, Minutes of Meeting I am reading from, that were furnished. Those present were Mr. Ewing Carter, Superintendent, and the following committee from the Muscoda Local No. 123, International Union of Mine, Mill and Smelter Workers: Byrd Barksdale, R. B. Autrey, J. A. Mason, M. E. Adams, Bill Baylor. I offer that portion of those minutes reading as follows:

"Mr. Barksdale:

Yes. We understand you have discontinued the tally man.

"Mr. Ball:

The tally man has been abolished and the time taker will stay at the tally house. We find that we get better results by keeping the time taker outside. Each section foreman, timber foreman, track foreman, etc., will make a distribution of the men in his charge which will be a check against the time taker. This practice has been followed on surface here for a number of years and at a great many of the large mines in the country. We feel that this is an advance step in time keeping. It has been in use at Wenonah and Ishkooda for the past fifteen days and has proved very successful."

Mr. Burr:

We have no objection to that.

The Clerk:

That will be Defendants' Exhibit No. 26.

(Thereupon, said minutes of December 31, 1934, of Tennessee Coal, Iron & Railroad Company, Meeting with Muscoda Committee, International Union, Mine, Mill and Smelter Workers, were identified as Defendants' Exhibit No. 26.)

The Court:

All right. Do you want Mr. Ball?

Mr. Harris:

Yes, I would like to ask him a question or two, Judge.

3168 E. M. BALL, being recalled, and having been previously sworn, testified as follows:

Re-Cross Examination.

(By Mr. Harris):

Q. Now, Mr. Ball, do you know whether these minutes, of your own knowledge, whether they are all of them, or whether some of them are gone?

A. They are all the minutes for each local division and for the local committees and for the general committees. I submitted everything we had in our file.

Q. But weren't there some of your minutes that you filed with the Labor Board that are not here?

A. There may have been copies of them but we always keep a copy of them in our file.

Mr. Harris:

Well, now, that is the reason I want Mr. Ball up there to find them. Now, let's see that one. I don't find myself in this a meeting of January 18, 1935.

Mr. Burr:

If you don't mind, show me what you are asking about and maybe we can find it. Did you give me all you had?

Mr. Harris:

Yes, these are some photostats that I have got.

Mr. Burr:

Well, are these copies of what you gave me?

Mr. Harris:

No, no, I didn't have those, as far as I know. These are photostats that I had. I got from Washington out of Government files.

Mr. Burr:

Yes, out of a governmental file. Did you get these out of a governmental file?

Mr. Harris:

No, I didn't get them but I had them obtained. They are photostats of minutes.

Mr. Burr:

Let's see. It may be that there are some minutes introduced there that we haven't got copies of. If I can read them we probably can dispense with any trouble.

Mr. Harris:

Well, I am not bringing that up with that idea.

Mr. Burr:

Are you going to offer them?

Mr. Harris:

Yes, I am going to offer them.

Mr. Burr:

Well, go ahead and offer them and maybe my objection will cover it. I am perfectly willing for you to offer these. Here it is right here.

Mr. Harris:

Well, I see I haven't been able to check it. I wasn't taking any chances. I was offering it on the theory I haven't left anything out, because I hadn't checked it.

Mr. Burr:

We couldn't check because we didn't have these photostats.

Mr. Harris:

You didn't take any chances.

Mr. Burr:

But you had them yesterday. You have had all night to check.

The Court:

All right.

Mr. Harris:

We offer minutes of meeting with the General Committee, International Union of Mine, Mill and Smelter Workers, which is marked 47-1, held in General Superintendent E. M. Ball's office, January 18, 1935.

Mr. Burr:

January 18, 1935?

Mr. Harris:

Yes, and they are pages 1, 2 and 3 and over at the right-hand corner of page 3, signed by B. H. Barksdale for the Committee and signed by E. M. Ball.

Mr. Burr:

We think he ought to use his photostats since he has got them.

Mr. Harris:

No, you have got it and I don't have to use the photostats, if you have got the originals.

Mr. Burr:

That is our copy.

The Clerk:

Do you want that marked?

Mr. Harris:

Yes.

The Clerk:

That will be Defendants' Exhibit 27.

Mr. Burr:

We would like the photostat checked against the copy in our file.

Mr. Harris:

All right, I will check the photostat against the copy in his file during the noon hour and if there is anything wrong with it why I will indicate it to the Court.

Mr. Burr:

All right, sir, have you got any other photostats that you want to offer?

Mr. Harris:

Well, it may be we have it in here.

(Thereupon, said minutes of meeting with General Committee, International Union of Mine, Mill and Smelter

Workers, held in General Superintendent E. M. Ball's office January 18, 1935, Tennessee Coal, Iron & Railroad Company, were identified as Defendants' Exhibit 27.)

Mr. Harris:

Now, the next one that I want is minutes of Muscoda Division, held in Superintendent E. M. Ball's office on June 24, 1935.

Mr. Burr:

That is Muscoda again?

Mr. Harris:

Yes. June 24, 1935. Now, let's see if that is in here. I remember particularly those present in that meeting were Mr. E. M. Ball, General Superintendent—

Mr. Burr:

Show what you are going to offer and it will save time.

Mr. Harris:

I am going to read it to the Judge.

Mr. Burr:

Well, I have got no objection to reading it to the Judge. What is it particularly, if you don't mind?

Mr. Harris:

I am going to read that paragraph right there.

Mr. Burr:

Now, the only objection I have got to that is the same objection that I have had to all of that line of testimony. I just want to get my objection and exception to the part that he proposes to read. Your Honor will see what it is when he reads it. It is our theory that the question of accidents in the mine has got nothing to do with the case. We have had that to start with.

The Court:
Yes.

Mr. Harris:
"Mr. Ball: I believe that we talked about the Section Foremen, Timbermen and Trackmen. We should also divide the time of the Underground Carpenter who is the chute builder. We talker this matter over, Mr. Perry, Mr. Abbott and myself, after you left, as we told you we would do. They left this matter up to me, that if we could get the same results as to efficiency and safety as we are now doing, we will be willing to try it."

Then this sentence: "Our record of lost-time accidents is bad and I do not want to do anything that will make that record worse."

We offer that specifically in rebuttal of the testimony that they brought out that their lost-time accident record was good.

Mr. Burr:
Now, if Your Honor pleases, we didn't bring—it is not in rebuttal of what we did. I don't want anything in the record about admitting. What happened is, Mr. Harris, when Mr. Ball was on the stand for the first time, on cross examination, went into the conditions in the mine as to safety and I objected then and took an exception. And then, of course, when I had witnesses on the stand I yielded to Your Honor's ruling and proved evidence in reference to the matter as it exists, and by his own witnesses on cross examination. So don't let this record show that I have ever admitted, because I think it is far-afield.

The Court:
All right, the record speaks for itself.

Mr. Burr:
And we except.

The Clerk:
No. 28.

(Thereupon, said minutes of Tennessee Coal, Iron & Railroad Company, meeting with Muscoda Committee, International Union of Mine, Mill and Smelter Workers, held in Superintendent E. M. Ball's office on June 24, 1935, were identified as Defendants' Exhibit 28.)

Mr. Harris:
Now, then, the next one I want is the meeting held in the General Superintendent's office, Muscoda, February 22, 1936. Now, that may be in one of the other books. I don't find it here in this book of minutes. January 27, '36, and then the next one is March 13, '36. The one I want is February 22, '36.

Mr. Burr:
You have got a photostat. Let's see your photostat. We will be glad to agree that it is.

Mr. Harris:
Well, then, if the Court pleases, during the noon hour I will hunt through their minutes further to see if I find that particular one.

Mr. Burr:
You have had them since yesterday afternoon. I don't care how much longer it takes, he can look through all he pleases.

Mr. Harris:

In other words, you don't want to help get them out?

Mr. Burr:

I am helping. He has the photostatic copies. Let him use those.

Q. Now, Mr. Ball, in 1934, there was considerable discussion between—or in the latter part of '33 or the early part of '34, or right after these unions and the various locals of the International Union of Mine, Mill and Smelter Workers were organized, they asked you for a six-hour day, didn't they?

A. If they did, I don't remember that.

Mr. Burr:

Will you let me see what you are asking about?

Mr. Harris:

Yes.

Mr. Burr:

Have you any objection to my seeing it first?

Mr. Harris:

Not at all. Had you rather see it before he looks at it?

The Court:

He doesn't have to answer until Mr. Burr looks at it.

Mr. Harris:

What I am going to do is to use a photostatic copy to refresh his recollection, is all.

Mr. Burr:

What, a photostatic copy of the Birmingham Post?

Mr. Harris:

Yes, to refresh your witness' recollection from this article on this page and over on the next page, May 20, 1934.

Mr. Burr:

We certainly object to his refreshing his recollection by the Birmingham, Post. If Your Honor pleases, I have an account of this good man here in the paper, and to refresh his recollection by something that is printed in a newspaper?

The Court:

Yes, if it should aid him any, if he does not remember.

Mr. Burr:

He hasn't said that he needed any refreshing.

Mr. Harris:

Well, I am going to see if he needs to refresh his recollection.

The Court:

Cross examination.

Mr. Burr:

No, no, it is rebuttal testimony.

Mr. Harris:

I have never closed my case, if the Court pleases.

Mr. Burr:

You closed as to Mr. Ball.

Mr. Harris:

No, I stated back there I might have some questions at this time.

Mr. Burr:
We object to his refreshing his recollection from that newspaper article.

The Court:
Overruled.

Mr. Burr:
We except.

A. The article in the paper at that time, Colonel Harris, about the strike at that time, I don't remember whether I saw that or not, but I am satisfied in my own mind that the six-hour day was never mentioned in our negotiations or proposals from the committees during the three times that they asked for traveling time one way.

Q. And your recollection is not refreshed by reading this article?

Mr. Burr:
He has answered your question.

A. No, sir, there was so much in the papers about the strike that it does not refresh it.

Mr. Harris:
That is all.

The Court:
All right, are you through?

Mr. Burr:
Just a minute. At this time I would like, Your Honor, in also checking over during the recess, I would like to make a motion to produce for our examination, just as we have produced for theirs, all the photostatic copies they have, so we can check them during the recess.

Mr. Harris:

My photostatic copies are not material to him. They have testified these minutes contain all the minutes kept by the Tennessee Company from the time the union was organized or from the time we asked for the subpoena up to the present time, and I haven't offered any photostats. The only reason I was using the photostats was on the theory that some might have been left and they didn't have them. So my private documents that I have obtained as evidence in this case myself are not any records kept by my people. They are not any records kept by any union, but it is minutes that the Tennessee Company kept and they say they are here. So why should he look at any copies I have got?

Mr. Burr:

If Your Honor pleases, on motion Your Honor required us to produce all the minutes that we have, and that is what we have produced. On examination of Mr. Ball the question has been asked as to whether or not some may have been offered in evidence before the Board, of which photostatic copies have been presented, and now I say, in all fairness, what is sauce for the goose is sauce for the gander. I don't know whether it amounts to a thing in the world or not. I don't know, but we have got the same right to check what he has got in his hands against our records, and we respectfully ask that that permission be given us.

Mr. Harris:

There is a very vital difference between having a party produce records kept by the party and having a lawyer produce records that he has obtained from independent sources or otherwise. Anything that I have in my file are my personal papers, unless they were kept by a party to the suit.

The Court:
Overrule the objection.

Mr. Burr:
We except. Of course, Your Honor knows the rule says "in possession or control." It doesn't make any difference where they come from. We are excepting to the ruling.

The Court:
Yes.

Mr. Harris:
Now, yesterday I had on a witness and had up the Republic Company's book of rules.

Mr. Burr:
I have got the various rules for you.

Mr. Harris:
I would like to have the book of rules in addition to the ones I have.

Mr. Burr:
Here is our latest edition of rules.

The Court:
What is the date of it, Mr. Burr?

Mr. Burr:
I think it is '36.

Mr. Harris:
That is the same one I had. Let's see mine.

Mr. Burr:
This is the latest one we have. I think it has been revised. That is the latest rule. If you have one it is all right. You can take either one or both of them.

Mr. Harris:

Well, mine is already marked as an exhibit. So there is no use in marking theirs. So instead of marking it for identification we offer it in evidence.

The Court:

What is it?

Mr. Harris:

It is rules for prevention of accidents.

Your Honor wants to know the number? It is Defendants' Exhibit 23.

Mr. Burr:

We have no objection to the rule book.

The Court:

It is Exhibit 23?

The Clerk:

Defendants' Exhibit 23, yes, sir. It is marked for identification.

(Thereupon, said rule book of the Republic Iron & Steel Company, 1936, was admitted in evidence as Defendants' Exhibit No. 23.)

Mr. Harris:

Defendants' Exhibit 18, marked for identification, The Ore Miner, issue of May, 1939, on page 12.

Mr. Burr:

Are these new ones that you are offering?

Mr. Harris:

No, these are the ones you have checked up, I put in for identification and you have checked them and I am offering them.

Mr. Burr:

We object, separately and severally. I think the ruling has been made.

The Court:

I think the ruling has already been made.

Mr. Harris:

I stated to the Court I would want to read them at a presentable time instead of in argument. You see, they have not been read to the Court.

Mr. Burr:

All I want to know is whether I have got an exception to each one.

The Court:

Have I ruled on it?

Mr. Harris:

It is my understanding that he was to have an objection and exception when I offered them in evidence.

The Court:

Well, I thought it was something on that order.

Mr. Harris:

Yes.

The Court:

I will wait and hear you read.

Mr. Harris:

On page marked No. 12, in the May, 1939, issue, I offer this sentence:

"No smoking is allowed while riding in and out of the mine."

The Court:

Is there any objection to that?

Mr. Burr:

I object because I think it is all immaterial, illegal and irrelevant.

The Court:

Overruled.

Mr. Burr:

I think Your Honor might as well put a sign on the back of the Courthouse for me.

(Thereupon, said article in the May, 1939, issue of The Ore Miner, was admitted in evidence as Defendants' Exhibit 18.)

Mr. Harris:

Then in the issue of November, 1938, Defendants' Exhibit 17, this paragraph on page 7:

The burning of one piece of timber underground the size of a track tie may result in the death of anyone who may happen to be caught in the resulting smoke and gases; and that a fire this size may necessitate shutting down of the section of the mine through which the smoke and gases pass."

And then this paragraph immediately following:

"In several instances in the past, methane gas has been found in old workings of our mines, and that going into old workings with an open light is dangerous."

Mr. Burr:

We have a separate and several exception to each offer that he has made: incompetent, irrelevant, immaterial, illegal; on the ground that it amounts to nothing except a safety warning and is not accompanied by any evidence of any kind that there has ever been a single accident in those ore mines resulting from gases.

The Court:
Overruled.

Mr. Burr:
We except.

(Thereupon, said article in the November, 1938, issue of The Ore Miner was admitted in evidence as Defendants' Exhibit No. 17.)

Mr. Harris:
In the issue of July, 1939, Defendants' Exhibit 16, we offer that part of the page which has been numbered 8 in pencil, reading as follows:

Mr. Burr:
What exhibit number is this, now?

Mr. Harris:
Exhibit No. 16.

Mr. Burr:
All right, sir.

Mr. Harris:
It comes first under the title of "The Back Cover," "Unseen Dangers", account for many of our accidents in mining. They are termed "unseen dangers" because, unless a miner is constantly on the alert he may receive an injury from some one of these dangers. Actually, there are very few hazards in mining which cannot be seen and guarded against,"

And then on The Back Cover to which he refers in the article, we offer the illustrations of the magazine of the Tennessee Company.

Mr. Burr:
Just a minute. Let me see your illustrations you are talking about. Oh, "Unseen Dangers"?

Mr. Harris:
Yes.

Mr. Burr:
All right.

Mr. Harris:
Then on page—

Mr. Burr:
Now, wait a minute. We object to each sentence that he read, separately and severally, and each illustration and each part of the illustration, on the same grounds that I stated.

The Court:
Overruled.

Mr. Burr:
All right, sir, we except.

(Thereupon, said articles from the July, 1939, issue of The Ore Miner were admitted in evidence as Defendants' Exhibit No. 16.)

Mr. Harris:
Then on page 8 we offer that portion of the right-hand column of the same statement reading as follows:

"A man walking along a haulage road with a piece of steel on his shoulder does not see the electricity in the trolley cable which may kill him if the steel comes in contact with it. He knows, however, that the cable is there for the purposes of carrying electricity and he has been taught never to carry steel on his shoulders. This "unseen danger" can therefore be eliminated through making it a practice never to carry any steel or any material on the shoulders which may cause you to come in contact with the electricity in the trolley cable.

"An unseen danger in the truest sence of the word exists in all old workings. In such places there is always the hazard of an accumulation of methane gas. Anyone going into such a place with an open light is exposing himself to a danger which has taken at least one life in our mines. Never go into an old working with an open light."

Mr. Burr:

The same objections and exceptions, separately and severally to each one.

The Court:

Overruled.

(Thereupon, said articles from the July, 1939, issue of The Ore Miner, on page 8 thereof, were admitted in evidence as Defendants' Exhibit 16.)

Mr. Harris:

Then the December, 1939, issue of The Ore Miner, Defendants' Exhibit 14, on page 4, we offer the square down at the bottom and the illustration therein, that is marked —has type under it, No. 8 Mine, which reads as follows:

"While walking up manway this man attempted to step over a rail which was being dragged by a mule. The rail bounced up and struck him on the foot.

"Remedy: Never attempt to cross over material that is being moved while it is in motion."

Mr. Burr:

We want to make the same objections to that, and the special objection that we think it ought to be accompanied by a photograph of our friend Patterson who got this foot hurt by the chair falling the other day.

Mr. Harris:

Here is my idea that it is relevant, Your Honor: The testimony shows that the men in walking into the mine have to step over cables and have to go through old workings in going to it, and is a part of the surrounding circumstances accompanying their passage from the time they check in until the time they check out at night. That was why I was offering that, was an admission against the interest of the plaintiffs.

Mr. Burr:

If Your Honor pleases, it couldn't be an admission against interest to warn people to be careful. Why, that is a new way of trying cases. Anybody in the world knows that you can't have the same conditions in an underground ore mine that you have here in this Courthouse. There has been no testimony that men walk over rails or tracks that are movable. All the testimony to date was walking over tracks and rails that are immovable, and not movable.

Mr. Harris:

Another theory that I had in mind, on which I introduced some of these others, is this, that it shows supervision over the men not only in telling them up at the top where they are to go and what they are to do, but also supervising them on their way and telling them how to travel and how to get there.

The Court:
I will admit it.

Mr. Burr:
Sir?

The Court:
I say I think it is admissible.

Mr. Burr:
If Your Honor pleases, if by elasticity you have changed the question to telling people about safety conditions, it is supervision for safety, is all it is. If you are in any plant in the world, whether you are a workman or anything else, you are under supervision for safety.

The Court:
Overruled.

Mr. Burr:
We except.

Mr. Harris:
That is Exhibit No. 14. Now, on page No. 8 of that same exhibit we offer a paragraph reading as follows:

"Stolen Rides. When the shift is over and you are hoodlum bound from your working place, don't let that overwhelming desire for a ride tempt you into hopping on a trip of cars which might be going your way. In addition to being strictly against the rules of the company which, however, subjects you to the possibility of immediate discharge if you are caught, this practice is very likely to result in serious injury. There are many ways in which such injuries may happen. You may miss your footing and fall under the wheels of cars; trips may wreck; ore on loaded cars can roll back on your hands, causing serious injury.

"Any motor runner who allows anyone to steal rides on his train will be considered just as guilty as the ones stealing the rides."

Mr. Burr:

The same objection and exception.

The Court:

I just wanted to get your viewpoint why that is relevant.

Mr. Harris:

Still in the supervision of how they enter and leave, if the Court pleases. Those men, from the time they check in at the time keeper or the tally keeper or whatever you call it, until the time they pick up their check in the evening, are always under the supervision of the Tennessee Coal, Iron & Railroad Company.

The Court:

Well, I will admit it. The objection is overruled.

Mr. Burr:

Give us an exception.

(Thereupon, said articles from the December, 1939, issue of The Ore Miner, on pages numbered 4 and 8 were admitted in evidence as Defendants' Exhibit No. 14.)

Mr. Harris:

Then in The Ore Miner of January, 1939, on page numbered 7, headed, "The Duties of Drillmen," that part reading as follows:

"The drillman must go into the mine on the first man trip at the beginning of each shift and shall be the first employee to enter the working face."

That is Exhibit No. 13, and that concludes, if the Court pleases.

Mr. Burr:
We have an objection and exception to that part.

(Thereupon, said article from the January, 1939, issue of The Ore Miner, on page numbered 7, was admitted in evidence as Defendants' Exhibit No. 13.)

Mr. Harris:
Now, I have a witness. Shall I call him at this time, Your Honor?

The Court:
Yes.

Mr. Harris:
Is Mr. Anderson in the Courtroom? Come around, please.

3185 M. C. ANDERSON, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Harris):
Q. What is your name, please, sir?
A. M. C. Anderson.
Q. How old are you, Mr. Anderson?
A. I am thirty-eight. I will be thirty-eight.
Q. Have you ever been connected with the International Union of Mine, Mill and Smelter Workers?
A. Yes, sir.
Q. In 1933 and '34 were you an officer of either a local union or a member of a committee?

A. Yes, sir, in 1934 and '33 I was President of the Ishkooda Local Union 153, and also the President of the Bessemer District Smelters Council, and also a member of the Committee of the Local Union, the General Committee of the three T. C. I. Locals, acted as one of the General Committeemen, and then as Chairman of the Smelters Council I worked with the committees from the other local unions from the other companies.

Q. Did you meet with the officers and representatives of the Tennessee Company, the Sloss Company or the Republic Company, or all of them, at different times in 1933 and '34 and discuss with them the hours of labor of the men in the ore mines?

A. I have with the T. C. I. at that time and also the Republic Iron & Steel Company and with the Woodward Iron Company.

Q. Well, I am not interested in the Woodward Iron Company. Now, in meeting with the officers of the Tennessee Company in 1933 and '34 what officers did you talk with?

A. Well, with C. B. Cameron at Ishkooda where it was a local union.

Q. What about a general meeting?

A. A general meeting, we would meet with the T. C. I. Company, was Mr. E. M. Ball and the superintendents from the various plants and then if it was on negotiations for hours, etc., or contractual relations it was generally we met with the president of the company, vice president of the company, manager of the industrial relations and Mr. E. M. Ball and the assistant to the president, Mr. LeMay.

Q. During 1933 or 1934 did you have conversations with them in which you or the men with you as representatives of the union asked for a six-hour day?

A. Yes, sir.

Q. Do you recall whether or not that request for a six-hour day was presented in writing, or whether it was presented orally by word of mouth?

A. It was presented in writing.

Mr. Harris:

May I have T. C. I. Exhibit No. 6?

Q. Did you get a reply from Mr. Ball or any other representative of the company when you asked for a six-hour day?

A. We had quite a discussion and argument over it and got a reply from Mr. Gregg criticizing the form that it was presented in, that it being a carbon copy that he wasn't served with an original. We just set forth the Tennessee Company in it, and this was a general proposal to cover all the council affiliates, in other words, cover all the local unions affiliated with the council.

Q. What did they say about giving you a six-hour day?

A. They couldn't do it. They said they were operating on an eight-hour day.

Q. Then after that did your committee present a paper bearing date of April 13, 1934, marked T. C. I. Exhibit 6, and having on page 2 as it is numbered there, 8: "In view of the fact that the company can force the men to enter and leave the mines at any time stated by the company, we ask the right to enter on our own time and leave on the company's time"?

A. Yes, sir.

Q. And then the 9th paragraph: "In view of the fact that the National Recovery Act was passed for the purpose of employing more men and increasing the producing power, we ask for a seven-hour day, a maximum of thirty-five hours per week, time and one-half for all overtime, double for Sundays"?

A. Yes, sir.

Mr. Burr:

Is that a Tennessee Company exhibit you are asking about?

Mr. Harris:

That is a Tennessee Company exhibit.

Mr. Burr:

Is it the one that was offered with Mr. Ball's testimony? What number is it?

Mr. Harris:

It is T. C. I. Exhibit No. 6.

Q. Is that your signature?

A. Yes, sir.

Q. M. C. Anderson, on that. Now, as to the Republic Company, did you take any part in discussions with the Republic Company during '33 and '34 about a six-hour day?

A. Yes, sir.

Q. Who did you talk to with the Republic Company?

A. Well, there was Mr. Oldham and Mr. Bransford and there was Walsh, I believe, and I am not positive, I believe Mr. Thompson was there.

Q. And then when you talked with them about the six-hour day did they make a favorable or an unfavorable reply to your request?

A. Very unfavorable.

Q. I will ask you whether or not during 1933 you took part in the filing of a complaint against the Republic Steel Corporation, Raimund Red Ore Mines Division at Bessemer, Alabama, to the Regional Labor Board?

A. I did.

Q. I have here Defendants' Exhibit 9 for identification. I will ask you to look at it, and what I am particularly calling your attention to is, "We hereby make the following request: Six: That the men be not required to enter and leave their place of work on their own time".

A. Yes, sir.

Q. Now, that bears at the end a certificate: "This is to certify that I have this the 21st day of December, 1933, placed in the mails a true and exact copy of our complaint and request, addressed to Mr. G. H. Oldham, as Vice President In Charge of Southern Properties of the Republic Steel Corporation, Empire Building, Birmingham, Alabama. J. A. Lipscomb," signature, and then under that type, "J. A. Lipscomb, P. O. Box 210, Bessemer, Alabama."

Mr. Burr:

That is the exhibit we offered in evidence you asked about?

Mr. Harris:

No, this is my exhibit. You never offered this in evidence.

Mr. Burr:

Let me see that. Oh, this is the complaint?

Mr. Harris:

That is right.

Mr. Burr:

Well, we have got no objection if he wants to put it in evidence, the whole thing.

Mr. Harris:

We offer it in evidence and the plaintiff has no objection.

Mr. Burr:

It may be necessary for us to offer a copy of the answer and a copy of the final order in the case.

Mr. Harris:

I am not offering it on the merit of the charges. I am not interested in the merit of the charges.

The Court:

The discussion of how it would work.

Mr. Harris:

That travel time was discussed; that is all I am offering it for.

The Court:

What is that exhibit?

The Clerk:

That is Defendants' Exhibit No. 9.

Mr. All:

It would be self-serving, I think, to have yourself make the statement that something else happened.

Mr. Harris:

They don't get the point. There has been evidence, if the Court pleases, from the plaintiffs that travel time was never discussed, and here is a charge made in 1933 before the Labor Board where they were asking that the men be not required to enter and leave the mine on their own time.

Mr. Burr:

We still say it never was discussed.

(Thereupon, the document dated December 31, 1933, with the certificate attached bearing the signature of J. A. Lipscomb, testified about by the witness, was admitted in evidence as Defendants' Exhibit No. 9.)

Q. Now, then—and did you talk to Mr. Oldham, vice president of the Republic, about the six-hour day?

A. Yes, sir.

Q. And what reply did he give you?

A. He said they were working on an eight-hour day and they could not change it.

Q. What reply did he give you about paying for the time, either both way or one way, of the men going in or coming out?

A. Well, the only—through the discussion was—that it was their policy and that they were not going to change.

Mr. Harris:

All right, you may take him.

Mr. Burr:

Does Your Honor want me to start now? We will be some time on this witness. We would like to have a chance to look at these exhibits. We can come back a little earlier.

The Court:

We will come back a little earlier. Court is adjourned until 1:30.

(Thereupon, at 12:05 p. m., July 30, 1941, Court adjourned until 1:30 p. m. of that date.)

After Recess, 1:30 P. M.

The Court:

All right, Mr. Burr:

Cross Examination.

(By Mr. Burr):

Q. Mr. Anderson, are you connected with this present union at the present time?

A. As a representative of the International, yes, sir.

Q. And what is your jurisdiction and territory?

A. District No. 5.

Q. That includes what states?

A. Alabama and Tennessee, where we have local unions at the present time, but District 5 is eight states, eight southeastern states.

Q. And you have jurisdiction of all these states, do you?

A. As a representative, wherever I am ordered to go by the supervisor.

Q. But you have Alabama and Tennessee?

A. Yes, sir.

Q. Now, when was the time that you say you presented a written paper that had a six-hour demand in it to the Tennessee Company?

A. 1934.

Q. 1934, what time in 1934?

A. April, 1934, the early part of April.

Q. April of 1934?

A. Yes, sir.

Q. Where was that presented?

A. It was presented directly to Mr. Gregg's office.

Q. That is the president of the company?

A. Yes, sir.

Q. April, 1934?

A. Yes, sir.

Q. You said that that was in writing?

A. Yes, sir.

Q. Where is it? Have you a copy of it?

A. I turned my copy—

Q. I didn't ask you what you did. I asked you if you had a copy.

A. Not with me at present, no, sir.

Q. Do you know where one is?

A. I know where my copy was turned over to.

Q. Is that available at the present time?

A. I suppose Mr. A. N. Summers of the National Labor Relations Board has it in his possession. That is who I turned my copy over to.

Q. You mean you turned the copy that you had over to Mr. Summers?

A. Yes, sir.

Q. He was conducting as attorney the case against the Tennessee Company that was tried so long here at the Courthouse?

A. Yes, sir.

Mr. Burr:

Now, may I ask if a copy of that is available, Mr. Harris?

Mr. Harris:

No, sir, I haven't got it.

Mr. Burr:

A photostatic copy of it?

Mr. Harris:

No, sir, I haven't got it.

Mr. Burr:

Mr. Brodie, would you mind telling us?

Mr. Harris:

Nobody has got a copy of it. We have been trying to get it.

Mr. Burr:

May I ask at this time as to whether you have requested or been furnished with copies that the National Labor Relations Board has got?

Mr. Harris:

I couldn't answer that question. I have been trying to find it here. I couldn't answer your question at all.

Mr. Burr:

Does anybody else—

Q. Was it offered in evidence before the National Labor Relations Board?

A. I am pretty sure it was.

Q. Do you know if it was? We have got the record of that. I want to know if it was.

A. All the contracts, or proposed contracts—

Q. Answer the question.

The Court:

Just answer his questions.

Q. I just want to know if you testify if that copy that you turned over to Summers was offered in evidence in that case.

A. I believe the record would speak for itself. I couldn't be positive that I could testify as to that.

Q. What is your best recollection?

A. Well, my best recollection is that they were all introduced.

Q. Including that one?

A. Yes, sir.

Q. Now, what else was in there besides the demand for a six-hour day?

A. There was a request for a raise in wages.

Q. And what else?

A. Equal division, if I am not mistaken there was a request for an equal division of time among the employees.

Q. What else?

A. Discrimination; in other words, that some employees were working two and three days a week and some making six days a week.

Q. All right, what else?

A. There were many grievances mentioned in it, such as wages, hours and conditions of employment.

Q. How many pages was it?

A. I believe there was about four.

Q. Who signed it?

A. Well, it was signed by, as a proposed contract, by the General Committee of at least from each Local Union and possibly there might have been three, the three—President, Vice President and Secretary of the Local Union.

Q. Did you sign it?

A. I am pretty sure that I did.

Q. Now, is that the time you say you were present when you discussed it with Mr. Gregg, the President of the company and the Vice President of the company, Mr. Abbott, the Manager of Industrial Relations—that was Mr. Vance, wasn't it?

A. That is right.

Q. Mr. E. M. Ball and probably Mr. Ernest LeMay?

A. Mr. LeMay was present.

Q. How much discussion did you have about the six-hour day?

A. We had quite a bit.

Q. Anything else you discussed besides the six-hour day and the raise in wages and the unequal division in time and the complaint you made of discrimination, is that all you discussed?

A. What was embodied in the contract.

Q. I know, but do you remember anything else that you discussed besides that?

A. Practically every clause that was in the contract.

Q. What else was in the contract?

A. I couldn't give you clause by clause unless I had the contract.

Q. Do you remember anything else that was in the contract?

A. I don't remember just everything in it.

Q. Anything else, I am asking you if you remember anything.

The Court:

Tell him whether or not you remember anything else that was in the contract.

A. I don't remember, from my recollection right off.

The Court:

All right.

Q. You had a provision in there that you wanted to be paid for half of your traveling time, didn't you?

A. No, sir. In other words, just the question of the six-hour day, the six-hour day clause. There was no mention in it—

Q. Of traveling time?

A. No, there was no mention of anything about the faces where they were to work at, but just the six-hour day.

Q. Was there any mention of traveling time?

A. No, it didn't specifically state traveling time.

Q. It didn't state traveling time. Specifically or unspecifically was it mentioned other than you discussed a six-hour day?

A. Nothing was discussed but the six-hour day.

Q. Mr. Anderson, you can answer the question.

Mr. Harris:

I think he has answered him.

Mr. Burr:

Read the question.

(Question read.)

A. Well, we discussed the six-hour day for eight hours pay, of course.

Q. Mr. Anderson, please, sir, listen to my question. If you don't understand I will try to make it clear to you.

The Court:

Just answer it.

Q. In that conference that you claim that you had there in the office of the President of the Tennessee Company in 1934, was there any discussion at all of the question that the men should be paid for traveling to and from their working places?

A. I don't believe that was mentioned.

Q. All right, sir. Now, then, that was in April, 1934?

A. Yes, sir.

Q. What part of April was it in?

A. I would say it was the early part of April.

Q. You saw this morning T. C. I. Exhibit No. 6 and identified your signature?

A. Yes, sir.

Q. M. C. Anderson?

A. Yes, sir.

Q. That was presented to the Tennessee Company on April 13, 1934, wasn't it?

A. That was renewed on April 13th.

Q. Is that the paper that you said this morning that Mr. Gregg—all he said in reply to it was that he criticized it for being a carbon copy?

A. No, sir, the one I spoke of before this was shown to me was the one that was fixed up in the form of a six-hour day, and it covered not only clauses concerning the Tennessee Company but it covered all of the—it would affect all mines, and the other paper was fixed just like this one.

Q. And the paper that you say now that you turned over to Summers which had the six-hour day request in it was also made out like this to all the companies, Woodward, Sloss, Tennessee and the Republic?

A. Yes, sir, it was made out to be presented to the companies.

Q. And you did present it to all the companies?

A. I am not positive that I presented it. I know we presented it to the Republic Iron & Steel Company, because I was one of those and I was present when it was discussed with the Tennessee Company.

The Court:

What is the date of it?

Mr. Burr:

April 13, 1934.

Q. So you claim that you turned it over to Summers, a paper that was dated some days previous to this?

A. Yes, sir.

Q. This is April 13th?

A. Yes, sir.

Q. Made out the same way with an original and carbon copy and the names of the companies filled in?

A. Yes, sir.

Mr. Harris:

I object to the phrase "you claim so and so."

Mr. Burr:

Well, "you testify that."

Mr. Harris:

Well, that is different.

Mr. Burr:

Yes, I would rather have it that way, "you testify that is a fact."

Q. And that is the one you say you turned over to Summers that you say you haven't been able to find a copy of?

A. Not that one. I turned a copy of this over to him, as well as the other copies.

Q. Well, you turned the others over?

A. Yes, sir.

Q. And you furnished a copy to Summers of this so far as the way it was written out and framed?

A. Yes, because Mr. Gregg criticized us for not handing him that.

Q. About it being a carbon copy both times?

A. Yes, sir.

Q. Now, you identified a paper here this morning with reference to the Republic Company which is Defendants' Exhibit No. 9, a charge signed by B. H. Barksdale and J. A. Lipscomb, Attorney, a complaint against the Republic Company, filed with the Regional Labor Board. Were you present at these hearings?

A. Yes, sir.

Q. Attended all of them, did you?

A. Yes, I attended that one in Atlanta. I didn't attend the one in Washington.

Q. Well, I am not talking about the one in Washington.

The Court:

Go ahead.

Q. There were two held in Atlanta. Did you attend them both?

A. I attended the first one.

Q. Did you attend the one held here?

A. Of the Republic Company?

Q. Yes.

A. No, sir.

Q. All right. The one that you attended in Atlanta, I notice in this complaint here there are some fourteen requests, and among them is that the men be not required to enter and leave their places of work on their own time. Now, that was—let's see if it has got a date. Yes, the 21st day of December, 1933, is that right?

A. Yes, sir.

Q. Now, you say you attended the first hearing?

A. Yes, sir.

Q. I want to know if a stenographer took down that hearing, everything that was said and done?

A. That Board, that Regional Board at that time under the NRA, that is when that was filed.

Q. Sure, and they had a stenographer over there?

A. Yes, sir.

Q. Who made a record of it?

A. Yes, sir.

Q. And the union never brought up in that hearing or in any other hearing that you attended of the Republic Company at any time any further complaints or request that the men be paid for traveling time?

A. They brought up numbers of requests.

Q. I am talking about on that contract, Mr. Patterson, what I am asking you. Have you ever seen the record in that case; have you ever read it?

A. No, sir, I haven't read it.

Q. Are you willing to testify that you or anybody else presented other than this—filing that paper—ever presented any testimony or made any further request or any further statement about the traveling time in that Republic Company hearing? If anybody did I want you to tell me who it was and what he said.

A. In fact, I don't think the hearing was ever completed until the NRA was—

Q. I am talking about while you were there. I am not talking about when it was completed. I will get to that a little later. But while you were there did you ever hear any request presented about traveling time other than this matter you say was presented in the contract and testimony taken about it?

A. I don't remember that. There was a very few testified, in fact.

Q. Why, Mr. Anderson, don't you know the whole—they had a Courthouse full of witnesses who testified?

A. Yes, but a very few testified.

Q. And they took testimony this thick (indicating)?

The Court:

Well, go ahead.

Mr. Burr:

What I am trying to get at, I am trying to get the facts about this, Your Honor.

Q. Now, I want to know, whether it was broad or long, that a single solitary soul ever mentioned the question of traveling time in your hearing or presence.

A. Mentioned the request as to the complaint, yes.

Q: Mr. Anderson, you understood the question, didn't you. I want to know if anyone said a word in the hearing, on the stand or the presentation of your attorney, Mr. Lipscomb, before that board at any time that you were there in which the question of the men being paid for any part of the traveling time was brought up, and if it was I want you to tell me who brought it up and what was said about it.

A. My best recollection it was brought up in this manner that the men, from the unloading stations to the places of work, they had so far to walk, and the time that they had to get there and go back into the places, and that was their reason for making the request.

Q. Do you testify that that was brought up that way in that hearing from the time it started in December?

A. That is my recollection.

Q. Who brought it up?

A. Well, it was brought to the Board's attention by the attorneys.

Q. Mr. Lipscomb here?

A. And they had witnesses. They had witnesses there to substantiate it.

Q. And you testify here on oath—

A. It is my best recollection. I didn't testify there, no.

Q. I am talking about now. You testify that you sat there in that Courtroom and heard somebody examined over there in reference to the time it took them to walk to the working place and things of that sort, concerning traveling time?

A. I couldn't swear that, but I know that it was brought to the attention of the Board by the attorneys through the arguments, etc.

Q. Will you swear that an attorney brought it to the attention of that Board in that hearing, and if you do I want you to take time off to read the statements of the attorneys; Do you testify that?

A. I would say that they brought it in the complaint.

The Court:
He says so.

Q. Do you swear that?

The Court:
He says so.

Q. Do you swear that?

A. Our attorney, Lipscomb, and Gooch.

Q. Your attorney, Lipscomb, and Gooch?

A. George Gooch was there.

Q. Which one of them talked about the traveling time?

A. They discussed the complaint in general.

Q. I am not talking about in general, Mr. Anderson.

A. All of that was taken into it, Mr. Burr. I couldn't specifically set out anything that Mr. Lipscomb said.

Mr. Harris:
Judge, if he has got a copy of it—

Mr. Burr:
I am cross examining the witness.

The Court:
Overruled, along that line.

Mr. Burr:
If Your Honor pleases, the law allows me to cross examine a witness and get his statement as to what he bases his testimony on. I asked him about a hearing.

The Court:
Well, I am allowing you to go on. He said that was his best recollection as to what was said.

Q. Well, who said that?

Mr. Harris:
He has answered that. He said Mr. Lipscomb or Mr. Gooch.

The Court:
He said Mr. Lipscomb or Mr. Gooch.

Q. All right, sir, I want you to tell me yes or no, do you testify that Mr. Jim Lipscomb sitting right there, in a hearing of that Republic case from the time it started in December, 1933, until it ended in April of 1934, ever opened his mouth or said a word?

A. I can't say anything about anything except the testimony here.

Q. All right, in that hearing will you testify that he opened his mouth or said a word about travel time or distances in a mine?

A. I am pretty sure he discussed it.

Q. Answer that, Mr. Anderson, please.

Mr. Harris:

I think he has tried to, may it please the Court.

The Court:

Is that your best recollection?

The Witness:

Yes, sir.

Q. That he did?

A Yes, sir, that he discussed the complaint in general.

Q. I didn't say a word about discussing the complaint, but do you say your best recollection is that he testified about the traveling time?

A. I don't say he testified.

Q. Did he state anything about it?

A. Yes, sir, brought it to the Board's attention.

Q. Are you under sentence right now, on appeal, from some sort of conviction?

A. Yes, sir.

Q. You are? What sort of a conviction are you under?

Mr. Smith:

We object.

The Court:

Has he been finally criminiated?

Mr. Burr:

That is what I want to find out.

Q. Have you got an appeal pending, or not?

A. Yes, sir.

The Court:
Sustain the objection.

Mr. Burr:
All right, sir, we except. That is all I want to ask him.

Mr. Harris:
That is all, Mr. Anderson. Now, if the Court pleases, we offer in evidence Defendants' Exhibit No. 10 for identification—it has already been introduced—the affidavit of Mr. Norman E. Thompson of the Republic Company. This affidavit has already been identified by him and his signature, and we offer it for purposes of impeachment, that part reading as follows:

"Beginning on June 7, 1935, the Committee representing the Brotherhood of Mine Workers of Captive Mines began to present from time to time their requests for new contracts and for some other changes in working conditions. At no time did this Union ever present the claim that going to and from their working place should be on company time. The same letters of understanding and of continuing the existing policy which was sent to the Union were also sent to the Brotherhood."

We offer the entire affidavit.

Mr. Burr:
We have no objections to that.

The Court:
That is Exhibit 10 of Defendants?

The Clerk:
Yes, sir, that is right.

(Thereupon, said affidavit of Norman E. Thompson was admitted in evidence as Defendants' Exhibit 10.)

Mr. Harris:
In the minutes furnished us by the Tennessee Coal, Iron & Railroad Company, we offer from the minutes of the Muscoda Division, January 17, 1936, the statement by Mr. Ball.

Mr. Burr:
Just a minute, Mr. Harris. Let me get that. What minute is that, now?

Mr. Harris:
January 17, 1936.

Mr. Burr:
Muscoda, did you say?

Mr. Harris:
Muscoda Division.

Mr. Burr:
Thank you, sir.

Mr. Harris:
Statement by Mr. Ball: "There is another matter I want to mention to this Committee: For several days a number of men have been late reporting to the mines. We pay a day's wage for a day's work and we expect the day's work. Whenever a man comes to the mine late, dragging along and encourages others to be late he is setting a bad example. I want this understood thoroughly —men must be on time; we don't care whether they work here or not, but if they want to work here they will have to be on time or else they will be disciplined, even to discharge."

Mr. Burr:
No objection to that.

The Clerk:
Let me mark that, Mr. Harris. That will be Exhibit 29.

(Thereupon, said minutes of Tennessee Coal, Iron & Railroad Company, Muscoda Division, held in General Superintendent E. M. Ball's office January 17, 1936, were identified as Defendants' Exhibit 29.)

Mr. Harris:
Now, I was furnished by—a young man from my office went over to your office yesterday and you gave us—he brought back five of these.

Mr. Burr:
That is all I could find.

Mr. Harris:
And I do not find any minutes whatsoever from these title pages dealing with the Ishkooda Division at all.

Mr. Burr:
It is already in evidence. That was offered by us way back yonder.

Mr. Harris:
The whole book?

Mr. Burr:
Yes, the pages from it. We are going to offer the whole book.

Mr. Harris:
Have you got your mark on it so you can put your hand on it?

Mr. Burr:

Here are T. C. I. Exhibits here.

Mr. Harris:

That is all right, if you have already got it in. I tried to check during the noon hour as many as I could.

Mr. Burr:

It was offered when Mr. Patterson was on.

Mr. Harris:

If the Court pleases, I believe, for myself and my clients, that is, the unions and the members of the unions affiliated with the CIO, that finishes with the evidence except that I do not believe we have yet received all the evidence required by the subpoena. I think we asked for some statistics, I believe.

Mr. Burr:

We offered you all of that before dinner.

Mr. Harris:

No, you offered me copies.

Mr. Burr:

No, you said you had production records there and you said you would get it later. They are there for you.

Mr. Harris:

Your Honor, may I have a few seconds to examine these so I can see if I want to put them in tomorrow morning?

The Court:

Yes, you may. You mean tomorrow morning?

Mr. Harris:

At tomorrow morning's hearing. In other words, I don't know whether we are going right on.

Mr. Burr:

Well, Your Honor is going to give us a recess before rebuttal.

Mr. Harris:

Well, you don't need any recess on that. There is no rebuttal on that. Then I will know by tomorrow morning whether I want to put them in or not.

The Court:

All right.

Mr. Harris:

Then I had as well move out of this front seat. I have finished my part of it.

The Court:

Are you all through?

Mr. Cooper:

If the Court pleases, as I stated yesterday, we are through with the evidence we wish to put on with the exception that we may wish to introduce some answers to interrogatories that we filed, after we have a chance to see the matter which came under the subpoena, and I guess we will see them this afternoon. Mr. Burr says they are here now. We will be ready tomorrow morning. Of course, it will take a very short time to put that in.

The Court:

All right.

Mr. Burr:

Of course, we don't want to go ahead until they finish their case. We don't want to go ahead until they put on all of their evidence, but we will be ready tomorrow morning.

The Court:

You are not ready now?

Mr. Burr:

No, sir. Your Honor told us you would give us two or three hours to get our rebuttal ready.

The Court:

Yes, I will do that. Now, as I understand it, the defendants, all the defendants, want time to examine the items they have requested in the subpoena duces tecum, and the plaintiffs in the case have requested time out to examine certain documents of the defendants.

Mr. Burr:

That is right.

The Court:

Now, the plaintiffs say that they are not ready to proceed until the defendants have closed. How long will it take? Suppose we adjourn now and let you gentlemen make your examination of these items that have been brought in. How long will it take you, do you think, if we just adjourn until you do that?

Mr. Harris:

Well, I don't know how much he has got there, but it won't take me more than five minutes to introduce it or not to introduce it.

The Court:

But you want time to see it?

Mr. Harris:

Yes, sir, I want time to see it. I have no idea what it is until I study them, but when I finish with the examination I won't take five minutes.

The Court:

The question is, it will take more time to examine it?

Mr. Harris:

That is right.

The Court:

And you can't tell, of course, how long?

Mr. Harris:

No, sir, I cannot. I don't know what he has got.

The Court:

But my recollection is that the defendants and the interveners requested about the same documents or items.

Mr. Harris:

They have, yes, sir. And then I want to call Your Honor's attention to this fact also, that when the plaintiffs had finished with their case we asked for no indulgence at all, but immediately started right on with our case and have plowed right on through.

The Court:

I will give you the time.

Mr. Harris:

Now, the plaintiffs have asked for two or three hours to see and check documents, everything, to see whether they want to put on anything in rebuttal.

The Court:

Well, I am going to grant both sides time that you have requested.

Mr. Harris:

Well, I think while they are doing that this afternoon we can check their documents and if I want to put them on I can put them on, so it won't take but four or five minutes from my point of view.

The Court:
Will it take you about the same?

Mr. Cooper:
I think it will take us at least an hour and a half to go over these records, Judge. We can't tell how many they have.

The Court:
What was it you wanted to examine, Mr. Burr?

Mr. Burr:
The main thing I wanted to do, Your Honor, we haven't had a chance to do at all, was to examine the exhibits and I wanted to go back and check to see what I wanted to put on in rebuttal. I have been as far as I could.

The Court:
Well, can't each of you do the same thing you wanted to do at the same time?

Mr. Burr:
Yes, sir, that is what we will try to do.

The Court:
And the question is whether we will adjourn until tomorrow morning or not.

Mr. Burr:
I think that is the sensible thing to do.

Mr. Cooper:
We can certainly be ready by tomorrow morning. It will take not more than fifteen or twenty minutes.

Mr. Burr:

There is one other matter here, Your Honor, I want to go into at this time. I called Mr. Harris' attention to it on yesterday. I gave him a copy of a letter. When this order was made to produce minutes, communications and proposals why I had another search made of our records and found in Mr. Gregg's file one letter which was dated August 9, 1933, signed by The Bessemer District Smelters Council, C. L. Pegues, Secretary, and I want to offer it along with the other.

Mr. Harris:

I see no materiality of the letter to any of the issues, and, in order not to clutter up the record or waste the time of the Court, I object to it.

The Court:

I overrule the objection.

The Clerk:

Do you want to mark that as T. C. I. or Plaintiffs'?

Mr. Burr:

T. C. I.

Mr. Burr:

Would our Honor like to have that read?

The Court:

I would like to have that read.

Mr. Burr:

"Bessemer, Alabama, August 9, 1933. Tennessee Coal, Iron & Railroad Company, Birmingham, Alabama, Woodward Iron Company, Woodward, Alabama, Republic Steel Corporation, Birmingham, Alabama, Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama.

"Gentlemen: In order to support our President in his efforts to restore the Nation's prosperity and reduce unemployment, we believe the hours of labor in industry should be reduced to a maximum of 35 hours per week, and that the minimum weekly pay should be $14.50 for common labor as provided by the Blanket Code approved by President Roosevelt.

"The Bessemer District Smelters Council of the International Union of Mine, Mill and Smelter Workers, affiliated to the American Federation of Labor, and composed of a representative number of your employees in mines and plants, pledge our patriotic support and cooperation in carrying out in every way possible the spirit, purpose and intent of the National Recovery Act. Therefore, through our chosen representatives, we are available to meet with you for the purpose of discussing wages, hours and other conditions promulgated under the President's Blanket Code in order that more men may be put to work as early as possible.

"We hope this will receive your immediate attention and careful consideration.

THE BESSEMER DISTRICT
SMELTERS COUNCIL,
(Signed) C. L. PEGUES,
Secretary.

Copies to—
Franklin D. Roosevelt,
President of the United States.

Hugh S. Johnson,
Administrator, Industrial Recovery Act.

William Green,
President, American Federation of Labor.

Plant & Mine Superintendents of respective Companies. International Union of Mine, Mill & Smelter Workers."

The Court:
That was in August, 1933?

Mr. Burr:
Yes, sir, that is the first written communication that we had.

The Court:
What exhibit is that?

The Clerk:
No. 32.

Mr. Burr:
In point of time that is the first one.

(Thereupon, said letter of August 9, 1933, from The Bessemer District Smelters Council, to Tennessee Coal, Iron & Railroad Company and others, was admitted in evidence as T. C. I. Exhibit No. 32.)

The Court:
Did you gentlemen prepare the orders for me to sign that I suggested Monday morning?

Mr. Harris:
Yes, sir, they are prepared. Yes, I have them, Judge. I would like the clerk to check the numbers that you made of the notations.

The Court:
I want that to be done.

Mr. Burr:
We insist that in the order it show our exceptions to each ruling.

Mr. Cooper:
I don't understand that is necessary. I haven't that noted.

The Court:
It is not necessary, Mr. Burr, under the new rule, to give you an exception.

Mr. Burr:
I want it in there.

The Court:
I can put it in there, "to which the plaintiffs except."

Mr. Burr:
That is right.

Mr. Harris:
You can interline it.

The Court:
You can just interline it, "to which the plaintiffs except."

Mr. Harris:
For that blank, I will get with Mr. Wheeler, Your Honor, and find out the exact time they went in these mines. I want that in the schedule in the other order.

The Court:
I wish you would. Shall we meet tomorrow morning at 9:00 or 9:30?

Mr. Smith:
9:30.

The Court:
What about that, Mr. Harris?

Mr. Harris:
So far as I am concerned, 9:00 o'clock is all right with me.

The Court:
How about you, Mr. Burr?

Mr. Burr:
Judge, I have mighty near given out.

The Court:
Well, I will make it 9:30. Court is adjourned until tomorrow morning at 9:30.)

(Thereupon, at 2:07 p. m. July 30, 1941, Court adjourned to 9:30 a. m. July 31, 1941.)

July 31, 1941, 9:30 A. M.

Court met Pursuant to Adjournment.

Mr. Harris:
If the Court pleases, there was an order entered in which by agreement we were to fill out the schedule, and I have the schedule there. I have shown it to the other side. There wasn't room to get it in.

The Court:
It was for that day?

Mr. Harris:
Yes, sir.

The Court:
All right, present it.

Mr. Harris:
This is that schedule we have worked on that we filled in. By agreement it was filled in there.

Mr. Burr:
That is all right.

Mr. Harris:
Now, we have some maps that we were furnished yesterday, some of which I want to introduce. This one, as I understand it, was already in evidence, Republic Exhibit No. 1, and you merely added some things to that.

Mr. Burr:
Added the ventilation system.

The Court:
Yes.

Mr. Harris:
So we don't have to reintroduce that, if the Court pleases.

The Court:
Now, let's see that. That is already in.

Mr. Harris:
That is already in there. Wouthout reintroducing that we will just count that in. Now, these are apparently new ones that you gave me:

Mr. Burr:
Yes. I couldn't read one of them if you asked me to, probably. Now, if there is anything you want to know about them, Mr. Ball could probably tell you, or Mr. Guyton over there could tell you. The maps were made to show the things they asked about, ventilation, etc.

Mr. Harris:
I think they are self-explanatory. If Mr. Ball feels they need any explanation he can get up here, but they look clear enough to me.

Mr. Ball:
With the lines filled in.

Mr. Burr:
Your Honor will note an exception to all of this evidence for us on the same grounds that we have been objecting. We don't think it has got anything to do with the issues of this case, the ventilation and things of that sort.

The Court:
All right, that is understood.

Mr. Burr:
That is true of each and all of these exhibits he is offering this morning.

Mr. Harris:
This is the Ishkooda iron mine. Suppose you just give that the next number.

The Clerk:
That will be Exhibit No. 30, Defendants'.

(Thereupon said map of the Ishkooda iron mines of the Tennessee Coal, Iron & Railroad Company was admitted in evidence as Defendants' Exhibit No. 30.)

Mr. Harris:
The next is the Wenonah Ore Mines.

The Clerk:
That will be Defendants' Exhibit No. 31.

(Thereupon, said map of the Wenonah Ore Mines of the Tennessee Coal, Iron & Railroad Company was admitted in evidence as Defendants' Exhibit No. 31.)

Mr. Harris:
The next is the Muscoda Iron Mines.

The Clerk:
That will be No. 32, for the Defendants.

(Thereupon, said map of the Muscoda Iron Mines of the Tennessee Coal, Iron & Railroad Company was admitted in evidence as Defendants' Exhibit No. 32.)

Mr. Harris:
I think these are the ventilation maps you had in mind, Mr. Burr. I am going to offer them now.

Mr. Burr:
Well, I have got an exception to all of them.

The Court:
It is understood that you object and have an exception to the rulings.

Mr. Burr:
Yes.

Mr. Harris:
Now, the next is Ishkooda Iron Mine, with the legend, Fresh Air and Exhaust Fan.

The Clerk:
That will be Defendants' No. 33.

(Thereupon, said map of Ishkooda Iron Mine with the legend, Fresh Air and Exhaust Fan, was admitted in evidence as Defendants' Exhibit No. 33.)

Mr. Harris:

The next is the Wenonah Iron Mine, with the legend, Fresh Air, Exhaust Air and Exhaust Fan.

The Clerk:

No. 34.

(Thereupon, said map of Wenonah Iron Mine, with the legend, Fresh Air, Exhaust Air and Exhaust Fan, was admitted in evidence as Defendants' Exhibit No. 34.)

Mr. Harris:

And the next is the map of the Muscoda Iron Mine, with the legend, Fresh Air, Exhaust Air, Overcast Booster Fan.

The Clerk:

That will be Defendants' Exhibit No. 35.

(Thereupon said map of Muscoda Iron Mine, with the legend, Fresh Air, Exhaust Air, Overcast Booster Fan, was admitted in evidence as Defendants' Exhibit No. 35.)

Mr. Harris:

That is all I have at this time, Your Honor.

The Court:

All of the defendants' exhibits. The defendants all rest, and the intervener.

Mr. Burr:

Well, there is the cross examination of Mr. Wheeler. I wanted to ask him a few questions this morning.

The Court:

Well, didn't we finish with him?

Mr. Burr:
No, sir. Your Honor will remember we reserved cross examination until I could look at these pictures.

The Court:
All right.

Mr. Burr:
Come around, Mr. Wheeler.

The Court:
Come around.

Defendants and Intervener rest.

3219 GEORGE S. WHEELER, being recalled, and having been previously sworn, testified as follows:

Cross Examination.

(By Mr. Burr):

Q. Mr. Wheeler, I am handing you the photographs that you identified. They run to No. 43. I wish you would keep them in order, so if I get to taking them out I will scatter them all over the place, and take them out as I call for a particular photograph, will you let me have it, please, sir. I would like to have No. 41 first.

A. Yes, sir.

Q. Let me have it, please, sir.

Q. Who was the photographer that took these pictures, Mr. Wheeler?

A. They were taken under my supervision. Mr. Rogers was the man holding the camera and snapping the pictures.

Q. I see. Who is Mr. Rogers?

A. He is an industrial hygienist man.

Q. Industrial what?

A. Hygienist; for instance, engineer in the civil service classification.

Q. What department does he work for?

A. Department of Labor.

Q. With the Department of Labor. Now, I understand you went through these mines in accordance with the order made by the Court which directed the plaintiffs to allow you to inspect these mines?

A. Yes.

Mr. Burr:

Will you let me have that order? You had it this morning.

Q. Now, the order says the two representatives to be selected by the said Philip B. Fleming be permitted to enter the mines. Were you one of those two?

A. Yes, sir.

Q. And Mr. Rogers was the other?

A. Yes, sir.

Q. And Mr. Rogers actually took the pictures?

A. That is correct.

Q. You say he was under your supervision on this inspection?

A. Well, he took the pictures as the points were decided and I made the notations which would identify the picture at the time.

Q. You selected the places where you wanted the pictures taken?

A. Well, sometimes I did and on a few occasions the company officials did.

Q. Could you tell me any one occasion where a picture was taken where anybody from the company selected a place?

A. Yes.

Q. I would like for you to tell me which pictures they were.

A. In Intervener's Exhibit 10.

Q. All right, sir, what is shown, please, sir, while you have got it before you?

A. It is a haulage way.

Q. A haulage way where?

A. At No. 4 mine of the T. C. I.

Q. What haulage way was it?

A. That is No. 2 haulage.

Q. All right, sir. Any other that you took at their request?

A. Not at their request. We just agreed that those were—

Q. Well, you told me some were taken at their request. I am asking you to give me those. You say No. 10 was one. I want you to give me the other.

Mr. Harris:

I don't think he used the word "request." He used the word "selected", as I recall.

Q. Well, your man had the camera, didn't he? What I want you to give me is the names of any places—I don't care whether you call it request or what you call it—where you had your camera man to take pictures at the suggestion or request of any representatives or any members of the company.

A. I am not positive whether this one marked Intervener's Exhibit 15.

Q. Well, if you are not positive about it—

A. I would prefer not to say.

Q. Don't you have your notes; don't your notes show everything that took place in there?

A. The note is not made in our conversation. We were talking all the time.

Q. Well, you read your notes the other day. You just put down in the notes what you thought was important?

A. To identify the pictures here.

Q. Is that all you put in your notes?

A. Yes, sir.

Q. Have you got your notes with you?

A. Yes, sir.

Q. Now, this order—I believe you furnished the information upon which this sheet was put in here this morning. When you went in Sloss-Sheffield red ore mine No. 2 under this order you were accompanied by T. E. Costner, J. W. Russell and a photographer named A. C. Keily; do you remember them?

A. Yes, sir.

Q. And then representing—

A. That was the company photographer. I am not positive of any relationship there.

Q. He was the photographer the company took down there with them?

A. Yes, sir.

Q. Now, representing the C. I. O. was Mr. John Hill, as you know?

A. Yes, sir.

Q. And representing the Government was George S. Wheeler, Senior Economist—that is you, I believe?

A. Yes, sir.

Q. And J. S. Rogers, Industrial Hygienist?

A. That is right.

Q. Do you recall when we first had this matter up you were here at the time and you requested that two engineers be allowed to go and an economist?

A. I do not recall any such request, no, sir.

Q. You don't recall anything like it. Well, is Mr. Rogers the only engineer the Government had down here since this case started?

A. So far as I know, the only one they were speaking of with reference to this request.

Q. How about Mr. Reid, didn't you have him here?

A. For a short while, yes.

Q. And sent him back?

A. I don't know anything about that.

Q. Did you meet in conference with Mr. Reid and Mr. Rogers with reference to this matter before your inspection started?

A. No, sir.

Q. Who is Mr. Reid?

A. I don't know.

Q. Was he introduced to you?

A. He was introduced to me. I think—well, I would rather not say because I just met him casually on one occasion.

Q. Well, didn't they tell you who he was when they introduced you to him?

A. Do you want me to give what I believe? I believe—

Q. He was introduced to you?

A. Yes. I only—

Mr. Cooper:

We object to this line of questioning about someone named Reid who is not identified with this business.

Mr. Burr:

I am trying to identify him now.

Mr. Cooper:

He doesn't appear on that order which designates the men who went through the mine.

Mr. Burr:

No, his name is not on the order. I want to show why it is not here.

The Court:

Sustain the objection.

Mr. Burr:
Your Honor sustains the objection?

The Court:
Yes.

Mr. Burr:
We except and offer to prove that Mr. Reid was here and conferred with Mr. Wheeler and Mr. Rogers, and that he is an engineer, not only an industrial engineer but a mining engineer of national standing.

The Court:
Well, he wasn't in the order.

Mr. Burr:
No, sir, he wasn't in the order. They decided they didn't want him in there, and we want to prove that, after they talked to him.

Q. Now, representing the T. C. I. at Muscoda Mine No. 4 Mr. Guyton, Mr. McKenzie and Mr. Mitchell, and Mr. Parsons and Mr. Alexander and Pete Dulaney representing the C. I. O. and Arthur Praytor representing the American Federation of Labor, were in that party, isn't that right?

A. It wasn't made up solely by—I also talked to Mr. Ball.

Q. I don't care who you talked to. I just want to get the people identified. The same parties representing the Government, you and Mr. Rogers, were there all during the inspection, so I need not repeat them. And there were the Tennessee Company men, Mr. Guyton and Mr. McKenzie and Mr. Mitchell?

A. Yes, sir.

Q. Did they go through all the Tennessee Company's mines with you?

A. Yes, sir.

Q. And accompanied by some mine foremen on that particular trip?

A. Yes, sir.

Q. And Mr. Alexander, photographer.

A. Yes, sir.

Q. Now, at the Republic Steel Corporation Mr. Jones over there went with you through Raimund?

A. Yes, sir.

Q. And representing the employees in that mine was John Butler of the T. C. I.?

A. Yes, sir.

Q. And representing the employees at Wenonah No. 8 was William Campbell of the C. I. O. and No. 6 was Robert Mullins of the C. I. O., and Muscoda No. 4, Pete Dulaney of the C. I. O. and Arthur Praytor of the A. F. of L. Now, this order also authorized you to take dust counts. Did you take any dust counts?

A. Yes, in Muscoda No. 8—Pardon me, Wenonah.

Q. At Wenonah you took dust counts: Who took the dust counts?

A. Mr. Rogers.

Q. Is Mr. Rogers here?

A. No, I don't think so.

Q. When did he leave, do you know?

A. I believe about July 18th.

Q. All right, sir. Now, you told me that No. 10 is the only one of those exhibits that you can identify positively as having been taken at the request or suggestion of the company representatives. Now, the others, you selected the places for the others to be taken after conference with Mr. Dulaney or whoever you happened to have with you representing the C. I. O. or the other union, is that right?

A. Well, I picked them out as representative of conditions in the mine.

Q. You didn't go all over the mine, did you?

A. I went through quite a bit of the mine.

Q. Is that the first time you had ever been in an ore mine in Alabama?

A. Ore mine, yes.

Q. Sir?

A. Yes, in Alabama.

Q. The first time you had ever been in an ore mine anywhere?

A. I think it is.

Q. Don't you know whether it is? What is the use to think about a thing like that?

The Court:
Don't argue with the witness.

Mr. Burr:
I am not arguing with the witness.

The Court:
Well, treat him respectfully, Mr. Burr.

Mr. Burr:
Well, I think I am treating him respectfully.

The Court:
I don't think so.

Mr. Burr:
Well, I disagree with Your Honor. That is all I can do, I am entitled to as much consideration as the witness.

The Court:
All right, sir, I have ruled and I don't want any more from you.

Mr. Burr:
Read the question.

(Question read: Q. The first time you had ever been in an ore mine anywhere?)

Q. That is my question. Don't you know it?

The Court:
Have you ever been in other ore mines?

The Witness:
I think I said yes.

Q. I didn't understand your answer.
A. Yes.
Q. Have you ever been in any other mine of any kind other than these mines? Underground mine?
A. Yes.
Q. Whereabouts?

Mr. Harris:
I don't see the materiality of that, if the Court pleases.

The Court:
I don't either.

A. In Indiana.
Q. What sort of mine?
A. Coal mine.
Q. How many mines?

Mr. Harris:
May I have an objection to any question about coal mines?

The Court:
I sustain the objection.

Mr. Burr:
All right, sir, we except and offer to show the conditions in the coal mine by this witness.

Q. That is the only other mine, without going into detail, any underground mine that you have been in other than the visits you made out there to these mines?

A. Yes.

Q. That is right. Well, now, as a matter of fact, how did you go about selecting the typical places in the mines? You say you selected the typical places.

A. Well, do you want me to start from the beginning?

Q. No, just how you selected the typical places. That is all I want to know.

A. We selected the typical walkways only.

Q. That is, you didn't take pictures of all the places in the mines?

A. Only the places where the employees were walking to and from the face and from the portal.

Q. How did you select the typical walkways?

A. I ~~didn't select typical walkways~~ in the sense that you just asked in your question. We just asked in each mine where the men ordinarily walked to and from work. We didn't want one that didn't. And then we would start in and I would select some place that I thought might give the different scenes in the mine and I would take the picture.

Q. And you would decide to take the picture?

A. Yes, sir.

Q. Would you consult anybody where to take it?

A. Sometimes I would consult—well, I would consult everybody before I finished taking the picture, both company representatives and the union. I wanted to make sure that this was a regularly used walkway.

Q. I understand that, but would you determine what part of the walkway to take a picture of?

A. Just my own—

Q. Judgment?

A. Judgment.

Q. Well, now, referring here to 41. I believe it is 41. That is a picture that you took that you described the water as being up above the top of the cars?

A. No, I didn't say above the cars.

Q. I don't mean above the cars; the car wheels is the way you describe it.

A. I said about half way up.

Q. The car wheels?

A. Yes, sir.

Q. Now, with reference to that picture, you took that because you saw water there, didn't you?

A. Why, yes.

Q. And you talked with Mr. Jones there, didn't you, about that water?

A. Yes.

Q. And he told you, didn't he, that that water there had been brought about by a broken pipe which had broken a day or two before or the day before it had broken and they were pumping it out at the time?

A. I got two completely different stories about that water.

Q. I didn't ask you if you got two completely different stories about that water. Did Mr. Jones tell you that at that point?

A. Not at that point, I don't believe.

Q. I want you to be certain about it, Mr. Wheeler.

A. There was a broken pipe up that same manway and haulway.

Q. Mr. Wheeler, just a minute, please, sir. Answer the question, please, sir.

A. Would you repeat it?

Q. Yes. I asked you if Mr. Jones told you, or if Mr. Wesson told you, if both of them didn't tell you at the time you took that picture that that was ordinarily a dry place and that this water was in there by a pipe that had broken and that they were fixing to pump it out at that time.

A. No, the break in the pipe—the water was flowing the other way. They didn't say in regard to this place that the water was caused by a break in the pipe.

Q. What place did they say the water was caused by a pipe breaking?

A. Further down the hill.

Q. Well, show a picture of it.

~~A. I don't have the~~ picture.

Q. You testify—I want to be certain I understand you ~~—that they didn't tell~~ you that that water at that place was being caused by a broken pipe?

The Court:

He has answered it.

Mr. Burr:

No, I don't think he has, Your Honor.

The Court:

Read the answer.

Q. Neither one of them told you anything of that sort?

A. Not that I recollect.

Q. Let me see your notes in reference to that, what you put down there.

A. I will read it. "Water has been on track at least two years, according to L. P. Templeton, track and timber foreman."

Q. Who told you that?

A. Mr. L. P. Templeton, track and timber foreman.

Q. Was he a party?

A. I met him.

Q. Was he a party, on this party that went down there with you?

A. I met him at the portal of the mine on the way out.

Q. What did you ask him?

A. He just asked me if I saw the water that the men had to climb past in 101 haulway, and I identified the stope, and I said, "Yes."

Q. Now, wait a minute. You were coming out of the mine?

A. Yes.

Q. Did you know Mr. Templeton at the time?

A. I did not know Mr. Templeton.

Q. Did he come up and have a conversation with you?

A. We had to wait for a car about half way and in the course of sitting on the steps there he came by and started to talking to Mr. Butler. He was introduced to us and just asked this question about whether we had this picture of this place in that manway.

Q. You identified the place from his conversation there at the portal?

A. No, no, I had previously identified it and then I asked him if he meant this 101 left haulway, 21 stope, and he said "Yes."

Q. Did you have your notebook then?

A. Yes. I made that footnote and that star.

Q. While you were sitting there?

A. That asterisk, while I was sitting there and then added this note back there.

Q. I see. Now, you said you had two stories about that. Where did you get the other one?

A. Mr. Jones didn't—I am not positive at all that he said this was caused by that break in the pipe which we discussed previously on another slope and grade where the water was flowing out directly; but in my best recollection I did get the impression from the company men that this was a temporary condition.

Q. Which?

A. The water.

Q. Now, who did you get that from?

A. It must have been from Mr. Jones and Mr. Wesson.

Q. The ones that went there with you?

A. Yes, sir.

Q. Did you talk with them out there?

A. Yes, sir.

Q. And you asked them whether the water was temporary or permanent?

A. I believe they volunteered that.

Q. Volunteered it, and they told you it was temporary?

A. I am not positive of that, but I got the impression.

Q. Well, according to your recollection, you said in the beginning, that you got two stories.

A. Mr. Butler said it was five years that it had been there.

Q. I didn't ask you about Mr. Butler. You are not interested at all in this, are you?

A. No, sir, but you did ask me what the two impressions were.

Q. No, sir, I said officers or representatives of the company are what I am asking you about. Now, you say Mr. Wesson and Mr. Jones both told you it was a temporary condition while you were down there looking at it?

A. I wouldn't swear to that.

Q. Is that your best recollection?

A. But I got the impression from them. It may have been in another spot.

Q. Well, when you went to take a picture of a big pool of water didn't you ask the people that were with you whether it was a temporary condition? Did you ask Mr. Butler?

A. I know they didn't make any positive statement about how long it had been there.

Q. Well, what did they tell you, Mr. Wesson and Mr. Jones?

A. If they said anything definite about how long it was there, that it was aggravated by this pipe-breaking, or temporary, or something to that effect.

Q. Did you put that down on your notebook?

A. I don't know whether I did or not.

Q. See if you did, while you were down there looking at the place.

A. No, I don't believe I did.

Q. I don't want you to believe. I want you to look and tell me whether you did or not.

A. No, I don't see anything on there.

Q. So the only thing on your note about this thing is after you got up to the portal Mr. Templeton came up and asked you the question?

A. I did not put anything down about the conversation at the time.

Q. But you put that down when Mr. Templeton told you that?

A. Yes. It is there.

Q. Yes, and the other is not there, is it?

A. No.

Q. All right, sir. Now, I want you, please, sir, next to turn to Exhibit No. 32, which purports to be a picture of No. 1 slope, left manway, after leaving the hoodlum, and get out 33 too, please, sir.

A. Is that 32 that you want?

Q. 32 and 33.

A. Yes.

Q. I will ask you, please, sir, to state whether or not both 32 and 33 are pictures that you had taken of No. 1 slope, left manway, and in which you testified about Mr. Jones making some statements there to you. Are they both pictures of the same No. 1 slope, left manway?

A. Yes.

Q. All right, sir, now look at those two pictures, please. Which one of those is nearer the hoodlum, 32?

A. 32. Let me make sure. 32.

Q. Where did you have your camera standing when you took 32? Was it standing or down on the ground, or was Rogers sitting down or stooping, or what; how did he take that picture?

A. I think that camera must have been about three feet from the ground, in order to get that view back down the manway.

Q. How close to it do you think it was taken?

A. I didn't take the measurement myself, but I said about three feet.

Q. You mean to say he was about three feet of the place when he took it?

A. No, the camera was about three feet from the ground.

Q. About how far distant from where it starts down the hill to that?

A. About twenty-eight feet or something like that.

Q. Now, then, this is the same place a little farther away from the hoodlum—I mean closer.

A. Yes, that is farther down the manway.

Q. After you get to the hoodlum?

A. Looking back towards this place.

Q. All right. Now, Mr. Jones told you then that that place was a new place they were fixing and it hadn't been in use before May 1, 1941, a new passage way that they were putting in there, didn't he?

A. No.

Q. He didn't tell you that?

A. He told me that after I got down to the bottom of the hill.

Q. I don't care where he told you that; he told you that before you got out of there?

A. Yes.

Q. That this was a passageway that was not used at all prior to May 1, 1941?

A. It was there.

Q. I know, but it wasn't used as a walkway but they were fixing and preparing it for a walkway?

A. He said nothing about fixing or preparing it at all.

Q. Did he say anything about using it before May 1st?

A. I recall that.

Q. You recall that?

A. He said it had been used prior to May 1st.

Q. Did you put anything down in your notebook?

A. I didn't put anything down there.

Q. I want to see if you put anything in there that would indicate to you so that you could testify about it, that that place had never been used prior to May 1, 1941.

A. I remembered that. I didn't put it down.

Q. You didn't put down everything?

A. He told me that after—

Q. I don't care where he told you. You didn't put it down. You put down what Templeton said, didn't you?

Mr. Harris:
He has answered that.

The Court:
He told you.

Mr. Harris:
Yes, he told you.

The Court:
Now, Mr. Burr, I want you to quit repeating your questions.

Mr. Burr:

I will do the best I can, if your Honor please. I have got a witness here that is showing—

The Court:

I don't think he is at all. He is a very respectful witness.

Mr. Harris:

He is very respectful.

Mr. Burr:

But I don't think he is affording a fair basis as a witness who took down notes—

The Court:

He is, because you asked him about the notes and he told you about them, so let it go at that.

Mr. Burr:

—by that sort of testimony, I respectfully insist, and except to Your Honor's attitude, as shown by the record.

The Court:

There is no attitude about it.

Mr. Burr:

It shows exactly what happened, my questions and Your Honor's statement.

The Court:

I want you to be fair to the witness.

Mr. Burr:

And I want the Court to be fair to me.

The Court:

I am fair to you.

Mr. Burr:
All right, sir, we disagree.

The Court:
In what way am I not fair to you? Whereby have I invaded your rights?

Mr. Burr:
I think I have got a right to cross examine a witness of this kind to develop the full facts about it.

The Court:
That has been accorded to counsel, Mr. Burr, by the Court.

Mr. Burr:
Well, sir, I must respectfully disagree with the Court in this connection. That is all I have got to say about it.

The Court:
I am not going to put up with that sort of thing.

Mr. Burr:
All right, sir, I respectfully except again to the statement of the Court. That is all I can do.

Q. Now, will you please turn next to No. 35.
A. That one (indicating).
Q. All right, sir. In No. 35 there that is a cinder path along there, isn't it?
A. No, that is not cinders. It is good footing. It is made as if it were cinders, but I don't think it is cinders.
Q. Will you look at your notes and see what it says about that place?
A. I quote: "Jones et al. Good walking about two thousand feet." That is the path of the manway, looking up.

Q. Is that two thousand feet that you mean that is good walking right along there? Is that typical?

A. No, that is two thousand feet along the manway.

Q. Well, how long did that stretch last there?

A. Oh, about one hundred and fifty feet, something like that. I took that particularly as an example of the best walking condition in that manway.

Q. I didn't ask you that, did I, Mr. Wheeler? That is just a voluntary statement of yours?

A. Yes.

Q. Have you got any interest in this case?

Mr. Cooper:

We object to that question, of the Court pleases.

The Court:

Answer his question.

Q. All right, sir. Now, will you find picture 42 for me, Exhibit 42? Look at 42 and see what your notes show.

A. One hundred and a half left manway, an old trackway near 100 haulage, 29 stope.

Q. Is that all you say about it? Have you got any footings on that?

A. No, sir.

Q. Now, you say an old trackway. Mr. Jones and Mr. Wesson—you can see the track being torn up there, can't you? It shows on the picture.

A. It wasn't—

Q. Yes, you can tell it. Did you ever see a track before in a mine?

A. Yes, sir.

Q. Well, can't you tell by that picture that that track has been torn up and was torn up at the time?

A. Yes.

Q. I will ask you if Mr. Jones didn't tell you in reference to that, that that was torn up for the purpose of making a new manway for the men to walk to get the powder, where they were going to place the powder magazine over there?

A. No, sir.

Q. Did he tell you anything about that at all?

A. No, that was a different stope.

Q. What stope was he talking about? Find me the picture you say he was talking about. It wasn't this one, was it? Let's get through with this.

A. In connection with powder, he said that was used to carry powder.

Q. Did he say how long it was used?

A. No.

Q. What did he say about it?

A. He said this was where an old trackage had been and it was torn up and they were moving the trackway, that the track went in another place.

Q. Anything else said about that?

A. They said about thirty-three men walked past there every day and some of the men carried powder past there, but it was on their own time.

Q. Anything else said?

A. Nothing else that I remember.

Q. Find me the one that you said they were fixing a new manway. Where was it, do you remember?

A. I can locate it fairly closely because it was off of 101 haulway, somewhere near 21 stope. I didn't take a note of that because it was in a stope.

Q. The place you are talking about was in a stope that he told you that?

A. Yes, where they were cutting through to another haulway from near 101 to 102 haulway, I believe.

Q. From 101 to 102 haulway?

A. Yes.

Q. And you are certain that he didn't tell you about this place you have just shown, the track?

A. I am positive.

Q. That they were tearing out a track for the men to get powder, in using that manway?

A. I am sure he said nothing about that.

Q. I see. All right, sir, if you will turn to the Tennessee Company's exhibits. I believe you said the photographer of the Tennessee Company was in there taking pictures and took pictures at the same time you did, didn't he, pretty well at the same place?

A. A good many of the same places.

Q. All right, sir. Look at your exhibits and the little pictures there and find the little picture of yours that is the same as this here, the man sitting there (indicating). This was at No. 6, Muscoda?

A. Yes.

Q. Men loading into the skip.

A. That is pretty close to that place. Both are at No. 6.

Q. And the picture that you identify as being probably taken at the same time is No. 6?

A. Not at the same time.

Q. I mean at the same place.

A. Yes.

Q. Showing the same skip?

A. Yes.

Q. And men getting into it?

A. Yes.

Q. Was at No. 6. All right, sir, you recognize that as being just a larger picture than yours, is about all?

A. The only place that could be is No. 6.

Q. I say, you recognize that it is just a larger picture than yours, showing people in the skip?

A. Yes.

Mr. Burr:

We want to offer that.

The Clerk:

T. C. I. No. 33.

(Thereupon, the photograph identified and testified about by the witness, showing men loading into a skip, was identified as T. C. I. Exhibit No. 33.)

Mr. Harris:
You haven't offered that one yet, have you?

Mr. Burr:
Yes, I am going to offer it.

Mr. Harris:
Suppose you mark it for identification, Mr. Clerk.

Mr. Burr:
No, sir, I am going to offer it straight.

The Clerk:
I am marking it right now No. 34.

Mr. Burr:
We offer that picture, Your Honor.

(Thereupon, the photograph identified and testified about by the witness was identified as T. C. I. Exhibit No. 34.)

Q. Now, then, you all took pictures of what has been referred to here as the bull pen, down on the underground loading station?

A. The hoodlum.

Q. The hoodlum. I don't believe you offered any of these pictures as exhibits?

A. I don't think so.

Q. All right, sir, I will ask you to look at that and see if that is a picture of Wenonah No. 8 man loading station, looking towards the slope.

A. Yes. I know that it is in one of those.

Q. Well, that is a good picture of it?
A. Yes, that is the hoodlum.
Q. And the others are very much similar?
A. Yes.

Mr. Burr:
I don't want to offer them all, but to give the Court some idea of what the hoodlum looks like.

Mr. Harris:
I object to him marking them unless you put them in, unless they are for identification; we are going to get the record confused.

Mr. Burr:
I offer it in evidence.

Mr. Harris:
Well, if he offers it in evidence that is all I have to say.

Mr. Burr:
Well, that is all I have offered. I haven't said anything about identification.

(Thereupon, the photograph identified and testified about by the witness, showing the hoodlum at Wenonah No. 8, the man loading station, looking towards the slope, was offered in evidence, having been identified as T. C. I. Exhibit No. 34.)

Q. Now, will you, please, sir, turn to your pictures offered in evidence at Wenonah—I think it is No. 6, Mr. Wheeler—of Wenonah No. 8, 108 overcast and right manway?
A. Do you know the number?
Q. I think it is 6. I am not sure that is my memorandum or not.

A. Here it is.

Q. Is that you standing there?

A. Yes, sir.

Q. You are the man standing in Intervener's Exhibit No. 18?

A. One of the men.

Q. One of the men, yes. Who went down the slope, further down?

A. I am not sure. It was one of the parties that went with us.

Q. I will ask you if that (indicating) was the picture taken at the same time and identically at the same place and the same people standing?

A. Yes.

Mr. Burr:

Mark that one, please, sir.

The Court:

Thirty-five.

The Clerk:

Yes, No. 35.

(Thereupon, the photograph identified and testified about by the witness as corresponding to Intervener's Exhibit 18, showing overcast 108 and right manway at Wenonah No. 8, was identified as T. C. I. Exhibit No. 35.)

Q. All right, sir, will you please, sir, find the one in No. 4 Muscoda, looking in the heading from the haulage way, the seventh right, No. 2 heading?

A. That corresponds to mine.

Q. The picture I am showing you will be marked T. C. I. Exhibit No. 36.

A. It is taken from a slightly different angle.

Q. Yes, I understand, the same place, and corresponds with Intervener's Exhibit No. 8.

A. Yes.

(Thereupon the photograph identified and testified about by the witness, taken at No. 4 Muscoda, looking in the heading from the haulage way, 7th right, No. 2 heading, was identified as T. C. I. Exhibit No. 36.)

Q. Now, when you took or had this picture taken, where was Mr. Rogers? Was he standing below or down on his knees with his camera, or sitting down, or where was it taken?

A. I don't know, sir.

Q. Did you direct where he should stand, or not?

A. I just told him to take a picture.

Q. You took that on account of this cable that runs across here?

A. Partly.

Q. Who was this stepping over it?

A. One of the workers. I don't know.

Q. And the same cable that is in that picture is here?

A. Yes. In one case it was slack and in the other case it was pulling.

Q. You took that on account of the cable being across the track?

A. Yes.

Q. What sort of cable was that, do you know?

A. It was a steel cable of the type ordinarily used, on the hoist, on the scraper loader.

Q. But not extra cable or anything of that sort?

A. No.

Q. A steel cable, a hoist, is that what you call it?

A. A hoist cable.

Q. And you took that one because the man had to step over it in walking?

Mr. Harris:

He has answered that once, if the Court pleases.

A. I took a picture of the heading too.

Q. All right, sir, look at this one here, No. 4 Muscoda, timbering to heading No. 87 near first upset. Have you got one to correspond to that?

A. No, that didn't turn out well.

Q. You took one of that but it didn't turn out well?

A. No.

Q. You took it on account of some timbers that were apparently—

Mr. Harris:

We object to that. He has introduced no picture of it.

Mr. Burr:

I am going to introduce it just as quick as I can ask about it.

Mr. Harris:

He can't ask him about a picture that was not introduced in evidence because it didn't develop well. I think that is going far afield, if the Court pleases. There is no such picture in evidence.

Mr. Burr:

I intend to put one in evidence.

(Thereupon the photograph about which the witness was questioned, taken at Muscoda No. 4, showing timbering of heading No. 87 near first upset, was identified as T. C. I. Exhibit No. 37.)

Q. I believe you said that you took a picture, Mr. Wheeler, at the same place and showing the same timbers that are shown there on T. C. I. Exhibit No. 37, timbering in heading 87 near the first upset, but it didn't turn out well?

A. We took a picture in that heading. I am not certain it was the same timber but it must have been approximately the same.

Q. Well, you took a picture of some timbers in the heading?

A. Yes, a fairly good—we wanted a good picture of that.

Q. You took a picture of the same thing?

A. Yes, we took a picture of the same thing.

Q. Don't you know every time you took a picture Mr. Alexander took a picture?

A. He had a different camera and was back a little.

Q. I didn't ask you that. I asked you if he took a picture every time you took a picture. I will ask you this: The place you took the picture that didn't turn out well and didn't have a picture that you thought didn't show a good support for the roof, that was your idea in taking the picture, was it?

Mr. Harris:

That is the same question I objected to a while ago, if the Court pleases. He is talking about a picture that has not been introduced in evidence.

Mr. Burr:

I can't help about not being introduced in evidence.

The Court:

I will let him cross examine him.

Q. Will you answer that?

A. Yes.

Q. Your answer is yes?

A. Yes.

Q. All right, sir. I want to be certain. Now, is this a good picture of that place?

A. Yes.

Q. Do you know anything about timbering in an ore mine?

A. A little bit.

Q. Where did you learn?

A. From what your officials told me.

Q. Your education on ore mines is what you got here in these mines?

A. Yes.

Q. Well, have you had any anywhere else?

Mr. Harris:

I think he went over all of that in getting his qualifications.

Mr. Burr:

He said he knew something about them. I want to find out what he knows about them.

Q. What do you know about timbering in mines?

A. Well, I know—

Q. Have you ever worked in any?

A. No.

Q. Were you ever employed about timbers?

A. No.

Q. Were you ever employed about a mine at all?

A. No.

Q. Did you ever design timbering for a mine? Do you know where the proper place is to put timber in a mine, where to cut your places, where to put your support?

A. No.

Q. You didn't introduce it because it didn't come out so well?

The Court:
The photo?

Mr. Burr:
Yes, sir.

The Court:
That has been over four times, Mr. Burr.

Mr. Burr:
Well, sir, he volunteered statements when I asked him a question about it.

The Court:
I know—

Mr. Burr:
All right, sir, I am still excepting respectfully to not being allowed the privilege of cross examining him.

The Court:
I am not going to allow you to ask the same question four times.

Mr. Burr:
I understand what the Court is not going to allow me to do.

The Court:
I have told you three or four times.

Q. The picture that turned out bad, have you got it with you?
A. No, sir.
Q. Have you got it at your room?
A. I think so.

Q. Will you, please, sir, get it when you go to your room for lunch?. Did you take a picture at the same place this one was taken? That is Mr. Dulaney. Find that one for me, please, sir.

A. I don't have that with me.

Q. Did you offer that one?

A. No.

Q. You never saw this one before this morning, did you? Did you take a picture of this that has not been offered in evidence?

A. Yes.

Q. And it has not been offered in evidence?

A. That is right.

Q. Is that a correct picture of how the walkway looks at that particular place?

A. Very good. It doesn't show exactly the same thing mine does.

Q. You didn't offer this, though?

A. No.

Mr. Burr:

We ask that this be identified.

The Clerk:

T. C. I. No. 38.

Mr. Burr:

The right manway, as indicated on the back.

(Thereupon, the photograph identified and testified about by the witness, showing a manway, was identified as T. C. I. Exhibit No. 38.)

Mr. Burr:

And this is another. I have offered one of those, if Your Honor cares to see it. It is another one of the hoodlum. They are all about the same. There is no use offering two or three.

Q. They are all about the same?

A. Yes.

Q. Have I asked you about this one or not?

A. No, sir.

Q. Will you find one that this is similiar to?

A. I remember trying to get a picture there but it didn't turn out at all. It was a complete blank.

Mr. Burr:

Mr. Guyton, will you, please, sir, mark on there where that picture is, and also this one. These are in connection with another matter, the testimony of Mr. Patterson, that is not included in that picture, Your Honor. I will get to that later.

Q. Now, just one other. There is a picture of the place over there that was taken—the tipple, looking to it. It shows a bath house there. Is that a fair picture of what it purports to show there?

A. Yes, sir.

Mr. Burr:

We ask that that be identified.

(Thereupon, the picture identified and testified about by the witness, showing bath house and tipple, was identified as T. C. I. Exhibit No. 39.)

Q. And a similar picture to the one that he has got a picture of. That covers the same thing?

A. Yes.

Mr. Cooper:

Are those all the pictures, Mr. Burr?

Mr. Burr:

Yes, these are all.

The Court:

Let's take a few minutes recess

(A short recess was then taken.)

(By Mr. Burr):

Q. If you will turn to Exhibit No. 11, the picture that purports to be a picture of heading No. 9 in No. 4 mine. What do your notes show about that picture?

A. Shall I read them?

Q. Yes, sir.

A. That last picture, left manway, lower end. Pardon me, what is it?

Q. No. 11.

A. That was before the skip in the numbers. Heading 89 at first upset looking towards face. J. L. Parsons, assistant mine foreman, stated men would be at work at 6:45.

Q. That is what your notes show. That was an actual working face?

A. The working face, a place for the men to be on there.

Q. You never were in that mine before in your life, were you?

A. No, sir.

Q. Don't you know the men that worked down there would bring the car down and they were paid for the time they were at that place right there?

Mr. Cooper:

We object to that. He has testified what he told him.

A. The foreman told me different.

Q. What foreman?

A. Mr. J. L. Parsons. I specifically asked whether the men had to go past this before their time started at 6:45 and he said yes.

Q. Did you ask whether or not they brought the—that was a part of the working place? You heard Mr. Ball describe the working place here, didn't you?

A. No, I did not.

Q. Well, assuming the working place is down where the sidetrack is, where they haul the ore, that part of the mine, is that where the cars are being hauled down, out from the face to the sidetrack?

A. That wasn't what Mr. Parsons told me, though.

Q. Well, just what did Mr. Parsons tell you? Read what you have got down there he told you. That is what I want.

A. Well, this is just a summary of the conversation with him.

Q. Read what you have got down there.

A. It says, "J. L. Parsons, assistant mine foreman, stated men to be at work by 6:45. That meant that the men who ran scraper loader had to be, according to Mr. Parsons, on the scraper loader. The men who work up in the stope had to be beyond this place and gathering their tools or some other thing."

Q. Mr. Wheeler, what did Mr. Parsons tell you?

A. That is exactly what he told me.

Q. He told you all that you now state?

A. Yes.

Q. Told you that?

A. Yes.

Q. And that is what you put down in your notes?

A. I just put down something of it to remind me.

Q. Do you know whether or not the sidetrack is there, the very picture that you are looking at is the sidetrack, or not?

A. I don't know what you mean by sidetrack.

Q. Well, the place where the ore is brought out of the working place by the crew and they leave it down at what you call the sidetrack, the main haulage way?

A. Yes, this connects up with the main haulage way.

Q. How far is the actual fact where they put the holes in up there; is it shown there in that picture, where they drill the holes?

A. The opening of the stope is shown here.

Q. That ~~is~~ it right here, isn't it?

A. Right over the top of the first car (indicating).

Q. That is where they do the actual drilling?

A. Right on up in that stope, yes.

Q. All right, sir. Now, look at No. 12.

A. Yes.

The Court:

Were you through with 11?

Mr. Burr:

Yes, sir. I would like to leave it over yonder.

Q. What do your notes show about No. 12?

A. The last picture of the day. "Left manway at lower end of run-around at bottom of slope. About two hundred to two hundred and fifty feet to left manway haulage. Service crew paid for walking here, miners not."

Q. Anything else?

A. Not for that picture.

Q. ~~What else~~ have you got there?

A. I have got, "Mine well lighted at that time."

Q. Now, who was the mine foreman with you or assistant mine foreman with you when that picture was taken?

A. O. B. Stone.

Q. All right, did Mr. Stone explain to you that the regular walkway for the ones that used this was around another way and this was a trackage that the men themselves took by preference than the regular walk?

A. He said this was the regularly used walkway.

Q. Did he tell you about the other walkway?

A. He said that the men could go around the other way.

Q. Did you make any note of that, the men could go around the other way?

A. No. I was interested in where they did walk, not where they could walk.

Q. That was all you were interested in?

A. Yes, certainly.

Q. And you say positively that he didn't tell you that the men did—that the regular walkway was the other way and that the men had used this trackage?

Mr. Cooper:
He repeated it exactly, Mr. Burr.

Mr. Burr:
Show me that map there. Have you got one of those maps? Let me have that Exhibit 30.

The Clerk:
Which one?

Mr. Burr:
Of the Tennessee Company. What is the number of that mine?

Mr. All:
No. 4 mine.

Mr. Burr:
No. 4 mine, the Muscoda map.

Q. Look and see if that is No. 4 mine or No. 6 mine, that picture I just asked you about. Did he tell you how many crews worked in that place that you just testified about, No. 12 picture? Have you got that 12 picture there?

A. No, you must have it.

Q. Do you understand maps, Mr. Wheeler?

A. Somewhat.

Q. Somewhat. Now, can you locate—I will ask you if it is not indicated there with the red pencil mark the place where you took that picture, that is beyond the pocket?

A. I think that is it.

Q. I see, and the picture that you took is indicated there by lines running through there. Now, I will ask you if the regular haulage way don't go around that triangle in that place and if that is the one the mine foreman told you about?

A. That there are two wide switches.

Q. And the regular haulage way where that track is, it goes around that triangle?

A. Yes, I think that must be correct because here in the middle—

Q. Well, that is your best recollection?

A. —of the picture is one of the haulage ways that goes across there.

Q. Now, then the other questions that I asked you that I probably didn't give you an opportunity to answer: How many crews worked up beyond that place?

A. I don't believe they specified.

Q. Did he tell you which one it was?

A. That was the main manway.

Q. No, this wasn't the main manway.

A. That was my understanding.

Q. It shows it was a cut through; it is not a track at all. Is there a track along there; was there a haulage way along there?

A. No, there is no haulage way there.

Q. How long is this manway shown here that you just pointed out?

A. It must continue here, this left manway haulage.

Q. The haulage way comes around the circle, doesn't it?

A. And then they join.

Q. Well, this space right here is a very short distance that cuts through from the main haulage until it hits the main haulage again?

A. That is correct.

Q. How many feet?

A. About three hundred feet from one haulage to another.

Q. From where it leaves the haulage to where it hits the haulage?

A. Yes.

Q. And the haulage is not shown on that map there?

A. It is indicated at that point.

Q. It runs around it just like the red mark shows it?

A. The red mark doesn't show the runaround.

Q. It goes through?

A. Yes.

Q. And it runs around the triangle and goes through, doesn't it?

A. Around the circle at the pocket.

Q. That is right, around the circle at the pocket. Now, look at 14. I think that is the last picture I want to ask you about. I didn't have this picture before me when you were examined about it yesterday and I took it down. Mr. Harris asked you whether or not the objects were muck or what the objects were and you said muck and slate. What objects are you talking about, those over there to the left of the track or on the track?

A. Between the track.

Q. Between the track. You were not speaking about these over here?

A. No, sir.

Q. And that is the way the pathway looks?

A. Yes, sir.

Q. As shown by the picture.

The Court:

Is that 14?

Mr. Burr:

That is 14, yes, sir.

Q. Now, Mr. Wheeler, I understood you to say you were employed by what department?

A. Department of Labor.

Q. What department of the Department of Labor?

A. The Wage and Hour Division.

Q. The Wage and Hour Division?

A. Yes, sir.

Q. Is that the division that Colonel Fleming is the head of, or General Fleming?

A. That is correct.

Q. How long have you been in the employment of the department?

A. Since 1938.

Q. And previous to that what was your business?

A. I was—just previous to that I was an economist employed by the National Labor Relations Board.

Q. And how long were you employed by the National Labor Relations Board as an economist?

A. From August, 1934.

Q. And previous to that what was your business?

A. I was research assistant to Dr. H. A. Milius, Chairman of the Department of Economics, at the University of Chicago.

Q. He became President of the National Labor Relations Board, or Chairman of it?

A. No, sir, not at that time.

Q. Well, later on?

A. He is at present.

Q. Is that your whole experience as an economist since you graduated? Well, when did you graduate?

A. I graduated in 1929.

Q. I see. At the University of Chicago?

A. No, at Reid College in Portland, Oregon.

Q. When did you go to the University of Chicago?

A. After a year of teaching at Reid I went to the University of Chicago.

Q. You graduated at Reid College?

A. Yes, sir.

Q. And had a year's teaching at Reid College?

A. Yes, sir.

Q. Then you went from Reid College to the University of Chicago?

A. Yes, sir.

Q. And while there you worked with Dr. Milius as an economist?

A. I was his research assistant.

Q. Then you went from there as an economist of the National Labor Relations Board?

A. That is right.

Q. Then you went from there as Chief Economist of the Wage and Hour Division?

A. No, sir.

Q. What then?

A. The classification is Senior Economist.

Q. Senior Economist?

A. That is right.

Q. Have you been Senior Economist since you have been there?

A. Yes.

Q. So that is your experience?

A. That is right.

Q. Business and otherwise?

A. That is right.

Q. Now, are you familiar with the opinion and the report attached to it that has been offered in evidence in this case?

Mr. Harris:

We object.

Mr. Cooper:

If the Court pleases—

The Court:

Just a minute. Let him finish his question.

Mr. Cooper:

I am sorry. I thought he had completed it.

Q. Which is referred to as the modified portal to portal wage and hour opinion.

Mr. Harris:

We object to whether he is familiar with it or not.

The Court:

I sustain it.

Mr. Burr:

We except.

Q. In this opinion it refers to a report made by Mr. Stein and states that, as a basis of the report—I will just read the language of it: "In order to base his answers to these requests on the fullest possible knowledge an investigation has been conducted, including field surveys and questionnaires, reports by the division regional directors and public conferences." Did you have anything to do with making up those field surveys?

Mr. Harris:
We object to that, if the Court pleases.

The Court:
I will let him answer it.

A. I didn't supervise that stuff.
Q. I didn't ask you that. You work sometimes without supervising, don't you?
A. What?
Q. You do some work without supervising, don't you?
A. No, I didn't make it up either.
Q. Did you have anything to do with it, do any work in connection with it?
A. No, sir.

Mr. Harris:
We object.

The Court:
Overruled.

Q. Have you ever seen it?

Mr. Harris:
We object to that.

The Court:
Sustained. He said he never had looked at it.

Q. Did you have anything to do with the questionnaires that were sent out, as special economist?

Mr. Harris:
We object to that, if the Court pleases.

The Court:
Sustained.

Mr. Burr:
We except.

Q. Did you assist Mr. Stein in reviewing the questionnaires and field surveys?

Mr. Harris:
We object to that.

The Court:
Sustained.

Mr. Burr:
We except.

Q. Did the questionnaires take into consideration the coal mines of the United States?

Mr. Harris:
We object to that.

Q. Or get any information about the coal mines?

Mr. Harris:
We object.

The Court:
Sustained.

Q. Did they take into consideration the ore mines in the Lake Superior region?

Mr. Harris:
We object.

Q. Open pit and underground mines?

The Court:
Sustained.

Mr. Burr:
We except. Your Honor evidently thinks that none of that is material and I will just cover the rest of it by an offer to cross examine this witness in reference to what those surveys and questionnaires don't contain. I heard Mr. Harris object. I want to know whether the Government is objecting.

Mr. Cooper:
Yes, we are.

Mr. Smith:
The witness said he didn't have anything to do with them.

Mr. Burr:
No, sir, he didn't, but I am just asking him if he had seen them.

The Court:
You offer to prove?

Mr. Burr:
Yes, sir, I offer to prove that he has seen them and that he is familiar with them and that they do not include any information at all with reference to underground ore mines in the Lake Superior district or any other district other than what they have got here in Ala-

bama and that they do not inilute any investigation or consideration of coal mines of the United States; they do not include or consider in any way the investigation of open pit mines in the Lake Superior regions and of other underground mines.

Mr. Harris:
And we object to all of that, each one separately and severally.

The Court:
The objection is sustained.

Mr. Burr:
And we except and make the offer. The Government objects too?

Mr. Cooper:
Yes.

Mr. Burr:
I want to ask at this time again and make a motion to require the production of all of these papers. I have already made it once but I want to make it in view of the attitude of the pleadings at this time.

The Court:
The production of what papers?

Mr. Burr:
The production of papers which Your Honor ruled that we could not have before the trial, the surveys and the questionnaires.

Mr. Harris:
We object to going into any phase of that, and on behalf of the unions I represent or any individual I represent I

object on the further ground Your Honor has already ruled on it, from his statement, and the case will go on forever if every time a case occurs to an attorney—

Mr. Burr:
If Your Honor please, I don't think that is a fair statement. Always after the evidence is through everybody has a right to make motions. I thought, of course, Your Honor was going to sustain the objection in view of your rulings.

The Court:
Yes, you have a right.

Mr. Burr:
And I insist that testimony that has come out here shows that it is more relevant and material.

Mr. Harris:
And we insist on the objection.

The Court:
I sustain it.

Mr. Harris:
And we insist separately and severally.

Mr. Burr:
I think that is all for Mr. Wheeler. Mr. All wants to ask a few questions about the Sloss mine.

(By Mr. All):
Q. Now, Mr. Wheeler, I will ask you what picture, what exhibit corresponds to this picture?

Mr. Harris:

May I suggest that both the attorney and the witness talk loud enough for all of us to hear. You all get close together and I can't hear either one of you.

The Court:

All right, talk louder.

A. The picture which you have just handed me corresponds to Intervener's Exhibit 29. It was taken from farther back up the track.

Q. Which was taken farther back up the track?

A. The picture you have just handed me. The picture was taken farther towards the stope.

Q. I see. That is generally corresponding, so far as location?

A. Yes, sir.

The Court:

Mr. All, do you want to introduce that?

Mr. All:

I want to ask him some questions about it. Yes, I am going to introduce it.

The Court:

I think for the record it should be identified.

Mr. All:

Can you tell me what my next exhibit number will be?

The Clerk:

The next number will be Sloss 43.

Q. And your statement with respect to the picture I hand you is with respect to Sloss Exhibit 43?

A. That is correct.

Q. Now, you remember that place, don't you, Mr. Wheeler?

A. Yes, sir.

Q. And there was some water here?

A. Yes.

Q. Do you recollect talking to Mr. Costner about that?

A. Yes.

Q. Well, he told you that at that point on account of some vacation that the people who were working back in there were gone and that the pumping had been relinquished, I mean had been continued over, suspended for a while, on account of the vacation there?

A. Yes, he said they had been on a twelve-day vacation.

Q. The vacation, and that accounted for that?

A. Do you want me to read my notes on that?

Q. Well, it don't make any difference. Go ahead.

A. After Mr. Costner told me that I asked a union representative, Mr. Hill, if that water was unusual and he said it was there all the time. So Mr. Costner suggested that we talk with the head miner, Mr. C. L. Willoughby, who was working with his crew from that point. Mr. Costner and I walked back towards the stope and consulted with Mr. C. L. Willoughby and Mr. Willoughby told us that the water had been there all the time; that it had been higher; that it had gone down during the twelve-day vacation, and that no pump was in there, no pump had been furnished, and that was why the water had been standing there.

Q. No pump had been furnished during the vacation?

A. Had never been furnished.

Q. You mean that there had never been a pump back there?

A. That is correct.

Q. Well, it was hard to get around that water?

A. Climb over rocks.

Q. You didn't have to do much climbing, you mean, walk over rocks?

A. You did through the background.

Q. Walk through here (indicating)?

A. Your choice of rocks or water.

Q. And at that time the water wasn't above the rail, was it?

A. No, it was above the ties, but not above the rail.

Q. Mr. Costner told you that there was a double shift working back here?

A. Yes, sir.

Q. Only fourteen men?

A. I think it was fifteen.

Q. Well, at any rate it was a double shift, it was a night and day shift?

A. That is right.

The Court:

What is the Intervener's exhibit corresponding to that?

The Clerk:

Intervener's No. 29.

Mr. All:

Now, will you make this 44?

The Clerk:

Yes.

(Thereupon, the two photographs about which the witness was questioned, having been taken in Sloss Red Ore mine, were identified as Sloss-Sheffield Exhibits 43 and 44, respectively.)

Q. Will you get your corresponding picture to my 44, Mr. Wheeler?

A. Yes, sir.

Q. That is the same place, isn't it (indicating)?

A. Yes, that is the same place. He had a flash gun. It shows more clearly in this picture, but it is identical.

Q. My picture is a little better picture than yours?

A. That is correct.

Mr. All:

I want to introduce that.

The Clerk:

This will be Sloss 45.

Mr. Brody:

To what does that correspond, Mr. All? 44 to 30 is the last one.

Q. Now, this 45 of mine, to what does that correspond with the intervener's?

A. We had a double exposure, I believe, on that. I am sure of that. Our picture of that failed, but we did take a picture at that point.

(Thereupon, the photograph about which the witness was questioned, having been taken in Sloss Red Ore mine, was identified as Sloss-Sheffield Exhibit 45.)

Q. You haven't got your picture of that point, whatever picture you have?

A. I believe I have the negative.

Q. But yours failed?

A. Yes, unfortunately.

Q. You didn't introduce it in evidence?

A. No, sir.

Mr. Harris:

Well, the witness didn't introduce that.

Mr. All:

Well, I mean by that that you all did.

Mr. Harris:

Mr. Cooper was the man that put on evidence. The witness merely answered questions.

The Court:

There is no such picture at this point?

Mr. All:

No, sir. I am just asking him.

The Court:

That is the question I am asking.

Mr. All:

No, sir, they didn't have any picture. Mr. Harris, I didn't mean to be technical when I said that.

Mr. Harris:

What I meant, it gives the impression in the record that the witness selected the pictures to be introduced. The witness didn't have anything to do with it. Mr. Cooper was the one that introduced evidence.

Mr. All:

All right, sir, will you mark this one, please?

The Clerk:

This is Sloss No. 46.

(Thereupon, the photograph offered by counsel for the Sloss-Sheffield Steel & Iron Company was identified as Sloss-Sheffield Exhibit 46.)

Q. I show you Sloss 46 and ask you to get your corresponding picture of that and let us see it.

A. I must confess, Mr. All, that was our first day in the mines and we had several failures in pictures, and again that was one of them.

Q. That is a good picture, isn't it (Sloss 46)?

A. That is a picture of the scene that I saw in that mine. I don't know the location of it, however.

Mr. All:

No. 46, I want to offer that in evidence, Your Honor.

The Court:

All right.

Q. Did Mr. Hill or any of the union representatives accompany you, take you to places where the pictures were to be taken, or did you independent of them select the point?

A. Mr. Hill took us to points that he wanted us to see but he had nothing to do with the selection of the place where I took the pictures.

Q. What I am driving at is this, Mr. Wheeler: It is a fact that you didn't undertake to pick out the worst places that you could find?

A. That is absolutely not true. I picked the good and the bad ones.

Q. Well, that took you to the places that you have said were the worst, whether you took others or not?

A. Yes, that is true.

Q. You got the worst ones. Did you request them to find the worst places?

A. I requested them to take me to the places that they thought were difficult walking.

Mr. All:

Well, that is what I mean by the worst.

The Clerk:

That is Sloss 47.

(Thereupon, the photograph handed to the clerk, taken in Sloss Red Ore Mine, was identified as Sloss-Sheffield Exhibit 47.)

Q. Have you got a match for that?

A. No, sir, I don't believe we took a picture there. I am not certain it is a manway.

Q. You say you are not just what?

A. A manway where the people walk.

Q. Were you present there? Is that a corresponding picture to the one that you took?

Mr. Cooper:

Judge, he can't tell whether it is a corresponding picture.

A. No, sir, I don't recall that one at all.

Q. Well, I will ask you this question: Did Mr. Kelly go in with the party, was he a member of the party all the time, the photographer that took these pictures?

A. Yes, but sometimes he went ahead of us lots of times and took pictures where we didn't take pictures.

Q. Well, did you have an opportunity to see where he was taking pictures?

A. Yes, we eventually went by the same place but I don't know whether he took pictures. I didn't make notes of all the places that he took pictures.

Q. Well, you had an opportunity to see him take a picture and to take a match picture, didn't you?

A. Unless I was busy somewhere else.

Q. But so far as you were concerned, they afforded you the opportunity?

A. Yes.

Q. And they didn't deny it to you, they didn't deny it, or there was nothing hidden?

A. Not so far as, I know.

Mr. Cooper:

I don't think the witness has identified that picture, Judge.

Mr. All:

Well, do you object to my introducing this picture?

Mr. Cooper:

No, not if you can identify it.

Mr. All:

Well, I can identify it all right. I just wanted to see if you objected to it. Now, have you marked this?

The Clerk:

That will be 48. The other one was 47.

(Thereupon, said photograph was identified as Sloss-Sheffield Exhibit No. 48.)

Q. I hand you Sloss Exhibit 48 and ask you what is the corresponding picture that your man Rogers took?

A. I believe that is at the foot of the hill at the main hoodlum between 48 and 54. We didn't take a picture from this. Mr. Keily went down and took a picture looking up the hill. We took one down the hill.

Q. Did you have an opportunity to take one like this one?

A. We were out of films at that time. We thought we had a picture corresponding to that looking down hill.

Mr. All:

That is 49.

The Clerk:

That is 49.

(Thereupon, said photograph was identified as Sloss-Sheffield Exhibit 49, showing entrance to slope as No. 2 Sloss mine.)

The Witness:

I don't believe that we have a picture that corresponds with that.

Q. Well, do you know what it is?

A. Yes, that is Sloss-Sheffield No. 2 mine portal.

Q. That is the beginning, down the slope?

A. Yes, that is, as I recollect, a 20-degree grade, the main road from the portal way on down.

Q. I mean that is the entrance to the slope, is what I am asking.

A. That is right.

Mr. Brody:

What is the number of that?

The Clerk:

This portal is No. 49. This will be Sloss No. 50.

(Thereupon, said photograph was identified as Sloss-Sheffield Exhibit 50, taken looking across a heading into an upset at the beginning of a stope.)

The Witness:

We have no picture corresponding to that, although we have a picture taken at the same place looking in another direction.

Q. That is what I want, a picture taken at the same place.

A. Looking in another direction.

Q. Now, the picture that you say is not a corresponding picture but a picture taken at the same place with the camera pointed in another direction is what exhibit of the intervener?

A. 28.

Q. Now, in what does the exposure there—what does the difference consist in?

A. Part of the difference is in that he had a flash gun which gave a great deal more powerful illumination.

Q. Made a plainer picture.

A. What?

Q. A plainer picture?

A. Yes.

Q. What I am talking about in the question, what way the camera was pointed and the general location, what is the difference?

A. This was taken across the heading looking into a new upset at the beginning of the stope.

Q. When you say this, you mean the Sloss Exhibit 50?

A. Yes, sir.

Q. And this one is where, Intervener's 28?

A. This is looking up the haulage way toward the face.

Q. Looking up the haulage way toward the face. Now, you testified, as I recollect it, that when you got to that point that somebody told you to go no further, that the roof was dangerous at that time?

A. That is right.

Q. Now, who told you that?

A. I believe it was Mr. Costner, although it may have been Mr. Russell.

Q. Well, whoever it was that told you that told you that they were not letting the men work there or not going under that roof, just like they were denying you the right to go under it?

A. No, this face crew that ordinarily worked up there, they had been called back to clean up this rockfall.

Q. What I mean is that they were not letting the men go under a dangerous place and they were not allowing you to go under there?

A. These men were not under there and they didn't allow our party to go under there.

Q. What do you mean, these men were not under there?

A. I mean these men on 28, this face crew that ordinarily worked there.

Q. You mean they were not working up there then?

A. Yes.

Q. What kind of work do you call that?

A. I think they call it developmental work.

Q. You mean they were doing something to repair the roof, or do you know?

A. I don't know about that.

Q. Of course, you realize that the roof, somebody has got to repair it. You testified, Mr. Wheeler, that your title was senior economist and had had that title since you first went with the Wage and Hour Department or Division of the Department of Labor; you were the senior economist when you first went to the Wage and Hour Division?

Mr. Cooper:

Not the senior economist. A senior economist.

Q. A senior economist?

A. A senior economist.

Q. Well, I misunderstood you.

A. It is a civil service classification.

Q. A civil service classification. What is the function of an economist or a senior economist with the Wage and Hour Department. What is the field of your employment?

Mr. Harris:

We object, if the Court pleases, because all this witness has testified to is identification of the pictures in the mines, and to go into the functions of an economist or a senior economist—he has given no testimony on any economical subject at all.

The Court:

Overruled.

Q. Go ahead.

A. That varies with each senior economist.

Q. Well, you, what is your function with the Wage and Hour Division?

A. I make studies of various industries.

Q. Well, I want to go into a little more detail to show what sort of studies you are talking about.

Mr. Harris:

Well, we object to the study of various industries that he made.

Mr. All:

Well, Judge, I don't mean to ask him what various studies. I am trying to get his function, and we think since Your Honor overruled the other objection, if he came down here as an economist and is not performing his function there may be some inference drawn from the evidence that he has not done anything down here.

Q. What is your general field? I don't want you to go into any detail at all.

A. All of us have a wide variety of functions.

Q. You?

A. I make studies of various industries, particularly in reference to Court cases. That is, I prepare economic material.

Q. Well, you mean by that you get up evidence, is that what you mean?

Mr. Harris:
We object to all of that, if the Court pleases.

The Court:
I sustain the objection.

Q. Well, what is it you have peculiarly in connection with Court work?

Mr. Harris:
I don't see the importance of that, if the Court pleases.

The Court:
Sustained.

Mr. All:
We except.

Q. What was your function in coming down here? For what purpose did you become connected with this case?

Mr. Harris:
We object to that, if the Court pleases.

The Court:
Sustain the objection.

Mr. All:
Does the Government object to that too?

Mr. Cooper:
Yes.

Mr. All:
We except. That is all.

Mr. Burr:

I want to ask him one further question, for identification.

(By Mr. Burr):

Q. This picture here, what is the number of that?

A. No. 11.

Q. No. 11. I will ask you if the lunch table isn't right here, just about, back this way a little bit from there?

A. The lunch table is back of the photographer.

Q. About how far back, Mr. Wheeler?

A. It is between one hundred and two hundred feet, something like that.

Q. Well, this is—you were told—this is the track that the mechanical loader works on in the heading, the stope?

A. It is the track that it is on.

Q. And this is the track that they told you it worked on?

A. It was at the time, yes. It was there at the time.

Q. And this is the track that they haul ore on?

A. Yes.

Q. Down to the sidetrack?

A. Yes.

Mr. Burr:

That is all.

Re-Direct Examination.

(By Mr. Cooper):

Q. Mr. Wheeler, I believe in answer to questions from both Mr. Burr and Mr. All you stated that all of the pictures which were taken under your supervision were not introduced?

A. That is correct.

Q. Did you state, or will you state, please, who made the selection of those pictures that were introduced through your identification?

A. The attorneys in the case.

Q. Do you have there the other photographs which I believe I gave you at the recess, and will you take those and see if in conjunction with the ones you have these are all of the photographs that were taken by you and developed, taken under your supervision, I mean?

A. They are in a brief case, I believe.

Q. Will you examine these? I believe they are marked.

A. No, sir.

Q. They are not all?

A. No, sir. They are in the last brief case over there.

Q. Will you look at this group of pictures and state, please, whether they, in conjunction with the ones introduced, constitute all of the pictures taken under your supervision?

A. Yes, sir.

Q. So that all of the pictures are present and available?

A. Yes, sir.

Mr. Cooper:

Now, would you like to see these additional ones, Mr. Burr?

Q. Mr. Wheeler, I believe Mr. Burr asked you whether a Mr. Rogers accompanied you on your visits?

A. Yes, sir.

Q. Through the mines. Will you state, please, when Mr. Rogers arrived in Birmingham and when he made his first visit with you?

A. He arrived about July 7th and made the first visit in the mine with me July 9th.

Q. On the first visit did he make any dust counts in the mines?

A. No, sir.

Q. Had he any equipment available at the time for the taking of dust counts?

A. No, sir.

Q. Subsequent to that time did any such equipment become available to him?

A. Yes, sir.

Q. Did he then take any dust counts?

A. He took dust counts in one mine, Muscoda No. 8.

Q. Did he take any subsequent to that?

A. No, sir.

Mr. Burr:
No. 8 mine is at Wenonah, not Muscoda.

Mr. Cooper:
He said Muscoda 8.

The Witness:
Did I say Muscoda?

Mr. Cooper:
Yes.

The Witness:
Wenonah.

Q. Will you state subsequent to the taking of the single dust count whether or not he had equipment available for the taking of dust counts?

A. He did not.

Q. What happened to his equipment?

A. His equipment broke.

Q. Did he make a report of the single dust count that he was able to make?

A. The dust counts in the single mine—there were dust counts in that mine.

Q. Did you see the report?
A. Yes, sir.

Mr. Burr:
We certainly object to any report. We would like to examine Mr. Rogers. He has gone.

Mr. Cooper:
I just wanted to ask the question.

Mr. Burr:
I just want to put you on notice that we object to any dust count of Mr. Rogers when he is not here.

Q. Did Mr. Rogers make a report of the single dust count in the series of mines which he was in?
A. He did.
Q. Will you look at this document and state whether that is the report made by him?
A. It is.
Q. And you testify that subsequent to this time this was taken he didn't make any dust counts?
A. His equipment arrived before this dust count was made and then it broke down and he was unable to make any further dust counts.
Q. Can you explain the circumstances—

The Court:
I don't see why you want to go into all of that unless you have got him here.

Mr. Cooper:
If the Court please, I think this witness' testimony has shown that Mr. Rogers was unable to complete his investigation because of the lack of equipment.

The Court:
Well, it has been over and shown.

Mr. Cooper:
We do not intend, of course, to introduce what we consider an inadequate account of the dust counts that were made. We didn't think this report was adequate.

The Court:
Why did you introduce that report?

Mr. Cooper:
We don't intend to introduce it. We were explaining that we didn't think it is a complete report; it is inadequate, but we state that it is available to counsel if they wish to see it.

Mr. Burr:
We are not interested in it at all.

Mr. Cooper:
That is all, Mr. Wheeler.

The Court:
Who will you have?

Mr. Burr:
I will examine Mr. Clayton next.

Plaintiffs' Rebuttal Evidence.

3280 TOM L. CLAYTON, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. Mr. Clayton, you work for the Tennessee Company?

A. Yes, sir.

Q. In what capacity, please, sir?

A. Assistant Mine Foreman, No. 8 mine.

Q. How long have you been Assistant Mine Foreman?

A. About sixteen months.

Q. Previous to that time what position did you have with the company?

A. Head miner.

Q. About how long were you a head miner or section foreman that corresponded to the head miner's job?

A. Well, I was a section foreman in 1926 for a short interval and then I was head miner from about 1933 until I was assistant mine foreman.

Q. Now, had you worked in the mines previous to the time you were section foreman?

A. Yes, sir.

Q. How long have you been in the mines all together?

A. Almost eighteen years.

Q. The same mine or different mines?

A. The Wenonah division.

Q. The Wenonah division. Do you know a colored man by the name of Wade Jefferson—I believe that is his name—Ward Jefferson?

A. I do.

Q. Has he been a head miner in the mine you have been assistant mine foreman of?

A. He has.

Q. Since you have been assistant mine foreman. I will ask you to state whether or not at any time you ever said this in substance to Ward Jefferson: Instructed him to always have his crew go down on the second man trip and told him if he didn't do it to hand in his brass, or words to that effect in substance? Have you ever said anything like that to him?

A. I have not.

Q. Did you have a conversation with this man about what skip he should ride on?

A. I did.

Q. Just tell the Court what that was and how it came up and what was said by you to him and he to you, just as briefly as you can.

A. Well, the first part of the year on my inspection of the entry that he works in, three right heading on the south haulageway, at that time I inspected his place and after inspection he complained to me about his leg hurting him. He said it was caused from someone kicking him on the skip.

Q. Did he say whether it was a white man or colored man that kicked him?

A. A white man.

Q. Just go ahead and tell the occurrence, what he said.

Mr. Harris:

Any occurrence about any kicking on the skip is not in rebuttal, if the Court pleases.

Mr. Burr:

It is in rebuttal of the conversation, of what he said to others that he did.

Mr. Harris:

He denies it.

Mr. Burr:

I offer to show what the conversation was between them. That is what I am trying to get to. In other words, what I am offering to show, so Your Honor can understand it, I am offering to show that the only time that he said anything to this Negro about what skip he should ride was when this Negro complained to him on this occasion, while he was riding down, he and several other Negroes on the same skip with the white men and they were having trouble with the white men and asked to have something done to correct that trouble, and that Mr. Clayton told him that all he wanted him to do was not to have any trouble, and that is what he tried to avoid, and for that reason the first trip was made up for the white men and the second trip was a mixed crew; that he would try to arrange, if he wanted him to, to go down on the third trip, and arrange the schedule so that none of the colored men would ride the second trip, and that Jefferson told him no, that he would go down on the first skip like he was going.

Mr. Harris:
All right, go ahead.

Q. Is that in substance—what I stated there?
A. That is correct. Will you read my last statement there?
Q. Well, just go ahead.
A. I told him that probably he should see the doctor about his leg.

Mr. Harris:
We object to that.

Q. Never mind what you said about seeing the doctor, but what you said about the white men and arranging and skip for him.

Mr. Harris:
Well, Mr. Burr has already given a complete recital and said, "Is that what he said?" and he said, "It was."

Q. What I stated was the substance of what happened, is that correct?
A. Yes, sir.

Mr. Burr:
All right.

Mr. Harris:
No questions.

Mr. Burr:
Now, we want to examine next Mr. Ball.

3284 E. M. BALL, being recalled, and having been previously sworn, testified as follows:

Direct Examination.

(By Mr. Burr):
Q. The paper that has been identified as Exhibit 27, Mr. Ball, which is a meeting held on January 18, 1935, in which you referred to a request that the position of tallyman be re-established, in order to expedite it I have prepared a written memorandum—I have prepared a copy of these minutes which I will now read to you: "Request that the position of tallyman be re-established: This step was taken in the interest of economy, efficiency and the elimination of the duplication of work and not with any idea of instituting or instigating what you men refer to as 'the stretch-out system.'" Do you recall that occasion, Mr. Ball?

A. I do.

Q. The union, were they or not requesting that you continue to have the two positions, one down below and one up at the tally house, was that what was being brought up at the time by the union?

Mr. Harris:

We object to that, if the Court pleases. We introduced their minutes kept by them and furnished under subpoena of the Court. Now, it is not in rebuttal of their minutes furnished by them to go into a discussion of what those minutes show. They speak for themselves.

Mr. Burr:

Why, if Your Honor pleases, the idea of saying that when they offer a part of the minutes we can't ask the witness to tell what it is about, explain it?

The Court:

Overruled.

Q. Is that what brought about the discussion at that time, Mr. Ball?

A. There was one occupation abolished; the occupation of tallyman was abolished and the timekeeper came out from underground and took his position at the tally house. He was known as the timekeeper at the tally house.

Q. And they wanted that re-established?

Mr. Harris:

We object to leading.

Q. Were they or not requesting that two men be employed instead of one; was that what the request was, in substance?

A. I believe their request showed that they wanted the position of tallyman re-established.

Q. I don't know whether you stated on your direct examination or not, it has been so long since you testified, but I would like for you to briefly summarize to the Court the practices in the mines in reference to taking time over the period of time that is involved in your testimony when you were on the stand. How was it first taken?

Mr. Harris:

We object to reopening his main case, if the Court pleases. It is not in rebuttal. It is just asking him to rehash what he gave on the main case, and we call the attention of counsel and of the Court that when they closed that was a close and we wanted to know whether they were through. Now, any rebuttal testimony is properly admissible.

The Court:

I don't believe that is in rebuttal, Mr. Burr.

Mr. Burr:

Why, if Your Honor pleases, they have offered this minute. Your Honor overruled my objections to the minute. The discussions as to whether or not they should use a tallyman or put an underground timekeeper up there, I think I have a right when they offer evidence of this sort to ask him how it came about and what occasioned it. What I am proposing to show by him, if Your Honor remembers it, I don't care to go over it.

Mr. Harris:

I think Mr. Ball was on the stand a great length of time and they went into everything and made out their main case primarily with Mr. Ball.

Mr. Burr:

This is not the main case, if Your Honor pleases.

The Court:

I will let him testify.

The Witness:

I testified about that before. I would be glad briefly to go over it again.

Mr. Burr:

You did go over it before?

The Witness:

Yes, sir.

Mr. Burr:

Then if you did, I don't care about it again.

The Court:

I don't remember it.

Mr. Burr:

Off the record.

(A discussion was then had off the record.)

Mr. Burr:

All right, sir, that is all I want on that.

Q. Now, I will ask you, Mr. Ball, to refer to Defendants' Exhibit 28 and that portion of it that was read by Mr. Harris beginning as follows: "I believe that we talked about the section foremen, timbermen and trackmen. We should also divide the time of the underground carpenter who is the chute builder." That was on June 24, 1935. Were you dividing time at that time?

A. We were.

Q. That was during the depression, you might say?

A. Yes, sir.

Q. "We talked this matter over, Mr. Perry, Mr. Abbott and myself, after you left, as we told you we would do. They left this matter up to me, that if we could get the same results as to efficiency and safety as we are now doing, we will be willing to try it. Our record of lost-time accidents is bad and I do not want to do anything that will make that record worse." Do you recall that statement, Mr. Ball?

A. I do.

Q. State whether or not your record at that time was bad, at that particular time.

A. It was worse than it has been previously.

Q. Was it worse during the time you were dividing the work?

A. Yes.

Q. And was it occasioned by the fact that you were dividing the work, you had to have different men on different jobs, and inexperienced men on certain jobs?

Mr. Harris:

I think that is calling for a conclusion.

The Court:

Yes, I think that is a conclusion.

Q. Well, did you find that it was due to the fact that you were dividing work among the men?

Mr. Harris:

That is the same question, if Your Honor pleases.

The Court:

He has already testified. He testified as to facts at that time.

Mr. Burr:
He said they were dividing time. I am asking him if it was due to that fact that his record got worse.

The Court:
I will permit him to answer.

Q. Was it or not?
A. The accidents were worse when we were dividing time.
Q. Now, after you got back on the regular work did the accident record improve or decrease?
A. Improved very greatly.

The Court:
What exhibit is that, Mr. Burr?

Mr. Burr:
Defendants' Exhibit 28.

The Court:
June 24th?

Mr. Burr:
June 24, 1935.

Mr. Harris:
Yes.

Mr. Burr:
Did you offer one February 22, 1936?

Mr. Harris:
I thought I did.

Mr. Burr:
Was that a photostatic copy?

Mr. Harris:
No, I didn't introduce a photostatic copy of any kind.

(Discussion off the record.)

Q. Mr. Ball, in this minute it refers to this remark—

Mr. Harris:
Which one is that?

Mr. Burr:
That is 25.

Q. It starts with, "Mr. Barksdale: We have a nice loading station in No. 6 now and I would like to get a ruling about the men staying in line when they go out to catch the skips." And the reply was, "Mr. Carter: Any man that is caught pushing will be disciplined, as men are liable to get hurt." That refers to getting in and off of the skip?

A. That is right.

Q. Has it or not been the practice of the company at all times to prevent, if they can, overcrowding or pushing or anything of that sort on the skip?

A. We do.

Q. Is that or not for safety purposes of the men?

A. Safety only.

Q. In that connection, with reference to the safety of the employees, or, for that matter, invitees anywhere in the mines, does the company endeavor to look after the men, whether they are invitees or employees, or anybody else, if the are traveling or walking in the mines, or when they are going down on the skip before, or going to their working places?

Mr. Harris:
We object, not in rebuttal.

The Court:

I don't think it is in rebuttal, but I am going to let him answer.

A. At all times we caution our employees about points where they could be injured or hurt.

Q. Now, are you familiar with the general rules in reference to the matter of safety and walking and conduct on the property of the company, the general rules?

A. In a general way I am.

Q. Well, now, did you have that same sort of rules in reference to—from the time the men get on the property of the company until they leave the property of the company?

Mr. Harris:

We object to all of that, if the Court pleases. That is not in rebuttal whether they have rules, etc., about the company property.

Mr. Burr:

Why, if Your Honor pleases, Your Honor allowed some evidence to go in yesterday on his statement that he offered to show supervision as to safety, and we are offering to show now that the same rule applies.

The Court:

Overruled.

Q. Is that a fact?

A. We have rules as to the conduct of employees on the company property.

Q. And do you have warnings or do you have instructions about hazards that they might meet at any place on the company's property?

A. We do.

Q. And has that been in existence ever since you have handled company affairs and ever since you have been connected with it?

A. Yes.

Q. Is that also true not only of the ore mines but is it also true of the steel mills and any other works of the company?

A. Yes, sir.

Q. Now, I call your attention next to Defendants' Exhibit No. 29, which appears to be January 17, 1936, where this statement appears on the second page: "There is another matter I want to mention to this Committee: For several days a number of men have been late reporting to the mines. We pay a day's wage for a day's work and we expect the day's work. Whenever a man comes to the mine late, dragging along and encourages others to be late he is setting a bad example. I want this understood thoroughly—men must be on time; we don't care whether they work here or not, but if they want to work here they will have to be on time or else they will be disciplined, even to discharge." Do you remember the occasion that brought up that matter, Mr. Ball?

A. I do.

Q. State what it was.

A. There was a certain crew of men, certain employees, that were making a practice of arriving late at their working place underground. The practice was increasing and we felt that they were not giving the company a square deal by not putting in their full time according to their agreement, and I issued that order to them.

Q. Was there ever a time when the men were required to report at the portal at a particular time or not?

A. No. The schedule operates automatically. Our man trips run at a particular time.

Mr. Harris:

He has gone over that.

The Court:
Yes.

Q. What was the rule as to when they reported for work, and when this matter came up were they late getting to their work after 6:45 or not?
A. They were late.

Mr. Quinn:
Was the rule in writing?

The Court:
Never mind. That has been answered.

Q. That is what you referred to at the time and that is what brought it up?
A. Yes.
Q. Mr. Ball, there has been something said here about the temperature. Do you know what the temperature of the mines is, the average temperature in the slope and the haulage ways? I am not talking about at the stope places, the working places, but in the walkways, slopes and haulage ways.
A. Oh, about sixty-five degrees.
Q. Is it uniform when you get in the mine?
A. No, sir.
Q. Is it uniform in the travel ways and the haulage ways?
A. Fairly uniform from the mine portal to the working places.
Q. That is what I am talking about. I mean by that, for illustration, say today if it is ninety-five outside, underground in the main slope and up to the working places or close to the working places, about what would the uniform temperature be?

Mr. Harris:
I don't think that is in rebuttal, if the Court pleases.

The Court:
There has been no testimony on that.

Mr. Burr:
Well, if Your Honor pleases, he has asked witness and witness about the sweating as they came back from this, that and the other haulage way.

The Court:
There is testimony that it got hotter as they went down there.

Mr. Burr:
Yes, sir.

The Court:
Overrule the objection.

Q. I mean underground as contrasted with the outside. Would it be hotter or cooler or what?

A. It would be much cooler underground than it would be outside.

Q. Is the temperature underground—and I am asking only about the main slope, in the haulage ways, haul ways, and walking ways—Is it substantially the same in the wintertime as it is in the summer or any great variation.

A. There is a great variation due to natural ventilation; in the wintertime it would be a little better than it would be in the summertime.

Q. Is there a greater variation on the inside between winter and summer and different seasons of the year than there would be on the outside?

A. Oh, no, there is just a slight change.

Q. The year around, Mr. Ball, which would be the most favorable place?

Mr. Harris:
We object to that.

The Court:
Sustain the objection.

Mr. Burr:
All right, sir, we except.

Q. Does the temperature remain fairly constant both in winter and summer underground in the mine?

Mr. Harris:
He has already been over there.

The Court:
Yes.

Mr. Burr:
Your Honor, I believe that is all.

Mr. Harris:
Let me have that last one you asked him about.

Cross Examination.

(By Mr. Harris):

Q. Mr. Ball, in this you say that a certain crew reported late underground?

A. I used that word "crew" meaning certain employees, a crew of employees.

Q. At 6:45?

A. Yes.

Q. Now, I will ask you—the last paragraph of that reads: "Mr. Ball: Beginning Sunday night the whistle will blow at 6:00, 6:20 and 6:30. The morning whistles will be blown at 6:00, 6:20 and 6:30." You made that statement, didn't you?

A. Yes.

Q. They can't hear those whistles underground, can they?

A. Certainly not.

Mr. Harris:

That is all.

Re-Direct Examination.

(By Mr. Burr):

Q. Those whistles you are talking about there, they were the whistles to indicate what?

A. The surface crew and the whistles to indicate six o'clock when they pulled the skip out of the sidetrack.

Q. Go ahead. What is the next one?

A. Six-twenty, that is just a warning signal for men approaching on their jobs or working places. That is just done to make them get there at that time.

Q. And the next one?

A. Is a surface whistle for all workers.

Q. Did your skips run down in that period of time?

A. Yes, sir.

Q. In other words, could a man that knew where his working place was get there by 6:45 on the outside, knowing the distance he had to walk, and what skip to take—

Mr. Harris:

I think you have been over all of that.

The Court:

I think you have.

Mr. Burr:

All right, come down.

Mr. Harris:

Just one question here.

Re-Cross Examination.

(By Mr. Harris):

Q. This statement about the whistles was in reply to Mr. Barksdale's question or statement: "Mr. Barksdale: Mr. Ball, we do not believe in the men being late for work and we will be glad to help you in this matter. Why not blow the whistle at night the same as in the morning?" That happened just like you have got it in the minutes there?

A. The whistles are blown at night, or were.

Re-Direct Examination.

(By Mr. Burr):

Q. Well, are they blown at night just like they are in the morning?

A. Yes, sir.

Q. Are the skips run the same way?

A. Yes, sir.

Q. Mr. Ball, maybe you could tell me when Mr. Eddins died.

A. He died in 1940.

Q. When?

A. In 1940.

Mr. Burr:

Mr. Eddins was the name that Jefferson testified about.

The Court:

Yes, I believe he was the foreman.

Mr. Burr:

Yes, sir, at that time he was a track foreman.

Mr. Harris:

That is the one we had so much trouble trying to find out how to spell his name.

Mr. Burr:

That is right, E-d-d-i-n-s. We want to make a motion at this time to exclude from the evidence Ward Jefferson's statements as to his conversations with Mr. Eddins, as the evidence shows he is now dead.

Mr. Harris:

I don't know of any rule of evidence that prevents a transaction with a deceased person. It is when the deceased person is a party in interest. Eddins was not a party in interest.

Mr. Burr:

The statute doesn't say any party in interest but a representative or agent of the company.

The Court:

Yes, I will exclude it under the statute, as not admissible.

Mr. Burr:

All I want is an exception if Your Honor does not exclude it.

The Court:

No, it is not admissible.

Mr. Burr:

Of course, it is not admissible.

The Court:

You say he was an employee of the defendant company in this case?

Mr. Burr:

I didn't know he was dead. I didn't offer it to bind us by a dead man's statement.

The Court:

Well, it is excluded.

Mr. Harris:

I didn't know he was dead. I didn't offer it to bind him by a dead man's statement.

Mr. Burr:

I didn't know he was dead either. I found it out afterwards.

The Court:

Anything else? We will adjourn until 1:30. Court is adjourned.

(Thereupon, at 12:20 P. M., July 31, 1941, a recess was taken until 1:30 of that date.)

After Recess, 1:30 P. M.

Mr. Burr:

If Your Honor pleases, I want to offer at this time the same thing I did—I didn't have it prepared then—for the Republic Steel Corporation that I did for the Tennessee Company. That is a list.

The Court:

A list of employees?

Mr. Burr:

A list of the classifications of underground employees, yes, sir.

The Court:

All right, sir.

Mr. Burr.

Do you want a copy of this?

Mr. Harris:

Now, there was some evidence—I tried to check all of these employees and I asked one of the men yesterday or the day before and he said many of the classifications had been changed recently.

The Court:

Well, now, Mr. Burr, when was that, up to what time?

Mr. Burr:

Up until May 1, 1941, and prior to that time.

Mr. Harris:

This is a classification as of July, 1941.

Mr. Burr:

1941.

Mr. Harris:

I had difficulty in checking these classifications. We spent about a half hour on one of them. So that was why I asked that man, one reason I asked the man, if the classification had been changed and he said many of them had.

Mr. Barr.

Well, I will ask Mr. Thompson. I guess, Mr. Thompson, you can look over these classifications. I want to ask you if these classifications were all there on May 1, 1941, and prior to May 1, 1941.

Mr. Harris:
Well, I don't think that is in rebuttal of anything.

The Court:
It is not in rebuttal but I will let it come in.

Mr. Burr:
Yes, I think it is.

The Clerk:
Republic Exhibit No. 20.

Mr. Harris:
I don't think whatever they classify them is in rebuttal of anything.

The Court:
I don't think it is in rebuttal.

Mr. Burr:
Well, just so it is in. We can argue about whether it is in rebuttal. The Court has said he overrules your objection.

Mr. Harris:
All right.

The Court:
That is Republic Exhibit—

The Clerk:
No. 20.

Mr. Burr:
Do you want to examine Norman on this?

Mr. Harris:
No, I don't want to ask him anything about it at all.

Mr. Burr:
He says this is a list—put the date on there, will you, please, sir, May 1, 1941, and prior thereto.

The Court:
Well, did you ask Mr. Thompson?

Mr. Burr:
Yes, sir.

The Court:
And he said that was the classification as of May 1, 1941?

Mr. Burr:
Yes, sir, that is right; isn't it Norman?

Mr. Thompson:
Yes, sir.

Mr. Burr:
And Mr. Harris said he didn't care to examine him

The Court:
That is Exhibit No. 20, Republic?

Mr. Burr:
That is right.

(Thereupon, said classification list of employees of the Republic Steel Corporation, May 1, 1941, and prior thereto, was admitted in evidence as Republic Exhibit No. 20.)

Mr. Burr:
Now, if Your Honor pleases, you recall I stated when my attention was called to the fact that the stenographers in preparing the Republic bill had in one place said in parenthesis Spaulding was not in it, so I have amended the bill so as to include that and supply that now.

The Court:
Yes.

Mr. Burr:
So that will be attended to.

The Court:
Have you submitted them a copy of the amendment?

Mr. Burr:
I am giving it to them now, Your Honor.

Mr. Harris:
Of course, we want to refile to this bill as amended all the papers that we heretofore filed.

Mr. Burr:
Just to save time could we file this as of the prior dates? Would that be satisfactory? That would save the Court a lot of entries and writings, etc.

The Court:
I think so. We will do so.

Mr. Burr:
Just file it back as of the date the pleadings were settled.

The Court:
You can file your answers to this complaint as amended.

Mr. Burr:
Yes, sir, as of the date we amended it.

Mr. Harris:
That might affect the record. Suppose you just file it as of today and just indicate all orders refiled—I mean all papers refiled and all rulings the same.

Mr. Burr:
That is all right with me.

Mr. Harris:
I think that will cover it.

Mr. Burr:
Put that on the bottom. That is all right.

The Court:
Mr. Burr, I allowed that amendment the day we opened Court, didn't I?

Mr. Burr:
Yes, sir.

The Court:
There is no need of my stating it?

Mr. Burr:
No, sir.

The Court:
The record shows.

Mr. Burr:
And I stated you had given permission for the introduction of it.

Mr. Harris:

And I offer an amendment in behalf—in each case as to the Tennessee and the Republic and Sloss, and I have already given those gentlemen a copy. The amendment does not change any question in the case in any way. It simply adds the people who came in and asked me to represent them after I had filed it before and then adds the name of Mr. Kovner and Mr. Pressman, in the prayer at the end where I inadvertently left them out.

The Court:

As attorneys?

Mr. Harris:

As attorneys and claim for an attorney's fee. It makes no change in the merits of the case one way or the other.

The Court:

Mark it filed, Mr. Clerk.

Mr. Burr:

Is that all in the way of pleadings you have?

Mr. Harris:

Mr. Lipscomb just whispered to me that he has something he didn't bring up. I didn't know about that. That is some claimants. Why can't he just attach them?

Mr. Burr:

I think that is a matter that is to be handled—it is not in order at this time.

The Court:

I thought we had an agreement earlier in this case.

Mr. Burr:

What we are trying now is the declaration. We are not trying individual claimants at all.

Mr. Smith:

We have been acting on that theory. We have a good many that we haven't named. I think the cross-claimants ought to be taken up at a separate time.

The Court:

That is right. It depends on the ruling of the Court.

Mr. Burr:

Depends on the ruling of the Court altogether.

The Court:

I think we agreed in open Court that if the case was determined against the plaintiffs—

Mr. Burr:

Then we would take up next the question of counterclaims.

The Court:

Then we would take up the question of the claimants.

Mr. Smith:

And then we can make such amendments as are proper.

The Court:

I think that was agreed in open Court.

Mr. Burr:

I think it was also covered by the pretrial order.

The Court:

Yes, I think it was. I haven't got it before me.

Mr. Burr:
Yes, sir, I know it was.

The Court:
All right, we will proceed, gentlemen.

Mr. Burr:
If Your Honor pleases, the next evidence I want to offer is—I am sure in connection with Your Honor's previous rulings that you will sustain objections to?

The Court:
Which I sustain objections to.

Mr. Burr:
I say which you will sustain objections to.

The Court:
Oh.

Mr. Burr:
I have a witness here to make the proof by; in case Your Honor does not sustain objections why I will call him around and make the proof. It is a summary showing lost-time accidents including fatalities, coal mines and iron ore mines, United States Bureau of Mines, the years 1937, 1938 and 1939. It gives the number of lost time accidents in all iron ore mines of the United States and then gives the number in coal mines of the United States and then gives the frequency rate so as to take care of the proposition that there are more coal miners than ore miners, and attached to it are the Government publications from which the summary is made. They are coal mine accidents in the United States, 1937 and the same thing for '38, the same thing for '40 and '41, and then the summaries for the metal mine accidents in the United States over the same period of time.

Mr. Harris:

We object, of course, to the summary and to each of the documents, separately and severally.

The Court:

Sustained.

Mr. Burr:

And we except, separately and severally. Now, we want to offer next the same thing comparing iron ore mines and coal mines of the Tennessee Company in that same regard.

Mr. Harris:

And the same objection, separately and severally to each of those.

The Court:

I sustain the objection.

Mr. Burr:

And we except. And in sustaining the objection, I understand there is no point made on the fact that we have a correct summary. If there is, I want to prove that. The Court sustains it on the principle that it is not admissible, I understand.

The Court:

Yes, that is my idea.

Mr. Burr:

And, of course, I offer to show that the summary is correct in both instances, and your Honor would sustain that; you don't think it would be admissible if it was correct.

The Court:

I sustain the objection.

Mr. Burr:

Yes, sir, and we offer these, T. C. I. and Plaintiffs'. Mark the big one general and the other one is T. C. I.

The Clerk:

The T. C. I. would be No. 40.

(Thereupon, said summary showing lost-time accidents, including fatalities, coal mines and iron ore mines, Bureau of Mines of the U. S., 1937, 1938 and 1939, was identified as Plaintiffs' Exhibit No. 52.)

(Said summary comparing lost-time accidents, iron ore mines and coal mines of the Tennessee Coal, Iron & Railroad Company was identified as T. C. I. Exhibit No. 40.)

Mr. Burr:

Now, if Your Honor pleases, I don't know whether it has been offered or not, but I don't know how else we can do it—I want to offer all of the minutes of all of these various meetings which were produced in evidence, some offered by the defendants, with the suggestion that in the event there is an appeal on either side that we can abridge the record at that time by the other side checking what I am offering them for, that there is no mention of portal-to-portal in here.

The Court:

Is that the purpose?

Mr. Burr:

Yes, that is the purpose, but I haven't had time to read them over myself. I have had them read and I could have that testimony here any way. I think that is the suggestion made the other day, that you could have them checked.

Mr. Harris:

Of course, I don't admit they are admissible and we reserve an objection to them, if the Court pleases, but so far as the mechanics of checking them, if there is an appeal, there is no trouble about that. . .

Mr. Burr:

He could make that check easily.

Mr. Harris:

We object separately and severally in the case of the meetings with the Wenonah Committee and the Muscoda Committee and the Ishkooda Committee and the meetings with the General Committee.

The Court:

Overrule the objection.

The Clerk:

That would be 41, 42, 43 and 44 of the T. C. I.

The Court:

They are admitted for that purpose Mr. Burr stated.

(Thereupon, said minutes of meetings, Tennessee Coal, Iron & Railroad Company, with Wenonah, Muscoda, Ishkooda and General Committees of the International Union of Mine, Mill and Smelter Workers were admitted in evidence for the purpose stated, as T. C. I. Exhibits 41, 42, 43 and 44, respectively.)

Mr. Burr:
Now, in the same way and for the sole purpose of the impeachment of the testimony of Mr. Anderson in reference to what occurred in the Republic labor hearing, I offer for the record a proceeding, stenographic report of all those hearings beginning on January 10, 1934, and ending on May 4, 1934.

Mr. Harris:
May I see one of those?

Mr. Burr:
Yes.

Mr. Harris:
Your Honor will recall that he said he was present only at the first one. I am going to object to these on various grounds.

The Court:
It looks like you could specify what part of it.

Mr. Burr:
Well, the only thing I can do is like the other, I can state and state from my recollection, without having read all of this recently, that nowhere at any time—and that is what I offer it for—from the time the complaint was filed—

The Court:
Well, he testified along the early part of the hearings, didn't he?

Mr. Burr:
He said he attended only one hearing, that was in Atlanta, and that is in this book here.

Mr. Harris:

I object on the ground that no proper predicate is laid for that.

The Court:

I want to hear you on that.

Mr. Burr:

Now, he means by the proper predicate I haven't got the stenographer here that took it.

Mr. Harris:

That is one thing, and another thing if we go into that we are going to have to review the hearing over there in Atlanta and I have never seen any reporter, I don't know whether he took down everything, I don't know whether he took down the arguments, I have no idea what occurred over there. I never heard of it until yesterday.

Mr. Burr:

Mr. Lipscomb was there. The stenographer, of course, wasn't our stenographer. She was Rachel Peoples Rogers, the stenographer of the Labor Board that heard the case.

The Court:

I sustain the objection.

Mr. Burr:

We except. Of course, I don't want to be in the attitude of testifying myself and I don't think it is important enough to do it, but I do state here in the presence of Mr. Lipscomb--

Mr. Harris:

Well, I object to ex parte statements.

The Court:
That is not testimony.

Mr. Burr:
I offer for the record to be checked by Mr. Lipscomb who was one of the attorneys.

Mr. Harris:
We are not interested.

Mr. Burr:
Then I have done all we can do about it until I have the stenographer here.

Now, if Your Honor pleases, I want at this time in closing the case to reoffer—it won't take but a minute or two to make the reoffer—to reoffer all of the evidence and showings in evidence which we have previously offered in reference to the coal mines, first in Alabama, and second all the coal mines in the United States, as to the conditions, and we offer to prove at this time that the same mining practices, since we offered that evidence, have been testified to by the various witnesses for the defendants, as to depositing and taking up checks and as to being transported partially into the mines by the same kind of conveyances, and as to the character and physical conditions of the skips, and of the main haulage ways, and of the main slope, and as to the general methods of mining, and particularly as to the question of ventilation and air and height and depth of stopes, and hazards and perils and dangers; in other words, we offer at this time to prove all of the conditions that I have mentioned before.

Mr. Smith:
That has all been over and been ruled on, separately and severally.

Mr. Burr:

Well, I have got a right to reoffer the testimony because I think I have made it relevant since I had my objection sustained, including the same method of carrying tools and of working and of providing tools; in other words, I am offering to prove, and I am ready to prove it, if the Court will allow me to prove it, that conditions in all respects as to methods of mining have existed in the coal mines substantially as they have been testified here to have existed in these iron ore mines in Alabama.

Mr. Harris:

And we object to each offer, separately and severally, on all the grounds we have heretofore assigned in our various arguments to the Court about going into the coal mine operation.

The Court:

Objection sustained.

Mr. Burr:

Now, then, we make the same offer as to the other coal mines of the United States.

The Court:

Outside of Alabama?

Mr. Burr:

Yes, sir, outside of Alabama and including the ones in Alabama.

Mr. Harris:

The same objection.

The Court:

Overruled. I mean it is sustained.

Mr. Burr:

And we except. And the same thing in reference to the operations of the open pit mines, Your Honor will recall. I want to reoffer that and take an exception, at the close of the case.

Mr. Harris:

And, of course, we reinterpose all the grounds of objection heretofore interposed.

The Court:

Sustained.

The Clerk:

Mr. Burr, did you intend to put in these General Committee meetings?

Mr. Burr:

Yes.

The Clerk:

You didn't name it. No. 45.

Mr. Burr:

There are four all together.

The Clerk:

Five all together.

Mr. Harris:

Six counting Ishkooda, isn't it?

Mr. Burr:

There may be.

The Clerk:

I have only five.

Mr. Burr:

Well, there was another one back yonder when Mr. Patterson was on the stand.

Mr. Clerk:

That will be 46.

Mr. Burr:

Well, it has already been identified. All right, so, so far as I can think of, so far as the Tennessee Company and the Republic Company, that is our case.

Mr. All:

Your Honor—I didn't speak to you gentlemen about it, but I have here—I don't know whether it is in the record or whether it was overlooked, and that is this Ruffner contract, the one I was introducing for the Sloss. You will recollect there is only one year of that, Colonel.

The Court:

Don't you remember whether it has been introduced or not?

Mr. All:

I find it there, and I think it must have been overlooked. There was only one year that there were negotiations for that particular contract.

The Court:

What year was that?

Mr. All:

March 7, 1941. I just put it in for what it is worth. You see, we didn't have a Ruffner contract until they just began, until they just reopened, so that we didn't have any long chain. We have reopened one mine and that is the reason it slipped me.

Mr. Harris:

Now, there is one question that comes up in my mind on his contract. As Your Honor will recall, I have objected all along to the contracts or anything else as having any effect to invalidate an act of Congress, but, as you understand, when this contract was signed representations were made to the unions that they would follow the law.

Mr. All:

Well, whatever it was, that will apply to this contract as to the other one. We will let the record show that. And we have a letter that you dictated or Mr. Lipscomb dictated and Mr. Davis' reply to it and that will go in and this too. You will remember I introduced in connection with the red ore a letter that Mr. Van Jones wrote from the office of Mr. Lipscomb and Mr. Davis' reply to it. And as I understand, Mr. Costner, that same situation existed with reference to the other, did it?

Mr. Costner:

Yes, sir.

Mr. Harris:

The same objection, of course.

Mr. Lipscomb:

That don't show that I dictated that letter. That is Mr. Van Jones' letter.

Mr. All:

Well, you did, didn't you?

Mr. Lipscomb:

No, I didn't write it.

The Court:
You want to offer that?

Mr. All:
Yes, sir, just to account for the copy.

The Court:
Is there any objection to it? If there is I am going to overrule it. I admit it.

The Clerk:
This will be Sloss Exhibit No. 51.

(Thereupon, the document referred to as the Ruffner contract dated March 17, 1941, with Ruffner Iron Ore Miners Union 512 was received in evidence, identified as Sloss Exhibit No. 51.)

Mr. All:
I want to ask Mr. Costner about two of those pictures that were put in evidence.

Mr. Harris:
Mr. All, I understood that letter introduced by you was introduced by the Sloss?

Mr. All:
I introduced it for both of them. I introduced it and the original.

Mr. Harris:
That is what I understand.

Mr. All:
Yes.

Mr. Burr:

Your Honor said, I believe in the beginning, and I think we agreed on that, that there are certain documents that have been introduced in evidence which were original documents, and we would like permission, of course, allowing the other side to check, that copies can be furnished at any time of these documents. I am thinking particularly about these minutes and others that occur to me. We will have copies made and submit them to you for checking, substituting these for the originals, if that will be satisfactory.

Mr. Brodie:

That will apply to every document on either side?

Mr. Burr:

Yes, just swap documents for checking and that will apply to every document that has been offered by anybody.

The Court:

Yes, that will keep your originals—

Mr. Burr:

Yes, sir.

The Court:

That is permitted, of course.

Mr. Burr:

Judge, there is one exhibit we offered, if we find it we will leave it like it is, and if we don't find it we will withdraw it from the record. You know we had a picture of the Lake Superior mine and Mr. Mitchell testified there were certain conditions in the face, and I stated if I found it I would put it in and if I didn't find it I would just withdraw it. If I don't find it we will just withdraw the introduction of it.

The Court:
All right.

3311 T. E. COSTNER, being recalled and having been previously sworn, testified as follows:

Direct Examination.

(By Mr. All):

Q. On July 9th, I believe, did you accompany the party of wage and hour representatives into the Sloss No. 2 mine?

A. I did. I am not certain about the date. Approximately that.

Q. Now, you heard Mr. Wheeler—the day Mr. Wheeler and Mr. Rogers went into the mine and took pictures?

A. Yes, sir.

Q. Were you present at that time?

A. Yes, sir.

Q. Were you present when this picture was taken?

A. Yes, sir.

Q. Does that properly represent—

The Court:
What exhibit?

Mr. All:
That is Sloss Exhibit 48. That is the one that Mr. Wheeler couldn't identify. He said he didn't know where it was.

Q. Where is that?

A. That is on 48 left slope haulage way, looking up the slope. This picture was made approximately seventy-five or one hundred feet below the point where Mr. Wheeler's representative took the picture.

Q. Took that picture?
A. Yes.

The Court:
The picture that he couldn't develop?

Mr. All:
Yes, sir, that is the picture that wasn't developed and Mr. Wheeler said he couldn't identify that spot. For that reason I had him testify. I want to introduce this picture.

The Court:
What exhibit?

The Clerk:
Sloss No. 48.

(Thereupon, said photograph taken on 48 left slope haulage way in Sloss No. 2 mine was identified and admitted in evidence as Sloss Exhibit No. 48.)

Q. Now, Mr. Costner, I show you Sloss Exhibit No. 43 and Intervener's Exhibit 29 and will ask you if those pictures were taken at about the same spot and, if not, how near?
A. They were taken in almost identically the same spot. The difference is that the camera in one was focused more nearly towards the floor, while the other one showed a more horizontal view or longer view.
Q. Which one shows the longer view?
A. The Sloss picture.
Q. The Sloss picture shows the longer view?
A. Yes, sir.
Q. Now, that is the picture you hold in your left hand?
A. Yes, sir.
Q. The Sloss picture?
A. Yes, sir.

Q. Now, looking in, you see cars, apparently a trip of cars or part of a trip of cars.

A. That is right.

Q. Are those cars toward the mouth of the mine or beyond the mouth of the mine further down into the mine?

A. They are between the point where they were loaded and the surface.

Q. In other words, looking at the picture as you have looked at it you are looking towards the top?

A. That is right.

Q. The more remote parts of the mine are beyond here?

The Court:

You mean the top is in front of the camera?

The Witness:

Yes, sir.

Mr. All:

That is what I am trying to get at.

Q. Now, from these pictures, Mr. Costner, there appears to be water here and I believe Mr. Wheeler testified that there was water at that point. Will you tell the Court the extent of the water that was there at that time and how the men got around the water and the occasion of the water being there?

A. Both pictures will show that the water is approximately four inches deep, as it does not come over the top of the six-inch tie.

Q. You mean the rail?

A. No, I mean the tie. It comes over the tie at some points, if I am not mistaken. It doesn't come over the rail, however, and the swag is approximately sixty feet long.

Mr. Brodie:

The what is sixty feet long?

The Witness:

The swag, the swale, the low point.

Q. And what is the dimension of it?

A. It is approximately ten feet wide, eight to ten feet, and sixty feet long and the deepest point would be less than the thickness of a tie and the rail combined. The water doesn't come over the rail.

Q. And the picture shows the water at the deepest point?

A. Yes, sir.

Q. Now, is there a way to walk around that water or do you have to walk in it to cross that pond?

A. No. This party passed this pond twice that day and no one was forced to get into the water. Both pictures show that you can pass alongside the water without getting in the water.

Q. Both pictures show that you can pass alongside the water without getting in the water. Now, will you tell the Court the occasion of that water being in the swag?

A. This is the furthermost point in this mine. It is also the lowest point for workings within a radius of twelve or fifteen hundred feet. That mine had been idle for approximately two weeks at which time vacation allotment had been given the men.

Q. What is the connection between the vacation allotment and the water being there?

A. There was no one working in the mine, no pumpers, no compressed air and no facilities for taking care of water that had drained into the low point during the idle period.

Q. Prior to that time how was the water taken care of?

A. It was taken out periodically by pumps discharging into another location.

Q. You have a pump there?

A. We moved one in there after.

Q. Now, that is your custom; I mean you usually do that?

Mr. Harris:

No, it is not the custom. That is what he did on that occasion.

Q. How did you keep the water out of that place?

A. Water accumulates there about every three months. We take a small portable pump to that point and remove it.

Q. You take a pump there and remove it. What is its condition now?

A. It was dry last Friday.

Q. When did you put a pump in there?

Mr. Brodie:

I object to that.

The Court:

I don't think that is in rebuttal.

Mr. All:

It is explanatory of the pictures, Judge, is what I wanted.

Q. Now, I am going to show you these two pictures, Sloss Exhibit 50 and Intervener's Exhibit 28, which appear to be at approximately the same point. Are they?

A. Yes, they are at exactly the same point. The difference is in the intervener's view ~~the camera~~ is focused a little further to the right and only shows a part of the view that is shown in the Sloss picture. For instance, this wall appears right here in the intervener's picture. That is this side right here. The two put together approximately like that would make one continuous view of the actual condition at that time.

Q. Now, what about the way the camera was focused to take the two pictures?

A. Well, you mean directed?

Q. How is that?

A. Which way was the camera directed?

Q. Yes, sir.

A. This one here shows farther around to the right. It shows a section of the haulage road beyond a point that we did not travel that day.

Mr. Brodie:

If Your Honor pleases, I would like to interpose an objection to this. I don't know what it is in rebuttal of. He is introducing additional pictures. They are apparently a part of his main case. He has not proven that this picture was inaccurate in any respect.

The Court:

Overrule the objection.

The Witness:

I think I completed what I started to say.

Mr. All:

You were telling about what this picture shows, the intervener's picture.

The Witness:

This picture shows a crew of men, which part of the crew also appears in this picture, the Sloss picture, and the whole group was working at this point, and the intervener's picture shows a section of the haulage road which we did not travel that day, while this Sloss picture shows the place where the men were actually engaged in work at the time of our visit.

Q. Now, did you stop this party at that point from going further?

A. I did.

Q. Now, what was the occasion of your stopping them?

A. We had met the section foreman, Buck Smith, who cautioned me about going further into this section or permitting anyone to go in there, due to the fact that there was a bad roof there; the top was working, about to cave in.

Q. The top was working?

A. Yes, sir.

Q. About to cave in?

A. Yes, sir.

Q. That is what you call groaning?

A. That is correct.

Q. How did you remove that sort of top?

A. We placed crossbars, some of which are noticeable here, and take down such rock that cannot be made safe by timbering and that that can be made safe we timber.

Q. Is that kind of timbering done constantly in mines?

A. In all mines.

The Court:

I don't think you need to go any further.

Q. The point I am trying to get at is this: Were the men working back in there at that time?

A. No, there was no one working except this crew was fixing to set the timbers to make the place safe for production.

Q. The crew was the one that was going to work on the place to make it safe?

A. Right.

Q. Just one other question. How many men had occasion to walk past that point where the water was in the picture that we first discussed?

A. There is one working place beyond that point that is worked two shifts per day, and on one shift there are seven men and on the other shift there are eight men.

Q. Your last answer is with reference to the two pictures that show the water?

A. Right.

Mr. All:
That is all.

Mr. Brodie:
No questions.

Mr. Burr:
Judge, I inadvertently failed to ask a witness one or two questions about the pictures I asked about this morning. May we call him now, Mr. Jones?

The Court:
Yes.

3319 B. C. JONES, being called as a witness, and being duly sworn, testified as follows:

The Court:
What are your initials, Mr. Jones?

The Witness:
B. C.

Direct Examination.

(By Mr. Burr):
Q. Mr. Jones, what position do you have with the Republic Company?
A. Assistant Superintendent, Raimund Mine.
Q. How long have you been Assistant Superintendent?
A. Since the first of last September.
Q. Before that were you working for the company?
A. Yes, sir.
Q. In what capacity?
A. Assistant mine foreman.
Q. How long were you assistant mine foreman?

A. From March, 1936.

Q. And before that did you work with the company?

A. Yes, sir. I was mining engineer there from February, '35, up until then.

Q. I believe you got by the eighth grade and graduated at Auburn, didn't you?

A. Yes, sir.

Mr. Harris:
I can't hear.

Mr. Burr:
He said he graduated at Auburn.

Mr. Harris:
Auburn?

Mr. Burr:
Yes.

Q. I wish you, please, sir, would look at this picture that has been identified, the two of them I show you at once, the intervener's number 32 and intervener number 33, and tell the Court what those two places in the mine are.

A. This 32 is a picture looking down the manway from No. 1 hoodlum and 33 is down the manway about a couple of hundred feet below.

Q. The same manway?

A. Yes, sir.

Q. Now, in these two pictures were these two places in use at all as walkways prior to May 1, 1941?

A. Not for regular travelways, no, sir.

Q. Where was the regular travelway at that time?

A. The men went out of No. 2 prior to then.

Q. Just stopped using No. 1 as a passageway?

A. Yes, sir.

Q. Did you explain that to Mr. Wheeler when he was down there and tell him about that, or not?

A. I don't recall that, no, sir.

Q. All right, sir. Now, please, sir, examine No. 42 and state what was being done by the company at that time. I don't mean at the actual time you were there, but what is the occasion of those crossties and track being torn up?

A. Well, the track—there is only one working place beyond this and the track had been changed to come in from another direction and this old track was being removed for use elsewhere at the time.

Q. Do you know whether you explained that to Mr. Wheeler or not?

A. Yes, sir, we mentioned that.

Q. All right, sir. Now, are you familiar with this place here that is shown by that picture that has quite a good deal of water there?

Mr. Brodie:

What is the number of it?

Mr. Burr:

No. 41.

Q. Is that water there at that place as a usual thing, Mr. Jones, ordinarily?

A. No, sir.

Q. What did you find was the occasion for the water being there that day, causing that unusual amount of water?

A. A broken pipe line in the heading up above.

Q. Now, you have been through that place very, very often, haven't you, since you have been down there?

A. Oh, yes, sir.

Q. Under ordinary conditions and circumstances is that water there at all?

A. Not on the track, no, sir.

The Court:
Not what?

The Witness:
Not on the track.

Q. Up on the track?
A. No, sir.
Q. Now, then, I will ask you to look at Exhibit No. 43. Can you tell the Court about how long those steps had been there that appear in that picture?
A. Let's see; they had been there about a year and a half.
Q. All right, sir. Now, prior to the time those steps were built there what way did the men use to go to the place that they now use those steps for?
A. The biggest majority of the men went around there by way of No. 1 across the haul way before it came into this place.
Q. Do you recall at whose request those steps were built there?

Mr. Brodie:
We object, if the Court pleases. It is not in rebuttal of anything that has been offered.

Mr. Burr:
It is in rebuttal of the picture.

Mr. Brodie:
Are you rebutting the picture by pointing out—

Mr. Burr:
Sure. We are trying to show the conditions in the mine.

The Court:
Overruled.

A. The men asked that they be permitted to travel through this place.

Q. Did they authorize them to walk there?

A. Yes, sir.

Q. And since then do they use the steps?

A. Yes, sir, they are in use now.

Mr. Burr:

That is all I want to ask him

Mr. Brodie:

We have no questions.

Mr. Harris:

I would like to ask a couple of questions.

Cross Examination.

(By Mr. Harris):

Q. Do you know a man named Templeton?

A. Yes, sir.

Q. Was he here this morning?

A. Yes, sir.

Q. Did he come from Bessemer with you?

A. Not with me, no, sir.

Q. Did you take him back out to Bessemer a while ago?

A. Yes, sir.

Q. He was brought in as a witness here?

Mr. Burr:

We object to these questions, if Your Honor pleases

Mr. Harris:

Well, there was a big ado about impeaching a man on the stand and inquiring about Templeton and I want to know where Templeton is.

Mr. Burr:

If Your Honor pleases, I resent those statements. I have tried mighty hard in this case to keep my head. Now, if he goes into that the next hullabaloo, if I raised one about Templeton, will be to show why I sent him back. I have never talked to him or had anybody else talk to him, but as soon as I found out he was a member of the union that Mr. Harris represents why naturally I didn't want him.

Mr. Harris:

That is all I care to ask him.

The Court:

Well, that concludes the testimony, does it, gentlemen?

Mr. Burr:

Yes, sir, that is all.

Plaintiffs close.

Mr. Cooper:

If the Court pleases, we understand that the evidence is closed and we do not wish to delay the case any more. We would just like to note for the record that some of the data requested and ordered produced by the Court was not produced by the T. C. I. and nothing, so far as we find, has been given us by the Republic Company. We got part of them yesterday.

Mr. Burr:

Yes, you got the map and I told you you could have them. You can have them right now. We don't care to extend the matter further.

Mr. Cooper:

I just wanted to note that.

The Court:

What good is it going to do to note that if you are not going to want it?

Mr. Cooper:

Well, we took up time—by request—time for each of these papers, but we haven't got them.

Mr. Burr:

All right, we have the Republic figures for you. Do you want them? They have been right here for you. All right, sir, there you are.

The Court:

Are you showing him the other papers?

Mr. Burr:

Sir?

The Court:

The other companies, Mr. Burr?

Mr. Burr:

I have given him both the Tennessee and the Republic.

Mr. Cooper:

Call Mr. Butler.

INTERVENER'S REBUTTAL EVIDENCE.

3324 JOHN BUTLER, having been previously sworn, was recalled to the stand.

Direct Examination.

(By Mr. Cooper):

Q. Will you look at this photograph identified as Intervener's Exhibit No. 41?

The Court:

Is this John Butler again?

Mr. Cooper:

Yes, sir.

The Court:

Surely this is not in rebuttal. You have put them in the case, the photographs.

Mr. Cooper:

On account of the statements made about this photograph I would like to ask him two or three questions.

The Court:

What photograph is that?

Mr. Cooper:

That is Intervener's No. 41, about which Mr. Jones was testifying a while ago.

Mr. Burr:

It seems to me if you had anything further there you should have put it in on your main case.

Mr. Cooper:

Well, it was admitted without objection, that it was shown that picture was incorrect. Your witness testified that our picture was incorrect and I would like to rebut that.

Mr. Burr:

No, no. All of your direct testimony was by Mr. Wheeler of his knowledge of the place. I don't think you can impeach Mr. Wheeler. If anything is brought out that is different I will probably have to get a mine foreman, if anything different is brought out. He presented the picture and I answered it.

Mr. Harris:

There is more than that, if I may interrupt. A man got on the stand and said the condition represented by that picture didn't exist before May 1st.

Mr. Cooper:

That was Mr. Jones.

Mr. Harris:

It has nothing to do with the admissibility of the picture, if they raise that point that the condition did not exist on May 1st.

Mr. Burr:

This is a different picture altogether. They presented that picture and Mr. Wheeler testified that Mr. Jones, when he was down there—I asked him if he didn't tell him—I asked Mr. Wheeler if Mr. Jones didn't tell him that that arose from a temporary breakdown of a pump, and he said no, and I put Mr. Jones on about that, and now Mr. Butler has come back about the same thing. It seems to me that we ought to have an end of it some time.

The Court:

It seems to me that you have already had your witness to identify that picture and testify about it, your witness.

Mr. Cooper:

Yes, that is true, Your Honor. I would like an opportunity to reply.

The Court:

I sustain the objection. Does everybody rest in this case?

Mr. Cooper:

If the Court pleases, might we make an offer of proof as to what Mr. Butler would testify at this point where you have sustained the objection to his testifying in reply to Mr. Jones?

The Court:
All right, sir.

Mr. Cooper:
We would offer to prove by Mr. Butler that he worked beyond this point shown by the photograph for a period, I believe five years prior to May, 1, 1941, and passed that point daily and was accustomed to seeing water in the pond shown by the photograph daily there on his trips back and forth to his place

Mr. Burr:
All right, sir, if that was offered we would have fifty men to prove the contrary.

The Court:
Overrule the objection—I mean I sustain the objection.

Mr. Harris:
Your Honor asked if everybody had closed. So far as I am concerned I am closed.

Mr. Burr:
We are through:

Mr. Cooper:
We are through:

All parties close.

The Court:
Everybody has closed. I will convene tomorrow morning at nine o'clock, when the argument of Plaintiffs will begin promptly at nine. Court is adjourned until nine o'clock.

(Thereupon, at 2:45 P. M., July 31, 1941(Court adjourned until 9:00 A. M., August 1, 1941.)

9:00 A. M., August 1, 1941.

Court met Pursuant to Adjournment.

The Court:
I am admitting these exhibits that I reserved on.

Mr. Harris:
What exhibits?

The Court:
17, 18 and 20.

Mr. Smith:
These Attorney General's rulings?

Mr. Burr:
Yes.

Mr. All:
And that Bulletin 13?

Mr. Burr:
That is already in. You mean—what bulletin are you talking about, 13?

Mr. All:
13.

Mr. Burr:
That has been in all the time.

Mr. Harris:
I believe we have an objection and exception to each one of them?

The Court:
Yes.

Mr. All:
Judge, I have some tickets here—I thought I had them. My understanding was that Your Honor sustained objection to some of these Woodward Iron Company tickets.

The Court:
I don't remember.

Mr. All:
I don't care anything about them one way or the other.

Mr. Harris:
What was that, Mr. All?

The Court:
He said it didn't matter one way or the other about the tickets.

Mr. All:
The Woodward Iron tickets, the technical pay checks. It doesn't make any difference to me.

The Court:
About the Woodward Iron Company?

Mr. All:
Yes, sir. I think Your Honor sustained objection to them.

The Court:
I think I did.

Mr. Harris:
The Woodward Iron Company is not in the case anyhow.

Mr. All:

But you can just make it as it is, Judge. I don't care anything about it.

Mr. All:

If the Court pleases, I reckon we are all glad we have finished the testimony and have gotten down to this point, and owing to the fact that we have spent the time that we have and gotten out into a good many fields in the testimony, I want to spend just a little time getting to the point as to what the issues are.

It is clear from the pleadings, including the complaint of the several plaintiffs, the answer of the representatives of the unions, the intervention and answer of the administrator, the pretrial hearing and the theory upon which the case has been tried—I say it is clear from these matters what the issues are. It is clear that it is true that this act was passed in 1938 and became effective, I believe, on October 24, 1938. The evidence and the pleadings disclose that in March, 1941, after having had investigations and hearings at two points in the country, in Salt Lake City and Birmingham, that the administrator rendered his opinion which has been called the portal-to-portal opinion, the effect of which was that in the metal mines, including the ore mines in this country, the travel time, that is that part of the travel time that has been from what is called portal to portal or collar to collar, in addition to the time spent at the productive work, shall constitute work time.

I say it is perfectly clear and evident from the pleadings and evidence in this case that that was the thing that precipitated the claims or the threatened suits of the ore miners and precipitated the institution of these suits in this case. So that we clearly have the question here as to whether or not this travel time as such comes within the workweek as the workweek is defined in the Fair Labor Standards Act.

Now, in the complaint, if the Court pleases, after setting up the facts, the plaintiffs set down this proposition—I am reading from a typical bill, if the Court pleases—there is no use to read all of them—

"That in following the wage and hour schedule and procedure as hereinbefore in Section II hereof set out, it has fully complied with the provisions of the section set forth and that in working its employees in and about their actual working places eight hours per day for five days per week, it is not employing said employees for a workweek longer than forty hours.

"That no part of the time spent by its underground employees in the bathhouse or in going from and to the bathhouse, to or from the portal, or to and from the underground man loading station from or to the portal, or to or from the actual working places of the employees from or to the underground man loading station constitutes a part of the workweek.

"Otherwise stated, the plaintiff asserts that the Congress intended the word 'workweek' to be construed as meaning the time actually spent by plaintiffs' underground miners in or about their actual work places and did not intend to include as a part of the workweek the time spent by such underground employees in being transported or walking to and from the places where they actually work."

And then seeking the declaratory judgment in the petition and prayer, the plaintiff propounds these questions for answer by the Court:

"Has the plaintiff, in following the work schedule and procedure as hereinbefore in Section II hereof set out, complied with the provisions of Section 7 of the Act?

"Did the Congress in the enactment of Section 7 of the Act intend that the workweek should consist of the time actually spent by the underground employees of the plaintiff working at and around their usual working places?

"Did the Congress in the enactment of Section 7 of the Act intend that the workweek of plaintiff's underground employees should include any portion of their time spent in being transported or walking to and from their usual working places and while not engaged in any physical work or service for the plaintiff?"

Then the other question: "When does the workday of plaintiff's underground employees begin, within the meaning of the Fair Labor Standards Act?"

"Are the assertions of the plaintiff as herein set forth as to the intentions of the Congress in the use of the word "workweek" legal and correct?"

And then the prayer of the bill is the determination of whether or not the travel time from portal back to portal is a part of the workweek.

Those are the questions that are propounded in the complaint of the plaintiffs and those are the questions which we think are before the Court.

The Court:

That is the real issue.

Mr. All:

That is the real issue in the case. But what I am trying to get at is a little more particular, if the Court pleases, is in the answer of the defendants. They say here after the pretrial hearing by amendment to the answer,

"For a further separate defense, these defendants allege that under the Fair Labor Standards Act of 1938 the workweek for the employees of the plaintiff engaged in production of goods for commerce includes all the time when a miner reports for duty as required at or near the collar or portal of the mine and ends when such miner reaches the collar or portal of the mine at the end of the shift, and all of the time spent on the surface in obtaining and returning lamps, carbide and tools, and checking in and out."

And then it alleges that the men had never been compensated for the travel time as such.

Then the intervener comes, in, if the Court pleases, and alleges that the interpretation of the administrator of 7(a) of the act is a correct interpretation.

Now, then, we come to the pretrial agreement on the pretrial hearing, and I want to read the appropriate parts of that:

"It was agreed by all of the parties that the following are all of the issues in controversy in this cause:

"a. What constitutes the working time which makes up the workweek of the underground ore mining employees of the plaintiff within the meaning of Section 7 of the Fair Labor Standards Act of 1938."

And then further defining that, (1) subhead:

"(1) In reference to 'a' above, the plaintiff contends that such workweek does not include that portion of the time spent by the underground ore mining employees in being transported or walking to and from their usual working places.

"(2) In reference to 'a' above, the defendants contend that the workweek covers all time from portal to portal as announced in the opinion and report of the Wage and Hour Administrator under the Fair Labor Standards Act on Farch 23, 1941, and also includes aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools and in checking in and out."

Then it goes on that,

"If the Court determines issue 'a' adversely to the plaintiff, the Court will further determine whether or not the defendants and other underground iron ore employees who are now or who hereafter may become parties are entitled to recover against the plaintiff, and if so, how much."

And then it provides for the defenses to the controversy.

What I am driving at is this, if the Court pleases: That the issue in this case involves an inquiry which is pertinent to the situation of all of the underground employees, not one or any group or any other group, but simply is the travel time work time so as to come within the meaning of the word "workweek."

We think, if the Court pleases, that we can say that the question in this case is whether or not Section 7(a) of the act contemplates a portal-to-portal computation of time involved in the workweek.

Now, we have spent the time which we have spent here in arriving at what the word "workweek" means as applied to underground ore mine employees who have travel time. I think that is the sole issue.

Now, when Congress passed this Fair Labor Standards Act Congress did not say that this shall apply to an ore mine. It did not say that it applies to a coal mine, to a limestone mine, to a quarry, or even to a mine. Congress did not say whether a workweek covered surface operations or underground operations. It simply said this—and, if the Court pleases, the whole gravamen of that act is this— I think allusion has been made in the course of this trial to the fact that a great part of it was intended to relieve a sweatshop situation, underpaid people, and the structure of the act is to relieve obstruction to interstate commerce by requiring those people to be paid a living wage. That is the foundation of this act and all the act provides.

I want to go into a somewhat brief analysis of the act. This act provides just three things: One, a minimum wage, the next a maximum week, maximum hours of work per week, and then Section 7(a) provides that no employer shall employ its employees to work more than forty hours —forty-four first, forty-two and then forty—in any workweek. There is no absolute prohibition that you cannot employ them to work that workweek exceeding forty hours, we will say—I will use that illustration—without paying them time and a half for all excess over the maximum hours. That is the whole act. There is nothing else in it.

I want to read this in view of the definition of the term that is used. The word "employ" in this act, if the Court pleases, as defined under (g), includes—"employ"—quoted "employ"—includes to suffer or permit to work. I want to say that because I want to read Section 7(a) as defined:

> "Maximum Hours—No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

We will read that this way:

> "No employer shall, except as otherwise provided in this act, suffer any of his employees who is engaged in the production of goods for commerce for a workweek longer than forty-four hours during the first year from the effective date of this act—of this section." Then forty-two and then forty-one.

The Court:
Forty.

Mr. All:

Forty, yes. Now, the word "workweek", if Your Honor pleases, is not a new word in legislation. It has been used before. "Work time" has been used before. "Eight-hour day" has been used before. "Maximum hour a week" has been used before. This is not the first time.

I think, if the Court pleases, that we can make this a little clearer by following this sort of procedure in argument. Just put the congressional shoes on and place ourselves in the Congressional Hall, passing this act, the objective being, we may say, to relieve unemployment. We read the policy of the act in the caption. We know what the policy of the act is. But we are doing two things here in Congress. We are fixing a minimum rate of pay per hour and we are fixing a maximum workweek. Not as a police measure, but we are fixing it and providing that the employer shall not permit an employee or employees to work for over forty hours a week without paying them time and a half overtime. And we simply use the word "workweek" when we sit there in Congress, if the Court pleases, and use the word "workweek" with the people to whom that act must apply engaged in all sorts of business, some underground and some on the surface.

First, I ask the question, if we were passing that act as you say that we consider the question of making a distinction between surface and underground employees, I challenge a conclusion, I challenge an argument that people when sitting in Congress and use that language that anybody could say that we passed an act to apply to the surface and not to underground, or apply to underground and not to surface.

Now, if the Court pleases, when we sit there in Congress like that, what are we charged with notice of? I think the principle has been alluded to two or three times in the course of this trial that everybody is presumed to know the law. During other times they didn't know it, not supposed to know it. But we all know it, it doesn't make any difference who we are, there is that sort of presumption.

But we can say this, if the Court pleases, that Congress, whether they actually know it or not, they are presumed to know it. They take the oath that they will not violate the Constitution of the United States.

What does that mean with the legislators? That we won't pass an act if we know it that delegates legislative power. We are not going to leave—we cannot do it—we cannot leave it to an administrator or somebody else to decide the policy. We have got to declare that policy.

They are also chargeable with another thing. They don't always do it.

The Court:

Congress? The industries to be regulated are so numerous that Congress couldn't undertake it.

Mr. All:

Well, I am going to get to that, if the Court pleases.

The Court:

Of course, delegated power may properly be conferred.

Mr. All:

Well, it has got to be very germane to the power—somebody by some product of reasoning or something. Personally, I think, if the Court pleases, we have gone far afield in that sort of thing, and I presume Your Honor does too. And there are lots of people who do, but they have a process of reasoning—there has never anybody said yet that Congress can delegate leglislative power.

Now, I am getting this point, however: Congress knows that they must use language which is clear enough to be reasonably understood. Significance, therefore, if the Court pleases, is to be placed on the proposition that Congress merely used the word "workweek." Now, I ask this question: You have got a question here of what that "workweek" means. That is our question as applied to particular businesses and to particular situations.

Now, very often a legislature will do this: They will pass an act with the knowledge, presumed knowledge, of customs, contracts, situations. But if they are going to change them, common sense dictates that they shall clearly indicate a revolutionary change, else the act shall apply to and fit established customs, usage and relationship; it shall apply to that and not in revolutionary destruction of it. That is one of the points that we have in this case.

Now, if the Court pleases, as I say, we are sitting in Congress and we use the word "workweek." What must you say are some of the considerations that Congress had in mind? Forty-hour workweek means eight hours of work a day. Have we ever legislated and used language like this before? Have we ever done anything like this before? What language did we use in some other legislation, and how was that language construed? How was that law administered, and how did the people treat it? Congress is bound to have had that before it.

Now, we have here, if the Court pleases—here is an act, an old act passed in 1892. It is the Hours of Labor on Public Works, U. S. C. A., where we find it. It is Chapter V, page 146. Congress said in this act:

"The service and employment of all laborers and mechanics who are or may be employed by the Government of the United States or the District of Columbia, or by any contractor or subcontractor, upon a public work of the United States or of the District of Columbia, and of all persons who are or may be employed by the Government of the United States or the District of Columbia, or any contractor or subcontractor, to perform services similar to those of laborers and mechanics in connection with dredging or rock excavation in any river or harbor of the United

States or of the District of Columbia, is limited and restricted to eight hours in any one calendar day."

That is the eight-hour day. Here is a part of the Reclamation Act of 1902:

"Upon the determination that any irrigation project is practicable, the Secretary of the Interior may cause to be let contracts for the construction of the same, in such portions or sections as it may be practicable to construct and complete as parts of the whole project, providing the necessary funds for such portions or sections are available, and thereupon he shall give public notice of the lands irrigable under such project, and limit of area per entry, which limit shall represent the acreage which in the opinion of the Secretary, may be reasonably required for the support of a famliy upon the lands in question; also of the charges which shall be made per acre upon the said entries, and upon lands in private ownership which may be irrigated by the waters of said irrigation project, and the number of annual installments in which such charges shall be paid and the time when such payments shall commence: Provided, that in all construction work eight hours shall constitute a day's work, and no Mongolian labor shall be employed thereon."

In passing—I am getting at this case, if the Court pleases—as I stated just now, when Congress passes an act which has its own history before it with respect to similar language or substantially similar language and the way that has been treated—because people have a right to presume that they did not intend any change, and there is some obligation on the Congress to express itself.

Now, it was held—I mean the administrative officers chargeable with the enforcement of that law adopted the view of eight hours and that meant eight hours of effective work. The question here—this is with reference to the Reclamation Act here, and this is the opinion of the Attorney General:

"The letter of the Director of the Geological Survey states that it is dangerous both to life and property to do blasting during the regular hours of labor when the men and the steam shovel are at work; and that it is very necessary to keep the powder men at their posts after the regular working hours in order to make their final preparations for shooting the blasts. The letter also states that it is necessary to clean up the shale thrown down by the blasts upon the tracks before regular working hours the following morning, in order that the force of the cuts and steam shovel shall not then be standing around idle until the tracks can be cleaned. The same reason for work before or after the regular hours applies to the necessary shifting of track, shoeing of horses, repair and cleaning machinery, and to other labor essential to the promptness and efficiency of the regular day service of the men and machinery. It is also suggested that if water for domestic use of the camp may not be hauled after regular working hours by some of the teams on the work, it would be necessary to keep an extra team for this purpose only, at much greater cost than 'by putting in a little time by extra work;' and that the teamsters hauling supplies, cooks and 'flunkies' (by which I understand scullions or assistants to cooks are meant) must put in more than eight hours per day."

In addressing himself to these questions the Attorney General said:

"But I think that the eight-hour day means eight hours of effective labor."

The Court:
What is the date of that?

Mr. All:

This was in 1906.

"But I think that the eight-hour day means eight hours of effective labor, and therefore so far as your questions present the case of laborers and mechanics who, from the exigencies of the situation, must wait until after the completion of the regular day to finish their work, I am of the opinion that the blasting, cleaning of tracks, repairing machinery, and all other similar work essential to prompt and continuous service in the regular day may be legally done before and after the regular hours. To be more specific, laborers and mechanics who are called upon to do two hours work, for example, before or after the regular day begins or ends that the law is applied if they are only called upon to work six more hours during the regular hours. The law gives no countenance to the conception that the interval between the beginning and end of the regular day is a controlling convention which excludes labor at any other time and entitles workmen to stand around idle if their services can be fully availed of during that interval. The law limits the working day to eight hours, but it does not prescribe in what hours of the day the work shall be done. Practically, no doubt, there should be a real necessity, as is obviously the case here, for working during other hours than the regular day; and there should be scrutiny and care lest abuses arise which, however, the right of contract, subject to law, between laborer and employer ought to prevent.

Mr. Harris:

Mr. All, would you mind giving the citations as you read? You inadvertently read and we don't know what you are reading from.

Mr. All:

Well, I was reading from the paper introduced in evidence, entitled—Plaintiffs' Exhibit 16 is what it is.

Mr. Harris:
All right.

Mr. All:
And the other, the next is Plaintiffs' Exhibit 17 where the same provisions of the same act arose in 1908 and opinions to the same effect were rendered.

In the act of March 3, 1931, Section 26a provides:

The Court:
What code?

Mr. All:
This is in U. S. C. A., Title V, Section 26a and Section 29a. Section 26a reads this way:

"On and after March 3, 1941, four hours, exclusive of time for luncheon, shall constitute a day's work on Saturdays throughout the year."

That is the pertinent part of that section. 29a:

"Each head of a department or independent establishment shall issue general public regulations, not inconsistent with law, setting forth the hours of duty per day and per week for each group of employees."

Pursuant to that latter section thirty-nine hours of work per week were prescribed, thirty-five for the first five days in the week and four hours for Saturday. The question arose with respect to employees, some, if not all, of whom were doing clerical work at Angel Island and they reported and were taken over from San Francisco to Angel Island on Government boats. They had some trouble about their reporting late and about the question of travel time and the matter of rescheduling the boats so that the thirty-nine hours of actual effective work at desks could be accomplished, and it was worked out by rearranging schedules so that the people could report within time to catch the boat and the boat should run at such hour as that those people would arrive at their desks for effective work of thirty-five hours during the first five days and four hours on Saturday. Travel time, they say, could not be paid for. Travel time was not paid for. Travel time was excluded.

I won't read all of this correspondence, if the Court pleases. This is Plaintiffs' Exhibit 45. But the correspondence between the Comptroller General and the Attorney General set out substantially in some more elaboration than what I have stated, and the Attorney General's office, the administrative assistant to the Attorney General, in reply, in the course of that correspondence, writes the Comptroller General this:

"Reference is made to your letter dated August 20, 1940 (A-44009), wherein you call attention to previous corresponence with the Secretary of Labor to the effect that the employees of the Angel Island Station of the Immigrant Naturalization Service have devoted fewer hours of duty than that of other employees in the same locality. You are advised that steps are being taken by this department to establish standard office hours at the Angel Island Station.

The Court:
That is October 2nd?

Mr. All:
October 3, 1940. This is the last letter.

The Court:
What exhibit is that?

Mr. All:

That is Exhibit 45 that I have just read. So there, if the Court pleases, with respect to employees working for the Government where a thirty-nine-hour week was prescribed, thirty-five hours on Monday, Tuesday, Wednesday, Thursday and Friday and four on Saturday, they exclude travel time.

The Court:

That is from their home to the place of work?

Mr. All:

Travel time from San Francisco, where they catch the Government boat to go to the island. There was no question raised, if the Court pleases, on the question of coming from home.

The Court:

No, I mean in the prior time.

Mr. All:

From the place where they caught the boat until they got over to their desks. Respecting the same letter the Department of Labor expressed themselves on the question this way:

"The District Commissioner has been instructed to readjust sailing schedules so that employees may be at their designated posts of duty for the required number of hours each day or be charged with the necessary annual leave to cover absences during the work period in accordance with the provisions of the vacation and sick leave act of March 14, 1936, and executive order of July 9, 1936."

And, of course, that executive order is the order that set up the thirty-nine hours, thirty-five hours and four hours for Saturday.

Now, if the Court pleases, let's get the force of that. The force of that is that Congress in passing—and I want you to bear with me if I happen to repeat, because there are two or three questions here that we think are really pivotal questions in this case—I say the importance of that is this, and, Your Honor, if you were sitting as a Congress or any of us sitting as a Congress where you had used the word "service" or where in the acts, in regulations in pursuance to acts, "workday," "workweek," "hours of work," had been used in the history of our legislation and we are passing an act for nation-wide application without reference to surface ore mines or coal mines or anything, just overtime for over forty hours a week, wouldn't our mind hark back? We certainly would give deep consideration to why we passed that act and where it is going to apply. That is inescapable and, if the Court pleases, Congress knew or must know that in this matter of work many, many, many employees had travel time. They must have known. These matters teach that travel time is involved in just what I have been reading. They must have known, if they were men of any intelligence at all—and they are—not only that travel time was involved in many industries, but they know that it is involved in practically all of the great mining industry of America, that practically without exception the great mining industry involves travel time with nearly all of their employees.

All right. Now, when I am sitting as a Congressman, say I am just going to say a workweek, when I know that in certain large, tremendous industries "workweek" involves travel time and in other it does not, when I say I am not going to use anything but "workweek", doesn't it mean that I am going to use "workweek" like it has been employed before, doesn't that mean that I mean "workweek" that is consistent with established practice and contracts of great industries?

Now, if the Court pleases, I want you to understand I am making allusion here to the ruling and I don't mean to be taken as rearguing any point of admissibility of evidence. Now, I want you to understand that I am not doing it for that purpose. I am not rearguing it, but I am stating something that is common knowledge with this Court and certainly a matter which Congress knew. Some of the biggest industries in this country are mining industries. We have got generally agriculture, we have got oil, we have got various kinds of minerals, and right now—and I am not using this on account of our enthusing defense contracts. I don't mean that. I am using it as an illustrative proposition. If this country possesses predominant strength in resources over its requirements I would say that it largely les in the wealth of our mineral resources. They are tremendous. I want to say this: Iron and steel are important; coal is important.

I am not arguing that from an economic standpoint. I am arguing it from the standpoint of what Congress knew of the line that they had to draw when they were passing this act. The coal mining industry, the ore mining industry, the gold, the silver, Congress must have known, and I do not do violence when I say that Congress did know, Alabama Congressmen knew that of my own knowledge, and Michigan and Minnesota and Colorado and the people around the Great Lakes, they knew about this travel time.

Tell me that Congress just used the word "workweek," that it did not mean for that to be consistent with the way that they had treated travel time by custom and by established contracts! Tell me that if Congress should not have known that they ever intended to disturb those customs and those practices they should not have done it—they used "workweek" like similar language and similar import—did not use an interpreted view.

Now, as I say, without any argument—suppose we say this, if the Court pleases, suppose they say in this act—had gone just a little further and this much further and said this act here applies to underground travel time. All right, suppose that is the question. Suppose we eliminate surface overtime and inquire whether or not "workweek" includes travel time underground. All right. Now, if it includes underground and they intended that, don't you know Congress when they looked out over the national landscape to decide what this act was going to do and who it was going to effect and where it was going to apply, took into account the vast coal deposits in this country and the established customs and practices of coal mines and ore mines and all other mines—they couldn't help but do it—they cannot draw a distinction between travel time anywhere and travel time somewhere else.

Mind you, if the Court pleases, we are not trying an individual case where an individual might have done some work which is not germane or part of the custom of travel time. But when you get into that you are getting into trying individual cases. I am talking about the principle of portal to portal. They had to know that.

Now, when you sit in the shoes of Congress you are presumed to look out on the field that Congress must have looked out on. Now, if the Court pleases, here is something that I think is a matter of judicial knowledge. And again here I want to state this: I don't want Your Honor to think for a minute that I want to argue anything that Your Honor has held not to be evidence. I don't mean it that way, and I don't want Your Honor to take it that way. I am just arguing the principle of legislative construction.

The NRA of course, the Court knows judicially and actually as we do the broad—I don't mean the details of it necessarily unless your practice drew you into certain kinds of vocations under it. I don't know all of it and I don't reckon any of us do, but we know generally what the NRA was. We know what the policies of the act were. We know the reason it was invalidated. It is. I think we know what the President did under it. I think that in offering the Bituminous Coal Code he could not have done it. But I think it is pertinent to this case. I think this Court takes judicial knowledge of that act and the former administrative determination and enforcement of that act.

This act, this NRA, provides for certain matters to be handled by mutual agreement and it has got this sort of provision where that is not done: After speaking of mutual agreements for effectuating the purposes of the act it is provided in subsection—subparagraph (c) of Section 7:

> "Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof, and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3."

Now, without going into, without reading the details of it, the language, the policy of this act of the NRA, the declared policy, is very similar to the policies of the Fair Labor Standards Act. Neither act, if the Court pleases, justifies any administrator or any Court just to permit something and do it. What we are after here is arriving at what Congress did and what we will do.

I think this is a matter in which we are interested, and I am just calling it to Your Honor's attention for what it is worth. I do not mean to get into the field of evidence. But pursuant to the sections I just read you the President established the Bituminous Coal Code. The Bituminous

Coal Code provided for—just like we have here—it provided that the workweek should be at the usual working place, like our custom, like our practices, like our contracts and like that practice that existed throughout the field in which underground travel time was involved. Working place to working place was not disturbed and has been adhered to.

Now, prescribing that work time shall be from face to face—I mention that for this reason, if the Court pleases, that it is one of the things that Congress must have had in mind when it gave consideration to the application of this act—could we say that Congress meant what it had never meant before by the use of similar terms? Can we say that it meant something different from the history of administrative interpretation of acts using substantially similar language? Must not we say when we sit as Congressmen here a few years ago that passed the NRA and under the NRA the code set up providing that work time should be from face to face, shouldn't we know that the people who are enjoined to apply the Fair Labor Standards Act, shouldn't Congress know that their minds would run back to the history of other legislation? Shouldn't we give some notice to somebody that we are going to revolutionize, we are going to do something that never has been done before, we are going to do something that somebody will change the meaning of the word from the accepted meaning to the administrative meaning? Doesn't that mean that it will be applied the same way? That is, I think, the force of that particular proposition.

Now, if the Court pleases, this sort of thought has been imputed to Congress, that if Congress passes an act and uses language or passes an act to the effect or similar in character to an act which has been passed by a state and construed by that state, congressional acts have been interpreted not to be counter to the interpretation that has been put on a state statute unless the contrary intention is shown.

I read Your Honor from the case of *Interstate Commerce Commission vs. Baltimore & Ohio Railroad,* 145 U. S., 263. This is a case which involves the matter of discriminatory rates under the Acts of Congress. The matter came up in this way, that a railroad was prosecuted for selling block tickets, party tickets, by which a number of people rode on one ticket and in that way they got a reduction in fares, and it arose in such a way as to come within the general antidiscrimination clause which they are chargeable with enforcing, and the question was whether or not under the interpretation of that act it could be broadly said to cover it, whether the Baltimore & Ohio Railroad had violated the act or was guilty of illegal discrimination. The Court in addressing itself to that question said this:

"If it be so, then, under state laws forbidding unjust discriminations, every such ticket issued between points * *"

What he means by "If it be so" is, if this were illegal discrimination.

"If it be so, then, under state laws forbidding unjust discriminations, every such ticket issued between points within the same State must be illegal. In view of the fact, however, that every railway company issues such tickets * *"

In other words, that is the custom and practice for every railroad to issue such ticket and they had been issuing them in the face of this act.

"In view of the fact, however, that every railway company issues such tickets; that there is no reported case, state or Federal, wherein their illegality has been questioned; that there is no such case in England; and that the practice is universally acquiesced in by the public, it would seem that the issuing of such tickets should not be held an unjust discrimination or an unreasonable preference to persons traveling upon them."

A reading of the case will show this, if the Court pleases, that they look to the fact of acquiescence in continued practice by railroads to issue this sort of tickets, they were discriminatory in a way, but the practice acquiesced in, the attitude of the enforcing officers and the state laws—there were state laws all over the country of similar import—that there was no report of any state involving unjust discrimination, and that that was of controlling importance in the interpretation of this statute.

In other words, we have got two things: That these tickets were not particularly dealt with; that they were not particularly dealt with and the custom and practice was established and that state laws with similar provisions, so far as the Courts were concerned, there was no evidence of convictions and prosecutions under those laws. We have got those two things as entering into and controlling their decision on the legislative intent as to whether the antidiscrimination act covered the issuance of such tickets.

Now, if the Court pleases, to apply that proposition, there are no cases under state statutes which include travel time in work time. It is excluded where not expressly included. That is another consideration the Court must have had. If there was some statute which did not expressly provide that work time, workweek, or service or similar words included travel time and where under such decision even though there were statutes prescribing hours of work, or where those statute did not expressly include travel time, there are no cases which hold that it includes it, or mere work time includes travel time, Congress knew that when they passed this act.

It has been held necessary to expressly include travel time in order for travel time to be included. If the Court pleases, this principle of statutory construction that I am undertaking to talk about represents the unanimous view of the Courts all over this country. I want to call Your Honor's attention to this—merely a matter which does not involve this particular question but involves a question of statutory construction as to whether or not the prohibition statutes apply to purchasers.

"Section 3 of Title 2," and I am reading here from the case of United States versus Farrar,—

The Court:
Against who?

Mr. All:
United States versus Farrar, 281 U. S. 624.

The Court:
624 is the page?

Mr. All:
That is where the case begins, on page 624. It is a short opinion. I am reading from the latter part of the opinion.

"Section 3 of Title 2 of the National Prohibition Act makes it unlawful for any person to 'manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act,' but provides that 'Liquor for non-beverage purposes and wine for sacramental purposes may be manufactured,'" and so forth.

This case involved the prosecution of a purchaser, and the Court, speaking through Mr. Justice Sutherland, said this:

"Since long before the adoption of the Eighteenth Amendment, it has been held with practical unamimity that in the absence of an express statutory provision to the contrary, the purchaser of intoxicating liquor, the sale of which was prohibited, was guilty of no offense. And statutes to the contrary have been the rare exception. Probably it was thought more important to preserve the complete freedom of the purchaser to testify against the seller than to punish him for making the purchase," citing a case. "However that may be,"—here is the important part. "However that may be, it is fair to assume that Congress, when it came to pass the prohibition act, knew this history and acting in the light of it deliberately and designedly omitted to impose upon the purchaser of liquor for beverage purposes any criminal liability."

So, if the Court please, and I am not undertaking here—I am not—

The Court:
Go ahead; go ahead.

Mr. All:
I am not undertaking, if the Court please, to exhaust the authorities on this subject. Before going into an argument on some of this evidence, I am simply citing some authorities to show the things which actuated Congress to show why we must say that Congress used the word "workweek" to apply to, to operate upon conditions as they existed, and not to destroy the conditions. These cases are all to that effect; first, that the legislative history with respect to similar legislation, that the interpretation of this Act, and other acts where words of similar import were used, the custom of the people and the industry upon which this act would operate in this case is controlling.

I am not going into coal. I am going to stick to ore for the purpose of this argument. We say that the universal practice in the ore industry is non-portal-to-portal. There is no ore mining practice of portal-to-portal. The practice is face-to-face. Now, it wouldn't make any difference particularly, if it were not all absolutely face-to-face, but it is not portal-to-portal, and so far as this record shows, and as far as the facts are, because there isn't any evidence to the contrary, the long-established custom, practice and usage, and where contracts existed, they all followed that long established usage; those contracts followed the usage and provided for face-to-face working time,—that work shall commence at the face and end at the face.

Now, we know, from the consideration of the oral testimony that has been absolutely established in Alabama,—no question about it. The long-existing, established custom and practice before and after contracts began to be made was face-to-face, and Congress didn't intend to disturb these arrangements. That is in Alabama. But I am going to demonstrate that is true also in the Lake Superior Region that mines 80 per cent. of the ore produced in this country. We have in this record, if the Court please, evidence of a consistent, universal practice or custom of treating work time as face to face, and Congress didn't mean to disturb that practice.

The Court:

Were there any hearings before the committees of Congress with reference to this bill as to mining companies?

Mr. All:

You mean with particular reference to mining Companies?

The Court:

Yes.

Mr. All:

I haven't found it,—nothing with particular reference to mining companies.

I want to say this, if the Court please, because my time is drawing to a close. I want to say we have the universal practice of treating work time as beginning at the face and ending at the face. We have shown the contracts. We have shown the contracts as showing the custom. The custom has not been different since the contracts started.

We have in this case some evidence beginning in 1934 when the Smelters Union was first organized of the Union suggesting a half time arrangement, half employee and half company time,—some time maybe nothing was suggested and sometime may be more, but it was all resolved by the continuation of the work. That is what we are interested in,—not what somebody claims.

We spent a good deal of time on this question: As to whether or not, so far as the T. C. I. was concerned, and may be Sloss, somebody said that the Union had asked for a six hour day, and one man said they asked for a six hour day and travel time both ways, and Mr. Anderson said he didn't remember anything about the travel time part of it, but they asked for a six hour day.

Now, suppose they did ask for it. These gentlemen are treating the question as if somebody who didn't comply with every union request had done something wrong and such refusal to comply with a union request as being a reflection on the employer. That is not true.

We have in this case this evidence too: They say—I can't anticipate them except by some questions they asked, —Isn't it true with respect to Sloss Company, with respect to the Tennessee Company, that you didn't have but one formal contract where you recognized the Union as the bargaining agent? If there had been no union it would have been the same. It isn't any more encumbent upon the employer to agree with the union than it is encumbent upon the union to agree with the employer. This act does not say anything about a union. It is a question of what the established practice was. As I say, in passing, I don't think in this case the question of whether the union asked for half way on company time or what not has got anything to do with the facts and does not disturb the established custom if the matter of negotiation resolved into a face-to-face contract and the men were paid that way.

And all the evidence in this case, all the employees in this case testified that the custom of not paying traveling time was consistently followed throughout each one's own experience. It is an established custom.

This is significant, however, if the Court please: That after this act was passed and until this portal to portal was agitated by the Administrator,—after this act was passed, contracts were made from face to face and employees were paid from face to face. We introduced, if Your Honor please, the testimony, the typical testimony, and the testimony from the stand bears it out,—they knew what the practice was. Each and every witness testified to that effect, and when they signed their receipts for year after year, it showed it wasn't a company practice, that it was a mutual practice, well understood by all, and there can't be any basis for anybody saying that it wasn't understood. Reid Robinson, the International President, was here on one or two occasions; Coles was here, Pressman. the general counsel, was in some of these negotiations, and they never changed it.

If the Court please, with respect to the Western country, you will remember we read over Mr. Swanson's deposition, only one of them, as a sort of typical evidence, and we introduced the other depositions without reading them, and there were quite a number of other witnesses. One of the other witnesses from the West was a man named George Michael Burck of Ely, Minnesota, and he worked in the mines along the Vermilion Range; he worked for the Oliver Iron Mining Company at Ely, Minnesota, in the Pioneer Mine and the Sibley Mine. Bear this in mind, if Your Honor please, the universitality—the universality in ore mines of this established custom. This testimony is not testimony we took. It is testimony the Administrator took and we have introduced all of it and it shows clearly that the practice there is the practice here. The little chores of tool carrying has been considered as being treated as a part of the traveling time, and this man Micheal Burcke was asked this question:

"Would it be correct to say that during your eight hours you were at the face of the mine?"

He answered, "Yes."

And at this Sibley Mine, he testified, they used the brass checks.

In passing, if the Court please,—I don't want to take up too much time with that. I just want to give you our ideas about that,—about the brass checks. The answers to leading questions, "You checked in for work?" "You checked in for work, didn't you?"—Why, if the Court please, that is not worth the paper it is written on. There is no trick about the word "check", and no trick about the words "check in". It is what the facts are. It has been decided from the beginning of law that Courts draw conclusions, not witnesses.

The evidence is clear, and if the Court please, in this report of Stein's, which is attached to the report—

The Court:

You mean to the opinion?

Mr. All:

To the opinion, it is said that the checking in was for safety purposes, and for this matter of the convenience of the men in getting to their places of work,—I mean on the question of replacement. It wasn't given by him the significance of the commencing to work. They were dealing with the broad portal to portal with which we are dealing.

I just want to say this, if the Court please, just to repeat, that a witness calling something a checking in—what we are interested in is what are the facts. Bear this in mind. They used a brass check at one place and didn't use a brass check at the other. The first witness on that that worked for the Sloss Company was a man named Jesse Gaines. Jesse Gaines didn't have any check. What did he do? He just walked up and said, "Here am I." It is the same thing as putting a brass check up there where those men could tell where they were in that mine. The checking in has an effect, but what effect it has depends on what the arrangement between you and your employer is.

Mind you,—this is true,—

The Court:
You still have that custom?

Mr. All:
What is that?

The Court:
Using a brass check?

Mr. All:
We never have had a brass check in Sloss Mines.

The Court:
I mean other companies?

Mr. All:
Oh, yes.

Mr. Smith:
You have got a time clock, Sloss has?

Mr. All:
But the point is checking in, if it is not counting time—

The Court:
I get your point.

Mr. All:
—it is not significant in this case.

The Court:
I get your point. I understand what you mean.

Mr. All:

When the man walked up at the Sloss Mine and said, "Here I am," he did the same thing as laying down a brass check. But checking in does not mean anything. I mean that is the point I am making.

Now, this man said he was on an eight-hour basis at Pioneer; he would start work sometime before seven o'clock but time was counted from seven o'clock. He would leave underground at 3:30 and it would take a few minutes more for hoisting the men up. He had gone to work at about fifteen minutes to seven.

Now, on page 133 of the transcript there he testified that from the time he started working in 1924 until May 1, 1941, the collar-to-collar system was never in force and operation and they did not have it at all during that period; that the time of the men was computed on the basis of an eight hour day not including travel time.

On the same page the question was asked,—This is an analysis of this testimony:

"And that was, so far as your experience is concerned, the universal custom during that period of time?"

And his answer was, "Yes."

He stated further that that same custom existed both at the Sibley and Pioneer mines.

On page 135 he was asked whether or not when he got his pay check it was computed on the eight-hour time spent at the working place and not travel time, and his answer was, "Yes." He stated that he signed a receipt on that basis twice a month.

Judge, just one second.

Another witness who testified was Anton Pechek. With respect to the eight hour day he stated that prior to May 1, 1941 they were always at the face the full eight hours and since May 1, 1941, they are not. He testified generally as to the type of mine and as to the operation; that it took ten or twelve minutes to get to the face from the bottom of the shaft, and about two minutes to get from the surface to the bottom of the shaft, so that about twelve or fourteen minutes would be the required time to get there and so forth. And then he testified to the universal custom of face to face in all aspects.

Now, I will not go any further—then, there is the testimony of Leander Runn to the same effect, and several other witnesses,—John Debeltz. I don't know, if Your Honor please, that I will read from this because they are all to the same effect.

Now, the witness Florindo Pilotto lived at Wakefield, Michigan, ore miner at Sunday Lake Mine, which is a Pickans and Mather mine. He testified at page 333 that they were on an eight hour day and stated, "That means you got to work eight hours at the face." A half hour is taken out for lunch and the men ate lunch a short distance away from the face.

I don't feel any useful purpose would be served to go any further into that, but that testimony shows a universal, established practice in the Lake Superior Region of face to face, just like it is here. It is a universal, unanimous, consistent, long-standing practice, evidenced by contracts running over some years.

Did Congress mean to disturb it? If they did, why didn't they say so.

Now, I have discussed the question of the check in and the check out.

I have one or two matters I want to discuss before I close. I don't want to get caught for time.

Now, here, with respect to the Sloss Company was a proposal in 1934—

The Court:
What is that?

Mr. All:
The Sloss Company proposal.

The Court:
Propsal?

Mr. All:
Yes, sir.

The Court:
I see.

Mr. All:
The proposal in 1934 requested that the employees enter on their own time and leave on the company time. Your Honor will remember that was their proposal. I don't think it is necessary to again comment on that. The fact they didn't agree with the proposal has nothing to do with this case. If they continued that practice they just sustained it and confirmed it as the existing practice. Congress was not legislating on that.

Something has been said about two contracts here with the Sloss company where the negotiations were carried on nominally by employees' representatives. They said the company didn't sign a contract recognizing the union. What has that to do with this case? Congress took care of that by the National Labor Relations Act. It is not involved in this case. I just can't agree with the idea that for the union not to agree with the company is a reflection on the union, nor can I agree it is a reflection on the company because it does not agree with the union. I cannot agree with the idea that every refusal by the company is an imposition on the other side, but a refusal by the other side is not an imposition on the company. That is a personal viewpoint.

Now, on this question of checking in and checking out, I want to call attention to that again, and I want to call it for this purpose: Mr. Harris introduced some issues of the "Ore Miner" in which they cautioned the men in going to and from their working place and other places to avoid stepping over some sort of a new proposition, telling them to be careful and look out for things, and when Your Honor asked him why it was introduced, he said, "I think it is competent on whether or not he was under the direction of the company; that is, whether his work started up there when he checked in." Ridiculous, if the Court please,— ridiculous! I am not criticising him. There are two viewpoints which we have got, and I will say this: I have got a partisan viewpoint in arguing this case. Mr. Harris has too, and so have these other gentlemen. The advocate's angle is to reach an opinion at the start; the advocate's idea is I want this thing to be entirely this way, and I will go hunt something to bolster my viewpoint. That is all right. I am not cirticising him. But I am just reminding him that the judicial viewpoint is not to analyze the evidence in advance. I say to the Court the question of safety is commendable, but it isn't indicative of when the work time of these men start as against the long-existing custom and practice and the contractual obligations which they enter into. The question of trying to keep them from getting hurt is not going to militate to start his work time while he is walking down. I want to apologize for arguing that question as having any weight as evidence in this case.

Getting back to this, if the Court please, in 1934 there was a proposal,—you will remember that,—and in that year that matter was wound up with this letter to Mr. Richardson. You will remember that in 1934.

Now, in 1935 another proposal was presented,—this is with respect to the Sloss Company,—on June 15th. Paragraph 2 of that proposal also proposed that the employees enter the mine on their own time and come out on the company's time. That was in 1935.

In passing, let me say this: That all the customs, all of the practices to substantially the fullest extent existing along in 1934 and '35 existed in 1938 and through 1938 up to 1941. These people, when they asked for travel time one way recognized it was the other way, and they didn't inject the performance of chores, such as the carrying of carbide, the carrying of a can of oil from a certain place. They themselves treated it as travel time in these proposals and otherwise, and it was a part of travel time, recognized as a part of travel time as such, and must be treated as a part of the custom upon which this act should take effect.

Now, 1935 was similarly ended with a letter to somebody connected with the Labor Department. We come on down, and in 1936, if the Court please, with respect to the Sloss Company, the proposal of May 6th provided for eight hours at the usual working place in line with the custom, in line with everything that had been going on in this district with respect to all our operations from the very dawn of the industry, and we say from this record and from the exhibits to this record that that is universally true.

In 1937, and I want to call Your Honor's particular attention to this,—in 1937, in 1938 and in 1939,—1937, before the passage of the Fair Labor Standards Act, 1938, the year the Act was passed, 1939, the year after it was passed, there was no Union proposal with respect to traveling time. Now, when we come to 1940, after the Administrator's agitation of this question, after this portal-to-portal matter came up, they demanded traveling time both ways; but until that came up, for 1937, 1938 and 1939, there was no Union proposal at all with respect to traveling time, and they worked under the face-to-face custom.

What does that mean? If the Court please, I respectfully say that this is the pertinency of that testimony, and the cases support that: That administrative interpretations, coupled with the interpretations of the people who are affected by the Act,—if they go together, that is indicative of proper interpretation.

Now, if the Court please, as a matter of common knowledge, and, consequently, as a matter of judicial knowledge, this Court knows as well as you know anything else, that the people on the employees' side of questions like this have kept up in the last few years with legislative programs affecting work and work time and employee-employer relations if anybody on earth ever did. They have got as many people in Washington looking after their interests as any other element in this country. I am not criticising them for it. I think that is all right. But when they come along, and after the Act is passed,—come along and with respect to a new contract say nothing about travel time but go ahead with no proposal with respect to travel time, and the Administrator, for two and a half years, before he agitates the subject, says nothing, with these contracts proposed in the same way, I say that is an acquiescence and administrative interpretation and an interpretation placed on the thing by those whom it affects clearly indicative of the legislative intent.

I want to read in that connection the case of United States versus Midwest Oil Company. It is in 59 Law Edition at page 680.

The Court:

What is the United States?

Mr. All:

Let me get that for you, Judge.—236 U. S. 459.

This involved, if the Court please, a statute which provided in effect that all public lands containing petroleum and other mineral oils and chiefly valuable therefor have been declared by Congress to be "free and open to occupation, exploration by citizens of the United States under regulations prescribed by law."

In interpreting that act, although the act—the President had been withdrawing oil lands from sales, and the Midwest Oil Company raised the question that these oil lands should not be, under the act, withdrawn from sale, and the Court in passing on the question used this language:

"It may be argued that while these facts and rulings prove a usage,"—that is, the power the executive exercised, —"they do not establish its validity,"—do not establish the validity of the usage; it may have been in violation of the act,—"but government"—This is what I want to call Your Honor's attention to. I think it is very important. "But government is a practical affair intended for practical men. Both officers, law makers and citizens naturally adjust themselves"—I want to emphasize that,—"Both officers, law makers and citizens naturally adjust themselves to any long continued action of the Executive Department, on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle, but is the basis of a wize and quieting rule that, in determining the meaning of a statute or the existence of a provision, weight shall be given to the usage itself,—even when the validity of the practice is the subject of investigation."

Now, I have argued, if the Court please, that when Congress looked out on the scene it looked out on a universal, unanimous, consistent practice and custom with respect to travel time in ore mines. I will pretermit the others. They knew it was going to operate on ore mines.

You can't say with justice, if the Court please, that they intended to revolutionize the practice; that they intended to say to ore miners, you wake up tomorrow morning and make a decision that it required the Administrator two years and a half, with two elaborate hearings, and reached with a good deal of timidity, to make. That is the ruling that we say to you he was wrong in. But would you expect, if Your Honor please,—would you expect the people who had been engaged in an industry to which this act would apply,—would you expect them to wake up on the morning of October 25, 1938, and glibly say we are going to have to revolutionize our business? To say that is unfair and unjust. I am not saying it for that purpose. I am saying it for this: That that act is not plain to that effect, and that they looked on that established custom and that established business, and that is indicative of the fact that they meant for it to be consistent with that established custom. That is shown by the fact that the employees and the union treated the act as not applying to traveling time and that the Administrator for two years and a half left it alone.

Judge, I believe my time is up.

The Clerk:
You have about seven minutes.

Mr. All:
I just want to say this in passing, if the Court please: I have no way, and Your Honor can appreciate my position, —I have no way of anticipating what is going to be said on the other side except from the nature of the general conduct of the trial, but I think there are two or three other matters I just want to make brief reference to.

You will remember in connection with what I have been discussing all the morning,—it has been the contention,—I don't know of how many of them,—but Mr. Harris, certainly, that there wasn't anything competent in this case,—

The Court:

Wasn't what?

Mr. All:

We couldn't look to any evidence, we couldn't look to anything that happened prior to October 24, 1938. In other words, all there was to do was just to pay off. I don't think there is any need to answer that. I think the things that happened just prior to the time of the enactment of this act was in the general viewpoint of the Congress looking out on the general scene and passing a piece of general legislation, knowing who it was going to affect in a way, that the custom and practice at that time was the crucial thing, and that they did not intend to change it.

Then Mr. Quinn gave some idea I rather construed to mean, if you follow it to its last analysis, that Congress hasn't got time to do this, has just got to leave it to somebody. If we follow that line of thought, we get into a field of ideas that is fraught with great danger. I thought at the time he was talking if that view he was expressing were carried into practical effect it would result in the most flagrant instances of administrative regulation.

Mr. Monaghan has called my attention to this: That the Administrator doesn't claim any power such as Mr. Quinn claimed for him. They say it is just an opinion. As I say, I don't know whether the Administrator is a lawyer, or the sort of legal advise he has or what value the thing has, but this is just an opinion, they say.

With respect to the other gentlemen I have nothing to say except I listened with a good deal of interest to the argument of Colonel Harris on the structure of our government on the question of whether the evidence as to coal mines was admissible, with which views we are in thorough accord. We have three foundation stones. We have three coordinate branches of government, each independent of the other branch of government, the legislative, the executive, and the judicial. We all agree with that. I didn't know at the time just what pertinency it had with reference to this particular matter. I don't know how to anticipate his argument, but I want to agree with this and say that nobody loves the structure and fundamentals of our government, particularly that part of the Constitution which provides for the three branches of the government more than I do; that there is nobody in the world,—I reckon we all do,—that has got any more feeling with respect to the preservation of that feature of our government from the inroads of administrative—when I say administrative, I mean bureaus and economists going too far,—than I have. I think that is something we have all got to guard with particular care.

If the Court please, I don't know whether I have talked about all I want to talk about or not. If you get up you probably spend too much time on one thing and not enough on another, but I believe that about covers what I care to say.

The Court:
All right. We will take a recess for five minutes.

(Thereupon proceedings were in recess from 11:05 A. M., to 11:10 A. M., at which time proceedings were resumed as follows.)

The Court:
All right.

Mr. Brodie:
Shall I proceed?

The Court:
Yes, sir.

Mr. Brodie:

May it please the Court: This case arises under the Fair Labor Standards Act of 1938. It doesn't arise under any regulation governing hours of work or governing employees who are especially excluded from its provisions. It doesn't arise from any state statute. It doesn't arise under any opinion of the Comptroller General. It arises under an act of Congress passed in June, 1938, which became effective October 24, 1938.

That act was designed to accomplish a number of purposes which the Congress enumerated in Section 2. The Congress found that "The existence in industry engaged in commerce or the production of goods for commerce of labor conditions detrimental to the maintenance of the minimum standards of living necessary for health, efficiency and general well-being of workers (1) cause commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several states; (2) burden commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce, and (5) interferes with the orderly and fair marketing of goods in commerce."

And the Congress, in that section of the Act, declared its purpose by this statute to eliminate as rapidly as practicable these detrimental conditions which were existing to our economy and social structure, and to accomplish that purpose Congress created minimum wage standards, maximum hour standards, and abolished child labor.

The minimum wage standards are not here involved.

The maximum hour standards by which Congress sought to accomplish this purpose of preventing labor disturbances and preventing strikes arising over wages and hours, burdening the channels of commerce, and preventing various other practices interfering with interstate commerce are here involved. Congress sought to accomplish that purpose by providing in Section 7 of the act, and I read, "No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce in excess of" the specified workweek set forth without paying time and one half for overtime for hours worked,—that is quoted,—hours in the employ of the employer in excess of those maxima.

To make doubly certain that there could be no misunderstanding as to what Congress meant, it included in the Act a section containing definitions. Section 3 and Section 3 (d) says employer includes any person acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States or any state or political subdivision of the state, or any labor organization other than one acting as an employer or anyone acting in the capacity of officer or agent of such labor organization.

Employer includes mine foreman, it includes assistant mine foreman, it includes skip tenders when they are specifically or directly acting in the interest of the employer with respect to the employee.

Further along Congress defined employee to include any individual employed by an employer, and in Section 3 (g) it defines "employ" to include "to suffer or to permit to work".

Now, in this case as it has developed here, those statutory provisions assume crucial significance. There is no question here about travel time per se. This Court, I respectfully suggest, has no power under the Constitution to decide any questions about traveling time per se. The Constitution limits the jurisdiction of this Court, and the Declaratory Judgments Act under which this case is brought limits the jurisdiction of this Court to cases and controversies, actual, real stuff between people, not bloodless, intellectual conflicts, not a game of chess. The controversy here is a real thing. It concerns the people of this area. It concerns these people who work under the mountain which can be seen from this Court room. It is not concerned with any hypothetical or intellectual exercises or bloodless intellectual callisthenics involving traveling time per se. The Court has no jurisdiction to decide that. The Constitution does not permit it.

Consequently, the question here is whether the employer and employee relationship, within the meaning of the Fair Labor Standards Act, exists if and when an underground employee of one of these companies reports at a tally house or some other fixed place and checks in or reports or says I am here, or anything of that sort; whether the employer-employee relationship exists when he reports there dressed in his mining clothes subject to the instructions of the employer.

Now, much testimony has been educed to show that instructions were sporadic or casual or not a regular thing. That is not important. The point is were these men subject to the instructions of the employer when they reported there. If so, within the meaning of the Fair Labor Standards Act, they were employees, and their time started to run. The question is, further, when these men reported with indispensable equipment they are employees and their time has begun to run.

Considerable testimony has been educed to show that tools are light or tools are heavy or that it takes a minute to pick up something or that it takes two minutes to pick up something else. The one incontrovertible fact which emerges from all this mass of testimony is that the one indispensable tool, the item which counsel says you can't work in the mines without, the miner's lamp is with him and is carried with him when he reports for duty and goes down into that mine.

Does that employer and employee relationship exist when the miner gets into a skip operated, provided and controlled by his employer, the loading of which is supervised by his employer or a representative of the employer acting in the interest of the employer with respect to that employee,—into a skip which runs on a schedule predetermined, not by the miner who takes it, but by the company which runs it and operates it? Does that employer-employee relationship exist when that man, that miner is required to be there to take that skip? When he must conform to the directions of the employer with respect to the time of reporting to take that skip or lose his job? The minutes of the Tennessee Company themselves, the evidence of the witnesses for the plaintiffs, all lead to only one conclusion, and that is you be there on time to take that skip or else. It is not a question of you being at the working face; you be at the top; not that you be at any point inside; you be at that point to take that skip or else you lose your job. Does that employer-employee relationship continue during the descent in the skip and during the walk through ways which are determined for the employee by the employer under rules promulgated by the employer and subject to hazards which are peculiar to this industry? And does that relationship continue at the end of the shift while the underground employee is returning over this way that is determined for him by his employer, over which he has no control, to the hoodlum, while he is being hoisted to the surface, and while he is still remaining under the direction and control of his employer?

And the question further is does that relationship of employer-employee continue until that underground employee checks out and once more becomes a free agent, completely free of any direction and control of his employer?

That is the question in this case, and it is the Administrator's position that during all the time the underground employee is subject to the direction and control of his employer from the moment he reports for duty at the top until he emerges at the end of the shift and once more becomes a free agent, he is on duty, and if the hours on duty exceed forty in any week, he is entitled to be paid time and a half for overtime.

Excluded from that time is a fixed lunch period that the employee has his lunch period free and that time is not included.

That is the Administrator's position and that is the issue of this case.

Portal to portal and face to face, as I have previously explained, are merely symbols. This Court cannot decide whether portal to portal is the proper way to pay a man or whether face to face is the proper way to pay a man, or whether he should be paid on some variation of those systems. This Court must necessarily decide whether all the time spent by an employee under the supervision and under the control and direction of his employer, whether all the time an employee surrenders up his freedom,—this Court must decide whether that time exceeds forty hours per week, and if so, this Court must decide, I respectfully submit, that that employee is entitled to time and a half for overtime, and that is the sole question in this case.

Our position is based upon the statute; is based upon nothing else, and the statute makes that question of employer-employee relationship the crucial determinative question to be decided by this Court.

The plaintiffs, with all the testimony they have introduced, with all their argument, have failed to make out any basis upon which the statute could be construed otherwise. Their sole contention is that the existence of a custom and the existence of a history of collective bargaining prior to the enactment of the Fair Labor Standards Act will prove that Congress did not intend to include within the Act the aspect of the employer-employee relationship we are discussing.

It is not proof that these men are not at work; it is not proof that they are not subject to the control and direction of their employer. It is offered as proof that Congress intended that employers could go on employing people for hours and not paying them.

That evidence took two weeks to put on. We have listened to a long argument this morning. During all of that not the slightest bit of attention was paid to the clarities of the situation. No attention was devoted to whether these employees are subject to the control and direction of the employer. No attention was devoted to the extent to which their freedom was circumscribed. That was all forgotten in the search for a custom or a practice or a practice or history of collective bargaining which would deprive the employees for whom this act was passed of its benefits.

Now, that omission is, in my view, a tremendously significant thing and I think that one of the most significant things that has happened in this case happened on July 9th, the second day of the trial, when Mr. Harris made an objection and Mr. Burr said:—This is on page 319 and the top of 220 of the transcript.

"Mr. Burr:

I understand your objection is that anything prior to the enactment of the act is out the window.

"Mr. Harris:

Yes.

"Mr. Burr:

We figure that if that goes out the window we won't have any case here."

And why not? If these men are not at work, if these men are not employees, these men are not subject to the control and direction of their employer, they have got a case. Why does he figure that if all of this evidence respecting intrinsic factors goes out his case goes out the window?

Now, let us examine this reliance upon custom and practice and the history of collective bargaining and assuming arguendo that there is something to it and see how far it takes us. What are the facts? The facts are that actually there has never been any settled custom, there has never been any practice, that the history of iron mining in this area as the history of all industry everywhere is one of constant change. The mines started as strip mines and the ore was taken from the surface. They went underground and the men walked down. Later, when the walking distance became too far they went down on skips. They worked at one time on a contract basis. Later they worked on a task basis, and at the end, during the completion of that task; that is when they had their quota for the day, they could come out of the mine. No face to face. Later they worked on a ten-hour day. And, parenthetically, I would like to observe that if the question whether what the plaintiffs denominate travel time is of any importance at all I suggest that the testimony indicates that during the ten-hour day underground workers were paid for some part of the time away from the face. Then they went on an eight-hour day. But that eight-hour day was not on an hourly basis during which a careful check that was kept to determine whether a man spent eight hours at the face and, if so, he was paid for eight hours. Oh, no, that eight hours was a shift basis or a turn basis. The men who were employed, during the course of their employment they were required to perform a certain turn at the face and when they completed that turn they were permitted to go away from the face to start back to the hoodlum, and they were paid regardless of that shift. There never was an eight-hour day. There never was an hourly basis.

Every witness examined by counsel for the plaintiffs said, "Yes, I got through with my drilling early. Yes, we finished our loading early. Yes, we did something else. When we were through with it we walked back to the hoodlum or we sat down and smoked a cigarette, or we did something else." And counsel said, "You were paid for that, weren't you?" and the witness said yes, sir, of course, he was paid for it. That was his shift. There was not any kind of hourly basis or anything of that sort.

Now, with respect to the other two companies it is inconceivable that there can be any contention that these men, their employees, were paid on a face-to-face basis. As Your Honor pointed out during the course of this trial, how can a man who is paid on a piecework basis, who if he loads one ton and is paid for one ton, or if he loads one hundred tons and is paid for one hundred tons, be said to be working on any defined hourly basis at a particular place?

Now, that tonnage basis continues to this day at the Republic Steel; with modifications it continues to this day at the Sloss-Sheffield, and the incentive plan of the T. C. I. is merely a modification of that tonnage or piecework basis; that is all it amounts to.

There is no custom, there never has been a custom of an eight-hour face-to-face or any other face-to-face question. Moreover, the practices of the companies themselves refutes any contention that there was a custom. Some mines are highly mechanized. Other mines have not yet reached the machine age. For many years in some mines they had a nine-man crew. Then they had a seven-man crew in their mines. Then a five-man crew. There is not any custom.

Moreover, for a custom to be worth anything at all it must be acquiesced in by the parties. These people cannot say, "No, we are not going to pay you; no, sir, you are not going to be paid," and then come into Court and say, "We have a universal, unanimous custom that our employees work for nothing and consequently this Act of Congress does not give them any protection."

Unanimity means agreement by all parties. Custom, to be worth anything applied to legislative interpretation must be acquiesced in by the parties concerned. Certainly, the Government or the Congress cannot be bound by any custom. Certainly, employees who throughout the years, ever since they had the slightest strength to raise up their voices in protest, have been fighting for a shorter working day. Whether they got it or not is immaterial. Certainly, those employees cannot be said to have acquiesced in any custom.

Much time has been spent referring to the practices in the Lake Superior district and Mr. All spent a considerable portion of his agrument this morning reading from the deposition taken in Minneapolis, that the employees there were always paid on a face-to-face basis. But that testimony—and that is the plaintiffs testimony where they took the depositions; it is the plaintiffs' testimony and they vouch for it—the testimony of every witness in these depositions is that since 1935 or prior they have been annually asking for eight hours collar to collar and they never had strength to get it. They asked for eight hours collar to collar when the employees representative plan or company union was their sole means of contact with their employer and when the Steel Workers Organizing Committee began to organize that area they asked for eight hours collar to collar, and in 1937, I believe it is, they submitted to the Oliver Iron Company—the Oliver Iron Company is a subsidiary of the United States Steel Corporation, a blood brother of the Tennessee Coal, Iron & Railroad Company, one of the largest, if not the largest, operators in the Lake Superior district—they submitted to that company a proposed contract in which they said:

"The schedule of hours made effective March 16, 1937, which provides an eight-hour day and a forty-hour week with time and one-half paid for all overtime in excess of eight hours in any one day, or for all overtime in excess of forty hours in any one week, shall remain in effect throughout the life of this agreement. It is further understood and agreed herein that the eight-hour day for underground miners shall be from collor to collar with one-half hour for a dinner period."

True, they didn't get it. They never got it. But what of it? There can be no custom which can bind anybody unless it is acquieseced in. And this book of minutes indicates that at every meeting of the union at which that question was discussed the men said, "We want eight hours collar to collar."

Moreover, these depositions indicate that one man whose name I do not at the moment recall, said that when he was trying to organize a union when he was doing something to better their conditions he was dragged from his home and beaten up. And to say that that is a history of a custom on which these plaintiffs can base an argument that an Act of Congress is ineffective!

Then what do they say further? They say in addition to a custom we have got a long history of collective bargaining which should not be disturbed and its employees have entered into agreements which provide that eight hours face to face shall be the working day. But they don't say they have introduced this evidence to estop the workers; they don't say they have introduced the evidence to estop the Government, because they know the Government cannot be estopped. They know that private agreements cannot override an expression of the Congress.

Oh, no. They say that they introduced this to show the things which actuated Congress. Well, Your Honor has put his finger on the knob of this case. What showing is there of a legislative history that Congress had any of these factors called to its attention? There is not one particle of legislative history indicating that Congress considered any of these matters at these hearings, that Congress considered the question of what the Attorney General or the Comptroller General or the Secretary of Labor or anybody else had to say about immigration inspectors on Angel Island.

Parenthetically, I would like to say this, that they had no opportunity to probe into that further and I know of my own knowledge that that question was never settled because the fire burned down the immigration office on Angel Island so the matter was left hanging and the dispute was abandoned.

But regardless of that, assume that what I said is not so and that the Comptroller General and the Attorney General or anybody else said Government employees or anybody else that worked on Angel Island for pay on Angel Island thirty-nine hours that the time spent on the ferry should not be included, it does not show that Congress had any of those factors before it; it does not show that this act was passed in contemplation of what the Comptroller General or the Attorney General or anything of that sort—if Congress is presumed to be omniscient and presumed to know all of these things, then Congress must be presumed to know that in the far west in the great mining states of Arizona and Utah eight-hour collar-to-collar laws have been in effect for many years. Congress must be presumed to know, and this is record evidence introduced by the plaintifs, in the opinion of the Administrator, that in many of the mines in the west collar to collar has been the rule for a long time, that operations collar to collar have been the rule for a long time and Congress must have known that employees are not paid for nothing, that employees are not paid for hours when they don't work. Congress must have known that if the Annaconda Copper Company pays for time between the collar and the face it must do so because the men are at work.

Now, with respect to this contention that there is a history of collective bargaining and that these men have bound themselves and cannot unbind themselves, I would like to call Your Honor's attention to the Court case of *Holden vs. Hardy* in which there was before the Supreme Court the constitutional validity of a maximum hours law for metal workers in the state of Utah.

Mr. Burr:
What case are you reading from? I didn't get your citation.

Mr. Brodie:
That is reported at 169 U. S. 366 and what I am about to read appears on page 397.

Mr. Burr:
And the name of the case, please, sir?

Mr. Brodie:
Holden vs. Hardy.

The Court:
Page what, did you say?

Mr. Brodie:
The quotation I am about to read is at 397, Your Honor, The case itself starts at 366. The Court there said:

"The legislature has also recognized the fact, which the experience of legislatures in many states has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self interest is often an unsafe guide and the legislature may promptly interpose its authority."

And that is precisely what the Congress here has done. The Congress has supplemented by the Fair Labor Standards Act the weak and puny efforts of these people to obtain a square deal, to obtain pay for all the time they are at work, to obtain pay for every hour they surrender their freedom to the control and direction of their employer.

Certainly the fact that they continue to work on their jobs and accept pay for a fewer hours than they actually work, rather than being a factor which negates the application of the statute it is a further reason for applying the statute and give them what they are entitled to, what they by their own efforts because of their weakness cannot get.

Much time has been taken up to show that by administrative constructions administrative officers of the Government have been estopped from doing one thing or another. Those cases represent merely an effort by the plaintiffs to lift themselves up by their bootstraps. They apply conjecture upon surmise and then when they erect this magnificent theory-made edifice they hang the argument in the sky and say the Government is estopped and custom and practice prevent this Court from giving effect to the will of Congress. But every one of those cases in which they have referred to an administrative ruling existing for a long time as being a consideration which should influence the Court in applying an administrative ruling between the parties to the suit—not one case says that because the Attorney General considers the hours of work of immigration inspectors on Angel Island to be one thing that the United States District Court for the Northern District of Alabama is bound by that in interpreting what the Fair Labor Standards Act confers upon employees who come before it. Not one of those cases says that the administrative intepretation of an entirely unrelated department of the Government can bind this Court in determining another issue.

Moreover, let us see what the latest pronouncement of the Supreme Court on this question of a departmental practice or a departmental ruling or a departmental procedure, what effect that has upon the Courts. In *United States vs. City and County of San Francisco*, decided in 1940, and reported at 310 U. S. at page 17; it appeared that the Government filed a complaint for an injunction to restrain the City and County of San Francisco from violating a restriction attached to a grant of lands by the United States to that municipal corporation. The restriction prohibited the grantee from disposing of power which was generated on those lands to a private utility. The city, however, had the right to dispose of the power direct to consumers. It seems that the city for many years had been disposing of power to a private utility and the Government filed suit for an injunction. A substantial part of the city's defense and its argument rested upon a claim that the Department of the Interior between 1913 and 1937 had construed the grant not to prohibit that which the Government sought to restrain. In other words, the Department of the Interior had said it is perfectly all right to sell this electricity to a private utility and in addition it was suggested in that case that the administrative interpretations of the Department of the Interior created an estoppel against the Government. The opinion was written by a distinguished son of this state, Mr. Justice Black, and with the Court's permission I will quote from it. I am quoting at page 31:

"A substantial part of the City's argument rests upon its claim that the Department of the Interior in the period from 1913 to 1937 construed Section 6 to forbid no more than sale of power for resale." That is Section 6 of the grant. "We are asked to accept these administrative interpretations. And in addition the City suggests that conduct of the department, of which these interpretations were a part, is sufficient to create an estoppel against the Government. Whether the department at any time ever did more than merely to tolerate sale and distribution of Hetch-Hetchy power by the company as a temporary expedient is doubtful. Certain it is, however, that in 1935 the Secretary of the Interior declared the City's disposition of the power through the company to be a violation of Section 6, demanded discontinuance of this violation without success and thereafter instigated this proceeding. We cannot accept the contention," says Mr. Justice Black, "that administrative rulings—such as those here relied on—can thwart the plain purpose of a valid law."

So with all of those factors in the case, administrative rulings, estoppel or anything else, the question is, what are the facts, what do these men do, what is their relationship, what control and direction and supervision is exercised, what limitations are there upon their freedom? And I don't blame counsel for saying that if that is the only evidence that is going into this case he might as well give up because there is not anything else in the case.

There are not any facts to refute the crucial and controlling factor that when these men report at the top of the mine, when they report at the tally house, when they are subject to the direction and control of their employer from that time until they come out and once more free agents, that they are at work. There is not one scintilla of evidence in this case to refute that. Every essential fact in this case bears that out. And if any further evidence of that were needed it would be the testimony of the skip tender who testified that he was paid for nine hours from the time he took the skip out and first started to go down until he became a free agent at the end of the day, while during the same period of time the underground employees were not paid for nine hours.

The companies, however, answer this by saying he was employed as a skip tender and this man is employed as a mucker and he works and he mucks for only eight hours. But the Fair Labor Standards Act does not say that no employer or no iron mining company shall not employ a mucker for mucking or a driller for drilling or a service man at maintenance work for more than forty hours a week. It says no employer shall employ any of his employees for a workweek in excess of forty hours without paying them time and a half for hours in excess. That is all there is to this case.

When we search for a guide in what the Courts have said for a determination of this question we come to the same result that we reach by a process of logic and that is that these men are at work, they are employed and they must be paid. I refer Your Honor to the Hours of Service Act and also to the cases dealing with travel time.

Now, there has been some subtle or metaphysical distinction between travel time and working time in this case. Whether this time be called travel time or anything else, these men are at work.

Now, specifically the cases involving that which, for want of a better term, has been called travel time, I respectfully call the Court's attention to the cases already decided under this act, not under another act, under the Fair Labor Standards Act. One of them is the case of *Williams vs. Atlantic Coast Line Railroad*, which was decided on February 17, 1940, by Judge Meekins, I think it is, in the Western District of North Carolina.

That case involved the application of the act to maintenance of way employees of a railroad who reported for work at the tool house or section headquarters and they were then transported by the railroad, their employer, to a particular point along the right of way at which repairs were to be performed by them, the railroad claiming that it was not required to pay for that time, that is, the time they spent riding this little handcar or whatever it was, and for that reason made a deduction for such travel time from the wages actually paid to the workers. In other words, they said, "We are going to charge you fare for this." And Judge Meekins found, and I quote:

"That the 'travel time paid for' for which the defendant claimed a reasonable cost of 1.5 cents per working hour for each of the plaintiffs, consisted of time spent in traveling by rail motorcar from the tool house, or section headquarters where the plaintiffs reported for work, and the place of work on the tracks and in the return to the tool house, and not of the time spent in traveling between plaintiffs' residences and the section headquarters. Plaintiffs were entitled to be paid for such time since it was time spent working for defendant and the claim of defendant with regard to this item is denied." That is, the claim for deduction of this cost.

In *Hackworth vs. Caddo River Lumber Company*, decided June 5, 1941—and I don't know whether it has been reported—I have no citation on it—the same principle was applied by District Judge Miller of the Western District of Arkansas. There the plaintiffs were engaged in activities connected with the production and transportation of timber and lumber products and they sued for unpaid wages under the act.

The Court:

When was that case decided?

Mr. Brodie:

That was decided June 5, 1941. Judge Miller indicated that they were not to be paid for time spent in traveling to and from their homes, but he then pointed out, and I quote:

"Some of the plaintiffs in the statement of their claims made no claim for the time required in going from their homes to the place of work and returning therefrom, but in determining this question I have considered the work time of the operators of the train or the track men, or section hands, begins at the time of their departure from the railroad yard or section house for the scene of their labors and the work time continued all during the time they were on the road and until they returned to the railroad yard or section house, excluding, however, the usual period for lunch."

Now, I respectfully urge that if the time spent by railroad workers in traveling in the open air on motor propelled cars in relative comfort from the point at which they are required to report to the point at which—what plaintiffs call their productive labor—commences, must be considered hours of work for which they are entitled to be paid, it seems to me doubly clear that these underground workers who go down in cramped conveyances, who are subject to all sorts of hazards and take with them the one essential tool of their occupation, are entitled to pay for that time.

Another case that I would like to call Your Honor's attention to is *Fleming vs. North Georgia Manufacturing Company*, which is reported at 33 Fed. Sup. 1005, and what I am about to quote—

The Court:
What Federal?

Mr. Brodie:
33, 1005, and what I am about to quote appears at pages 1006 and 1007. There the claim was made that employees were not at work although they were admittedly on the employer's premises engaged in various occupations connected with their actual manufacturing activities. In other words, it is a waiting time case and Judge Underwood in a contempt proceeding held:

"The pretense and artifice of defendants, both with respect to recovering back from their employees, under the guise of free will offerings the amounts of restitution paid under the decree of this Court, and also with respect to their claims that employees, though remaining in the factory long hours, were really not employed a great part of the time and were free to utilize such time as they saw fit, are puerile and too transparent to deceive anyone. The benefits and purposes of the Fair Labor Standards Act cannot be set aside by any such devices and subterfuges."

Similarly, in another case pending under the Fair Labor Standards Act, decided by the Supreme Court of New York County on June 4, 1941, *Rech vs. Zarnocay*—and I do not have the citation for that—the plaintiff sued under Section 16(b) for alleged wages which he claimed were due him as a general assistant, secretary and press agent for a band leader whose orchestra made recordings and radio broadcasts in various parts of the country. Before the recordings and broadcasts plaintiff was engaged in assisting in the preparation of the studio, assembling the instruments and similar activities. During the performance he did no actual work but he had to remain there for duty. The Court held, and I quote:

"The fact that plaintiff was not actually working each minute is immaterial since he was required to be present ready for work during all the time involved.

I would like to call Your Honor's attention to the cases which have arisen under the Hours of Service Act, which will be contained in our brief and which I have not time to call to the Court's attention now, and there is one case which is a departure from the normal and that is a case decided by a Court in California—I am not sure whether it was the Supreme Court or a lower Court in California—in which was construed the eight-hour law in California which required the workers to be underground eight hours. Now, that case, I submit, was wrongly decided. It is based upon *United States vs. Post,* a United States Supreme Court case reported at 148 U. S. 124, and there the Court held that a letter carrier who was on duty was entitled to compensation for all hours while he was on duty despite the fact that he might not have been letter carrying a certain portion of his time. The California case is *Ex Parte Martin and Lee.* I will refer to it in our brief.

Thank you very much.

The Court:
We will be back at 1:15. Court is adjourned until 1:15.

(Thereupon, at 12:15 P. M., August 1, 1941, Court was in recess until 1:15 P. M. of the same day.)

After Recess, 1:15 P. M.

The Court:
All right, Mr. Quinn.

Mr. Quinn:
May it please the Court, Mr. Brodie has very ably and clearly covered this policy and purpose of the act with reference to the particular facts in this case.

Much has been said about whether or not Congress retained or had no intention of abrogating customs and practices. It is admitted, I believe, that Congress, as a matter of fact, had no legislative or historical discussion at the time or prior to the time the act was passed, but it would be indeed a violent presumption to assume that even though Congress had in mind of not doing away with customs and practices, Congress chose to retain the evils and injustices in customs and practices. Someone has said the evils that men do live after them; the good is often interred with their bones. Congress, may it please the Court, chose to bury the evils in customs and practices as they let their minds dwell upon and had in their minds customs and practices and evils and injustices in the hazards and slip-shod methods of industry in this nation engaged in the interstate commerce or in the production of goods for interstate commerce.

If Congress, may it please the Court, had any intent and purpose, it was to do away with and to put an end to dangerous an unjust evils and practices whether they were built up over a period of recent or over a period of long years. Congress deliberately expressed fully and clearly its policy in Section 2 of the Act, and some of these evils and injustices and weaknesses and detriments to health are referred to there. Congress defined "employer" and defined "employee", and by the verb "employ" defined or added to the definition of "employ" when one is employed.

Congress didn't choose, and it would have been, in my judgment, highly impracticable to have undertaken to do so, to define or stipulate what the workweek should be. With hundreds of thousands of industries and businesses in this country, some of them, Your Honor, prior to the passage of the Act, perhaps paying traveling time, and some paying waiting time to their employees even before this Act was ever dreamed of, many paying no such time, many working in hazardous places over long periods of hours, in danger, in surroundings and environments that were not conducive to their health and physical well-being, often sacrificing in blood and tears and sweat, to use a very popular expression, in their carrying out and in their performance of their hazardous tasks, it would have been impracticable for the Congress to have prescribed a general workweek.

We assume Congress had in mind that, if you revert to customs and practices, Congress had no intention, we will say, of doing away with the good that obtains in ancient customs and habits or practices, or even modern customs and habits and practices, and Congress did retain some of them in this very legislation.

And, by the way, we have a humanitarian attitude in its social outlook, and, therefore, this Court must liberally construe it to meet the manifest intention and purpose of the Congress as all such legislation must be.

Now, Mr. All takes me to task because of an observation I made the other day that Congress did not define the workweek but left that to the Administrator of the act. Can it be said that the plaintiffs in this case contend that the Administrator and administrative machinery provided in this act have no authority to issue and promulgate an interpretive opinion? I do not think they would dare go that far although they have gone very far afield in this particular case. I made the statement then, and I assumed they wouldn't deny it, that the Administrator, whose primary duties and functions are to enforce the Act, has the right to issue and promulgate and announce an interpretative opinion. What weight, then, will Your Honor give to this opinion? No less an authority,—Your Honor is familiar with that, and I am sure the lawyers on the other side are also familiar with it,—no less an authority than the Supreme Court of the United States has said often and very recently in the Trucking Associations Case with which we are all familiar, that the Courts, including the Supreme Court of the United States gives such opinions great weight.

I will venture this, and it cannot be argued away or even disputed successfully should the attempt be made,—when the Administrator issues such interpretative opinion that is the administrative law, Your Honor, for the purpose of carrying out the purposes and intent of Congress until Your Honor or some Court of competent jurisdiction has nullified, abrogated or set aside the opinion of the Administrator.

No, I wasn't so foolish as to say Your Honor is bound by that administrative opinion,—no. Your Honor can, if he thinks the evidence justifies it, forget the Administrator's opinion, except Your Honor will give it great weight, as the highest authority in the land says it must be accorded, but Your Honor will render that issue on the facts as presented, and I submit, on the testimony of the plaintiffs alone, the Administrator's opinion is justifiable. Forget, may it please the Court, any testimony that the defendants have presented in this Court, and the Administrator's opinion is wholly and amply justified on the testimony alone of two witnesses,—Mr. Ball and Mr. Carter. If there were no other testimony before Your Honor, in the light of a commonsense interpretation of this Act, the Administrator's opinion would stand.

Now, let's see. What did Congress provide? Let's use the words. Look at the verb "employ",—when an employer employs a man. That includes "to suffer or to permit to work". I make this assertion, and it is founded on reason and, I think, authority, that suffer or permit to work,—if that is done by an employer with his employees, irrespective of any written or other contract he may have with them, he is bound to pay them for the time permitted or suffered to be worked by them, and they cannot contract contrary to that simple provision however they may try to exercise themselves in an effort to do so. I repeat for the sake of emphasis, that no matter what contract the employer has with his employees with respect to an eight hour day, if that employer permits or suffers his employees to work overtime, he is bound to pay them, and if not, he is subject to the penalties provided in the act, and he is powerless to contract against it and talk about a waiver or forfeiture. If these men, may it please the Court, since October 24th of 1938, have performed services within the meaning and contemplation of this act, and that is well established in this country, what service consists of, then these plaintiffs must pay for it. They are not coming into this Court, this great Court, may it please the Court, as beggars; they are not coming into this Court of justice and asking for something to which they are not entitled. They have been paid, may it please the Court, since October 24, 1938, up to May 1st of this year for eight hours work and for a five day week. If they performed ten hours service in the sense that the relation of employee and employer obtains, when they were on the premises, when their work begins,—no, they are not beggars. They are standing on their feet, on their just rights, and having been forced in as defendants in this Court, they put in their simple counter claims and say yes, we have been asking for it all along.

They say they didn't ask for travel time but three times. "Thrice they offered him a crown and thrice he refused." They didn't offer Caesar the crown the fourth time because, having refused it thrice, it was an absolute certainty he would not receive it the fourth time. Do they expect these boys to come bending and crouching before them year in and year out asking for so-called traveling time? No requirements was made at all. They weren't required to do it once, but three times is enough if that were all. And, if they have performed the services, may it please the Court, they are entitled to their overtime, rightfully so, as citizens and workers.

Something has been said about whether they are organized or unorganized. Other tribunals, may it please the Court, fortunately have been set up under other legislation for the purpose of organizing the working men. That has become the fixed policy of this country in recent years fortunately. An honest worker cannot now be fired on a flimsy excuse, wholly in the mind of the employer perhaps. That is a great day. If there were times in this country when the workers did not have that protection and had to submit, those times have gone. Today the worker is protected in his rights. That is the eternal policy of this country so long as this country shall live, and I hope and believe that is many, many, many years to come. No, this is not a tribunal to question an organization or disorganization. There are three great groups in this Court, Your Honor, standing upon their rights as counter claimants, and they have been brought into this Court by the processes of this Court and not voluntarily upon their part. We have the great C. I. O. group, the great American Federation of Labor group and the great and very significant unorganized group who have, as individuals, workers and employees, the same rights, and whose rights are being determined here just the same as the others. The question whether they are organized—come in here organized by one great, powerful union or the other is not the question here,—not at all. They are in Court as workers and employees, and they are insisting upon their rights under the opinion of the Administrator who says under the rules they work from portal to portal. Had they done no work at all, the Administrator's ruling was correct. He held if the employees came upon the premises and checked in, or came upon the premises at a time and place just immediately before they started down into the mine, their work period began, and whether they did any work or not, either in the mines on the way to their respective places where the production was done or whether they did or performed actual service on the surface, they are at work, but the evidence here strengthens the facts found by the Administrator, and it is overwhelmingly shown by the evidence in this case that they did actually perform physical work. Riding time, traveling time,—I prefer to call that by its common sense name, what it is. It is work time. In that crouched, crowded position, uncomfortable on their way subject immediately to the hazards; before they start down, under the undisputed facts, subject to the orders of their employers and their agents in charge of the entrances and loading and unloading stations,—why, if Your Honor please, it is work time and nothing but work time.

Why, Mr. All says, it is absurd, the argument Colonel Harris referred to in questioning a witness the other day or introducing in evidence the records of the rules and regulations that are shown in the ore miners magazine, the operator's magazine. He says it is absurd. Of course, we have proper rules and regulations for conduct. Yes, and they should be subjected to censure if they didn't do all they could to contribute to the physical well being and the spiritual well being of their workers during those arduous hours of work. That is not the significant thing, that they have the rules. Where and when do these rules take effect upon the workers or employees? Where and when do they become employees? They become subject to those rules and regulations and they become employees when they come upon the premises at the time they begin the day's work. There is no rule or regulation or otherwise trying to regulate the conduct of the employees on the way from their homes to the checking-in place. The rules and regulations apply to the employees after they begin their day's work. That is the purpose of the rules and regulations. It confirms the fact they are employees of the plaintiff at the time the rules and regulations and orders, both written and unwritten, are taking effect, and are exercised and actually put into performance by the management and by the plaintiffs and their agents in this case.

Why, the undisputed evidence shows that they have the right, and even do exercise this right to an employee before he starts down on the man trip,—order him to do certain other things, give him instructions. The undisputed, overwhelming evidence shows that. Work? Yes. And in addition to that they get their carbide light as the first thing. They come there first, after dressing and washing at the bath house, with their work clothes on, get their carbide, check in, subject there and then to the orders, rules and regulations, verbal or written, and to perform their duties in accordance with such rules and regulations and orders; pick up their tools, come and get extra help, and carry tools on their way to the so-called working places. That is just a part of the working place. The working place, may it please the Court, is from the entrance, when they hang up their check and get their carbide and go on performing their duties subject to the orders, rules and regulations of the plaintiffs. The working place is from then on,—just a difference in degree,—and that working place continues until they check out in the afternoon. Who denies that under this evidence? Who can deny it? Who does deny it?

Employ means to suffer or permit to work. That wasn't thrown in there by accident by Congress. If you do that thing, no matter what your requirements about an eight hour day are, no matter when you contract or how you contract, if you suffer and permit, and they held, may it please the Court, under the "Hours of Service Act of 1907", where railroad and telegraph employees were forbidden by their employees to work longer than sixteen hours, to suffer and permit means that is to work if they perform unless you prohibit that performance. Talk about a contract! Talk about forfeiture! Talk about waiver! There were penalties to that act, and it has been enforced. But they also held that if a railroad or telegraph company permitted or suffered its employees to work they were subject to the penalties, and they also held directly that to suffer or permit; that is suffering or permitting unless the company prohibits them from so working. Talk about precedent and what Congress had in mind. Just use a little common sense,—that is all. Yes, and I do say it, that in the absence of a judicial construction to the contrary, Interpretative Bulletin 13 is the "Bible" for the industries and business concerns in this country doing business in interstate commerce and manufacturing goods and shipping goods in interstate commerce. Do they deny it? Who has authority, may it please the Court, to set aside, modify or do away with the Administrator's opinion? Only one tribunal in all this great country, and that is a Court of competent jurisdiction. It is the law until declared otherwise by a Court of competent jurisdiction. I think that the Court judicially knows that many industries, without long and expensive litigation, are trying to comply and are complying with the principles laid down in Interpretative Bulletin 13 as to so-called travel or waiting time. Those principles are not difficult. They are general. Some industries have no traveling or waiting time in this country that are engaged in commerce, some have a little, others have more.

You can't tell me, may it please the Court, whatever Congress had in mind it didn't have in mind this proposition: That on and after the effective date of this act, if an employer suffers or permits an employee to do or to perform work within the meaning and interpretation of that act he was not to be paid for it and that he could not waive it.

Let's see, Your Honor. I think it is pertinent, if for no other reason—there are a number of Alabama cases. I have only one. It is upon what they have said with reference to work time. It is the case of Benoit Coal Mining Company versus Moore, 109 Southern 878. The Court, among other things, said—the evidence, Your Honor,—I think it is pertinent too—

The Court:

Is that a Workmen's Compensation Case?

Mr. Quinn:

Yes, sir, how they have been paying compensation. It throws light on how the Courts in Alabama, in many instances, have paid—

The Court:

I don't think that law is applicable here.

Mr. Quinn:

I thought perhaps it was, Your Honor, on the question of when they are at work.

I will read this,—just one little excerpt. It is from the case of the City of Milwaukee versus Althoff, 156 Wisconsin 68, 145 Northwestern 238. Our Court presented that with approval in this case of Benoit Coal Mining Company versus Moore. We take the following pertinent excerpt therefrom:

"In the instant case, when the servant reported to his foreman and received his instructions for the day and proceeded to carry out these instructions by starting for the place where he was to work, we think the relation of master and servant commenced, and that in walking to the place of work the servant was performing a service growing out of and incidental to his employment."

Mr. Brodie cited you the Hours of Service Act and many authorities. I just want to read what the Court said, and I have read only the notes under that act.

Section 62, USCA, Title 45: "Railroads: Require or Permit: 'Permit' as used in this section does not imply knowledge and consent, but in view of the legislative history—" No, this had a legislative history,—"of the act is synonymous with suffer"—Permit is synonymous with suffer.

Mr. All:
Will you give me a citation?

Mr. Quinn:
Section 62, under that the notes.

Mr. All:
What is the book?

The Court:
Title 45.

Mr. Quinn:
Title 45, Railroads, page 556.

The Court further says—

The Court:
556?

Mr. Quinn:
Yes, sir, page 556.

The Court further says, "It is urged that the words 'require or permit' imply consent or knowledge on the part of the employer, and this is perhaps their common significance;"—I will read that again. "It is urged that the words 'require or permit' imply consent or knowledge on the part of the employer, and this is perhaps their common significance; but the word 'permit' also means a failure to prohibit by one who has the power and authority to do so."

So, may it please the Court, for the sake of emphasis, and I repeat, and then I am through: Where, in carrying out these simple words, the employer does not prohibit his employees from working, but suffers or permits them to do so, regardless of the contract he may have with them, he must pay them.

I think Judge Smith has a few words.

Mr. Smith:

May it please the Court, I will be as brief as I can.

Mr. All, this morning, kind of set a text which I am going to follow. He said that Congress looked out on a scene and what did it see? Then, he said, the Administrator looked out and what did he see? Well, I am going to amend that by including the Court that is trying this case now and see what he sees.

They have gone into the purpose of Congress, what it knew and didn't know and the history of it; they have gone into the report of the Commissioner in holding these hearings and what he say and we have been here, I think this is the eighteenth day, letting Your Honor see what you could see.

Now, there have been two lines of thought in this case as there are in mighty near all lawsuits, and that is the viewpoint of the officers and employees of the companies in running these ore mines. We have had the testimony of these splendid gentlemen here who have devoted long heard to the mining business and who have gotten up to top places at this time where they can sit in the swivel chairs and have reports made to them, and on the other hand we have the ordinary run of American citizens and Alabamians. I believe in this case of all the witnesses testifying on behalf of the defendants, there wasn't but one of them born outside of Alabama,—some born in Blount County where you came from, some in Montgomery County, and some in Perry County where I came from, and some from Calera, all around us, and one man showed up from Georgia who has been here many years.

So, we have those people to testify to what they actually do, the concrete facts right fresh under the now existing conditions, and who is better able to know about what goes on down in those mines than the man who actually reports there at six o'clock in the morning and takes every single step in the operation of that mine until he gets back?

Now, Mr. All made a great deal of fun about hanging up a check, that it didn't amount to anything. Why, of course, it does not amount to anything; it is just a starting point. It is like an engineer, when he his surveying a piece of property, if the Court please. He has to get a point of beginning. And the hanging up of that check, according to our contention, is the point of beginning of going down in that mine and back to that point at the end of the day,—what has been referred to as the collar of the mine.

Let's see what this is. Is it work or play? If it isn't work it must be play, and if it is play there must be some kind of pleasure about it, there must be some kind of thrill about it that we don't know about. Now, let's trace it down there by actual people that go down there day in and day out, but before we do that let me call Your Honor's attention to the progress that has been made in ore mining in the district here.

We have gone back to where ore mining first began, in its primitive stage, where you started down and dug the ore out in the open. Different conditions existed there then. We had one witness, Mr. Praytor, who testified he had been there seventeen years, and in that seventeen years the place where he started in and the place where he is now working had changed by one mile,—one mile going and one mile coming. Now, that is just one physical progress in the operation of that mine; that is just one thing a man has to do, two miles longer than he used to have to do seventeen years ago. There has been testimony by many witnesses that the mine is progressing all the time.

Now, let's see, just briefly, from these witnesses, if the Court please, that actually do this walking, that actually do this dodging that has been testified to here on this man trip,—let's see whether it is work or play.

In the first place, when you go there you have to go over and bathe and change your clothes. That is very refreshing, taking a bath in the morning, but they don't charge for that. They used to charge fifty cents a month. They don't do that now. We get that free. All right, you get dressed--

The Court:

Some of them charge for that bath house in my recollection.

Mr. Smith:

Yes, sir, some of them do. I think the Sloss still charges. Mr. All?

Mr. All:

Charges for what?

Mr: Smith:

The bath house?

Mr. All:

Oh, I don't know.

Mr. Smith:

It is in the testimony. Your Honor heard the testimony. It is very nice if they are given that free, but there are a lot of things they were not given free. The Tennessee Company said they gave it free; they had made an addition to their bath house. Let's pass the bath house.

Let's start when a man goes there and hangs up his check. Let's take it from the many, many witnesses here who have traced that thing step by step from the time they hang up their check. Who is there? The mine foreman, the assistant mine foreman, the heads of the crews are there, and they outline the day's work, and as to who is present and who is absent, and they are checked in on that skip. They are told when to get in and under what conditions to get in, and they go down on that skip, and Your Honor has heard time and time again—you have seen the spoon fashion, you have seen it illustrated here in Court. Is that a pleasure, riding in a mine car? Walking a mile or so to your place of business? Is that the prelude to what you would call pleasure? I don't think so. But let's get on.

They get down to man unloading station; they are unloaded there, may it please the Court, under the supervision of a mine inspector or assistant mine inspector. Then they start to their places of work. There is testimony here as to the various kinds of tools they take. They take dynamite, fill up a crocus sack with dynamite. Now, anybody can do that that wants to. If that is not a hazard, a man monkeying with dynamite in a crocus sack, I don't know what to say about it. Is that pleasure? If it is, it is mighty foolish pleasure.

Now, we get down to the place where they are going to work. Some have fist muckers and some have mechanical loaders, and I believe, from listening to this thing, I would rather work on a mechanical loader. That would be my choice. They say when you get there—when you get there and get that roof fixed and everything, and when we blow the whistle, we are going to start to work. We say when that work starts; we say it by the whistle. Is that what actually happens? Are they masters of the situation to such an extent they can blow a whistle and start the work whether the work has started or not actually? That is the issue Your Honor has got to try. It has got to be tried right down those slopes.

Congress knows about it. We have men from here supposed to know about mining conditions. There are men from the iron ore mining district of Minnesota that are supposed to know about it. They have a big corps of investigators and economists to advise them. Don't you know they know about it? Congress knew about the customs that have been described on that stand and that dates back to the time they opened these ore mines on the mountain. It is time—high time that somebody somewhere was ready to change a custom that started back in the gay Nineties in the horse and buggy days and get that ore out. Who would have thought of travel time back there? Why, they would have thought you were crazy. Why, up in Minnesota, where you get in the elevators like you do in the First National Bank Building and come down to your working place, why, I don't think much of travel time in that kind of a mine. They don't know what it is. But we don't have that. We have some cars on which you have to prop your feet and take a kick and hold on; you have to duck your head, and it is operated by a skip tender or a chainer. Some fellow taps on the wire that he is ready to go, and away you go. Suppose that fellow gives the wrong tap, if Your Honor please; is that running any risk? Is that pleasure? I think that is something that goes along with very serious business.

Now, my contention, if Your Honor please, is that the working place in one of these mines or all of them we have described here constitutes the mine as a whole, and you can't let an officer of the company go down there arbitrarily and carry a man two or three miles underground like you have heard here over these days and let him say arbitrarily that is the working place,—that is the working place. We say it is; we blow the whistle when you start and we blow it when you stop. How you get there and how you get back is your own business although you are regulated, may it please the Court, by all kinds of rule books as to what you should do on the premises from the time you put your foot on the premises, as to what you should do on the skip, as to what you do at the man loading station. If you don't do it, what is the penalty? You get fired,—just like the testimony of Mr. Ball they read in these minutes at one of these meetings about his dissatisfaction.

Mr. Burr starts out by saying there was a great controversy about this matter. He then proves there wasn't any controversy; that these men came in and made two little complaints, but there wasn't any controversy.

This very thing, may it please the Court, started back in 1933, according to the testimony, and Mr. Ball, the superintendent, says three times he had it up, and other witnesses here have had it up from time to time and they didn't get anywhere. They couldn't get it.

Suppose Your Honor and myself were making a contract about something and I had a provision I wanted in that contract and you told me three times, "I will not put that provision in there," and I came back again and said, "How about this piece of property; put that provision in there?" "No, I will not put it in there." I go back the third time and make the same request. "No, I will not put it in there." A man would be a monkey to keep on. The law does not require a man to do a useless thing, if Your Honor please. That is one of the elementary settled rules of law. You take here in this Court Room and a lawyer tries to get in testimony; he will do it once; he will do it twice; he will do it three times. Finally Your Honor will say, "Hold on. You have been over that before." You have done that this week. "Hold on." You are the boss.

In making these contracts, Your Honor knows and everybody that has good sense knows that the way that bargaining went on in making these contracts the company was the dominant influence.

Your Honor remembers the testimony as to what the Sloss Company said. "Why, we are just a little company. We can't do it unless the big companies do it." There you go. It is not in there. Are they estopped for that reason? By failing to do a useless thing? I don't think so. I don't think the law says so.

The law has been read to Your Honor. I am just taking up these facts that seem practical to me, and I have just confined my consideration to right down the manways of these mines and back.

You have heard the tools they have there, the hangers and wedges and oil and dynamite and other things. Why, I got to dreaming at night about the materials that go down in those mines. Now, the testimony shows, if the Court please, by the men who actually carried them, that they were taken down there, and it was the custom to take them down there, and they took them on that man trip—man skip, and they took them from the man unloading station to the place of work, and some of them brought them back, and some of them took them to the blacksmith shop after they got away from the collar. They left the collar even to go there and carry them.

I say the testimony shows, if the Court please, that these men have been worked there arbitrarily eight hours at the face, and the testimony shows they have been in there from nine and a half to ten hours,—an hour and a half and two hours over time, as the case may be, according to the tradition and the custom.

And I say to the Court, if Your Honor please, you have sat here and reviewed the testimony that was taken before Mr. Stein,—both sides here read and examined those witnesses from the testimony taken before Mr. Stein. He said that these things were reasonable. The Administrator promulgated this order after reviewing Mr. Stein's report and after Stein reviewed the evidence that he took in different places.

Now, if the Court please, there are some things that becloud this case. The coal mine situation is out of it. The pit ore mines, digging in pit ore mines up in Minnesota, is out of the case. The ore mines up there where they have elevators that go down, take them up and down, takes them two or three minutes, is in evidence, but I tell Your Honor that it is not a similar situation to this down here. They mine up there in an entirely different method from what we do here in Alabama. Your Honor let that testimony in. You have let in testimony here as to every ore mine they thought they could get in, and I think it is all right. I think you have got an ore mine investigation and got a good one. I am not complaining about that, but I am calling Your Honor's attention to the fact that the ore mines out here on Red Mountain where we get our ore are not similar to those in Minnesota. You have got to consider this case as to the conditions existing in these mines between October 24, 1938, and May 1, 1941. I don't know what happened in all that time. All of a sudden, on May 1, 1941, they said, "Yes, we are going to comply with that order," and they got everything ready, speeded up, changed the number of cars,—just got ready all of a sudden. I don't know what caused the delay, but there was a change on May 1, 1941. They must have thought it was not so bad after all after waiting from October 24, 1938, to May 1, 1941. I don't know what all the delay was about, but they put it in, and every one of them, the testimony coming in a little bit at the time where they have put improvements in there and speeded up systems and improved the conditions. That goes to show, may it please the Court, that it was good legislation.

Now, if Your Honor please, I hate to close with this sentiment. This is about sanitary conditions in the mines.

The Court:

About what?

Mr. Smith:

About sanitary conditions in the mines. Your Honor has heard the testimony. I don't know whether that would come under work or pleasure. I don't think it would be pleasure smelling the odors that have been described in those mines,—several hundred men with no sanitary connections down there at all. But that is just one of the things that go on in seeing whether it is in keeping with a man's health and all that.

Now, Your Honor, in conclusion, I have tried to confine myself to the actual facts. My experience has been in arguing a case, and seeing cases argued, that if you have some good facts it is a lot better to argue them than a lot of indefinite and uncertain law. These other gentlemen have covered the law and I have tried to cover the thing I started out to, the actual trip down in the mine and back, right from Mr. All's little brass checks, from the beginning until the shift comes back and puts Mr. All's little check up there. That completes the collar to collar.

Now, the things done in there, was that work or did they have to wait until they got down in there and got a pick and shovel and drilled a hole and set off dynamite? I don't think the Court can give that kind of construction to that act in view of the history and testimony of the ore mining business and to the progress this country is making in improving its practices and the conditions of the working people.

I thank you.

The Court:

We will take a five minute recess.

(Thereupon a recess was had from 2:15 P. M. to 2:20 P. M., at which time proceedings were resumed as follows:)

Mr. Harris:

If the Court pleases, it has been my habit the last few months when I had a spare moment to turn in my office and look out upon Red Mountain. In years gone by it was my habit on a Sunday afternoon to ride out in Shades Valley. I had always thought that the mountain and the valley were very beautiful.

After hearing the evidence in this case neither the mountain nor the valley will ever again appear as attractive to me as it did before this case began. I see over a long period of years men working under that mountain. I see them in the beginning picking at the surface of the mountain and then with the progress of time and the work of these men underground they get to a greater and greater depth, and to me there is something as if the mountain or the earth resented the presence of those creatures that were withdrawing the treasure that lay buried there.

I read The Ore Miner where they speak of unseen dangers. I have listened to the testimony where one man said the place was working as if it were something alive, ready to pounce on these men that are working in the bowels of the earth and I see these worked out places on these maps that are introduced, and when Your Honor comes to look at them they will give you a graphic picture of the presence of these men burrowing in the earth over a period that covers mine and your lifetime, and you will see those worked out places and you will see the manways that these men have to travel where danger always lurks, where the roof at some place or other is always ready to fall, where danger accompanies these men from the moment they start underground until the very moment they step away from the tally house or get away from the very mouth of the mine, and I see men not only with nature fighting them but I see these men working over a period of years for a length of time which to us in this progressive age is a terrible thing. I see a little boy fifteen or sixteen years of age under that mountain twelve hours a day. I see men under that mountain ten hours a day and nine hours a day and eight hours a day, and I see that time counted where they do not take into account any of the toil or any of the labor that those men have put forth increasingly as the years went by and their burrowings got deeper into the earth.

We do not have in this case any problem of what the Wage and Hour Administrator has decided. The Wage and Hour Administrator's opinion is no more binding on this Court than the words of any man on the street. If his words have wisdom Your Honor can listen to them. The administrative action may have persuasive effect but it has no controlling effect with this Court and this Court is not sitting as a Court of Review.

I am not here to defend the investigation that the Wage and Hour Administrator may have conducted, whether he conducted it in Lake Superior or Utah or Colorado or Alabama. I am not here to inquire into the extent of the Wage and Hour Administrator's investigation. Neither are we gathered together in this Courtroom for the purpose of considering a review of Mr. Stein's report. We are gathered here in accordance with the ancient and immemorial custom and habit of the American people and the Anglo-Saxons from whom we got our heritage of law and our blood.

We are here to pass on a question of law and a question of fact between actual living people in an actual world of fact and not of fancy, and the question that we have and the question that is before Your Honor has been stated with clarity in the pretrial orders, and that question I could not improve upon.

And this was not an agreement. It was referred to this morning by the first speaker for the plaintiffs as an agreement. It is more than an agreement. The parties got together and had a day or day and a half of discussion, but the Court entered into that discussion by being present in the form of the Court's clerk and the Court entered an order and here is the order of the Court:

"It was agreed by all of the parties that the following are all of the issues in controversy in this cause:

"(a) What constitutes the working time which makes up the workweek of the underground ore mining employees of the plaintiff within the meaning of Section 7 of the Fair Labor Standards Act of 1938."

That is the question in the case. It is not a question of Mr. Stein's report or Mr. Fleming's opinion. It is a question of what constitutes working time. And in order to ascertain what constitutes working time this Court has been given a picture by the attorneys and by the witnesses of the actual situation that has obtained since 1938 and way back beyond 1938 in the ore mines in this district. And at this point may I say that the Court in getting that picture has not had raw and inexperienced lawyers representing the plaintiffs. Two of the leading lawyers of this state and all the resources of two of the greatest law firms of this state have been devoted to presenting to this Court a picture of what went on and the claims of the plaintiffs have been presented to this Court as clearly and as forcibly as the essential nature of those claims will justify. In fact, from our side of the case it is perhaps unnecessary that I should attempt to argue this case to Your Honor after the argument that Mr. Brodie made this morning. I listened, never having heard him make a speech except on a point of law, and I thought that he covered the case clearly and concisely and coherently for the Court. I heard part of the speeches of the gentlemen on my side of the table but did not get to hear them all, because I wanted to arrange my own thoughts and avoid as much as possible unnecessary repetition to the Court.

And we have had a clear picture. I don't think there is any doubt but what we have had a clear picture of the ore mining operation in this district, so that Your Honor can look to your pretrial order and can determine what constitutes work time.

These men reporting for work, checking in in their own minutes by one called a timekeeper, subject to orders, carrying on various tasks and duties, carrying tools into the mine, bringing them out of the mine, and at all times carrying with them that one absolutely indispensable thing. As Mr. Burr said, you cannot work underground in the dark. And these men have not only been working from the moment they reported to the Tennessee Company or to the Sloss Company, and when the little man, Jesse Gaines—he didn't use the words, "Here am I," when he testified, he said, "I will go up and see. I am here." And then counsel in cross examination kept playing up the phrase, "Here am I." But when he said, "Here I am" or "I am here" the man had a book and he marked in that book and they were reporting then and they were under orders then and they were at work then and they stayed at work until they checked out.

And if that is not work, what is work? If it is not work for a man to have to crowd in one of those skips, to put his knee up and take his hands and push himself back so his ribs won't be broken, if that is not work then I don't know what work is. If it is not work at the end of a shift to climb a grade thousands of feet and arrive at the hoodlum wet with sweat, then I don't know what work is.

"Oh," but they say, "this is not the actual drilling that we hired you to do." As Mr. Brodie said, the Act of Congress didn't say, "You shall not employ a man more than forty hours a week at drilling," "You shall not employ him more than forty hours a week unless you pay him time and a half for overtime."

To me it is absurd and to any man that has ever lived by the sweat of his face it seems to be absurd to say that men climbing those places, carrying those tools, coming out worn from that heavy toil at the end of a day, to say that these men are not working or putting forth human energy, what is work?

How do men work? Either with their brains or their bodies. In ore mining the man that drills and shoots has to use his brain. All of them have to use their alertness to keep from running into those unseen dangers, and all of them are there putting forth the energies of their bodies from the time they leave the drilling place until they get out and breathe God's fresh air once again.

"Oh," they say, "You are not at the face." I don't care whether any work of art has come out whereby they call it a working place, whereby they denominate it in the Congress a working place, Congress was not legislating for any one industry or any one condition. Congress used a formula that would apply through the length and breadth of America.

If your cook comes to your house to cook your breakfast every morning, is she working or is she cooking when she heats the fire; is she cooking when she is preparing food, or does her time only start when she actually picks up the vessel with meat or the vegetables in it and puts it on the flame? That is the only time the actual cooking is going on.

When Your Honor's secretary reports to your office in the morning and sits there and you don't happen to give her any work, is she off on a pleasure jaunt, is she at work or is she not at work? She is there under Your Honor's orders.

Suppose these men burrowing in the earth go for three miles and suppose these companies for some reason do not want to sink a vertical shaft, which apparently is the successful way, and let them down at the speed of an elevator in a New York skyscraper, but they don't want to sink a vertical shaft and these men keep going farther and farther and farther underground, the companies say, "Oh, no, that is not work. In 1941 you walk two miles, in 1949 you are walking three, in 1950 you are walking five miles, but that is not work."

I say that that contention is an unwary and fanciful contention. It is as if a great air line company had come to a painter and said, "There is a mountain up here that is in our way and we want directions on it and we will pay you so many dollars a day to paint a sign on that mountain, to put the compass bearings there or an arrow there," and the mountain is high and the top of it is almost inaccessible and the man spends weeks and months getting up there with his equipment and does the work, and when he goes to collect they say, "We have kept books on it. It took you one day and a half to do that painting on that mountain, and that is all we hired you to do was to paint the compass bearings up there."

Are we living in a world where we will ignore the changes that take place? The actual evolution of mining in this area has brought about this problem. The men have borne it and they have borne it not in silence. They have complained but their complaints did them no good. And Mr. All argues and Mr. Burr argues that we want to put on all of this factual history to enable the Court to resolve any doubts in the construction of the act.

I can't find any doubts in that law. That law is so clear to me that it doesn't need any extrinsic facts to make it clear and the thing has been up and other Courts have considered whether or not we need any extrinsic facts.

In the case of *Davies vs. City of Seattle*, decided by the Supreme Court of Washington, 121 Pac. 987, which involved the eight-hour law of the State of Washington, the city made the precise argument which the plaintiffs are making here, and then the Court said:

> "The statute is so clear in its meaning and so free from ambiguity that it requires no construction. It means what it says, viz., as applied to the case at bar, that no day laborer shall be required to work more than eight hours a day except in cases of extraordinary emergency, and none is claimed in this case. The appellants offered evidence to the effect that, in the cities of Seattle, Tacoma, Spokane, Everett and Bellingham, a custom has obtained, since the enactment of this law, requiring teamsters to work eight hours a day 'on the job.' This testimony was offered, not for the purpose of showing a custom in conflict with the statute, but as an aid to its interpretation.. In all of these cities a teamster is required to harness and hitch his team, drive it to work, work for eight hours 'on the job,' and then return his team to the barn, unhitch and unharness it. In Everett the additional burden of grooming the team is put upon the teamster. These witnesses justifed the custom by saying that the excess time put in by the teamster is not work, but, as they variously term it, 'choring' or 'preparing for the day's work.'

This morning the gentleman objected to calling little chores work.. In that same case they made the same argument and used the same words, "preparation for the day's, work."

"Such construction is a palpable evasion of the law. The statute is so clear in its provisions that it requires no such aid in its interpretation. The respondents are only asking that it be obeyed."

And that is what we are asking in this case, that the terms of an Act of Congress be obeyed by these companies.

Now, they say, "We want to go into this picture, this ancient history, to show the intent of Congress," and I noted down as the able lawyer who made the first address for the plaintiffs was speaking this morning, I noted down his language, and there is, as he said in another part of his speech, a clash between his opinion and mine. Never in my life have I come to the trial of a lawsuit where different views are more clearly to be found than in the speech that he made and in the speech that I will make if the thoughts in my heart can be expressed in words. He said that Congress intended—and I wrote it down—that the act shall apply to fixed established customs and practices. He said that Congress intended the act to be consistent with the practices of an industry. He argued that the Congress did not intend to disturb those customs and practices.

My theory and my belief, my faith, is directly to the contrary. Evils had grown up in American industry, evils which were endangering the very life of the republic, and the Congress of the United States, conscious of those evils, looking into the future with its dangers and unseen dangers to fair government, Congress looking ahead, not with the omniscience with which they endowed Congress, but looking ahead saw these evil practices and conditions throughout industry weakening the American Laborer, interfering with the free flow of commerce. Congress, if presumed to be omniscient, Congress had heard the cry of these men down here, "Give us shorter hours. Don't make us go in and out on our own time."

It had heard the cry of those men up in the Lake Superior region, every one of whom said they had been trying since 1935 to get the collar-to-collar basis.

So I say that in an enlightened age and as part of a great forward movement for the benefit of the American people it is absurd to argue to this Court that Congress intended to fix, to solidify and to mold in an iron form the customs and practices that had grown up when the employer was absolute boss and the employee never got a chance to get collective bargaining until the all-powerful arms of the American Government reached out and broke the bands that encircled him, and we have had one enlightened law after another lifting the American laborer from his place of bondage.

And to say that Congress intended to make every existing custom a thing of imperishable crystal which would last forever is, to say that Congress was doing the very opposite which the history of Congressional legislation shows they were trying to do.

Congress was not trying to perpetuate, but to remove; not trying to entrench power which is already in power, but to lift up those to some semblance of equality so that they to a reasonable government might make a reasonable claim to a human right.

And this law which was passed for the working man of America was never intended to be given any strict construction for the perpetuation of evil institutions. This law must by this Court be literally construed.

In Fleming vs. Hawkeye Pearl Button Co., 113 Fed. 2d, page 52, at page 56 the Circuit Court of Appeals for the Eighth Circuit, on June 26, 1940, said:

"The manifest declared purpose of the statute was to eradicate from interstate commerce the evils attendant upon low wages and long hours of service and industry. Accepting this as the declared purpose of the act, exemptions would tend to defeat its purpose. The statute is remedial, with a humanitarian end in view. It is therefore entitled to a liberal construction."

And in the later case of *Bowie vs. Gonzales,* 117 Fed. 2d, at page 16, the Circuit Court of Appeals for the First Circuit—the case begins at page 11—at page 16 the Court says:

"The purpose of the act is to eliminate from industries engaged in commerce or in the production of goods for commerce the existence of labor conditions detrimental to the maintenance of the minimum standard of living necessary for the health, efficiency and general well being of workers in such industries and production in order to prevent disruption of such commerce. Such unfavorable conditions are produced by low wages and long hours, and the act is designed to cure those evils. The statute is remedial in nature and should be liberally construed."

The Court:
What is the citation?

Mr. Harris:
117 Fed. 2d. The case begins at 11 and I was quoting from page 16. The title is *Bowie vs. Gonzales,* Your Honor.

So we have a suggestion in this argument about the intent of Congress has gone out the window where the construction is out the window. It is a liberal instead of a strict construction.

And then what is their claim? They say, "Oh, but we have a contract. We have a custom and a practice which has crystallized into a contract. Your men are estopped. You have had collective bargaining." Now, why do they put that in? Because they run across the phrase, "collective bargaining" in the coal industry and then they argue the only answer here to Your Honor this morning when we all know that there is no eight-hour day in the coal industry; there is a seven-hour day. And he says, "We have a contract with you and you have had collective bargaining."

Can we look for a few minutes into the labor industry of this district here if we have had any collective bargaining here?

They came in in 1933 and 1934 and as soon as they were organized they made their claim for a six-hour day and they made their claim that they ought not to be made to travel—and they actually went so far as to file a charge before the Labor Board—and yet some people would have this Court believe that no question of travel time, as they call it, ever came up. And the unions, did they meet—did they meet as the law of the United States now provides—across the table for actual, bona fide collective bargaining?

So in one of the documents introduced where they talk about recognizing the union was: "We admit you can join this or that just as you can join the church or a lodge or anything else," and these men who wanted their independent organization had to come to them as employees' committees during all the years until this act was discussed in Congress. They had no contract. And they have a strike. And they talk about the members of the union. And they have a strike and in two days after they open up for some reason they shut down.

Not only they wouldn't receive them as members of the union and deal with them as members of the union, but when the Federal Government came in they wrote them letters of understanding. No communications directly with these men who were out there toiling on their properties under the earth.

Read the minutes and Your Honor will get a picture more graphic than my power to portray as to how these men were forced by virtue of their economic condition to submit to orders and domination. And the Government representing them, they addressed their communications to the Government, and they don't give them a contract.

And what happens to their union? Their union begins to go to pieces and in '36 and in '37 they have practically no union and where hundreds had attended only four or five attend. And then they were so weak that they were ineffective in getting the kind of contract that they had asked for. And the lawyers for the plaintiffs argue, "You didn't get a contract. Here is the one you got, and this being the one you got that vanishes your claim."

The greater the weakness of the suppliant, the less help he would obtain from his government or from a Court. The greater the spirit to follow a custom, the less remedial effect to be given by a statute. It would only be the small custom or the contract that had a benefit in it that would ever serve.

What this Court is interested in is the actual picture of the conditions that were going on in this district. There was working not only underground in the morning but there was working on the top when these men came out trying to get their right of collective bargaining.

Does the Congress of the United States pass laws for the benefit of the weak or the poor or the helpless or economic subordinate with any expectation that the strong or the powerful can say, "Sign on the dotted line and your contract deprives you of your remedies under the law"? Your Honor has met with in your practice many, many times the release obtained when the widow was grief stricken or the man was under the influence of dope, and no Court has ever given any weight to them.

The Congress of the United States never contemplated, when you talk about the intent of Congress, that the beneficiaries of this legislation should be able to defeat it on account of their weakness and inability to bargain with their employees. And I don't ask the Court to take my ipse dixit for it. There are cases where questions similar to this have come up. Take the case out in Oregon, I believe, or Washington, *Larsen vs. Rice*, 171 Pac. 1037:

"It is undoubtedly a general rule that private controversies between individuals sui juris may be compromised by them by mutual agreement, and that the Courts will not, where no question of fraud intervenes, relieve from the agreement, even though it be shown that the one gained rights thereby to which he would not otherwise have been entitled, and that the other gave up rights to which he was fully entitled; this is on the principle that compromises are favored by the law since they tend to prevent strife and to conduce to peace and to the general welfare of the community. But the controversy here had an added element not found in the ordinary controversy between individuals. It was not wholly of private concern. It was affected with a public interest. The state, having declared that a minimum wage of a certain amount is necessary to a decent maintenance of an employee engaged in the employment in which the respondent was engaged, has an interest in seeing that the fixed compensation is actually paid. The statute making the declaration not only makes contracts of employment for less than the minimum wage void, but has sought to secure its enforcement by making it a penal offense on the part of the employer to pay less than the minimum wage, and by giving to the employee a right of action to recover the difference between the wage actually paid and such minimum wage. The statute was not therefore intended solely for the benefit of the individual wage earner. It was believed that the welfare of the public requires that wage earners receive a wage sufficient for their decent maintenance. The statute thus being protective of the public as well as of the wage earner, it must follow that any contract of settlement of a controversy arising out of a failure to pay the fixed minimum wage in which the state did not participate is voidable, if not void. Especially must this be so, as here where the contract of settlement is executory, has been repudiated by one of the parties, the parties cannot be placed in statu quo, and the wage earner, by carrying out the contract, will not receive the wage to which she is justly entitled. One has but to glance at the terms of the proposed settlement in this instance to see that the respondent will not receive thereby any just equivalent for the sum which she agreed to surrender. Our opinion is that it is such a contract as the Courts are not required to enforce and that it would be against the policy of the statute so to do."

Then I have heretofore read from this opinion to the Court to the same effect, *City of Glendale vs. Coquat*, 52 Pac. 2d, 1178, where the same thing, only there they dealt with it as an estoppel and say:

"As we have stated in several cases, the minimum wage law is not only meant for the establishment of individual private rights, but is a solemn declaration on the part of the state, that as a matter of public policy, it is interested in seeing that its citizens are protected in such rights. It is apparently universally held that where a right has been given to an individual not alone for his private benefit but, as a matter of public policy, in the interest of the state, it may not be waived by anyone.

" 'Such conclusion would permit an officer of the state to defeat the beneficient purpose of the statute and violate its provisions. The state expressed its intention as to the rate of compensation, and the fact that claimant accepted a reduced compensation does not estop him from recovering the residue fixed by law.'

"We are of the opinion that plaintiff not only was not estopped from asserting his claim to additional compensation; but that he did not and could not waive it by his conduct in accepting the lesser wage without protest."

Now, there are numerous cases, if the Court pleases, to the same effect as those I have just read to Your Honor.

Men cannot, whether employer or employee, get together and by shrewd manipulation or by any advantage, one of the other, nullify an Act of Congress, neither in the establishment of a custom nor in the establishment of a waiver.

So as I see it, if the Court pleases, we have in the Alabama law the same doctrine and I won't take time to read from the opinions but cite them to Your Honor— in *Hamilton vs. Edmundson*, 177 So. 743, where they held that an officer cannot take less than the salary fixed by law. The same way, a man whose wages have been fixed by Congress, can by no act of his bind himself to accept laws, whether you call it a custom or a contract or an estoppel or a waiver, he cannot bind himself to accept less.

So we come back, leaving out all questions of contract and everything else, we come back to one simple proposition—what is work time within the meaning of the Fair Labor Standards act?

A man does not have to be drilling a drill; he does not have to be running a mechanical loader to be working. One of the greatest judges that this country ever produced, a man whose opinions are a thing of beauty and will be a joy to lawyers forever, Mr. Justice Holmes, in the case of *Missouri K. & T. Ry. vs. The United States*, 231 U. S. 112, with his customary clarity expressed the law very simply:

"One of the delays was while the engine was sent off for water and repairs. In the meantime the men were waiting, doing nothing. It is argued that they were not on duty during this period, and that if it be deducted, they were not kept more than sixteen hours"—

Notice how his next statement fits the situation here.

"but they were under orders, liable to be called upon at any moment, and not at liberty to go away. They were none the less on duty when inactive. Their duty was to stand and wait."

Then to argue that the men in this situation were not engaged in actual work is to me to ask this Court to forget the essential facts of life and ignore the evidence that has come not only from the witnesses for the defendants but the witnesses for the plaintiffs, and the fact that thousands of men are involved, the fact that they want the Court to pronounce some judgment on a different question to me cannot obscure the test, what was work time? Did the employer-employee relationship exist? Were they subject to orders? In addition to that, Your Honor sees that they were subject to dangers.

A student of war once wrote that in war the proper thing to do is exceedingly simple, and in war the simple thing to do is exceedingly difficult.

As I see it, in this case all the complexities disappear when we consider the words of the Act of Congress which, to my mind, need no elucidation, and apply those words and their meaning to the actual situation that has developed out here under this mountain, and when we follow great principles in the decision of great cases, it matters not whether in Lake Superior, Utah or Colorado, they come and take our decisions or they reject them.

The truly great decision is the decision resting on great and fundamental principles, and in this case the principles of justice and reason and humanity lead my mind to the abiding conviction that the plaintiffs in this case are not entitled to a declaratory judgment of the nature they claim, but that these defendants can look to this Court to say, "I make my findings of fact, I make my conclusions of law, and I appoint a Special Master to make the calculations to give you that to which you are entitled under the solemn Act of Congress and which no power on earth can legally take away from you."

(A brief recess was taken at 3:15 p. m.)

Mr. Burr:

If Your Honor please, I wish to take up the argument in this case and present, as well as I can, the issue involved.

I have thought, in reading the pleadings, the answers of the defendants, the opinion of the Administrator, the pretrial order of the Court and agreement of counsel, that the issues was comparatively simple so far as stating it was concerned. I find that if I should be led away to follow the arguments of my friends who represent the defendants in this case that, as I see it, the issue, instead of being enlightened, would be beclouded.

Before presenting the issue as the plaintiffs see it, I want briefly to refer to a few suggestions made by counsel for the different defendants in their arguments.

The first counsel that spoke, representing the defendant-intervener, the Administrator Fleming, took the position that there was not involved in this case the question of traveling time per se, and seemed to take exception to our position that that is the real issue involved. In using the language we did to state this case, we but followed the very language of the Administrator, whom he represents, when the Administrator propounded the following question:

"Must the time spent by the underground worker in traveling from the portal to the face be counted as time worked?"

I don't believe that you could find any clearer language to put it in than in the Administrator's question.

"Must the time spent by the underground worker in traveling from the portal to the face be counted as time worked?"—(irrespective of whether or not any work is done).

In his Modified Portal to Portal Opinion the Administrator answered that question in the affirmative,—that traveling must be counted as time worked without reference to whether any work is done or not.

While the Administrator's counsel takes issue with our assertion of the issue being the question of traveling time per se, he states it the same way when you analyze the argument he makes.

He asserts that the work time begins when the miner "loses his freedom" at the entrance of the mine and ends when he comes to the surface after the shift. Here again we have the question of traveling time of itself being the issue in this case. But Administrator's counsel abandons the assertion of the Administrator in his opinion that the Congress intended the word "workweek" to be one of universal application, and argues strenuously that the evidence as to *local* conditions in plaintiffs' mines make all traveling time work time.

Mr. Quinn, (representing one of the Unions), does not follow the argument of the Administrator's counsel in abandoning the opinion of his client. He adopts it, says it is the Bible, and then extends it,—and well he might, if his logic is good,—by saying that a man's employment, —not work,—begins when he enters the premises of the employer. Why not, if his logic be correct? Why can you draw a line at the entrance of the mine and not at the gate where the miner enters the premises? Doesn't everyone know that for all times in all plants, almost without exception, men go to the gates of plants, and even punch the clock, but their time at work does not begin until they get to their work benches where production begins, no matter how far the gate is from the place of work? Don't we all know, taking judicial knowledge, and using our common sense, that in these days and times when we are endeavoring to protect the plants manufacturing materials for war,—don't we know a man is stopped at the gate and indexed, photographed and finger printed? Yet, anybody knows that when that man "checks in", to use the words that have been so often used here, he is not at work until he reaches his place of work.

Now, my friend Judge Smith raps his partner in his conception of the case. Ralph says yes, it is a national question, as the Administrator has treated it. (He is right in that respect, as I will show Your Honor before I get through). Judge Smith says, "Oh, no. You must determine this question as to what Congress intended solely by the local conditions that exist where the miner gets in the slope under Red Mountain." He would have you try each individual case of these men by answering this question that is presented here today as to each individual miner, although that is not the issue presented here to the Court at this time. He asks this Court to legislate by a local application of Section 7 of the Act to plaintiffs' miners alone.

And then the last speaker for the defendants,—why, in those deep, resonant tones of his,—I almost wept in sympathy for him as he depicted himself getting gray headed and old sitting on his porch on top of Red Mountain and looking across the way and weeping because of the terrible evils that he claims the evidence shows to exist over here under the mountain across the way, and which, until now, presented to him such a wonderful and pleasant view. He would have this Court legislate beyond, instead of construe, an Act of Congress.

Why, if there is one thing that can't be denied in this case, it is that when this Act was passed it wasn't an Act entitled an act to cure the terrible evils which Crampton says he has been crying about every minute since he heard the evidence in this case. That was not the purpose of the bill with which we are here concerned. Spoon-like posture in skips, lack of sanitary, underground toilets, things of that sort, if they exist now, they existed before the passage of this Act. Congress was not trying to cure the evils of underground mining when it passed the law. I defy any one to find in this Act any reference to underground mining.

May it please the Court, these gentlemen have gotten so far away from what we are considering that it is impossible to follow them. If what they are suggesting here could be followed, Your Honor would not be only asked to legislate, but to legislate unconstitutionally. What is the basis of this Act? Let's not forget it before we begin discussing its language. Sure, its policy was to cure certain evils, but what evils? Not the discomforts of uncomfortable skips, not the hazards of groaning roofs that will exist as long as we have underground mines,—but the evils, as said by the Supreme Court of the United States in the Darby case,—Your Honor has read it,—it was for the purpose of preventing unfair competition growing out of sub-standard wages or sweat shop wages, as they called it in the speeches before the committees.

Certainly that is not an issue here, because the evidence is undisputed that there is no question involved here of any minimum wages. Congress did not say it would cure these evils which have been so great as to keep Crampton awake at night. If that had been what they were after, do you think Congress would have been so inhuman as to say this is a terrible situation, but go ahead and work them as long as you please provided you pay them time and a half for overtime? And equally inhuman would be the opinion of the Administrator when you analyze it. That is shown by reading his opinion. Does Your Honor remember the second paragraph of his opinion when he says that lunch time down in that "terrible, stinking, dangerous, unsafe mine" is not a part of the workweek? So, how can anyone say with any degree of consistency or logic that what we are concerned here with is eradicating the evils of underground mining, and particularly the evils that exist over here in these slopes in Red Mountain?

No, Your Honor, that is not the issue. The issue in this case is so plain that even though Mr. All has pointed it out to Your Honor, I want to emphasize it.

In the first place, before we get to the issue, you must remember that there are two classes of defendants in this case. We have the Administrator, whose opinion one of the attorneys says is the "Bible", and whose opinion, another attorney says, may be the words of a wise or a foolish man,—he doesn't know which. He is one defendant. We are not concerned, as far as that defendant is concerned, with what happened in violation of the Act, if his opinion is right, prior to May 1, 1941, because the Administrator has absolved us, in his opinion, from any prior risk so far as he is concerned.

The opinion says: "General Fleming announced, however, that because the Division has not heretofore taken a definite stand on the various problems involved, it would not seek to compel the payment of restitution from mine owners who have been operating on a face to face or other basis inconsistent with the principles outlined in the report."

Therefore, so far as the Administrato. is concerned, we are asking,—and he has come in here and joined in the request by asserting in his answer, the correctness of the opinion, while his counsel, in a way, denies the underlying logic and principle,—under the compulsion of having to comply or take the consequences while the matter is being determined in Court,—we are asking the Court to tell us what the Congress intended. Did it intend, as asserted by the Administrator, without reference to the hazards or perils or lack of Chick Sayle houses or crowded skips or "spoon fashioned" posture, or anything else,—did it intend that so long as a man is underground he is at work? That is what his opinion says, and there can be no question about it.

Now, let's have some common sense about this thing. Can't you see, so far as defendant Fleming is concerned, and so far as the future of these plaintiffs is concerned, every bit of this evidence they have talked about, as if they were talking to a jury or an assembly of people met for humanitarian or sociological purposes, about the hazards of mining and so forth and so on, hasn't anything in the world to do with this case? Why, if "checking in" has got anything to do with the future, the Tennessee Company could do like the Sloss Company has done for thirty-five to fifty years,—not have any brass checks. They don't have to have any brass checks for the future. If riding on a skip, because one has to stand up and hold on or get in a spoon-shaped position is the trouble, why, the plaintiffs, so far as the future is concerned, can place cushioned seats in the skips and thus add to the comfort and happiness of the employees as they ride underneath the ground. If the question of the "groaning, creeping, falling roofs" is the trouble, if plaintiffs can't eliminate these hazards they can alleviate them so far as the future is concerned. So with everything in this case. Tool carrying,—and before we get through I will have proven to Your Honor that they haven't proven any tools carrying in this case except in the case of a few individuals,—but if Congress intended traveling time should be work time because somebody carried a tool or two, all we have got to do, so far as the Administrator is concerned, to comply with his opinion, is to make them quit carrying tools, even though they want to and do it for their own convenience to save a double walk. So, I say the only proposition,—the only proposition so far as the defendant Fleming is concerned, is traveling time per se, or to use his own language:

"Must the time spent by the underground worker in traveling from the portal to the face be counted as time worked?"

In other words, if plaintiffs don't allow the men to "check in", or to carry a tool; if they provide the most commodious, air-conditioned skips with cushioned seats; if they light everything in the mine like this Court Room is lighted; even if they remove every hazard, even then under his opinion,—even then plaintiffs must pay those men for their traveling time. And plaintiffs have been warned in unmistakable language if they don't—if you don't do that in the future,—I have absolved you from the past, but if, after May 1, 1941, you don't compute and pay for traveling as work you must take the consequences of the penalties I have the power to enforce under the Act.

May it please the Court, as to defendant Fleming the issue is unmistakable. It is equally unmistakable as far as the other defendants are concerned. All of them at the start were like Quinn. All of them said in their answers that the Administrator's opinion is the "Bible",—it is right from "kiver to kiver". The only difference between their position and that of defendant Fleming is that they are concerned not only with the future, but are seeking recovery for the past, while the Administrator, insofar as he can, has granted full remission of all past sins.

Now, what did we ask Your Honor to do, and what did Your Honor set this case down to be heard on at the present time? I want to read one part of all the complaints I don't think Mr. All read. These complainants were prepared specifically for the purpose of trying to get a determination of a comparatively simple proposition, and to exclude all these collateral matters which can be handled later if they have to be handled.

Take the illustration one of these lawyers used this morning, or the attempted illustration, the skip tender. He claimed that because plaintiffs paid skip tenders from entrance to exist so also they should pay all other employees. Why, the skip tender is just like Your Honor's stenographer or cook to whom Mr. Harris referred in his argument. The skip tender is there at work running the skip for nine hours and being paid for nine and a half hours,—from entrance to exit,—at work running the skip while the other employees are being transported to their working places.

Now, here is what we say in the complaint.

The plaintiffs assert, "That no part of the time (unless some actual service for the plaintiff is performed) spent by its underground employees in the bath house or in going from and to the bath house to or from the portal, or to and from the underground man loading station from or to the portal, or to or from the actual working places of the employees from or to the underground man loading station constitutes part of the workweek."

The Administrator says that it does not make any difference whether service is performed or not, and without reference to dangers and perils, and so do these gentlemen in their answer.

And here is the question presented that Your Honor is called upon to answer:

"Did the Congress, in the enactment of Section 7 of the Act, intend that the workweek of plaintiffs' underground employees should include any portion of their time spent in being transported or walking to and from their usual places, and while not engaged in any physical work or service for the plaintiffs?"

Turning again to the Administrator's opinion, he has, in one respect, rightly laid down a proper rule of construction, as I see it. He said, as Your Honor will recall, in addition to the traveling time that was spoken of in the first part,

"The workday also includes the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools and in checking in and out."

Well, if that is true on the surface, can you tell me or can any man explain to anyone that has got any common sense at all why the same thing wouldn't be fair and true after you leave the top of the mine? If you are going to pay the man—if he is entitled to pay for the actual time—as was the case at Muscoda, during a portion of the time,—if you can pay him for the actual time that he spent in work when he went to the bath house before reaching the portal and got his hangers, wedges and jack hammer steel,—as the Administrator says, he must be paid for,—why can't you pay him in the same way for the same time, if he spends any time after he reaches the portal in getting and carrying tools before he goes to his working place? What right has anybody, irrespective of the intent of Congress,—what right has Your Honor or I, these gentlemen or the Administrator to say, "Oh, well, I will take a guess at it; I will say you have got to commence paying them when they get to the entrance"? Your Honor knows the fair way to consider that, the way it will be considered if the point is raised by an individual employee. If there is an employee working for my client that can show he was required, beyond the eight hours he contracted to give his service, to get tools or carry tools or perform work, he is entitled to be paid for that work, but he is not entitled to have added to his other time the time spent solely in traveling.

Now, I am talking common sense. If he is right,—if the Administrator is right,—and he is right in that respect,—if any employee at Muscoda not only was required, but was permitted or suffered to do any actual work by getting his tools at the carbide house and carrying them to the portal, he is entitled to be paid just like the Administrator says he is,—for the aggregate of the time he spent in that work, but he is not entitled to be paid for traveling time, and you can't draw a line here, under those conditions, instead of drawing it over here at the carbide house, or drawing it at the entrance of the mine, instead of drawing it, as Mr. Quinn would have it drawn, at the time he sets foot on the premises of the employer.

The answers of the defendants in this case adopt word for word the opinion of the Administrator. In order that may stick in Your Honor's mind, I want to read it briefly. This is the union's answer:

> "For a further separate defense, these defendants allege that under the Fair Labor Standards Act of 1938 the workweek for the employees of the plaintiff engaged in production of goods for commerce includes all the time when a miner reports for duty as required at or near the collar or portal of the mine, and ends when such miner reaches the collar or portal of the mine at the end of the shift, and all of the time spent on the surface in obtaining and returning lamps, carbide and tools, and checking in and out."

That is the word for word, punctuation for punctuation, the opinion of the Administrator, and then when you take up his answer he alleges:

"Intervener alleges that the proper interpretation of Section 7 of the Fair Labor Standards Act of 1938 is as set forth in the opinion and report, a copy of which is annexed to plaintiffs' petition as Exhibit A."

Then, in his answers to interrogatories he reaffirms this and deposes:

"I intend to follow the interpretation in question unless directed otherwise by the authoritative ruling of the Court, or unless I should subsequently decide that my prior interpretation is incorrect."

So, may it please the Court, we must submit, getting away from many side issues that have been brought into this case, that the question that Your Honor is considering here today is:

Did Congress intend by the use of the word "workweek" to include as work all time spent underground?

That is what it is. That is what it is. Or to use General Fleming's question, which I would as soon adopt:

"Must the time spent in traveling from the portal to the face be counted as time worked?"

Now, may it please the Court, I haven't time to cover it all, but I want, as best I can, to show you, and I make this assertion and challenge anything to the contrary,—I make this assertion:

That by every cardinal rule of statutory construction that has been adopted and followed by every Court in the country the interpretation they are asking you to make here today can't be made.

Now, what are some of those rules, to take them up as rapidly as I can?

You, first, in considering this threshold question,—you must first follow the rule that the words of a statute are to be taken in the sense in which they would be understood by the man in the street,—Congress must be presumed to have used words in their common and ordinary acceptation. If there is no ambiguity the Court must follow the language of the Act.

Now, there can't be any doubt about that being the law. I will briefly give Your Honor some of the citations, using first the decisions of the Supreme Court of the United States.

United States versus Ishman, 17 Wallace, 426-507; 21 Law Edition 729:

"The words of a statute are to be taken in the sense in which they would be understood by that public in which they are to take effect."

We will show Your Honor before we get through that the word "workday" at the time of the enactment of this law was unanimously, by every one, considered in all mines on the working place to working place basis.

"Science and skill are not required in their interpretation except where scientific or technical terms are used."

Old Colony Loan Company versus Commissioner of Internal Revenue, 280 U. S. 562; 52 Supreme Court 211-213:

"The rule in construing statutes which should be applied is established by many decisions. The Legislature must be presumed to use words in their common and ordinary significance."

And in the case of United States against American Trucking Associations, 310 U. S. 543, uses this language:

"In the interpretation of statutes the function of the Courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the Legislature undertook to give expression to its wishes."

The Court:
What is the citation?

Mr. Burr:
That is the United States versus American Trucking Association, a recent opinion, 310 U. S. 534.
If Your Honor would like to have this, I have a list of the authorities I expect to use.

The Court:
Thank you.

Mr. Burr:
There is the recent decision,—Fleming versus Belo Corporation, Fifth Circuit Court of Appeals, decided June 27, 1941,—I am going to read because it is so persuasive on these propositions. That decision is by the Court that is our immediate superior here in which they emphasize that same thing, and then they go further and say even when the language can not be clearly understood that the first thing the Court, in construing the statute, ought to do,—and that is common sense,—is to look at the other parts of the same act throw on the language that is in

question. In this case our Circuit Court of Appeals says:

"We cannot agree with appellant that the statutory words under consideration, 'regular rate at which he is employed', are at all ambiguous, or that for their construction they require resort to the declaration of policy and the legislative history of the act. We think it is clear that their meaning is plain and simple and their application equally so. In cases where there is no express agreement as to the regular rate at which the employee is employed, but only an agreement for a weekly wage, appellant's method of arriving at the regular rate by assuming that the wage stipulated for is not intended to cover overtime worked, would, we think, be unexceptionable. But in cases where, as here, the contract of employment fixes the regular rate, that method will not do, for here within the very words of the statute, 'the regular rate at which he is employed', is fixed as to each employee in his contract of employment.

"But, if we could agree with appellant, that the words of the act are ambiguous and that for its construction, resort to the purpose clause and the legislative history of the act is necesssary or proper, we can find nothing in either to support appellant's view. Section 2 deals with doing away with a substandard, and the establishment and maintenance of a minimum standard of living. It says nothing about spreading the work or reducing hours of work. Section 3 declares it to be the policy of the act, through the exercise by Congress of its power to regulate commerce, 'to correct, and as rapidly as possible, to eliminate substandard conditions of employment, without substantially curtailing employment or earning power.' Section 5 provides for industry committees whose business shall be to make the recommendations provided for in Section 8. Section 6 provides what shall be the maximum weekly hours, during which an employee may work at the regular rate at which he is employed, and that, except where as the result of collective bargaining, employer and employee otherwise agree, for every hour over, that he works, he shall be compensated at a rate, not less than one and one-half times the regular rate. Section 8, the section which implements the policy section of the act, provides in Sec. (a), 'with a view to carrying out the policy of this act by reaching as rapidly as is economically feasible, without substantially curtailing employment, the objective of a universal wage of 40 cents an hour in each industry engaged in commerce or in the production of goods for commerce * * * the Administrator shall from time to time convene the industry committee for each industry * * * and it shall from time to time recommend the minimum rate of wages to be paid under Section 6.'

"If then, we are, as appellant contends, to find the meaning of the act, its prohibition and commands, not in the language, of its implementing clauses, which the Congress has chosen to express that meaning, but in the general purpose, thought to animate it, the title of the Act, 'Fair Labor Standards Act', the complete absence from the act of any prohibition against or limitation upon the making of agreements by employers with their employees, the expressions in Section 2 (doing away with substandard and the establishment of a minimum standard), and particularly the provisions of Section 8 (universal wage of forty cents an hour), would compel us to conclude that the purpose of the act is to establish and gradually raise minimum wages, that the overtime provisions in it are inserted not at all to discourage or limit overtime work but as a part of the scheme to raise substandard wages by providing a definite pay for overtime work when such work is required; and that nothing in it purports to or does at all impair the right of employer and employee to contract as they have done here. When we turn to the legislative history of the act, appellant stands no better. For, there is no reference in the whole legislative history to prohibiting agreements between employer and employee, as here, for all inclusive and regular weekly salaries, none whatever to the effect that it was intended that persons already paying more than the minimum wage the act provided, should be compelled to pay still more. The legislative history of the act, while showing as the legislative history of all new and controversial act does some individual differences of opinions, adds up to showing, as to the overtime provisions, only what the act shows, that in broad outline the Congress intended that for overtime work, time and a half, the regular rate of pay at which each was employed, should be paid each employee. How that regular rate should be arrived at, when it was fixed above the minimum, was not, for all that appears in the briefs of the parties, and we have not otherwise had access to the debates or committee reports, dealt with in the debates on the bill, either in the original passage of it, or in amendments offered to it, except to say that wages above the minimum must be left to bargaining between employee and employer. When all is said and done, appellant comes in his argument to this point; that the law should be construed as he contends for, because in the opinion of the administrator, the law would better serve its purpose if it were drawn that way. Appellant overlooks the fact that a legislative act in the United States is not as in some countries a mere general outline by a party or group in power, of the purposes it wishes to accomplish, to be expanded, implemented and given effect by its administrators, in accordance with the general purposes of its proponents. A fundamental fact in American political life, has always been that in the struggle here for laws as means, to make law as liberator effective, there have alwaye been differing opinions as to the wisdom, propriety and scope of proposed new and controversial laws, and that laws as finally enacted here, are usually the result of a compromise or at least an adjustment of those conflicting views.

Because this is and always has been so, it can be usually said of our laws that the general, not the partial or partisan will, speaks in them. It is because this is so, that canons of statutory interpretation and construction require that statutes must be construed and given effect, in accordance with adjustment of views, and not in accordance with purposes or views, of either the proponents or the opponents of the legislation, which have not been given expression in the statute.

The issue presented here by the claim of the appellant that though the statute does not say so, it must be construed to give full effect to the purpose of placing him as administrator of the act in a tutelary position, the employer and employee in a state of tutelage to him, so that they no longer have a right to fix their wages by agreement, but must fix them according to the legalistic interpretative formulas of the administrator's general counsel, brings this into sharpest focus. It may be admitted that there is a section of opinion in this country and in the Congress, sufficiently collectivistic to prefer the tutelary system for which the administrator contends, and that if they had had sufficient voting power, they would have sc provided in the law. It must be conceded however, on the other hand that there is another section of opinion both in the nation and in the Congress, which is not so collectivistic and still believes in reasonable freedom of contract. It is just becaue of this fact legislation is compromise, that the views of the proponents and of the opponents, as to the purpose and effect of the legislative act, are never regarded as of value in a construction of it, and that it is settled law that statutes must be construed in accordance with the intent of the legislature as expressed in the lanugage of the act as a whole. Its meaning may not be sought by the Courts in the vague *penumbrae* of the wishes and desires of its proponents or its opponents as these are expressed in debates. Particularly, may it not be sought in the purely legal interpretation by the administrator's legal staff, for if this were so, the administrator would find himself, not only in the powerful position he properly stands in, of administrator for the Congress of one of its laws, and plaintiff bringing suit in the name and power of the United States to enforce the law, but, by issuing a binding interpretation of it before he brings his suit, in the position of a judge in his own cause who has written his decision beforehand.

For us to agree that such interpretations are binding on us would require us to entertain the view, the contrary of that uniformly taken both by Congress and the Courts, that law as well as fact, should be and has been delegated to the administrator. The authorities in support of his view that the administrator's interpretation should be followed here, do not, we think at all support him. In the *Trucking Company* case, the majority clearly states the applicable rule. "There is, of course, no more persuasive evidence of the purposes of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. [* * *] When the meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the Act. Frequently, however, when the plain meaning did not produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole" this Court has followed that purpose, rather than the literal words * * * The interpretation of the meaning of statutes, as applied to justiciable controversies is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislators, has said.' The interpretation given weigh there was the settled practice of the I. C. C., as to its jurisdiction under the Motor Carrier Act, both before and after the enactment of the Wage and Hour Act. It was not, as here, the purely legal opinion of the administrator's counsel nor was it an interpretation which would abrogate the right of contract, to substitute an arbitrary, for a conventional method of arriving at the regular rate at which each employee is employed.

"It is true, that as quoted in appellant's brief, the opinion did say at page 549, that 'contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they were yet untried and new', was entitled to great weight. But this was a quotation from the opinion of the Supreme Court in *Norwegian Nitrogen Company v. U. S.*, 299 U. S. 294 at 315, a reference to that case and the authorities it cites, makes it entirely clear that the Court was not intending at all to depart from the established rule; that where a statute is ambiguous or uncertain, the practical interpretation by the Executive Department charged with its administration is entitled to the highest respect and, if acted upon for a number of years, will not be disturbed except for very cogent reasons. *U. S v. Moore*, 95 U. S. 760; *Logan v. Davis*, 233 U. S. 627; *Brewster v. Gage*, 260 U. S. 336; *Fawcus Machine Co. v. U. S.* 282 U. S. 378; *I C. C. v. New York, N H. & S. RR. Co.*, 287 U. S. at 190. It was certainly not intended thereby to announce the new and heretical doctrine put forward by the administrator, that the newer the statute, and the more recent the legal interpretation of it, by the administrator's counsel, the more binding that interpretation on the Courts.

"The *Darby* case is not authority for, it is authority against appellant's contention that the purpose of the act was to spread the work by discouraging and penalizing overtime work and pay. In the *Darby* case, the Supreme Court said of the act that the motive and purpose was, 'plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument for competition in the distribution of goods produced under substandard labor conditions', and again at page 122, 'As we have said the evils aimed at by the Act are the spread of substandard labor conditions through the use of the facilities of interstate commerce for competition by the goods produced with those produced under the prescribed or better labor conditions', and again on page 125, 'Both provisions are minimum wage requirements compelling the payment of a minimum standard wage with a prescribed increased wage for overtime of "not less than one and one-half times the regular rate" at which the worker is employed.' There is nothing here about spreading the work, nothing about penalizing overtime, nothing about abrogating the right of contract, nothing about requiring an employer to further raise wages already far above the substandard struck down and the minimum standard set up in the act.

"Freedom of contract, within constitutionality valid limitations is, in the United States of America, one of the fundamental freedoms, and this particularly so in regard to labor relations. When, then, it is contended, as here, that a statute has cut off or limited this freedom, a litigant, must point to language clearly and validly so providing. There is no more authoritative principle in the field of labor law than that, subject of course, to valid statutes designed to prohibit substandard conditions and unfair labor practices, wages, hours, and work conditions are the proper subject of contract between employer and employee and their agreements must be, and are, given full effect in the Courts."

Now, what is the language that is in question here? There isn't a word in Section 7 about underground ore mines; there isn't a word about any kind of mines. There is the universal statement with a universal application to all employers that the "workweek", or to reduce it to a day basis, the "workday" shall not exceed the stipulated number of hours per week or per day.

Now, what sort of workweek, when Your Honor puts yourself in the shoes of Congress,—what sort of "workweek" was Congress legislating about,—looking first at the word "workweek"? What would you have been talking about if you had been up there in John Bankhead or Hugo Black's shoes at the time? You would have thought about the workweek that was existing at that time, wouldn't you? You couldn't have had any other thought. You wouldn't have thought about a workweek that some one else, like our friend Harris, awakened by testimony and growing sleepless at night might think about. You would have considered the existing workweek and that is what you would have legislated on. You would not have considered an entire change in existing custom and contracts. And if anything ever was clear, you get the same idea of "work" in reading throughout this entire Act.

I want you to follow the Act. First, take Section 7, and as I read it, we can refer to other parts of the Act. It begins, "No employer shall, except as otherwise provided in this section, employ—"

Now, what do these gentlemen here try to convert it into? They stop right there. They say what Congress said was if you are in employment, subject to direction on the plant's premises,—that is what the Congress intended. If that is what they meant, they would have stopped right there. But paragraph (g) of Section 3 of the Act defines "employ" this way:

"'Employ' includes to suffer or remit to *work*."

Does it say "to suffer or permit to be in your employment?" No. It says, "to suffer or permit to *work*."

Now, would any man in the street ever understand the word "work" to mean walking or riding to a place of work, assuming you do not act of service or work on the way? Whether it be inside or outside of a mine, the statute doesn't make any difference between the two.

The Act goes on:

"—any of his employees who is engaged in interstate commerce or, in the *production* of goods for commerce—"

What does "production" mean as defined by the Act?

Section (j) of Section 3 provides:

"'Produced' means produced, manufactured, mined, handled or in any other manner *worked* on in any State."

Why, how these gentlemen have studiously gotten away from the word "work". One of them refers to "service" all through his argument; all the others refer to "employment".

I can't help but stop here to say a word about workmen's compensation laws. Your Honor caught it this morning. There is no such a distinction between these laws and this act that I don't for a moment suggest these workmen's compensation decisions could be cited as an authority against our position, but they illustrate how strong our position is. Your Honor knows the Workmen's Compensation Act does not say anything about paying a man who is injured while he is at *work*. Those statutes say pay him if he is injured in the course of his employment. Your Honor will recall a recent case where an employee of a restaurant, going to work, stepped on a banana peeling in front of her employer's place of business and was injured, and the Court held that employer was liable for compensation.

The Court:

That is the Britling case.

Mr. Burr:

Yes, sir, the Britling case.

The Court:

A lady slipped and fell.

Mr. Burr:

That is right. If Your Honor is interested in that decision as illustrative of the distinction to which I referred; it is *Barnett v. Britling Cafeteria Company,* 225 Ala. 462, 143 So. 813.

Most forcibly emphasizing the distinction and the inapplicability of these cases are two cases decided by the Alabama Supreme Court against the same employer,—W. P. Brown & Sons Lumber Company. In one of these cases the Court held the plaintiff was entitled to recover workman's compensation although he was not an employee of the defendant (*W. P. Brown & Sons Lumber Company v. Crossley,* 230 Ala. 403; in the other case where, as in this Act, proof of the relationship of master and servant was necessary to recover, the Court held that the plaintiff could not recover because he was the employee of an independent contractor (*W. P. Brown & Sons Lumber Company v. Rattray,* 192 So. 851).

To the same effect are the following cases:

Grady v. Nevina, (N. J.), 189 Atl. 669;

Wista v. North Butte Co., (Mont.) 210 Pac. 332, 64 Mont. at pages 289-290.

If Congress had intended to do what these gentlemen are trying to say it did, it would have said so in plain and unmistakable language.

Section 7 continued:

"Engaged in commerce and in the production of goods for commerce."

If the intent of Congress has been as these gentlemen have contended here, Congress would have stopped there, but it didn't stop there. It said, "For a workweek".

It is also true that all the other parts of the Act show the intent of Congress equally as clearly, and you can turn to those. For instance, I want Your Honor to read Seition 5. It relates to the employers of industrial home workers, and refers to such an employer as one who directly or indirectly distributed *work* to be performed by an industrial home worker, and in reference to the records required to be kept, demands, among other things, the following information "with respect to each such industrial home worker engaged on *work* distributed directly by such employer, or indirectly in his interest."

Then, quoting from the Act, again, Section (d) says:

"With respect to each lot of *work* issued;

"(1) Date and hour on which *work* is given out to worker and amount of such *work* given.

"(2) Date and hour on which *work* is returned by worker, and amount of such *work* returned.

"(3) Kind of articles *worked* on and operations performed" and so on throughout every sub-section the word "*work*" is used, and not the word "employment".

Well, I was just thinking, when they were talking about all this crowded condition,—I was just thinking of where sweat shop wages really exist,—up in the crowded cities of Chicago and New York, and yet under the interpretation these gentlemen would have Your Honor give to this Act, every sweat shop worker in New York or Chicago, when he goes to the left to get his material and takes the material home, and then gets on a crowded subway and brings the finished goods back to the loft would, under the Administrator's interpretation, be engaged in work, notwithstanding the language of the Act itself.

You find that the intent of the Congress is also clearly shown in Section 13 of the Act which relates to fishermen. That section gives certain fishermen exemption from the Act, and says included in the exemption must be the time spent in going to and from the fishing.

And yet defendants' counsel say that the Congress could not speak its intention, could not define "work" because of the thousands upon thousands of different local conditions. If Congress had intended to legislate as these gentlemen would have them legislate for underground mines, all it had to say or do was put in there what two States in the Union, as I will show Your Honor, did put in their laws, and what all other states have refused, wherever it has been raised, to put in their laws,—a simple provision that in underground mines work time shall start at the portal as they go in, and end at the portal when they come out.

So, we see, as we look at the Act, there can't be any doubt about this construction.

That is the first cardinal rule of construction to which I have called Your Honor's attention.

Now, what is the next one?

Nobody has ever denied this. They have talked all around it, and they have been running from it ever since this case started. Why, defendants' counsel would have you put yourself in a vacuum in trying to place yourself in the shoes of the Congress. He says that you can't consider anything except what has happened since October 24, 1938, and until May 1, 1941. Defendants' counsel was right when he quoted me as having said,—and I will say it again,—if that is the law you might as well throw our cases out of the window, but when you do throw out with them the decisions of the Supreme Court of the United States and of every State in the Union which says that the thing you must consider in getting at the intent of Congress primarily, if you have any doubt about the matter, if the language of the Act doesn't show it,—the thing you consider first in considering Congressional statutes is the federal background of the Act. I don't have to re-read the authorities that have been cited here by my associate. You will find none to the contrary. I do, however, wish briefly to comment on the facts of one of them because it shows how far that rule of construction goes. I think it was the Baltimore & Ohio case where the Court said, in construing a statute they would go to "Merrie Olde England" and consider the statute whose language had been substantially used, and if the interpretation of the English administrative officers had been fixed prior to the enactment of the law over here, that when our Congress adopted it, it adopted it along with this interpretation and administrative enforcement. In this case (*Interstate Commerce Commission v. Baltimore & Ohio Railroad Co.*, 145 U. S. 263, the Supreme Court of the United States said:

> "—It may be presumed that Congress, in adopting the language of the English Act, had in mind the construction given to these words by the English Courts and intended to incorporate them into the statute. McDonald v. Hovey, 110 U. S. 619."

The same principle of construction is laid down in *U. S. v. Farrar* (1930), 218 U. S. 624, where the Court used the following language:

"—it is fair to assume that Congress, when it passed the Prohibition Act, knew this history, and acting in the light of it deliberately and designedly omitted to impose upon the purchaser of the liquor for beverage purposes any criminal liability."

The Supreme Court of Alabama well expressed the same rule of construction when it said:

"It is a well settled rule of interpretation, applicable to constitutions as well as statutes, that it is permissible in ascertaining this purpose and intent to look to the history of the law when the instrument was adopted, and the conditions necessitating its adoption."—*Houston County v. Martin*, 169 Southern 16.

Now, what is the federal background? Let's look at that next. First, we will study the parentage of this law. You know heredity has a lot to do with laws as well as with personalities. Where did this law come from? The best article, among the early articles on this Case, was one that appeared in 3 Law and Contemporary Problems, published by Duke University in the summer of 1939, and here is what that article starts out with:

"The roots of the Fair Labor Standards Act of 1938 are deep in a movement that extends back over a period of years, yet it is evidence that the closest relationship exists with the wage and hour standards established under the National Industry Recovery Act."

Well, that is a very good authority, but I want to go to the "Bible" for corroboration of that, and that is the

Wage and Hour Manual. I mean by saying it is the Bible it is not my Bible, but it is the Bible of my friends over here. There are a lot of things in it from which I dissent. On Page 745 you will find stated the following background of the law:

"Background for regulation of wages and hours by the Federal Government was afforded in the National Industrial Recovery Act of 1933, which, through the application of 'codes' to specific industries, set minimum wages and maximum hours for laborers and placed a ban upon child labor. When approved by the President the codes had the force of law. They required in all cases observance by employers of collective bargaining rights.

"Following the invalidation of NIRA by the Supreme Court of the United States in 1935, permanent legislation regarding collective bargaining rights was embodied in the National Labor Relations Act of that year."

NLRA takes care of the bargaining rights of labor. And you know if I wasn't feeling so badly I could have laughed out loud when my good friend over there cried about how the foot of capital on the neck of labor caused the passage of this Act. Under the administration of NLRA can any sensible person doubt the power or ability of labor to take care of itself in bargaining for its rights and in asserting and securing relief for its grievances?

Now, listen. "The other half"—now what is the other half, as the "Bible" says, setting minimum wages and maximum hours for laborers and placing a ban upon child labor?

"The other half of the substantive labor provisions of the earlier act took a permanent form in the Fair Labor Standards Act of 1938."

All right. Congress then was using the National Industrial Recovery Act as a guide to meet the constitutional objections; it set up the National Labor Relations Act to take care of collective bargaining and the rights of labor. And then to protect commerce from restraint and unfair competition it set up the Fair Labor Standards Act and took care of child labor, minimum wages and maximum hours of service.

Well, now, surely, may it please the Court, under these decisions, if Congress was following the policy of an act, as they say they were, and as all of these decisions hold, they not only had the right, but they were charged— the contention of defendants' counsel that there is no proof that Congress knew about these existing conditions; that there is no record brought here that they were discussed in the Congress is absurd—under the decisions of the Courts with the duty of knowing of existing conditions, and they had no business sitting on Capitol Hill if they didn't know what those conditions were.

And what did they know in the very beginning and on the very threshold of this thing? They knew they were passing an act to take the place of a part of NIRA, and they knew—and, as Mr. All said, we are not getting into the discussion of the difference in coal mines and ore mines,—but they knew as Your Honor knows judicially that codes had been established under the NIRA handling this very question.

And I make the assertion—I don't have to make it because if there had ever been a code adopted under the NIRA that put into effect the legislation they try to get Your Honor to enact here, putting traveling time on a portal to portal basis, they would have that Code here,— that no Code was ever adopted and approved by the President which directly or indirectly made traveling time a part of the "workday".

On the contrary, the Bituminous Coal Code, (1933) the only one adopted for the mining industry, expressly provided:

"Seven hours of labor shall constitute a day's work and this means seven hours work at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid on the day or the tonnage or other piece work basis."

It is undisputed that industry and union,—as Congress did—has followed from the very day this code was promulgated until the present time and until this decision of the Administrator came out the identical language used in this Code.

But, say defendants' counsel, the Coal Code provided for a seven hour day.

Why, may it please the Court, the Congress knew, when it enacted the Wage and Hour Law that the definition of "work at the usual working place" had been in universal use by custom and contract as far back as 1898 and during the periods of the ten, nine and eight hour days.

It is, therefore, undisputed that the Wage and Hour Act is the youngest child of NIRA (the oldest being NRA) and that Congress clothed and vested it with the vestments of NIRA, the most essential of which was the definition in the mining industry of "work" as being "at the usual working place."

And you can't gainsay the fact that President Roosevelt not only approved that definition but he approved it as being pursuant to, and in line with, the policy of the act as set forth in Section 1 of the National Industrial Recovery Act which is almost identically the same as set forth in Section 1 of this Act.

And then to come here and talk about having to decide this case by going out on Red Mountain and considering only local conditions and ignoring the fact that this is a national act applying not only to all mines, but universally to all industry!

But this is not all. We have had a number of other acts, both prior to and subsequent to this act, which used substantially the same language that we are now construing. Take the Walsh-Healy Act. "No person shall be permitted"—to do what? To deal in unemployment? No. To travel? No, no.

"No person shall be permitted to *work* in excess of eight hours in any one day or in excess of forty hours in any one week."

The Supplemental Defense Appropriation Bill which was passed in 1940 says:

"* * * on a basic day rate of eight hours per day"—it is almost identically like this—"and work in excess of eight hours per day shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half the basic rate of pay."

And here is even a later one: The Bill to Expedite National Defense provides:

"That the wages of every laborer and mechanic employed by any contractor or subcontractor engaged in the performance of any such contract shall be computed on a basic rate of eight hours per day and forty hours per week and work in excess of eight hours per day or forty hours per week shall be permitted upon compensation for all hours worked in excess of eight hours per day and forty hours per week at not less than one and one-half times the basic rate of pay."

Now, take those three facts that have been passed subsequent to this Act. I will later give Your Honor the authorities on that. I want to discuss them right now a minute or to and I will show Your Honor that another rule of construction is that if there is any doubt of the meaning of an act that the subsequent passage of an act using similar language and the subsequent interpretation by its administrative officers furnished light upon the legislative intent.

Well, now, to where does that lead us?

I did say that this case is an important case. It is a most important one because, if these people are right now, and Your Honor so holds, and the ruling is sustained, that the Congress intended that traveling time should be a part of the working time, then, may it please the Court, by the same token every employer who is selling material to the government is violating this law every day.

And yet, although the Walsh-Healy Act was passed prior to this Act in 1936 and the other two I mentioned were passed after this Act, there has not been an effort on the part of a single, solitary person or agency chargeable with the administration of these Acts to claim, as is claimed by these defendants, that traveling time is per se "work".

There have been acted eight hour laws applying to employees of the United States in 1892, 1912, 1917 and so on. They all read very much the same. For illustration:

> "The service and employment of all laborers and mechanics is limited and restricted to eight hours in any one calendar day and it shall be unlawful to *work* more than eight hours in any calendar day."

> "The wages of persons employed upon such contracts shall be computed on a basic day rate of eight hours *work* with overtime rates to be paid for at not less than

time and one-half for all hours worked in excess of eight hours."

Now, Your Honor will see that in those laws the Congress used the same words, in effect,—"eight hours work", "permitted to work", "hours worked", "unlawful to work more than eight hours," and the Congress had to know, and when you put yourself in the shoes of Congress you have got to know, that every one of those laws had at that time been construed by the administrative officers who were in charge of their enforcement as meaning the time at productive work. ~~Some of them~~ use the words "effective labor."

"Oh," my friends say, "but that was traveling under God's sunlight; it wasn't underground." Well, the Congress didn't draw any distinction. Can Your Honor legislate in that regard? So, we say that on the national historical background of this law you can't get away from it.

Now, I say, in summing up this part of the discussion, that the undisputed evidence in this case shows that on October 24, 1938, when this law was passed, the parent of the Act before Your Honor for consideration had actually defined the word "work" to mean time spent in productive work and that the codes promulgated under the parent law had actually defined the word "work" as we define it here.

I say, in the second place, that the previous laws that had been passed,—Walsh-Healy and the other laws I have mentioned,—had by their method of administration, been given a similar construction.

And, in the third place, since 1892, the opinions of the United States Attorneys General, and of administrative departments had, previous to the enactment of this Act, construed statutes having similar language as meaning "work at the usual working place."

And I challenge my friends on the other side to present a single interpretation by any Court, government official or administrator indicating anything to the contrary. We have looked it up, and I know that with their exceptional means of getting inderdepartmental knowledge which is confidential, if it existed it would have been presented.

I, therefore, make this assertion: That there can not be found an administrative interpretation or enforcement of any of these laws in keeping with what they are asserting here in this case today. But, on the contrary, every opinion and interpretation and judicial decision on the matter prior to the enactment of this law is in line with the assertion as plaintiffs make it.

Now, another cardinal rule of statutory construction is that Courts will assume that the Congress, in enacting laws, considered the state background of statutes of similar import.

Now, let us go to these state statutes and let your Honor get in the shoes of Congress and see what Congress knew about those statutes at that time.

Well, Senator Thomas, of Utah, was one of the sponsors of this legislation, and he and Senator Black were, I think, its chief proponents before the Committee and through the Senate. Senator Thomas was from the State of Utah. I think at that time the Senator from Arizona was our dearly beloved departed friend who had such a wonderful vocabulary, Senator—

Mr. All:
Ashurst.

Mr. Burr:
—Ashurst. Now, then, those gentlemen were sponsorng this law and assisting in drafting it and voting for it. They knew what the state policies of Utah and Arizona were.

I want to read Your Honor the Utah statute. It was a very simple matter to have included traveling time in underground mines as work if they had wanted to do so. They had so handled it in Utah. It was not a question of defining hundreds of thousands of kinds of work. If they had wished, in underground mines, to eradicate the evils that, since the opening of this case, have interfered with the rest of defendants' counsel, they knew how to accomplish it, Senator Thomas knew how to do it, because he knew the Utah statute was the adopted policy of that state provided,—I am quoting—

"The period of employment in underground mines shall not be more than eight hours per day,"—

It didn't stop there like the statutes of other states, as I will show Your Honor they stopped, but it added, "Computed,"—and how simple is this if the Congress had wanted to say it,—

"—computed from the time the men go underground until they return to the surface.".

Now, Senator Thomas knew that. He knew that if he wanted to have that act read like these genttlemen say it ought to read he could find the words to make it so read if he could have gotten the other Senators to agree with him. Senator Ashurst may have gone along with him because his state is the only other state in the Union that has adopted such a policy. The Arizona statute reads this way:

"Inclusive of the time employed in descending to and ascending from the place of work."

Now, there is only one other state in the Union that has adopted a legislative policy partially in keeping with the one advocated by defendants, and that is the State of Nevada. But Nevada didn't want to go that far. They wanted to legislate for a division of the traveling time. So here is the law of that state:

> "The period of employment shall not exceed eight hours within any twenty-four hours, and the said eight hours shall include the time employed, occupied, or consumed from the time of reaching the point of employment or working place in any underground mine, and in returning to the surface from said point or place of work, and that it is the intent and purpose of this Act that the period of time between arriving at the point or place of work in any underground working and returning to the surface from such point of work, shall not exceed eight hours within any twenty-four hours."

In other words, Nevada, by law, did the same thing that the defendant Unions requested of plaintiffs in the three times they presented their proposals in 1933, 1934 and 1935, —they divided it.

Now, that is what those three states (and only those) had provided prior to the enactment of the Act.

Now, I say if the Senators from those states had wanted to include traveling time as work time in underground mines they would have said so.

Now, what, at the time of the enactment of the Act, had the other states provided with reference to this question?

The first state that enacted any law on the subject was California,—Section 750 of the California Labor Code. That statute provided, (just like our federal statutes that have been construed, as I pointed out to Your Honor, by administrative officers) that "the period of employment shall not exceed eight hours, excluding the intermission for meals." That is much stronger than the words in Section 7 of the Act here under consideration. Under the California statute an argument could be made that it referred to employment and not to work. Well, it was not long after that act was passed until it was construed by the Supreme Court of California in the case of *Ex Parte Martin,* 157 California 39, 106 Pacific 238, and it came up in this way:

Underground employees, as I recall it, represented by a union,—I am not certain of that, but underground employees, I know,—reached the conclusion that, under that statute which said that the period of employment should not exceed eight hours, inasmuch as they were working eight hours at the face, and it took them an hour or an hour and a half to get out of the mine, that, adding that time to it, they were exceeding eight hours, and here is what the Supreme Court of California said:

"We think the petitioner's contention that no violation of the Act is here charged is correct and should be sustained. The Act provides that the period of employment of persons employed or engaged in work in underground mines, etc., shall not exceed eight hours in any twenty-four hours. The purpose of the Act is, as has been pointed out in the opinion in Cr. No. 1539, the protection of the health of the men working in underground mines. The injury to health which seems to have been apprehended is that which would be encountered by one subjected to the strain of performing manual labor under detrimental conditions."

The same sort of conditions, I guess, they have there we have here.

"Giving to the words of the Act their ordinary and reasonable meaning, the limitation of time is to be construed as referring to the time when men are actually engaged in work, not when they are going to or from their work. There is nothing in the language of the Act which would justify a more restricted interpretation."

Now, without taking the time to read them,—I have got them here if Your Honor would like to see them later,—

The Court:
They are on your memorandum?

Mr. Burr:
No, sir. They are state laws, and Your Honor takes judicial knowledge of them.

The Court:
All right.

Mr. Burr:
There is not another state in the Union—most of them out in the West followed the California Act almost verbatim and, of course, under another indisputable rule of statutory construction, when a state passes an act somewhat similar to the act of another state which has been construed by the Supreme Court of that state, it enacts the construction along with the enactment of the act.

We have an illustration here in Alabama. Take the Workmen's Compensation act,—

The Court:
The Minnesota law.

Mr. Burr:
The Minnesota law.

Every state that has mines in it,—I have looked them all up,—with the exception of Utah, Arizona and Nevada, the policy, the lesgislative policy of all the other states that have mines in them, underground coal, iron ore, any other kind, is the same as California, the N. R. A., the codes adopted under N. R. A., and every federal act that has been construed and administered since the country was a government, and even down to the present time under the War Defense Acts to which I have called Your Honor's attention.

There is another interesting thing here that brings up another cardinal rule of statutory construction. I am using them all, and I am challenging these gentlemen to show a single rule of construction that supports their contention. Now, this one I am referring to is this: That the legislative policies of a state which, under the decisions, Congress looks at, can not only be established by its enactment of laws, but can be established by its refusal to enact laws.

We have a splendid illustration of that in the State of Montana here, and I am citing, and I have given you here the Montana Acts on the subject. For thirty-five years the labor unions in Montana have been presenting and trying to secure the passage of an act similar to Utah. I will read Your Honor one of these proposed bills.

Mr. Harris:

What exhibit is that you are reading from, Mr. Burr?

The Court:

It is not an exhibit.

Mr. Burr:

It is not an exhibit. It is a certified copy. I am just helping Your Honor's judicial knowledge.

"Be it enacted by the legislative assembly of the State of Montana:

"Section 1: That Section 3071 of the Revised Code of Montana of 1935 be, and the same is hereby amended to read as follows:

"Section 3071: Hours of Labor—Underground Miners: The period of employment of workingmen in all underground mines or workings, including railroad tunnels or other tunnels, shall be not to exceed eight hours per day, except in cases of emergency when life and property is in imminent danger, provided that the period of eight hours provided for shall be computed from the time the workman enters such mine, working or tunnel until he emerges therefrom."

Now, over a period of thirty-five years and, I think, on five different occasions, the Legislature of Montana has said, "We will have nothing to do with that kind of Utah-Arizona Law."

So, you have all the states in the Union except Utah, Arizona and Nevada following California, and you have the State of Montana that has declined for thirty-five years,—and this State is right out there in the bosom, you might say, of the Smelters Union—to pass a law similar to Utah and Arizona.

Before I take up the next rule of statutory construction to which we can turn to aid us in the construction of the Act here under consideration, I want to call Your Honor's attention to one other thing. I think I have shown the Court,—and I know I have convinced myself long ago,—that the Congress wouldn't have had any difficulty if it had wanted to do what these gentlemen said it did do with reference to underground mines in accomplishing such a purpose by using the Utah language. The Congress, having had all this history before it, and not having done so, Your Honor can't step in and legislate and say it did so.

The statements which I have been hearing so often,—"You can't define work," "That is to be left to promulgation," "Hundreds of thousands of different situations"—

The Court:

Where the word "work" gets its meaning—it all depends—its meaning, may be, is interpreted in the light of the facts.

Mr. Burr:
I agree with Your Honor thoroughly on that.

The Court:
That is my idea about it.

Mr. Burr:
I think that is right. I think, as I stated in the beginning, if any of these employees did any work which carried them over eight hours they are entitled to be paid for it, but if they spent the time in just traveling you couldn't add that to work.

Now, on that same proposition, in the President's message asking for the enactment of this law, he says:

"Allowing for a few *exceptional* trades, and permitting longer hours on the payment of time and a half for overtime, it should not be difficult to define a general maximum *working* week."

There is an express recognition of the fact that Congress could, in exceptional trades, if it wanted to, do what these gentlemen said it did do. It could have, and if it so intended, would have made the exception plain.

So, we say that Congress just didn't say so; it knew how to say so and it didn't say so.

Now, the next cardinal principle of construction that I want to call to Your Honor's attention is this:

The Court will assume that Congress took into consideration the traditional custom that existed in all the underground mines in the United States.

When Your Honor studies the opinion of the Administrator you will see that is what he attempts to base his opinion upon, and he is eminently correct that far. It is ridiculous, of course, to contend that this Act hasn't a universal application, or that it has a particular local application to this mine or that mine. But where the Administrator is wrong, as this undisputed evidence shows, is in his conclusions of fact that he sets forth in his opinion as backed up by Mr. Stein's report. He says that he recognizes the existence over the United States of an established custom in underground metal mines; he says this custom should be followed, and that is what we say, and that is what the authorities hold, but the Administrator states, as the factual basis for his conclusion, that the portal to portal plan was the custom of the nation, and you will find in his opinion that he says that the Alabama mines were the only metal mines of any size in the United States that operated on the "face to face" basis. Now, his principal is right, but his facts are totally wrong. No wonder his counsel makes no effort to defend them here before this Court.

This evidence here shows beyond any doubt that, taking the United States as a whole, there wasn't when the Congress enacted the Act, a mine in the United States, open or underground, coal, metal or non-ferrous that was operated on the "portal to portal" plan. It is an invention of the Administrator. He justifies his opinion on his claim that there was such a plan in national effect. He was right in saying that Congress would follow custom and practice, but he was wrong in his assumption that the custom and practice was "portal to portal", and every bit of the evidence in this case demonstrates that fact. Take the mines of Minnesota. There isn't a witness whose deposition was taken by the government, and when the defendant-intervener did not see fit to offer his own depositions, we were glad to vouch for them, and offer them,—every one of them on cross examination,—and some of them went back twenty-five or thirty years,—testified that in those states, Minnesota, Wisconsin and Michigan,—they covered those three states that produced, as shown by the figures here in evidence, as I recall it, over 90 percent. of the iron ore production of the United States,—that for all that period of time they had never been paid for any part of their travel time and their work time had been computed and paid for on a face-to-face basis.

Take Senator Lafollette,—why he is as great a humanitarian as defendants' counsel is. Can anybody doubt that Senator Lafollette, knowing that in Wisconsin and Minnesota and Michigan, the very lifeblood of which states is the iron ore industry, that the Union, for many years had been trying to get, and hadn't been able to get, the traveling time paid, would have supported this law if he wanted to carry the state policy of Utah and Arizona into national effect without attempting to have the Act so declare in clear, easily understood, "man in the mine" language?

Go out to Colorado, the only other iron ore producing state as to which any evidence has been introduced here, and we find that the contract and agreement with the employees provide that "eight hours shall constitute a day's work, and this means eight hours work at the usual working place for all classes of labor, exclusive of the noon hour and the time required to go to and from the place of employment."

So I say, if the Court please, Congress, at the time of the enactment of this Act, knew that it was the traditional and universal custom in all the mines of the United States to compute and pay wages on the "face to face" basis.

Now, let's consider Alabama. Why, I can't see how anybody can have the temerity to question that the evidence here, so far as Alabama is concerned, shows without contradiction the existence for a period of more than fifty years of the "face-to-face" plan. The evidence in this case shows as far back as fifty-six years. I think is the oldest one,—Mr. Jim Smith,—and coming down to my young friend Ed Ball over here, who admits to thirty-nine years, wasn't it Ed?—and on down to Mr. Patterson and other defendants' witnesses, man after man has testified that until May 1, 1941, it had been without any exception the custom to compute and pay wages on the working place-to-working place basis.

In passing I want to give defendants' counsel a little solace as he tries to sleep these hot nights, worrying about his poor clients,—as I looked at them upon the stand,—I have never seen a case fought like this one has been where, with one or two exceptions I don't care to comment upon, there was such an evident intention and purpose on the part of the witnesses on both sides to tell the exact truth, but it is strange that if these terrible conditions exist these men we saw here on the stand should stay there as long as they have. It is rather remarkable how they have continued to work so many years for the same company—not only in the same line of work, but for the same company. As I recall, the witnesses the defendants put on the stand had worked for the same employer for many years,—thirty, twenty, fifteen, and some all their working lives. The Court must have observed their remarkable physical condition. If, as defendants' counsel contend, these men had to undergo such intolerable conditions, we have had demonstrated here a most unusual instance of bearing hardships and hazards.

May it please the Court, the evidence is undisputed that for fifty-six years in the ore mines of Alabama,—your Honor didn't think we should be permitted to into the coal mines,—but in the ore mines for fifty-six years the universal practice without exception has been to treat the work on the basis of productive work at the face.

So, when the Congress enacted the law it knew that the traditional custom all over the country and in Alabama had been, since the memory of man ran, on the "working place-to-working place" basis. Just like I say that Senator LaFollette would have represented his section of the country up yonder, I know our Senators, chargeable with knowledge of the existing workweek as it existed in Alabama by custom and contract,—I know those two Senators would have done one of two things,—either they never would have voted for a bill that would have changed all that, of if they had voted for it they would have had the manhood and the courage to put in that bill exactly what they were voting for.

Now, that brings me briefly to the question of contracts. I wish I had time to analyze these contracts, but I have only a short time longer. I just can't see the applicability of any authorities read by defendants' counsel. They throw no light on the intent of Congress; they restate the questions of estoppel and fraud. We are not arguing there is any matter of estoppel involved in the question we are considering now,—not at all,—so what have the authorities cited on fraud and estoppel between parties got to do with the question of Congressional intent?

The Court:
Waiver?

Mr. Burr:
We are not arguing waiver at this time.

What we are arguing is the undisputed fact that the Supreme Court has said when the Congress passed that Act they were legislating for a workweek and were charged with knowledge of what that workweek was, and you can't get away from those facts.

I am not interested here in this case as to who told the truth as to whether or not the Union at one time requested a six hour day with traveling time included. If such a request were made it was in the good old year 1933 or 1934. What difference does it make whether they asked for six hours then or not? That was before this law was ever thought of. The face-to-face custom was then in existence. The significant thing is if they asked for it in 1933 this shows they knew they did not have it, and they never insisted on it or argued for it, and only included the request along with a large number of other requests. When you read these exhibits you will find that the Union made these requests for payment of half traveling time only in

1933, 1934 and 1935, and that in 1936 Mr. Horn, the District President of the Union, had written a letter to all the iron ore mining companies, submitting a contract in which he used, defining the day's work, the exact language of the bituminous coal contract and the bituminous coal code. And don't forget back yonder in 1933 when they made the request for the half travel time Mr. Gregg's reply was, "We are following the bituminous coal code as closely as we can." So Mr. Horn presented to all these companies a contract in which he defined the work day as being on the face-to-face basis, just like it was in the bituminous coal code, exactly word for word.

What happened after that? I commenced to weep again with sympathy for the labor unions as I listed to defendants' counsel describe what happened at the Chicago conference when the contract of 138 was formulated and signed. Poor, deluded mortals! Capital having its foot on their necks! And all of them with such little education! And who does the undisputed evidence show was representing them at the conference? Why, Mr. Pressman, the general counsel of the C. I. O., which has more paying members right now than the United States has soldiers in its Army, and who is a graduate of "dear old Harvard". There was Jim Vance imposing on Lee Pressman and "gypping" these good friends of mine who have been paraded here as having gone through the fourth, sixth or seventh grade, and who are making more money now, I will bet you, than our young economist over there with the Wage and Hour Division whose total experience consists of education at Reid College and the University of Chicago, a research director for the National Labor Relations Board and a Senior Economist in Charge of Litigated Cases of the Wage and Hour Division of the Labor Department. There was that Union, represented by Pressman and Reid Robinson, its President, negotiating and signing a contract providing that the computation of the day's work should be on the face-to-face basis, using the exact language of the bituminous coal code, and the bituminous coal contracts.

The next thing I want to call to Your Honor's attention is another cardinal rule of statutory construction, and I think this is about the last one.

"The contemporaneous construction of a statute of doubtful meaning by those charged with its enforcement is highly persuasive of the correctness of that interpretation."

Green v. Jones (Kentucky), 186 S. W. 675;

National Lead Co., v. U. S., 252 U. S. 140;

U. S. v. Ala. Great Sou. R. R. Co., (U. S. Supreme Ct.), 35 Law. Ed. p. 1136;

State v. Tuscaloosa Building & Loan Association, 161 So. 530.

So far as this record shows, and it may be assumed we have the entire record here,—so far as this record shows, from the time this Act was enacted on October 24, 1938, until the latter part of March, 1941, Jim Smith, United States District Attorney for this District,—Your Honor taking judicial knowledge of your own records,—never claimed that plaintiffs were daily violating this statute, and no other judicial or administrative officer in the United States has asserted such a violation. The Administrator didn't claim it. On the contrary, he waits and "busts" loose two and a half years afterwards with this kind of opinion, which is not supported by the facts, and then Crampton and Ralph and J. Q. rush in and holler, "Money on the barrel head!"

Mr. Smith:

We didn't bring this suit.

Mr. Burr:

You brought yours mighty quick.

During that two and a half years what were they doing? We come to a cardinal rule of fairness and justice. They were renewing their contracts just like the practice had been for fifty-six years. Not only that, but they accepted wage increases which this undisputed evidence shows were made and computed and based on the good faith and credit, the reliability and sanctity of their written contracts time after time. If there was any ambiguity about the meaning of Section 7 the parties to these contracts construed it time and time again not to include traveling time as work time.—*Birmingham Water Works Co. v. Hernandez*, 196 Ala. 438. And what else did they do? The failure to attempt the enforcement of this law on a portal-to-portal basis prevented these plaintiffs,—and prevented every other company of the United States, because don't believe for an instance that Your Honor's decision here, and its ultimate affirmance or rejection by the other Courts will not affect other industried,—we are the tail to the dog in the iron and coal industry in this country,—from protecting themselves against the unjust claims of the defendant unions. I am not arguing here that if these defendants, all of whom have stepped up four times a month or twice a month for ten or fifteen years and have taken their wages,—some of them $250 a month net, and put their names down in writing, acknowledging full payment on the "face-to-face" basis,— knowing what they were doing, knowing that they were not being paid for traveling time, acknowledging that their construction and the construction of the parties to this contract was just the same as ours, are estopped from suing to recover on the basis of the Administrator's opinion, because that is not the issue we are trying. They signed contracts up to 1941 on this same basis. What would have happened if they had come in then and raised the question? Plaintiffs would have had the opportunity of doing what the Circuit Court of Appeals for this Circuit has just approved in the case of Fleming against Belo Corporation, and in this way protected themselves from these exhorbitant and unjust demands.

The Court:
What is the case?

Mr. Burr:
I will just hand you the opinion. It is an advance sheet. It is Fleming against Belo Corporation.

The Court:
We have that.

Mr. Burr:
Have you?

The Court:
We get them. What state is that from?

Mr. Burr:
Fifth Circuit Court of Appeals,—came up from Texas. I will leave this with Your Honor in case—

The Court:
We have got it.

Mr. Burr:
It is our own Circuit Court of Appeals.

The Court:
Do you remember the Judge who decided it?

Mr. Burr:
Judge Hutchenson wrote the opinion.

The Court:
I mean the District Judge?

Mr. Burr:
Judge Atwell was the District Judge. Judge Hutchenson wrote the opinion and the opinion was unanimous. I would just like to read—the effect of the opinion is—

The Court:
When was it handed down?

Mr. Burr:
June 27, 1941.

The Court:
All right.

Mr. Burr:
The effect of the decision is this:

The Court:
I will read it.

Mr. Burr:
And I particularly want Your Honor to read—well, read the whole opinion.

Now, if Your Honor please, I want very briefly to discuss one or two phases of the evidence. I have tried to make myself clear on this proposition, and that is what I have been discussing so far, that the sole question we have for determination now is whether or not time is to be computed from the time a man goes into the mine until he comes out. That is the question. That is what the Administrator says. That is what these gentlemen say. We say it isn't to be computed in that way. Now, even if we were willing to argue at this time,—it is not an issue at this time, but if it were an issue at this time, there isn't any evidence here to show any work of such a nature as to make traveling time work in these particular mines.

Now, I have gone over the list of witnesses here. As Your Honor recalls, there are two sets of underground employees—

The Court:

Production and service.

Mr. Burr:

Yes, production and service, Your Honor. I don't remember the proportions, but I think it was 60 per cent. service and 40 per cent. production. Take in the mines of the Tennessee Company; out of 2,650 employees 60 per cent. were service employees. All right, sir. Now, Mr. Ball's evidence is undisputed in this case, and it is even undisputed by the few service employees that were on the stand, that, aside from "checking in", which I will discuss in a few minutes,—the evidence is undisputed by these service employees when they go down in the mine on the skip they get off at the man unloading station and they report to their places of work practically right there. There is no contention that they carry tools; there is no contention that they have anything to do with jackhammer steel or that sort of thing; there is no contention they do a thing in the world except to deposit their checks as they go in and take them up as they come out.

Now, look at the witnesses who have testified. There have been of production employees of the Tennessee Company eight head miners, of the Republic Company two head miners, of the Sloss Company three head miners; drag operators, Tennessee Company one, Republic none, Sloss one; section helpers, Tennessee Company one, Republic none, Sloss one,—a total of sixteen of the production crews, and there hasn't been a one of those that hasn't varied in his testimony,—scarcely a one.

Going to the service crews, out of a classification of thirty-three service jobs, there have testified of the Tennessee Company employees one motor inspector, one dispatcher, one service foreman, one hoisting engineer, one skip tender, one timber man; of the Republic Company employees, one hoisting engineer; of the employees of the Sloss Company, one hoisting engineer, one lamp man, one electrician, one drag engineer,—a total of twelve.

So, we say it would be absolutely impossible for the Court on that kind of testimony, and especially when you analyze the testimony,—why, you take the testimony of these men here that testified last at Muscoda,—John White and Frank Palmer and Fred Trammell and W. R. Headrick, and you can't find even in their testimony, any evidence that will justify Your Honor in holding that in riding into that mine they were engaged in any work.

Now, what is the thing they say justifies them in asking this Court to hold that the Congress intended to draw a line at the portal and everyone who went in there was at work until he came out? They say they "check in". Is there any doubt about how they check in? Is there any doubt about the fact that the only thing they do is to deposit their checks as they enter and take them up as they leave?

It is undisputed that not a one of these employees is under supervision so far as the work is concerned until they get to their places of work; that the members of the production crews do not go down with the head miner; some of them meet their head miner at the working place, some meet him at the tool box and walk up with him. In depositing their checks they are doing that to get ready for transportation to their places of work. They are not under any supervision except as to safety until they get to their places of work. Mr. Ball's testimony is undisputed, and is corroborated by the testimony of all these witnesses that the service men, as one witness expressed it, "begins his work when he unlocks his tool box at the motor pit."

As Mr. Ball expressed it, they begin their work when they report to their boss at the place of work. Is there any magic in depositing a check at the top of the mine? Why, the same thing is done in every plant in this country. Your Honor knows they not only check in at the gate of the plant, but they punch the clock, and the work doesn't begin and the time doesn't start until they get to their places of work. So I don't care whether James Knox, or whoever it was who said, "Here am I," or "I am here,"—when he said that he was not, under the language of this Act, at work. He was not, under the interpretation that everybody gives it except the Administrator and these gentlemen over here, engaged in "work."

I submit, in closing, in answering the question as to the meaning of Section 7, in putting yourself in the shoes of Congress, if this Court says that the Congress intended to state that "workweek" included traveling time, it will bastardize the Act against the admitted parentage cf N. R. A. and its codes, and will hold that Congress intended, without saying so, to overrule all judicial and administrative interpretations of this and similar acts; to repudiate the existing, universal custom that had endured for generations; to disown the construction by the parties of their solemn, written contracts, and that in thus overruling all precedent, it demonstrated its inability to understand and use the English language.

Now, I would like—my time is up, Your Honor. I would like to have the privilege of examining and commencing on a few decisions cited by defendants' counsel which we have not had the opportunity to see.

The Court:

Will you let me have them right away?

Mr. Burr:

Yes, sir, in the morning.

Mr. Harris:

We will also have some authorities too.

The Court:

Court is adjourned.

(Whereupon, at 5:20 P. M., August 1, 1941, the hearing in the above entitled matter was closed, and the case was submitted to and taken under advisement by the Court.)

EXHIBITS INTRODUCED IN EVIDENCE.

T. C. I. EXHIBIT X.

Case # 5232, etc.

B-1. 1351.

Tennessee Coal Iron and Railroad Company.

Ore Mines and Quarries.

Daily Time Sheet.

Mine No. ....

Mining—Underground.

Shift...............

Section No. ....

Date............, 19....

Badge Number	Name	Occupation	Hours Worked	Remarks
......	....	Head Miner	......	....
......	....	Drill Runner	......	....
......	....	Drill Runner	......	....
......	....	Drill Runner	......	....
......	....	Drag Operator	......	....
......	....	Section Helper	......	....
......	....	Section Helper	......	....
......	....	Section Helper	......	....
......	....	Section Helper	......	....

.... Section Helper ....
....
....
....
...... Tram Loaded ....
...... Explosives Used:
...... Powder (Sticks) ....
...... Fuse (Feet) ....
...... Caps (Dynamite) ....
...... Paper (Sheets) ....

Approved .... Signed............................
Mine Foreman. Head Miner.

T. C. I. EXHIBIT X-1.

B-3.

Tennessee Coal, Iron and Railroad Company.

Ore Mines and Quarries.

Sheet No. 2.

Daily Time Sheet.

Mechanical, Electrical, and General Underground.

Shift..............

Mine No. ....

Date.........., 19....

Badge Number	Name	Occupation	Hours Worked	Remarks
......	....	Haulage Engineer	.....	....
......	....	Sinking Hoist Engineer	.....	....
......	....	Pocketman	.....	....
......	....	Dumpman	.....	....
......	....	Skip Tender	.....	....
......	....	Skip Tender	.....	....
......	....	Mine Laborer	.....	....
......	....	Mine Helper	.....	....
......	....	Mine Helper	.....	....
......	....	Mat'l & Man Hoist Engr........	.....	....
......	....	U. G. Hoist Engineer	.....	....

		Pumper (Air)		
		Pumper (Air)		
		Electric Pumper		
		Sub-Station Tender		
		U. G. Mule Shoer		
		U. G. Stable Cleaner		
		U. G. Stable Cleaner		
		Boss Driver		
		Mine Mechanic		
		Drag Repairman		
		Drag Repairman		
		Pipeman & Pumper		
		Drag Repairman Helper		
		Drag Repairman Helper		
		Car Repairman		
		Car Repairman Helper		
		Motor Inspector		
		Motor Inspector		
		Motor Inspector Helper		
		Motor Inspector Helper		

Approved .... Signed ....
Mine Foreman. Asst. Mine Foreman.

T. C. I. EXHIBIT X-2.

B-2.

Tennessee Coal, Iron and Railroad Company.

Red Mountain Works.

Daily Time Sheet.

Timbering, Tracks, Chutes, Material and Slate Dumps—Underground.

Shift..............

Mine No. ....

Date.............., 193....

Badge Number	Name	Occupation	Hours Worked	Over	Under	Remarks
......	....	Section Foreman....	......	......	......	....
......	....	Timberman	......	......	......	....
......	....	Trackman	......	......	......	....
......	....	U. G. Carpenter....	......	......	......	....
......	....	Helper	......	......	......	....
......	....	Helper	......	......	......	....
......	....	Helper	......	......	......	....
......	....	Helper	......	......	......	....
......	....	Helper	......	......	......	....
......	....	Helper	......	......	......	....
......	....	Helper	......	......	......	....

.... Helper ....
.... Helper ....
.... Helper ....
.... Helper ....
....

Approved .... Signed ....
Mine Foreman. Foreman.

T. C. I. EXHIBIT X-3.

B-3-A. Tennessee Coal, Iron and Railroad Company. 1353.

Sheet No. 1

Ore Mines and Quarries.

Daily Time Sheet.

Mechanical, Electrical, and General Underground.

Shift ....

Mine No. .... Date.............., 193....

Badge Number	Name	Occupation	Hours Worked	Remarks
......	....	Ore Inspector	......	....
......	....	Dispatcher	......	....

Badge Number	Name	Occupation	Hours Worked	Remarks
......	....	Motorman	......	....
......	....	Motorman	......	....
......	....	Motorman	......	....
......	....	Trip Rider	......	....
......	....	Trip Rider	......	....
......	....	Trip Rider	......	....
......	....	Trip Rider	......	....
......	....	Pipeman	......	....
......	....	Pipeman	......	....
......	....	Section Helper-Service	......	....
......	....	Section Helper-Service	......	....
......	....	Section Helper-Service	......	....
......	....	Section Helper-Service	......	....
......	....	Section Helper-Service	......	....
......	....	Head Miner-Service	......	....
......	....	Drill Runner-Service	......	....
......	....	Drill Runner-Service	......	....
......	....	Drill Runner-Service	......	....
......	....	Gasman	......	....
......	....	Gasman Helper	......	....
......	....	Powderman	......	....

......	....	Haulage Engineer	....	......	....
......	....	Haulage Engineer	....	......	....
......	....	Haulage Engineer	....	......	....
......	....	Haulage Engineer	....	......	....
......	....	Haulage Engineer	....	......	....
......	....	Haulage Engineer	....	......	....
....	....	Haulage Engineer	....	......	....

Approved .... Signed.............................

Mine Foreman. Asst. Mine Foreman.

T. X. I. EXHIBIT X-4.

117 Rev. 1-39.

Tennessee Coal, Iron and Railroad Company.

Authorization for Overtime.

.... Works.

Date
Overtime Worked ....19....

In.............................Department For Turn Ending ....

			Hours Worked in Excess of Standard				
			Daily		Weekly		
No. Badge	Name	Occupation	Special Allowance	In Excess of 8 Hrs. in a 24 hr. Period	In Excess of 5 Turns or 40 hrs. in a calendar wk. or in excess of 5 trns. without 24 Hrs. Continuous. rest	Rate Per Hour	Earning
....	....	....	....	......	....	.....	......
....	....	....	....	......	....	.....	......
....	....	....	....	......	....	.....	......
....	....	....	....	......	....	.....	......
....	....	....	....	......	....	.....	......
....	....	....	....	......	....	.....	......

....	....	....	......	....	.....	....
....	....	....	......	....	.....	....
....	....	....	......	....	.....	....
....	....	....	......	....	.....	....
....	....	....	......	....	.....	....
		Total	......	....	.....	....

Reasons for Overtime—State Briefly.

....

....

....

Approved: .... **Dept. Supt.**
Approved: .... **Genl. Supt.** ....
Foreman.

(This form to be used for reporting overtime only.)

B-6.

T. C. I. EXHIBIT X-5.

Tennessee Coal, Iron and Railroad Company.

Red Mountain Works.

Daily Report of Railroad Cars, Trams Loaded and Men Leaving Mine Before Shift is Over.

Division .... Mine No. .... Shift .... Date 19

Railroad Car Number (Loaded).

1..........	7..........	13..........	19..........	25..........	31..........	37..........
2..........	8..........	14..........	20..........	26..........	32..........	38..........
3..........	9..........	15..........	21..........	27..........	33..........	39..........
4..........	10..........	16..........	22..........	28..........	34..........	40..........
5..........	11..........	17..........	23..........	29..........	35..........	41..........
6..........	12..........	18..........	24..........	30..........	36..........	42..........

Trams Loaded

Heading No.	Mech.	Hand
....	......	......
....	......	......

No. of R. R. cars standing loaded beginning of shift ......

No. R. R. cars standing empty beginning of shift.. ......

No. of empty R. R. Cars placed during shift...... ......

Total Empty R. R. Cars.......................... ......

No. of R. R. Cars Shipped.......................... ......

No. of R. R. Cars standing Loaded

Total Cars Loaded

No. of empty R. R. Cars at End of Shift

Trams in pocket beginning of shift

Trams in pocket end of shift

Remarks:

Total

Force Foreman and Miner

Muckers

Other Mine Labor

Surface

Delays:

Men Leaving Mine Before Shift is Over.

Check No.	Name	Working Place	Reason	Time

....

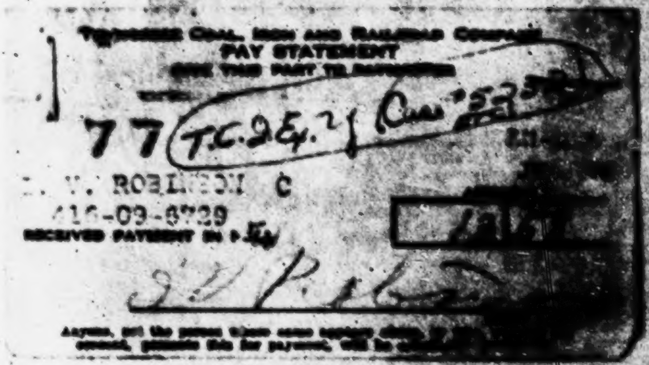
Tallyman.

....

Mine Foreman.

3556

T. C. I. EXHIBIT Y



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77 T.C.I.Ex. 2 } Case #[illegible]

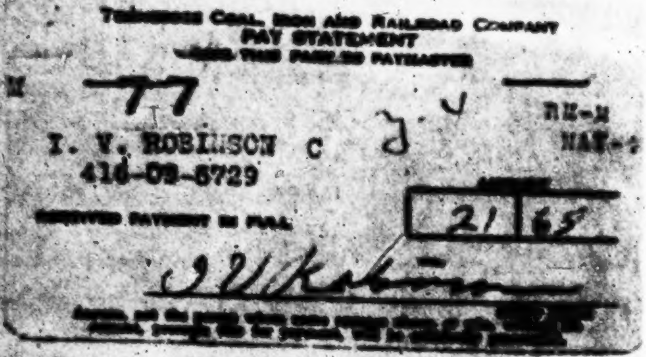
I. V. ROBINSON C
416-09-6729

AMOUNT [illegible]

RECEIVED PAYMENT IN FULL

I V Robinson

T. C. I. EXHIBIT Y-4



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77 Y-4 RM-M

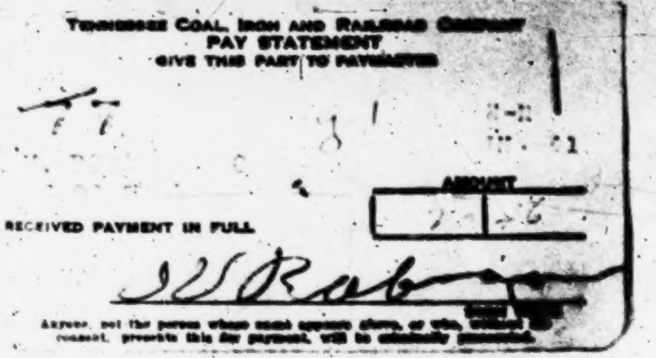
I. V. ROBINSON C
416-09-6729

AMOUNT 21 65

RECEIVED PAYMENT IN FULL

I V Robinson

T. C. I. EXHIBIT Y-1



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77 Y-1 M-M

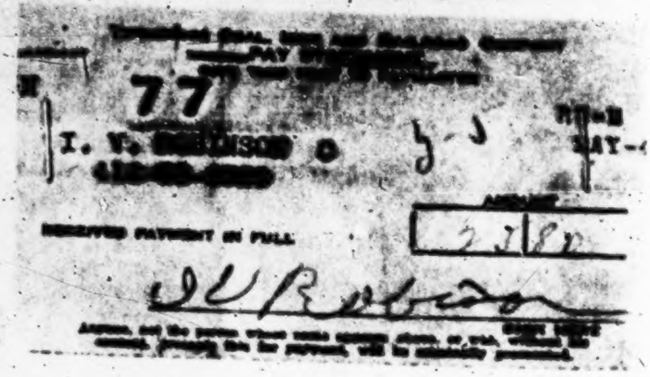
AMOUNT [illegible]

RECEIVED PAYMENT IN FULL

I V Robinson

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT Y-5



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77 Y-5 RM-M MAY-4

I. V. ROBINSON C

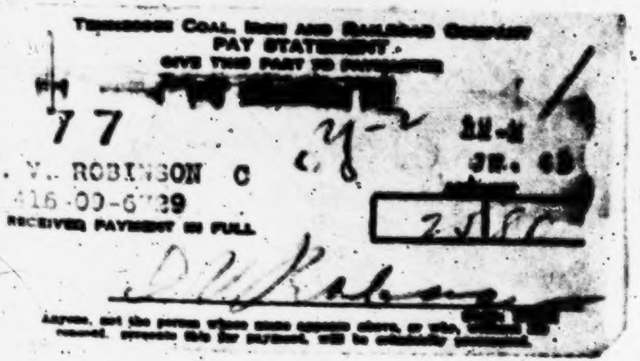
AMOUNT 23 80

RECEIVED PAYMENT IN FULL

I V Robinson

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT Y-2



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

[redacted]

77 Y-2 RM-M

V. ROBINSON C
416-09-6729

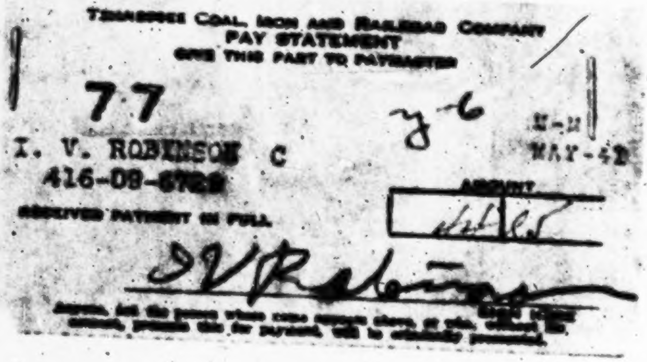
AMOUNT 23 80

RECEIVED PAYMENT IN FULL

I V Robinson

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT Y-6



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77 Y-6 M-M MAY-42

I. V. ROBINSON C
416-09-6729

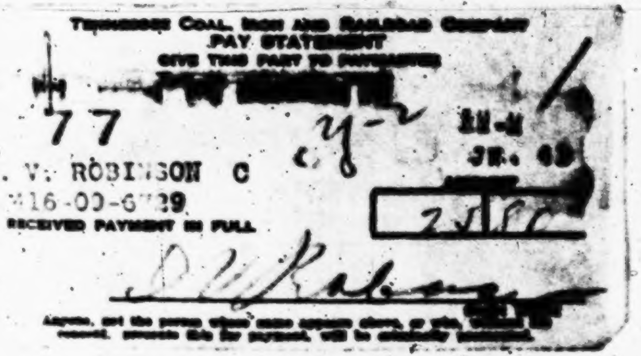
AMOUNT [illegible] 65

RECEIVED PAYMENT IN FULL

I V Robinson

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT Y-2



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

[redacted]

77

Y-2

RH-M
JN. 41

I. V. ROBINSON C
416-09-6729

AMOUNT 23 80

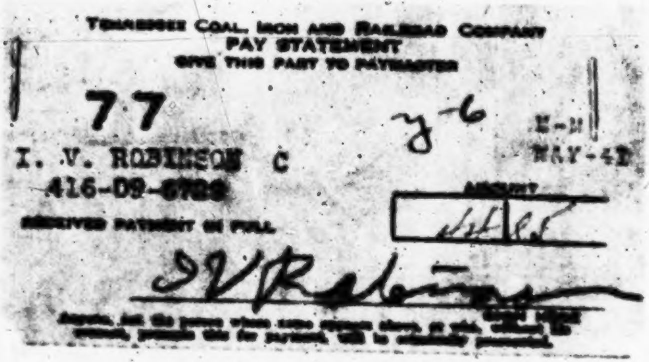
RECEIVED PAYMENT IN FULL

I V Robinson

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT Y-6



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77

Y-6

RH-M
MAY-41

I. V. ROBINSON C
416-09-6729

AMOUNT 44 85

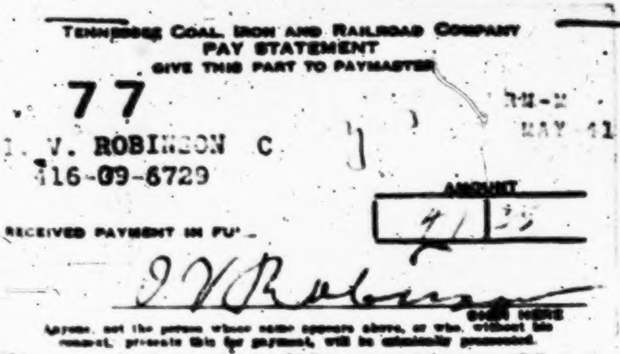
RECEIVED PAYMENT IN FULL

I V Robinson

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT Y-3



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77

RH-M
MAY 41

I. V. ROBINSON C
416-09-6729

AMOUNT 41 35

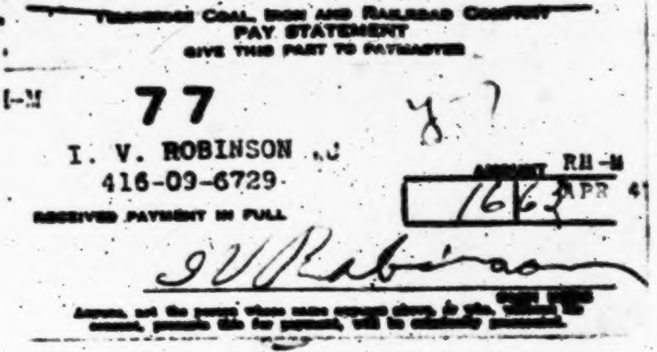
RECEIVED PAYMENT IN FULL

I V Robinson

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT Y-7



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77

Y-7

I. V. ROBINSON C
416-09-6729

AMOUNT 16 63

RH-M
APR 41

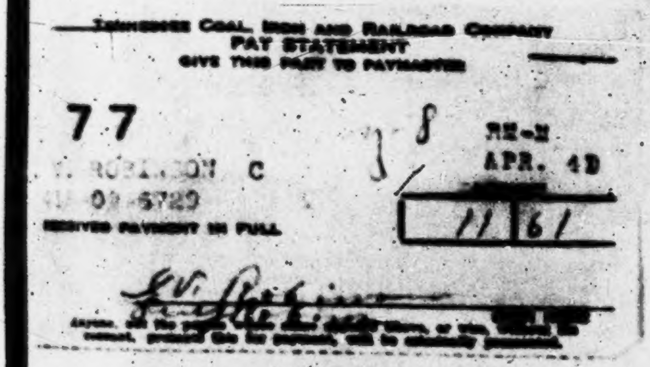
RECEIVED PAYMENT IN FULL

I V Robinson

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT Y-8



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77
V. ROBINSON C
416-09-6729

Y 8
RH-M
APR. 40

RECEIVED PAYMENT IN FULL

11	61

I. V. Robinson

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

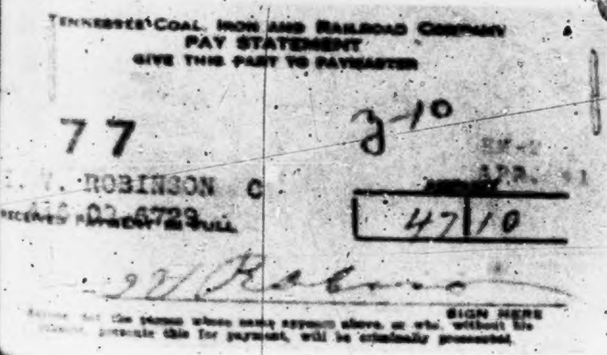
T. C. I. EXHIBIT Y-9

TENNESSEE COAL, IRON AND RAILROAD COMPANY

77
I. V. ROBINSON
416-09-[illegible]

I V R

T. C. I. EXHIBIT Y-10



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77
I. V. ROBINSON C
416-09-6729

Y-10
RH-M
APR. 41

RECEIVED PAYMENT IN FULL

AMOUNT

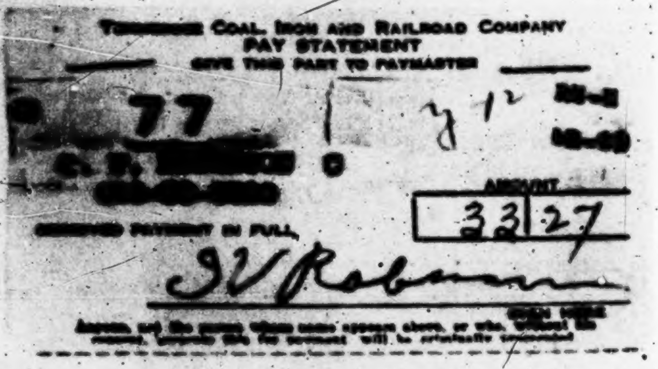
47	10

I V Robinson

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT Y-12



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77
C. V. [redacted] C
[redacted]

Y 12

RECEIVED PAYMENT IN FULL

AMOUNT

33	27

I V Robinson

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

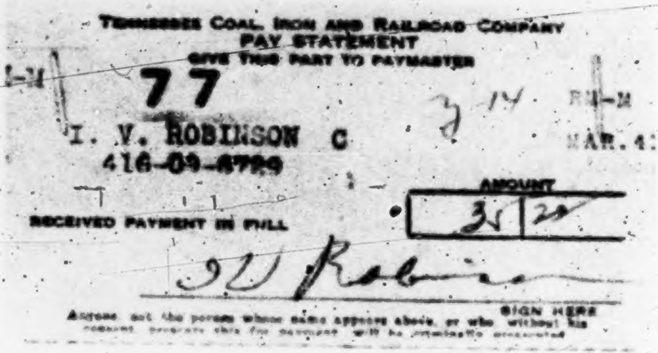
T. C. I. EXHIBIT Y-13

TENNESSEE COAL, IRON AND RAILROAD COMPANY

Y-13

[illegible]	[illegible]

T. C. I. EXHIBIT Y-14



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77
I. V. ROBINSON C
416-09-6729

Y-14
RH-M
MAR. 4

RECEIVED PAYMENT IN FULL

AMOUNT

35	20

I V Robin

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77

3-10

RM-M
APR. 41

I. V. ROBINSON C
416-09-6729

RECEIVED PAYMENT IN FULL

AMOUNT	
47	10

IV Rob

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT Y-14

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

RM-M

77

3-14

RM-M
MAR. 41

I. V. ROBINSON C
416-09-6729

RECEIVED PAYMENT IN FULL

AMOUNT	
35	20

IV Robin

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT Y-15

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77

RM-M
MAR. 41

I. V. ROBINSON C
416-09-6729

RECEIVED PAYMENT IN FULL

AMOUNT	
22	57

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77

RM-M
FEB 41

I. V. ROBINSON C
416-09-6729

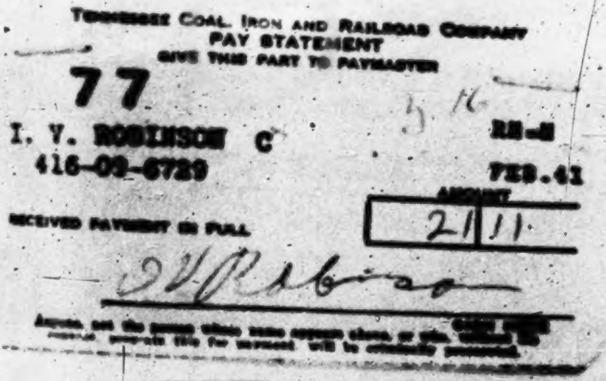
RECEIVED PAYMENT IN FULL

AMOUNT	
34	60

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT Y-16



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77

Y-16

I. V. ROBINSON C
416-09-6729

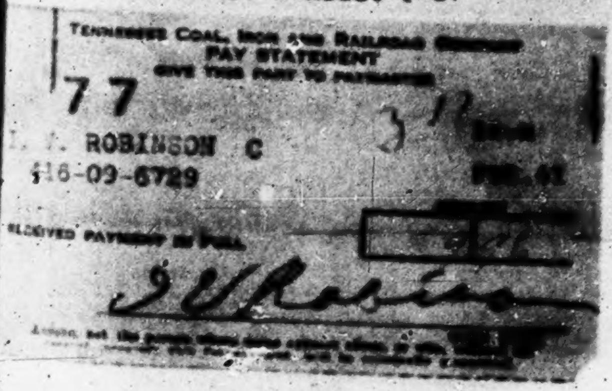
RM-M
FEB.41

AMOUNT
21 | 11

RECEIVED PAYMENT IN FULL

I V Robinson

T. C. I. EXHIBIT Y-17



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77

Y-17

I. V. ROBINSON C
416-09-6729

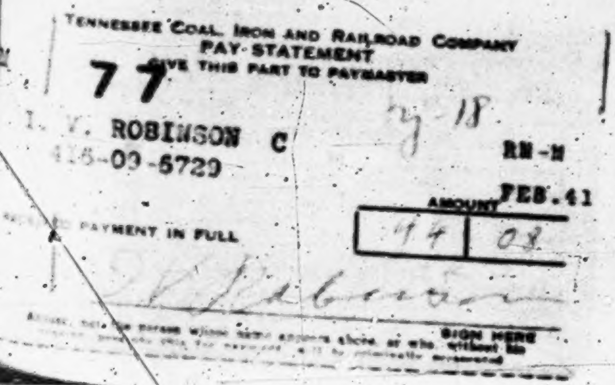
[illegible]
FEB.41

AMOUNT
[illegible]

RECEIVED PAYMENT IN FULL

I V Robinson

T. C. I. EXHIBIT Y-18



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77

Y-18

I. V. ROBINSON C
416-09-6729

RM-M
FEB.41

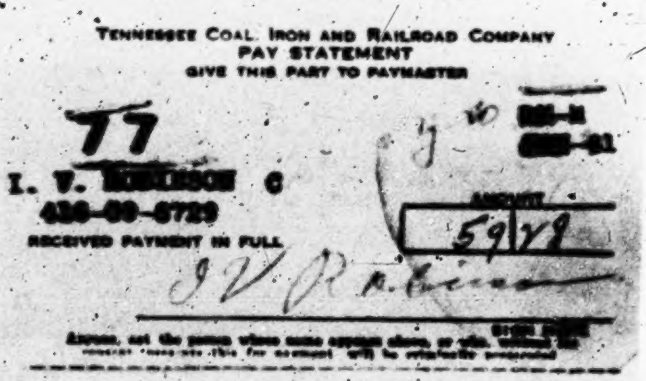
AMOUNT
94 | 08

RECEIVED PAYMENT IN FULL

I V Robinson

SIGN HERE

T. C. I. EXHIBIT Y-20



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77

Y-20

I. V. ROBINSON C
416-09-6729

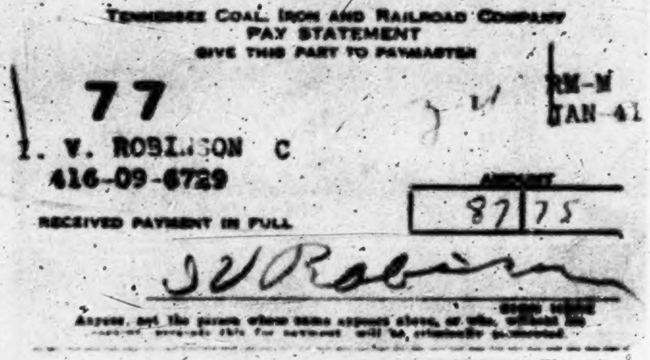
RM-M
[illegible]-41

AMOUNT
59 | 79

RECEIVED PAYMENT IN FULL

I V Robinson

T. C. I. EXHIBIT Y-21



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77

Y-21

I. V. ROBINSON C
416-09-6729

RM-M
JAN-41

AMOUNT
87 | 75

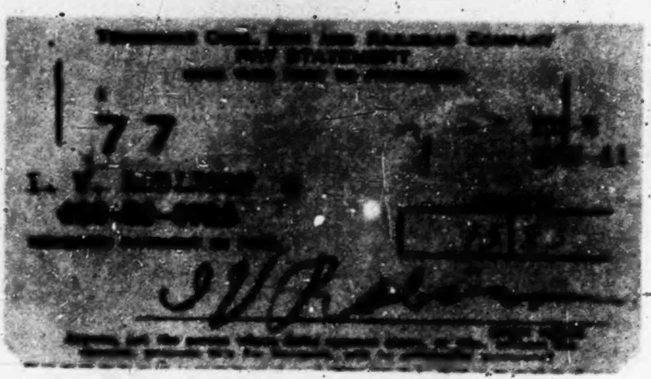
RECEIVED PAYMENT IN FULL

I V Robinson

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment will be criminally prosecuted.

T. C. I. EXHIBIT Y-22

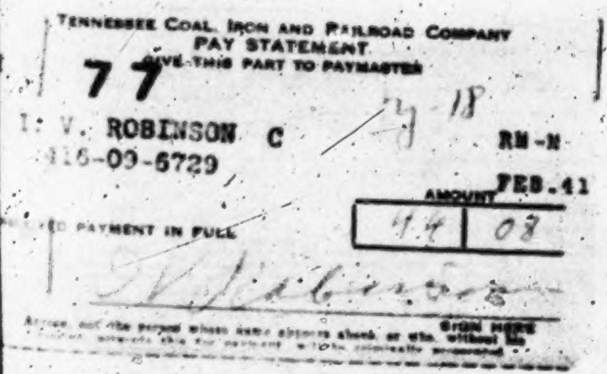


TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77

I. V. [illegible]

I V Robinson



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77

y-18

I. V. ROBINSON C
416-09-6729

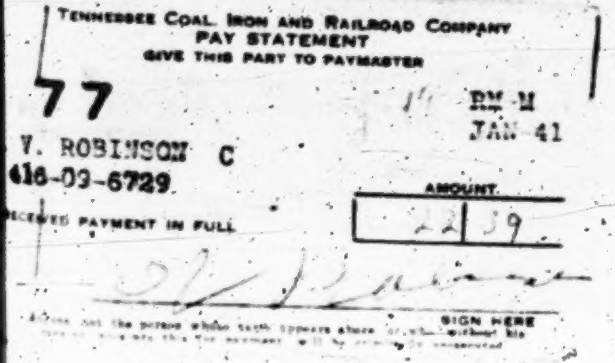
RM-M
FEB. 41

AMOUNT	
44	08

RECEIVED PAYMENT IN FULL

SIGN HERE

T. C. I. EXHIBIT Y-19



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

77

14

RM-M
JAN 41

V. ROBINSON C
416-09-6729

AMOUNT	
22	39

PAYMENT IN FULL

SIGN HERE

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77

T. C. I. EXHIBIT Y-33

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Jan 1941

3-23

RECEIVED PAYMENT IN FULL

Anyone, not the person whose name appears above, or who, without his request, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

[illegible]

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 1ST PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	48	77	36	96
"				
"				
" RATE ADJUSTMENT		.10		
INCENTIVE				
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			36	96
TOTAL DEDUCTIONS			14	57
BALANCE DUE			22	39

DETAIL OF DEDUCTIONS		
SUPPLIES		50
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		36
FED. OLD AGE BEN. TAX		36
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE	1	20
MEDICAL FEE		
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER	2	15
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE		
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	10	[illegible]

T. C. I. EXHIBIT Y-34

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Jan 1941

77 3-24

77 I. V. ROBINSON C
416-03-[illegible]

RECEIVED PAYMENT IN FULL

Anyone, not the person whose name appears above, or who, without his request, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77 I. V. ROBINSON C
416-03-67[illegible]

[illegible]

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 2ND PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	4	77	3	08
"	48	77	36	96
"				
" RATE ADJUSTMENT		.10		
INCENTIVE			20	[illegible]
INCENTIVE EXPLOSIVE			13	[illegible]
TOTAL EARNINGS			74	[illegible]
TOTAL DEDUCTIONS			15	45
BALANCE DUE			59	28

DETAIL OF DEDUCTIONS		
SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		75
FED. OLD AGE BEN. TAX		75
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE	1	20
MEDICAL FEE		
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER	2	15
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE		
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	[illegible]	[illegible]

T. C. I. EXHIBIT Y-25

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Jan. 1941

77 Y-25

I. V. ROBINSON C
416-09-6729

RECEIVED PAYMENT IN FULL

AMOUNT	

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77

I. V. ROBINSON C
416-09-6729

EMPLOYEE TO KEEP THIS PART
THIS IS A STATEMENT OF YOUR EARNINGS FOR 3RD PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	40	77	30	80
"				
"				
" RATE ADJUSTMENT		.10		
INCENTIVE				
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			30	80
TOTAL DEDUCTIONS			14	97
BALANCE DUE			15	83

DETAIL OF DEDUCTIONS		
SUPPLIES		30
ACCIDENT & HEALTH INSURANCE	2	05
ALA. UNEMPLOYMENT INSURANCE		31
FED. OLD AGE BEN. TAX		31
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE		
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER	2	00
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE		
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	[illegible]	[illegible]

T. C. I. EXHIBIT Y-26

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Jan. 1941

77 Y-26

77 I. V. ROBINSON C
416-09-6729

RECEIVED PAYMENT IN FULL

AMOUNT	

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77

I. V. ROBINSON C
416-09-6729

JAN 4 1941

EMPLOYEE TO KEEP THIS PART
THIS IS A STATEMENT OF YOUR EARNINGS FOR 4TH PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	56	77	43	12
"				
"				
" RATE ADJUSTMENT		.10		
INCENTIVE			21	12
INCENTIVE EXPLOSIVE			26	33
TOTAL EARNINGS			90	57
TOTAL DEDUCTIONS			2	82
BALANCE DUE			87	75

DETAIL OF DEDUCTIONS		
SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		91
FED. OLD AGE BEN. TAX		91
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE		
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER	1	00
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE		
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION		

T. C. I. EXHIBIT Y-27

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER [illegible]

I. V. ROBINSON C
03-[illegible]

RECEIVED PAYMENT IN FULL	AMOUNT	

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77 I. V. ROBINSON C
416-03-[illegible]

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 1ST PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	8	77	6	16
"	56	77	43	12
"				
" RATE ADJUSTMENT		.10		
INCENTIVE				
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			49	28
TOTAL DEDUCTIONS			14	68
BALANCE DUE			34	60

DETAIL OF DEDUCTIONS		
SUPPLIES		35
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		49
FED. OLD AGE BEN. TAX		49
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE	1	20
MEDICAL FEE		
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER	2	15
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE		
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	10	00

Form [illegible]

T. C. I. EXHIBIT Y-28

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER [illegible]

I. V. ROBI[illegible]
416-03-[illegible]

RECEIVED PAYMENT IN FULL	AMOUNT	

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77 I. V. ROBINSON C
416-03-6[illegible]9

EMPLOYEE TO KEEP THIS PART

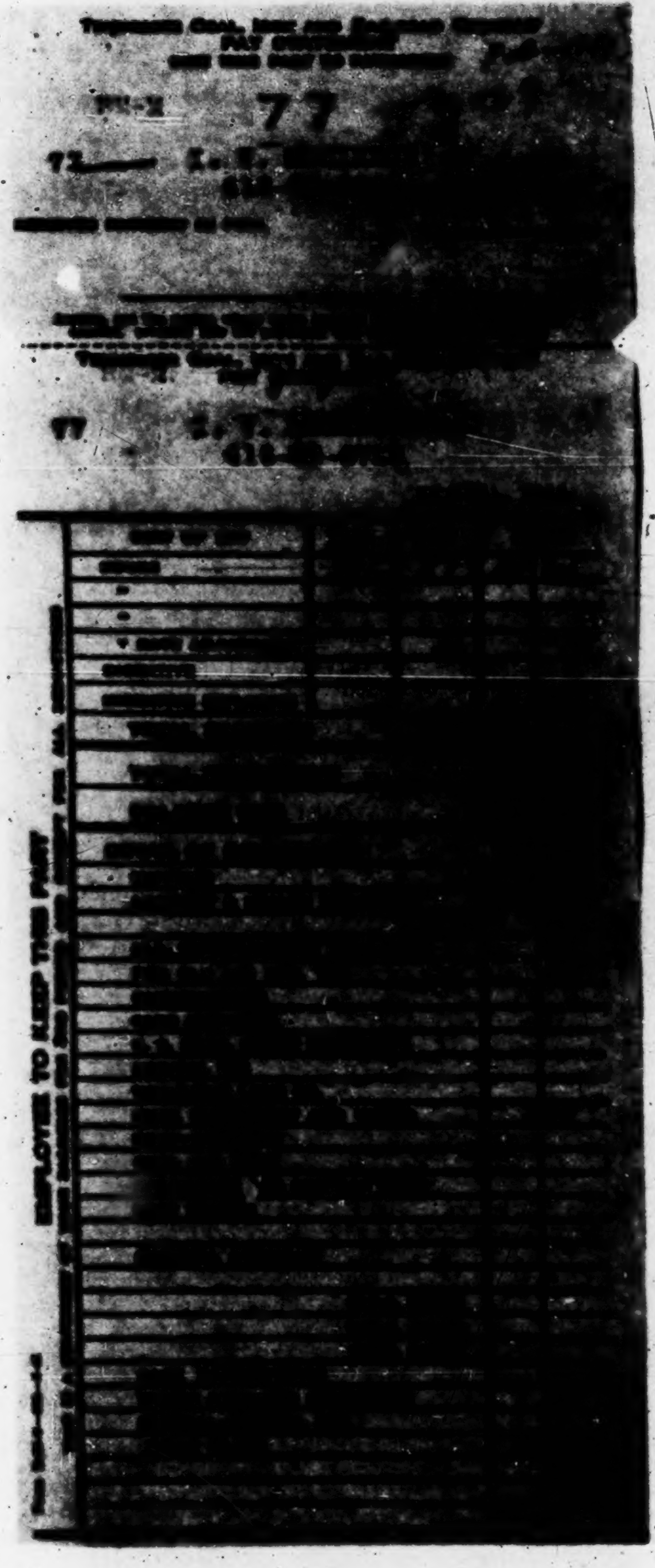
THIS IS A STATEMENT OF YOUR EARNINGS FOR 2ND PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	32	77	24	64
"				
"				
" RATE ADJUSTMENT		.10		
INCENTIVE			4	31
INCENTIVE EXPLOSIVE			6	63
TOTAL EARNINGS			35	58
TOTAL DEDUCTIONS			14	47
BALANCE DUE			21	11

DETAIL OF DEDUCTIONS		
SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		36
FED. OLD AGE BEN. TAX		36
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE	1	75
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER	2	00
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE		
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	10	00

Form 3-88-B—[illegible]—8-41

T. C. I. EXHIBIT Y-29



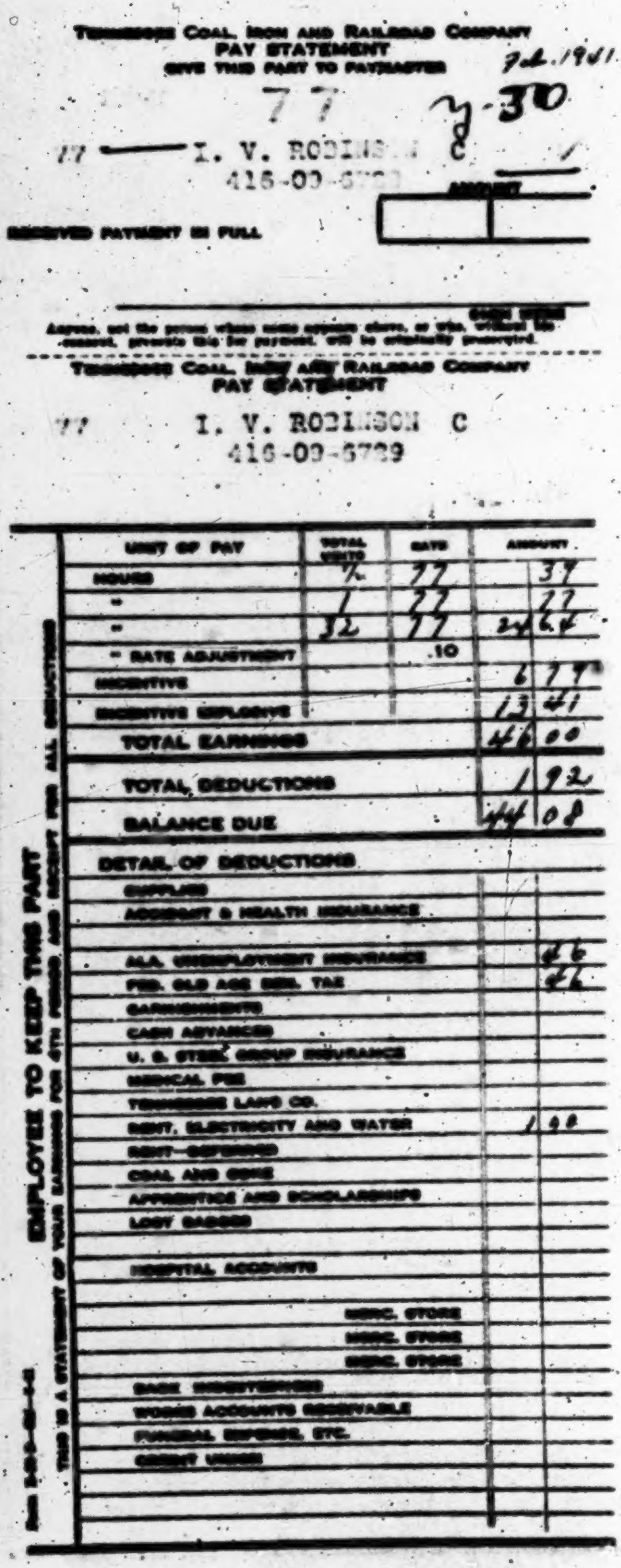
TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77

77 —— I. V. R

EMPLOYEE TO KEEP THIS PART

T. C. I. EXHIBIT Y-30



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Feb. 1941

77 Y-30

77 —— I. V. ROBINSON C ✓
416-03-6729

RECEIVED PAYMENT IN FULL

AMOUNT

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77 I. V. ROBINSON C
416-03-6729

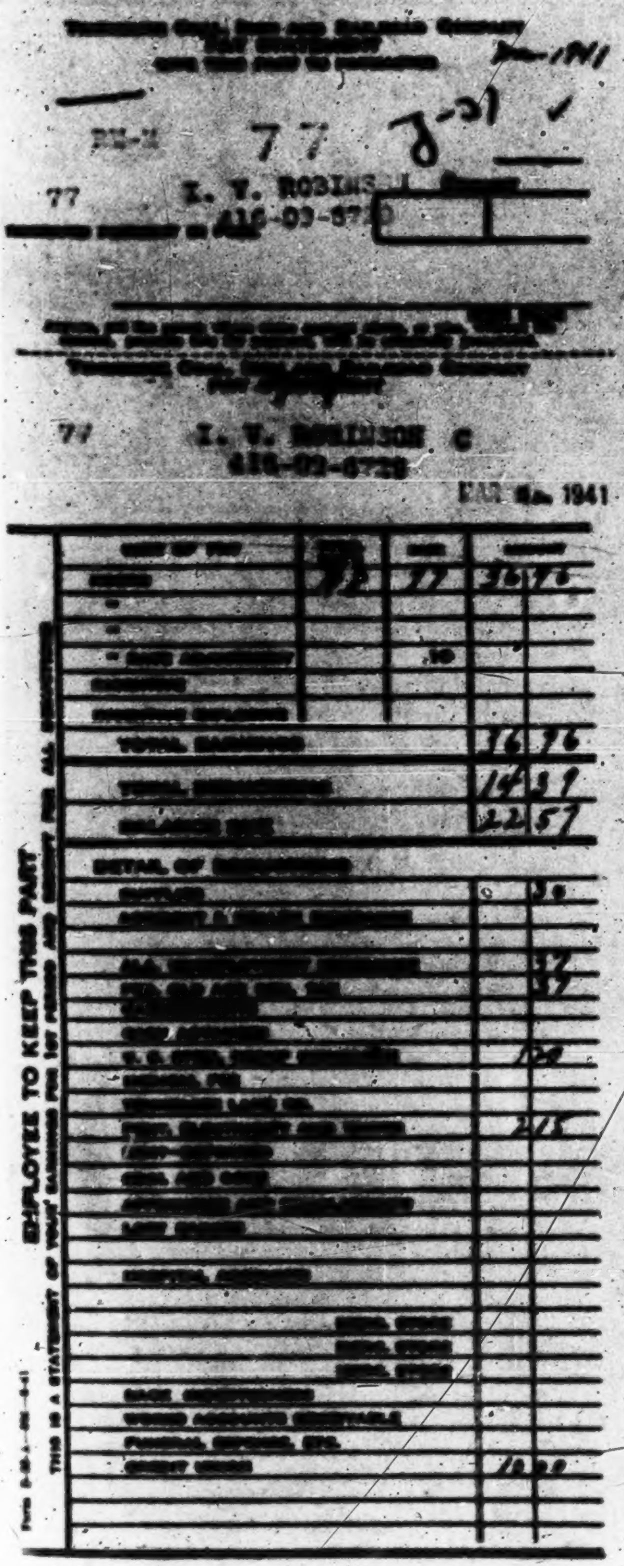
UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	½	77		37
"	1	77		77
"	32	77	24	64
" RATE ADJUSTMENT		.10		
INCENTIVE			6	77
INCENTIVE EXPLOSIVE			13	41
TOTAL EARNINGS			46	00
TOTAL DEDUCTIONS			1	92
BALANCE DUE			44	08

DETAIL OF DEDUCTIONS		
SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		46
FED. OLD AGE BEN. TAX		46
GARNISHMENTS		
CASH ADVANCED		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE		
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER	1	00
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE		
BANK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSES, ETC.		
CREDIT UNION		

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 4TH PERIOD AND RECEIPT FOR ALL DEDUCTIONS

T. C. I. EXHIBIT Y-31



Jan-1941

[illegible]-31 ✓

77

77 I. V. ROBINSON

416-03-6720

77 I. V. ROBINSON C

416-03-6720

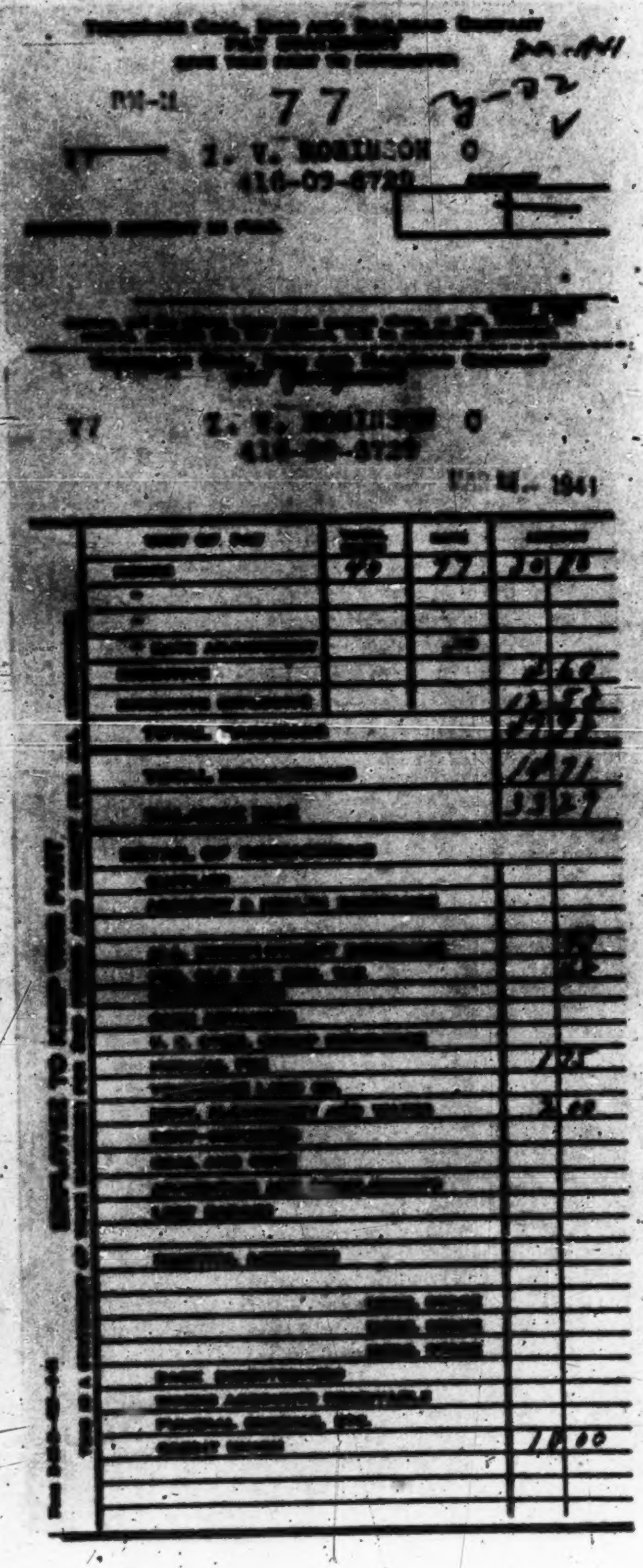
MAR [illegible] 1941

[illegible]	72	77	36	76
TOTAL [illegible]			36	76
TOTAL [illegible]			14	19
[illegible]			22	57

[illegible]	0	30
[illegible]		37
[illegible]		37
[illegible]		1 20
[illegible]		2 15
[illegible]		10 00

EMPLOYEE TO KEEP THIS PART

T. C. I. EXHIBIT Y-32



Jan-1941

[illegible]-32 ✓

77

I. V. ROBINSON C

416-03-6720

77 I. V. ROBINSON C

416-03-6720

MAR [illegible] 1941

[illegible]	[illegible]	77	[illegible]	76
[illegible]			2	60
[illegible]			12	[illegible]
TOTAL [illegible]			[illegible]	[illegible]
TOTAL [illegible]			10	71
[illegible]			33	27

[illegible]		1 25
[illegible]		2 00
[illegible]		10 00

T. C. I. EXHIBIT Y-33

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Nov. 1941

PN-M 77

Y-33 ✓

77 I. V. ROBINSON C
416-09-6729

AMOUNT

RECEIVED PAYMENT IN FULL

[illegible]

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77 I. V. [illegible]
416-0[illegible]

[illegible]	[illegible]	[illegible]	[illegible]

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 3RD PERIOD AND RECEIPT FOR ALL DEDUCTIONS

T. C. I. EXHIBIT Y-34

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Nov 1941

77

Y-34 ✓

77 I. V. ROBI[illegible] C
416-09-6729

AMOUNT

RECEIVED PAYMENT IN FULL

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77 I. V. ROBI[illegible]SON C
416-09-6729

[illegible] 1941

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT
HOURS	48	77	36 96
"			
"			
" RATE ADJUSTMENT		.10	
INCENTIVE			
INCENTIVE EXPLOSIVE			
TOTAL EARNINGS			36 96
TOTAL DEDUCTIONS			1 74
BALANCE DUE			35 22

DETAIL OF DEDUCTIONS	
SUPPLIES	
ACCIDENT & HEALTH INSURANCE	
ALA. UNEMPLOYMENT INSURANCE	37
FED. OLD AGE BEN. TAX	37
GARNISHMENTS	
CASH ADVANCES	
U. S. STEEL GROUP INSURANCE	
MEDICAL FEE	
TENNESSEE LAND CO.	
RENT, ELECTRICITY AND WATER	1 00
RENT—DEFERRED	
COAL AND COKE	
APPRENTICE AND SCHOLARSHIPS	
LOST BADGES	
HOSPITAL ACCOUNTS	
MERC. STORE	
MERC. STORE	
MERC. STORE	
BACK INDEBTEDNESS	
WORKS ACCOUNTS RECEIVABLE	
FUNERAL EXPENSE, ETC.	
CREDIT UNION	

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 4TH PERIOD AND RECEIPT FOR ALL DEDUCTIONS

Form 3-38-D-6M-8-41

T. C. I. EXHIBIT Y-35

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

April-1941

77

Y-35

77 I. V. ROBINSON C ✓
416-09-6729

AMOUNT	

RECEIVED PAYMENT IN FULL

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

I. V. ROBINSON C
416-09-6729

APR [illegible] 1941

UNIT OF PAY	TOTAL HOURS	RATE	AMOUNT	
HOURS	40	77	30	80
"				
"				
" RATE ADJUSTMENT		.10		
INCENTIVE				
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			30	80
TOTAL DEDUCTIONS			14	17
BALANCE DUE			16	63

DETAIL OF DEDUCTIONS		
SUPPLIES		30
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		21
FED. OLD AGE BEN. TAX		31
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE	1	20
MEDICAL FEE		
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER	2	15
RENT—DEFERRED		
COAL AND COKE		
APPLIANCES AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MDSE. STORE		
MDSE. STORE		
MDSE. STORE		
BACK INCENTIVES		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSES, ETC.		
CREDIT UNION	10	00

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 1ST PERIOD AND RECEIPT FOR ALL DEDUCTIONS

Form [illegible]

T. C. I. EXHIBIT Y-36

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

April 1941

77

77 I. V. ROBINSON C Y-36 ✓
416-09-6729

AMOUNT	

RECEIVED PAYMENT IN FULL

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77 I. V. ROBINSON C
416-09-6729

APR [illegible] 1941

UNIT OF PAY	TOTAL HOURS	RATE	AMOUNT	
HOURS	[illegible]	77		54
"	1	77		77
"	32	77	24	64
" RATE ADJUSTMENT		.10		
INCENTIVE				
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			25	70
TOTAL DEDUCTIONS			14	19
BALANCE DUE			11	61

DETAIL OF DEDUCTIONS		
SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		17
FED. OLD AGE BEN. TAX		25
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE	1	17
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER	1	10
RENT—DEFERRED		
COAL AND COKE		
APPLIANCES AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MDSE. STORE		
MDSE. STORE		
MDSE. STORE		
BACK INCENTIVES		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSES, ETC.		
CREDIT UNION	[illegible]	[illegible]

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 1ST PERIOD AND RECEIPT FOR ALL DEDUCTIONS

Form [illegible]

T. C. I. EXHIBIT Y-37

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER april 1941

77 Y-37 ✓

77 I. V. ROBINSON C
416-03-6729

AMOUNT

RECEIVED PAYMENT IN FULL

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77

77 I. V. ROBINSON C
416-03-6729

APR 15 1941

EMPLOYEE TO KEEP THIS PART.
THIS IS A STATEMENT OF YOUR EARNINGS FOR 3RD PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	48	77	36	96
"				
"				
" RATE ADJUSTMENT		10		
INCENTIVE				
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			36	96
TOTAL DEDUCTIONS			15	88
BALANCE DUE			21	08

DETAIL OF DEDUCTIONS

SUPPLIES		70
ACCIDENT & HEALTH INSURANCE	2	05
ALA. UNEMPLOYMENT INSURANCE		26
FED. OLD AGE BEN. TAX		37
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE		
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER	3	00
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE		
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	10	00

T. C. I. EXHIBIT Y-38

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER april 1941

77 Y-38 ✓

77 I. V. ROBINSON C
416-03-6729

AMOUNT

RECEIVED PAYMENT IN FULL

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77 I. V. ROBINSON C
416-03-6729

EMPLOYEE TO KEEP THIS PART.
THIS IS A STATEMENT OF YOUR EARNINGS FOR 4TH PERIOD AND RECEIPT FOR ALL DEDUCTIONS

Form B 20 D—9M—5-41

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	24	77	18	48
"				
"				
" RATE ADJUSTMENT		10		
INCENTIVE			8	56
INCENTIVE EXPLOSIVE			20	88
TOTAL EARNINGS			47	92
TOTAL DEDUCTIONS				82
BALANCE DUE			47	10

DETAIL OF DEDUCTIONS

SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		34
FED. OLD AGE BEN. TAX		48
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE		
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER		
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE		
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION		

T. C. I. EXHIBIT Y-39

Tennessee Coal, Iron and Railroad Company
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

May 1941

77 Y 39 ✓

77 I. V. ROBINSON C
416-09-6729

RECEIVED PAYMENT IN FULL.

EMPLOYEE

[illegible]

Tennessee Coal, Iron and Railroad Company
PAY STATEMENT

77 I. V. ROBINSON C
416-09-6729

MAY [illegible] - 1941

[illegible]	[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	77	[illegible]	72
[illegible]		.35	5	60
[illegible]	[illegible]		13	95
[illegible]				
TOTAL EARNINGS			63	27
TOTAL DEDUCTIONS			15	92
BALANCE DUE			47	35

DETAIL OF DEDUCTIONS		
[illegible]		18
ACCIDENT & HEALTH INSURANCE		
[illegible]		25
[illegible]		63
[illegible]		
[illegible]		
[illegible]	1	20
[illegible]		
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER	2	15
[illegible]		
COAL AND COKE		
[illegible]		
LOST BADGES		
HOSPITAL ACCOUNTS	1	00
MDSE. STORE		
MDSE. STORE		
MDSE. STORE		
BANK INSTALLMENTS		
WAGES ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	10	60

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR PAY PERIOD AND [illegible]

Form [illegible]

T. C. I. EXHIBIT Y-40

Tennessee Coal, Iron and Railroad Company
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

May 1941

77 Y 40 ✓

77 I. V. ROBINSON C
416-09-6729

RECEIVED PAYMENT IN FULL.

EMPLOYEE

[illegible]

Tennessee Coal, Iron and Railroad Company
PAY STATEMENT

77 I. V. ROBINSON C
416-09-6729

MAY [illegible] - 1941

[illegible]	[illegible]	[illegible]	[illegible]	
[illegible]	.72	77	29	64
[illegible]		.35	1	20
[illegible]			2	77
[illegible]			3	26
TOTAL EARNINGS			3[illegible]	21
TOTAL DEDUCTIONS			14	36
BALANCE DUE			21	65

DETAIL OF DEDUCTIONS		
[illegible]		
ACCIDENT & HEALTH INSURANCE		
[illegible]		25
[illegible]		15
[illegible]		
[illegible]		
[illegible]		
[illegible]	1	25
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER	2	00
[illegible]		
COAL AND COKE		
[illegible]		
LOST BADGES		
HOSPITAL ACCOUNTS		
MDSE. STORE		
MDSE. STORE		
MDSE. STORE		
BANK INSTALLMENTS		
WAGES ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	10	00

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR PAY PERIOD AND [illegible]

Form [illegible]

T. C. I. EXHIBIT Y-41

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER May 1941

77 Y-41

77 I. V. ROBINSON C
416-09-87[illegible]

RECEIVED PAYMENT IN FULL

[illegible]

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
77

77 I. V. ROBINSON C
416-09-87[illegible]
[illegible]

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 3RD PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT
HOURS	[illegible]	[illegible]	[illegible]
"			
"			
" RATE ADJUSTMENT		.10	[illegible]
INCENTIVE			
INCENTIVE EXPLOSIVE			
TOTAL EARNINGS			[illegible]
TOTAL DEDUCTIONS			[illegible]
BALANCE DUE			[illegible]

DETAIL OF DEDUCTIONS

[illegible]

T. C. I. EXHIBIT Y-42

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER May 1941

77 Y42

77 I. V. ROBINSON C
416-09-8723

	AMOUNT	
RECEIVED PAYMENT IN FULL		

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
77

77 I. V. ROBINSON C
416-09-87[illegible]

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 4TH PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	48	77	36	96
"				
"				
" RATE ADJUSTMENT		.10	4	80
INCENTIVE				
INCENTIVE EXPLOSIVE			3	87
TOTAL EARNINGS			45	63
TOTAL DEDUCTIONS				78
BALANCE DUE			44	85

DETAIL OF DEDUCTIONS		
SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		32
FED. OLD AGE BEN. TAX		46
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE		
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER		
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE		
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION		

Form 3-20-D—[illegible]—5-41

T. C. I. EXHIBIT Y-45

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER June 1941

77

77 I. V. ROBINSON C
416-09-6729

RECEIVED PAYMENT IN FULL.

[illegible]

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

77

77 I. V. ROBINSON C
416-09-6729
JUN 7 1941

[illegible]	[illegible]	[illegible]	[illegible]	
HOURS	[illegible]	.77	[illegible]	[illegible]
"				
"				
" RATE ADJUSTMENT	[illegible]	[illegible]	[illegible]	
TOTAL EARNINGS			[illegible]	
TOTAL DEDUCTIONS			[illegible]	
BALANCE DUE			[illegible]	

EMPLOYEE TO KEEP THIS PART

T. C. I. EXHIBIT Y-46

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER June 1941

77

77 I. V. ROBINSON C
416-09-6729

AMOUNT

RECEIVED PAYMENT IN FULL.

FORM [illegible]
Anyone, not the person whose name appears above, or his, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

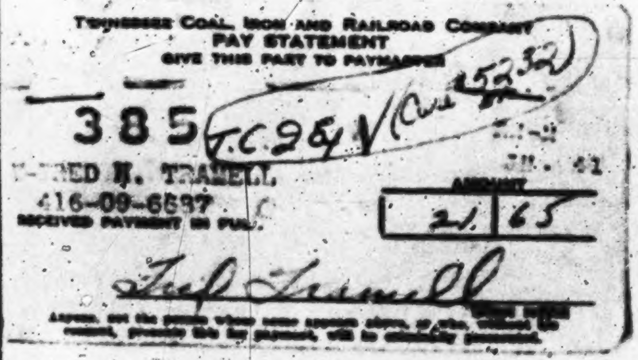
77 I. V. ROBINSON C
415-09-6729

1941

UNIT OF PAY	TOTAL HOURS	RATE	AMOUNT	
HOURS	40	.77	30	80
"				
"				
" RATE ADJUSTMENT	40 Hrs	@ .10	4	00
INCENTIVE			7	55
INCENTIVE EXPLOSIVE			1	55
TOTAL EARNINGS			44	09
TOTAL DEDUCTIONS				75
BALANCE DUE			43	25

DETAIL OF DEDUCTIONS		
SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		31
FED. OLD AGE BEN. TAX		44
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE		
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER		
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE		
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION		

EMPLOYEE TO KEEP THIS PART
THIS IS A STATEMENT OF YOUR EARNINGS FOR 4TH PERIOD AND RECEIPT FOR ALL DEDUCTIONS



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385 T.C. 264 V (Aus 5232)

JN. 41

RED N. TRAMELL
416-09-6687

RECEIVED PAYMENT IN FULL

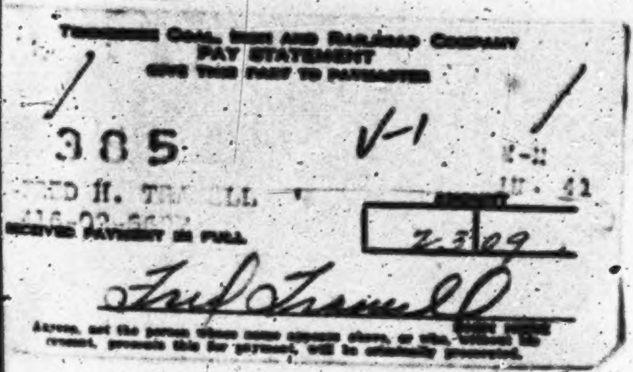
AMOUNT 21 | 65

Fred Tramell

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT V-1



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385 V-1

JN. 41

ED H. TRAMELL

RECEIVED PAYMENT IN FULL

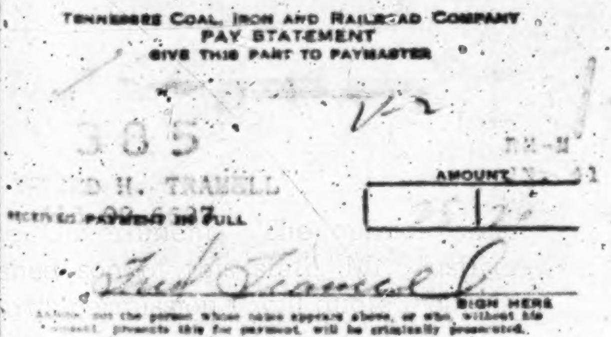
AMOUNT 23 | 09

Fred Tramell

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT V-2



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385 V-2

RH-M

D H. TRAMELL

RECEIVED PAYMENT IN FULL

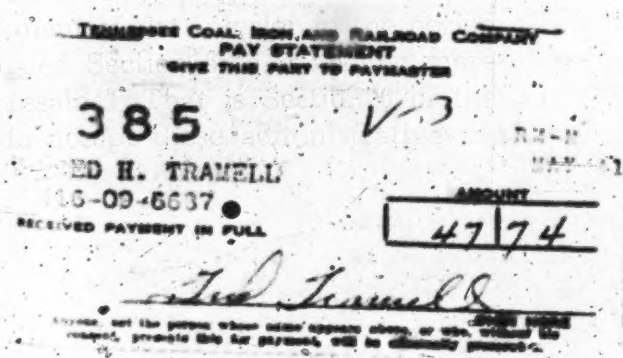
AMOUNT [illegible] | 72

Fred Tramell

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT V-3



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385 V-3

RH-M
MAY-41

ED H. TRAMELL
16-09-6687

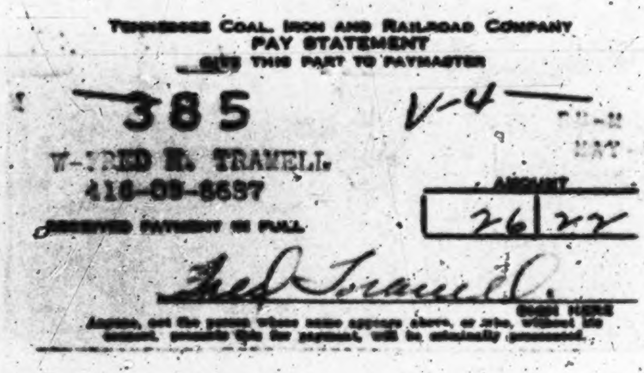
RECEIVED PAYMENT IN FULL

AMOUNT 47 | 74

Fred Tramell

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385 V-4

RH-M
MAY-41

W-FRED H. TRAMELL
416-09-6687

RECEIVED PAYMENT IN FULL

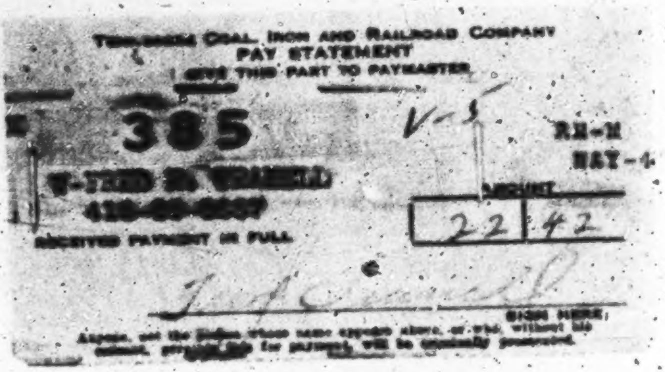
AMOUNT 26 | 22

Fred Tramell

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT V-5



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385 V-5

RH-M
MAY-4

W-FRED H. TRAMELL
416-09-6687

RECEIVED PAYMENT IN FULL

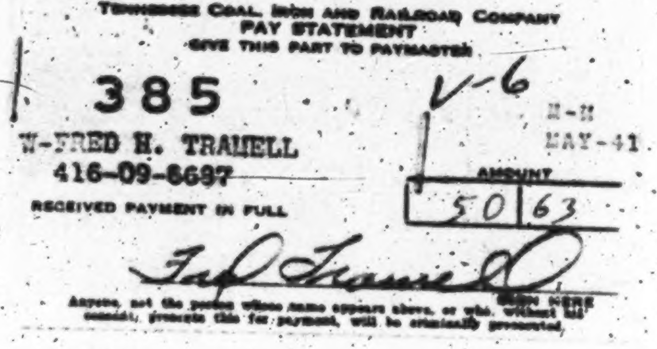
AMOUNT 22 | 42

Fred Tramell

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT V-6



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385 V-6

H-M
MAY-41

W-FRED H. TRAMELL
416-09-6687

RECEIVED PAYMENT IN FULL

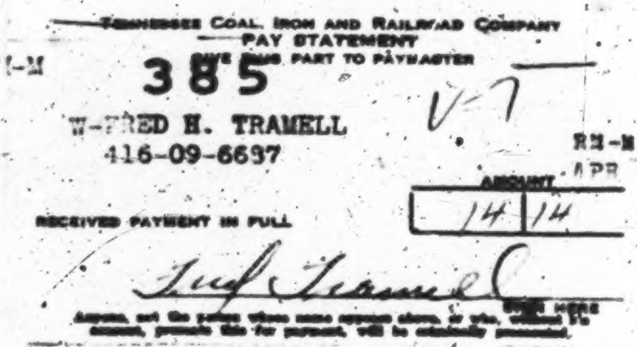
AMOUNT 50 | 63

Fred Tramell

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT V-7



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385 V-7

W-FRED H. TRAMELL
416-09-6687

RH-M
APR 4

RECEIVED PAYMENT IN FULL

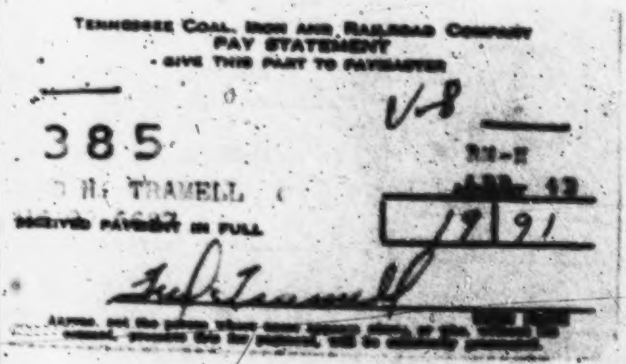
AMOUNT 14 | 14

Fred Tramell

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT V-8



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

V-8

385

H. TRAMELL

RECEIVED PAYMENT IN FULL

19 | 91

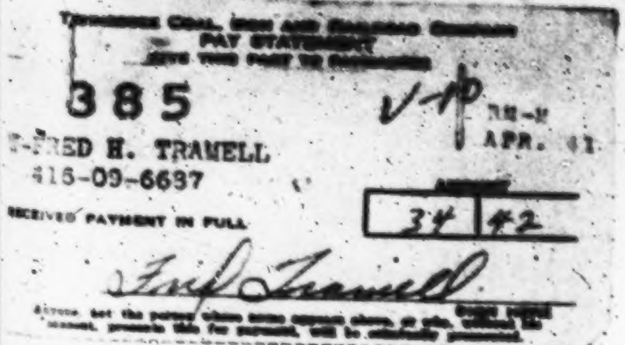
Fred Tramell

T. C. I. EXHIBIT V-9

385

416-

T. C. I. EXHIBIT V-10



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385

V-10

FRED H. TRAMELL
416-09-6637

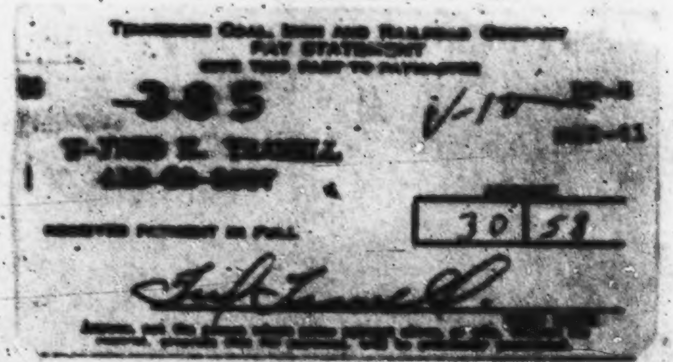
APR. 41

RECEIVED PAYMENT IN FULL

34 | 42

Fred Tramell

T. C. I. EXHIBIT V-12



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385

V-12

W-FRED H. TRAMELL

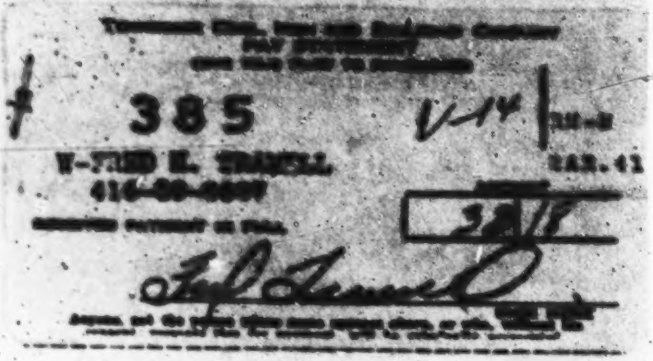
RECEIVED PAYMENT IN FULL

30 | 58

Fred Tramell

T. C. I. EXHIBIT V-13

T. C. I. EXHIBIT V-14



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385

V-14

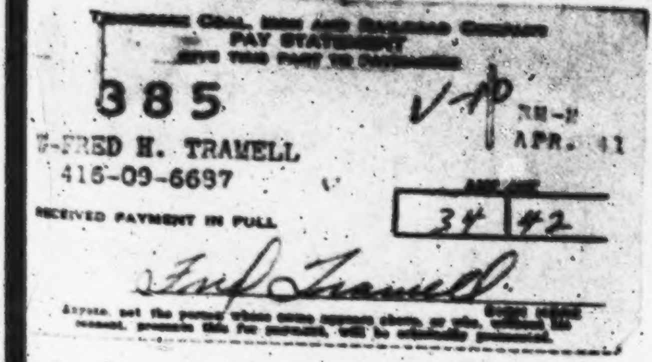
W-FRED H. TRAMELL

MAR. 41

RECEIVED PAYMENT IN FULL

Fred Tramell

T. C. I. EXHIBIT V-10



PAY STATEMENT

385

V-10

RM-M
APR. 41

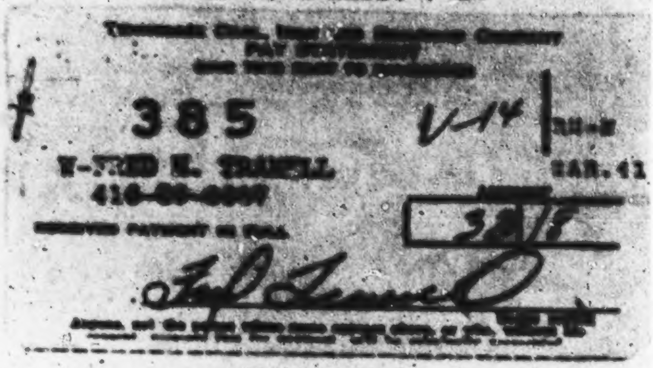
-FRED H. TRAMELL
416-09-6697

RECEIVED PAYMENT IN FULL

34 | 42

Fred Tramell

T. C. I. EXHIBIT V-14



385

V-14

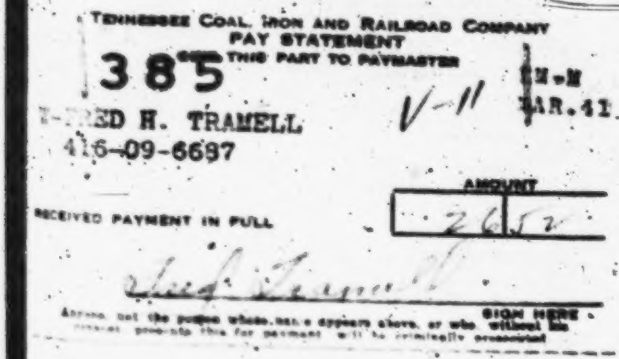
RM-M
MAR. 41

W-FRED H. TRAMELL
416-09-6697

RECEIVED PAYMENT IN FULL

38 | 15

T. C. I. EXHIBIT V-11



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385

V-11

RM-M
MAR. 41

-FRED H. TRAMELL
416-09-6697

AMOUNT

RECEIVED PAYMENT IN FULL

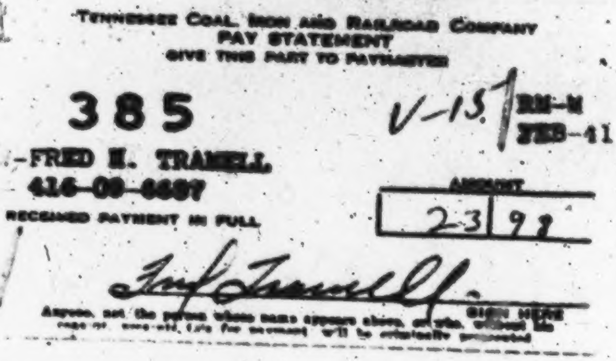
26 | 52

Fred Tramell

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT V-15



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385

V-15

RM-M
FEB-41

-FRED H. TRAMELL
416-09-6697

AMOUNT

RECEIVED PAYMENT IN FULL

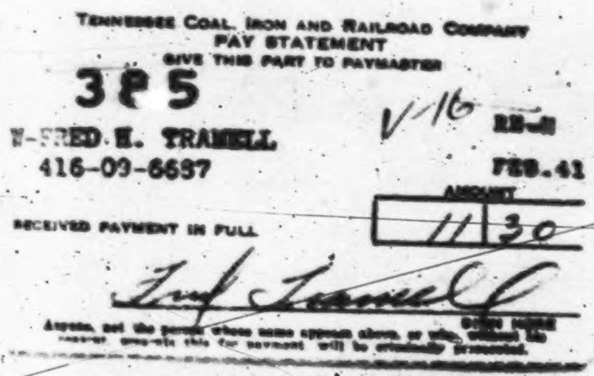
23 | 99

Fred Tramell

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

T. C. I. EXHIBIT V-16



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385

V-16

[illegible]

Y-FRED H. TRAMELL
416-03-6687

FEB.41

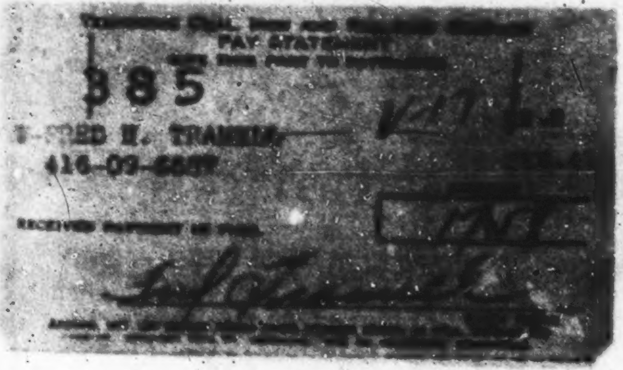
AMOUNT 11 30

RECEIVED PAYMENT IN FULL

Fred Tramell

Anyone, not the person whose name appears above, or who, without his request, presents this for payment will be criminally prosecuted.

T. C. I. EXHIBIT V-17



PAY STATEMENT

385

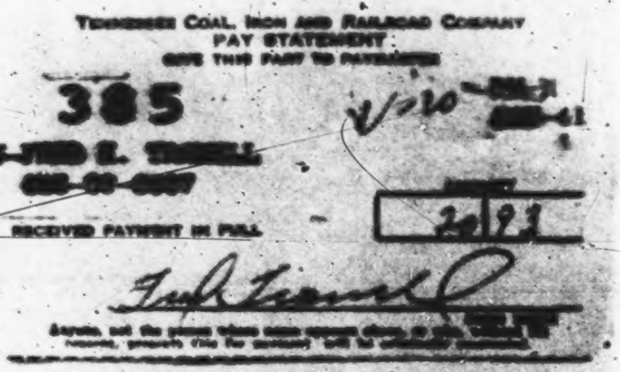
V-17

Y-FRED H. TRAMELL
416-03-6687

RECEIVED PAYMENT IN FULL

T. C. I. EXHIBIT V-18

T. C. I. EXHIBIT V-20



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385

V-20

[illegible]

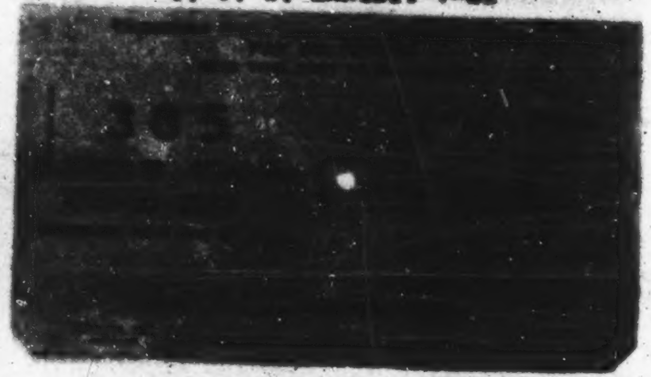
T-FRED H. TRAMELL
[illegible]

AMOUNT 20 93

RECEIVED PAYMENT IN FULL

Fred Tramell

T. C. I. EXHIBIT V-21



T. C. I. EXHIBIT V-22

T. C. I. EXHIBIT V-24

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Apr. 1941

V-24

FRED H. TRAMELL
416-09-6637

	AMOUNT	
RECEIVED PAYMENT IN FULL		

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

FRED H. TRAMELL
416-09-6637

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 1ST PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	48	77	36	96
"				
"				
" RATE ADJUSTMENT		.10		
INCENTIVE				
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			36	96
TOTAL DEDUCTIONS			31	58
BALANCE DUE			5	38

DETAIL OF DEDUCTIONS

SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		37
FED. OLD AGE BEN. TAX		37
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE	1	20
MEDICAL FEE		
TENNESSEE LAND CO.	12	14
RENT, ELECTRICITY AND WATER		
RENT DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE	12	00
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	6	50

T. C. I. EXHIBIT V-25

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Jan 1941

V-25

385

W-FRED H. TRAMELL
416-09-6637

	AMOUNT	
RECEIVED PAYMENT IN FULL		

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

385

W-FRED H. TRAMELL
416-09-6637

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 2ND PERIOD AND RECEIPT FOR ALL DEDUCTIONS

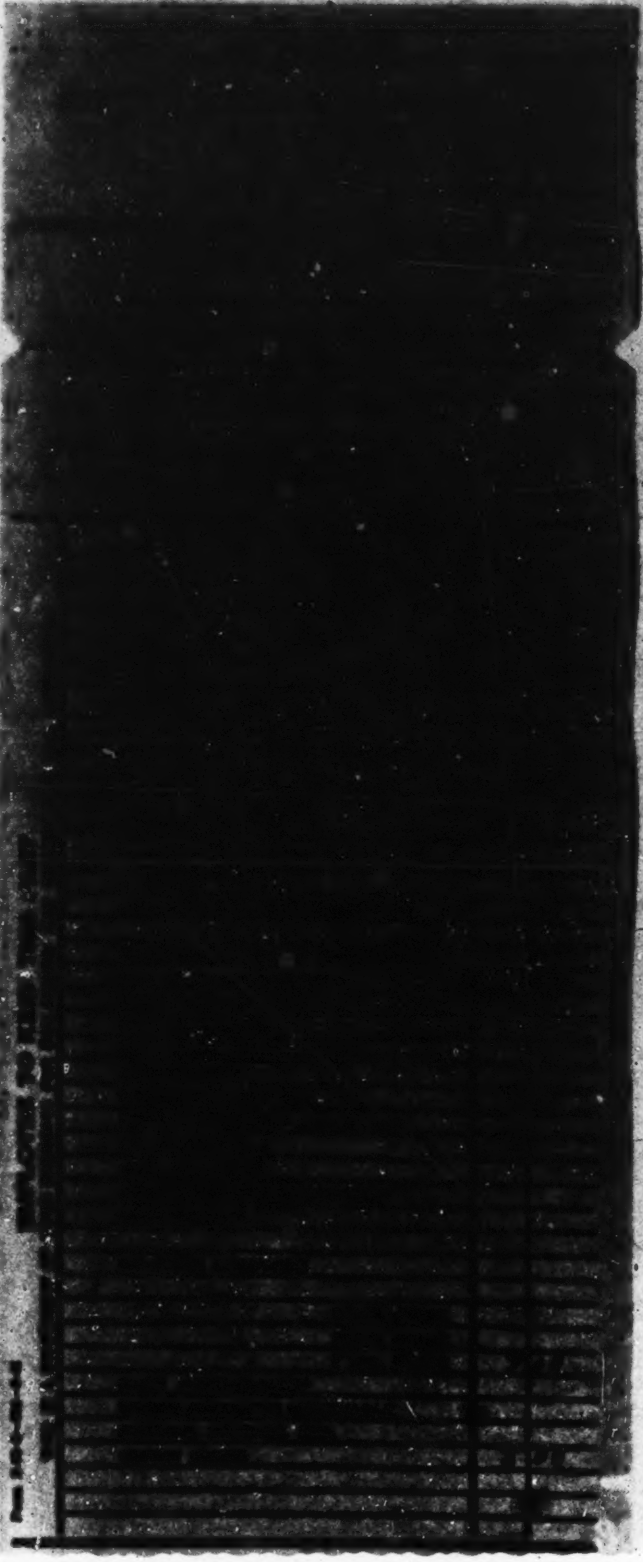
UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	27	77	20	79
"	24	77	18	48
"	5½	77	4	24
" RATE ADJUSTMENT		.10		
INCENTIVE			7	19
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			50	70
TOTAL DEDUCTIONS			29	77
BALANCE DUE			20	93

DETAIL OF DEDUCTIONS

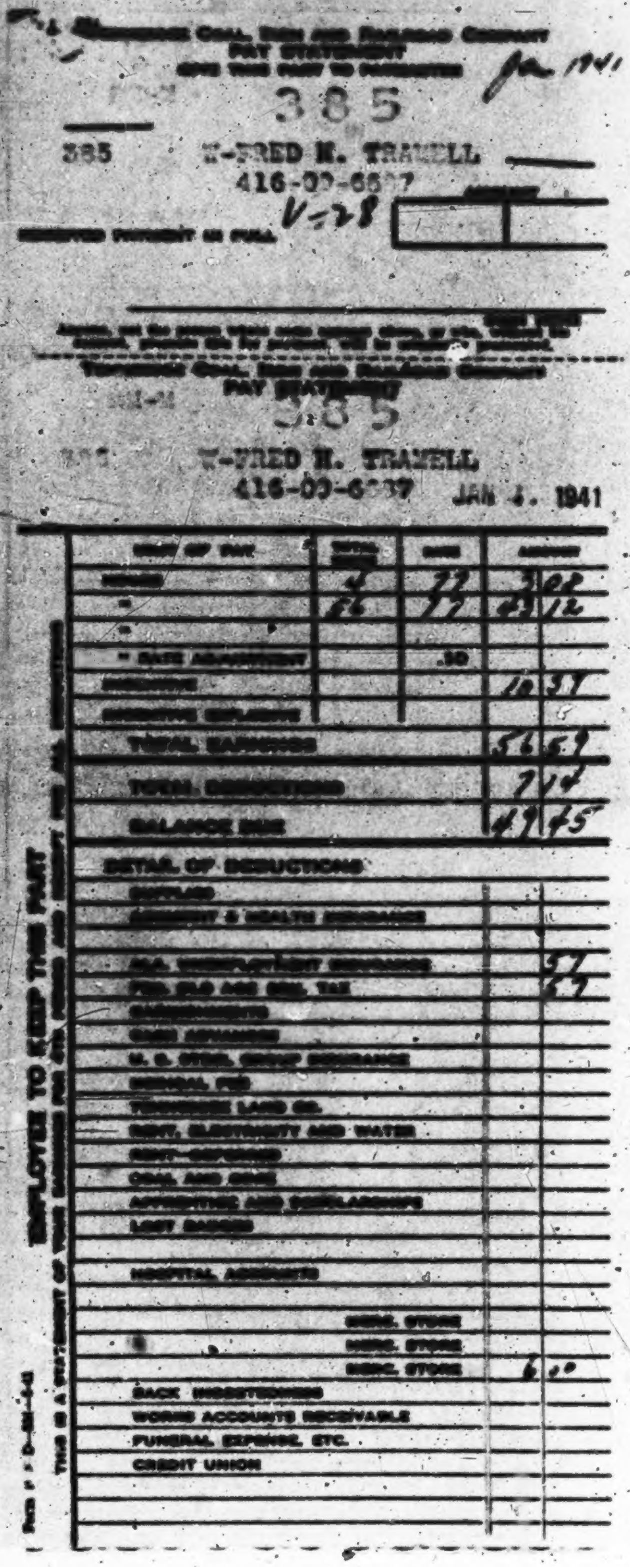
SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		51
FED. OLD AGE BEN. TAX		51
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE	1	75
TENNESSEE LAND CO.	12	00
RENT, ELECTRICITY AND WATER		
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE	9	00
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	6	00

There is No T. C. I.
Exhibit V-26

T. C. I. EXHIBIT V-27



T. C. I. EXHIBIT V-28



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Jan 1941

385

385 W-FRED H. TRAWELL
416-00-6637

V-28

RECEIVED PAYMENT IN FULL

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

385

W-FRED H. TRAWELL
416-00-6637 JAN 4. 1941

KIND OF PAY	TOTAL HOURS	RATE	AMOUNT	
HOURS	4	77	3	02
"	56	77	43	12
"				
" RATE ADJUSTMENT		.10		
[illegible]			10	37
[illegible]				8
TOTAL EARNINGS			56	59
TOTAL DEDUCTIONS			7	14
BALANCE DUE			49	45

DETAIL OF DEDUCTIONS

SUPPLIES		
ACCIDENT & HEALTH INSURANCE		11
ALA. UNEMPLOYMENT INSURANCE		57
FED. OLD AGE BEN. TAX		57
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE		
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER		
[illegible]		
[illegible]		
[illegible]		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE	6	00
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION		

EMPLOYEE TO KEEP THIS PART

T. C. I. EXHIBIT V-29

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Feb. 1941

385

V-FRED N. TRAMELL
416-03-6537

RECEIVED PAYMENT IN FULL V-29

Anyone, not the person whose name appears above, [illegible] criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

385

V-FRED N. TRAMELL
416-03-6597
FEB [illegible] 1941

UNIT OF PAY	[illegible]	RATE	AMOUNT
HOURS	7	.77	6.76
"	5 8	.77	[illegible] 12
"			
" RATE ADJUSTMENT		.10	
INCENTIVE			
INCENTIVE EXPLOSIVES			
TOTAL EARNINGS			49.22
TOTAL DEDUCTIONS			25.30
BALANCE DUE			23.92

DETAIL OF DEDUCTIONS	
SUPPLIES	
ACCIDENT & HEALTH INSURANCE	
ALA. UNEMPLOYMENT INSURANCE	.49
FED. OLD AGE BEN. TAX	.49
GARNISHMENTS	
CASH ADVANCES	
U. S. STEEL GROUP INSURANCE	1.20
MEDICAL FEE	
TENNESSEE LAND CO.	7.62
RENT, ELECTRICITY AND WATER	
RENT—DEFERRED	
COAL AND COKE	
APPRENTICE AND SCHOLARSHIPS	
LOST BADGES	
HOSPITAL ACCOUNTS	
MERC. STORE	
MERC. STORE	
MERC. STORE	9.00
BACK INDEBTEDNESS	
WORKS ACCOUNTS RECEIVABLE	
FUNERAL EXPENSES, ETC.	
CREDIT UNION	2.50

EMPLOYEE TO KEEP THIS PART.
THIS IS A STATEMENT OF YOUR EARNINGS FOR 1st PERIOD AND RECEIPT FOR ALL DEDUCTIONS

T. C. I. EXHIBIT V-30

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Feb. 1941

385

385 V-FRED N. TRAMELL
416-03-6537

RECEIVED PAYMENT IN FULL V-30

[illegible]

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

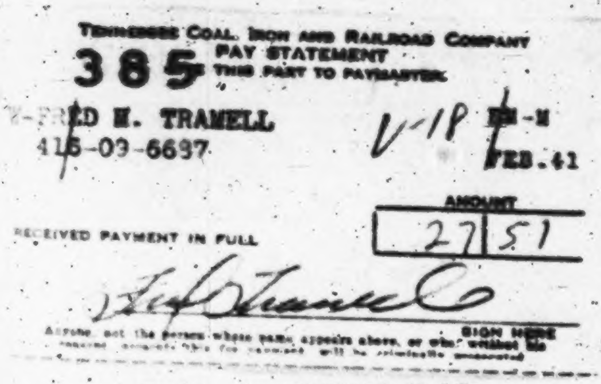
FEB-11 385

385 V-FRED N. TRAMELL
416-03-6597
FEB [illegible] 1941

UNIT OF PAY	[illegible]	RATE	AMOUNT
HOURS	[illegible]	[illegible]	[illegible]
"	[illegible]	[illegible]	[illegible]
"	[illegible]	[illegible]	[illegible]
" RATE ADJUSTMENT		[illegible]	
INCENTIVE			[illegible]
INCENTIVE EXPLOSIVES			
TOTAL EARNINGS			[illegible]
TOTAL DEDUCTIONS			26.51
BALANCE DUE			11.96

DETAIL OF DEDUCTIONS	
SUPPLIES	
ACCIDENT & HEALTH INSURANCE	
ALA. UNEMPLOYMENT INSURANCE	.37
FED. OLD AGE BEN. TAX	.37
GARNISHMENTS	
CASH ADVANCES	
U. S. STEEL GROUP INSURANCE	
MEDICAL FEE	1.25
TENNESSEE LAND CO.	1.00
RENT, ELECTRICITY AND WATER	
RENT—DEFERRED	
COAL AND COKE	
APPRENTICE AND SCHOLARSHIPS	
LOST BADGES	
HOSPITAL ACCOUNTS	
MERC. STORE	
MERC. STORE	
MERC. STORE	10.00
BACK INDEBTEDNESS	
WORKS ACCOUNTS RECEIVABLE	
FUNERAL EXPENSES, ETC.	
CREDIT UNION	6.00

EMPLOYEE TO KEEP THIS PART.
THIS IS A STATEMENT OF YOUR EARNINGS FOR 2nd PERIOD AND RECEIPT FOR ALL DEDUCTIONS



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
THIS PART TO PAYMASTER

385

FRED H. TRAMELL
416-03-6687

V-18

RM-M
FEB.41

AMOUNT 27|51

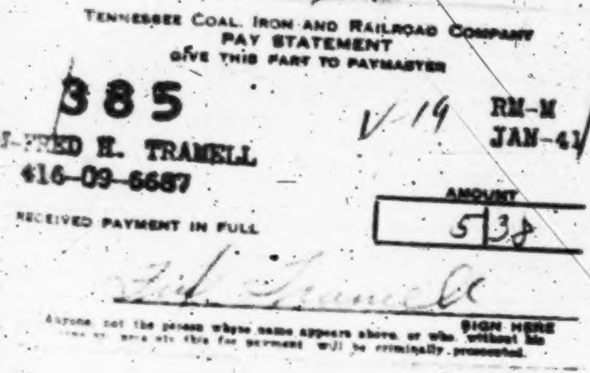
RECEIVED PAYMENT IN FULL

Fred Tramell

SIGN HERE

Anyone not the person whose name appears above, or who, without his consent, presents this for payment will be criminally prosecuted.

T. C. I. EXHIBIT V-19



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385

FRED H. TRAMELL
416-09-6687

V-19

RM-M
JAN-41

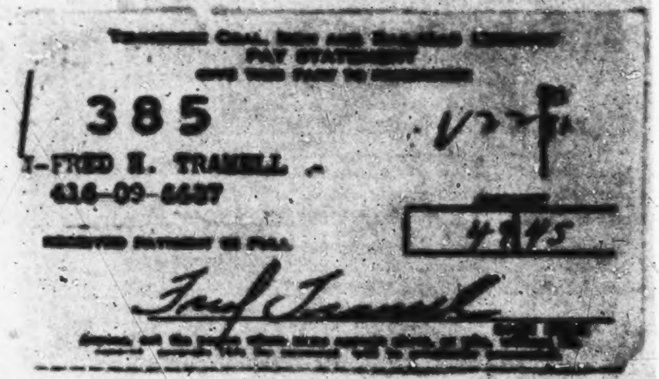
AMOUNT 5|38

RECEIVED PAYMENT IN FULL

Fred Tramell

SIGN HERE

Anyone not the person whose name appears above, or who, without his consent, presents this for payment will be criminally prosecuted.



TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385

FRED H. TRAMELL
416-09-6687

V-22

48|45

RECEIVED PAYMENT IN FULL

Fred Tramell

There is no T. C. I.
Exhibit V-23

T. C. I. EXHIBIT V-31

Feb.-1944

385

385

V-31

[illegible]

T. C. I. EXHIBIT V-32

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Feb 1944

-FRED H. T
416-00-

RECEIVED PAYMENT IN FULL V-32

AMOUNT	

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Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

-FRED H. TRAMELL
416-00-6[illegible]17

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 4TH PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	½	77		39
"	1	77		77
"	32	77	24	64
" RATE ADJUSTMENT		.10		
INCENTIVE			6	35
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			32	15
TOTAL DEDUCTIONS			4	64
BALANCE DUE			27	51

DETAIL OF DEDUCTIONS

SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		32
FED. OLD AGE BEN. TAX		32
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE		
TENNESSEE LAND CO.		
RENT, ELECTRICITY AND WATER		
RENT- DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE	4	00
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION		

Form 9-36-D-[illegible]-5-41

T. C. I. EXHIBIT V-33

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Mar-1941

385

385 W-FRED H. TRAMELL
416-09-6637

AMOUNT

RECEIVED PAYMENT IN FULL

V=33

SIGN HERE

Anyone, not the person whose name appears above, or wife, [illegible] [illegible], presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

385

385 W-FRED H. TRAMELL
416-09-6637 [illegible] 1941

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT
HOURS	6½	77	5 01
"	45	77	34 65
"	16	77	12 32
" RATE ADJUSTMENT		.10	
INCENTIVE			
INCENTIVE [illegible]			
TOTAL EARNINGS			51 98
TOTAL DEDUCTIONS			25 46
BALANCE DUE			26 52

DETAIL OF DEDUCTIONS	
SUPPLIES	10
ACCIDENT & HEALTH INSURANCE	
ALA. UNEMPLOYMENT INSURANCE	52
FED. OLD AGE BEN. TAX	52
GARNISHMENTS	
CASH ADVANCES	
U. S. STEEL GROUP INSURANCE	1 50
MEDICAL FEE	
TENNESSEE LAND CO.	7 32
RENT, ELECTRICITY AND WATER	
RENT—DEFERRED	
COAL AND COKE	
APPRENTICE AND SCHOLARSHIPS	
LOST BADGES	
HOSPITAL ACCOUNTS	
MERC. STORE	
MERC. STORE	
MERC. STORE	9 00
BACK INDEBTEDNESS	
WORKS ACCOUNTS RECEIVABLE	
FUNERAL EXPENSE, ETC.	
CREDIT UNION	6 50

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 1ST PERIOD AND RECEIPT FOR ALL DEDUCTIONS

T. C. I. EXHIBIT V-34

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Mar-1941

385

385 W-FRED H. TRAMELL
416-09-6637

AMOUNT

RECEIVED PAYMENT IN FULL

V=34

SIGN HERE

Anyone, not the person whose name appears above, or wife, [illegible] [illegible], presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

385

385 W-FRED H. TRAMELL
416-09-6637 MAR 7 - 1941

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT
HOURS	[illegible]	77	4 [illegible]
"	[illegible]	77	[illegible]
"	8	77	6 16
" RATE ADJUSTMENT		.10	
INCENTIVE			9 51
INCENTIVE [illegible]			
TOTAL EARNINGS			55 43
TOTAL DEDUCTIONS			24 85
BALANCE DUE			30 58

DETAIL OF DEDUCTIONS	
SUPPLIES	
ACCIDENT & HEALTH INSURANCE	
ALA. UNEMPLOYMENT INSURANCE	55
FED. OLD AGE BEN. TAX	55
GARNISHMENTS	
CASH ADVANCES	
U. S. STEEL GROUP INSURANCE	
MEDICAL FEE	1 75
TENNESSEE LAND CO.	7 00
RENT, ELECTRICITY AND WATER	
RENT—DEFERRED	
COAL AND COKE	
APPRENTICE AND SCHOLARSHIPS	
LOST BADGES	
HOSPITAL ACCOUNTS	
MERC. STORE	
MERC. STORE	
MERC. STORE	8 02
BACK INDEBTEDNESS	
WORKS ACCOUNTS RECEIVABLE	
FUNERAL EXPENSE, ETC.	
CREDIT UNION	6 00

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 2ND PERIOD AND RECEIPT FOR ALL DEDUCTIONS

T. C. I. EXHIBIT V-35

[redacted]

T. C. I. EXHIBIT V-36

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

Mar 2

FRED H. T[illegible]
416-02-[illegible]

	AMOUNT	
RECEIVED PAYMENT IN FULL	7	

V-36

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted

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TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

385 W-FRED H. TRAVELL
416-02-[illegible]

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 4TH PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	3/4	77	-	57
"	1½	77	1	16
"	48	77	36	96
" RATE ADJUSTMENT		.10		
INCENTIVE			3	33
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			42	02
TOTAL DEDUCTIONS			8	84
BALANCE DUE			33	18
DETAIL OF DEDUCTIONS				
SUPPLIES				
ACCIDENT & HEALTH INSURANCE				
ALA. UNEMPLOYMENT INSURANCE				42
FED. OLD AGE BEN. TAX				42
GARNISHMENTS				
CASH ADVANCES				
U. S. STEEL GROUP INSURANCE				
MEDICAL FEE				
TENNESSEE LAND CO.				
RENT, ELECTRICITY AND WATER				
RENT—DEFERRED				
COAL AND COKE				
APPRENTICE AND SCHOLARSHIPS				
LOST BADGES				
HOSPITAL ACCOUNTS				
MERC. STORE				
MERC. STORE				
MERC. STORE			8	00
* BACK INDEBTEDNESS				
WORKS ACCOUNTS RECEIVABLE				
FUNERAL EXPENSE, ETC.				
CREDIT UNION				

Form 3-35-D—6M—3-42

T. C. I. EXHIBIT V-37

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

april 1941

[illegible] FRED H. TRAMELL
416-09-6697

	AMOUNT
RECEIVED PAYMENT IN FULL	

V-37

[illegible]

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

FRED H. TRAMELL
416-09-6697 [illegible] 1941

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 1ST PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	52½	77	40	43
"				
"				
" RATE ADJUSTMENT		.10		
INCENTIVE				
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			40	43
TOTAL DEDUCTIONS			26	29
BALANCE DUE			14	14

DETAIL OF DEDUCTIONS		
SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		22
FED. OLD AGE BEN. TAX		40
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE	1	20
MEDICAL FEE		
TENNESSEE LAND CO.	2	63
RENT, ELECTRICITY AND WATER		
RENT DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS	1	50
MERC. STORE		
MERC. STORE		
MERC. STORE	7	27
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	7	00

Form [illegible]

T. C. I. EXHIBIT V-38

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

april 1941

385

385 W-FRED H. TRAMELL
416-09-669[illegible]

	AMOUNT
RECEIVED PAYMENT IN FULL	

V=38

[illegible]

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

385

385 W-FRED H. TRAMELL
416-09-6697
[illegible] 3, 1941

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 2ND PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	[illegible]	[illegible]	[illegible]	[illegible]
"	15	[illegible]	[illegible]	[illegible]
"	[illegible]	[illegible]	[illegible]	[illegible]
" RATE ADJUSTMENT		.10		
INCENTIVE			4	23
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			45	43
TOTAL DEDUCTIONS			25	52
BALANCE DUE			19	91

DETAIL OF DEDUCTIONS		
SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		32
FED. OLD AGE BEN. TAX		45
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE	1	75
TENNESSEE LAND CO.	8	00
RENT, ELECTRICITY AND WATER		
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE	8	00
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION		00

Form [illegible]

T. C. I. EXHIBIT V-41

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER May 1941

385 W-FRED H. TRAMELL
416-03-6637

	AMOUNT	
RECEIVED PAYMENT IN FULL		

V-41

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

W-FRED H. TRAMELL
416-03-6637 MAY [illegible] 1941

EMPLOYEE TO KEEP THIS PART
THIS IS A STATEMENT OF YOUR EARNINGS FOR 1ST PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	4	.77	3	08
"	56	.77	43	12
"				
" RATE ADJUSTMENT		.10	6	00
INCENTIVE [illegible] April			20	60
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			72	80
TOTAL DEDUCTIONS			25	06
BALANCE DUE			47	74

DETAIL OF DEDUCTIONS		
SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		51
FED. OLD AGE BEN. TAX		73
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE	1	20
MEDICAL FEE		
TENNESSEE LAND CO.	8	62
RENT, ELECTRICITY AND WATER		
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE	7	00
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	7	00

Form [illegible]

T. C. I. EXHIBIT V-42

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

385

385 W-FRED H. TRAMELL
416-03-6637

	AMOUNT	
RECEIVED PAYMENT IN FULL		

V-42

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

W-FRED H. TRAMELL
416-03-6637
MAY [illegible] 1941

EMPLOYEE TO KEEP THIS PART
THIS IS A STATEMENT OF YOUR EARNINGS FOR 2ND PERIOD AND RECEIPT, FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	8	.745	5	96
"	32	.77	24	64
"				
" RATE ADJUSTMENT		.10	4	00
INCENTIVE			16	24
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			50	84
TOTAL DEDUCTIONS			24	62
BALANCE DUE			26	22

DETAIL OF DEDUCTIONS		
SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		36
FED. OLD AGE BEN. TAX		51
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE	1	75
TENNESSEE LAND CO.	8	00
RENT, ELECTRICITY AND WATER		
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
MERC. STORE	7	00
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	7	00

Form [illegible]

T. C. I. EXHIBIT V-39

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

april 1941

385

385 V-FRED H. TRAMELL
416-09-6657

RECEIVED PAYMENT IN FULL

V-39

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

385

385 V-FRED H. TRAMELL
416-09-6657

Apr [illegible] 1941

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 3RD PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	[illegible]	77	[illegible]	[illegible]
"	[illegible]	77	[illegible]	[illegible]
"				
" RATE ADJUSTMENT		.10		
INCENTIVE				
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			46	[illegible]
TOTAL DEDUCTIONS			24	93
BALANCE DUE			21	27

DETAIL OF DEDUCTIONS		
SUPPLIES		[illegible]
ACCIDENT & HEALTH INSURANCE		[illegible]
ALA. UNEMPLOYMENT INSURANCE		[illegible]
FED. OLD AGE BEN. TAX		[illegible]
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE		
TENNESSEE LAND CO.	7	00
RENT, ELECTRICITY AND WATER		
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS	1	00
MERC. STORE		
MERC. STORE		
MERC. STORE	8	00
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	6	00

Form [illegible]

T. C. I. EXHIBIT V-40

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

april 1941

V-FRED H. TRAMELL
416-09-6657

AMOUNT

RECEIVED PAYMENT IN FULL

V-40

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

V-FRED H. TRAMELL
416-09-6657

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 4TH PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	8	77	6	16
"	32	77	24	64
"				
" RATE ADJUSTMENT		.10		
INCENTIVE			9	30
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			40	10
TOTAL DEDUCTIONS			5	68
BALANCE DUE			34	42

DETAIL OF DEDUCTIONS		
SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		28
FED. OLD AGE BEN. TAX		40
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE	1	
MEDICAL FEE		
TENNESSEE LAND CO		
RENT, ELECTRICITY AND WATER		
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS	1	00
MERC. STORE		
MERC. STORE		
MERC. STORE	3	00
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION		

Form [illegible]

T. C. I. EXHIBIT V-43

V-43

[illegible]

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 3RD PERIOD AND RECEIPT FOR ALL DEDUCTIONS

T. C. I. EXHIBIT V-44

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

May 1941

[illegible]D H. T[illegible]LL
416-0[illegible]

RECEIVED PAYMENT IN FULL

AMOUNT	

V-44

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted

---

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

[illegible]D H. T[illegible]LL
416-0[illegible] 7

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 4TH PERIOD AND RECEIPT FOR ALL DEDUCTIONS

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	48	77	36	96
"				
"				
" RATE ADJUSTMENT		.10	4	80
INCENTIVE			13	82
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			55	58
TOTAL DEDUCTIONS			4	95
BALANCE DUE			50	63
DETAIL OF DEDUCTIONS				
SUPPLIES				
ACCIDENT & HEALTH INSURANCE				
ALA. UNEMPLOYMENT INSURANCE				39
FED. OLD AGE BEN. TAX				56
GARNISHMENTS				
CASH ADVANCES				
U. S. STEEL GROUP INSURANCE				
MEDICAL FEE				
TENNESSEE LAND CO.				
RENT, ELECTRICITY AND WATER				
RENT—DEFERRED				
COAL AND COKE				
APPRENTICE AND SCHOLARSHIPS				
LOST BADGES				
HOSPITAL ACCOUNTS				
MERC. STORE				
MERC. STORE				
MERC. STORE			4	00
BACK INDEBTEDNESS				
WORKS ACCOUNTS RECEIVABLE				
FUNERAL EXPENSE, ETC.				
CREDIT UNION				

Form 3-55-D-[illegible]-3-41

T. C. I. EXHIBIT V-45

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER [illegible] 1944

385

W-FRED H. TRAMELL
416-09-6697

RECEIVED PAYMENT IN FULL

AMOUNT	

V-45

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

W-FRED H. TRAMELL
416-09-6697

JUN 7 1944

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	60	.77	46	20
"				
"				
" RATE ADJUSTMENT	60 Hrs	.10	6	00
INCENTIVE				
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			52	20
TOTAL DEDUCTIONS			23	94
BALANCE DUE			28	26

DETAIL OF DEDUCTIONS		
SUPPLIES		
ACCIDENT & HEALTH INSURANCE	2	05
ALA. UNEMPLOYMENT INSURANCE		37
FED. OLD AGE BEN. TAX		52
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE		
TENNESSEE LAND CO.	8	00
RENT, ELECTRICITY AND WATER		
RENT—DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
Bessemer MERC. STORE	4	00
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION	9	00

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 3RD PERIOD AND RECEIPT FOR ALL DEDUCTIONS

Form [illegible]

T. C. I. EXHIBIT V-46

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER [illegible] 194

D H. T[illegible]

RECEIVED PAYMENT IN FULL

AMOUNT	

V-46

SIGN HERE

Anyone, not the person whose name appears above, or who, without his consent, presents this for payment, will be criminally prosecuted.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
PAY STATEMENT

D H. TRAMELL
416-09-6697

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT	
HOURS	[illegible]	[illegible]	31	96
"				
"				
" RATE ADJUSTMENT	[illegible]	.10	2	15
INCENTIVE			2	19
INCENTIVE EXPLOSIVE				
TOTAL EARNINGS			49	30
TOTAL DEDUCTIONS			4	84
BALANCE DUE			44	46

DETAIL OF DEDUCTIONS		
SUPPLIES		
ACCIDENT & HEALTH INSURANCE		
ALA. UNEMPLOYMENT INSURANCE		[illegible]
FED. OLD AGE BEN. TAX		[illegible]
GARNISHMENTS		
CASH ADVANCES		
U. S. STEEL GROUP INSURANCE		
MEDICAL FEE		
TENNESSEE LAND CO		
RENT, ELECTRICITY AND WATER		
RENT DEFERRED		
COAL AND COKE		
APPRENTICE AND SCHOLARSHIPS		
LOST BADGES		
HOSPITAL ACCOUNTS		
MERC. STORE		
MERC. STORE		
Bessemer MERC. STORE	[illegible]	
BACK INDEBTEDNESS		
WORKS ACCOUNTS RECEIVABLE		
FUNERAL EXPENSE, ETC.		
CREDIT UNION		

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 4TH PERIOD AND RECEIPT FOR ALL DEDUCTIONS

Form [illegible]

NO. 8-MINE		TRAVELING TIME	DISTANCE
Change house to tipple (mine portal)		9 min	2325 ft
Man loading station to working place	(MINE AVERAGE)	23 "	4585 "
" " " " " "	(LONGEST DISTANCE	28 "	6050 "
" " " " " "	SHORTEST DISTANCE	15 "	1550 "

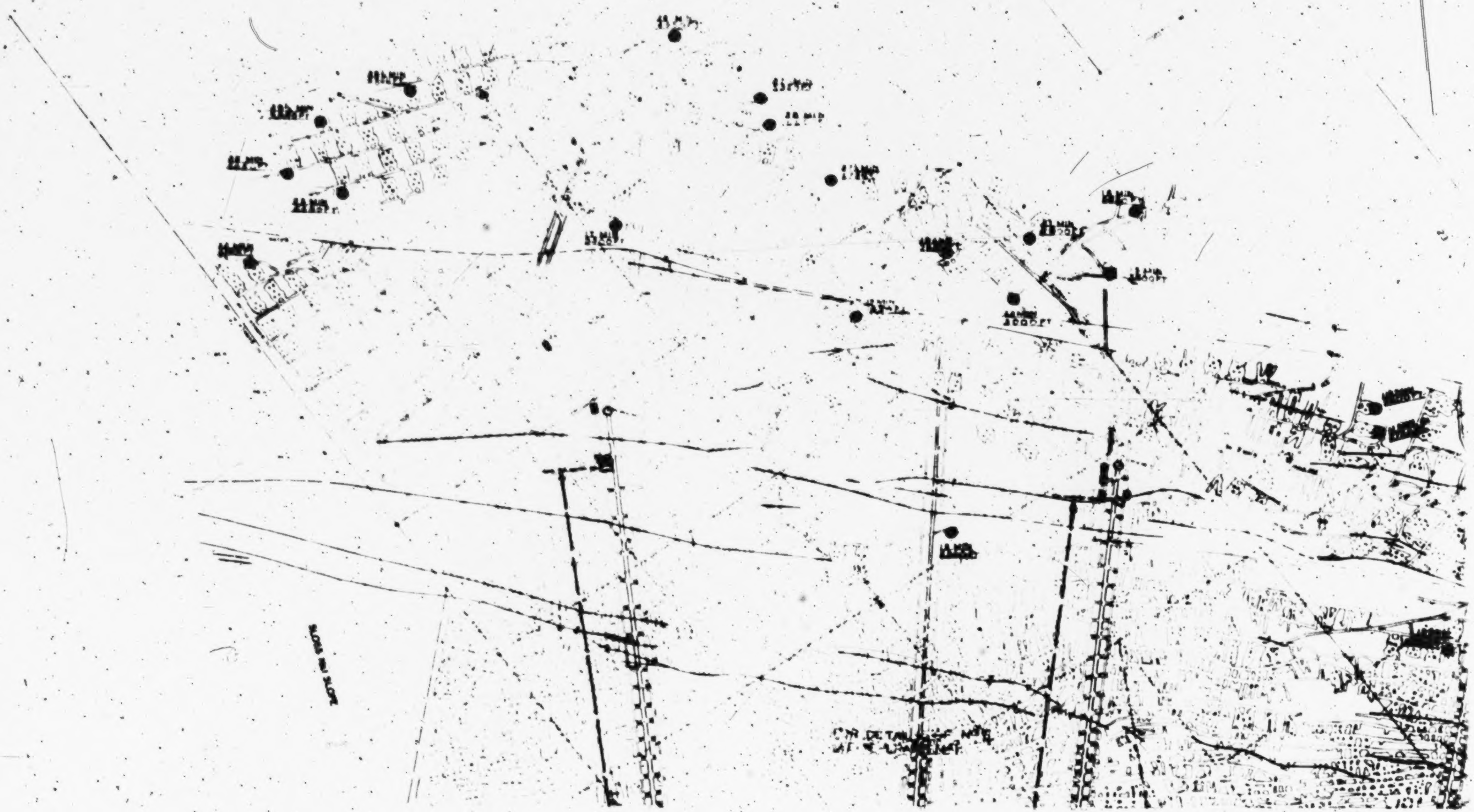
NO. 5 MINE		TRAVELING TIME	DISTANCE
Change house to tipple (mine portal)		[illegible] min	730 ft
Man loading station to working place	[illegible]	[illegible] "	[illegible] "
" " " " " "	[illegible] DISTANCE	9½ "	1700 "
" " " " " "	[illegible]	3 "	350 "

WOODWARD IRON CO

NO 4 MINE
Change house to tipple (m
Man loading station to worki
" " " " "
" " " " "

REPUBLIC IRON &

T. C. I. EXHIBIT NO. 1

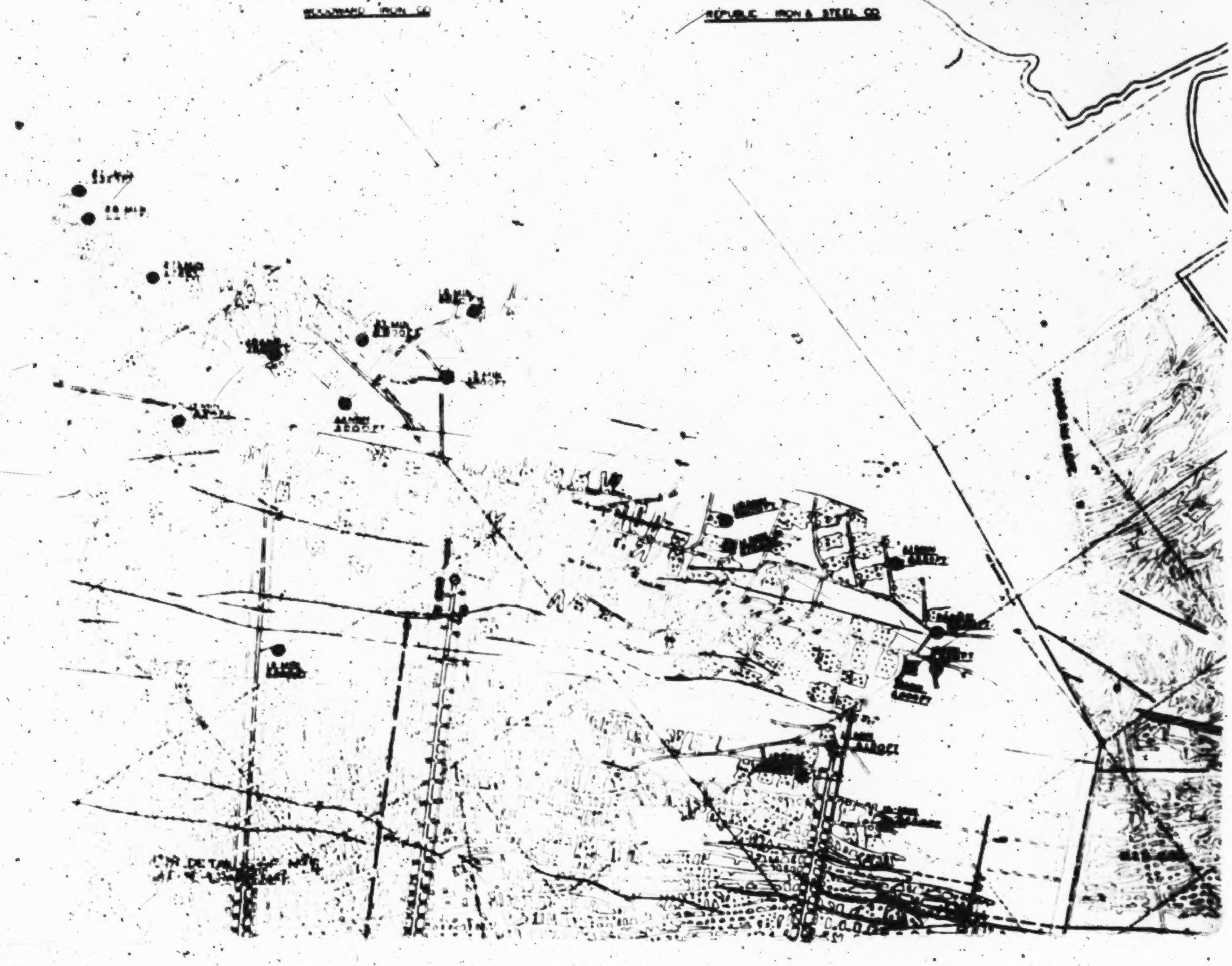


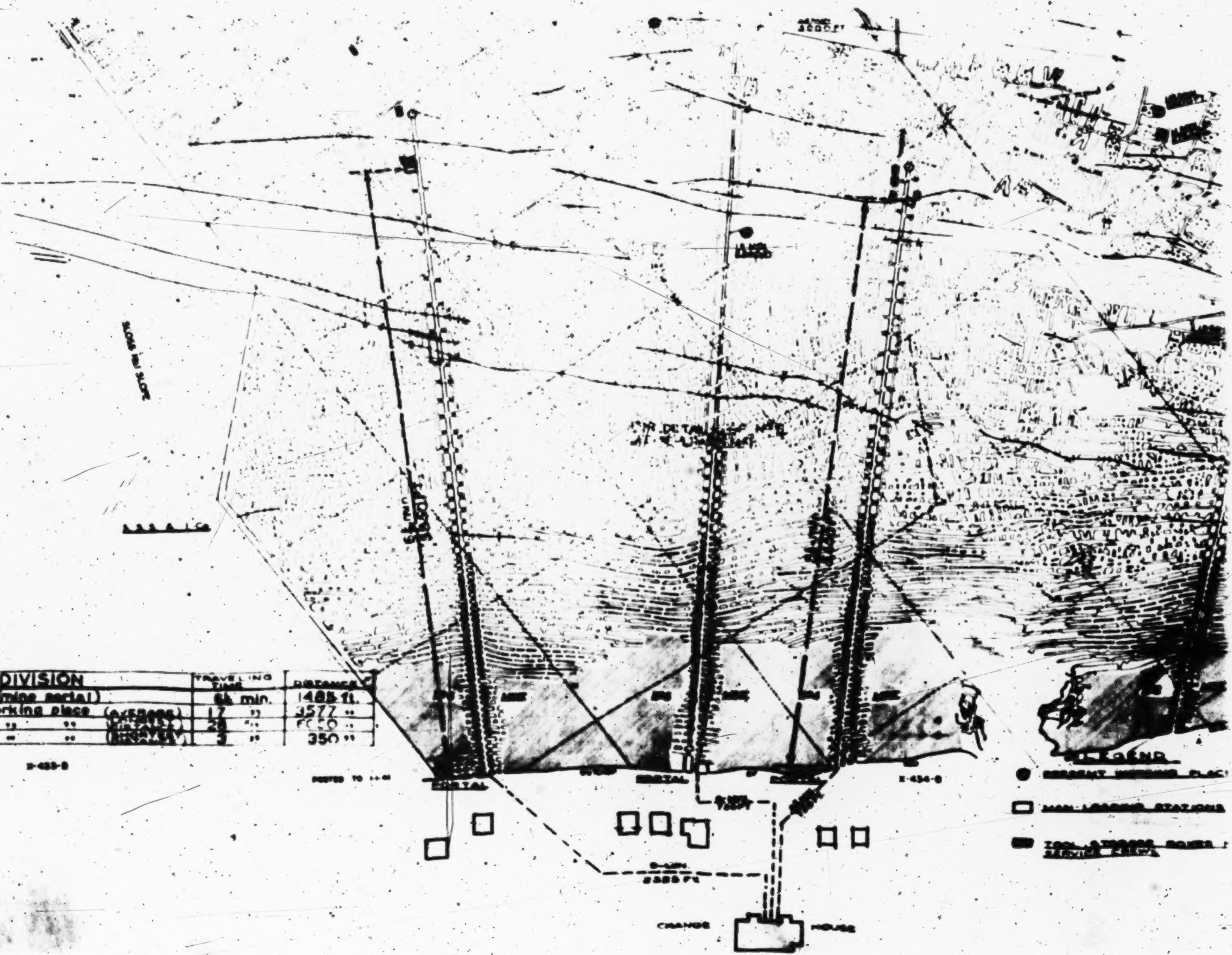
5 MINE

	TRAVELING TIME	STANCE
o tipple (mine portal)	[illegible] min	730 ft
on to working place [illegible]	[illegible]	[illegible]
" " " DISTANCE	9½ "	4700 "
" " " [illegible]	3 "	350 "

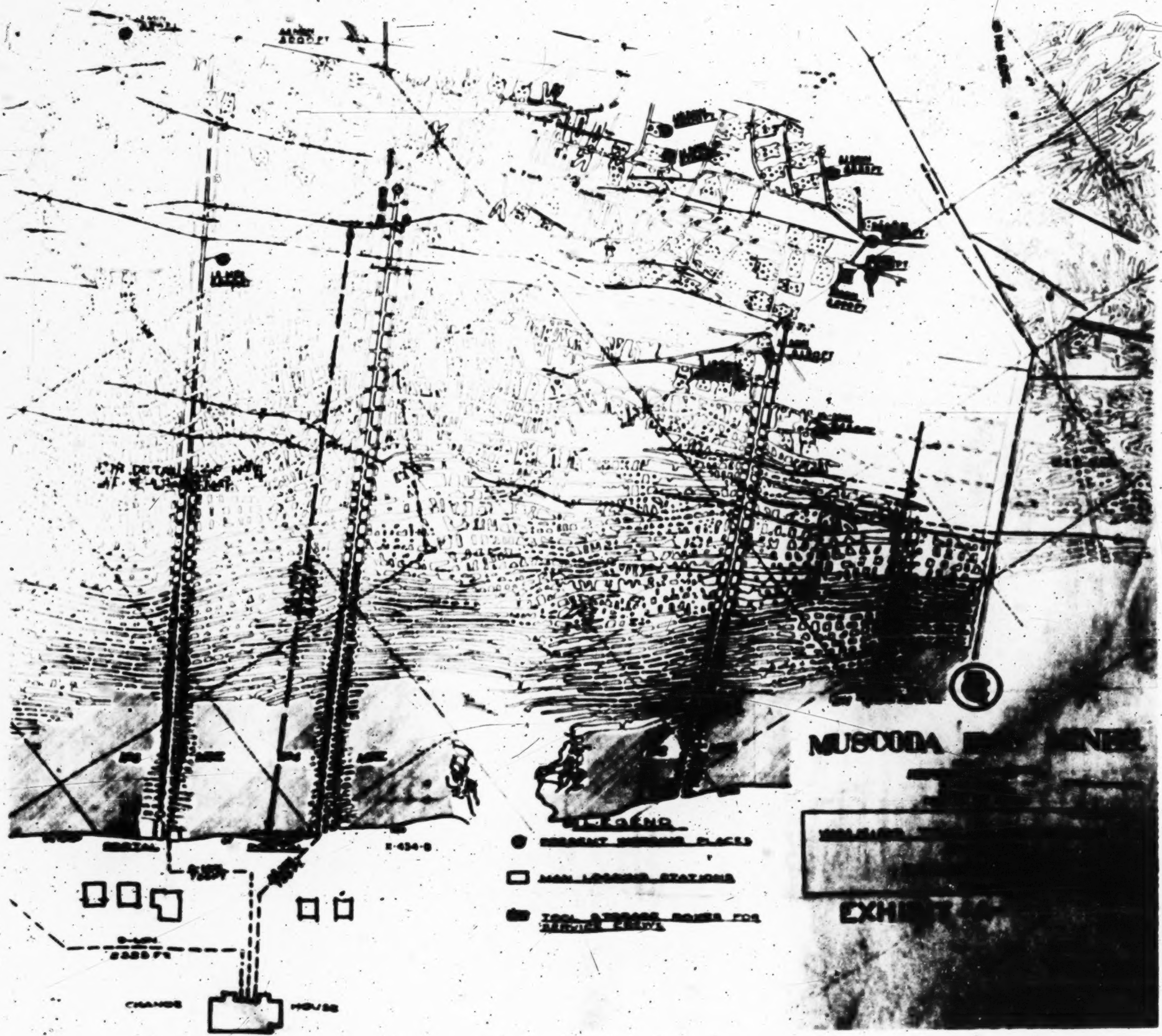
NO 4 MINE

		[illegible]	[illegible]
Change house to tipple (mine portal)		[illegible]	[illegible]
Man loading station to working place	MINE AVERAGE	15½ "	[illegible]
" " " " " "	LONGEST DISTANCE	20 "	1800 "
" " " " " "	SHORTEST DISTANCE	1½ "	2800 "


WOODWARD IRON CO
REPUBLIC IRON & STEEL CO
FOR DETAILS SEE MAP


PORTAL
PORTAL
CHANGE
HOUSE
LEGEND
MAN LOADING STATIONS
D-433-B
E-434-B

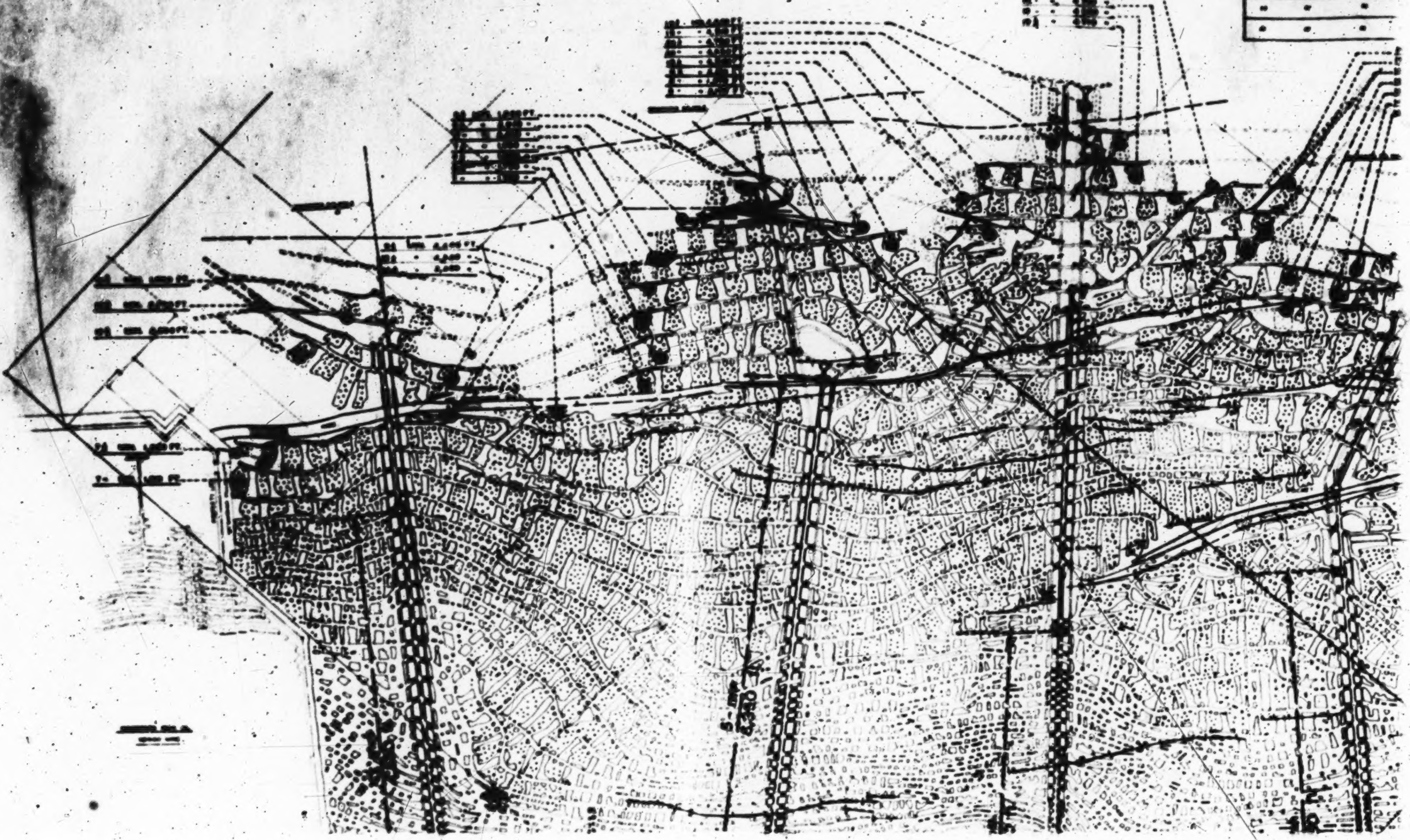
MUSCODA DIVISION		TRAVELING TIME	DISTANCE
Change house to tipple (mine portal)		6½ min.	1485 ft.
Man loading station to working place	(average)	17 ,,	3577 ,,
,, ,, ,, ,, ,, ,, ,,	(maximum)	28 ,,	6050 ,,
,, ,, ,, ,, ,, ,, ,,	(minimum)	3 ,,	350 ,,

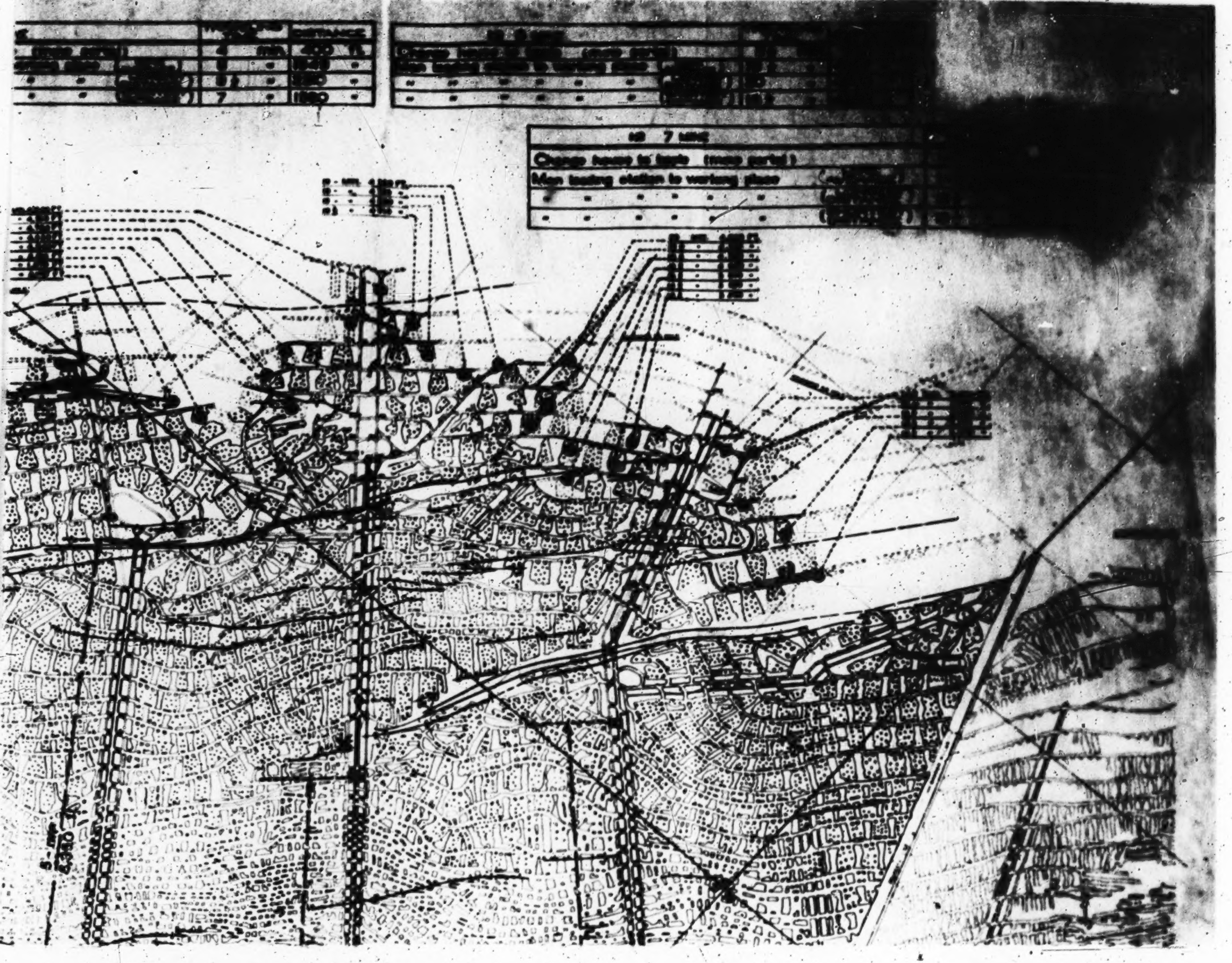
MUSCODA
LEGEND
PRESENT WORKING PLACES
MAIN LOGGING STATIONS
TOOL STORAGE BOXES FOR SERVICE CREWS
EXHIBIT
E-434-B
CHANGE HOUSE

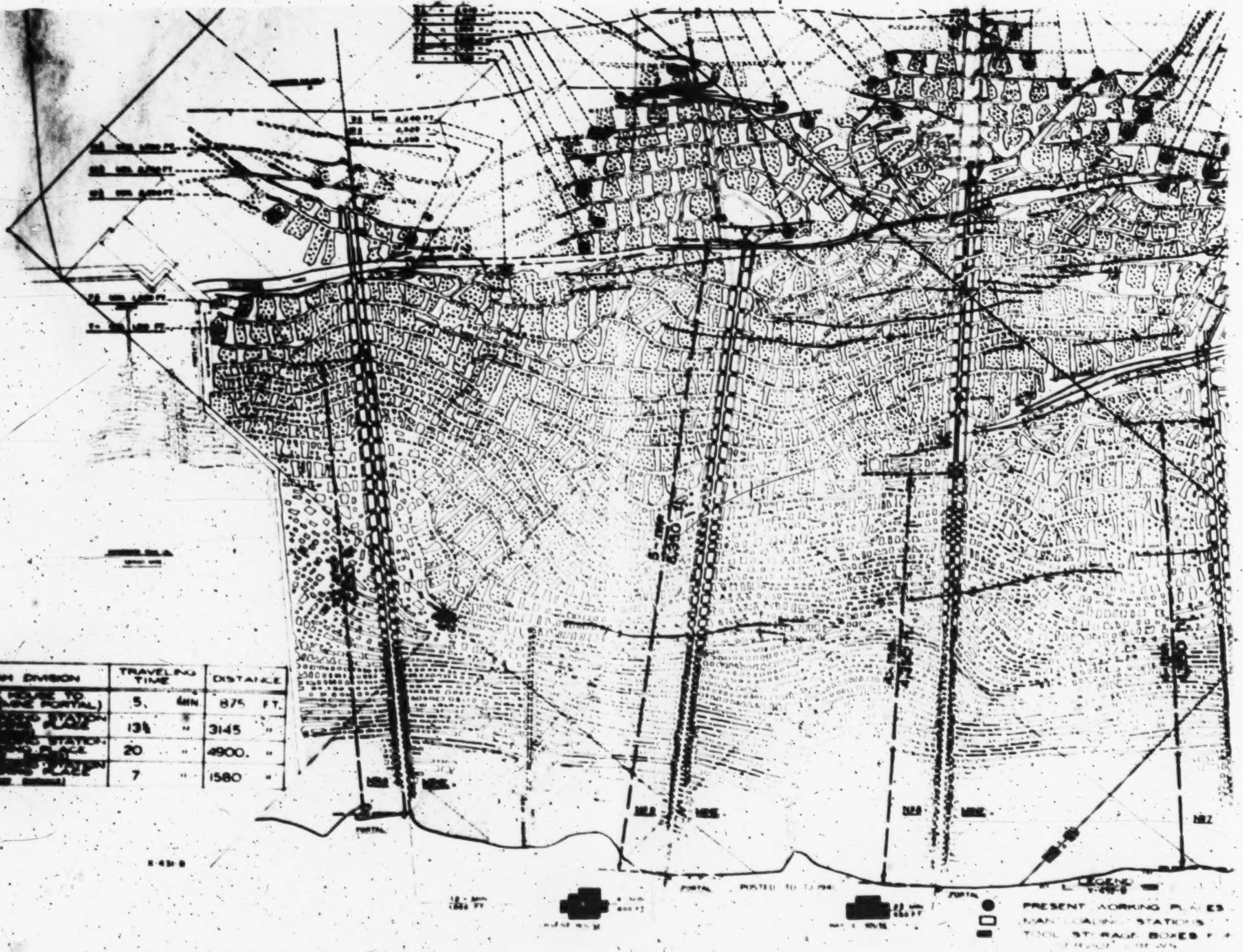
T. C. I. EXHIBIT NO. 2

[illegible]	TRAVELING TIME	DISTANCE
[illegible]	4 min.	400 ft.
[illegible]	6 "	1848 "
" " " " " " [illegible]	8½ "	2250 "
" " " " " " [illegible]	7 "	1980 "

No 7
Change house to la
Man loading station t
" " "
" " "

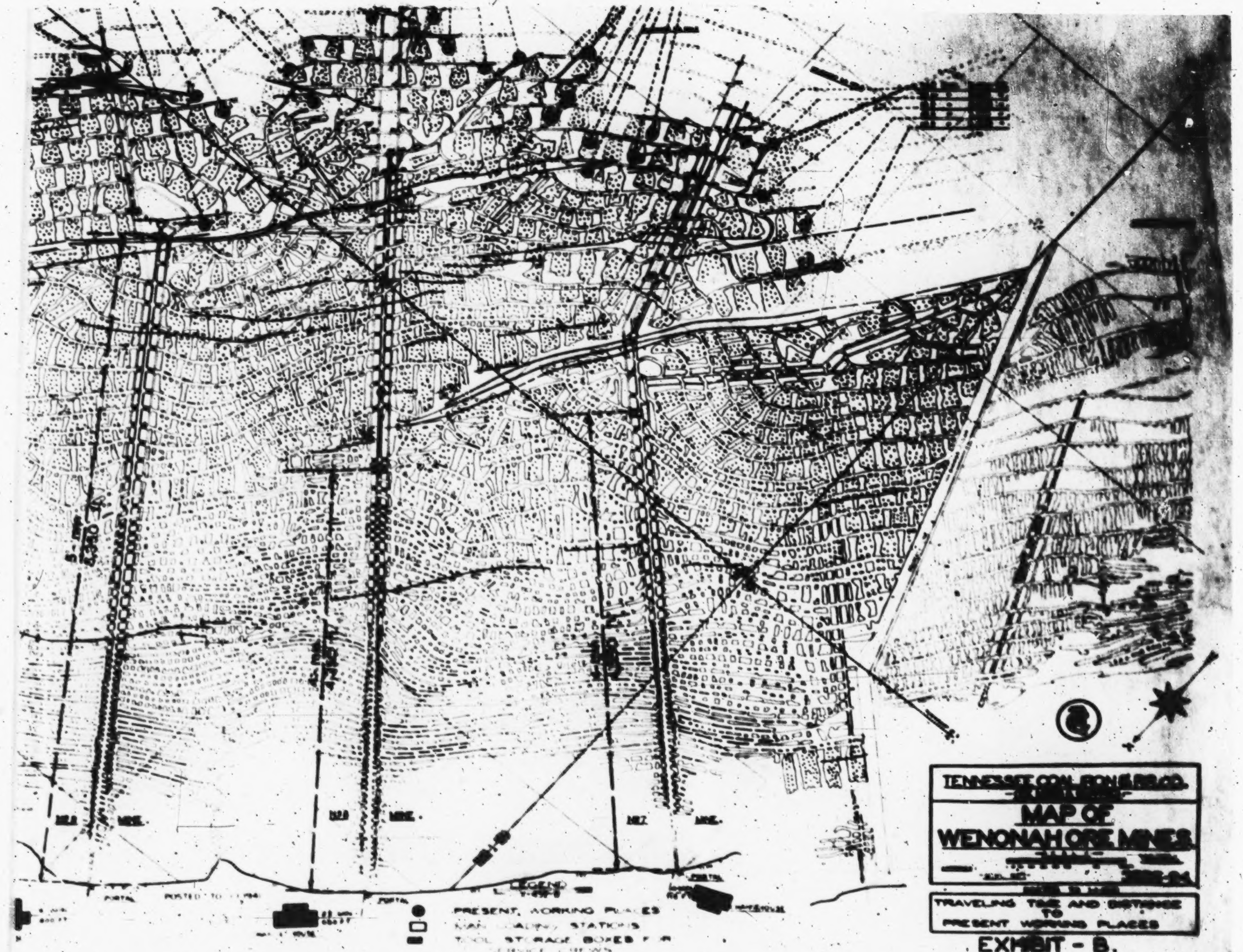



DISTANCE
7 MINE
Change house to tipple (man trip)
Man loading station to working place



NO 8 MINE
PORTAL
POSTED TO 12-1941
NO 7
LEGEND
PRESENT WORKING PLACES
MAN LOADING STATIONS
TOOL STORAGE BOXES FOR SERVICE CREWS

WENONAH DIVISION	TRAVELING TIME		DISTANCE	
[illegible] HOUSE TO TIPPLE (MINE PORTAL)	5.	MIN	875	FT.
[illegible] STATION TO [illegible] PLACE	13½	"	3145	"
[illegible] STATION TO [illegible] PLACE	20	"	4900.	"
[illegible] STATION TO [illegible] PLACE [illegible]	7	"	1580	"


MINE
MINE
MINE
PORTAL
POSTED TO
PORTAL
LEGEND
PORTAL
PRESENT WORKING PLACES
MAN LOADING STATIONS
TOOL STORAGE BOXES FOR SERVICE CREWS

TENNESSEE COAL, IRON & R.R. CO.

MAP OF
WENONAH ORE MINES

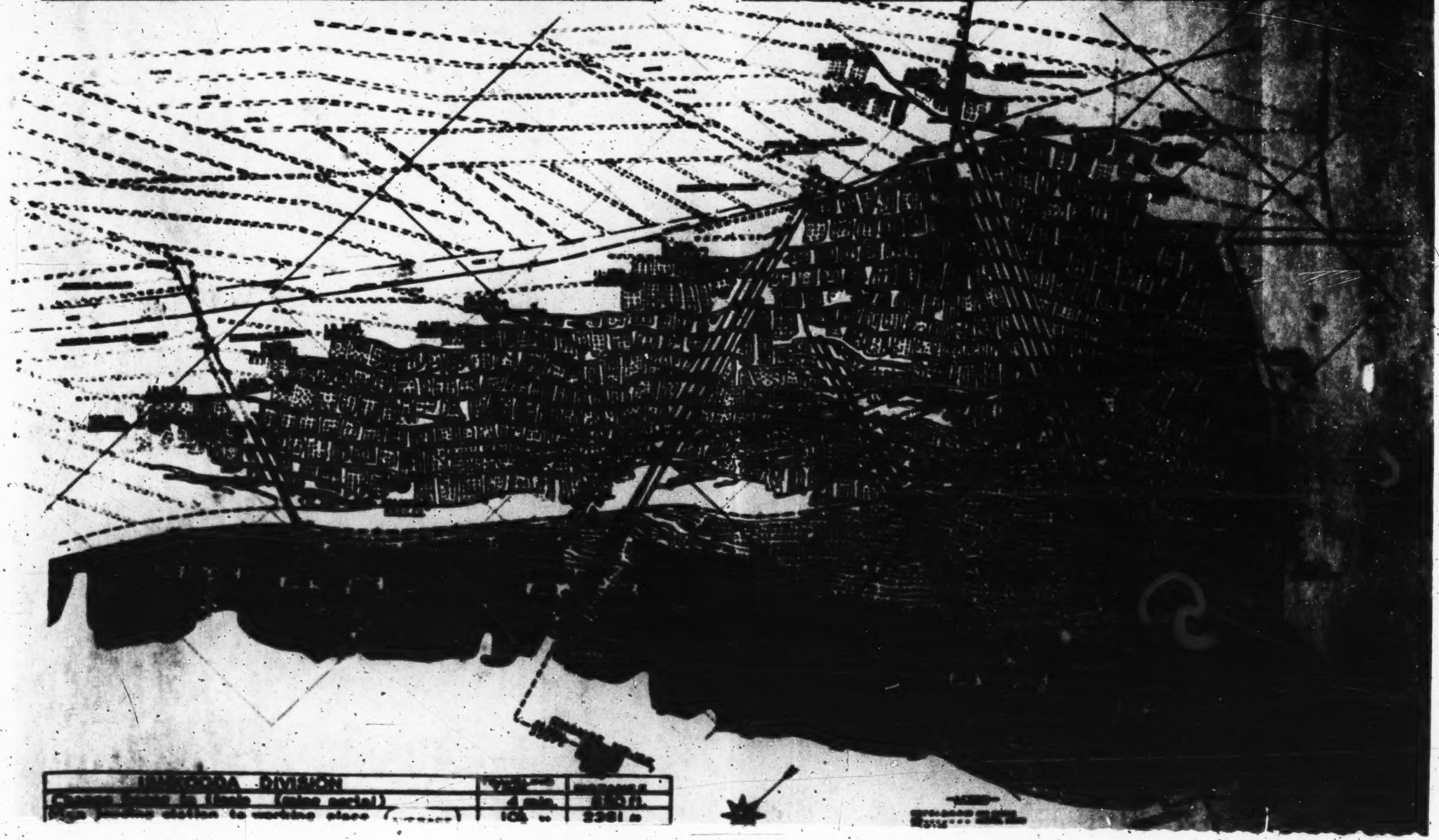
TRAVELING TIME AND DISTANCE
TO
PRESENT WORKING PLACES

EXHIBIT - B.

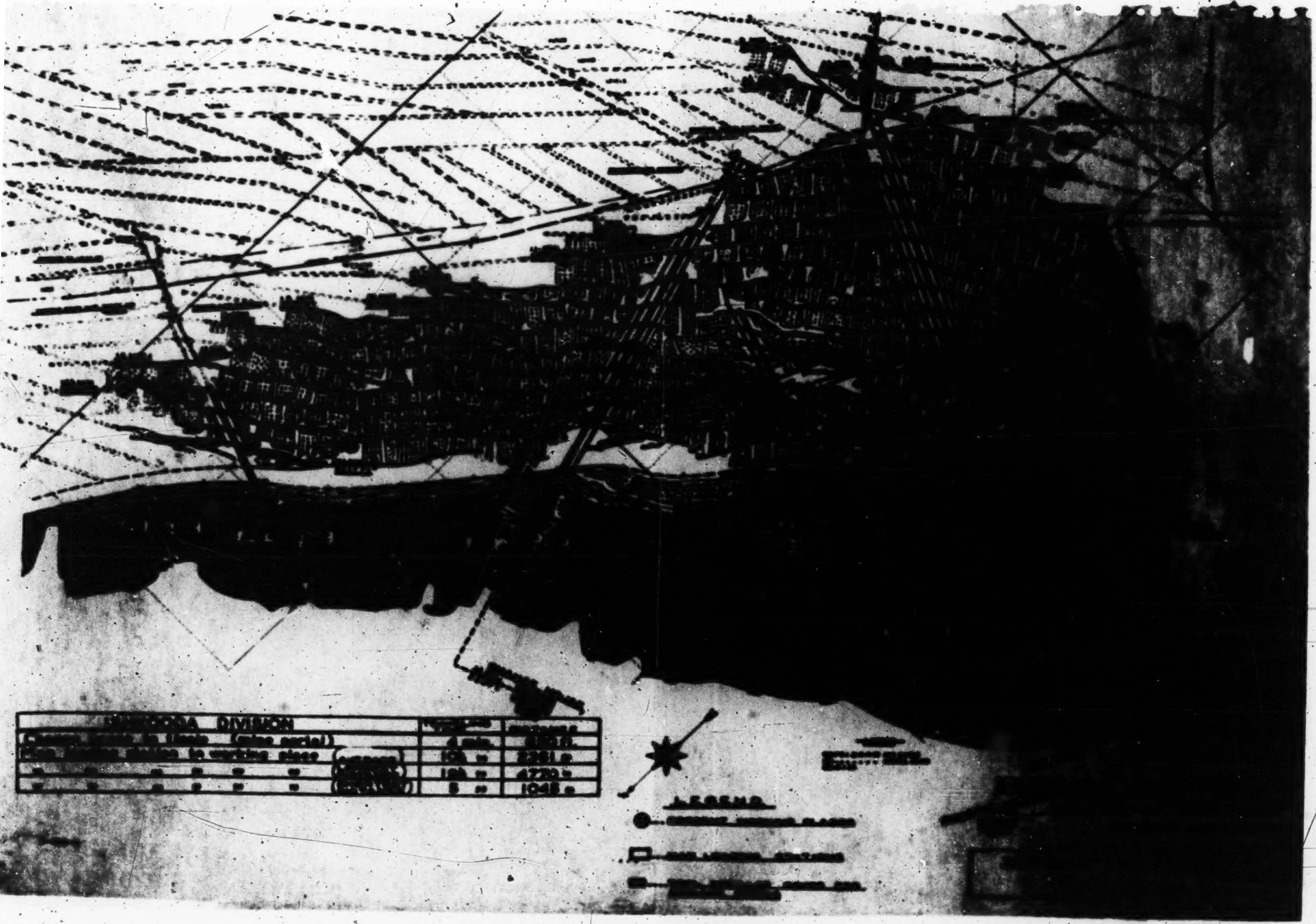
T. C. I. EXHIBIT NO. 3

NO 13 MINE		TRAVELING TIME	DISTANCE
Change house to tipple (mine portal)		3½ min	550 ft.
Man loading station to working place	(MINE AVERAGE)	14 "	3061 "
" " " " " "	(LONGEST DISTANCE)	18½ "	4770 "
" " " " " "	(SHORTEST DISTANCE)	9½ "	2095 "

NO 11 MINE		[illegible]
Change house to tipple (mine portal)		[illegible]
Man loading station to working place	[illegible]	[illegible]
" " " " " "	[illegible]	[illegible]
" " " " " "	[illegible]	[illegible]

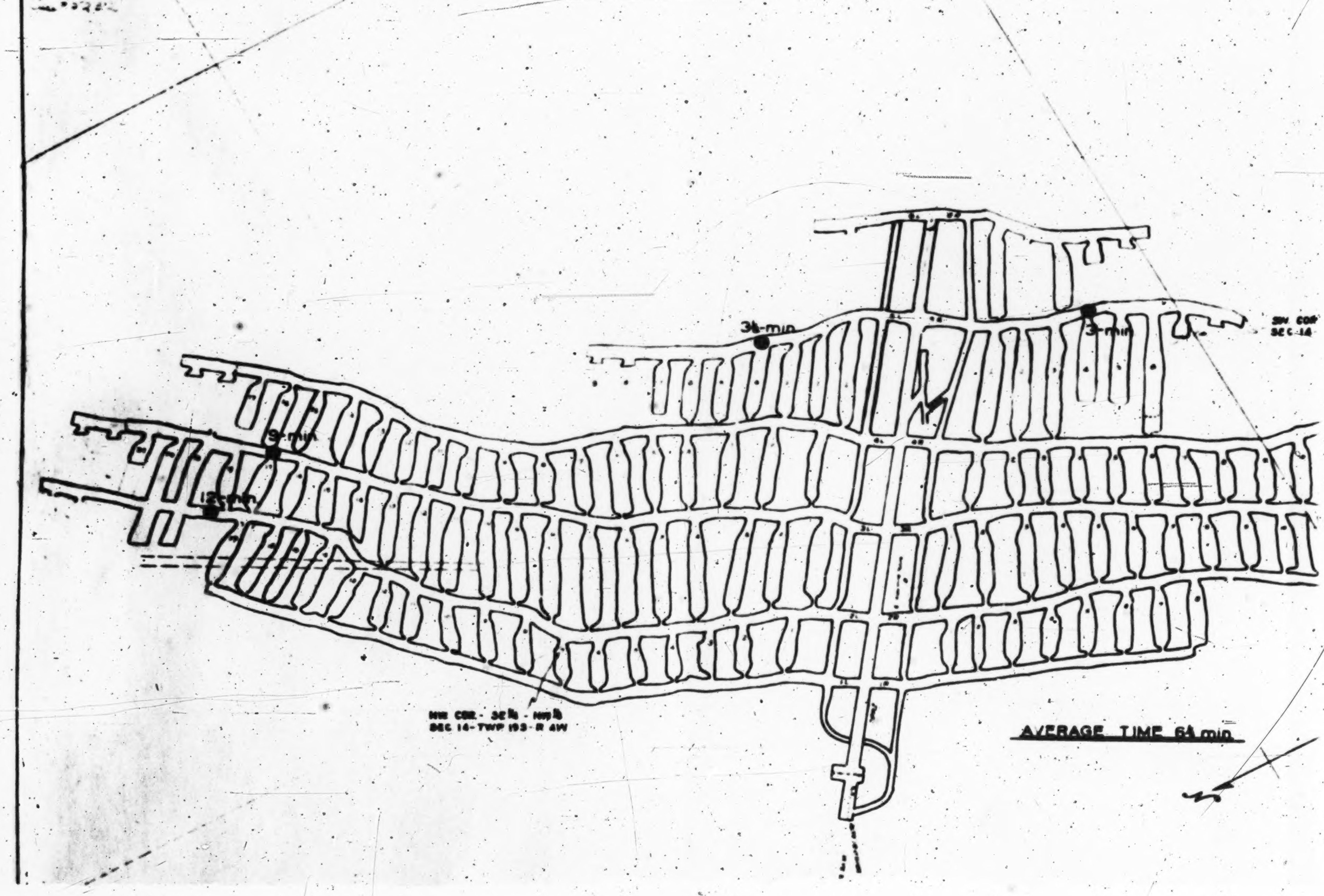


[illegible] DIVISION		[illegible]	[illegible]
Change house to tipple (mine portal)		4 min.	[illegible] ft.
Man loading station to working place	[illegible]	10½ "	2361 "

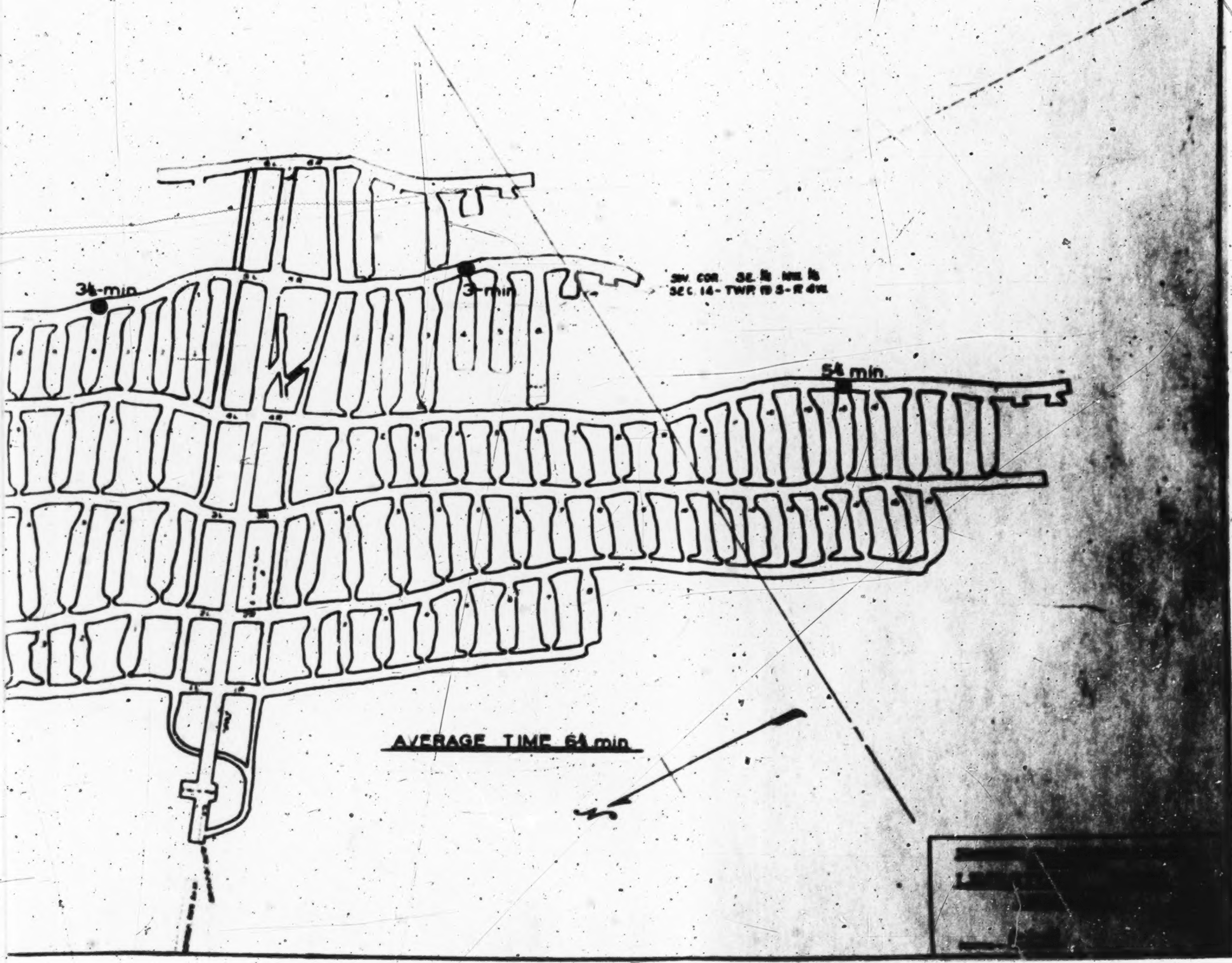

DIVISION
4 min.
10½ ″
12½ ″
5 ″
2281 ″
4770 ″
1045 ″
LEGEND

[illegible]

T. C. I. EXHIBIT NO. 4


3½-min
3-min
SW COR
SEC 14
9-min
12-min
NW COR. SE¼ - NW¼
SEC 14 - TWP 19S - R 4W

AVERAGE TIME 6¼ min


3½-min
3-min
SW. COR. SE ¼ NW ¼
SEC. 14 - TWP. 19 S - R 4W
5½ min.
AVERAGE TIME 6½ min

Copy of Memorandum of Meeting Held in Office of President, October 19, 1933, with a Committee of Seven Men Purporting to Represent Certain Employees of the Ore Mining Division, Tennessee Coal, Iron & Railroad Company.

On October 19, 1933, a Committee of seven men called upon the President of this Company to present a number of requests as regards certain employees of the Ore Mining Division, together with a list of suggestions for consideration by the proper officers of the Company.

Investigation has been made in reference to the cases of the named employees, each of which is answered individually.

The list of suggestions presented by the Committee has been given full consideration and they are answered now in order:

1—Suggestion that the Company recognize the three locals as labor organizations.

We are aware of the existence of these various groups, in which may be found some of the employees of this Company; in the same spirit, we are aware of the existence of church groups of various denominations, of fraternal orders of different kinds and of other societies formed for a variety of purposes. Every citizen of the country has a right to belong to any of these, or not to belong as he may elect. It is not our particular concern whether he joins any such group or refrains from joining, so long as his work is performed in an efficient and capable manner.

2—Suggestion that wage discriminations among our employees be discontinued:

It has always been and will continue to be the policy of this Company to compensate its employees fairly for the work assigned to each employee. The wages paid by us have generally been at a higher rate than the prevailing scale in this district. This policy has permitted us to secure the type of employee best suited to our needs and has encouraged our men to perform their tasks in such a manner as to win promotion where available, with consequent improvement in their earnings. It is not our purpose to change this policy.

3—Suggestion that discharged employees be reinstated with full seniority rights:

It has never been the policy of the Company to discharge an employee except for good cause, such as violation of working or safety rules, inability to perform his assigned task properly and similar reasons, all of which are clearly recognized as being fair and sound. In times like the present, we have found it very difficult to give employment to those employees who are on our rolls and in good standing. It is certain that we cannot give work under these conditions to former employees who have been discharged for valid reasons, nor will we consider doing so until operations permit the active employment of all men now in good standing.

4—Suggestion that men enter the mines on their own time and come out on Company time:

5—Suggestion for an 8-hour day and 40-hour week and

6—Suggestion that rates of pay be increased accordingly.

These three suggestions are considered as one since they can be answered as such. The code adopted for coal mining is being followed very closely by this Company in connection with its ore mining operations and that code provides for 8 hours of work at the usual working place, exclusive of the lunch period, for a 40-hour week and for certain wage scales. While we do not propose the adoption of identical wage scales at the ore mines as those of coal mines, proper differentials are being maintained and adjustments have been made to insure a fair wage to each employee.

Having replied to each of the suggestions submitted, it remains now to make one further statement. In this present instance, the President of the Company has seen fit to receive a Committee from one of the operating divisions, contrary to the established procedure in such matters. Plans are now in force and have been for many years whereby any employee may present a suggestion or complaint to his Superintendent, who will give it due consideration. Having done so, the workman has the right of appeal to the General Superintendent, then to the Vice President in charge and finally to the President in any case where he feels an injustice has been done.

The workmen in every division have elected committees to present their cases for a fair hearing and the orderly procedure provides for full consideration of every case so presented. It is necessary that such suggestions or complaints that you have to make in the future be made in the regular order. The President will not be able to receive Committees such as this, except as he may deem it advisable, and then only after the regular procedure has been followed.

October 24, 1933.

3541 T. C. I. EXHIBIT No. 6.

Bessemer, Alabama, April 13th, 1934.

To: Tennessee Coal, Iron & Rail Road Company,
Attention: Mr. Robert R. Gregg, President.

In Re: Muscoda division, Wenonah Division and Ishkooda Division.

Gentlemen:

We, the duly chosen representatives of more than 90 per cent of your employees, who were working for you on the first day of April, 1934, submit the following demands in working agreements and wage scales:

First: That the Company recognize our Union and deal with our chosen representatives, as required by Section 7 and 7 (a) of the National Recovery Act.

Second: That the Union be recognized and the check-off system be given the employees, which system included the collection of dues collectively by the Company and paying same to the Financial Secretary. The Financial Secretary to send list of names in duplicate to pay master, and one list to be marked and returned to Financial Secretary of respective local. This list to be sent in for deduction from first pay day of month.

Third: That there be no discrimination or coercion against any employee for his activities and affiliations with the organization.

Fourth: That Union employees heretofore discharged and victimized be immediately reinstated with full seniority rights, and pay for time lost on account of their activities in our organization.

Fifth: That the company desist in attempting to compel by force, duress, threats and bribery to compel employees to join company union, or "Company Representative plan."

Sixth: That the write-up system be abolished, or when any member of the organization, or employee, having violated any safety rule, and being written up, shall have the right to appeal to the Shops Committee for investigation of said violation, and if not satisfied with the report of the Shops Committee, shall have the right to appeal to the State's Compliance Board, or, if he deems it necessary, the right to take his appeal to the National Labor Board.

Seventh: That the Company put any employee who has been laid off or discharged, back to work immediately, and give him preference over new men, and any employee, that has just grounds for thinking, or being convinced, that he has been demoted, shall be given a fair hearing, and if proven that he has been demoted, shall be put back to his former position.

Eighth: In view of the fact that the Company can force the men to enter and leave the mines at any time stated by the Company, we ask the right to enter on our own time and leave on the Company's time.

Ninth: In view of the fact that the National Recovery Act was passed for the purpose of employing more men and increasing the purchasing power, we ask for a 7 hour day, the maximum of 35 hours per week, time and one-half for all overtime, double time for Sunday, (except where continuous operation is necessary), and double time shall be paid for the following holidays; Fourth of July, Labor Day, Armistice Day and Christmas. And where there is the contract system no man shall be paid less than the minimum daily rate.

Tenth: And where the men work on tonnage or contract basis, that they shall have the right to designate the check weighman, he to be paid by the employees, and the right to ask for inspection of scales at any time, if they deem it necessary.

Eleventh: And in the event of slack time, that time among the various employees be equitably divided.

Twelfth: That all scrips and substitutes for money be made negotiable without discount.

Thirteenth: That the employees have the right to take any matter up with the company in regard to the doctor who is not giving satisfaction, and by solicitation and petition, shall submit to the company any fault which they might find with the doctor, as the employees pay the doctor. When an employee receives an defect caused by injury on job the company to reinstate him when he is discharged by company physicians. When company physician turns a man down he has right to go to private physician and if found sound and able to work the company is to reinstate said man.

Fourteenth: That periodical physical examination be abolished.

Fifteenth: Any employee required to do work for the Union, shall be granted leave of absence, and said employee to be reinstated with full seniority rights upon his return to work.

Sixteenth: That no employee be required to live in a company house, unless said employee chooses to.

Seventeenth: That no employee be required to trade in the company store.

Eighteenth: That a Union committee shall take up the investigation of any officer or discharged member of the organization, and, in the event that there is no settlement agreed to, they shall appeal it to the Industrial Arbitration Board for their investigation.

Nineteenth: Should any controversy arise which can not be straightened out by a committee designated by the Union, in conference with the Company officials, they shall set up an arbitration board consisting of two (2) men chosen by the Union; two (2) men chosen by the Company, and one man appointed by the Regional or National Labor Board. Each party having the right to appeal the findings of the Arbitration Board.

Twentieth: Should any man, living in a company house, be reasonably and justifiably discharged, or should quit the services of the company, that he shall be given a reasonable length of time to vacate said house, and, in the event of a strike or lock out, that employees living in company houses shall have the right to retain same until strike or lock out is adjusted satisfactory to both sides, and after adjustments and satisfactory agreements have been reached by the company and the employees, the employees shall be required to pay one-half of the rent they are in arrears.

Twenty-First: That the employers shall have the right to discharge any man for a justifiable cause, but the employee shall have the right to appeal his case to the Arbitration Board, and, in the event the Arbitration Board hands the decision in favor of the man, the company shall have the right to take it before the Regional Board, and, if necessary, the National Board.

Twenty-Second: Wage Scale: That the minimum rate of pay shall be, for outside common labor, $4.60 per day.

For inside common labor, $5.00 per day. And that the differential existing as of April 1st, 1934, between common labor and skilled labor shall be maintained as of this date.

Respectfully submitted, and in witness whereof, we hereunto subscribe our names as the chosen representatives of more than 90 per cent of your employees.

M. C. ANDERSON, #153
C. J. McDANIEL, #157
VAN D. JONES, #123
M. E. ADAMS, #123
MORRIS SMITH, 157
E. A. SISEMORE.

(Seal of I. U. M. M. & S. W. Bessemer District Smelters Council, Bessemer, Alabama.)

(Seal of I. U. M. M. & S. W. Muscoda Local No. 123, Bessemer, Ala.)

3545 **T. C. I. EXHIBIT No. 7.**

Memorandum of Replies Made to Proposals Submitted by Committee Composed of the Following Employees of Tennessee Coal, Iron & Railroad Company.

M. C. Anderson,
C. J. McDaniel,
Van D. Jones,
M. E. Adams,
Morris Smith,
E. A. Sisemore.

With reference to your proposals submitted to me on April 18th, 1934, it should be stated at the outset that until an Ore Mining Code is approved by the proper officials of the Government and thus made effective generally, it is the purpose of this Company to continue its well-known policy of providing its Ore Mines employees with as much work as is possible at such rates of pay and such hours of work as in its judgment will be fair and reasonable. If, as and when the Ore Mining Code is approved and made effective, this Company will, of course, be governed by its provisions to the same extent as these may be legal and binding upon us.

Dealing with your proposals in order:

Items 1 and 2 ask that the Union be recognized by the Company. If it is intended that you are advising us of the existence of your Union, or any Union, we answer that we are aware of the existence of many Unions, among them being yours. If by this it is intended that we agree to deal with your Union, or any Union as such, we must answer that we will not do so. We have not failed nor will we fail to deal with committees of our employees or any representatives of our employees as such representatives. The Superintendents at our Ore Mines have met with every reputable committee asking for a meeting and will continue to do so. We have not extended any form of the so-called check-off to our Ore Mines or to our Manufacturing Divisions, nor is it our purpose to do so.

Items 3 and 4 relate to discrimination or coercion against any employee. Our supervising men are clothed with full authority to operate the various Departments of our Company, but they are instructed not to discriminate against any employee for his activity in connection with any organization. If any employee feels he has been unfairly treated for this or any other cause, his request for a hearing by his Superintendent will receive prompt attention and full consideration, as has been our consistent policy. It must not be overlooked, however, that the sole power of employment, discharge or transfer for sufficient cause is vested in the management, and that right will not be relinquished.

Item 5 intimates that this Company has attempted to compel, coerce or even bribe employees to join in our Plan of Industrial Relations. This is so wide of the actual fact that it is not deserving of reply.

Item 6 has reference to one of our safety rules that has been so productive of carefulness and safe practice that we would be false to our responsibility to the families of our employees were we to fail to enforce it. If anything can be done to make for safety in our operations we propose to add to our rules in this respect rather than otherwise. Again, if any employee feels he has been treated unfairly, he may present his side of the matter to his superintendent where it will be fully considered.

Item 7 has been answered in paragraph above.

Item 8: When we changed the working time in the mines from ten hours to eight, we found that the average time spent at the face was about nine hours. We then adjusted the wage to equal nine hours pay for eight hours at the face or regular working place, so that we feel we have done all that you now request. There must be a regular starting time and quitting time for the orderly operation of the mine and we are convinced that our present policy is fair and proper.

Item 9: Unless and until it becomes a general practice in the Ore Mining Industry to observe any other than the eight hour day we expect to make no change in our hours of operation. Likewise, until such changes become generally established we expect to make no change in our long established policy of paying for time worked at the regular rates of pay. We are careful now to prevent any overtime except in case of emergency and propose to adhere to this policy.

Item 10: This evidently was not intended for our consideration as we do not have a tonnage system of wages in our Ore Mines.

Item 11: Ever since the depression began we have endeavored to spread work among our employees in an equitable way. This policy will not be changed.

Item 12: This is a legal question and we propose to conduct our affairs in accordance with the law. Under the law of Alabama it is made a criminal offense for a Corporation to issue any paper to answer the purpose of money or for general circulation. This law is contained in Sections 3492 and 3493 of the Criminal Code of Alabama, which are as follows:

"3492. Emitting change bills as money.—Any officer or agent of any private corporation or association, or any other person, who makes, emits, signs, or countersigns, or causes or procures to be made, emitted, signed, or countersigned, without authority of law, any paper to answer the purpose of money, or for general circulation, must, on conviction, be fined not more than five hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the country, for not more than one year.

"3493. Circulating such change bills.—Any person who passes or circulates in this state any paper issued without authority of law, to answer the purpose of money, must, on conviction, be fined not less than twenty nor more than one hundred dollars."

Item 13: I have already pointed out that any employee has the right to present his case or complaint to his supervising officer where it will be given full consideration. This applies in the case of a doctor employed by the company.

It is true employeer do pay a nominal sum each month to receive medical and hospital service for themselves and their families, but these payments by employees do not cover the cost of such service. Moreover, each employee has a perfect right to use this service or not to use it just as he sees fit. If he does not want the service or is dissatisfied with it, he need only withdraw his written assignment covering these services. In other words, it is voluntary with each employee whether or not he uses this service.

We rely upon our medical staff for expert medical advice and shall continue to do so both for our protection and for that of our employees and their families. By reason of the fine staff of medical men in our Hospital who are furnished with the best equipment and who must pass upon the physical fitness of any injured man before he can return to work, we cannot agree to be governed by the opinion of any outside physician in this regard.

Item 14: This is not applicable to our Company and needs no reply.

Item 15: Any employee may be assured of a reasonable leave of absence for proper cause upon application to his superintendent. This has always been our policy and will continue. A question was raised by one of the committees as to what would be construed a reasonable length of time. It developed that what was wanted was one year or maybe more in case of certain men. My reply was that if a man wanted a year's absence to do work for which he would be paid by some organization and not work for this Company, we could not consider him in the light of a regular employee and that he would not retain his rights with the Company. If he wanted several days or a week, or perhaps two weeks, upon proper request he could get it without difficulty and without loss of position.

Items 16 and 17 are not applicable to our Company.

Items 18 and 19: Again I state that any employee may take up with his supervising officer any question of supposed or actual unfair treatment. I go further and point out the procedure already adopted by the employees and approved by management.

1. Any matter which, in the opinion of any employee, or any group of employees, requires adjustment, and which such employee, or group of employees, has been unable to adjust, either directly or through his or their Representatives with the foreman of the work on which he or they are engaged, may be taken up by such employee, or group of employees, either in person or through any Representative of his or their Department in writing—

First—With the Superintendent concerned.

Second—With the Manager of Industrial Relations.

Third—With the Management,

and, lastly, with the President of the Company, and it is my thought that after getting this far a satisfactory settlement will be had of all cases arising.

Item 20 is a legal question. All we need say is that we have always tried to be sensible of what is fair and to be governed accordingly.

Item 21: See answer to 18 and 19.

Item 22: We have always paid as high if not higher wages than any Company in this District. We are now paying more than any Company mining ore on Red Mountain and have reached the limit of our ability to pay without bankruptcy. Only recently we agreed with our men on an adjustment which increased our ore mining payrolls about 10% and we can go no further in this respect at this time.

I only hope that business may improve to the point where we can begin to make back some of the millions we have lost in the past four years, and with the hearty cooperation of all our employees and associates this can be done.

April 20, 1934.

3551 T. C. I. EXHIBIT No. 8.

June 24, 1934.

Honorable Frances Perkins, Secretary of Labor,
Commissioner James Dewey,
Commissioner C. L. Richardson,
Birmingham, Alabama.

This is to confirm the understandings reached today at the conference between representatives of employees of our Ore Mines and the management, which was presided over by Commissioners Dewey and Richardson, regarding the position of this Company as to its ore mining operations. This is furnished to you as the representatives of the United States Government as a part of your record in this matter.

We are informed that the following named men have been chosen as a Committee to deal with the management on collective bargaining matters:

Geo. R. Coles, V. P. International.
V. C. Finch, Rep. A. F. L.
J. A. Lipscomb, Rep. Ore Miners.
C. L. Burchell, Sou. Rep. International.
Van D. Jones, Pres.
William Baylor, V. Pres.
M. E. Adams, Fin. Secy.
C. J. McDaniels, Pres.
Will Maham, V. Pres.
Morris Smith, Fin. Secy.
A. C. Cox, Rep.
M. C. Anderson, Pres.
Orange Wilson, V. Pres.
E. A. Sisemore, Fin. Secy.

We are entirely willing to deal with this Committee on matters of collective bargaining as they arise for all our Ore Mines employees as they may represent.

The employees at our Ore Mine have been free to join any organization they chose without prejudice or discrimination and this is the policy of our Company.

It is understood that the wage scale attached to this letter constitutes the rates to be paid by us for the various classifications as shown for the period of one year from this date.

Our men at each mine are free to select a committee to represent them in adjusting any grievance that may arise between them and the management which the employee himself cannot settle satisfactorily with his immediate supervisor. It is understood that such committee will not take up any grievance with the management unless and until the employee has endeavored to adjust the matter himself.

If the Committee and the Foreman of the mine fail to adjust any grievance, the matter will then be taken up by the Committee with the Mine Superintendent. Failing to reach agreement in this event, it will be taken up with the General Superintendent of Ore Mines. If they should fail to agree, the matter may be submitted to arbitration, one arbitrator to be named by the Committee and one to be named by the management of the Company and these two may select a third.

It is understood that the management of the mines is vested exclusively in the Company and the duties of the mine committees shall be confined as above outlined.

It is understood that no such mine committee will interfere with the operations of the mine to enforce any purely local grievance until the full procedure of settlement has been followed.

The Company, of course, will be bound by all the terms and conditions of the Ore Mining Code when such Code has been adopted to the extent they apply to our operations in this District.

As a condition of the above understandings reached between the Committee and the management, it is understood the strike at all our Ore Mines is called off and that all men are to return to their former occupations without prejudice or discrimination.

Yours truly,

....

President.

enc.

Tennessee Coal, Iron & Railroad Company

Ore Mines Division

Classification of Occupations

	Rate Per Hour Present	Rate Per Hour Proposed
Division General:		
Camp Watchman	.515	.545
Watchman	.31	.36
Mine Messenger	.30	.35
Mechanical—General:		
Repairman	.37	.41
Extra Compressor Engineer	.43	.46
Locomotive Crane Engineer	.56	.59
Locomotive Crane Fireman	.375	.415
Boiler Cleaner	.375	.415
Boiler Cleaner	.33	.37
Locomotive Crane Helper	.30	.35
Machine Shop:		
Handyman	.515	.545
Machinist Helper	.48	.51
Machinist Helper	.435	.465
Machinist Helper	.43	.46
Machinist Helper	.405	.435
Apprentice	.51	.54
Shop Labor	.315	.365
Blacksmith Shop:		
Blacksmith	.54	.57
Drill Sharpener and Mule Shoer	.54	.57
Drill Sharpener	.54	.57
Tool Dresser	.54	.57
Blacksmith Helper	.41	.44

	Rate Per Hour Present	Rate Per Hour Proposed
Carpenter Shop:		
Painter	.515	.545
Brickmason Helper	.315	.365
Electric Shop:		
Lineman	.495	.525
General Yard:		
Scraperman	.41	.44
Material Helper	.30	.35
Common Laborer	.30	.30
Teaming:		
Stableman	.39	.425
Truck Driver	.46	.49
Tractor Driver—2 Ton	.46	.49
Oil Wagon Driver	.37	.41
Teamster—2 Mule	.37	.41
Teamster Helper	.315	.365
Stable Cleaner	.30	.35
Miscellaneous:		
Pumper—Scotts Branch	.42	.45
Pumper—Graces	.405	.435
Dry House Fireman	.41	.44
Carbide Filler	.36	.40
Supply House Helper	.30	.35
Dry House Attendant	.30	.30
Inside Mine Operatives:		
Gas Man Helper—Limestone Mine	.42	.45
Powderman	.42	.45
Tallyman—9 hours	.42	.45
Material Foreman Helper	.395	.43

	Rate Per Hour	
	Present	Proposed
Timberman	.48	.51
Timberman Helper	.395	.43
Trackman	.50	.53
Trackman Helper	.395	.43
Sub-Station Tender	.46	.49
Electric Pumper	.445	.475
Electric Pumper	.43	.46
Pumper—Air	.41	.44
Motorman	.585	.615
Trip Rider	.495	.525
Boss Driver	.41	.44
Driver	.30	.35
Skip Tender—9 hours	.46	.49
Pocket man	.46	.49
Dump Man	.41	.44
U. G. Hoist Engineer #7-A Single Drum	.54	.57
Material and Man Hoist Engineer—9 Hrs. Limestone	.54	.57
Haulage Engineer	.40	.435
U. G. Mule Shoer	.54	.57
U. G. Stable Cleaner	.44	.47
U. G. Mine Labor	.375	.415
Underhand Stopes and Development:		
Drill Runner	.54	.57
Drill Helper	.44	.47
Mucker	.47	.50
Drag Operator	.54	.57
Haulage Engineer	.40	.435
Sinking Hoist Engineer	.40	.435
Pocket Man	.36	.40
Slate Dumper	.375	.415
Inside Mechanical and Electrical:		
Drag Repairman	.56	.59

	Rate Per Hour	
	Present	Proposed
Drag Repairman Helper	.42	.45
Car Repairman	.54	.57
Car Repairman Helper	.42	.45
Pipeman	.41	.44
U. G. Carpenter Helper	.395	.43
Sheave and Car Repairman	.41	.44
Motor Inspector Helper	.42	.45
Outside Mine Operatives:		
Compressor Engineer	.54	.57
Fan Man	.43	.46
Crusher Repairman	.445	.475
Crusher Repairman	.405	.435
Crusher Feeder	.38	.415
Bottom Crusherman	.38	.415
Crusher Helper	.30	.35
Steam:		
Head Fireman #13	.44	.47
Fireman	.41	.44
Boiler Cleaner	.375	.415
Ash Wheeler #13	.30	.35
Mechanical—General:		
Air Drill Repairman	.605	.635
Extra Hoist Engineer	.60	.63
Machine Shop:		
Machinist	.78	.81
Machinist	.74	.77
Machinist	.625	.655
Air Drill Repairman	.605	.635
Handyman	.57	.60

	Rate Per Hour	
	Present	Proposed
Blacksmith Shop:		
Blacksmith	.675	.705
Blacksmith	.655	.685
Tool Dresser	.675	.705
Carpenter Shop:		
Carpenter	.65	.655
Carpenter	.61	.64
Painter—Sub Foreman	.60	.60
Brickmason	.81	.84
Electric Shop:		
Shop Electrician	.66	.69
Electrician	.60	.63
General Yard:		
Steam Roller Engineer	.61	.61
Inside Mine Operatives:		
U. G. Hoist Engineer—Doublie Drum	.61	.64
Gas Man—Task—Limestone Mine	6.02	6.02
Inside Mechanical and Electrical:		
U. G. Carpenter	.60	.63
Motor Inspector	.655	.655
Mine Machinist	.665	.665
Outside Mine Operatives:		
O. S. Hoist Engineer #6	.66	.69
O. S. Hoist Engineer	.62	.65
Assistant O. S. Hoist Engineer #6 and 11	.60	.63
Electrician—Limestone	.60	.63
Section Foreman	.61	.64

3557 Birmingham, Ala., June 24, 1934.

Commissioner James Dewey,
Commissioner C. L. Richardson,
U. S. Department of Labor,
Birmingham, Ala.

Gentlemen:

This letter is to state the proposition of the employees of the Tennessee Coal, Iron & Rail Road Company, who are members of the International Union of Mine, Mill and Smelter Workers, and affiliate of the American Federation of Labor in regards to the proposal made to us through you to settle the present controversy at the Red Ore Mines of that Company, this is to advise that the following have been designated as the chosen representatives of the above referred to employees to deal with officers of the Company for the purpose of promulgating a working agreement between the Company and the employees, and the following are the chosen representatives.

Chosen Representatives.

Geo. R. Coles, V. P. International.
V. C. Finch, Rep. A. F. L.
J. A. Lipscomb, Rep. Ore Miners.
G. L. Burcheil, Sou. Rep. International.

Muscoda #123.

Van D. Jones, Pres.
William Baylor, V. Pres.
M. E. Adams, Fin. Secy.

Wenonah #157.

C. J. McDaniels, Pres.
Will Maham, V. Pres.
Morris Smith, Fin. Secy.
A. C. Cox, Rep.

Ishkooda #153.

M. C. Anderson, Pres.
Orange Wilson, V. Pres.
E. A. Sisemore, Fin. Secy.

We are herewith submitting a list of rates of increases which we request be established for the classifications mentioned therein and designate same in four brackets: First bracket to include Dry House Attendants only, rate 30c per hour; second bracket to include a 7c raise per hour over the present rates of those employees now receiving from 30c to 42c per hour, both inclusive; third bracket to include a 5c raise per hour over the present rates of those employees now receiving from 43c to 54c per hour, both inclusive; the fourth bracket to include a 3c raise per hour for all of the other employees receiving from 55c per hour, and over.

This proposal is based upon the original classification submitted to you and affects skilled mechanics, journeymen and others, and we feel that this request is reasonable and fair and should be granted, and we are agreeable that the rates agreed upon shall continue in effect for one year from date, subject to any increase that may be established in the Iron Ore Code, when promulgated.

You will note that we are insisting on inclusion of certain classifications of mechanics and skilled workmen. We insist upon and request a clear understanding between the above mentioned committee and the Management, that they propose to continue to recognize the right of the employees to organize in organizations of their own choosing, and bargain collectively through representatives of their own choosing, and we desire to have this incorporated in our working agreement.

The fifth paragraph of your letter proposes a set-up for handling grievances with the Company. We propose the following method of handling same, that in the event an adjustment cannot be made between the aggrieved party and the mine foreman, then that it be submitted to the Superintendent of the mine and our chosen mine or grievance committee, or their chosen representatives or their officers, and in the event satisfactory adjustment cannot be made, either party may appeal to a designated Board consisting of two members, one of whom shall be designated by us and one by the Company. Failing to agree they shall request the National Labor Board, or like Board, to select an umpire, or either party may require that the matter be submitted forthwith to said Labor Board.

We interpret the last paragraph of your letter, in which it is proposed that the Company guarantees to put into full force and effect, all the provisions of the Ore Mining Code when adopted, and that this will include Section 7-A of the N. I. R. A.

Yours respectfully,
GEORGE R. COLES,
(Geo. R. Coles)
As Vice-Pres. I. U. M. M. & S. W.
VAN D. JONES,
(Van D. Jones)
As Pres. Muscoda #123.
C. J. McDANIEL,
(C. J. McDaniel)
As Pres. Wenonah #157.
M. C. ANDERSON,
(M. C. Anderson)
As Pres. Ishkooda #153.

To: Mr. Dewey and Mr. Richardson.

Gentlemen:

Following is a proposed rates that the Executive Board of the Tennessee Co. employees are submitting for the Company's approval or rejection. We do not waive the rights on any of the other points that have been under discussion between employers and employees by submitting this proposed rates. We still believe that the other points are vital and are worth discussing even if the Company does agree to the following rates.

	Present Rate	Proposed Rate
Stopper section foreman	.61¢ hr.	.66¢ hr.
Drag operator (engineer)	.54 hr.	.59 hr.
Drill runner	.54 hr.	.59 hr.
Drill helper	.44 hr.	.52 hr.
Mucker	.44½ hr.	.52½ hr.
Carpenter helper	.40 hr.	.48 hr.
Powder man (magazine attendant)	.42 hr.	.50 hr.
Haulage engineer	.40 hr.	.48 hr.
Haulage Motorman	.58½ hr.	.62½ hr.
Trip rider (chainer)	.49½ hr.	.64½ hr.
Time taker	.54 hr.	.59 hr.
Carpenter	.59 hr.	.64 hr.
Motor inspector	.66 hr.	.71 hr.
Track man	.50 hr.	.58 hr.
Rotary dump man	.46 hr.	.51 hr.
Skip tender	.52¾ hr.	.56¾ hr.
Motor inspector helper	.42 hr.	.50 hr.
Mechanics	.54 hr.	.59 hr.
Mechanic Helper	.52 hr.	.50 hr.
Timber foreman (round)	.46 hr.	.54 hr.
Timber foreman (square)	.59 hr.	.64 hr.
Carpenter foreman	.59¾ hr.	.64¾ hr.
Slate dump foreman	.46 hr.	.52 hr.

	Present Rate	Proposed Rate
Slate dump helper	.38½ hr.	.45½ hr.
Hoist engineer	.61 hr.	.66 hr.
Material hoist engineer	.54 hr.	.59 hr.
Pipe men	.41½ hr.	.49½ hr.
(Outside) Hoist engineer (single drum)	.62½ hr.	.67½ hr.
Hoist engineer (double drum)	.66 hr.	.71 hr.
Assistant engineer	.60 hr.	.65 hr.
Compressor man	.54 hr.	.59 hr.
Machinist (first class)	.78 hr.	.83 hr.
Machinist (second class)	.58 hr.	.62 hr.
Machinist helpers	.30 hr.	.38 hr.
Blacksmith foreman	.54 hr.	.59 hr.
Helpers (blacksmith)	.42 hr.	.50 hr.
Welders	.72 hr.	.77 hr.
Steel sharpener foreman	.59 hr.	.64 hr.
Steel sharpener helper	.44 hr.	.52 hr.
Truck and tractor operator	.46 hr.	.54 hr.
Carpenter helper	.59 hr.	.64 hr.
Carpenter	.65 hr.	.70 hr.
Surface foreman	.44¾ hr.	.52 hr.
Drivers and teamsters	.28½ hr.	.35½ hr.
Night watchman	.32¼ hr.	.40¼ hr.
Fire boss	.75½ hr.	.80½ hr.
Helpers	.42½ hr.	.50½ hr.
Fan operator	.44 hr.	.52 hr.
Door man	.40 hr.	.48 hr.
Rotary dump helpers	.41 hr.	.49 hr.
Crusher man	.37 hr.	.45 hr.
Wash house attendant	.30 hr.	.30 hr.
Air compressor helper	elim.	
Outside electrician	.60½ hr.	.65½ hr.
Tally man	.46¼ hr.	.51¼ hr.
Drag engineer	.54 hr.	.59 hr.
Heading haulage motorman	.58½ hr.	.63½ hr.

	Present Rate	Proposed Rate
Dumpers	.46 hr.	.51 hr.
Pipe fitters	.37½ hr.	.45½ hr.
Pump man	.37½ hr.	.45½ hr.
Track foreman	.50 hr.	.55 hr.
Track helpers	.39½ hr.	.47½ hr.
Repairman	.54 hr.	.59 hr.
Repair helper	.39½ hr.	.47½ hr.
Tool house man	.39½ hr.	.47½ hr.
Powder man	.41½ hr.	.49½ hr.
Mule driver	.37½ hr.	.45½ hr.

3563

T. C. I. EXHIBIT 8-G.

Direction
Dinkler Hotels Co. Inc.

Carling Dinkler,
President & Gen. Mgr.

Tutwiler Hotel

500 Rooms and Baths—Radio in Every Room.

Under Same Management

Ansley Hotel, Atlanta, Ga.

Jefferson Davis, Montgovery, Ala.

Andrew Jackson, Nashville, Tenn.

St. Charles, New Orleans, La.

R. Burt. Orndorff,
Manager.

Birmingham, Alabama.

1st. The strike at all mines of the T. C. I. is called off, and all there return to their former employment without prejudice or discrimination.

2. That a scale of wages attached hereto is to be the rate paid by the T. C. I. Company for one year.

3rd. No wage scale or rate of pay is to be used in this agreement for any person employed as a foreman, Pay Roll clerk, weighman or scientific research worker, mine engineers or any other person that engaged in the various positions that is commonly known as workmen at actual labor in or around the mines of the above co.

4. The co further agrees that the employees at each mine can select a committee to represent them in adjusting grievances that arise between the management and any employee that said employee can not settle satisfactorily himself. The committee will refuse to take up for adjustment any grievance for an employee until the employees has tried to adjust the same with his immediate superior.

If the committee and the General foreman of a mine fail to adjust the grievance the matter will again be taken up by the committee and the General Supt. of the Mine. If the General Supt. and the committee fail to reach an agreement the matter may be referred to arbitration, the committee selecting one man and the General Superintendent Selecting one man and these two men selected may select the third man to decide the matter, and his decision shall be final.

5. The duty's of committee shall be confined to the above only; and the Management of the Mine shall be vested exclusively in the Company and any committee interferring in any manner or calling of a strike to enforce a local demand may be discharged.

TCI EXHIBIT No. 9.

Tennessee Coal, Iron & Railroad Company

Muscoda Division

Held in General Superintendent E. M. Ball's
Office on June 13th, 1935.

Those present were:
Mr. E. M. Ball, General Superintendent,
Mr. A. W. Beck, Chief Engineer,
Mr. M. E. Baird, Gen. Supt's Clerk,

and the following Committee from the Red Mountain locals of the International Union of Mine, Mill & Smelter Workers:

Mr. Byrd Barksdale (w) (President, Muscoda Local #123).

Mr. Charlie McDaniel (w) (President, Wenonah Local #153).

Mr. M. C. Anderson (w) (President, Ishkooda Local #157).

Mr. Ed. Sizemore (w) (Secretary, Ishkcoda Local #157).

Mr. M. E. Adams (w) (Secretary, Muscoda Local #123).

Bill Baylor (c) (Vice President, Muscoda Local #123).

Will Mahan (c) (Vice President, Wenonah Local #153).

Morris Smith (c) (Sec.-Treas., Wenonah Local, #153).

Orange Wilson (c) (Vice President, Ishkooda Local #157).

The meeting was called to order at 1:00 P. M. by Mr. E. M. Ball, General Superintendent.

Mr. Ball:
What have you today?

Mr. Barksdale:
Mr. Ball, we are here today to present a copy of a proposed contract. We would apprecate it if you would make the arrangements for negotiations.

Mr. Ball:
I do not have the authority to enter into any negotiations on hours, wages, working conditions, etc., but I will forward this contract in triplicate to our Management and will let you know what their reaction is as soon as possible.

Mr. Barksdale:
How long do you think that will be?

Mr. Ball:
I do not know, but I will advise you as soon as possible.

Mr. Barksdale:
I believe that is all for today, unless you have something to say.

Mr. Ball:
Yes, I would like to talk to you about the Group Insurance but we will not include that in the minutes of this meeting.

E. M. BALL,
Gen. Supt., Iron Mines &
Quarries.

TCI EXHIBIT No. 9-A.

This Agreement made and entered into by and between the Tennessee Coal, Iron and Railroad Company, hereinafter called the Company, and the Muscoda Local Union No. 123, the Ishkooda Local Union No. 153 and the Wenonah Local Union No. 157, of the International Union of Mine, Mill and Smelter Workers, hereinafter called the Locals,

Witnesseth:

1. That the Company fully recognizes the Locals and through its properly accredited officers will meet and confer with the properly accredited officers and committees of the Locals upon all grievances and questions which may arise under this agreement.

2. Any controversy concerning hours, wages, and conditions of employment arising under this agreement between the Company and the Locals shall, if possible, be adjusted locally.

3. For the purpose of collective bargaining on matters of mutual interest including hours, wages, and conditions of employment or any grievances affecting their membership, the Locals shall select representative committees who shall be recognized by the accredited representatives of the Company as the proper medium through which the Company and the Locals are to negotiate.

(a) All grievances shall be settled within fifteen (15) days from date of first notice given by the grievance committees to the superintendent of their respective divisions.

(b) Any member having a grievance shall first discuss it thoroughly with his foreman, and an honest effort made to settle it.

(c). If the individual and foreman cannot agree on a satisfactory settlement, the member having the grievance shall report same to the grievance committee.

(d) The grievance committee shall make a detailed investigation of the grievance and decide whether or not it shall be handled further with the Company. If the grievance is to be handled further, then it must thereafter be handled as follows:

(e) The superintendent of the department in which the grievance arose shall be notified and the grievance shall be thoroughly discussed with him and every effort made to settle same.

(f) If a settlement with the superintendent cannot be made the grievance shall then be taken up and thoroughly discussed with the Manager or General Manager of the Company and an effort made to reach an amicable adjustment.

4. Until grievances have been handled exactly in accordance with this agreement there shall be no suspension of work by strike or lockout, and both parties shall endeavor in every way to reach an amicable adjustment.

5. The Company retains the right to discharge any employee, but upon request by the Local of which he is a member, the Company agrees to show cause for such discharge. If satisfactory cause cannot be shown, the discharged employee shall be reinstated and shall be paid for all time lost at his regular rate of pay.

6. In the event of the closing down of any one mine by the Company, and the employees are transferred to another mine, and equal distribution of time shall be made

among the employees and all foremen shall carry their own crew.

7. In case of curtailment or other reductions of the number of employees, whatsoever the cause, the Company agrees that the men shall be laid off in rotation in service, the seniors to be the last laid off and the last man laid off to be the first reemployed.

8. It is agreed that if for any cause there is a stoppage of production it shall be mutually agreed between the management and the representative committee of the employees as to the number of, and who shall be permitted to work as are required in connection with the operation of pumps and other equipment, or on such work as is necessary to protect the properties from damage or destruction. It is further agreed that no charges for house rent shall be made during the stoppage of production.

9. It is agreed that the employees shall enter the mines on their own time and come out on the Company's time.

10. Eight hours shall constitute a day's work, not to exceed forty (40) hours per week. Time worked in any day in addition to the regular hours per day shall be paid for at the rate of time and one-half. All Sunday work to be eliminated, insofar as possible, double time to be paid for all other work on Sundays and for the following holidays: Independence Day, Labor Day, Thanksgiving Day and Christmas Day, regularly employed operations and maintenance men, by mutual agreement, to be excepted.

11. The regular semi-monthly pay days now in force shall be continued.

12. It is further agreed that all employees coming under the jurisdiction of the Locals shall have checked off from

their wages any monies due the Locals for Initiations, Dues, Fines and/or Assessments, the same to be paid monthly to the Financial Secretaries of the Locals on or before the tenth day of the month following such deductions.

13. There shall be no discriminations of any kind against any member of the Locals by Foremen, Superintendents, or any other persons in the employ of the Company.

14. Members of the Locals shall be granted leave of absence on Local business upon request. Any member who holds office or shall be elected to office in his respective Local, which requires his absence from the Company's service, shall upon retirement from such office be reinstated in his position with the Company without loss of seniority.

15. Effective June 25th, 1935, wages shall be increased ten per cent (10%) over and above rates now in effect.

16. It is agreed that the officers and committeemen of the Locals will use their best efforts at all times to see that members are conscientious and honest in all respects, and that they conduct themselves in such a manner as to clearly indicate that they have not only the interest of their fellow employees in mind, but, also the interest of the employer as well, because for employer and employee success it is necessary that there be the fullest cooperation between employer and employee at all times.

17. It is further agreed that this agreement supersedes any and all other agreements that have been signed mutually by each party herein named, and shall terminate one year from the date of signing, and is subject to change to conform to or with any National labor legislation passed during the life of this agreement.

In Witness Whereof, the parties hereto have executed this agreement on the ...... day of .... 1935.

TENNESSEE COAL, IRON &
RAILROAD COMPANY,
By ....
....

MUSCODA LOCAL No. 123,
I. U. M. M. & S. W.,
By ....
....
....

ISHKOODA LOCAL No. 153,
I. U. M. M. & S. W.,
By ....
....
....

WENONAH LOCAL No. 157,
I. U. M. M. & S. W.,
By ....
....
....

3572 T. C. I. EXHIBIT No. 9-B.

June 24, 1935.

File 384.

Mr. Byrd Barksdale, President, Muscoda Local, I. U. M. M. & S. W., Muscoda, Alabama.

Mr. Charlie McDaniel, President, Wenonah Local, I. U. M. M. & S. W., Wenonah, Alabama.

Mr. M. C. Anderson, President, Ishkooda Local, I. U. M. M.
& S. W., Ishkooda, Alabama.

Gentlemen:

In reply to your communication left with Mr. Ball June 13, 1935, and our subsequent conferences, I submit the following:

The Management reiterates its former statement of policy to the effect that it will receive and negotiate with the representatives of any organization, as such, as spokesmen for the employees they represent on any matters of wages, hours or working conditions.

Confronted with the present low operating schedule the Management cannot agree to any upward revision of wage rates at this time, and proposes that the arrangement outlined in the letter of the President of the Tennessee Coal, Iron and Railroad Company of June 25th, 1934, to the Honorable Secretary and Commissioners of the United States Department of Labor be continued in effect until such time as it is more definitely indicated that such an arrangement is no longer practicable.

At any such time, the Management is willing to negotiate with duly authorized representatives of the employees to accomplish any necessary revisions of the existing arrangement.

Yours truly,

....
President.

Copy to—
Mr. A. E. Horn, President, District No. 5,
International Union of Mine, Mill & Smelter Workers,
Bessemer, Alabama.

3573 T. C. I. EXHIBIT No. 10 & REPUBLIC No. 7.

District 5 International Union of Mine, Mill
and Smelter Workers

Affiliated With A. F. of L.

Offices: 1726½ Third Avenue

Phone 380

Officers:
A. E. Horn, President.
Frank Allen, Vice President.
C. L. Pegues, Secy-Treas.

Executive Board:
M. C. Anderson, Alabama.
M. Payne, Tennessee.
A. J. Watkins, North Carolina.
V. D. Jones, International Executive Board Member,
Bessemer, Alabama.

Bessemer, Alabama, May 26, 1936.

Mr. E. M. Ball,
Gen'l Supt., Mines and Quarries,
Tennessee Coal, Iron & R. R. Co.,
Bessemer, Alabama.

Dear Sir:

On June 24th, 1936, the agreement between your employees, members of the International Union of Mine, Mill and Smelter Workers and the Company will expire.

In order that unnecessary delay or closing down of the mines with its resultant ill-feelings, hardship and expense be avoided we respectfully request that negotiations between representatives of your employees and their Company on the requests enclosed with this letter be entered into as soon as convenient to the Company.

Your employees are convinced that due to the understanding made possible by the contract now drawing to a close both the employer and employee have benefitted, especially so in this. Your employees under the contract have had at their command a representative to present their side in all major and minor controversies with the Company, thereby eliminating all possibility of misunderstanding and ill-feeling between the employee and his immediate supervisor.

Further, in presenting the requests listed in a separate letter enclosed with this communication we desire to state that they have only been arrived at after long and painstaking deliberations, excessive and exorbitant demands have been left out by the committee of your employees; duly elected by their fellow workers to form these requests.

Your employees are well aware that during the past five years the roads traveled by our company have been hard. We also know our corporation is an inanimate being, created by law, without a soul, incapable of suffering the privations of life, or having a wife and children to share their sufferings, which has been the bitter experience of your employees.

As employees, we feel that we should and are willing to share increasingly our responsibilities. As partners in the business, and we feel that we are, we know that unless our company prospers, the employee can't. If costs are excessive and there are no orders, mines and mills are idle. Knowing these things in the past we have made no demands for increased wages or changes in working hours of our company. We now feel conditions are better, earnings are increasing, dividends are slowly but surely mounting. In substantiation of these statements we quote no less an authority than our President, who recently said in one of his radio talks. "We are now definitely on our road to better times". Prices have increased in the bare necessities of life, as well as steel and iron and coal. Our dollars will procure less and less as business improves. To meet the increase in the cost of living we are asking for a new contract, granting the following requests. I am

Sincerely yours,
A. E. HORN,
(A. E. Horn)
President, District 5 International Union of Mine, Mill and Smelter Workers

AEH/bac.

3575

TCI EXHIBIT No. 10-A.

Working Agreement Between the Tennessee Coal, Iron and Railroad Company and their Employees, Members of the International Union of Mine, Mill and Smelter Workers.

This agreement made and entered into this ..... day of ...., 1936, by and between the Tennessee Coal, Iron and Railroad Company of Jefferson County, in the State of Alabama, hereinafter called the Company and the Employees of the Tennessee Coal, Iron and Railroad Company, members of Local Unions Nos. 123, 153 and 157 of the International Union of Mine, Mill and Smelter Workers, employed at the Red Ore Mines of the Tennessee Coal, Iron and Railroad Company, located in Jefferson County, in the State of Alabama, hereinafter called the Employees.

Witnesseth: That

Your employees, members of Muscoda Local Union #123, Ishkooda Local Union No. 153 and Wenonah Local

Union No. 157, have chosen the undersigned officers or members of the International Union of Mine, Mill and Smelter Workers, District No. Five, to represent them in collective bargaining with the Company, and,

Whereas, the said Tennessee Coal, Iron and Railroad Company Locals Nos. 123, 153 and 157, through their Presidents and other representatives thereof and the International Union of Mine, Mill and Smelter Workers through its President and other International Officers and District 5, International Union of Mine, Mill and Smelter Workers through its President and other District Officers and representatives, being recognized as parties to this Agreement to the extent that they or said representatives or either of them shall now or hereafter represent the Employees of the Company at said Mines.

Now, therefore, This said Agreement entered into as of date hereinafter stated, between the Company and said representatives and other parties referred to hereinabove for and on account of the Employees at said mines (not excepted from the operation hereof) who have chosen or who may hereafter choose said representatives or parties or any of them for the purpose of collective bargaining with the Company, or who may ratify their action hereunder, which have been or shall be conclusively determined for the purpose of this Agreement by the execution of assignment of dues under other sections hereof.

Witnesseth, That the parties hereto mutually agree to and with each other as follows: That the Company has entered into this Agreement with the understanding that all similar agreements relating to wages, working conditions and hours throughout the Alabama field shall be on a uniform basis, subject only to such differences as may be required by conditions peculiar to different mines, and it is understood and agreed that if the International Union of Mine, Mill and Smelter Workers through their representatives, negotiate an agreement relating to wages, working conditions and hours with any other company on a basis more favorable than the basis of this Agreement, this Agreement shall then be modified so that the Company signatory hereto will receive like benefits.

Representation.

The employees not now represented by said representatives may by written notice to the Company authorize said representatives to represent them in negotiations with representatives of the Company as to all matters arising under this contract.

Check Off.

Employees shall have the right upon written assignment by the Locals, to have dues not exceeding an amount predetermined by the Locals in lawful and regular session checked off the wages of such Employees. The amount shall be remitted to the person provided in the assignment, on or immediately following the date of the regular payday.

No assessments or dues other than provided in this section shall be checked off for the account of Tennessee Coal, Iron and Railroad Company Locals Nos. 123, 153 and 157, except upon authorization by the Executive Board of said Locals, except funeral and sick benefits may be checked off along with each months dues.

Initiation fees (not exceeding $10.00 for any one man, and in sums not to exceed $2.00 per man in any pay period), where proper written authorization has been made to the Company by the Employee, shall be deducted by the Company and remitted to the Financial

Secretary of Tennessee Coal, Iron and Railroad Company Locals Nos. 123, 153 and 157.

Maximum Hours.

An eight hour day and five day week, (40 hours per week) shall prevail, exclusive of the thirty minute lunch period, with option to run through without suspension, if agreed to between the Company and the Mine Committee.

The eight hour day means eight hours in or about the mines, at the usual working places for all classes of work, (other than those excepted from this Agreement), exclusive of the lunch period, whether they be paid by tonnage, except in case of accident, which temporarily necessitates longer hours for those Employees required on account thereof, and also except to those whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mines. The following Employees are excepted from the foregoing provisions as to maximum hours of work: All employees engaged in handling transportation of ore and men shall work additional time necessary to handle the man-trips or ore in transit, and shall be paid the regular hourly rate. A maximum of fifteen minutes after the quitting time of loaders shall be allowed for the handling of ore in transit. Overtime work shall be done to take care of accidents and to do other repair work necessary so that the machinery may operate on the following shifts; and also to do any emergency work to protect property and make the main haulageway safe. In doing this necessary emergency work employees are to receive time and one-half for all time worked in excess of eight hours in any one twenty-four hour period, this period extending from twelve midnight to twelve midnight, with the exceptions as stated above, where mantrips and ore in transit is being handled.

For all work performed by Employees on Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, double the regular rates of pay shall be received, with the exception that necessary continuous occupational jobs, such as pumpers, will be paid in the usual manner.

The usual lunch period as hereintofore observed unless changed by mutual agreement is to be given.

Day wage men going into the mines in the morning shall be entitled to three hours pay whether or not the mines work three full hours but after the first three hours the men shall be paid for every hour thereafter, by the hour, for the hours worked or fractional part thereof.

Mine Committee.

A Mine Committee of three Employees shall be elected, each member of which shall be eligible to serve as a committee member only so long as he is employed at the mines, to represent the employees who are members of the Local Unions, the Committee to be properly certified to the Company by their Locals representatives. No meeting shall be held during working hours except by mutual agreement between the Mine Officials and the Mine Committee, nor shall members of a Mine Committee leave their working places except when called in by the Mine Officials, who shall, on request, permit the committee to look after the interest of the employees represented by them involved in any dispute.

Discharge Cases.

In cases of controversy regarding the justice of employer in discharging or suspending an employee, the case will be disposed of according to the manner and method as set out under the heading, "Settlement of Disputes". Should it be decided that an injustice has been done to the employee the Company will be obligated to reinstate and compensate the employee at a rate of pay based on the average earnings of his five immediately preceding full work days, prior to such discharge or suspension. Further, that such cases shall be taken up within three days from the date of discharge or suspension and disposed of as soon thereafter as possible and in any event not more than thirty days. The Company may employ the complainant during the time the hearing is in progress.

Settlement of Disputes.

In case of controversy arising between the Company or Employees as to the meaning or application of any of the provisions or terms of this Agreement, or as to matters not specifically mentioned in the Agreement, it is agreed that there shall be no suspension of work either by strike or lockout for a period of at least thirty days, during which time an honest and lawful effort will be made to settle such difficulty by the following procedure:

1. The complaining party taking his grievance up with the Local's pit committee who in turn in company with the complaining party presents it to the Mine Foreman.

2. The Superintendent of the Mines and the Mine Committee.

3. Through the Superintendent of the Mines and the representatives of District No. 5, I. U. M. M. & S. W., who have signed this Agreement or their representatives.

4. Through the Management or their representatives who have signed this Agreement and the representatives of District No. 5 of the I. U. M. M. & S. W., who have signed this Agreement on behalf of the Employees.

5. In case an agreement is not reached by negotiations through one of the four methods set out above, the controversy shall be arbitrated by a board of four members, two of whom shall be designated by the signers of this Agreement, representing the Management and two designated by the signers representing District No. 5, I. U. M. M. & S. W.

In case of a tie in this board the fourth shall select a fifth member who, after having all the facts placed before him, shall cast the deciding vote. In the event of failure to agree upon a fifth member the President of District No. 5 or his representative and the President of the Company or his representative shall agree upon a fifth member within five days. In the event they fail in this the Commissioner of the Department of Labor for Alabama, shall select the fifth member. All expenses incident to the services of the fifth member shall be paid equally by the Company and District No. 5. The decision of this arbitration board shall become a part of this Agreement continuing as such until its expiration.

Miscellaneous.

Payments shall be made semi-monthly in lawful money or par check at or near the location in which the employee works. The Company shall keep the working places as dry as possible; when wet places are driven the amount of pay incidental to furnishing proper protection and inconvenience shall be agreed upon between the Mine Boss and the Employee affected.

When an employee has no work at the face and is given other labor he shall be paid at the scale for such labor.

A helper is an employee who works under the direction of a skilled man.

In the event of strikes or lockouts Employees request that they be permitted to place watchmen about the mines or workings in equal number with the regularly employed company watchmen, this to forestall, if possible, any damage or vandalism to company property as has been the case in past difficulties, in an effort to discredit your employees and their organization. In the event this is granted and the mines do not attempt to operate there will be no picketing on the part of your employees while on the contrary your property will be guarded with their lives.

In the case of shut-downs or the suspension of operations for a period of two weeks or more due to causes over which your employees have no power, house rent shall be reduced two-thirds the regular charged amount to the employee.

In the vent of shut-downs in which the Company supplies its employees with provisions and supplies at their company stores, on resumption of operations, the employee's wages shall be cut in payment for these supplies in the following manner:

Up to and including first forty hours current debts. After forty hours 15% of earnings applied to back debts.

In the event the employee desires to make a more substantial payment out of current earnings than at the rate above he may do so by voluntarily making a written assignment to the Company.

At least once each month employees are to be given a statement setting out the amounts paid and amounts due on back indebtedness.

The Company shall grant a general increase in wages of 10% to all Employees, plus equitable adjustments, in specific instances to be taken up at the time of negotiations on this Agreement.

The work day shall consist of eight hours in any twenty-four hour period, the time to run from midnight to midnight.

Time and one-half is to be paid for all overtime in excess of eight hours in any twenty-four hour period and double time for Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

In case of controversy neither party to the Agreement is to cause the cessation of operation for a period of at least thirty days, during which time negotiations shall be extended, with the exception that in the event either party, deliberately and knowingly violates this Agreement, the aggrieved party may consider this contract terminated.

Any and all monies due from employees to their Locals is to be deducted from the first half of the month earnings, with the exception that in case the employee only worked two full days the deductions is to be made from the second half earnings.

This Agreement is to terminate on ...... of ...., 1937.

For and in consideration of the above Agreement your Employees, members of Local Unions Nos. 123, 153 and 157 of the International Union of Mine, Mill and Smelter Workers bind themselves to in every way consistent with sound judgment, through their Locals and officials, faithfully carry out this Agreement.

In Witness Whereof, said parties have hereunto set their hands and seals this .... day of ...., 1936.

GENERAL COMMITTEE OF
LOCALS Nos. 123, 153, 157 of
I. U. M. M. & S. W.
By ....,
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TENNESSEE COAL, IRON &
R. R. CO.
By ....

3583 T. C. I. EXHIBIT No. 11.

Proposed Agreement.

In presenting a plan embodying the major principles of the so-called "Incentive Plan" to the Management of the Tennessee Coal, Iron & Railroad Company by its employees, members of the International Union of Mine, Mill & Smelter Workers, District 5, Local Unions Nos. 123, 153 and 157 of the International Union of Mine, Mill & Smelter Workers, located in Jefferson County, Alabama, we quote the various headings and paragraphs followed by our comment. With this additional observation on the part of representatives of your Employees:

The so-called strike is in itself a deplorable thing, one that is to be avoided at any cost short of permanent forceful abandonment of one's democratic right of collective bargaining and organization. A right so ably used by our corporations, a right that was denied your Employees in the very incipiency of this discussion of the proposed incentive plan by your general superintendent at the mines, Mr. E. M. Ball, in these words, "At a meeting held in my office on March 13, 1936, I told you that we were considering an incentive plan for the employees of the iron mining division. I have asked you men here today to explain certain pasages of this plan to you. We will not enter into any discussion at this time; we will only explain any passage that you might not understand. After you have had time to study this plan you will probably want another meeting with me. When you are ready for the meeting, call me, and I will be glad to meet with you. Mr. Halfpenny will read the plan and if you have any questions to ask please raise your hand."

You will note from reading the above that the Employees were told they would not enter into any discussion at the time, but they would explain any passage that was not thoroughly understood and later told that the plan would go into effect regardless. As your employees understand collective bargaining it does not include a condition as described above when they are called in, told what they must do, or else.

The first paragraph embodied in the incentive plan is

During the past five years of bad business and low production the Tennessee Coal, Iron and Railroad Company has taken care of men on the payroll by sharing the work reasonably among its employees in the Ore Mines. This caused high labor costs for ore so produced and placed the Tennessee Coal, Iron and Railroad Company at a disadvantage in competing for business, so that the Company has operated at a loss during these years. In the opinion of the Management the time has now arrived to review this condition. Special studies have been made which show that by the application of a proper incentive plan of wage payment the difference between our competitors and ourselves in the market can be changed to our advantage. To insure success of the plan of this sort, entire cooperation between the Employees and the Management is essential.

We concur in your statement that the entire cooperation between the Employees and the Management is essential for the success of any plan or undertaking. But as pointed out above, your employees were not asked to cooperate. They were told to either concur in the Management's plan regardless or get out. Your employees know that ore costs are unnecessarily high, due not to a third shift, which we do honestly believe does not enter into this additional cost, but due to the causes which the Management is so free to admit in the second paragraph of the Incentive Plan headed "Present Conditions". And others, which we respectfully point out to our Management at this time. Paragraph two is well stated, and we, as Employees, are well aware of the fact that idleness, over which we have no control, such as waiting for trams, and waiting for powder, enters materially into ore costs. In submitting these criticisms and suggestions as additions to your paragraph two we do this with no animosity or criticism of the Management nor do we do it with any intention or idea that it is our duty to in any way whatsoever enter into any part of the Management, but in a spirit of cooperation.

First we would call your attention to the fact that the survey made by the engineers in preparation for the drawing of the Incentive Plan, that studies were made only in the best working entries such as #11 mine at 62 right, which gives a picture not true of all working entries, in fact the picture is entirely too flattering and does not represent the true facts for the mines as a whole.

The idea suggested of drilling under a Head Miner is good. This will greatly improve production by eliminating unnecessary delays.

The proper handling of trams.

The lack of a split shift in all mines to handle material while the crews are out of the mines.

No mine supplies, such as skidder blocks, ropes and pipe fittings kept at convenient locations.

No large inside pocket in which to store ore at all mines.

Unfair to make comparisons of cost in various mines since conditions vary greatly in the mines as to equipment, method of handling and supervision.

#7 Mines will never be able to produce what it should as long as the inside hoist is not able to handle the ore, regardless of any number of men or shifts, that might be employed.

Numerous instances of bad or drummy roof caused by not timbering at the proper time.

Construction of side ramps that are too narrow to handle the work properly.

No convenient location of tool house, making tools easily accessible to the men.

If and when given the opportunity there are a great many other suggestions your Employees would be glad to make in order to reduce red ore costs. However, the reduction of men or the elimination of crews is not one of these suggestions, if the Company is sincere in wanting to reduce costs and produce greater tonnage.

Paragraph 3—"Increased Production".

Your employees feel that any increased production that will result by putting into force any or all of the above suggestions will result in a considerable saving. Not only in the actual mining of ore but in costs above, since these are stationary and depend entirely as to whether they are excessive or small on production.

Paragraph 4—"Standard of Production".

Your employees would prefer to discuss this question with the Management or its representative.

Paragraph 5—"Guarantee of Occupational Rates over each Payroll Period."

This paragraph should also have the benefit of an unbiased discussion of its problems. Particularly is this true since the Management is stressing the question of clean ore, which in itself can mean a cutting of production in half.

Paragraph 8—"Increased Orders".

This is a question of Management with the cooperation of the Employees in each individual department, a responsibility that your Employees at Red Ore is ready and willing to assume.

Paragraph 7—"Earnings under Incentive Plan".

Under this paragraph your Employees are requesting a flat 10% increase in pay for all employees, as well as those set out in the statements on pages A-1, A-2, A-3, A-4, A-5 and A-6.

Paragraph 8—"Section Crews".

Your employees request that an amended plan be tried out in a fair and honest way while the section crews stand as they are at present, however, re-arranging the work week in this manner. Crew #1 and Crew #2 work an entire week of five days or 40 hours. Crew #2 is off the next week permitting the Crew #1 and Crew #3 to work an entire week, to be followed in the succeeding week by Crew #2 and Crew #3. By altering the work week in this manner if there is any added cost due to the three crews it will be promptly brought out and at the same time the Company will have permitted one entire shift of its old and loyal employees to have at least earned sufficient money to procure the bare necessities of life. This we feel the Company is due its employees and in doing this will also be complying with the request of the President of these United States in giving all of those employment possible.

Paragraph 9—"Working Conditions".

The first paragraph under this heading will of necessity have to be altered.

The second paragraph is proper and as it should be.

No drag scrape or section crew except during emergency be permitted to start work before usual working time and must cease work at the regular quitting time.

Days work to consist of eight hours, 6:30 a. m. to 2:30 p. m. and 6:30 p. m. to 2:30 a. m. with no time off for lunch.

Paragraph 10—"Slate or Sandstone".

Acceptable without discussion.

Paragraph 11—"Records".

Acceptable without discussion.

Paragraph 12—"Weights".

Acceptable without discussion.

Paragraph 13—"Explosives".

Acceptable without discussion.

Paragraph 14—"Method of Figuring Production and Earnings".

This should read "at the end of each day period the production of the Head Miners, etc." Also the sentence "no changes shall be made in rates or allowances without approval of the General Superintendent" is not clearly understood.

Paragraph 15—"Store Checks and Cash Advances".

Head Miners and crew may draw store checks and obtain cash advances in accordance with present regulations, based upon their occupational rates. All clacker to be exchanged for cash if requested by those possessing the same between the first and third days of each month, on demand.

Paragraph 16—"Work to be done by Head Miner and Crews".

Acceptable without discussion.

Duties:

"Setting all necessary temporary timbers."

This has not been customary in the past and could only result in costly delays, by the men, when they should be producing ore. Other duties set out acceptable without discussion.

Paragraph 17—"Drag Operators".

Acceptable without discussion.

Paragraph 18—"Drill Runner".

Perform such other duties as may be assigned him by Head Miner.

(This to be discussed at meeting.)

Other duties as set out acceptable without discussion.

Paragraph 19—"Helpers".

Other duties as set out acceptable without discussion.

"Perform such other duties as may be assigned him by Head Miner."

(This will be discussed at the Employees conference.)

Paragraph 20—"Work to be done and Equipment Provided and Installations made by Company."

Company shall:

"Supply pump, air and discharge lines when necessary. Setting up and operation to be done by Head Miner and Crew." The first part of this paragraph is acceptable to the Employees but operating of the supply pump by the Head Miner and Crew would only result in unnecessary loss to the miners.

Helpers, drill runners and drag operators move equipment to working places and set up. (This to be discussed at meeting with your employees.)

"Do all timbering (Head Miner to set temporary timbers)".

Your miners feel that this should be left up to a skilled mine timbering crew, who are thoroughly equipped and are familiar with this line of work.

"Supply auxiliary hoist for pulling trams to side track".

(Head Miner and Crew to move and operate hoist as necessary.) Your employees feel that this should be left to a thorough discussion before a decision is made on the plan.

Paragraph 21—"Check-off".

Employees shall have the right upon written assignment by the Locals, to have dues not exceeding an amount predetermined by the Locals in lawful and regular session checked off the wages of such Employees. The amount shall be remitted to the person provided for in this agreement on or immediately following the date of the regular payday. No assessment or dues other than provided in this section shall be checked off for the amount of Tennessee, Iron and Railroad Company Locals, Nos. 123, 153 and 157, except upon authorization by the Executive Board of said Locals, except funeral and sick benefits may be checked off along with each month's dues.

Initiation fees (not exceeding $10.00 for any one man, and in sums not to exceed $2.00 per man in any pay period), where proper written authorization has been made to the Company by the Employees, shall be deducted by the Company and remitted to the Financial Secretary of International Union of Mine, Mill and Smelter Workers Locals Nos. 123, 153 and 157.

Paragraph 22—"Employees Agreement".

Provisions of the proposed Employees Agreement relative to collective bargaining and other questions not embodied in the above Plan to be discussed formally at the time and place set out for the above meeting.

Definitions.

Your Employees feel that paragraph one should read "A fair days work". This is the daily production of an average section crew working in an average heading at the average rate of skilled miners with average allowance for personal necessities, fatigue, and general mining delays and conditions.

The second paragraph should read "Earnings"—ten per cent increase of the occupational rates and ten per cent increases to the expected rates as illustrated in Exhibits A-1 to A-6 inclusive. "Possible earnings—Under Best Conditions." No comment.

3591 T. C. I. EXHIBIT 12.

Tennessee Coal, Iron & Railroad Company,
Muscoda Division.

Minutes of Meeting.

Held in General Superintendent E. M. Ball's Office.

June 10, 1936.

Those present were:

Mr. E. M. Ball, General Superintendent, Mr. J. F. Vance, Manager of Industrial Relations, Mr. Ewing Carter, Superintendent, Muscoda, Mr. G. B. Neal, Superintendent, Wenonah, Mr. C. B. Cameron, Superintendent, Ishkooda, Mr. M. E. Baird, Gen. Supt., Clerk,

and the following Committee representing the members of the Red Mountain Locals of the International Union of Mine, Mill & Smelter Workers:

Mr. A. E. Horn, President District 5, Mr. Van Jones, International Representative, Mr. B. H. Barksdale, President Muscoda Local, Mr. C. J. McDaniel, President Wenonah Local, Mr. M. C. Anderson, President Ishkooda Local, Mr. M. E. Adams, Secretary Muscoda Local, Mr. Britt Lemley, Secretary Wenonah Local, Mr. Ed. Sizemore, Secretary Ishkooda Local, Frank Allen, (c) Vice President District 5, Bill Baylor, (c), Vice President Muscoda Local, Will Mahan, (c) Vice President Wenonah Local, Elmore Mitchell, (c), Vice President Ishkooda Local.

The meeting was called to order at 10:00 A. M., by Mr. E. M. Ball, General Superintendent.

Mr. Ball:

I have here the proposal which was presented to the Tennessee Coal, Iron & Railroad Company, and I believe the best procedure is to take it up paragraph by paragraph. Mr. Horn, have you a copy of the proposal with you?

Mr. Horn:

Yes, sir.

Mr. Ball:

The second paragraph which I will read, does not express all the facts in the case. "The so-called strike is in itself a deplorable thing, one that is to be avoided at any cost short of permanent forceful abandonment of one's democratic right of collective bargaining and organization. A right so ably used by our corporations, a right that was denied your Employees in the very incipiency of this discussion of the proposed Incentive Plan by your General Superintendent at the mines, Mr. E. M. Ball, in these words, 'At a meeting held in my office on March 13, 1936, I told you that we were considering an Incentive Plan for the employees of the Iron Mining Division. I have asked you men here today to explain certain passages of this plan to you. We will not enter into any discussion at this time; we will only explain any passage that you might not understand. After you have had time to study this plan you will probably want another meeting with me. When you are ready for the meeting, call me, and I will be glad to meet with you. Mr. Halfpenny will read the plan and if you have any questions to ask please raise your hand.' You will note from the reading of the above that the Employees were told they would not enter into any discussion at the time, but they would explain any passages that was not thoroughly understood and later told that the plan would go into effect regardless. As your employees understand collective bargaining it does not include a condition as described above when they are called in, told what they must do, or else."

In your proposal, you failed to refer to the meeting that followed. In the first meeting, Mr. Halfpenny was present and I asked him to read the Plan. At that time I told you that this was not something that was thought up over night. I told you that this Plan had been worked out by myself and experienced Mining and Industrial Engineers and that we did not expect you to absorb all of the details of the plan at this meeting and therefore no discussion was necessary, but that we would read the Plan to you and explain and enlarge on what was set out in the Plan. That was the reason for the meeting. You will recall that no questions were asked. I also told you that we were holding meetings that same day with our Supervisory force, and our Section Foremen. On June 2nd, I received a letter from Mr. Horn asking me to clarify certain points, but the subject matter of my letter in answer to his letter is not in line with the statements made in your proposal. I wish to read the fifth paragraph of the proposal:

"We concur in your statement that the entire co-operation between the Employees and the Management is essential for the success of any plan or undertaking. But, as pointed out above, your employees were not asked to co-operate. They were told to either concur in the Management's plan regardless or get out. Your employees know that ore costs are unnecessarily high, due not to a third shift, which we do honestly believe does not enter into this additional cost, but due to causes which the Management is so free to admit in the second paragraph of the Incentive Plan headed "Present Conditions". And others, which we respectfully point out to our Management at this time. Paragraph two is well stated, and we, as Employees, are well aware of the fact that idleness, over which we have no control, such as waiting for trams, and waiting for powder, enters materially into ore costs. In submitting these criticisms and suggestions as additions to your paragraph two, we do this with no animosity or criticism of the Management nor do we do it with any intention or idea that it is our duty to in any way whatsoever enter into any part of the Management, but in a spirit of co-operation."

With reference to the statement "Your Employees were not asked to co-operate," which is a sentence in the above paragraph, is not a true statement. In the second meeting after which you had ten days to study the Plan, I felt that you had the opportunity to go over the Plan carefully, and after the explanations we had made in the first meeting, that you should be in a position to ask any questions about points that were not clear, but I received no answers to my query "Do you wish to ask any questions about the Plan". We did ask for your co-operation. You had ten days to go over the Plan and it appeared as though you had no interest in the matter. In addition, certain Section Foremen whom your

Committee represent, and who were at another meeting the same day when the Plan was explained to them, did not even take the trouble to explain the Plan to the men working in their headings. So, your statement that you were not asked for co-operation is not true. We did tell you at the second meeting that there was nothing else for us to do, and that the Incentive Plan would go into effect June 1st, but you were told this only after I received no answers to my several queries "Have you any questions to ask about the Plan". Is there anything you would like to say?

Mr. Horn:

The statements set out in your letter in answer to mine are the same as I remember them to have been made in the meetings you refer to; but as we had no copy of minutes, I wished to be sure of them. I may have misunderstood, or I may not have analyzed this correctly. I am presenting this to you as the men see it.

Mr. Ball:

After you received my letter I suppose you gave the correct information to the men.

Mr. Horn:

No, sir. Nothing has been done up to now. We only had our recollection of what happened. This Committee read your letter.

Mr. Ball:

I suppose I can assume that what is contained in this proposal is not in line with what you think now.

Mr. Horn:

This proposal was in process of being made when we received your letter. This proposal contains our understanding of what happened in the previous meetings.

Mr. Ball:

Then you know that some of the men are under the wrong impression.

Mr. Horn:

I read your letter to this Committee, but not to the men.

Mr. Ball:

The proposal reads: "First we would call to your attention the fact that the survey was made by the Engineers in preparation for the drawing of the Incentive Plan, that studies were made only in the best working entries such as No. 11 Mine at 62 right, which gives a picture not true of all working entries, in fact the picture is entirely too flattering and does not represent the true facts for the mine as a whole."

You men know that in an organization of this kind we keep a great many records, daily, semi-monthly, monthly, etc., and that we have these records covering many months and years. A study was made on the basis of these reports and we know what men are doing and have done in the past. As a check, a time study was made in several working levels. Results obtained by these time studies were checked with the records over a period of time and we know the basis as outlined in the Incentive Plan is correct and fair. You state in your proposal "The idea as suggested of drilling under a Head Miner is good. This will greatly improve production by eliminating unnecessary delays." There is nothing new in this, that is what we are doing at the present time, except that drillmen are drilling under Section Foremen's supervision. I am satisfied, as you are, that when delays are eliminated we will do better work. We can expect improvement in the handling of trams, even if it is necessary to put on a Trafficman. Your proposal states, "The lack of a split shift in all mines to handle material while the crews are out of the mines." In reply, it is the duty of the Management to see that material is supplied to the working places. We do have split shifts at several of our mines for handling material. The handling of material into mines and to working places is a duty of Management. It is to our interest to keep enough material on hand for men to work with.

Mr. Jones:

To get myself clear, do you mean that the split shift distributes material to the working places.

Mr. Ball:

The material is put in the mine by the split shift and we are going to see that delays are reduced to a minimum.

Mr. Jones:

Then the split shift only handles the material to the timber tunnel.

Mr. Ball:

Material is handled by the Service Crew and charged to the company account. Your proposal goes to say, "No mine supplies, such as skidder blocks, ropes and pipe fittings kept at convenient locations." This is not true, as we have spare parts in the mine that can be obtained on short notice.

Mr. Horn:

If a rope breaks, or a block breaks, it is hard to get replacements.

Mr. Ball:

All headings have tool boxes, and we know that one crew hides equipment from the other crews. This will be eliminated. You go on to say, "No large inside pocket in which to store ore at all mines:" This had nothing to do with the working faces. Where it is necessary we have pockets, some are installed. We have pockets at No. 4, No. 6, No. 7 and No. 8 Mines. There will be one at No. 9 Mine and one is under construction at No. 11 Mine, and when we get to the limit of the surface hoist at No. 13, we will have one there. The Incentive Plan has nothing to do with the pockets, as all ore is brought to the pocket by Service men. Your are probably thinking that there will be delays because of dumping. Getting the ore to the pocket is the duty of the Management and we will only use enough men ,at working faces to keep the haulage equipment up to capacity.

Mr. Horn:

We do not say that this is a handicap to the Incentive System. There are delays that are not under the control of the employees and we feel that they are now being passed on the employees. You spoke of the tool boxes, how long have they been there?

Mr. Ball:

For a number of years. In every working place there are points in the levels and on the rib where tools can be kept for both crews to use. The main supplies are explosives and these are issued from underground Powder Houses as needed. As for drill steel, hose pipe, etc., they should be kept in a convenient place in the heading where they could be found when needed.

Mr. Horn:

Do they have regular supplies, suppose a "T" breaks, or if a block is torn up, how much delay is caused because they do not have the spare parts?

Mr. Ball:

Very little. Spare parts can be obtained in a short time. Your proposal states, "Unfair to make comparisons of cost in various mines since conditions vary greatly in the mines as to equipment, method of handling and supervision." In my 30 years experience on Red Mountain I know that every heading goes through the same process. They go through the same cycle over a period of 3 or 4 months. In arriving at the basis of this Plan this was taken into consideration. I am trying to make these explanations as it is my belief that whoever wrote these proposals is not familiar with conditions in our mines. I agree that conditions vary as the method of handling. In No. 6 Mine, all ore is handled to the pocket by Electric Locomotives. The same applies in our No. 4 Mine. In No. 7 Mine some of the ore is handled by an Auxiliary Single Drum Electric Hoist at 103 Heading. The balance being handled by the Double Drum Electric Hoist, which is almost as large as our surface hoist at No. 6 Mine. The same applies at No. 8 Mine with this addition, we are now putting in another pocket and the ore will be brought to the pocket by Electric Locomotives the same as we are now doing at No. 6 Mine. In No. 9 Mine we will operate the same as at No. 6 Mine. In No. 11 Mine we are now putting in a pocket. Temporarily the ore is being handled the same as at No. 7 Mine, but later will be handled by locomotive haulage. In No. 13 Mine the ore is trammed to the slope and the empty cars returned by mule haulage. There is some difference in the method of handling the ore in each mine, but we can not do otherwise considering the contour of ore body, faults, etc. All equipment in working levels is the same, every level is equipped with a mechanical loader of our own design, the same type of air drills, all have five-ton tram cars, air and water lines are the same. Supervision in all mines are the same. Each working place has a Section Foreman, or a proposed Head Miner, each mine has a Mine

Foreman and Assistant Mine Foreman. Each mine has a Service Crew consisting of Timber and Track Crews. Are there any questions? (None asked.) The proposal goes on to say, "No. 7 Mine will never be able to produce what it should as long as the inside hoist is not able to handle the ore, regardless of any number of men or shifts, that might be employed.". In reply, that is a very broad statement and shows ignorance of actual conditions. I assume you mean 103 Auxiliary Hoist. That is not the main part of the mine. The main part of the mine is served by the Double Drum Hoist. That ore will be handled over the double track slope. The next statement in your proposal, "Numerous instances of bad or drummy roof caused by not timbering at the proper time." In reply, heavy roof is in general caused by weight from overlying cover and the width of opening, you make in the ore seam. Character of roof such as sandstone or slates, also determine roof conditions. Where you have drummy top, the Head Miner and the Drillmen are supplied with quarrying bars to take the top down. There are working places where we do not have 'bell' top, but is perfectly safe and it can be kept safe by using temporary and permanent timbers and keeping draw rock quarried down. The Management of the Mining Department of the Tennessee Coal, Iron & Railroad Company, has in the past and is now doing, provided a safe and proper pillar system for each of its iron mines. This is to prevent large ground movements, which might endanger several working places at once. This Company has been very particular to see that proper pillars are left by only taking a certain per cent of the ore on the first mining. We drive our main entries 20 to 22 feet wide and about 220 feet apart. We leave pillars at proper intervals to take care of overlying weight. We have a system where you can not mine certain ore and you must leave certain pillars. All this is so that we will not get a large ground movement, and if you men will use quarrying bars in your working places, you will be in no danger from heavy falls of ground. Proper timbering is essential, but that comes under the duties of Management. We are interested in not having to handle unnecessary top rock.

Mr. Horn:

I think the idea is that some places are not timbered at the right time and then the top comes down.

Mr. Ball:

When any hole is made in the ground, Old Mother Nature tries to fill it up. That is what we have Service Timber Crews for, to help hold the top between pillars.

Mr. Horn:

We think these delays are being passed on the men.

Mr. Ball:

That is not true.

Mr. Horn:

We understood that these things are functions of the Management, but the men are being made to pay for them.

Mr. Ball:

That is not true. The T. C. I. & R. R. Co. has always been fair to their men, provided good wages, the best working conditions that can be provided and proper tools to work with, and done numerous other things to help their employees.

Mr. Horn:

They never had a Plan like this before either.

Mr. Ball:

No, they never had any as good as this. We told you before that we realized we had a duty to perform and you men must take our word for what we say. We realize we can not get ore from working places unless we give service to those employee in working places.

Mr. Horn:

I know of one case on the Mountain where a crew was on a tonnage basis. Their task was 35 tons and over that they got a bonus. As soon as they got their production over 35 tons and were making a little money, their base was raised to 42 tons. Do you wonder why these men ask questions?

Mr. Ball:

I made the statement, and it is quite clear in the Plan, that these rates will not be changed.

Mr. Horn:

But you have left a gap there.

Mr. Ball:

I said the only rate that would be changed would be the powder rate, and that if the cost of powder went up or down. We know the men can make money and as we said here before, if the men make 100% we would be glad of it.

Mr. Horn:

I am trying to show you how the men look at it.

Mr. Ball:

That is alright. Now you say here, "Side ramps are too narrow to handle the work properly." We feel that these ramps are large enough. If the Head Miner feels that he can increase production by using a wider ramp, we would be glad to make it larger.

Mr. Jones:

I have seen ramps so narrow that a buzzard could not roost on it, must less run ore over.

Mr. Anderson:

There are some ramps at Ishkooda that are so small that the ore runs over on the track.

Mr. Ball:

That is easily remedied by moving the track, or moving the ramp. If the chutes are not right, we can easily fix that.

Mr. Barksdale:

We are talking about what has happened in the past. I have worked in places where the chutes have not been right and we have worked the place out without getting them fixed right.

Mr. Ball:

The Company realizes that they have certain duties to perform. We will be glad to do this because it will increase production and get better costs.

The next item in the proposal is, "No convenient location of tool house, making tools easily accessible to the men." We have already gone into that. We have tool houses underground at all times.

Mr. McDaniel:

There has been times when we would need a fitting and it would not be in the tool house in the mine and they would not have it outside. This causes a big delay.

Mr. Ball:

That may have been true in a few cases, but most of the time we have it on hand when needed. It is our duty to see that supplies are furnished. Your proposal goes on to say:

"If and when given the opportunity there are a great many other suggestions your Employees would be glad to make in order to reduce red ore costs. However, the reduction of men or the elimination of crews is not one of these suggestions, if the Company is sincere in wanting to reduce costs and produce greater tonnages."

You men all know that we have had Suggestion Boxes at our works for a number of years. We give prizes to those Suggestions that are of value. Some of our employees have gotten nice awards for suggestions they have made and we welcome suggestions from all employees. We will be glad to hear what you have on your mind. These Committees have been told a great many times, we welcome suggestions from our employees.

Mr. Horn:

We will leave that open and will talk about that later.

Mr. Ball:

The next item is *Standard of Production*. "Your employees would prefer to discuss this question with the Management or its Representatives." What have you to say on this?

Mr. Horn:

We would like to be excused a few minutes. (Gone 10 minutes.)

Mr. Ball:

Before proceeding, I wish to state very emphatically that the Management realize they are under certain obligations, and the Management assumes the responsibility to see that delays are reduced to a minimum, and if you have the idea in your mind, that we are not going to do that, get rid of it. Remember that it is to our interest to see that all delays are reduced as much as possible.

Mr. Horn:

There is some misunderstanding about figuring the production. If the Head Miner has to keep his average up to the mine average, he can not make it. There are a number of places that can not come up to the mine average. You state here that the bonus starts on 80% efficiency, leaving the impression that the bonus starts at 20% less than what they are doing now. Then you cut off two men from the crew, which would more than take up that 20%.

Mr. Ball:

All places go through the same cycle. In nearly every heading there are three places to drill and you will get more drilling.

Mr. Horn:

The contention is that the men can not make the bonus with seven men. We would like to come back here later and tell you the places where the men can not make the bonus.

Mr. Ball:

We know that it can be done on the basis of our studies and it will remain as it is. You have three places to drill in and there is not a Head Miner or a Drillman on Red Mountain that can not break 5-½ feet in a 22 foot place. That would mean between 110 and 120 tons of ore.

Mr. Horn:

If all of the working places go through the same cycle, why have you changed some of the men around and given certain men places where they can make money?

Mr. Ball:

All places will make money during the cycle.

Mr. Jones:

I know that one Drillman drilled five shifts in a place and only broke 17 cars. I have also seen extra Drillmen put in a place and only break 20 cars after drilling a week.

Mr. Ball:

We did have a lot of inefficient men.

Mr. Jones:

It is not shown that this Plan will increase efficiency.

Mr. Ball:

How do you know? You haven't tried it as yet.

Mr. Barksdale:

I have worked in places where the heading was good all the way and in others where they were bad all the way. This was due to the top. In the 1st Left North and Auxiliary in No. 6 Mine, we had good top. In the East Haulage the top is bad. There is no way for them to load ore like the 1st Left North and the Auxiliary.

Mr. Ball:

In most cases the bad top is caused by bad drilling. It is a question of spacing the holes. Under this system the Drillman will be more careful. It would be very nice if we had good top and good conditions in all places, but our experience teaches us that all levels go through the same cycle. Another thing is that you will find that the Drillmen will not begin tearing down at 1:30, but will be anxious to get the tonnage.

Mr. McDaniel:

Certain men were given the best headings. I know men that were taken out of good places and told to go to other places not so good. I was in a good place and I was taken out and told to go to another place.

Mr. Ball:

These same men will probably kick when they have to go through the bad part of the cycle.

Mr. Barksdale:

In that case the men doing the hardest work will be getting the least pay.

Mr. Ball:

Every heading will probably have to move the same amount of slate during the cycle.

Mr. Horn:

Let's pass that over for the present.

Mr. Ball:

The next item in the proposal is, "Guarantee of Occupational Rates over each Payroll period." You mention here, "This paragraph should also have the benefit of an unbiased discussion of its problem. Particularly is this true since the Management is stressing the question of clean ore, which in itself can mean a cutting of production in half."

Mr. Horn:

We know that you can not get clean ore as long as you are using mechanical loaders, unless the ore is hand picked. If a man gets a good heading and begins to make money then you might say the ore is not clean and he will not get the bonus.

Mr. Ball:

I don't think you need worry about that. As long as the analysis remains the same as it is now, we will be satisfied.

Mr. Horn:

We know there is going to be slate in the ore.

Mr. Ball:

Certainly, there will be small pieces, but we want the big pieces kept out of the cars. We are not going to stand for cars half loaded with slate and sandrock.

Mr. Horn:

That is one question we want cleared up. If that section is properly worded we can talk "turkey."

Mr. Ball:

You men know what we mean by that paragraph. We will not tolerate cars loaded with slate and sandrock.

Mr. Horn:

That just leaves a loophole for someone to be discharged for loading slate. If you wished to discharge one of my Presidents you could do it because he loaded slate.

Mr. Vance:

How would you word that paragraph, Mr. Horn?

Mr. Horn:

To make it clear, that all that is expected is what they are doing now.

Mr. Jones:

This analysis is all "hoey" anyhow.

Mr. Ball:

It is not all "hoey." The furnaces are charged on the analysis of the ore.

Mr. Jones:

I have seen slate and sandrock loaded and it did not run the analysis up.

Mr. Ball:

It did run the analysis up.

Mr. Jones:

I remember one time when Mr. Cross was Superintendent he put on slate pickers and we picked every rock that was loaded and the next day the worst analysis we ever had.

Mr. Ball:

We know what causes the acid in the ore. It is the slate and sandrock. The local Management will be able to tell when the slate and sandrock is being loaded, by a simple inspection of the working places and noting where there are no gob piles when draw rock is coming in working place.

Mr. Jones:

Your statement that the ore must be free of slate and rock is wrong, it can not be done.

Mr. Ball:

I think you are carrying this to an extreme. You men know what is meant by clean ore.

Mr. Barksdale:

At one time here we were told that if the analysis did not come down the mine would be shut down. We picked the ore and still it did not come down.

Mr. Ball:

We know that the crew can not keep out the very fine pieces of slate and sandstone. We want the big pieces kept out and that can be done.

Mr. Horn:

Don't you think this should be cleared up?

Mr. Ball:

I think it is clear now. After all is said—it is up to the local management to see that clean ore is mined. There is nothing new to this. At present men are subject to discipline and discharge for loading slate and sandrock.

Mr. Horn:

I know that the Company has some smart men, and if a word or two added to this paragraph would clear the matter up, and they do not do it, then it has been left this way for a purpose.

Mr. Ball:

The Mine Foremen and the Assistant Mine Foremen are responsible for the loading of clean ore. The local Management will also have other ore inspectors.

Mr. Horn:

Yes, sir, and this statement says load clean ore.

Mr. Ball:

They have been loading clean ore in the past.

Mr. Horn:

It is not a question of the past. What is the purpose of this statement?

Mr. Vance:

Then you think it is a question of the honesty of the Management?

Mr. Horn;

It is not a question of honesty of the Management. This says "clean ore" and I think that statement can be used for discrimination.

Mr. Ball:

If I were in the Mine and I found a few small pieces of slate in the ore I would not call that dirty ore, but if I found the car half full of slate covered with ore I would call that unclean ore.

Mr. Horn:

It could still be used to discriminate against certain men.

Mr. Vance:

Is that not an assumption, Mr. Horn?

Mr. Horn:

Yes, sir.

Mr. Vance;

The basis of this discussion must be reached on an honest and fair footing. We are going to do that and we expect the same from you. That is common sense.

Mr. Horn:

I do not mean to be antagonistic. I have something to sell to the men and I want this clear so that I can sell it to them.

Mr. Ball:

You will note in the Plan that slate or sandrock over 12 inches is to be moved at Company expense. When you take that in connection with what we are discussing it clears the matter. The men must not load that slate or sandstone with the ore.

Frank Allen:

I have seen certain Mine Foremen come through when they wanted a big run and say, "I don't know slate from ore, load everything."

Mr. Ball:

I know that has been done in years gone by.

Mr. Horn:

You have said in the past that it is hard not to play favorites. Under this Plan it is easy to see how favoritism can be shown.

Mr. Ball:

Mr. Horn, we are all human, but I believe we have been fair in the past. You must remember that no man can be discharged without my approval.

Mr. Jones:

What would be your reaction if the Mine Foreman recommended that a man be discharged for loading slate?

Mr. Ball:

That is nothing new. I would investigate as I did under the old system. If any man consistently loaded slate he would be discharged and that is what would happen under the Incentive Plan.

Mr. Horn:

Don't you think this matter should be cleared up?

Mr. Vance:

That is just a question of interpretation. That was quite clear to the man that wrote that paragraph. You and I may have placed a different meaning on it.

Mr. Horn:

I want to make the statement clear.

Mr. Vance:

There is nothing subtle in this. You may have interpreted it a little different. That is what has caused all the different religions in the world, just a little difference in the interpretation of the wording of the same book. Two men can put a different construction on the same article. As I see it you seem to think that this will be used as a club against certain men.

Mr. Horn:

That is exactly it, and I do not mean any reflection toward any person here.

Mr. Vance:

The answer to that is that we do not expect any more than what is being done now; is that right, Mr. Ball?

Mr. Ball:

That is all we expect, but we do insist on as clean ore as we have been loading in the past. The same rules and regulations will apply with reference to loading slate and sandrock.

Mr. Horn:

Then why not change it to read just as you have said it?

Mr. Ball:

That would not clarify it, as it would all go back to the judgment of someone. It is all based on common sense.

Mr. Horn:

O. K. Let's pass that up for now, but if you said, "clean ore" to the present state of cleanliness that would clear it up.

Mr. Ball:

That would not make it any clearer.

Mr. Horn:

Mr. Ball, you know that you haven't a man in the mines that is loading clean ore and if I were a Mine Foreman and I wanted to get rid of a man I believe I could convince you that he should be fired.

Mr. Ball:

If I went in a place and found the top had fallen out and the Head Miner could not show me where it went I would know that it had been loaded and sent to the furnaces. It is easy for the Management to catch men loading slate.

Mr. Horn:

If that was stated in the Plan like you have stated it we would be satisfied.

Mr. Vance:

If we made it read as you suggest the men that are now loading lots of slate would be safe.

Mr. Ball:

All we expect is for the men to do their part and we will do ours. Regardless of how it is written it goes back to the judgment of the men that inspect the ore.

Mr. Horn:

If you made it read "nearly clean ore" that would fix it.

Mr. Ball:

That makes it worse.

Mr. Horn:

How about "reasonably clean ore"?

Mr. Vance:

Our ideas of "reasonably clean ore" might differ.

Mr. Horn:

We are not getting anywhere, let's pass that up.

Mr. Ball:

The next item is "Earnings Under the Incentive Plan."

"Under this paragraph your Employees are requesting a flat 10% increase in pay for all employees, as well as those set out in the statements A-1, A-2, A-3, A-4, A-5, and A-6."

The only answer to this is No, with the added statement that studies are being made to put the so-called Service Crews on the Incentive Plan, so that they will have an opportunity to make more money. Are there any questions?

Mr. Horn:

No; that statement is quite clear.

Mr. Ball:

The next item is Section Crews: "Your employees request that an amended plan be tried out in a fair and honest way while the section crews stand as they are at present, however, rearranging the work week in this manner. Crew #1 and Crew #2 work an entire week of five days or 40 hours. Crew #2 is off the next week permitting the Crew #1 and Crew #3 to work an entire week, to be followed in the succeeding week by Crew #2 and Crew #3. By altering the work week in this manner if there is any added cost due to the three crews it will be promptly brought out and at the same time the Company will have permitted one entire shift of its old and loyal employees to have at least earned sufficient money to procure the bare necessities of life. This we feel the Company is due its employees and in so doing this will also be complying with the request of the President of these United States in giving all of those employment possible."

The answer to that is No, so far as the crews are concerned. As stated in my letter to you, Mr. Horn, there are no longer any crews known as No. 1, 2 and 3. The men will be picked by the Head Miner, approved by the Superintendent and General Superintendent. All men under the Head Miner will be expected to work 40 hours per week, if the work is available, but the Head Miner will work six days if necessary. Each Head Miner will carry one or two extra men so as to rotate the men if it is necessary for any mine to work six double turns per week. The sharing of work is finished. This Company is not a charitable institution and we will no longer share work with men who are not needed in the operations. Other Companies are not doing it and we have gone our limit in this respect. The next paragraph requires no answer as we do not agree to the paragraph above. In the following paragraph:

"No drag scrape or section crew except during emergency be permitted to start work before usual working time and must cease work at the regular quitting time."

Our studies show that the men do not do that now. When we check men in the mines we expect them to give a full eight hours work. The next paragraph states:

"Days work to consist of eight hours, 6:30 a. m., to 2:30 p. m., and 6:30 p. m., to 2:30 a. m., with no time off for lunch."

Our answer to that is No. Our men go in the mines about 6:05 a. m., and they get to their working places about 6:45 a. m. Lunch is from 11:45 to 12:15. However, if the men want their lunch hour at some other time that is O. K. Quitting time is 3:15. That is eight hours face to face. Men that are working all day need their lunch period. They get up early and to keep in the best physical condition these hours should remain as they are. This also applies to the Service men. Are there any comments?

Mr. Horn:
That is clear.

Mr. Ball:
The next paragraph is "Method of Figuring Production and Earnings."
This should read, "at the end of each pay period the production of the Head Miners, etc." Also the sentence "no change shall be made in the rates or allowances without the approval of the General Superintendent" is not clearly understood.

Mr. Horn:
Is that based on the mine tonnage?

Mr. Ball:

No, I don't think you understand. There are two Head Miners in charge of the working place. A record is kept of the number of trams loaded by these two Head Miners and their crews, as a unit. These trams are added at the end of the payroll period and the men are paid on the basis of the average number of trams per turn for that period. The tonnage is based on the mine tram weights for the preceding month. This figure times the number of trams loaded gives the tons loaded. Each working place gets credit for the number of trams loaded.

Mr. Horn:

Then if one man loads light cars and the other men have to suffer, and if one man loaded good cars the others get credit.

Mr. Ball:

Men who load light cars will be discharged.

Mr. Horn:

You take the total railroad weights from each mine and divide by the total trams from that mine to get the tonnage in average trams. Is that right?

Mr. Ball:

Yes, that is right. The man that loads light cars will be put on the spot by his fellow workers, Mine Foremen, Assistant Mine Foreman and Ore Inspectors.

Mr. Horn:

Then if the average of one man's cars are five tons and another 4-½, they all get credit for 4-3/4 tons. Some cars can not be loaded as heavy as others.

Mr. Ball:

All trams can be loaded to average five tons or more.

There may be places where we have auxiliary hoists where you are pulling cars five or six hundred feet. In that case I would not charge the Hoist Engineer to the Head Miner. These things will be taken up by the Superintendent and I will rule on each case. There are places in No. 13 Mine where we use mule haulage and that will not be charged to the Head Miner. There will be no change in the rates in this Plan. There may be places where we will reduce the working place to 3, 10, or 12 feet In that case we would adjust the rate. Where the haul is short, it will be done by the Head Miner but where it is a long haul it will be done by the Company. Are there any questions?

Mr. Horn:

If anyone has any questions, ask them. (None.)

Mr. Ball:

The next paragraph is "Store Checks and Cash Advances." "Head Miners and crew may draw store checks and obtain cash advances in accordance with present regulations, based on occupational rates. All clacker to be exchanged for cash if requested by those possessing same between the first and third days of the month, on demand."

The answer to that is No. There is no reason for any man drawing more check than he needs. We do not require our men to draw store checks.

The next paragraph is "Work to be done by Head Miner and Crews" *Duties:* Setting all necessary temporary timbers. This has not been customary in the past and could only result in costly delays, by the men, when they should be producing ore. Other duties set out acceptable without discussion.

Those timbers that have been shot out, or knocked out by the drag, and can be set back in the same footwall hitch and will still fit against the roof, I have classified as temporary timbers. If the roof has fallen out and the timber will no longer fit it is no longer classed as a temporary timber. The resetting of timbers is a safety problem and in most cases only require a few minutes. Temporary timbers are also those not placed in hitches but used to hold up roof until same can be quarried or shot down.

Mr. Barksdale:

If two or three timbers are knocked out then the whole drag crew will have to stop and set timbers. The timber crews have been doing that and the drag crew has been going ahead. It would probably take a half day to set the timbers.

Mr. Ball:

If the footwall is clean, they can be reset in the same hitch in a few minutes, and assures your safety.

Mr. Barksdale:

Suppose the crew is dragging in that place.

Mr. Ball:

That is no different from what you are doing now. You do not use many temporary timbers.

Mr. Anderson:

The timber crews cut the temporary timbers at the knuck and then haul them to the heading.

Mr. Ball:

Yes, but we will have the timbers in the working place. As I said, you use very few temporary timbers.

Mr. McDaniel:

We agree with you on that but we do not think the drag crew should have to stand those timbers.

Mr. Ball:

I have explained what a temporary timber is. It only requires a very few minutes to set one.

Frank Allen:

The back of the timber will break when they are shot out.

Mr. Ball:

If the timber will not fit it is no longer a temporary timber. If the timber is broken it would have to be replaced by the Timber Crew.

Mr. McDaniel:

I always understood that a temporary timber was one that was not set in a hitch.

Mr. Ball:

If the timber can be set back in the same hitch and will still reach the top, it is a temporary timber and it should be reset for your own safety.

Mr. McDaniel:

In most cases the hitch is covered with muck. Then you have to take the whole crew and clean out before it can be reset. This will cause delays.

Mr. Horn:

Let's pass that up for now.

Mr. Ball:

Next item 18—Drill Runners. "Perform such other duties as may be assigned to him by Head Miners. (This to be discussed at meeting.)" What is wrong with that paragraph?

Mr. Horn:

It can be used for discrimination the same as the clean ore. We think it was put in for a purpose.

Mr. Ball:

That was put in there so that the Drillman would know that he is supposed to do whatever is needed in the heading.

Mr. Vance:

It was also put there to show that the Head Miner is boss and that he is in charge of the work.

Mr. Horn:

If you read the other duties here it looks like the Drillman has plenty to do. It looks like that was put there so that when the Drillman has finished his work the Head Miner can make him help the other men.

Mr. Ball:

It is up to the Drillman to break plenty of ore and that should take all of his time, but if he is needed for other work I think he would be willing to do it because he is getting paid on the production from that heading.

Mr. Horn:

The Drillman will not be able to drill out if he has other duties. There are two sides to the question.

Mr. Vance:

Yes, and one is the suspicious side.

Mr. Horn:

Some of this is new to me. I am not a miner.

Mr. Ball:

I think you will find that all the men in the heading will work as a unit. They will all be trying to get production.

Mr. Horn:

If the Drillman goes down there and does a days drilling he should be through and not made to do other things.

Mr. Ball:

You know that some of the Drillmen tear down at 1:00 o'clock.

Mr. Barksdale:

Some of the other men will drag around and then the Drillmen will have to help them do their work If he drills out he has done a good day's work.

Mr. Ball:

I think you can trust the Head Miners to see that the drilling is done. It will be up to all of the men to work as a unit. It will be to every man's interest to get the greatest possible tonnage. We know that the Drillmen are not doing the drilling they should.

Mr. McDaniel:

Some of the men are only drilling eight and nine holes now, then they would have to help the drag crew.

Mr. Ball:

There are three places to drill and if he has drilled out in one place he can move to another. The idea is to get the muck down.

Mr. Barksdale:

Do you mean that if a man drills out in one place he should tear down and set up in another place?

Mr. Ball:

Yes. He gets paid on the basis of what is loaded.

Mr. Vance:

The idea is this—a man may drill out and sit down and if the Head Miner has nothing for him to do he may keep sitting. The idea here is to show that the Head Miner is boss and that the Drillman should help if needed.

Mr. Horn:

That looks like the clean ore proposition to me. It is a good chance to use discrimination.

Mr. Vance:

That is not the idea of the paragraph. He may not be needed but the Head Miner is boss and if he is needed he is expected to help and it will be to his interest to do so. It is the same as if Mr. Neal asked Mr. McDaniel to do certain work. He will do it because Mr. Neal is his superior officer.

Mr. Horn:

If a man has to do so much of another man's work his own work will suffer and he will have to quit or be discharged.

Mr. Ball:

That will not be done. The drilling must be done for the crew to make money.

Frank Allen:

The Head Miner will work a man so hard one day that he will not be able to work the next day.

Mr. Vance:

That would be poor management. The Head Miner would be hurting himself.

Mr. Barksdale:

One Section Foreman made the statement that when the mines went back to work that his men would work eight hours if they carried the skidder block all day.

Mr. McDaniel:

Some of the Section Foremen made the statement just before we shut down that when the mines went back to work that they would be the boss.

Mr. Ball:

If the ore is not coming from the heading changes will be made.

Mr. Horn:

Let's pass the subject. The same objection is made in the duties of the other men so there is no use going into that.

Mr. Ball:

Reference is made here to a small pump. This is just a matter of turning on the valve, and I don't think the Drillmen will waste so much water. The proposal also states "Helpers, drill runners and drag operators move equipment to working places and set up." What is the matter with that?

Mr. Horn:

That means that the crew has to move the equipment and then operate the small hoist.

Mr. Ball:

That is true for the short hauls.

Mr. Horn:

It does not specify short hauls.

Mr. Ball:

I explained that before.

Mr. Horn:

Is it not the duty of the Head Miner to stay with the Drillmen when quarrying is being done? If so, how can he operate the hoist and watch the quarrying?

Mr. Ball:

If the Head Miner thinks the quarrying is dangerous work he should stay there, but the Head Miner is like the Mine Foreman. The Mine Foreman can not be in every working place in the mine at the same time. He goes to the place he is most needed.

Mr. Barksdale:

There are some places where the Section Foreman acts as flagman.

Mr. Ball:

That can be done with the seven man crew.

Mr. Barksdale:

It can be done but the production will suffer.

Mr. Ball:

That will stand as it is. You will find that the Head Miners will get a square deal on the long hauls. Let me again make it clear that the Management assumes full responsibility for the production and will do its part to help the men make more money but the men will also have to work a little harder than they have. Some of the men are dragging along, being late getting to their working place, they tear down early, and leave before quitting time. I have seen places where from six to fifteen more cars could have been loaded.

Mr. Horn:

That could be done and there would be no objection but this is stretching the work.

Mr. Ball:

This is not stretch-out. It is the proper application of time and effort. The men work as a unit. We feel that the base established in the Plan is correct and the men can easily make more money. I have had application from contractors that are now employed with other companies because they know the Plan as presented here is fair and they can make money. We don't expect the impossible but we do expect a fair day's work for the guaranteed wages. We will help as much as possible by suggesting short cuts to help the men make more money.

Mr. Horn:

A few moments ago you said that some of the men were late getting to work. You don't mean the men that go after the mules, who have to curry, etc.

Mr. Ball:

No, I mean those men that get off the skip and then drag along to their working place.

Mr. Horn:

Let's pass that subject.

Mr. Ball:

The next item reads as follows: The Check Off, "Employees shall have the right upon written assignment by the Locals, to have dues not exceeding an amount predetermined by the locals in lawful and regular session checked off the wages of such employees. The amount shall be remitted to the person provided for in this agreement on or immediately following the date of the regular pay day. No assignment or dues other than provided in this section shall be checked off for the account of the Tennessee Coal, Iron & Railroad Company, Locals Nos. 123, 153 and 157, except upon authorization by the Executive Board of said Locals, except funeral and sick benefits may be checked off along with each month's dues. Initiation fees (not exceeding $10.00 for any one man, and in sums not to exceed $2.00 per man in any pay period), where proper written authorization has been made to the Company by the Employee, shall be deducted by the Company and remitted to the Financial Secretary of International Union of Mine, Mill and Smelter Workers Locals Nos. 123, 153 and 157."

The answer to that paragraph is No.

The next paragraph No. 22—"Employees Agreements", and reads as follows: "Provisions of the proposed Employees Agreement relative to collective bargaining and other questions not embodied in the above plan to be discussed formally at the time and place as set out for the above meeting."

With reference to this paragraph, there will be no signed Agreement, but we are willing to extend the present Letter of Understanding, which is to include the Incentive Plan as an additional part of the present Letter of Understanding.

The next is Definitions: "Your employees feel that paragraph one should read, 'a fair day's work'. This is the daily production of an average section crew working in an average heading at the average rate of skilled miners with average allowances for personl necessities, fatigue, and general mining delays and conditions."

That is unnecessary, as the meaning is the same as in the Incentive Plan. The next paragraph reads: "The second paragraph should read 'Earnings'—ten per cent increase of the occupational rates and ten per cent increase in the expected rates as illustrated in Exhibits A-1 to

A-6 inclusive. Possible earnings Under Best Conditions" —no comment.

This is the same as Paragraph 7 of the proposal Earnings Under the Incentive Plan. The answer is the same —No. Is there anything anyone would like to say? I suppose you will want another meeting.

Mr. Horn:

I would like to submit the results of this meeting to the locals, before having another meeting. We will either have to have the minutes or trust to our memories as to what took place here today.

Mr. Ball:

You will be furnished with the minutes of this meeting some time tomorrow.

Mr. Horn:

It looks like we are just where we started and I would like to have the minutes to know what was said.

Mr. Ball:

We hope to have them ready by noon tomorrow and will call Mr. Barksdale as soon as they are ready. The meeting is now adjourned.

Adjourned at 1:15 P. M.

B. H. BARKSDALE,
For the Committee.

E. M. BALL,
General Supt., Ore Mines & Quarries.

3617 T. C. I. EXHIBIT No. 13.

Statement Issued to the Press by Governor Graves.

August 4, 1936.

I am very happy to announce that all parties concerned are in agreement upon a plan whereby the pending strike in the ore mines of the Tennessee Coal, Iron and Railroad Company will be immediately ended and work resumed therein at once.

This amicable settlement has been brought about by mutual concession on all sides which shows the spirit of cooperation and of willingness to consider the public good that can only be denominated by the word "patriotic," and I congratulate all interested and especially the much concerned public on this happy outcome.

The understanding is as follows:

"In compliance with the request of Governor Graves, for the purpose of informing the public as to the situation in regard to the strike of the ore miners of the Tennessee Coal, Iron and Railroad Company, and for the purpose of settling the strike now current and in the interest of sound labor relations, it is proposed that the so-called incentive plan be given a trial of four months under the following conditions:

1. That the employees and the Company set out the contentions of their respective sides for use in any ultimate settlement.

2. That a body be appointed including one member to be appointed by the employees of the Tennessee Coal, Iron and Railroad Company who are members of the

International Union of Mine, Mill and Smelter Workers, one member to be appointed by the employees of the Tennessee Coal, Iron and Railroad Company who are members of the Brotherhood of Mine Workers of Captive Ore Miners of the Tennessee Coal, Iron and Railroad Company; two members to be appointed by the management of the Tennessee Coal, Iron and Railroad Company, and three members to be appointed by Governor Graves. This body will serve as an investigative agency during the operation of the aforesaid period of trial in which each side will have full opportunity to present their contentions for the purpose of making these contentions public, if in the opinion of this body it is proper to do so, and to use their offices to settle differences arising during the trial period as it pertains to the merits of the controversy which shall be made public and with no power to coerce either side; public opinion to be the only power to be availed under this arrangement.

3. The Tennessee Coal, Iron and Railroad Company estimates that no more than 273 workers will be laid off and if the number to be laid off exceeds that is willing to have full discussion before the body and give full consideration to the body's opinion in this matter, and the body may make public such information as they deem necessary. This estimate of men to be laid off is based on the operations as of May, 1936.

4. That the Tennessee Coal, Iron and Railroad Company will not discriminate against members of the International Union of Mine, Mill and Smelter Workers as such.

5. That during the operation of the plan every effort will be made on both sides to settle on the ground any disputes which may arise.

6. It is understood that any and all employees shall have the right to take up with the management of the Company any and all grievances through proper representatives of their own choosing.

7. That before the termination of this agreement, the aforesaid body shall have the power to make public any and all facts that it has ascertained in these hearings to the end that the public may be fully advised of the situation.

8. Accordingly the parties agreeing to this plan, both employer and employees, shall use every honest effort to give this plan a fair and impartial test. It is agreed that neither employees nor management will put any obstacles in the way of the other to prove or disprove the working of the plan."

It will be noted that the incentive plan is to be given a fair trial by all for a period of four months; that the body to be named; 2 by the Management, 2 by the Employees (one by the Brotherhood and the other by the Union) and three by the Governor is to act as a body for the purpose of making public such information in regard to this trial as considered appropriate and in the interest of sound labor relations.

It will also be noted that this body has no power other than to secure such information as applies to the operation of the ore mines and the trial period of the wage incentive plan and making same public.

This willingness of both management and men to submit the merits of their sides of the controversy to a forum of an enlightened public opinion certainly argues well for the faith each side has in the merits of its contentions and in my opinion this is the most important step taken towards settling controversies of this kind at the bar of an enlightened public opinion, which I believe in America is the safest tribunal.

So soon as the members selected by the management and the men are supplied to me I will announce the members whom I shall appoint as representatives of the public.

I believe that settlement of our industrial differences means an early and material enlargement of our industry.

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T. C. I. EXHIBIT No. 14.

T. C. I. Exhibit No. 14 is in all respects identical with Exhibit "C" to the Petition of Petitioner-Plaintiff Tennessee Coal, Iron & Railroad Company, heretofore set out. (Record, p. 105.)

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T. C. I. EXHIBIT No. 15.

Birmingham, Alabama, June 26, 1935.

Mr. Luke Cushman, President, Brotherhood of Mine Workers of Captive Mines, Muscoda, Alabama.
Mr. Louis Harmon, President, Brotherhood of Mine Workers of Captive Mines, Wenonah, Alabama.
Mr. Tom Brown, President, Brotherhood of Mine Workers of Captive Mines, Ishkooda, Alabama.

Gentlemen:

For the past year there has been an understanding between a committee representing certain of our employees in the Ore Mines and the Management. This understanding is covered by a letter written by Mr. Robert Gregg under date of June 25, 1934, to the Honorable Secretary and Commissioners of the United States Department of Labor. I quote from this letter as follows:

> "We are entirely willing to deal with this Committee on matters of collective bargaining as they arise for all our Ore Mines employees as they may represent.
>
> The employees at our Ore Mines have been free to join any organization they chose without prejudice or discrimination and this is the policy of our Company.
>
> It is understood that the wage scale attached to this letter constitutes the rates to be paid by us for the various classifications as shown.
>
> Our men at each mine are free to select a committee to represent them in adjusting any grievance that may arise between them and the Management which the employee himself cannot settle satisfactorily with his immediate supervisor. It is understood that such committee will not take up any grievance with the Management unless and until the employee has endeavored to adjust the matter himself.
>
> If the Committee and the Foreman of the mine fail to adjust any grievance, the matter will then be taken up by the Committee with the Mine Superintendent. Failing to reach an agreement in this event, it will be taken up with the General Superintendent of Ore Mines. If they should fail to agree, the matter may be submitted to arbitration, one arbitrator to be named by the Committee and one to be named by the Management of the Company and these two may select a third.
>
> It is understood that the management of the mines is vested exclusively in the Company and the duties of the mine committees shall be confined as above outlined.
>
> It is understood that no such mine committee will interfere with the operations of the mine to enforce any purely local grievance until the full procedure of settlement has been followed."

Referring to a conference you had with Mr. E. M. Ball on June 24, 1935, I wish to submit the following: The management reiterates its former statement of policy to the effect that it will receive and negotiate with the representatives of any organization, as such, as spokesmen for the employees they represent on any matters of wages, hours or working conditions.

Confronted with the present low operating schedule the Management cannot agree to any upward revision of wage rates at this time, and proposes that the arrangement outlined in the letter of the President of the Tennessee Coal, Iron and Railroad Company of June 24, 1934, to the Honorable Secretary and Commissioners of the United States Department of Labor be continued in effect until such time as it is more definitely indicated that such an arrangement is no longer practicable.

At any such time the Management is willing to negotiate with duly authorized representatives of the employees to accomplish any necessary revisions of the existing arrangement.

I attach herewith copy of the present wage scale.

Yours truly,

J. L. PERRY,
President.

enc.

3624 T. C. I. EXHIBIT No. 16.

Tennessee Coal, Iron & Railroad Company, Muscoda Division.

Minutes of Meeting.

Held in General Superintendent E. M. Ball's Office.

June 24, 1935.

Those present were:

Mr. E. M. Ball, General Superintendent,
Mr. Ewing Carter, Supt., Muscoda,
Mr. G. B. Neal, Supt., Wenonah,
Mr. C. B. Cameron, Supt., Ishkooda,
Mr. A. W. Beck, Chief Engineer,
Mr. M. E. Baird, Gen. Supt., Clerk.

and the following Committee from the Red Mountain Chapters of the Brotherhood of Miners of Captive Mines of Alabama:

Mr. Luke Cushman, President, Muscoda Chapter,
Mr. Glenn Ingram, Secretary, Muscoda Chapter.
Mr. Frank Costello, Muscoda Chapter
Mr. Clarence Hutchison, Muscoda Chapter,
Mr. Tom Massey, Muscoda Chapter,
Mr. Robert Grimes, Muscoda Chapter
Brooks Dobbins (c) Muscoda Chapter
Eugene Coffee (c) Muscoda Chapter
Willie White (c) Muscoda Chapter
Mr. Louis Harmon, President, Wenonah Chapter
Mr. F. C. Wilson, Secretary, Wenonah Chapter
Mr. H. W. Kiker, Wenonah Chapter

Mr. T. E. Brown, President, Ishkooda Chapter,
Mr. Hugh Strong, Secretary, Ishkooda Chapter
Mr. H. W. Nelson, Ishkooda Chapter
Mr. L. Strong, Ishkooda Chapter
Joe Simons (c) Asst. Secty., Ishkooda Chapter.

The meeting was called to order at 4:30 P. M., by Mr. E. M. Ball, General Superintendent.

Mr. Ball:

Men, this meeting has been called to keep you advised as to the progress of the negotiations with the representatives of the Mine, Mill & Smelter Workers. I told you at a meeting held in my office at 2:00 P. M., June 21st, that certain proposals had been presented through me to Mr. Perry, President of the Tennessee Coal, Iron & Railroad Company, at which time Mr. Perry asked them to withdraw the proposals before further discussions were entered into. On Monday morning, June 24th, at 10:00 A. M., a meeting was again held with these representatives in Mr. Perry's office. Mr. Horn as spokesman stated that the Locals had voted not to withdraw the proposals. However, they wanted to know what Mr. Perry had in view in place of their proposals. Mr. Perry then presented them with a copy of this letter. (Mr. Ball then read the letter to Mr. Barksdale, Mr. McDaniel and Mr. Anderson.) I wish you men would please note very carefully that this is nothing more than a statement of the company's former policy of dealing with representatives of any organization as such, as spokesman for the employees they represent. This letter also refers to the letter under date of June 25, 1934, to the Honorable Secretary and Commissioners of the United States Department of Labor and is an outline of the Company's position taken last year. Please note that this understanding is to continue in effect until such time as it is more definitely indicated that such an arrangement is no longer practical.

Mr. Horn then told Mr. Perry that if we would come to an understanding about the division of time that he would go with the presidents to their locals and try to sell the counter-proposal as outlined in this letter I just read to you.

Mr. Brown:

I was talking to a man today and I told him that the present working agreement was perfectly satisfactory. Of course, when business conditions improve we would expect consideration and if business gets worse we would expect some reduction. I have always been treated fairly by the Tennessee Company.

Mr. Ball:

As I told you at our last meeting we propose to put in operation our No. 8 Mine at Wenonah, provided there is no labor trouble on Red Mountain. This will give part time work to the Wenonah employees who are now idle. With further reference to the division of time, we have considered a great many times of dividing the time of our Section Foremen, Timbermen, Trackmen and Underground Carpenters. This is especially so since our low rate of operations since June 1st. Mr. Perry and Mr. Abbott said that they would leave this matter entirely up to me and I held a meeting at 3:00 P. M., today to further discuss the division of time with the representatives of the Mine, Mill & Smelter Workers. By so doing I want you men to clearly understand that I am not setting a precedent. We used to do this several years ago and if the results as to efficiency and safety are not as good, or better, than at present, we will go back to the old method or find some new method of supervision.

Mr. Kiker:

Mr. Ball, it looks like the majority has the say. It looks like there is nothing for us to do but take the arrangements made by the Smelters Committee.

Mr. Ball:

There is no agreement except for a continuation of the present understanding ,as I previously explained to you. I explained to the other Committee just like I am explaining to you that there has been a slight change in the Management's policy of further dividing the time during the period of slack operations for those occupations which have not been affected recently.

Mr. Ingram:

We will be satisfied if we can get work, but it looks as if we are going to have to work under the old understanding, or agreement, made with the Smelters last year when the strike was settled.

Mr. Ball:

Mr. Ingram, you must remember that at that time last year there was no Brotherhood organization on Red Mountain.

Mr. Harmon:

If we are going to work under that agreement, or understanding or whatever you want to call it, I think we should have a copy.

Mr. Ball:

I do not believe all you men are familiar with the letter outlining the Company policy which was written to the Department of Labor last year. Let me make this suggestion: Why not go into another room and take this letter which Mr. Perry has presented to the representatives of the Mine, Mill & Smelter Workers and also a copy of the original letter of understanding outlining the Company's policy under date of June 25, 1934, and discuss them among yourselves.

(Note: Committee went into another room and returned after about thirty minutes.)

Mr. Hugh Strong:

This Committee has asked me to say a few words in regard to this understanding. I have been in the Brotherhood since it started and I get all worked up when things go against our organization that we have tried so hard to build up. We come to the conclusion a long time ago that the men who lead the Smelters are not the type to lead or represent us. In this agreement I do not feel that the Brotherhood has been given due consideration. We feel that the Brotherhood should represent the members in this organization. If we deal with the Management we expect to have some rights and we do not feel we should be a party to an agreement entered into between the Company and the Smelters. We feel that it is unfair to the Management and to the men in making this change of dividing the time of the Section Foremen, Timbermen, Trackmen and U. G. Carpenters. The present men on these occupations are competent and we do not feel that the men should have to work under untrained Section Foremen.

Mr. Ball:

I do not think you men really understand the letters I have turned over to you. There is no agreement. There is simply a proposal to continue the present agreement and the Management always reserves the right to make any change in its supervisory forces that they deem advisable. I am so telling this Committee as I told a previous Committee that if this arrangement does not work out to the advantage of the Company we will make some other changes. Mr. Strong, you have the wrong idea about men working under untrained Section Foremen. Allow me to explain in this manner: When we were operating No. 11 and No. 13 Mines double turn we had about 40 Section Foremen. We now have with No. 11 Mine only, operating about 18 or 20 Section Foremen. This simply means that instead of a Section Foreman working his full five or six days a week, other Section Foremen who are competent will divide the time with him. This also applies to such occupations as Timbermen, Trackmen and U. G. Carpenters.

Mr. Ingram:

The Smelters have gained a point on us because they came to an understanding and we had no voice in the agreement.

Mr. Cushman:

The Smelters are not fighting the Company, they are fighting us. If they can get rid of our organization they can handle the Company as they see fit.

Mr. Massey:

If you allow this agreement to stand it will ruin our organization. We will have more Smelter Section Foremen than Brotherhood.

Mr. Ball:

Men, please let me try to get this idea across to you again. The counter-proposal made by Mr. Perry is for a continuation of the arrangement which has been in force for the past year and the representatives of the Smelters have been informed by me as I am now informing you that we intend to divide the time among the Section Foremen, Timbermen, Trackmen and Underground Carpenters, and unless this arrangement works out to the advantage of the Company we will go back to the old method or try some new method of supervision. Surely you men never had the thought that we put men in a supervisory position because he belonged to one organization or the other. Let me make myself clear on this point—men are promoted on their ability to do the work. Everything else being equal seniority counts but not before. The Management has always reserved the right to appoint and place men in supervisory capacity, or to place employees in certain working places and we intend to continue that policy.

Mr. Hutchinson:

The present Section Foremen were picked by the Management and they have been a success.

Mr. Ball:

When operations are reduced we do not have enough jobs for all of our men and it is up to the Management to place the men in the available jobs whom we think will get the best results for the reduced operations.

Mr. Massey:

Then I can only work the days my crew works. If they only work two days then I can only work two days.

Mr. Ball:

That is right. If our schedule of operations allows three days for the entire mine crew then the Section Foreman gets three days. If the time is reduced then the Section Foreman gets the same amount of time as his crew. We intend, to the best of our ability and with the work available, to so divide the time that all the occupations below Assistant Mine Foreman will get an equal amount of work.

Mr. Brown:

It looks to me like this arrangement was made for the benefit of the Section Foremen who belong to the Smelters.

Mr. Ball:

I can not agree with that statement. You men will remember that when we were operating at a good capacity during the months of January, February and March that the men on Red Mountain were well satisfied and now with reduced operations and with further reduced operations facing us for some time in the future, we are making an attempt to further divide the available work.

Mr. Brown:

For some time past the Smelters have been making their brags that after June 25th, the Section Foremen would be dividing the time like the rest of the men. They have done that very thing. We might just as well quit and join the Smelters because they made the very point they said they would.

Mr. Ball:

I do not believe you men are using the proper viewpoint. I have stated repeatedly in this meeting that the division of time is for the Management to decide, and we have decided to further divide the available work. Just consider this question from a viewpoint of fairness. The available work on Red Mountain is very limited, in fact there was a possibility on June 1st of closing all the mines due to no orders for finished products. The Management after a great deal of discussion decided that we would temporarily operate No. 6 Mine and No. 11 Mine, and that was done for the simple reason to give work to our employees.

Mr. Grimes:

Mr. Ball, I hope you will not think that we are selfish and do not want to divide the time. We realize that with the limited amount of work that it is only fair and just that we should divide the time as far as possible among the occupations you believe will not affect the efficiency. With regard to the agreement, or understanding we have been working under, I understand that Mr. Perry's proposal is an extension, but you also realize that the men in the Brotherhood have had a tough go. We have lost friends but we believe in our organization and I think there is a little feeling here that a concession was made to the Smelters.

Mr. Ball:

I have been thinking about making this change for some time. The unfortunate part is that we do not have enough full time work for all of our employees.

Mr. Grimes:

I wish conditions would get back like they once were. I have heard many times in the past, before the Brotherhood or Union started here, that if a man on Red Mountain was not getting a square deal he could go to Mr. Ball and get straightened out.

Mr. Ball:

That policy is still in effect and I hope all employees in the Ore Mines and Quarries will continue to come to me with any differences they can not satisfactorily adjust with their Foreman or their Superintendent. Let me make it clear that the present understanding makes it clear that the Company will bargain with the representatives of its employees.

Mr. Cushman:

We know that Jim Lipscomb told the Smelter Committee last Sunday morning that last year when they came out on a strike that they were organized 100%. This year they are only organized about 50% and the union can not depend on them. He told them that they should go to Mr. Perry and get any kind of settlement they could. He also told them that if the Company decided to operate in the event of a strike that the Brotherhood would work and would defeat the union.

Mr. Massey:

Mr. Ball, I believe the Brotherhood has over-estimated the confidence that you and the Company has in our organization.

Mr. Ball:

You should not feel that way about it, Mr. Massey. The Company has always had the interest of its employees at heart and I want you to know that if this was not so we would not be operating some of the mines today. We really do not need the ore we are mining but the Company desires to give the employees all the work possible and I sincerely hope you men will do a lot of thinking along this line.

Mr. Ingram:

Would you consider posting a notice to the effect that the Company has decided to divide the time between the Section Foremen. We would like to make it clear that the Company is making this change and not the Smelters.

Mr. Ball:

We will not post any notices about the further division of time among certain occupations. That is a problem that is strictly up to the Management. We who are in charge of our operations always have and always will make any changes we consider necessary. We do not post notices every time we change a Drill Runner to a Drag Operator, or when we change a Mine Foreman to a Section Foreman, or any other change affecting the placing of our working crews. Don't you think that a rather unfair request?

Mr. Ingram:
Well, Mr. Ball, maybe it was.

Mr. Brown:
I think if we can get a copy of this letter, addressed to the officers of the Brotherhood, it will help us in the Brotherhood a great deal.

Mr. Harmon:
I think a letter addressed to us will help us.

Mr. Cushman:
I think the Muscoda Unit of the Brotherhood should have a letter to show the Brotherhood members that they have the same rights as the Smelters. For this Committee, I wish to thank Mr. Ball for his patience and assure him that we are still loyal to the Company. We have had a hard fight to keep our organization together and we have about reached the stand-still point in regards to new members. It means that we will have to work harder for our organization. I suggest we adjourn.

Meeting adjourned at 7:45 P. M.

E. M. BALL,
General Supt., Iron Mines &
Quarries.

3633 T. C. I. EXHIBIT 17.

May 6, 1937.

Mr. E. M. Ball,
General Superintendent, Ore Mines,
Tennessee Coal, Iron & Railroad Co.,
Muscoda.

Dear Sir:

As you know, the employees of the three red ore divisions, viz: Muscoda, Wenonah and Ishkooda, are now working under an agreement between the Brotherhood of Mine Workers of Captive Mines and the Company contained in a letter from Mr. Perry, and minutes of meetings between the management and the Brotherhood Committee. It is the desire of these employees, more than 75 per cent of whom are members of the Brotherhood, to have executed a formal agreement, signed by the management of the Tennessee Coal, Iron & Railroad Company and the duly chosen representatives of the Brotherhood, and you will find attached hereto proposed agreement, with a request for a meeting of the Committee with the Management at the earliest convenient date.

Respectfully,

....................,
Chairman, Executive Committee.

3634 T. C. I. EXHIBIT 17-A.

This Agreement entered into by and between the Tennessee Coal, Iron & Railroad Company, a corporation, hereinafter referred to as the Company, and the Brotherhood of Mine Workers of Captive Mines, hereinafter referred to as the Brotherhood, for the purpose of promoting and improving industrial and economic relations between those employes of the Red Ore Divisions and the Company, and to further set out herein the basic agreement covering rates of pay, hours of work, and conditions of employment to be observed between the parties hereto, Witnesseth:

Section 1. It is understood and agreed that this agreement pertains only to the employes of the three Red Ore Divisions of the Company, viz: Muscoda, Wenonah and Ishkooda.

Section 2. It is agreed that the term "employe" as used in this agreement shall be meant to include all employes of said Red Ore Divisions except those salaried employes engaged in a supervisory capacity.

Section 3. It is agreed and understood that the Company recognizes the Brother. of Mine Workers of Captive Mines (hereinafter referred to as the Brotherhood) as a collective bargaining agency for the employes of the Company of the three said red ore divisions, and will not interfere with the rights of its employes to become members of the Brotherhood.

Section 4. It is agreed that the present rate of pay and wages and hours, as agreed upon between the Brotherhood and the Company effective March 16, 1937, shall remain in effect until such time as negotiations concerning rates of pay and wages shall be opened by either party hereto.

Section 5. It is agreed and understood that the established day shall be eight (8) hours and the established week shall be forty (40) hours, and that time and one-half shall be paid for all overtime in excess of 8 hours in any one day and for all overtime in excess of 40 hours in one week, and that a week shall consist of any five (5) days or five (5) turns in any one calendar week followed by a forty-eight (48) hour rest period, as requested by the Company; that no employe shall be paid both daily and weekly overtime for the same overtime worked.

Section 6. It is agreed that each employee of said red ore divisions who prior to April 1, 1937, was continuously in the service of the Company for one year or more (Continuity of Service to be based on U. S. Steel and Carnegie Pension Fund Rules) shall receive one week's vacation with pay, such vacation to be taken in one single period; and that those who are granted vacations will be paid on their average rate of earnings for the previous two estimates immediately preceding their vacation, and that the total hours of vacation pay will be the average hours they worked during that period, but not less than 40 hours and not more than 48 hours; and that said vacations will, so far as possible, be granted at times most desired by the employe, but the final decision of the allotment to a vacation period is reserved by the Company to insure orderly operations of the plants.

Section 7. It is agreed that should differences arise between employees represented by the parties signatory hereto and the Company as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this agreement, or should any local trouble of any kind arise, that there shall be no suspension of work, by the employes represented by the parties signatory to this agreement, on account of such differences, but an earnest effort shall be made to settle such differences immediately, so far as the parties hereto or those represented by them are concerned, with the foreman; and, second, through the Superintendent of the mine and the Grievance Committee; and, third, through the General Management and the representatives signatory to this agreement, or their representatives; and, fourth, by a board consisting of four members, two of whom will be designated by the Brotherhood and two by the Company, and failing to agree they may select an umpire to decide the dispute.

Section 8. It is agreed that when an employe represented by the parties signatory hereto has been discharged from his employment and he believes he has been unjustly dealt with that there shall be a case arise under the method of settling disputes herein provided; and should there be a case under the rules of this agreement that the employe has been dealt an injustice, the Company shall reinstate and compensate him at the rate based on the earnings of said employe prior to such discharge, provided however, that such case shall be taken up within five days and disposed of as promptly as possible.

Section 9. It is agreed between the parties hereto that the following days be considered holiday, during which days there shall be no regular production work, except in cases of continuous operations, viz: July 4, Labor Day and Christmas Day.

In Testimony Whereof, the said parties have hereunto set their hands this the 6th day of May, 1937.

TENNESSEE COAL, IRON
AND RAILROAD COMPANY,
A corporation,
By ....,
General Superintendent, Ore Mines,
By ....,
Manager of Industrial Relations.

REPRESENTATIVES OF
BROTHERHOOD OF MINE
WORKERS OF CAPTIVE
MINES, RED ORE
DIVISION,

....................,
Chairman, Executive Committee,

....................,
Secretary.

(Also places for two committeemen each from Muscoda, Wenonah and Ishkooda to sign).

3637 T. C. I. EXHIBIT 17-B.

Tennessee Coal, Iron & Railroad Company.
Muscoda Division.

Minutes of Meeting.

Held in General Superintendent E. M. Ball's Office.

May 8, 1937.

Those present were:

Mr. E. M. Ball, General Superintendent,
Mr. J. F. Vance, Manager of Industrial Relations,
Mr. Ewing Carter, Superintendent, Muscoda,
Mr. G. B. Neal, Superintendent, Wenonah,
Mr. C. B. Cameron, Superintendent, Ishkooda,
Mr. A. W. Beck, Chief Engineer,
Mr. M. E. Baird, Chief Clerk,

and the following committee representing the members of the three Red Mountain Units of the Brotherhood of Miners of Captive Mines of Alabama:

Mr. S. I. Hudnall, Chairman, Ishkooda Unit,
Mr. Luke Cushman, President Muscoda Unit,
Mr. T. J. Massey, Muscoda Unit,
Mr. E. A. Best, Muscoda Unit,
Mr. Frank Costello, Muscoda Unit,
Mr. Jack Wilson, Wenonah Unit,
Paul Dumas (c) Muscoda Unit,

John McGhee (c), Wenonah Unit,
Hayes Judkins (c), Ishkooda Unit.

The meeting was called to order at 9:30 A. M. by Mr. E. M. Ball, General Superintendent.

Mr. Ball:

You men asked for a meeting today. The meeting is now open.

Mr. Hudnall:

Mr. Ball, I have been appointed as Chairman of this Committee succeeding Mr. Wilkins, who has resigned. We are very sorry to lose him, but I am going to fill this job to the best of my ability.

Mr. Ball:

I am sure this Committee has made a good selection.

Mr. Hudnall:

The purpose of this meeting is to present you with a proposed contract. (At this point the proposed contract was handed to Mr. Ball.)

Mr. Ball:

We will go over this contract section by section and have a full discussion of each.

The following changes were deemed necessary:

Opening Paragraph: Determine proper term—'Ore Mines' or 'Iron Mines'.

Section 1: To be changed to cover only those employees who are members of the Brotherhood.

Section 2: To be modified.

Section 3: To be modified.

Section 4: To be modified. Revise with respect to time limit.

Section 5: To be re-written to comply with Company rules as now applied.

Section 6: Correct to read in accordance with established practice.

Section 7: OK, with possible minor changes in verbiage with no intent to change principle.

Section 8: OK as stated.

Section 9: OK as stated.

Closing Paragraph: Change to Executive Committee, Brotherhood of Miners of Captive Mines, Red Ore Division.

The following new paragraphs were suggested:

Paragraph to take care of local inequalities in rates.

Paragraph setting out that the Company continue to make provisions for health and safety of employees.

Paragraph to provide for future conferences for new contract.

Mr. Vance:

The procedure will be that we will offer you a counter proposal. When same is ready I will notify Mr. Ball and he will arrange for another meeting with you at which time we will discuss the counter proposal.

The meeting adjourned at 11:00 A. M.

E. A. BEST,
For the Committee.

E. M. BALL,
Gen. Supt., Iron Ore Mines & Quarries.

3639 **T. C. I. EXHIBIT 17-C.**

Tennessee Coal, Iron & Railroad Company,
Muscoda Division.

Minutes of Meeting.

Held in General Superintendent E. M. Ball's Office.

May 23, 1937.

Those present were:

Mr. E. M. Ball, General Superintendent,
J. F. Vance, Manager of Industrial Relations,
Mr. Ewing Carter, Superintendent, Muscoda,
Mr. G. B. Neal, Superintendent, Wenonah,
Mr. C. B. Cameron, Superintendent, Ishkooda,
Mr. A. W. Beck, Chief Engineer,
Mr. M. E. Baird, Chief Clerk,

and the following Committee representing the members of the three Red Mountain Units of the Brotherhood of Miners of Captive Mines of Alabama:

Mr. S. I. Hudnall, Chairman, Ishkooda Unit,
Mr. Luke Cushman, President, Muscoda Unit,

Mr. T. J. Massey, Muscoda Unit,
Mr. E. A. Best, Muscoda Unit,
Mr. Robert Grimes, Muscoda Unit,
Mr. Jack Wilson, Wenonah Unit,
Mr. C. F. Odell, President, Ishkooda Unit,
Mr. Sam Pitts, Ishkooda Unit,
Paul Dumas (c), Muscoda Unit,
I. V. Robinson (c), Muscoda Unit,
John McGhee (c), Wenonah Unit.

The meeting was called to order at 9:15 A. M., by Mr. E. M. Ball, General Superintendent.

Mr. Ball:

At our last meeting on May 8th, we went over your proposed agreement and we told you that we would give you an answer at an early date. The delay has been due to the pressure of other work. We have a counter proposal which I will ask Mr. Vance to read.

Mr. Vance:

I would suggest that we read the proposal and then if there is anything you do not understand we can come back to that and discuss it fully.

Mr. Hudnall:

I think that would be a good idea.

(Proposed contract read in full by Mr. Vance.)

Mr. Hudnall:

The Committee would like to retire and discuss this proposal.

(The Committee was gone for one hour and ten minutes.)

Mr. Hudnall:

There are several paragraphs in this proposed contract that we would like to go over again.

Mr. Vance:

If you will point out the paragraphs we will be glad to discuss them with you.

Mr. Hudnall:

The first paragraph we would like to discuss is Section 3. The Committee has voted to ask that this paragraph remain as stated in our proposal.

Mr. Vance:

If we were to agree to that we could be accused of straight out favoritism. We can not agree to that.

Mr. Best:

Our reason for that is that we do not want to 'peg' wages. If the cost of living goes up we have no way to get a raise. The Coal Miners recently got a raise of fifty cents per day and their contract has two years to run. They have lost all rights to an increase for two years no matter how high the cost of living may go.

Mr. Vance:

Any contract or agreement must be for a specified length of time. We can not agree to your proposal.

Mr. Wilson:

It is not that we have any idea of asking for an increase in wages, but we would like to leave the way open so that if the cost of living goes up we would not be barred from asking for an increase.

Mr. Ball:

The agreement works both ways. We can not reduce your wages unless you agree, until the expiration of this contract. The Company has always been fair in the past. The raise in wages you got on March 16th was after we had reached an agreement based on the cost of living. That agreement was made in November 1936. If the cost of living were to advance to a point where it was necessary to give an increase in wages the Management could call in this Committee and advise you that an increase would be granted without interferring with this contract.

Mr. Vance:

That would be a voluntary act on the part of the Company and there would be no collective bargaining except possibly as to how that increase would be applied.

Mr. Cushman:

I notice that the Incentive Plan is not mentioned in this agreement.

Mr. Ball:

This agreement covers guaranteed pay. The Incentive Plan is over and above the guaranteed wage.

Mr. Vance:

It is set out very clearly in the Incentive Plan that if any adjustments are necessary they will be made. We are already on record on that point.

Mr. Hudnall:

The next point is in Section 13. The Committee voted that this should include such salaried men as we represent.

Mr Vance:

That is admitted. That paragraph is intended to include the salaried men. When we say wage rates we mean either hourly, tonnage or salaried rates,

Mr. Hudnall:

The Committee accepts that explanation The next i Section 14. We think negotiations should start at leas 30 days before the expiration of this agreement.

Mr. Vance:

The negotiations should be completed before the expiration of the present agreement. Whatever time is necessary to do that is OK.

Mr. Hudnall:

That is satisfactory to us. The next is Section 15. Thi Committee feels that the men who work on holidays should be paid time and half time.

Mr. Vance:

We have never paid time and half time for regular maintenance work. That is a condition of employment t work on such days as work is available. If we asked you to do other work than maintenance work we would expect to pay time and half time.

Mr. Ball:

You must remember that maintenance work is necessary in order that the mines be ready for operation on the next shift. If it become necessary for us to work on one of the days mentioned we could not to so unless we called in this Committee and mutually agreed to operate.

Mr. Cushman:

Every man likes to be off on holidays. It has always been a policy with all Companies to pay a little extra for these days.

Mr Ball:

It has been the policy in the past to allow the men to go home when their work is done. I see no reason to change that.

Mr. Hudnall

We accept that Section as it is. That brings us back to Section 3.

Mr. Ball:

You must understand that every agreement must have a fixed date.

Mr. Vance:

You may wish to take this counter proposal back to your units for consideration.

Mr. Best:

I suggest that the Committee retire for a few minutes and discuss this question again.

(Committee gone for ten minutes.)

Mr. Hudnall:

The Committee has voted to take your counter proposal back to their Units for consideration. We will advise you later of their action. We will give you at least two days notice of the next meeting.

Mr. Ball:

Suppose we agree to meet again next Sunday at 9:00 A. M., unless you come to an agreement before that time, and in that event we could meet about 4:00 P. M., some afternoon.

Mr. Cushman:

In order to save time, in case we agree to this proposal there would be no need of further discussion, and it would only be necessary for those who are going to sign the agreement to be present. That could be done in a very few minutes.

Mr. Ball:

That will be satisfactory.

The meeting adjourned at 12:00 noon.

(Signed) E. A. BEST,
For the Committee.
(Signed) E. M. BALL,
Gen. Supt., Iron Mines & Quarries.

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T. C. I. EXHIBIT 17-D.

This exhibit is in all respects the same as T. C. I. Exhibit 18 hereinafter set forth except that T. C. I. Exhibit 17-D does not bear the signatures set forth at the conclusion of T. C. I. Exhibit 18. (Record Page 3720.)

3644

T. C. I. EXHIBIT 17-E.

Tennessee Coal, Iron & Railroad Company, Muscoda Division.

Minutes of Meeting held in General Superintendent E. M. Ball's Office, May 30, 1937.

Those present were:
Mr. E. M. Ball, General Superintendent,
Mr. J. F. Vance, Manager of Industrial Relations,
Mr. Ewing Carter, Superintendent, Muscoda,
Mr. G. B. Neal, Superintendent, Wenonah,
Mr. C. B. Cameron, Superintendent, Ishkooda,
Mr. A. W. Beck, Chief Engineer,
Mr. M. E. Baird, Chief Clerk,
and the following Committee representing the members

of the three Red Mountain Units of the Brotherhood of Miners of Captive Mines of Alabama:

Mr. S. I. Hudnall, Chairman, Ishkooda Unit,
Mr. Luke Cushman, President, Muscoda Unit,
Mr. T. J. Massey, Muscoda Unit,
Mr. E. A. Best, Muscoda Unit,
Mr. Jack Wilson, Wenonah Unit,
Mr. Sam Pitts, Ishkooda Unit,
Paul Dumas (c), Muscoda Unit,
I. V. Robinson (c), Muscoda Unit,
John McGehee (c), Wenonah Unit,
Julius Hicks (c), Ishkooda Unit.

The meeting was called to order at 9:15 A. M., by Mr. E. M. Ball, General Superintendent.

Mr. Ball:

This meeting is now open. We will resume where we left off in our meeting of last Sunday.

Mr. Hudnall:

This Committee has not met since the last meeting of our units. It may save time if the Committee would retire a few minutes.

Mr. Wilson:

Before we retire I would like to call your attention to a part of Section 1, which states 'the term "employee" as used in this Agreement shall not include Foreman, Assistant Foreman or Supervisors in charge of any classes of labor'. If we let that stand in the Agreement it will bar the Head Miners, Timbermen, Trackmen, Lead Repairmen, etc., from our organization.

Mr. Vance:

The men you mention are not supervisors; they direct the work of the men but they are not supervisors.

Mr. Wilson:

We can't get that by with our men.

Mr. Ball:

A supervisor, not a Foreman or an Assistant Foreman, but a man like Mr. Birchfield, the Chief Mine Inspector. He has the right to go in a working place and shut it down if he thinks it is necessary.

Mr. Wilson:

We can not accept the statement in the Agreement about supervisors as it stands; why not change the wording?

Mr. Vance:

That is the standard working and the Management has the right to say who are supervisors. The men you have mentioned here are not supervisors, they are gang leaders.

Mr. Wilson:

For the time being we will accept your explanation and let the matter drop. Understand that we do not question the honesty of the Company in this matter but we want it worded so that the Board would understand.

Mr. Vance:

The management is the only one that would be in a position to say who are supervisors and who are not. If the Board were to rule otherwise there is nothing we can do about it.

(The Committee retired and were gone 15 minutes.)

Mr. Hudnall:

Mr. Ball, this Committee has voted to accept this Agreement as it stands. There is still some dissatisfaction about some of the wording, especially as to the matter we were just talking about, but we accept it as it stands.

Mr. Vance:

We will read the Agreement once more, checking the copies that are to be signed.

(After reading the Agreement it was signed.)

The meeting adjourned at 10:45 A. M.

E. A. BEST,
For the Committee.
E. M. BALL,
Gen. Supt., Iron Mines & Quarries.

3646 T. C. I. EXHIBIT 18.

Agreement.

Whereas, The Tenessee Coal, Iron & Railroad Company, a coporation, hereinafter referred to as the Company, is satisfied that a large number of its employees at its ore mines are members of the Brotherhood of Mine Workers of Captive Mines, hereinafter referred to as the Brotherhood, and

Whereas, such employees have indicated their desire to have the undersigned officers and members of the Brotherhood represent them in collective bargaining with the Company, and in the making of this agreement, and

Whereas, the Company is willing to so recognize such representatives on behalf of the members of the Brotherhood, and to make this agreement,

Now Therefore, this agreement entered into on this the 31st day of May, 1937, between said representatives chosen by and on behalf of the members of the Brotherhood and the Company

Witnesseth:

Section 1.—It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships between those employees who are members of the Brotherhood and the Company, and to set forth herein the basic Agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties hereto.

It is understood and agreed that this Agreement pertains only to the members of the Brotherhood employed in the ore and limestone mines of the Company located at Muscoda, Wenonah,and Ishkooda, Jefferson County, Alabama.

The term "employee", as used in this Agreement shall not include Foreman, Assistant Foreman or Supervisors in charge of any classes of labor.

Section 2.—Recognition. The Company recognizes the the Brotherhood as the collective bargaining agency for those employees of the Company who are members of the Brotherhood. The Company recognizes and will not interfere with the right of its employees to become members of the Brotherhood. There shall be no discrimination, interference, restraint or coercion by the Company or any of its agent against any members because of membership in the Brotherhood.

The Brotherhood agrees not to intimidate or coerce employees into membership and also not to solicit membership on Company time or plant property.

Section 3.—Wages. It is agreed that the present rates of pay as agreed upon between the Brotherhood and the

Company effective March 16, 1937, shall remain in effect until May 1st, 1938.

Section 4.—Hours of Work. Effective March 16, 1937, there shall be established an eight (8) hour day and a forty (40) hour week. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.

The eight (8) hour-day means eight hours of work in or about the mines of the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis.

A day may be a calendar day or any 24-hour period, and a week may be a calendar week or any five (5) regular 8-hour turns on consecutive days, following by a 48-hour rest period, at the option of the Company.

An employee who is a member of the Brotherhood shall not be paid both daily and weekly overtime for the same hours worked.

Section 5.—Irregular Work. When an employee absents himself from his work for a period of two days without the consent of the Company, other than because of proven sickness or a satisfactory explanation, he may be discharged. When any employee makes a habit of laying off for single days other than because of proven sickness and continues to do so after having been warned by the Company he shall be subject to discharge.

Section 6.—Vacations. Each employee who is a member of the Brotherhood, and who, prior to July 1, 1937, was continuously in the service of the Company five (5) years or more (continuity of service to be based on United States

Steel and Carnegie Pension Fund Rules for Service Continuity) shall receive one week's vacation with pay, such vacation to be taken in a single period. Those who are granted vacations will be paid on their average rate of earnings per hour for the two pay periods immediately preceding their vacation. The total hours of vacation pay will be the average hours they worked per week during that period, but not less than 40 hours nor more than 48 hours.

Vacations will, so far as possible, be granted at times most desired by employees, but the final right to allotment of vacation period is exclusively reserved to the Company in order to insure the orderly operation of the plants.

Section 7.—Seniority. It is understood and agreed that in all cases of promotion and increase or decrease of forces the following factors shall be considered, and where factors (b), (c), (d) and (e) are relatively equal, length of continuous service shall govern.

(a) Length of continuous service.

(b) Knowledge, training, ability, skill and efficiency.

(c) Physical fitness.

(d) Family status; number of dependents, etc.

(e) Place of employment.

Section 8.—Adjustment of Grievances: Should differences arise between the Company and the Brotherhood or its members employed by the Company as to the meaning and application of the provisions of this Agreement, or should any local trouble of any kind arise in any mining division, there shall be no suspension of work on account of such differences but an earnest effort shall be made to settle such differences immediately in the following manner:

First, between the aggrieved employee, who is a member of the Brotherhood, and the Foreman involved;

Second, between a member or members of the Grievance Committee, designated by the Brotherhood, and the Foreman and Superintendent of the mining division;

Third, between a member or members of the Grievance Committee, designated by the Brotherhood, and the General Superintendent of the Mines;

Fourth, between the representatives of the Brotherhood and the representatives of the Executives of the Company, and

Fifth, by a board consisting of four members, two of whom shall be designated by the representatives signatory hereto, and two by the Company. Failing to agree, they may select an umpire to decide the dispute.

Pending the hearing of disputes, the employees represented by the parties signatory hereto shall not cease work because of any dispute; and a decision reached at any stage of the proceedings shall be binding on both parties thereto; and shall not be subject to reopening by any other party except by mutual agreement.

Specified periods shall be agreed upon between the Grievance Committee and the Superintendent of each Mining Division for the presentation of grievances hereunder. Provided, however, that matters pertaining to discharges or other matters that cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provisions.

The Grievance Committee for each Mining Division shall consist of not less than three employees of that mining Division, and not more than six such employees, designated by the Brotherhood, who will be afforded such time off, without pay, as may be required.

First, to attend regularly scheduled committee meetings.

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting, and

Third, any member of the Grievance Committee shall have the right to visit departments other than his own at all reasonable times for the purpose of transacting the legitimate business of the Grievance Committee, after notice to and permission from his Foreman or his designated representative.

The actual number of members of the Grievance Committee at each Mining Division shall be mutually agreed upon between the Superintendent of the Mining Division and the Brotherhood.

Section 9.—Illegal Suspension of Work. A strike or stoppage of work on the part of the employees represented by the parties signatory hereto shall be a violation of this Agreement, and there shall be no strike or cessation of work until and unless the matter of complaint shall have been submitted and determined by all the methods provided for in this Agreement for the adjustment of disputes.

Section 10.—Management: The management of the mines and the direction of the working forces, including the right to hire, suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Section 11.—Discharge Cases. In the event a member of the Brotherhood shall be discharged from his employment from and after the date hereof, and he believes he has been unjustly dealt with, such discharge shall constitute a case arising under the method of adjusting grievances herein provided. In the event it should be decided under the rules of this Agreement that an injustice has been dealt the employee with regard to the discharge, the Company shall reinstate such employee and pay full compensation at the employee's regular rate for the time lost. All such cases of discharge shall be taken up within five (5) days from the date of discharge and disposed of as promptly as possible.

Section 12.—Safety and Health. The Company shall continue to make reasonable provisions for the safety and health of its employees at the mines during the hours of their employment. Protective devices, wearing apparel and other equipment necessary to properly protect employees from injury shall be provided by the Company in accordance with the practice now prevailing in each separate mine.

Section 13.—Individual Wage Rates. Where alleged inequalities in wage rates prevail, the matter may be taken up for adjustment with Superintendent of Mining Division, and settlement made on a mutually satisfactory basis.

Section 14.—Future Conferences. Joint conferences between representatives of the Company and of the Brotherhood shall commence in Birmingham, Alabama, on May 31st, 1938, for the purpose of negotiating an Agreement with regard to wages, hours and working conditions, to take effect upon the expiration of this Agreement.

Section 15.—Holidays. The following days shall be considered holidays, during which days there shall be no regular production work; however, it is understood that regular maintenance work will be carried on:

July 4th, Labor Day, and Christmas.

Section 16.—Termination Date. This Agreement shall remain in full force and effect until May 31st, 1938, inclusive.

TENNESSEE COAL, IRON AND
RAILROAD COMPANY,
By E. M. BALL,
General Superintendent, Ore Mines.
By J. F. VANCE,
Manager of Industrial Relations.

Representatives of those Employees who are Members of the Brotherhood of Mine Workers of Captive Mines, Ore Mines Division.

STANLEY I. HUDNALL,
Chairman, Executive Committee, Brotherhood of Mine Workers of Captive Mines, Ore Mines Dvision.
E. A. BEST,
Secretary.

T. J. MASSEY,
Committeeman—Muscoda.
PAUL DUMAS,
Committeeman—Muscoda.
J. W. WILSON,
Committeeman—Wenonah.
JOHN McGHEE,
Committeeman—Wenonah.
J. S. PITTS,
Committeeman—Ishkooda.
JULIAN HICKS,
Committeeman—Ishkooda.

3653 T. C. I. EXHIBIT 19.

Agreement.

Whereas, the Tennessee Coal, Iron and Railroad Company, a corporation, hereinafter referred to as the Company, is satisfied that a large number of its employees at its ore mines are members of the Brotherhood of Mine Workers of Captive Mines, hereinafter referred to as the Brotherhood, and

Whereas, such employees have indicated their desire to have the undersigned officers and members of the Brotherhood represent them in collective bargaining with the Company, and in the making of this Agreement, and

Whereas, the Company is willing to so recognize such representatives on behalf of the members of the Brotherhood, and to make this agreement,

Now, Therefore, this agreement entered into on this the 15th day of June, 1938, between said representatives chosen by and on behalf of the members of the Brotherhood and the Company.

Witnesseth:

Secton 1.—It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships between those employees who are members of the Brotherhood and the Company, and to set forth herein the basic Agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties hereto.

It is understood and agreed that this Agreement pertains only to the members of the Brotherhood employed in the ore and limestone mines of the Company located at Muscoda, Wenonah, and Ishkooda, Jefferson County, Alabama.

The term "employee," as used in this Agreement shall not include Foreman, Assistant Foreman or Supervisors in charge of any classes of labor, or Watchmen or Patrolman.

Section 2.—Recognition. The Company recognizes the Brotherhood as the collective bargaining agency for those employees of the Company who are members of the Brotherhood. The Company recognizes and will not interfere with the right of its employees to become members of the Brotherhood. There shall be no discrimination, interference, restraint or coercion by the Company or any of its agents against any members because of membership in the Brotherhood.

The Brotherhood agrees not to intimidate or coerce employees into membership and also not to solicit membership on Company time or plant property.

The obligation on the part of both such parties not to exercise any intimidation or coercion shall be deemed to prevent any application to another of such force, either physical, moral or mental, as to induce or constrain him to do against his will something he would not have otherwise done, and not to commit any act of making any person timid or fearful or of deterring such person from some act by threats.

Section 3.—Wages. It is agreed that the rates of pay now in effect shall remain in effect unless changed in accordance with the procedure set forth under Section 15, except that all salaried employees who are members of the Brotherhood shall receive the same reductions or increases in pay as may be applicable from time to time to all other salaried employees of the Compny.

Section 4.—Hours of Work. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.

The eight (8) hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusve of the lunch period, whether they be paid by the day or be paid on the tonnage basis.

At the option of the Company (1) a day may be either a calendar day or any twenty-four (24) hour period, and (2) a week may be either a calendar week or any period of five (5) regular eight (8) hour turns on consecutive days, the last of said five (5) turns being followed by a forty-eight (48) hour rest period.

An employee who is a member of the Brotherhood shall not be paid both daily and weekly overtime for the same hours so worked.

Section 5.—Irregular Work. When an employee absents himself from his work for a period of two days without the consent of the Company, other than because of proven sickness or a satisfactory explanation, he may be discharged. When any employee makes a habit of laying off for single days other than because of proven sickness and continues to do so after having been warned by the Company shall be subject to discharge.

Section 6.—Variations. Each employee, who is a member of the Brotherhood, and who, prior to July 1, 1938, was continuously in the service of the Company five (5) years or more (continuity of service to be based on United States Steel and Carnegie Pension Fund Rules for Service Continuity) shall receive one week's vacation with pay, such vacation to be taken in a single period. Those who are granted vacations will be paid on their average rate of earnings per hour for the two day periods immediately preceding their vacation. The total hours of vacation pay will be the average hours they worked per week during that period, but not less than 40 hours nor more than 48 hours.

Vacations will, so far as possible, be granted at times most desired by employees, but the final right to allotment of vacation period is exclusively reserved to the Company in order to insure the orderly operation of the plants.

Section 7.—Seniority. It is understood and agreed that in all cases of promotion and increase or decrease of forces the following factors shall be considered, and where factors (b), (c), (d) and (e) are relatively equal, length of continuous service shall govern.

(a) Length of continuous service.

(b) Knowledge, training, ability, skill and efficiency.

(c) Physical fitness.

(d) Family status; number of dependents, etc.

(e) Place of employment.

Section 8.—Adjustment of Grievances. Should differences arise between the Company and the Brotherhood or its members employed by the Company as to the meaning and application of the provisions of this Agreement, or should any local trouble of any kind arise in any mining division, there shall be no suspension of work on account of such differences but an earnest effort shall be made to settle such differences immediately in the following manner:

First, between the aggrieved employee, who is a member of the Brotherhood, and the Foreman involved;

Second, between a member or members of the Grievance Committee, designated by the Brotherhood, and the Foreman and Superintendent of the mining division.

Third, between a member or members of the Grievance Committee, designated by the Brotherhood, and the General Superintendent of the mines.

Fourth, between the representatives of the Brotherhood and the representatives of the Executives of the Company; and

Fifth, by a board consisting of four members, two of whom shall be designated by the representatives signatory hereto, and two by the Company. Failing to agree, they may select an umpire to decide the dispute.

Pending the hearing of disputes, the employees represented by the parties signatory hereto shall not cease work because of any dispute; and a decision reached at any stage of the proceedings shall be binding on both parties thereto; and shall not be subject to reopening by any other party except by mutual agreement.

Specified periods shall be agreed upon between the Grievance Committee and the Superintendent of each mining division for the presentation of grievances hereunder. Provided, however, that matters pertaining to discharges or other matters that cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provisions.

The Grievance Committee for each Mining Division shall consist of not less than three employees of that Mining Division, and not more than six such employees, deignated by the Brotherhood, who will be afforded such time off, without pay, as may be required—

First, to attend regularly scheduled committee meetings,

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting, and

Third, any member of the Grievance Committee shall have the right to visit departments other than his own at all reasonable times for the purpose of transacting the legitimate business of the Grievance Committee, after notice to and permission from his Foreman or his designated representative.

The actual number of members of the Grievance Committee at each Mining Division shall be mutually agreed upon between the Superintendent of the Mining Division and the Brotherhood.

It is specifically understood that the provisions of this section respecting appeal to an umpire shall not apply to matters which may arise under Section 13 nor to matters which may arise under Section 15.

Section 9.—Illegal Suspension of Work. A strike or stoppage of work on the part of the employees represented by the parties signatory hereto shall be a violation of this Agreement, and there shall be no strike or cessation of work until and unless the matter of complaint have been submitted and determined by all the methods provided for in this Agreement for the adjustment of disputes.

Section 10.—Management. The management of the mines and the direction of the working forces, including the right to hire, suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Section 11.—Discharge Cases. In the event a member of the Brotherhood shall be discharged from his employment from and after the date hereof, and he believes he has been unjustly dealt with, such discharge shall constitute a case arising under the method of adjusting grievances herein provided. In the event it should be decided under the rules of this Agreement that an injustice has been dealt the employee with regard to the dscharge, the Company shall reinstate such employee and pay full compensation at the employee's regular rate for the time lost. All such cases of discharge shall be taken up within five (5) days from the date of discharge and disposed of as promptly as possible.

Section 12.—Safety and Health: The Company shall continue to make reasonable provisions for the safety and health of its employees at the mines during the hours of their employment. Protective devices, wearing apparel and other equipment necessary to properly protect employees from injury shall be provided by the Company in accordance with the practice now prevailing in each separate mine.

Section 13.—Individual Wage Rates: Where alleged inequalities in wage rates prevail, the matter may be taken up for adjustment with Superintendent of Mining Division, and settlement made on a mutually satisfactory basis.

Section 14.—Holidays. The following days shall be considered holidays, during which days there shall be no regular production work; however, it is understood that regular maintenance work will be carried on:

July 4th, Labor Day, and Christmas.

If for any reason work other than regular maintenance work is performed on these days, it shall be paid for at the rate of time and one-half.

Section 15.—Change or Termination. This agreement shall continue until changed or terminated as follows:

(a) Either party may at any time and from time to time give ten (10) days written notice to the other party of the time for the commencement of a conference of the parties for the purpose of negotiating the terms and conditions of a change of this Agreement, which conference shall be at the office of the Company in Birmingham, Alabama, unless otherwise mutually agreed, and

(b) If, because of a failure to agree, this Agreement is not changed by written agreement entered into by the Company and Brotherhood within twenty (20) days from the giving of said notice, then this Agreement and all of the provisions thereof shall terminate upon the expiration of twenty (20) days from the giving of said notice.

Both parties shall be obligated to attend the conference and negotiate in good faith and the neglect or refusal of the party to whom notice is given to so attend and to participate in the negotiations shall be the equivalent of a failure to agree and the refusal of either party to change any position which it may take as to changes proposed in the negotiations shall not be considered as a lack of good faith in the negotiations."

Section 16.—Notice hereunder shall be given by registered mail to be completed by and at the time of mailing, and if by the Company be addressed to Brotherhood of Mine Workers of Captive Mines, Ore Mines Division, 1404 Woodland Ave, Birmingham, Ala., and if by the Brotherhood be addressed to the Company at Brown-Marx Building, Birmingham, Alabama. Either party may by like written notice change the address to which registered mail notice to it shall be given.

TENNESSEE COAL, IRON AND
RAILROAD COMPANY,
By E. M. BALL,
General Superintendent, Ore Mines.
By J. F. VANCE,
Manager of Industrial Relations.

Representatives of those Employees who are Members of the Brotherhood of Mine Workers of Captive Mines, Ore Mines Division.

J. W. WILSON,
Chairman, Executive Committee, Brotherhood of Mine Workers of Captive Mines, Ore Mines Division.
E. A. BEST
Secretary.
T. J. MASSEY,
Committeeman—Muscoda.
I. V. ROBINSON,
Committeeman—Muscoda.
W. R. MAXWELL,
Committeeman—Wenonah.
STEPHEN JACKSON,
Committeeman—Wenonah.
JAS. A. BAILEY,
Committeeman—Ishkooda.
HAYS JUDKINS, Sr.,
Committeeman—Ishkooda.

3661

T. C. I. EXHIBIT No. 20.

It is agreed that the terms and conditions of the agreement between the Tennessee Coal, Iron & Railroad Company and the Red Ore Miners Union, affiliated with the American Federation of Labor, entered into on June 29, 1939, and concerning which written notice for the commencement of a conference for the purpose of negotiating the terms and conditions of a change of such agreement was given by the union to the company on December 4, 1940, and no agreement having been reached during the period of negotiation, the agreement dated June 29, 1939, is extended in full force and effect to and including January 31, 1941.

TENNESSEE COAL, IRON &
RAILROAD COMPANY,
W. J. KELLY,
Acting Manager of Industrial
Relations.
RED ORE MINERS UNION,
J. W. WILSON,
Chairman Executive Committee.

Dated December 23, 1940.

3662

AGREEMENT.

This Agreement, dated June 29, 1939, is between Tennessee Coal, Iron and Railroad Company (hereinafter referred to as the "Company") and Red Ore Miners Union, affiliated with the American Federation of Labor, (hereinafter referred to as the "Union") on behalf of its members employed by the Company in its ore and limestone mines located at Muscoda, Wenonah and Ishkooda, Jefferson County, Alabama.

Section 1. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industral and economic relationships between those employees who are members of the Union and the Company, and to set forth herein the basic Agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties hereto.

It is understood and agreed that this Agreement pertains only to the members of the Union employed in the ore and limestone mines of the Company located at Muscoda, Wenonah, and Ishkooda, Jefferson County, Alabama.

The term "employees", as used in this Agreement shall not include Foreman, Assistant Foreman or Supervisors in charge of any classes of labor who do not perform any regular work, or Watchmen or Patrolmen, or any salaried employees.

Section 2.—Recognition. The Company recognizes the Union as the collective bargaining agency for those employees of the Company who are members of the Union. The Company recognizes and will not interfere with the right of its employees to become members of the Union. There shall be no discrimination, interference, restraint or coercion by the Company or any of its agents against any members because of membership in the Union.

The Union agrees not to intimidate or coerce employees into membership and also not to solicit membership on Company time or plant property.

The obligation on the part of both such parties not to exercise any intimidation or coercion shall be deemed to prevent any application to another of such force, either physical, moral or mental, as to induce or constrain him to do against his will something he would not have otherwise done, and not to commit any act of making any person timid or fearful or of deterring such person from some act by threats.

Section 3.—Wages. It is agreed that the rates of pay now in effect shall remain in effect unless changed in accordance with the procedure set forth under Section 15.

Section 4.—Hours of Work. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.

The eight (8) hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period whether they be paid by the day or be paid on the tonnage basis.

At the option of the Company (1) a day may be either a calendar day or any twenty-four (24) hour period, and (2) a week may be either a calendar week or any period of five (5) regular (8) eight hour turns on consecutive days, the last of said five (5) turns being followed by a forty-eight (48) hour rest period.

Any employee who is a member of the Union shall not be paid both daily and weekly overtime for the same hours so worked.

Section 5.—Irregular Work. When an employee absents himself from his work for a period of two days without the consent of the Company, other than because of proven sickness or a satisfactory explanation, he may be discharged. When any employee makes a habit of laying off for single days other than because of proven sickness and continues to do so after having been warned by the Company, he shall be subject to discharge.

Section 6.—Vacations. Each employee, who is a member of the Union, and who prior to July 1, 1938, was continuously in the service of the Company five (5) years or more (continuity of service to be based on United States Steel and Carnegie Pension Fund Rules for Service Continuity) shall receive one week's vacation with pay, such vacation to be taken in a single period. Those who are granted vacations will be paid at their average rate of earnings per hour for the four pay periods closed and calculated immediately preceding their vacation. The total hours of vacation will be the average hours they worked per week during that period, but not less than forty hours nor more than forty-eight hours.

Vacations will, so far as possible, be granted at times most desired by employees, but the final right to allotment of vacation period is exclusively reserved to the Company in order to insure the orderly operation of the plants.

Section 7.—Seniority. It is understood and agreed that in all cases of promotion and increase and decrease of forces the following factors shall be considered, and where factors (b), c), and (d) are relatively equal, length of continuous service shall govern.

(a) Length of continuous service.

(b) Knowledge, training, ability, skill and efficiency.

(c) Physical fitness.

(d) Place of employment.

Section 8.—Adjustment of Grievances. Should differences arise between the Company and the Union of its members employed by the Company as to the meaning and application of the provisions of this Agreement, or should any local trouble of any kind arise in any mining division, there shall be no suspension of work on account of such differences but an earnest effort shall be made to settle such differences immediately in the following manner:

First, between the aggrieved employee, who is a member of the Union, and the Foreman involved;

Second, between a member or members of the Grievance Committee, designated by the Union, and the Foreman and Superintendent of the Mining Division;

Third, between a member or members of the Grievance Committee, designated by the Union, and the General Superintendent of the Mines.

Fourth, between the representatives of the Union and the representatives of the Executives of the Company, and

Fifth, by a board consisting of four members, two of whom shall be designated by the representatives signatory hereto, and two by the Company. Failure to agree, the matter shall then be appealed to an impartial umpire to be appointed by mutual agreement of the parties hereto. The decision of the umpire shall be final. The expense and salary incident to the services of the umpire shall be paid jointly by the Company and the Union.

Pending the hearing of disputes, the employees represented by the parties signatory hereto shall not cease work because of any dispute; and a decision reached at any stage of the proceedings shall be binding on both parties thereto; and shall not be subject to reopening by any other party except by mutual agreement.

Specified periods shall be agreed upon between the Grievance Committee and the Superintendent of each Mining Division for the presentation of grievances hereunder. Provided, however, that matters pertaining to discharges or other matters that cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provisions.

The Grievance Committee for each Mining Division shall consist of not less than three employees of that Mining Division, and not more than six such employees, designated by the Union, who will be afforded such time off without pay, as may be required—

First, to attend regularly scheduled committee meetings.

Second, to attend meetings pertaining to discharge or other matters which cannot reasonably be delayed until the time of the next regular meeting; and

Third, any member of the Grievance Committee shall have the right to visit departments other than his own at all reasonable times for the purpose of transacting the legitimate business of the Grievance Committee, after notice to and permission from his Foreman or his designated representative.

The actual number of members of the Grievance Committee at each Mining Division shall be mutually agreed upon between the Superintendent of the Mining Division and the Union.

It is specifically understood that the provisions of this section respecting appeal to an umpire shall not apply to matters which may arise under Section 13 nor to matters which may arise under Section 15.

Section 9.—Illegal Suspension of Work. A strike or stoppage of work on the part of the employees represented by the parties signatory hereto shall be a violation of this Agreement, and there shall be no strike or cessation of work until and unless the matter of complaint shall have been submitted and determined by all the methods provided for in this Agreement for the adjustment of disputes.

Section 10.—Management. The management of the mines and the direction of the working forces, including the right to hire, suspend or discharge for proper cause, or transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for purposes of discrimination against any member of the Union.

Section 11.—Discharge Cases. In the event a member of the Union shall be discharged from his employment from and after the date hereof, and he believes he has been unjustly dealt with, such discharge shall constitute a case arising under the method of adjusting grievances herein provided. In the event it should be decided under the rules of this Agreement that an injustice has been dealt the employee with regard to the discharge, the Company shall reinstate such employee and pay full compensation at the employee's regular rate for the time lost. All such cases of discharge shall be taken up within five (5) days from the date of discharge and disposed of as promptly as possible

Section 12—Safety And Health. The Company shall continue to make reasonable provisions for the safety and health of its employees at the mines during the hours of their employment. Protective devices, wearing apparel and other equipment necessary to properly protect employees from injury shall be provided by the Company in accordance with the practice now prevailing in each separate mine.

Section 13—Individual Wage Rates. Where alleged inequalities in wage rates prevail, the matter may be taken up for adjustment with Superintendent of Mining Division, and settlement made on a mutually satisfactory basis.

Section 14—Holidays. The following days shall be considered holidays, during which days there shall be no regular production work; however, it is understood that that regular maintenance work will be carried on:

July 4th
Labor Day, and
Christmas.

If, for any reason, work other than regular maintenance work is performed on these days, it shall be paid for at the rate of time and one-half.

Section 15—Change Or Termination. This Agreement shall continue until changed or terminated as follows:

(a) Either party may at any time and from time to time give ten (10) days written notice to the other party of the time for the commencement of a conference of the parties for the purpose of negotiating the terms and conditions of a change in this Agreement, which conference shall be at the office of the Company in Birmingham, Alabama, unless otherwise mutually agreed, and

(b) If, because of a failure to agree, this Agreement is not changed by written agreement entered into by the Company and the Union within twenty (20) days from the giving of said notice, then this Agreement and all of the provisions thereof shall terminate upon the expiration of twenty (20) days from the giving of said notice.

Both parties shall be obligated to attend the conference and negotiate in good faith and the neglect or refusal of the party to whom notice is given to so attend and to participate in the negotiations shall be the equivalent of a failure to agree and the refusal to either party to change any position which it may take as to changes proposed in the negotiations shall not be considered as a lack of good faith in the negotiations.

Section 16. Notice hereunder shall be given by registered mail to be completed by and at the time of mailing, and if by the Company be addressed to Red Ore Miners Union, J. W. Wilson, c/o Stones' Store, Route 1, Birmingham, Alabama, and if by the Union to be addressed to the Company at Brown-Marx Building, Birmingham, Alabama. Either party may by like written notice change the address to which registered mail notice to it shall be given.

RED ORE MINERS UNION,
By S. E. ROPER,
By J. W. WILSON,
By T. J. MASSEY,
By WILLIS COLE,
By W. R. MAXWELL,
By JOHN McGHEE,
By JAMES A. BAILEY,
By GEORGE E. MOORE.
TENNESSEE COAL IRON AND RAILROAD COMPANY,
By E. M. BALL,
General Superintendent,
Ore Mines,
By J. F. VANCE,
Manager of Industrial Relations.

3670

T. C. I. EXHIBIT 21.

(Stamped) Received Oct. 21, 1940, J. F. Vance.

Bessemer, Alabama, October 5th, 1940.

In Re: Ishkooda Local No. 153 of International Union of Mine, Mill and Smelter Workers, District No. Five, an Affiliate of the Bessemer Smelters Council.

Whereas, there now exists a controversy between this Local and the T. C. I. & R. R. Company, at its mines near Bessemer, Alabama, and this controversy is of long standing and deals with the travel pay time of our members employed by the above mentioned Company at its iron ore mines in its production and maintenance departments; and these employees are required to report at the mouth or collar of the mines at 6 o'clock, A. M. in the morning for the purpose of being loaded into man-trips and other methods of entering the mines, they being underground workers; and at the mouth or collar of the mines are checked in at six o'clock and immediately given supplies, tools, equipment and instructions, and then they proceed to their working places, which is approximately 2 miles from the mouth or collar of the mines and down under the ground, which requires and consumes approximately one hour's time before they then arrive at their usual working places; all of this time being spent on the premises of the Company, and after the men are checked in and given supplies, equipment and instructions they then proceed to their working places to perform their usual tasks, after which they return to the mouth or collar of the mines arriving there about four o'clock in the afternoon, and are checked out, thus requiring the employees to be on the premises on duty and in the performance of their work for the Company ten (10) hours per day in the mines, totaling fifty hours per work week, and

Whereas, immediately after our Union was set up, and ever since that time, we have been protesting the travel pay of our members in this mine, and this controversy is based upon the time spent by our members on the premises of the Company each work week and being in excess of the hours required to work under the law, and as we understand it, in violation of the rules and law, and which time amounts to approximately 10 hours per work day, and employees affected by this condition numbering approximately 300. And we further believe that in view of the fact that the Fair Labor Standards Act was passed primarily for the purpose of reducing excessive required hours on the premises of the employer during any given work week, and

Whereas, the Fair Labor Standards Act is recognized and being complied with in many instances without any controversy on the part of the employees, but notwithstanding that fact and in the face of many rulings by the Wage & Hour Board supporting our position and conditions of work, we are still required by the said Company to be on the premises of the Company many hours in excess of the work week, and for which we receive no pay.

Therefore, be it Resolved by this Local in regular meeting assembled that we authorize and request our local and National officers to immediately bring about a correction of these conditions and require the Company to immediately comply with the Fair Labor Standards Act from now on, and also require the Company to pay all back time since the effective date of this law.

And we further authorize our officers to bring this Resolution to the attention of the Hon. Robert P. Amis, Regional Director of the Wage & Hour Division of the Department of Labor in Birmingham, Alabama, and also with Col. Philip B. Fleming, Administrator of the Wage & Hour

Division of the Department of Labor, Washington, D. C. And our officers, both Local and National, are further authorized to take such steps as may be necessary and expedient, by negotiations, or suit, in order to bring about a speedy conclusion of this controversy.

Be it further resolved that copies of this Resolution be immediately forwarded to all interested parties.

This is to certify that the above is a true and exact copy of a Resolution unanimously adopted by Local No. 163 in its regular meeting of October 5th, 1940.

E. A. SISEMORE,
As President Of Local #....
of I. U. M. M. & S. W.

Attested by:

(Seal)

T. J. SIZEMORE,
As Recording Secretary.

3750-a

Limestone Mining In Muscoda No. 5

E. M. Ball
General Superintendent

A. W. Beck
Chief Engineer

Tennessee Coal, Iron & Railroad Company
Subsidiary United States Steel
Corporation
Birmingham, Alabama

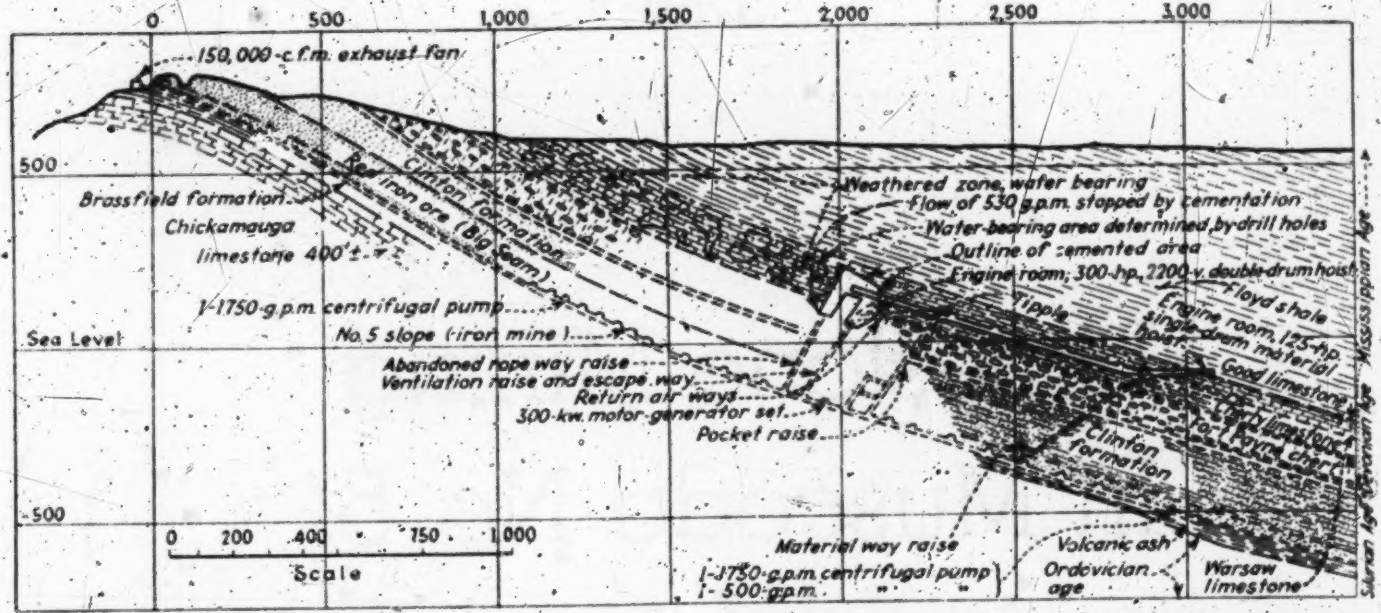
0
500
1,000
1,500
2,000
2,500
3,000
150,000-c.f.m. exhaust fan
500
Brassfield formation
Chickamauga limestone 400'±
Red iron ore (Big Seam)
Clinton formation
1-1750-g.p.m. centrifugal pump
No. 5 slope (iron mine)
Sea Level
Abandoned rope way raise
Ventilation raise and escape way
Return air ways
300-kw. motor-generator set
Pocket raise
-500
0 200 400 750 1,000
Scale
Weathered zone, water bearing
Flow of 530 g.p.m. stopped by cementation
Water-bearing area determined by drill holes
Outline of cemented area
Engine room; 300-hp., 2200-v. double-drum hoist
Floyd shale
Tipple
Engine room, 125-hp. single-drum material hoist
Good limestone
Cherty limestone
Fort Payne chert
Clinton formation
Material way raise
1-1750-g.p.m. centrifugal pump
1-500-g.p.m. " "
Volcanic ash
Ordovician age
Warsaw limestone
Mississippian Age
Devonian Age
Silurian Age

Fig. 1 . . . THE LIMESTONE MINE lies above the temporarily abandoned iron-ore workings of this portion of the Big Seam, dipping under Red Mountain. Access is had through the old No. 5 slope, through which all men, production, and supplies are handled. This cross-section is taken on the center line of the workings

Limestone Mining In Muscoda No. 5

T

Limestone Mining In Muscoda No. 5

A Unique Underground Operation In the Birmingham District

E. M. Ball
General Superintendent

A. W. Beck
Chief Engineer

Tennessee Coal, Iron & Railroad Company
Subsidiary United States Steel Corporation
Birmingham, Alabama

At MUSCODA, Ala., 12 miles southwest of Birmingham and a mile southeast of Bessemer, is the No. 5 limestone mine of the Tennessee Coal, Iron & Railroad Company. The property is capable of producing 130 tons of limestone per hour. Of its products, lump stone, 2½ to 7 in. in size, is used in the open-hearth operations at the company's Fairfield steel works. Fine crushed and washed stone, 1¼ to 0.063 in. in size, is calcined at the lime-burning plant and used for lime charges in the open-hearths at the Ensley works. Mine output is shipped to the Fairfield and Ensley plants over the company's own railroad system. The average of analyses of the production for the first seven months of 1937 is given in Table I.

A cross-section on the center line of the mine is given in Fig. 1. The formation in which the limestone occurs is in the Warsaw horizon of the lower Mississippian. It is 130 ft. thick. The limestone beds mined are stratigraphically 330 ft. above the Big Seam of iron ore of the Clinton formation. Immediately above the Clinton and below the workable limestone bed lies approximately 100 ft. of Fort Payne chert, which is composed of layers of chert and cherty limestone. The limestone bed, being badly weathered, is not workable for approximately 1,200 ft. down the dip from the outcrop.

Table I—Average Composition of Limestone Mined, January to July Inclusive, in 1937

Type of Stone	SiO_2 %	Fe_2O_3 and Al_2O_3 %	$CaCO_3$ %	$MgCO_3$ %
Lump	0.60	0 23	98 44	0 22
Crushed and washed	0 91	0 29	98 05	0 26

Prior to April, 1931, the limestone requirements of the company were obtained from Vanns quarry, near Trussville, 14 miles northeast of Birmingham. This source of supply was abandoned due to excessive costs, attendant upon a high percentage of waste material in the stone, hand-loading, and high transportation costs.

Extensive diamond drilling undertaken in 1909 to determine the extent, composition, and structural conditions of the iron-ore seam indicated the presence of the limestone above the Big Seam. To prove its extent and grade and to locate the lower limit of weathering, seventeen diamond-drill holes were put down from the surface at Muscoda in 1926. This drilling indicated the presence of a deposit of high-grade limestone 40 ft. thick; also that future developments must be confined to the unweathered stone. The weathered Warsaw and Fort Payne formations at iron mines, where the ore pillars have been extracted in territory underlying the zone of weathering, are heavily water-bearing, as indicated by inflows of over 3,000 g.p.m. for considerable periods.

The temporarily abandoned slope of No. 5 iron mine was used for development of the limestone mine (Fig.

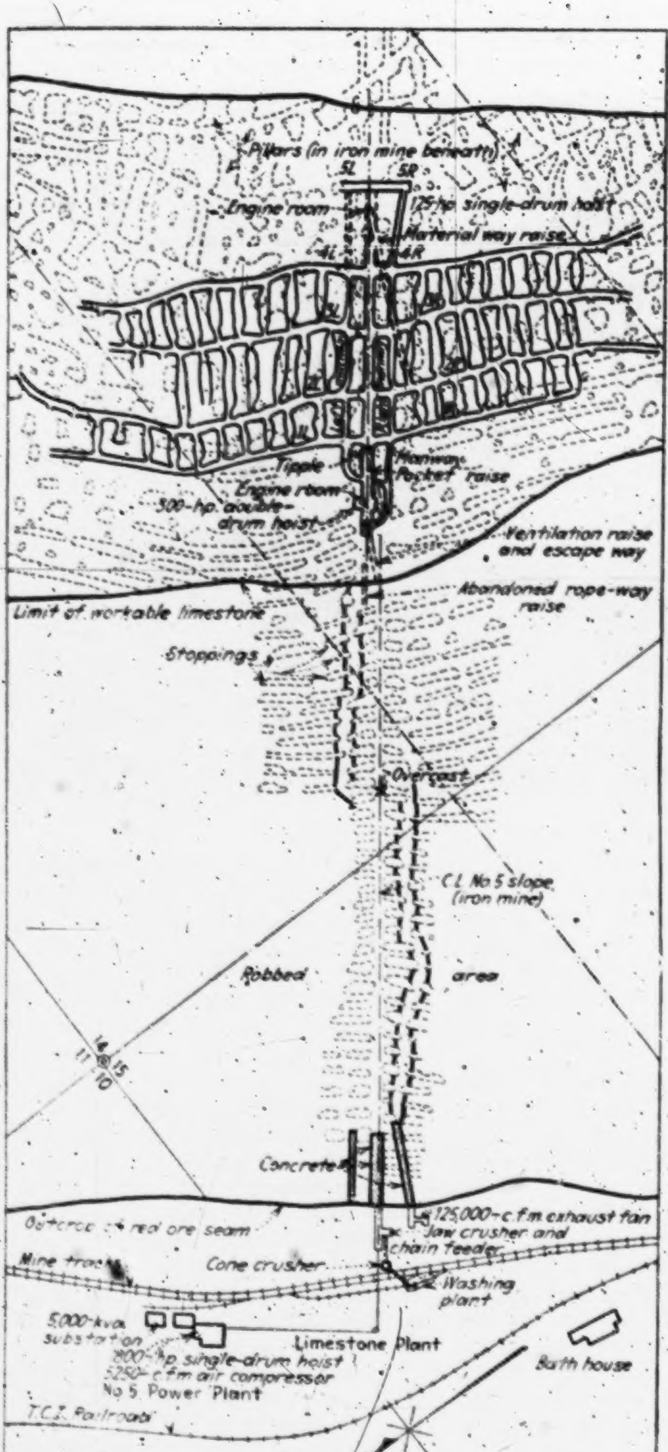
Pillars (in iron mine beneath)
5L
5R
Engine room
125-hp single-drum hoist
Material way raise
4L
4R
Tipple
Manway
Pocket raise
Engine room
300-hp double-drum hoist
Ventilation raise and escape way
Abandoned rope-way raise
Limit of workable limestone
Stoppings
Overcast
C.L. No 5 slope (iron mine)
Robbed area
14
15
11
10
Concrete
125,000-c.f.m. exhaust fan
Outcrop of red ore seam
Jaw crusher and chain feeder
Mine track
Cone crusher
Washing plant
5,000-kva. substation
Limestone Plant
800-hp single-drum hoist
5250-c.f.m air compressor
No 5 Power Plant
Bath house
T.C.I. Railroad

Fig. 2 . . . (left) WORKINGS of the limestone mine are here, in this plan view, seen superimposed over the old iron-ore workings, which are sketched in broken lines. The limestone bed is not workable between the outcrop and a point 1,200 ft. down the dip, owing to weathering

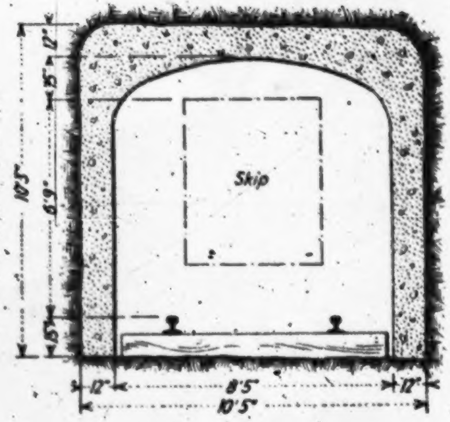
12"
15"
6'9"
10'3"
15"
Skip
12"
8'5"
12"
10'5"

Fig. 3 . . . (top right) A LINING of reinforced concrete, of the cross-section shown here, is provided in No. 5 iron ore slope for a distance of 210 ft. from the portal

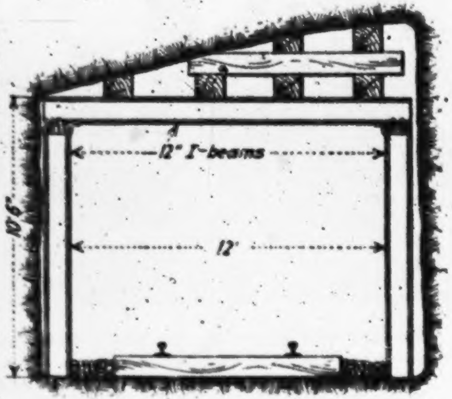
12" I-beams
10'6"
12'

Fig. 4 . . . (right) STEEL SETS such as this are used to support the ground in the ore slope where the ground is heavy

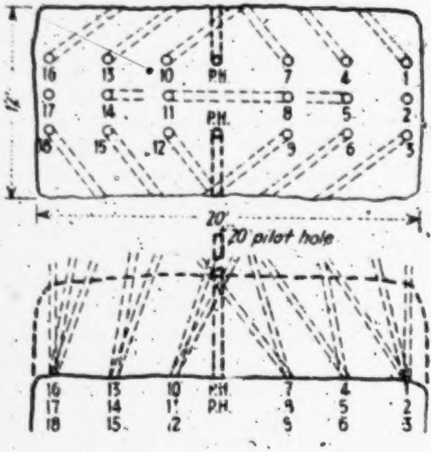
16
13
10
P.H.
7
4
1
17
14
11
P.H.
8
5
2
18
15
12
9
6
3
12'
20'
20' pilot hole
16
13
10
P.H.
7
4
1
17
14
11
P.H.
8
5
2
18
15
12
9
6
3

Fig. 5 . . . (right) TYPICAL DRILL ROUND, employing the center cut shown, that is used in advancing level faces and in stopes. Maximum depth of hole is 10 ft. The cut is followed by slabbing rounds

2). Both the limestone bed and the iron ore seam below it have a dip of 17 deg. An 8x12-ft. incline for use as a man-and-material way was raised from the ore slope at an angle of 36½ deg. with the horizontal to intersect the lower edge of the limestone bed. From this intersection, a 10x20-ft. slope was raised a distance of 900 ft. in the base of the workable limestone. Simultaneously, two additional raises were started from the ore slope. The upper raise, which was to be used as a ropeway, was located so as to come below the zone of weathering, as indicated by the diamond-drill cores, and was approximately 2,000 ft. horizontally from the outcrop of the iron-ore seam. The depth of overlying cover at this point was 400 ft. Driving of this raise continued for a distance of 259 ft., or to a point 83 ft. below the limestone bed. At this location, drilling encountered weathered limestone and chert and developed a flow of 530 g.p.m., which made it advisable to stop the work. Work in the lower raise 60 ft. down the ore slope was also discontinued at this time. This raise was to be used as a transfer pocket between the limestone and ore slopes.

Attempts were made to stop the flow of water by cementation, through a series of long drill holes, radiating from the upper part of the limestone slope. After cement had been injected into the area by means of pressure pumps, the inflow of water from the rope raise was reduced to 20 g.p.m. It was found, however, that the territory ahead of the rope raise and the limestone slope was badly weathered. Many cavities filled with mud and clay could not be replaced with cement, making it unsafe to continue work because of the probable inflow of large quantities of mud and water. The ropeway was therefore abandoned after a 12-ft. plug of broken rock was placed in its upper end and filled with cement between the fragments. An inflow of approximately 250 g.p.m. in the upper end of the limestone slope was substantially reduced, after additional cementation work had been done in the back and sides of the slope.

Plans were changed and it was decided to place the auxiliary hoist for handling stone in the limestone slope, instead of in the ore slope below, as intended originally. A new pocket

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Limestone Mining In Muscoda No. 5

THE LIMESTONE PLANT stands at the mouth of Muscoda No. 5 ore slope. Two products are made, lump stone ranging from 2 to 7 in. in size and finer material ranging from 1¼ in. to 0.063 in.

E. M. Ball
General Superintendent

A. W. Beck
Chief Engineer

Tennessee Coal, Iron & Railroad Company
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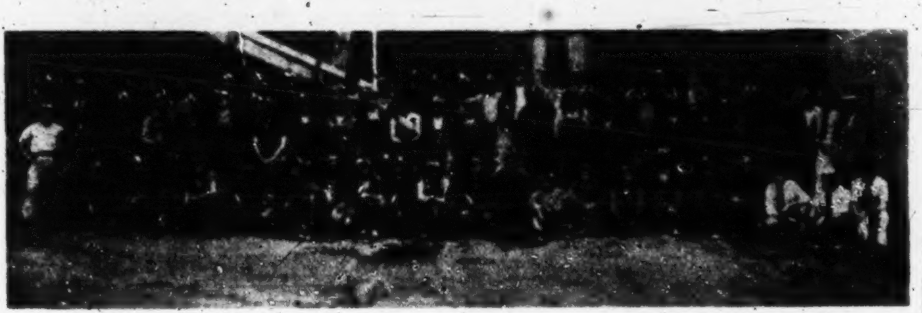
Birmingham, Alabama



TEN-TON SKIP entering the single-track tipple at the mouth of Muscoda No. 5 ore slope. The limestone falls into a 125-ton flat-bottomed pocket lined with rails. From this it is fed by a chain feeder to the primary crusher

IN A BACK STOPE. Drilling is under way, with the tripod-mounted machine standing on the muck. The tail block of the scraper used in mucking out the stone is seen fastened to the back

raise was driven from a point 150 ft. down the ore slope. The old pocket raise was completed and used for ventilation and escapeway purposes. The ventilation and pocket raises are both driven on an angle of 60 deg. with the horizontal. Four pairs of mining levels, 12x20 ft. in cross-section, were turned at right angles from the slope. These are placed at 200-ft. intervals and driven on a grade of 1.5 per cent in favor of the load.

No. 5 ore slope is lined with reinforced concrete for a distance of 210 ft. from the portal (Fig. 3). This lining is of single-arch construction with side walls 8 in. thick. The compartment is 8 ft. 5 in. wide and 10 ft. 5 in. high above the top of the ties at the center of the arch. No one is allowed to walk the slope while stone is being hoisted or men and material are being handled. Inspection and maintenance of slope track is done after the shift is finished.

The man-and-material way enters the limestone mine at a point 2,850 ft. on the incline from the portal of No. 5 ore slope. Its intersection with the limestone slope is under 650 ft. of cover. The ore slope, the man-and-material way, and the limestone slope are electrically lighted. To permit signaling, a ⅛-in. messenger wire is provided in the first two, extending along the left rib of the ore slope and the right rib of the man-and-material way and suspended on insulated hangers. Signals are given with a brass rod, connected by a flexible shunt to the skip in the ore slope, and to the larry in the man-and-material way, respectively. When this is touched to the messenger wire, it completes a 22-volt circuit through hoisting rope and rails, sounding a signal on the hoist engineer's platform. When men are being hoisted in the ore slope, a skip tender is required to ride the front end of the skip with the signaling rod in his hand, so that he can signal the hoist engineer should the necessity arise. When the men are being lowered, the skip tender rides the back end of the skip in a specially provided chair. In hoisting and lowering men in the man-and-material way to the limestone mine, the same procedure is adopted, with the exception that no chair is provided. The man handling the signal rod rides the front end of the larry when it is being hoisted and the rear end during lowering.

Approximately 40 men are handled in the skip on the ore slope and 20 men on the larry in the man-and-material way. Men walk to their respective working places from the lower end of the limestone slope. Materials and mine supplies are handled by special larries in the ore slope and are transferred through the

MINING LEVELS, a face of one of which is here seen, are driven with wet drifters mounted on tripods. A center cut, illustrated in Fig. 5, is used, followed by slabbing rounds. A grade of 1.5 per cent in favor of the load is maintained

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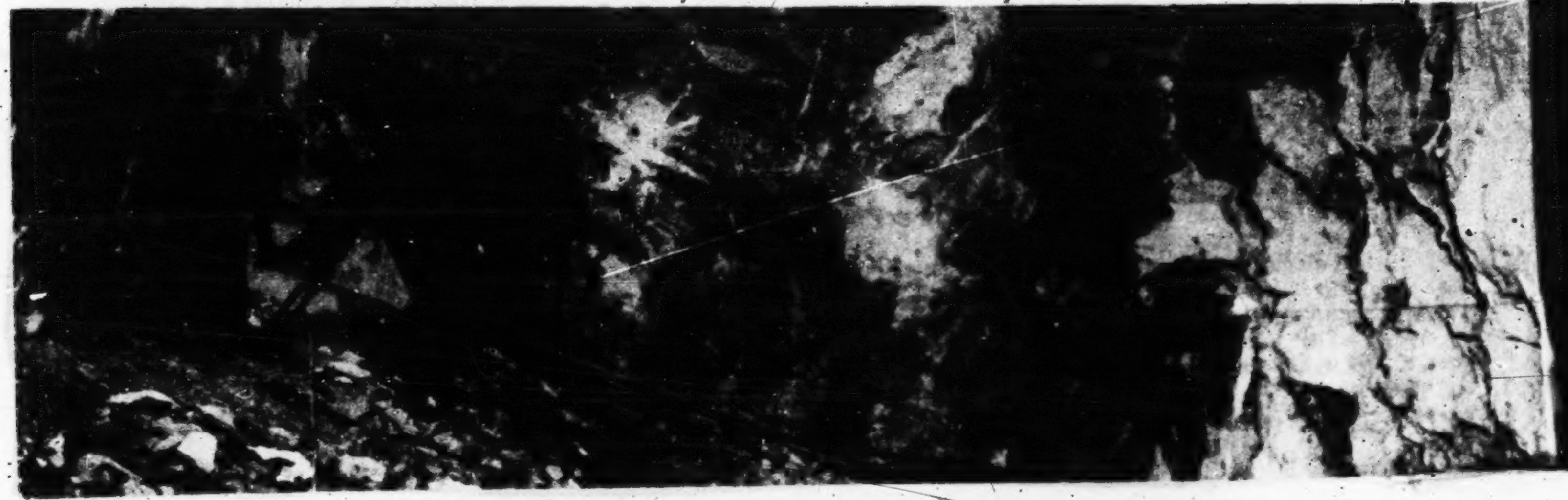
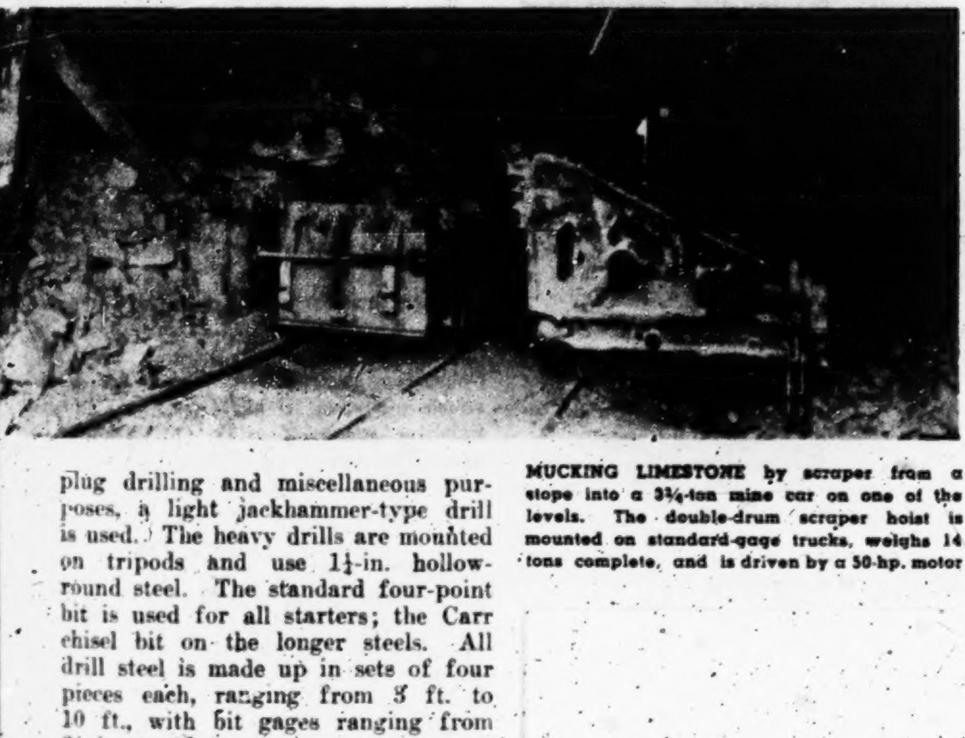


material way to the limestone slope. The man-and-material way hoist is a single-drum unit equipped with post brakes and driven by a 125-hp. motor, magnetically controlled.

In that part of the ore slope where the top is heavy, support is provided by sets consisting of two legs and a collar framed from 12-in. I-beams. (Fig. 4). In other sections, 12-in. square props are placed on each side of the slope track. No timbering is required in the man-and-material way, but 12-in. square props are used in the center of the limestone slope between tracks.

Drills used for driving the faces of mining levels and in stoping are water-type drifters, having a 4-in. cylinder and weighing 186 lb. For plug drilling and miscellaneous purposes, a light jackhammer-type drill is used. The heavy drills are mounted on tripods and use 1¼-in. hollow-round steel. The standard four-point bit is used for all starters; the Carr chisel bit on the longer steels. All drill steel is made up in sets of four pieces each, ranging from 3 ft. to 10 ft., with bit gages ranging from 2¼ in. to 1⅞ in.

A SIDE VIEW of drilling operations in a back stope. The 20 ft. of limestone remaining in the back after the breast stoping is completed is taken out in two successive cuts



MUCKING LIMESTONE by scraper from a stope into a 3¾-ton mine car on one of the levels. The double-drum scraper hoist is mounted on standard-gage trucks, weighs 14 tons complete, and is driven by a 50-hp. motor

A center cut, followed by slabbing rounds, is used in driving levels and stopes, 10 ft. being the maximum depth of hole (Fig. 5 and Table II). Pilot holes 20 ft. long are drilled ahead of working faces, to give advance notice of water-bearing joints or openings. Air is supplied from the 2-in. heading air line through a 1½-in. hose to a line lubricator and through a short section of 1-in. hose to the drill. Water is fed to the drills through a ⅜-in. hose. The explosive used is a water-resisting ammonia dynamite, in cartridges 1½ x 6 in., with a stick count of 110 per 50-lb. case, and a bulk strength of approximately 42 per cent. All blasting is done with fuse and cap, and only at the end of the shift.

Stope openings 16x12 ft. high are turned off the mining levels on 60-ft. centers. After one of these openings has advanced 20 ft. from the upper plug drilling and miscellaneous purposes, a light jackhammer-type drill is used. The heavy drills are mounted on tripods and use 1¼-in. hollow-round steel. The standard four-point bit is used for all starters; the Carr chisel bit on the longer steels. All drill steel is made up in sets of four pieces each, ranging from 3 ft. to 10 ft., with bit gages ranging from 2¼ in. to 1⅞ in.

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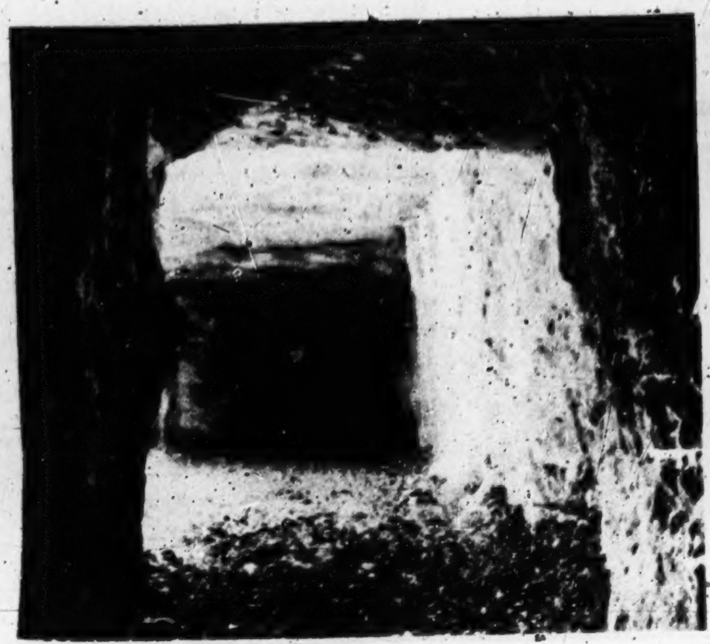
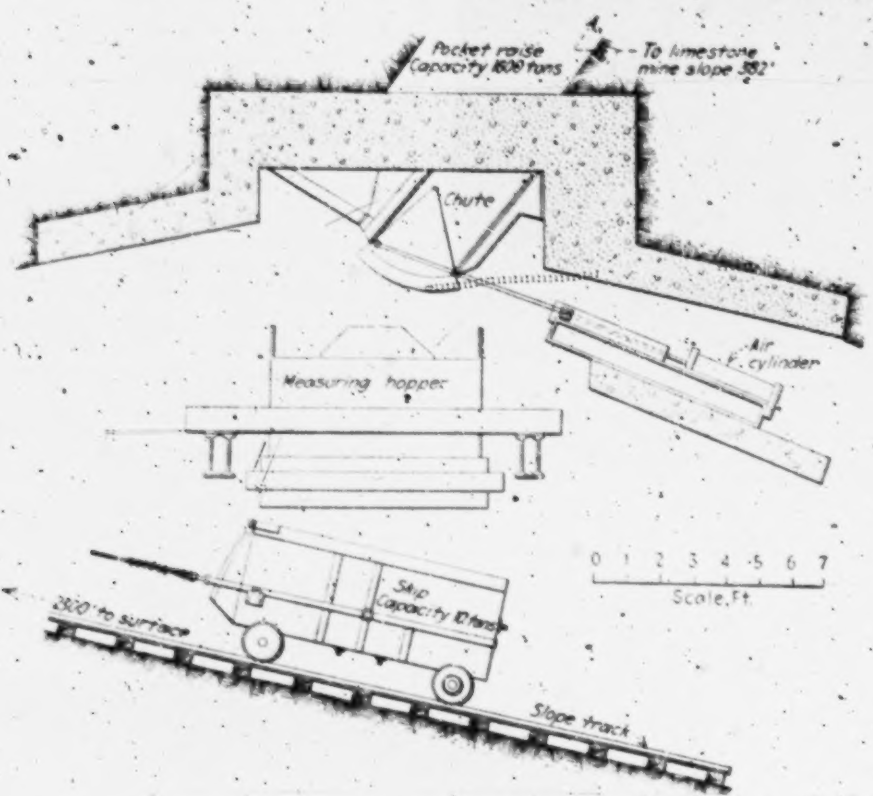


A COMPLETED STOPE. Stopes are turned off the mining levels in the bottom of the limestone on 80-ft. centers. After they are driven to the next level above, 20 ft. of good stone remains in the back, which is then backstoped in two successive cuts. The level interval is 200 ft.

DUMPING one of the 3¾-ton mine cars into a skip of the same capacity on the limestone slope. This is done by means of an air cylinder beneath the tracks ft. and driven to within 15 ft. of the lower rib of the level above. It is then narrowed to 8 ft. for the remaining distance and broken through near the hanging wall to ventilate the stope properly. Mining levels are driven in the bottom of the limestone bed and 20 ft. of good limestone remains in the back of the stope. This is mined by back-stoping at the lower end of the stope until the lower part of the permanent hanging wall is reached. Sufficient broken stone is left on the footwall to work upon. Back-stoping is then conducted in two successive cuts, each about 10 ft. thick from bottom to top, and advancing from the lower to upper end of the stope. Drilling is done at approximately right angles to the dip. It is not necessary to use wooden staging, as drilling and quarrying are done on top of the broken stone left in the stope. Enough stone is removed to provide working space at the back. All broken stone is removed after the drilling and blasting operations are completed. When the next stope toward the face of the level is broken into the level above, a stopping and adjustable air regulator is placed in the upper end of the worked-out stope. This allows the ventilation to be advanced towards the face of the level and also provides means by which any gas in the worked-out stope can be removed.

All stone in levels and stopes is loaded by double-drum scraper hoists into 3.75-ton standard-gage, roller-bearing, steel tram cars. Scraper hoists are equipped with two loose drums driven through jaw clutches by a 50-hp., 250-volt, direct-current, reversing motor, having contactor controls. The complete scraper hoist is mounted on standard-gage trucks and weighs 14 tons. The front end of the machine is equipped with horizontal and vertical rollers to guide the rope to the drum face. Steel-center ropes, $\frac{7}{8}$ in. in diameter, are used for in-haul and out-haul operations. The scraper itself weighs 2,700 lb., is bottomless, and holds $1\frac{1}{2}$ cu.yd. It is 54 in. wide, 54 in. long, and 34 in. high, with teeth in the back end. In mining, the stone is scraped from the stopes, and the advancing faces over steel loading ramps made from 15-in. channels 18 ft. long and bolted together. The toe of the channel is set in a hitch in the footwall. The other end of the channel extends over the loading track and rests on a 12-in. square timber bent. This bent is placed at proper height for stone from scrapers to fall into the tram cars.



Tram cars run by gravity from the loading ramps to air-operated horn-type tipples placed at the limestone slope. Empties are returned to loading ramps by mules. Tracks are standard gage of 60-lb. rail, laid on 7x9-in. by 8-ft. creosoted ties. Tram cars standing in the air-operated tipples are dumped directly into 3.75-ton balanced skips in the limestone slope.

Skips are handled by a double-drum hoist, driven by a 300-hp., 60-cycle, 2,300-volt, alternating-current motor, operating at 600 r.p.m. through single-reduction gears, to develop a hoisting speed of 1,300 ft. per minute. The drums are 8 ft. in diameter, with a 5 ft. 8 in. face, and are wound with 6x21 $1\frac{1}{8}$-in. lang-lay hoisting rope. The hoist is equipped with magnetic control, hydraulic-control post brakes and clutches, and Lilly hoist controllers with track limit switches and visible skip-position indicator. The engine room for the hoist is located at the upper end of the limestone slope. Skips dump over a double-track steel tipple into the pocket raise to the ore slope below.

Stone is drawn into a 10-ton measuring hopper from the bottom of the pocket by means of an air-operated

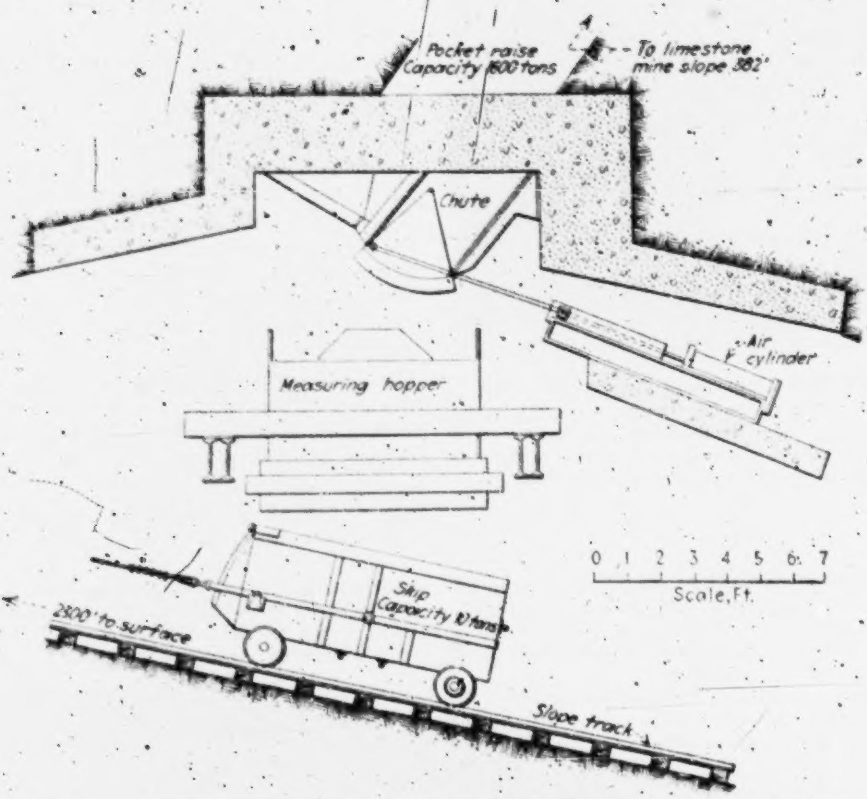


Fig. 6 . . . **STONE MINED in Muscoda No. 5 is delivered to a pocket raise holding 1,600 tons, from which it is drawn through an undercut gate into the measuring hopper shown for loading the 10-ton skip that is hoisted on No. 5 ore slope**

Table II—Drilling and Blasting Data to Accompany Fig. 5

Kind of Hole	Hole Number	Sticks Powder	Feet Fuse	Number Caps	Sheets Paper	Depth Hole
Upper	1	18	8	1	½	9
Middle	2	12	8	1	½	9
Lower	3	18	8	1	½	9
Upper	4	12	8	1	½	9
Middle	5	10	8	1	½	7
Lower	6	12	8	1	½	9
Upper	7	12	8	1	½	9
Middle	8	10	8	1	½	7
Lower	9	18	8	1	½	9
Upper	10	12	8	1	½	9
Middle	11	10	8	1	½	7
Lower	12	18	8	1	½	9
Upper	13	10	8	1	½	9
Middle	14	10	8	1	½	7
Lower	15	12	8	1	½	9
Upper	16	18	8	1	½	9
Middle	17	12	8	1	½	9
Lower	18	18	8	1	½	9
Totals	18	242	144	18	9	154
Pilot	P.H.	0	0	0	0	20

slope. Empties are returned to loading ramps by mules. Tracks are standard gage of 60-lb. rail, laid on 7x9-in. by 8-ft. creosoted ties. Tram cars standing in the air-operated tipples are dumped directly into 3.75-ton balanced skips in the limestone slope.

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Stone is drawn into a 10-ton measuring hopper from the bottom of the pocket by means of an air-operated undercut gate (Fig. 6). The doors in the bottom of the hopper are tripped by an air cylinder. From the measuring hopper, the stone is delivered into a standard-gage, 10-ton skip equipped with roller bearings and three-point suspension. The skip is hoisted, by a single-drum electric hoist, to the surface tipple 2,400 ft. away. A round trip is made in three minutes.

Water from the mine drains to two sumps in the ore slope below, and is pumped to the surface by two motor-driven centrifugal pumps, handling 1,750 g.p.m. and operating in relay. For use in an emergency, a 500-g.p.m. motor-driven centrifugal pump sends water to a main pumping station at No. 4 iron mine.

UNDERGROUND CREW of Muscoda No. 5 limestone mine. These men won the Sentinels of Safety trophy for 1936 for the non-metallic group in the National Safety competition with a record of 114,701 accident-free man-hours

A. W. Beck
Chief Engineer

Tennessee Coal, Iron & Railroad Company
Subsidiary United States Steel
Corporation
Birmingham, Alabama

II. *Ventilation and other auxiliary operations are described*

The crew wins National Safety trophy

► *DEVELOPMENT and mining practice at Muscoda No. 5 was dealt with by Messrs. Ball and Beck in the first part of this article, published in the December issue. The present concluding installment completes the picture of the work. The property is interesting on several counts, particularly because of the unique relationship of the limestone and the older iron-ore workings and the occurrence of methane*

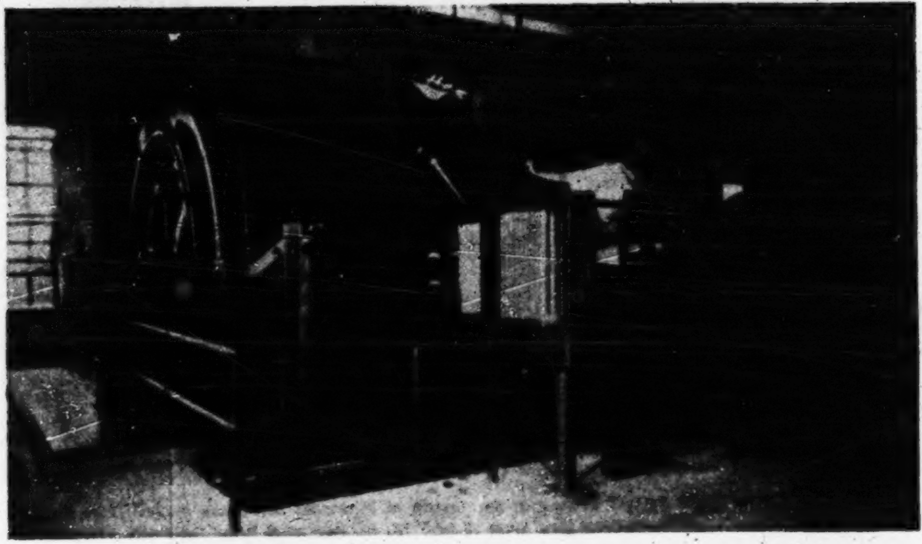
DURING the development of the limestone mine, ventilation was satisfactorily maintained by means of a booster fan of 50,000-c.f.m. capacity, installed on the ore slope near the foot of the material way to the mine. After the mine had been in operation four months, a large feeder of methane gas was unexpectedly encountered in the 2d Right Level. This feeder and a small one in the 4th Right Level were supplying approximately 250 cu.ft. of methane per minute, which, with the gas from the remaining workings, was sufficient to call for the provision of additional ventilation, for which facilities were promptly installed.

The limestone mine and two ore mines of the Muscoda division are ventilated by means of an 8 ft. by 3 ft. 6-in. double-inlet exhaust fan. This fan is on the surface near the portal of the limestone mine (Fig. 7) and is exhausting 125,000 c.f.m. of air against a 3.4-in. water gage. It is driven by a 125-hp., 2,300-volt, alternating-current motor through friction clutches and multiple V-belts. An auxiliary 80-hp. gasoline engine is used as a standby unit and is put in operation only in case of an electric-power interruption. The slowing down of the fan causes a blinker system to go out, at the same time sounding an automatic signal to warn the attendant. Twenty-five thousand cubic feet of air per minute is required to ventilate the limestone mine, the remainder being used for ventilating the two adjoining ore mines. The ventilating current for the limestone mine comes down the ore slope, up the material way to the limestone slope, and is split into two currents at this point to ventilate workings on either side of the mine. The two splits come together again in the airway to the ventilation raise, thence through an overcast on the ore slope into the return airway paralleling the ore slope. Blower fans discharging 2,800 c.f.m. of air through 12-in. flexible tubing are used in each mining level to maintain ventilation between the last crosscut and the face.

A certified gas inspector makes a complete examination of all working places in the mine before each shift goes on. This is necessary because feeders of methane gas seep into the mine through joint planes in the limestone bed.

All compressed air for use in the limestone mine and the two ore mines of the Muscoda division is supplied from three electrically driven compressors situated on the surface (Fig. 8). One compressor at No. 5 engine house has a capacity of 5,250 cu.ft. of free air per minute. This compressor is equipped with a five-step automatic volume control, and delivers air through a 12-in. line into the limestone mine. The other two compressors, of 4,000-cu.ft. capacity, are at the No. 4 ore mine engine house. They are connected to the 12-in. air line by an 8-in. line.

The ore slope and limestone slope



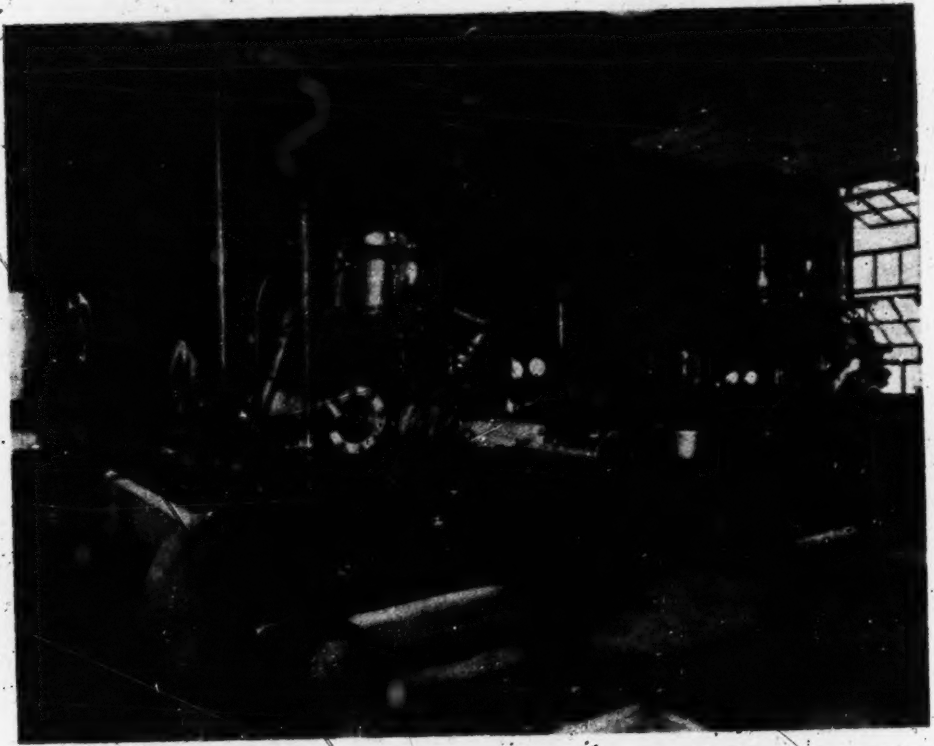
THE SURFACE HOIST serving Muscoda No. 5 ore slope has a single 10 x 13-ft. drum and is driven by an 1800-hp. motor through single-reduction gears. It develops a hoisting speed of 2000 ft. per minute

FAN HOUSE and air duct near the portal of No. 5 ore slope. The fan is an 8x3½-ft. double-inlet exhaust unit of 125,000 c.f.m. capacity and is driven by a 125-hp. motor

are illuminated with 200-watt, 220-volt, alternating-current lamps, suspended from brackets placed at intervals of 100 ft. A floodlight at the top of the man-and-material way furnishes its illumination. In the mining levels, electric lights are connected to the 250-volt, direct-current mechanical-loader circuit.

Mine-type telephones are located in each mining level and are connected to vital points both on surface and underground. When hoisting or lowering men, the skip tender communicates by telephone with the hoisting engineer before the regular hoisting or lowering signals are given.

The single-track surface tipple is of steel construction and has a flat-bottomed pocket of 125 tons' capacity. This pocket is lined with rails to take up the shock of the stone falling when the skip dumps. The material falling into the pocket forms its own hopper. Stone is fed from the pocket by a chain feeder, into a 40x48-in. all-steel primary jaw crusher set to produce a 7-in. product (Fig. 10). The product from the primary crusher is discharged to a 36-in. inclined belt conveyor. A chain drag decreases the impact of the stone as it falls on the conveyor belt. A magnetic head pulley 30 in. in diameter removes tramp iron before the conveyor discharges to a 4 ft. by 8 ft. 6-in. vibrating scalping screen, which has 2-in. square openings.



THIS AIR COMPRESSOR, of 5250 cu. ft. capacity, is equipped with five-step automatic volume control and delivers air into the limestone line through a 12-in. line

Stone which passes over the scalping screen is discharged by chute directly into railroad cars on a siding, ready for shipment to the company's open-hearth plant. The flow of stone in the chute is controlled by an air-operated gate, allowing the spotting of cars without delay to the plant. Undersize stone from the scalping screen goes by gravity to a 5½-ft. cone crusher set at 1¼-in. opening. The product from this crusher is delivered by chute to a 24-in. inclined belt conveyor, which leads to the top of the washing plant. This conveyor discharges to a 4 ft. by 8 ft. 6-in. double-deck vibrating and washing screen with 1¼-in. and ¾-in. openings, respectively, on the top and bottom deck. The three sizes of stone produced are next fed to a similar screen with ¼-in. and 0.063-in. openings. Pressure water sprays are used on both screens, thoroughly washing the stone and removing the fines. Stone from the two screens is discharged into railroad cars for shipment to the company's lime-burning plant. A flap gate controls the flow of stone through two chutes, so that loaded and empty cars can be handled without delay to the plant.

The fine material passing through the screen is discharged into a conical steel sump tank with all wash water. A 4-in. sand pump handles it from here to a 90,000-gal. conical steel settling tank 500 ft. distant. The tailings from this tank flow into a waste pond. The elevation of the tank allows the clear water overflow to return by gravity to the washing system. Washer plant and car drippage is collected on a concrete drip pad and is automatically pumped back into the settling tank and water recovery system.

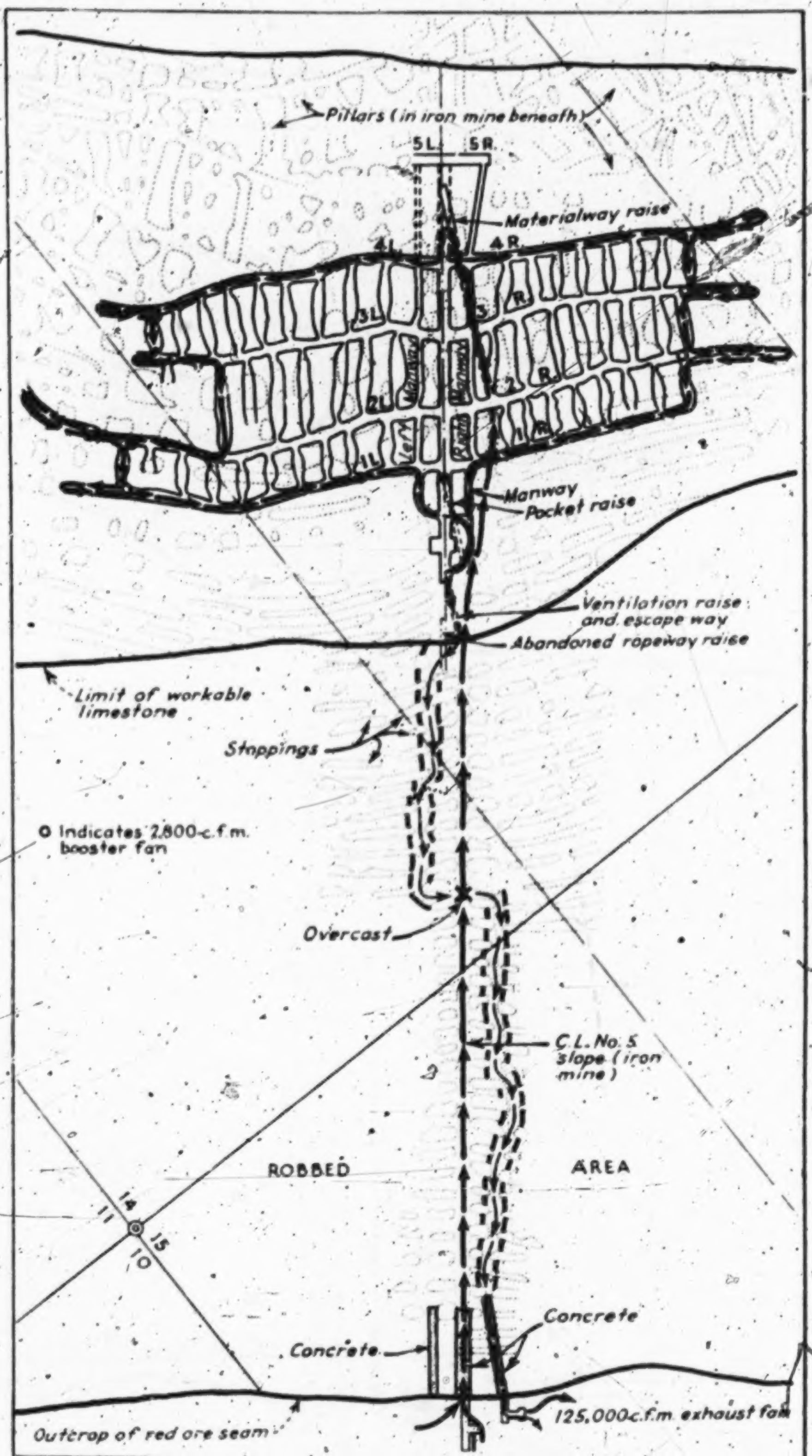
The plant is of steel construction throughout. Crusher foundations are of concrete. The inclosed parts of the plant have copper-bearing, corrugated metal siding and roofing.

An automatic-sequence starting and stopping system is used for all plant motors, which are controlled from a main switchboard in the control room. Local pushbutton switches also are used. Should a motor overheat, it actuates a thermal relay and stops all plant machinery in sequence.

The main surface hoist has a single drum keyed to the shaft, the drum being 10 ft. in diameter with a 13-ft. face. It is driven by an 1,800-hp., 60-cycle, 2,300-volt, alternating-current motor, operating at 360 r.p.m.

Table III—Miscellaneous Operating Statistics First Eight Months of 1937

Average number of men per shift	75
Per cent of white employees	80
Per cent of colored employees	20
Tons of stone per man per eight-hour shift (producing labor)	21.2
Tons of stone per man per eight-hour shift (entire mine crew)	8.2
Tons of stone per pound of explosive	1.2
Kilowatt-hours per ton of stone mined for:	
Scraper operations	0.825
Main surface hoist	4.180
Limestone slope hoist	0.740
Crushing, screening and washing	1.380
Pumping	1.210
Ventilation	3.050


Pillars (in iron mine beneath)
5L
5R
Materialway raise
4L
4R
3L
3R
2L
2R
1L
1R
Manway
Jerry
Manway
Radio
Manway
Pocket raise
Ventilation raise and escape way
Abandoned ropeway raise
Limit of workable limestone
Stoppings
O Indicates 2,800-c.f.m. booster fan
Overcast
C.L. No. 5 slope (iron mine)
ROBBED
AREA
14
11
15
10
Concrete
Concrete
125,000 c.f.m. exhaust fa
Outcrop of red ore seam

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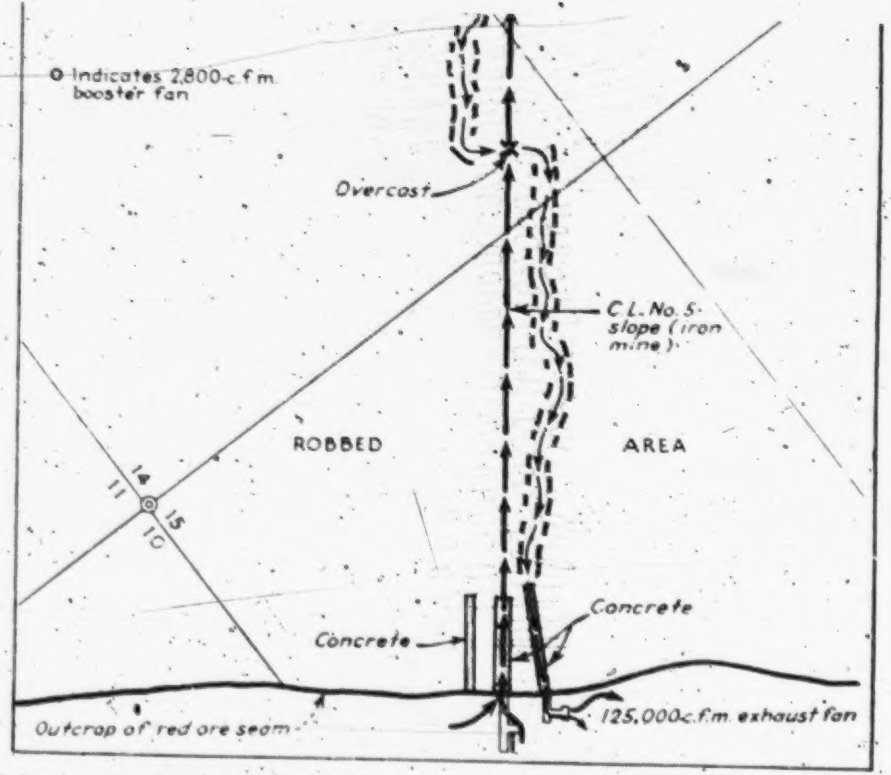
Main surface hoist	4.180
Limestone slope hoist	0.740
Crushing, screening and washing	1.380
Pumping	1.210
Ventilation	3.030

through single-reduction gears to develop a hoisting speed of 2,000 ft. per minute. The hoist is equipped with magnetic-control, dynamic braking system, hydraulic-control post brakes, Lilly hoist controller, track limit switches, and visible skip-position indicator. A miniature tipple placed over the indicating dial is wired to insulated sections of the track in the main tipple. When the skip passes over these sections, it completes the electrical circuit and a light shows on the miniature the exact position of the skip while dumping. The hoist is located to one side and at right angles to the slope center line. The hoisting rope is of 6x21 1¼ in. lang-lay construction. It runs from the hoist to a 10-ft. diameter turn sheave at ground level, and thence to a 10-ft. diameter head sheave at the top of the surface tipple.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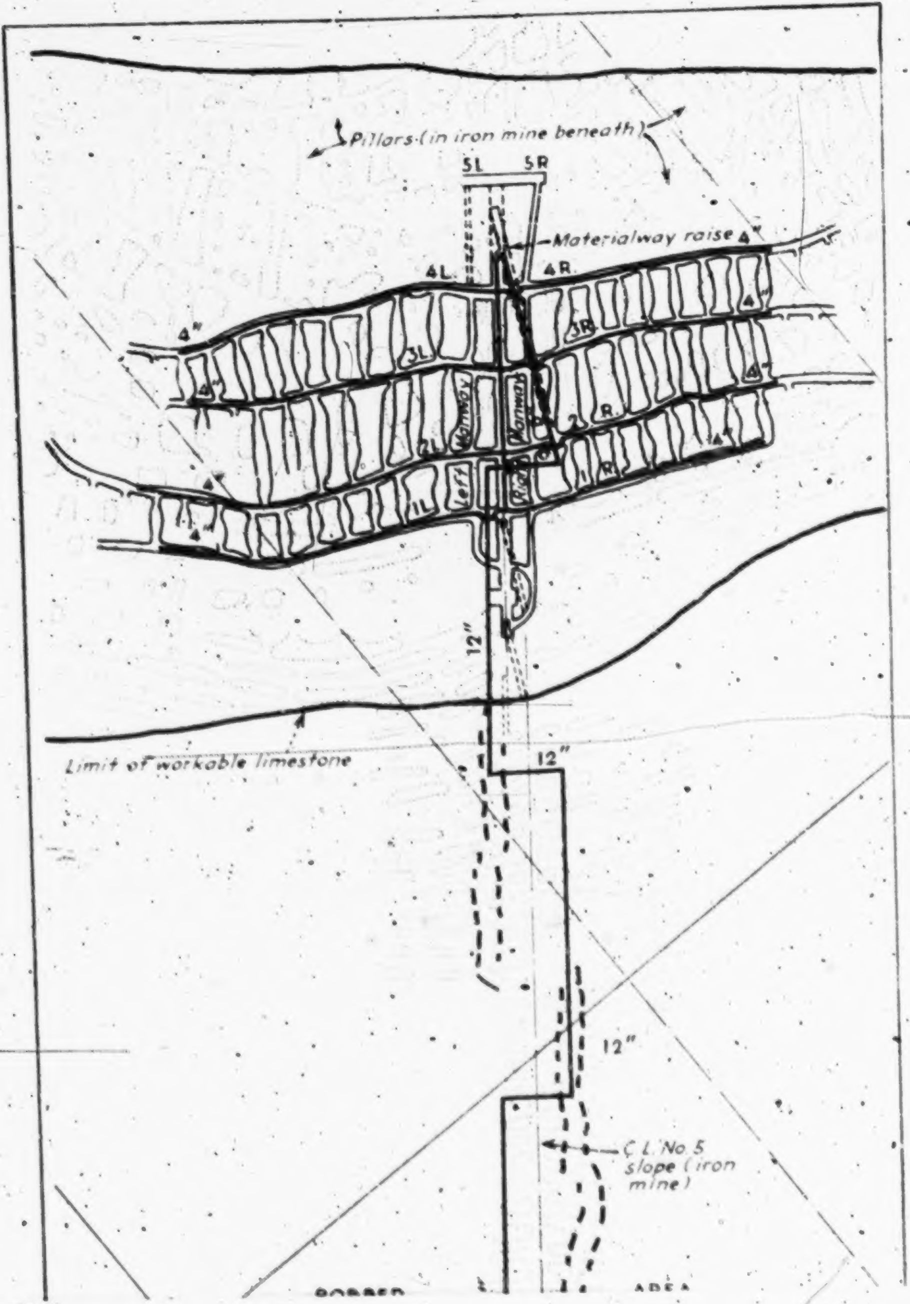
Overcast
C.L. No. 5 slope (iron mine)
ROBBED
AREA
14
11
15
10
Concrete
Concrete
125,000 c.f.m. exhaust fan
Outcrop of red ore seam

Fig. 7 . . . **VENTILATION of the limestone mine, Muscoda No. 5, is accomplished with a 125,000-c.f.m. exhaust fan, 20 per cent of this capacity being required for the limestone workings and the remainder for two adjoining ore mines. Blower fans and flexible tubing also are used on each mining level**

Power for the operation of the surface hoist, compressors, crushers, and all underground electrical equipment is furnished from a central power house at the Fairfield steel works blast furnaces. It is delivered at 44,000 volts to a 5,000-kva. transformer substation near No. 5 engine house, where the voltage is stepped down to 2,300. Power at this voltage is transmitted into the mine through 600,000-circular mil, three-conductor, armored cable, to the motor-generator station in the ore slope below the limestone mine. This station is equipped with a 300-kva. motor-generator set with automatic controls. Direct current at 250 volts for mechanical loading is supplied


Pillars (in iron mine beneath)
5L
5R
Materialway raise
4"
4L
4R
3L
3R
2L
2R
1L
1R
Left Manway
Right Manway
12"
Limit of workable limestone
12"
12"
C L No 5 slope (iron mine)
ROBBED
AREA

No. 6 cable, connected to the main cable.

Cost per ton of stone mined, crushed, washed, and delivered into railroad cars ready for shipment to the Ensley and Fairfield steel works consists approximately of 70 per cent for labor and 30 per cent for supplies and power. Table III gives a few statistics, averaged for the first eight months of 1937.

All men underground and the surface hoisting and assistant hoisting engineer, crusher men, helpers, and timekeeper are paid on an incentive system of pay, with a guaranteed occupational wage as a base. The producing crew in each mining level is a seven-man crew, consisting of head miner, two drill runners, one scraper-hoist operator, and three section helpers. The day shift only is worked, and an eight-hour turn at the working face is in effect. A standard number of tons per man-hour was established for the producing crews in the mining levels. When the tons per man-hour, loaded by a crew during a pay period, exceeds this standard, the payment of bonus begins. The bonus is distributed to every man in that mining crew on the basis of an equal per cent increase over his basic occupational rate. The amount of bonus is governed by the increase in tonnage over the standard. Head miners and drill runners are paid an additional bonus, which is based on the tons of stone broken per pound of explosive in excess of a predetermined standard.

The incentive earnings of the producing crews differ in each mining level. At the close of each pay period, an average is computed for the entire mine. Service or maintenance men are given a percentage increase over their basic occupational rate, based on this average.

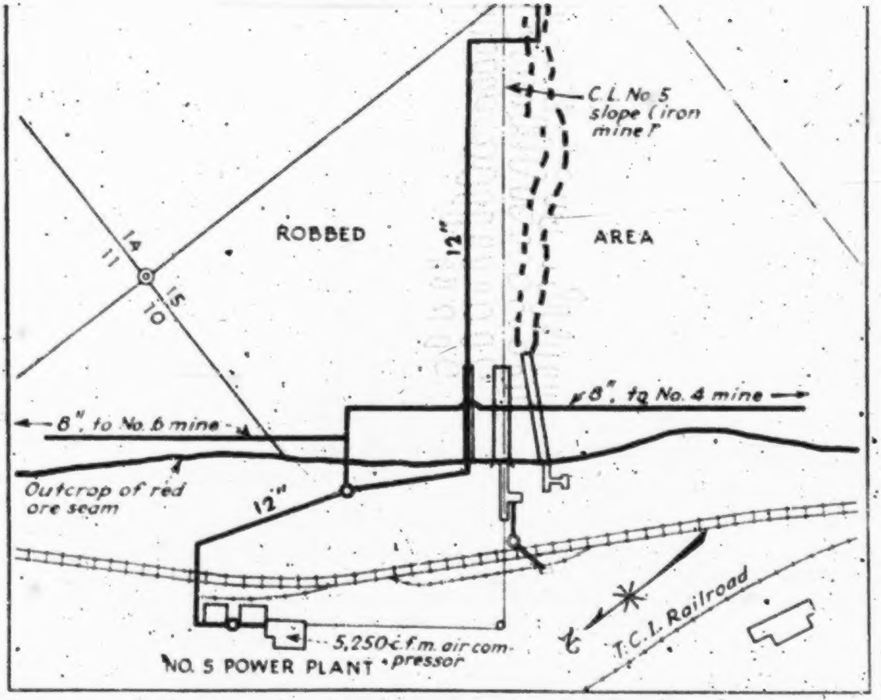


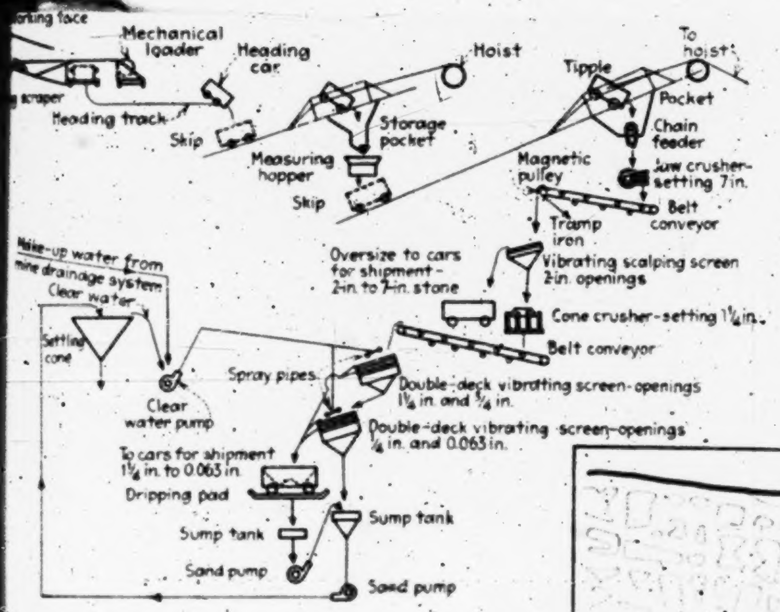
Fig. 8 . . . COMPRESSED AIR for the limestone mine as well as for the two adjoining iron ore mines is supplied from three electrically driven compressors situated on the surface. One of these, of 5,250-cu. ft. capacity, delivers air through a 12-in. line into the limestone workings. The other two are connected to this line by an 8-in. line

through a 1,000,000-circular mil feeder cable. Alternating current at 2,300 volts is supplied for the double-drum limestone slope hoist through a 2/0 cable which is connected to the main 600,000-circular mil cable. Alternating current for the man-and-material hoist is supplied through a

The incentive earnings of the producing crews differ in each mining level. At the close of each pay period, an average is computed for the entire mine. Service or maintenance men are given a percentage increase over their basic occupational rate, based on this average.

The mine superintendent gives a talk to each new man employed, safety being emphasized. The new employee is then placed in a crew under a foreman thoroughly experienced in handling new men, and given special supervision and instructions. Every crew foreman throughout the mine is responsible for the safety of his men. He gives daily instructions on safety and on all phases of the work. The mine foreman and his assistant examine daily all working places to insure safe conditions and practices. The mine inspector and his assistant make complete inspections at regular intervals, reporting to the management exact conditions found at time of inspection.

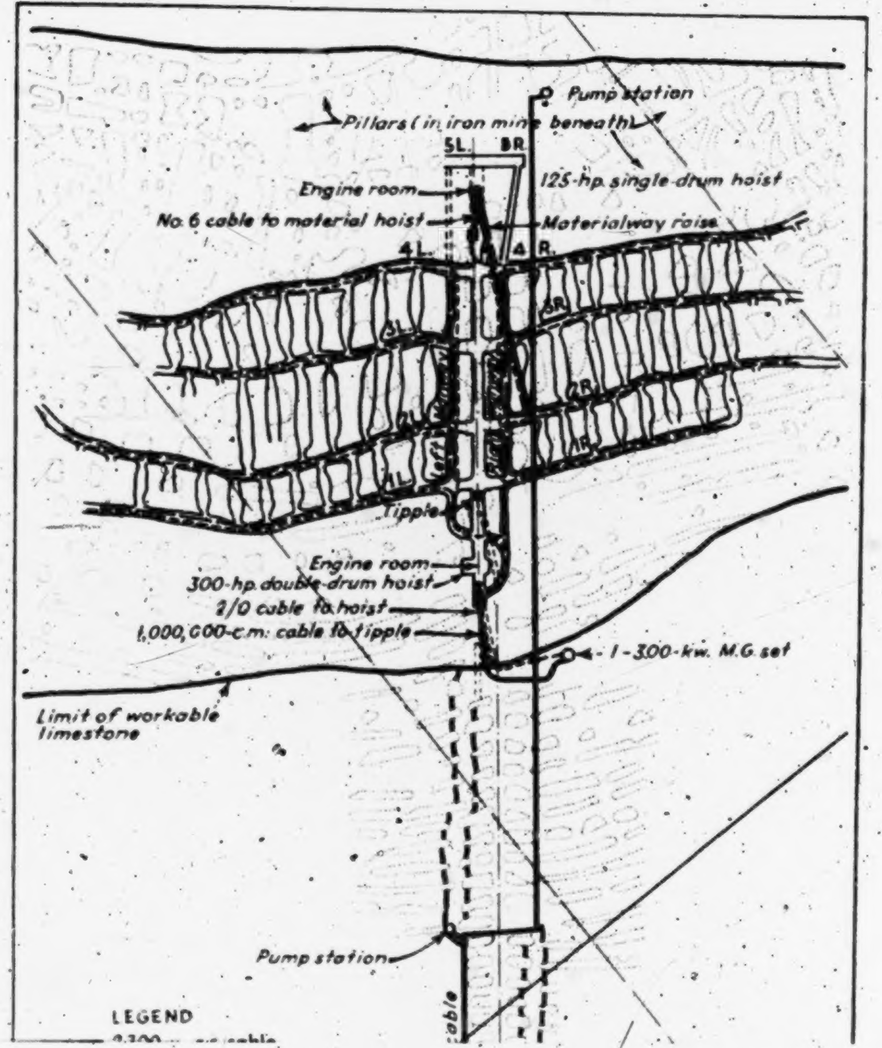
Workmen reported for unsafe practices or violations of safety rules are disciplined by the superintendent, either through reprimand, temporary suspension from work, or discharge. Monthly meetings are held by the superintendent. All foremen, subforemen, and head miners attend. Any accidents that have occurred are



Working face
Mechanical loader
Heading car
Hoist
Tipple
To hoist
scraper
Heading track
Skip
Storage pocket
Pocket
Chain feeder
Measuring hopper
Skip
Magnetic pulley
Jaw crusher-setting 7in.
Belt conveyor
Tramp iron
Make-up water from mine drainage system
Clear water
Oversize to cars for shipment - 2-in. to 7-in. stone
Vibrating scalping screen 2-in. openings
Settling cone
Cone crusher-setting 1¼ in.
Belt conveyor
Spray pipes
Double-deck vibrating screen-openings 1¼ in. and ¼ in.
Clear water pump
Double-deck vibrating screen-openings ¼ in. and 0.063 in.
To cars for shipment 1¼ in. to 0.063 in.
Dripping pad
Sump tank
Sump tank
Sand pump
Sand pump

Fig. 10 . . . LIMESTONE HANDLING and preparation for shipment to the furnaces is shown here, beginning with the point of loading in the stope. The preparation plant is built of steel throughout

Fig. 9 . . . ELECTRIC POWER is distributed through the limestone workings from a 5,000-kva. substation, near the slope mouth, where it is stepped down to 2,300 volts from the 44,000 volts at which it is generated at the Fairfield steel plant. A motor-generator set in the ore slope below the limestone workings provides direct current for scraper use



Pump station
Pillars (in iron mine beneath)
5L
5R
Engine room
125-hp. single-drum hoist
No. 6 cable to material hoist
Materialway raise
4L
4R
3L
3R
2L
2R
1L
1R
Left
Right
Tipple
Engine room
300-hp. double-drum hoist
2/0 cable to hoist
1,000,000-c.m. cable to tipple
1-300-kw. M.G. set
Limit of workable limestone
Pump station
cable
LEGEND
2,300-v. cable

thoroughly discussed, and suggestions are made for improvements in operation and future prevention of accidents. A program of first-aid training is followed, classes being held in the mine office. Those selected for training are paid for their attendance.

In its first year as a participant in the National Safety competition, the No. 5 limestone mine won for the year 1936 the Sentinels of Safety Trophy for the non-metallic group. First place was won with 114,701 accident-free man-hours. On Oct. 21, 1937, there had actually elapsed a period of 928 days since the last occurrence of a lost-time accident.

Use of the services of the local company physician or of the employees' hospital is optional with the employee. Physicians are on call 24 hours each day, and employees desiring their service pay a small monthly fee. This entitles the men and their families to dispensary service and hospitalization at the employees' hospital at a reduced cost. Employees living more than 2½ miles from a company dispensary are required to pay for each visit of the doctor.

In the event of an accident in an

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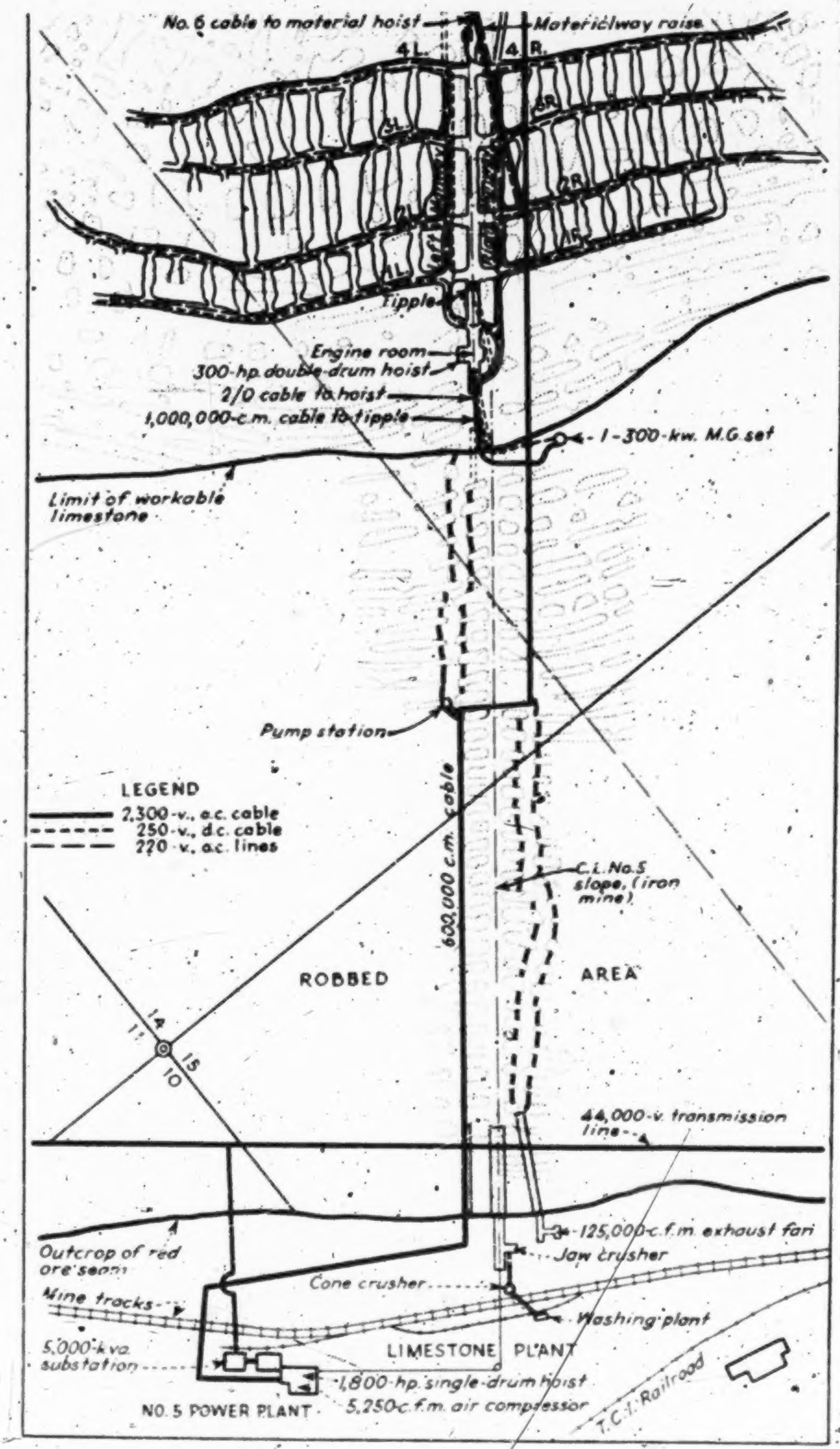
In the event of an accident in or around the mine, the injured party receives first aid by fellow workmen and is then sent to the local dispensary for emergency treatment. When accidents are of a serious nature, the patient is immediately taken by the company ambulance to the employees' hospital at Fairfield.

It was found that, in order to keep the stone of a more uniform analysis and low silica content and to meet more stringent specifications, it was necessary to reduce the height of stone mined from 40 ft. to 28 to 30 ft. This was essential because of chert inclusions in the upper and lower portions of the limestone bed.

Mining operations have been conducted since May 13, 1931, the only serious interruption being the time required for the installation of a new ventilation system.


No. 6 cable to material hoist
Materialway raise
4L.
4R.
3L
3R
2L
2R
1L
1R
Tipple
Engine room
300-hp. double-drum hoist
2/0 cable to hoist
1,000,000-c.m. cable to tipple
1-300-kw. M.G. set
Limit of workable limestone
Pump station
LEGEND
2,300-v., a.c. cable
250-v., d.c. cable
220-v., a.c. lines
600,000 c.m. cable
C.I. No. 5 slope, (iron mine)
ROBBED
AREA
14
11
15
10
44,000-v. transmission line
125,000-c.f.m. exhaust fan
Jaw crusher
Outcrop of red ore seam
Cone crusher
Mine tracks
Washing plant
5,000-k.v.a. substation
LIMESTONE PLANT
1,800-hp. single-drum hoist
5,250-c.f.m. air compressor
NO. 5 POWER PLANT
T.C.I. Railroad

3673

SLOSS EXHIBIT No. 1.

Bessemer, Alabama, April 13th, 1934.

To: Sloss-Sheffield Steel & Iron Company,

Attention: Mr. Marshall, Vice-President.

In Re: Closs Mines division, Bessemer.

Gentlemen:

We, the duly chosen representatives of more than 90 per cent of your employees, who were working for you on the first day of April, 1934, submit the following demands in working agreements and wage scales.

First: That the Company recognize our Union and deal with out chosen representatives, as required by Section 7 and 7(a) of the National Recovery Act.

Second: That the Union be recognized and the check-off system be given the employees, which system included the collection of dues collectively by the Company and paying same to the Financial Secretary. The Financial Secretary to send list of names in duplicate to pay master, and one list to be marked and returned to Financial Secretary of respective local. This list to be sent in for deduction from first pay day of month.

Third: That there be no discrimination or coercion against any employee for his activities and affiliations with the organization.

Fourth: That Union employees heretofore discharged and victimized be immediately reinstated with full seniority rights, and pay for time lost on account of their activities in our organization.

Fifth: That the company desist in attempting to compel by force, duress, threats and bribery to compel employees to join company union, or "Company Representative Plan".

Sixth: That the write-up system be abolished, or when any member of the organization, or employee, having violated any safety rule, and being written up, shall have the right to appeal to the Shops Committee for investigation, of said violation, and if not satisfied with the report of the Shops Committee, shall have the right to appeal to the State's Compliance Board, or, if he deems it necessary, the right to take his appeal to the National Labor Board.

Seventh: That the Company put any employee who has been laid off or discharged, back to work immediately, and give him preference over new men, and any employee, that has just grounds for thinking, or being convinced, that he has been demoted, shall be given a fair hearing, and if proven that he has been demoted shall be put back to his former position.

Eighth: In view of the fact that the Company can force the men to enter and leave the mines at any time stated by the Company, we ask the right to enter on our own time and leave on the Company's time.

Ninth: In view of the fact that the National Recovery Act was passed for the purpose of employing more men and increasing the purchasing power, we ask for a 7 hour day, the maximum of 35 hours per week, time and one-half for all overtime, double time for Sunday, (except where continuous operation is necessary), and double time shall be paid for the following holidays: Fourth of July, Labor Day, Armistice Day and Christmas. And where there is the contract system no man shall be paid less than the minimum daily rate.

Tenth: And where the men work on tonnage or contract basis, that they shall have the right to designate the check weighman, he to be paid by the employees, and the right to ask for inspection of scales at any time, if they deem it necessary.

Eleventh: And in the event of slack time, that time among the various employees be equitably divided.

Twelfth: That all scrips and substitute for money be made negotiable without discount.

Thirteenth: That the employees have the right to take any matter up with the company in regard to the doctor who is not giving satisfaction, and by solicitation and petition, shall submit to the company any fault which they might find with the doctor, as the employees pay the doctor. When an employee receives any defect caused by injury on job the company to reinstate him when he is discharged by company physicians. When company physician turns a man down he has right to go to private physician and if found sound and able to work the company to reinstate said man.

Fourteenth: That periodical physical examination be abolished.

Fifteenth: Any employee required to do work for the Union, shall be granted leave of absence, and said employee to be reinstated with full seniority rights upon his return to work.

Sixteenth: That no employee be required to live in a company house, unless said employees chooses to.

Seventeenth: That no employee be required to trade in the company store.

Eighteenth: That a Union committee shall take up the investigation of any officer or discharged member of the organization, and, in the event that there is no settlement agreed to, they shall appeal it to the Industrial Arbitration Board for their investigation.

Nineteenth: Should any controversy arise which can not be straightened out by a committee designated by the Union, in conference with the Company officials, they shall set up an arbitration board consisting of two (2) men chosen by the Union; two (2) men chosen by the Company; and one man appointed by the Regional or National Labor Board. Each party having the right to appeal the findings of the arbitration Board.

Twentieth: Should any man, living in a company house, be reasonably and justifiably discharged, or should quit the services of the company, that he shall be given a reasonable length of time to vacate said house, and, in the event of a strike or lock out, that employees living in company houses shall have the right to retain same until strike or lock out is adjusted satisfactorily to both sides, and after adjustments and satisfactory agreements have been reached by the company and the employees, the employees shall be required to pay one-half of the rent they are in arrears.

Twenty-first: That the employers shall have the right to discharge any man for a justifiable cause, but the employee shall have the right to appeal his case to the Arbitration Board, and, in the event the Arbitration Board hands the decision in favor of the man, the company shall have the right to take it before the Regional Board, and, if necessary, the National Board.

Twenty-Second: Wage Scale: That the minimum rate of pay shall be, for outside common labor, $4.60 per day.

For inside common labor $5.00 per day. And that the differential existing as of April 1st, 1934, between common labor and skilled labor shall be maintained as of this date.

Respectfully submitted, and in witness whereof, we hereunto subscribe our names as the chosen representatives of more than 90 per cent of your employees.

....

(S.) JOHN HILL,

....

....

....

....

....

Copy.

3677

SLOSS EXHIBIT No. 3.

This Agreement made and entered into by and between the Sloss-Sheffield Steel and Iron Company, hereinafter called the Company, and the Sloss Local Union No. 109, International Union of Mine, Mill and Smelter Workers, hereinafter called the Local.

Witnesseth:

1. That the Company fully recognizes the Local and through its properly accredited officers will meet and confer with the properly accredited officers and committees of the Local upon all grievances and questions which may arise under this agreement.

2. Any controversy concerning hours, wages, and conditions of employment, arising under this agreement between the Company and the Local shall, if possible, be adjusted locally.

3. For the purpose of collective bargaining on matters of mutual interest, including wages, hours, conditions of employment or any grievances affecting its membership, the Local shall select a representative committee who shall be recognized by the accredited representatives of the Company as the proper medium through which the Company and the Local are to negotiate.

4. Each grievance shall be handled as hereinafter provided:

(a) Any member having a grievance shall first discuss it thoroughly with his foreman, and an honest effort made to settle it.

(b) If the individual and the foreman cannot agree on a satisfactory settlement, the member having the grievance shall report same to the grievance committee.

(c) The grievance committee shall make a detailed investigation of the grievance and decide whether or not it shall be handled further with the Company. If the grievance is to be handled further then it must thereafter be handled as follows:

(d) The superintendent of the department in which the grievance arose shall be notified and the grievance shall be thoroughly discussed with him and every effort made to settle same.

(e) If a settlement with the superintendent cannot be made, the grievance shall then be taken up and thoroughly discussed with the Manager or General Manager of the Company and an effort made to reach an amicable adjustment.

5. Until all grievances have been handled exactly in accordance with this agreement there shall be no suspension of work by strike or lockout and both parties shall endeavor in every way to reach an amicable adjustment.

6. The Company retains the right to discharge any employee, but upon request by the Local he agrees to show cause for such discharge. If satisfactory cause cannot be shown, the discharged employee shall be reinstated and shall be paid for all time lost at his regular rate of pay.

7. In case of curtailment or other reductions of the number of employees, whatsoever the cause, the Company agrees that the men shall be laid off in rotation in service, the seniors in service to be the last laid off, and the last man laid off to be the first reemployed, in his respective occupation.

8. It is agreed that if for any cause there is a stoppage of production, it shall be mutually agreed between the management and the representative committee of the employees as to the number, of and who shall be permitted to work as are required in connection with the operation of pumps and other equipment, or on such work as is necessary to protect the properties from damage or destruction. It is further agreed that no charges for house rent shall be made during the stoppage of production.

9. Physical examinations shall not be a requirement for employment, and all periodical medical examinations *examinations* shall be abolished.

10. The Physician shall be selected by mutual agreement between the Company and the Local.

11. It is agreed that the employees shall enter the mines on their own *their own* time and come out of the mines on the Company's time.

12. It is agreed that the 'contract system' shall be abolished.

13. Eight (8) hours shall constitute a day's work, not to exceed forty (40) hours per week. Time worked in any day in addition to the regular hours per day shall be paid for at the rate of time and one-half. All Sunday work to be eliminated, insofar as possible, double time shall be paid for all other work on Sundays, and for the following holidays: Independence Day, Labor Day, Thanksgiving Day and Christmas Day, regularly employed operations and maintenance men by mutual agreement, to be excepted.

14. Employees called for work on other than his regular shifts, shall receive pay for not less than four (4) hours, and they shall be required to do only such work as emergency demands.

15. The regular semi-monthly pay days now in force shall be changed to weekly, or four (4) times monthly.

16. It is agreed that all employees coming under the jurisdiction of this Local shall have checked off from their wages any monies due the Local for Initiations, Dues, Fines and/or Assessments, the same to be paid monthly to the Financial Secretary of the Local on or before the tenth day of the month following such deductions.

17. There shall be no discriminations of any kind against any member of the Local by Foreman, Superintendents, or any other person in the employ of the Company.

18. Members of the Local shall be granted leave of absence on Local business upon request. Any member who holds office or shall be elected to office in the Local

which requires his absence from the Company's service, shall upon retirement from such office be reinstated in his position with the Company, without loss of seniority.

19. Effective July 6th, 1935, wages shall be increased ten per cent (10%) over and above rates now in effect.

20. It is agreed that the officers and committmen of the Local will use their best efforts at all times to see that members are conscientious and honest in all respects, and that they conduct themselves in such manner as to clearly indicate that they have not only the interests of their fellow employees in mind, but also the interests of the employer as well, because for employer and employee success it is necessary that there be the fullest cooperation between employer and employee at all times.

21. It is further agreed that this agreement supersedes any and all other agreements that have been signed mutually by each party herein named, and shall terminate one year from date of signing, and is subject to change to conform to or with any National labor legislation passed during the life of this agreement.

In Witness Whereof, the parties hereto have executed this agreement on the ...... day of ...., 1935.

SLOSS-SHEFFIELD STEEL &
IRON COMPANY,
By ....
....
....

SLOSS LOCAL UNION No. 109,
I. U. M. M. & S. W.,
By ....
....
....
....
....

3681 SLOSS EXHIBIT No. 4.

Sloss-Sheffield Steel & Iron Company

Birmingham, Ala., August 4, 1935.

To: Mr. A. E. Horn, President, District #5,
Mr. John Hill, Representative of Sloss Ore Employees,
Mr. W. A. O'Neal, Representative of Sloss Ore Employees,
Mr. Sam Knox, Representative of Sloss Ore Employees.

Gentlemen:

Confirming statements made to you in conference with Mr. A. F. Harper and Mr. Osborne on August 3rd, 1935, relative to the notice given to you and posted at Sloss Mine on July 6th, 1935. This notice reads as follows:

"The present hourly tonnage and yardage rates and working conditions will be continued in effect until further notice.

(Signed) A. F. HARPER,
Superintendent."

Hours and rates of pay paid on this date for all classes of work will be continued in effect until further notice.

Working conditions includes the letter of understanding under date of July 7th, 1934, written by the Sloss Company to Mr. C. L. Richardson, Representative of Secretary of Labor. All provisions of this understanding will be continued in effect until such time as this arrangement is no longer practicable.

Yours very truly,

....

General Manager.

3682

SLOSS EXHIBIT No. 5.

District 5 International Union of Mine, Mill and Smelter Workers

Affiliated with A. F. of L.

Offices: 1726½ Third Avenue

Bessemer, Alabama

May 5, 1936.

Mr. Ben Davis,
General Manager,
Sloss Sheffield Steel & Iron Company,
Birmingham, Alabama.

Dear Sir:

Relative to the policy of the Sloss Sheffield Steel & Iron Company with reference to the employees in the Red Ore Division as set forth in your letter of August 4th, 1935, and now in effect, we respectfully request a conference at your earliest possible convenience for the purpose of working out changes in this policy that will be mutually satisfactory to the company and the employees.

Awaiting your reply, I am,

Very truly yours,
(S.) A. E. HORN,
(A. E. Horn)
President.

AEH:P.

cc to: U. S. Department of Labor,
State Department of Labor.

3683

SLOSS EXHIBIT No. 6.

May 8, 1936.

Mr. A. E. Horn, President,
International Union of Mine, Mill and Smelter Workers,
District No. 5,
Bessemer, Ala.

Dear Sir:

In reply to your letter of May 5th, 1936, requesting a conference with the management of the Sloss Company for the purpose of discussing and changing the present working policy relations now in effect at our ore mines.

I would be glad to discuss these matters with you personally at any time. However, in keeping within the present understanding with our employees, I feel any changes desired should be taken up by the employees' representatives with the plant superintendents and may be finally decided by them to the mutual satisfaction of all concerned.

Yours very truly,

....

Vice-President & Gen. Mgr.

bd/h.

SLOSS EXHIBIT No. 7.

District 5 International Union of Mine, Mill and Smelter Workers.

Affiliated with A. F. of L.

Offices: 1726½ Third Avenue

Phone 380

Officers:
A. E. Horn, President
Frank Allen, Vice President
C. L. Pegues, Secy-Treas.

Executive Board:
M. C. Anderson, Alabama
M. Payne, Tennessee
A. J. Watkins, North Carolina.
V. D. Jones, International Executive Board member, Bessemer, Ala.

Bessemer, Alabama, May 26, 1936.

Mr. A. F. Harper, Supt.,
Sloss Mines Division,
Sloss-Sheffield Steel & Iron Co.,
Bessemer, Alabama.

Dear Sir:

On June 24*, 1936, the agreement between your employees, members of the International Union of Mine, Mill and Smelter Workers and the company will expire.

In order that unnecessary delay or closing down of the mines, with its resultant ill-feelings, hardships and expense be avoided we respectfully request that negotiations between representatives of your employees and their company on the requests enclosed with this letter be entered into as soon as convenient to the company.

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*Error in date—should be July 7th.

Your employees are convinced that due to the understanding made possible by the contract now drawing to a close both the employer and employee have benefitted, especially so in this. Your employees under the contract have had at their command a representative to present their side in all major and minor controversies with the company, thereby eliminating all possibility of misunderstanding and ill-feeling between the employee and his immediate supervisor.

Further, in presenting the requests listed in a separate letter enclosed with this communication we desire to state that they have only been arrived at after long and painstaking deliberations, excessive and exorbitant demands have been left out by the committee of your employees; duly elected by their fellow-workers to form these requests.

Your employees are well aware that during the past five years the roads travelled by our company have been hard. We also know our corporation is an inanimate being, created by law, without a soul, incapable of suffering the privations of live, or having a wife and children to share their sufferings, which has been the bitter experience of your employees.

As employees, we feel that we should and are willing to share increasingly our responsibilities. As partners in the business, and we feel that we are, we know that unless our company prospers, the employee can't. If costs are excessive and there are no orders, mines and mills are idle. Knowing these things in the past we have made no demands for increased wages or changes in working hours of our company. We now feel conditions are better, earnings are increasing, dividends are slowly but surely mounting. In substantiation of these statements we quote no less and authority than our President, who recently said in one of his radio talks, "We are now definitely on our road to better times". Prices have increased in the bare necessities of life as well as steel and iron and coal. Our dollars will procure less and less as business improves. To meet this increase in the cost of living we are asking for a new contract, granting the following requests. I am

Sincerely yours,
(Signed) A. E. HORN,
(A. E. Horn)
President District #5, International Union of Mine, Mill and Smelter Workers.

AEH/bac.

Working Agreement Between the Sloss-Sheffield Steel and Iron Company and Their Employees, Members of the International Union of Mine, Mill and Smelter Workers.

This Agreement made and entered into this .... day of ...., 1936, by and between the Sloss-Sheffield Steel and Iron Company of Jefferson County, in the State of Alabama, hereinafter called the Company, and the Employees of the Sloss-Sheffield Steel & Iron Company, members of Local Unions No. 109 employed at the Red Ore Mines of the Sloss-Sheffield Steel & Iron Company, located in Jefferson County, in the State of Alabama, hereinafter called the Employees.

Witnesseth: That

Your employees, members of Sloss Local No. 109, have chosen the undersigned officers or members of the International Union of Mine, Mill and Smelter Workers, District Number Five, to represent them in collective bargaining with the Company, and,

Whereas, the said Sloss-Sheffield Steel & Iron Company Local No. 10[illegible] through their President and other representatives thereof and the International Union of Mine, Mill and Smelter Workers through its President and other International Officers and District 5, International Union of Mine, Mill and Smelter Workers through its President and other District Officers and representatives being recognized as parties to this Agreement to the extent that they or said representatives or either of them shall now or hereafter represent the Employees of the Company at said mines.

Now, therefore, This said Agreement, entered into as of date hereinafter stated, between the Company and said representatives and other parties referred to hereinabove for and on account of the Employees at said Mines (not excepted from the operation hereof) who have chosen or who may hereafter choose said representatives or parties or any of them for the purpose of collective bargaining with the Company, or who may ratify their action hereunder, which have been or shall be conclusively determined for the purpose of this Agreement by the execution of assignment of dues under other sections hereof.

Witnesseth, That the parties hereto mutually agree to and with each other as follows: That the Company has entered into this Agreement with the understanding that all similar agreements relating to wages, working conditions and hours throughout the Alabama field shall be on a uniform basis, subject only to such differences as may be required by conditions peculiar to different mines, and it is understood and agreed that if the International Union of Mine, Mill and Smelter Workers through their representatives, negotiate an agreement relating to wages, working conditions and hours with any other company on a basis more favorable than the basis of this Agreement, this Agreement shall then be modified so that the Company signatory hereto will receive like benefits.

Representation.

The employees not now represented by said representatives may by written notice to the Company authorize said representatives to represent them in negotiations with representatives of the Company as to all matters arising under this contract.

Check Off.

Employees shall have the right upon written assignment by the Local, to have dues not exceeding an amount predetermined by the Local in lawful and regular session checked off the wages of such Employees. The amount shall be remitted to the person provided in the assignment, on or immediately following the date of the regular payday.

No assessments or dues, other than provided in this section shall be checked off for the account of the Sloss-Sheffield Steel & Iron Company Local 109, except upon authorization by the Executive Board of said Local, except funeral and sick benefits may be checked off along with each months dues.

Initiation fees (not exceeding $10.00 for any one man, and in sums not to exceed $2.00 per man in any pay period), where proper written authorization has been made to the Company by the Employee, shall be deducted by the Company and remitted to The Financial Secretary of Sloss Local No. 109.

Maximum Hours.

An eight hour day and five day week, (40 hours per week) shall prevail, exclusive of the thirty minute lunch period, with option to run through without suspension, if agreed to between the Company and the Mine Committee.

The eight hour day means eight hours in or about the mines, at the usual working places for all classes of work, (other than those excepted from this Agreement), exclusive of the lunch period, whether they be paid by the day or paid by tonnage, except in cases of accident, which temporarily necessitates longer hours for those Employees required on account thereof, and also except those whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mines. The following Employees are excepted from the foregoing provisions as to maximum hours of work: All Employees engaged in handling transportation of ore and men shall work additional time necessary to handle the mantrips or ore in transit, and shall be paid the regularly hourly rate. A maximum of fifteen minutes after the quitting time of loaders shall be allowed for the handling of ore in transit. Overtime work shall be done to take care of accidents and to do other repair work necessary so that the machinery may operate on the following shifts; and also to do any emergency work to protect property and make the main haulageway safe. In doing this necessary emergency work employees are to receive time and one-half for all time worked in excess of eight hours in any one twenty-four hour period extending from twelve midnight to twelve midnight, with the exception as stated above, where man-trips and ore in transit is being handled.

For all work performed by Employees on Independence Day, Labor Day, Thanksgiving Day and Christmas Day, double the regular rates of pay shall be received, with the exception that necessary continuous occupational jobs, such as pumpers, will be paid in the usual manner.

The usual lunch period, as hereinbefore observed unless changed by mutual agreement is to be given.

Day wage men going into the mines in the morning shall be entitled to three hours pay whether or not the mines work three full hours but after the first three hours the men shall be paid for every hour thereafter, by the hour, for the hours worked or fractional part thereof.

Mine Committee.

A Mine Committee of three Employees shall be elected, each member of which shall be eligible to serve as a committee member only so long as he is employed at the mines, to represent the Employees who are members of the Local Union, the Committee to be properly certified to the Company by their Local representatives. No meeting shall be held during working hours except by mutual agreement between the Mine Officials and the Mine Committee, nor shall members of a Mine Committee leave their working places except when called in by the Mine Officials, who shall, on request, permit the committee to look after the interest of the employees represented by them involved in any dispute.

Discharge Cases.

In case of controversy regarding the justice of employer in discharging or suspending an employee, the case will be disposed of according to the manner and method as set out under the heading "Settlement of Disputes". Should it be decided that an injustice has been done to the employee the company will be obligated to re-instate and compensate the employee at the rate of pay based on the average earnings of his five immediately preceding full work days, prior to such discharge or suspension. Further, that such cases shall be taken up within three days from the date of discharge or suspension and disposed of as soon thereafter as possible and in any event no more than thirty days. The Company may employ the complainant during the time the hearing is in progress.

Settlement of Disputes.

In cases of controversy arising between the Company or Employees as to the meaning or application of any of the provisions or terms of this Agreement, or as to matters not specifically mentioned in the Agreement, it is agreed that there shall be no suspension of work either by strike or lockout for a period of at least thirty days, during which time an honest and lawful effort will be made to settle such difficulty by the following procedure:

1. The complaining party taking his grievance up with the Local's pit committee who in turn in company with the complaining party presents it to the Mine Foreman.

2. The Superintendent of the Mines and the Mine Committee.

3. Through the Superintendent of the Mines and the representatives of District No. 5, I. U. M. M. & S. W., who have signed this Agreement or their representatives.

4. Through the Management or their representatives who have signed this Agreement and the representatives of District No. 5 of the I. U. M. M. & S. W., who have signed this Agreement on behalf of the Employees.

5. In case an agreement is not reached by negotiations through one of the four methods set out above, the controversy shall be arbitrated by a board of four members, two of whom shall be designated by the signers of this Agreement, representing the Management, and two designated by the signers representing District No. 5, I. U. M. M. & S. W.

In case of a tie in this board the four shall select a fifth member, who after having all the facts placed before him, shall cast the deciding vote. In the event of failure to agree upon a fifth member, the President of District No. 5, or his representative and the President of the Company or his representative shall agree upon a fifth member within five days. In the event they fail in this, the Commissioner of the Department of Labor for Alabama, shall select the fifth member. All expenses incident to the services of the fifth member shall be paid equally by the Company and District No. 5. The decision of this arbitration board shall become a part of this Agreement continuing as such until its expiration.

Miscellaneous.

Payments shall be made semi-monthly in lawful money or par check at or near the location in which the employee works. The Company shall keep the working places as dry as possible; when wet places are driven the amount of pay incidental to furnishing proper protection and inconvenience shall be agreed upon between the Mine Boss and the Employee affected. When an employee working on piece work is required by a Mine Official to leave his work at the face to perform other work he shall be paid at the rate for a Miner on Company Work.

When an Employee has no work at the face and is given other labor he shall be paid at the scale for such labor.

A helper is an employee who works under the direction of a skilled man.

In the event of strikes or lockouts, Employees request that they be permitted to place watchmen about the mines or workings in equal number with the regularly employed company watchmen, this to forestall, if possible, any damage or vandalism to company property as has been the case in past difficulties, in an effort to discredit your employees and their organization. In the event this is granted and the mines do not attempt to operate there will be no picketing on the part of your employees, while on the contrary, your property will be guarded with their lives.

In the case of shut-downs or the suspension of operations for a period of two weeks or more due to causes over which your employees have no power, house rent shall be reduced two-thirds the regular charged amount to the employees.

In the event of shut-down in which the Company supplies its employees with provisions and supplies at their company sores, on resumption of operations, the employees wages shall be cut in payment for these supplies in the following manner:

Up to and including the first 40 hours, current debits; after first 40 hours-fifteen percent of earnings applies to back indebtedness; in the event the employee desires to make a more substantial payment out of current earnings than at the above rate, he may do so by voluntary making a written assignment to the Company.

At least once each month employees are to be given a statement setting out the amounts paid and amounts due on back indebtedness.

The Company shall grant a general increase in wages of 10% to all Employees, plus equitable adjustments, in specific instances to be taken up at the time of negotiations on this Agreement.

The work day shall consist of eight hours in any twenty-four hour period, the time to run from midnight to midnight.

Time and one-half is to be paid for all overtime in excess of eight hours in any twenty-four hour period and double time for Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

In case of controversy neither party to the agreement is to cause the cessation of operations for a period of at least thirty days, during which time negotiations shall be extended, with the exception that in the event either party deliberately and knowingly violates this Agreement, the aggrieved party may consider this contract terminated.

Any and all monies due from Employees to their Locals is to be deducted from the first half of the months earnings, with the exception that in case the employee only worked two full days the deduction is to be made from the second half earnings.

This Agreement is to terminate on the .... day of ...., 1937.

For and in consideration of the above Agreement your Employees, members of Local Unions Nos. 123, 153 and 157 of the International Union of Mine, Mill and Smelter Workers bind themselves to in every way consistent with sound judgment, through their Local Unions and Officials, to faithfully carry out this Agreement.

In witness whereof, said parties have hereunto set their hands and seals this .... day of ...., 1936.

SLOSS LOCAL UNION No. 109,
I. U. M. M. & S. W.,
By ....
....

SLOSS-SHEFFIELD STEEL &
IRON COMPANY,
By ....
....
....

3695 **SLOSS EXHIBIT No. 8.**

Sloss Sheffield Steel & Iron Company

Birmingham, Alabama.

To the Employees of Sloss Red Ore Mine:

1. This is to confirm the understandings reached at conference between representatives of employees of our red ore mine and the management, regarding the position of this company as to its red ore mining operations.

2. We are entirely willing to deal with a committee on matters of collective bargaining as they arise for our red ore mine employees as they shall represent.

3. The employees at our red ore mine have been free to join or not to join any organization they chose without prejudice or discrimination and no employee is required to join any organization in order to retain or obtain a job with Sloss Company.

4. It is understood that the wage scale attached to this letter constitutes the rates to be paid by us for the various

classifications as shown to August 4, 1937, unless changed by mutual agreement between the management and the representatives.

5. Our men are free to select a committee to represent them in adjusting any grievance that may arise between them and the management which the employee himself cannot settle satisfactorily with the Mine Foreman and Superintendent. It is understood that such committee will not take up any grievance until the employee has endeavored to adjust the matter himself with the Mine Foreman and Superintendent.

6. Should the employee and the Mine Superintendent fail to adjust the grievance, the matter will then be taken up by the committee with the Mine Superintendent. Failing to reach an agreement in this event, it will be taken up with the General Superintendent of Ore Mines. If they should fail to agree, the matter shall be submitted to arbitration, two arbitrators to be named by the committee and two to be named by the management of the company and these four shall select a fifth within thirty days. Any expense incurred by the arbitration shall be borne equally by the company and employees.

7. It is understood that the management of the mine and direction of the working forces are vested exclusively in the company, and the duties of the mine committee shall be confined as outlined in Items 5 and 6.

8. It is distinctly understood that the mine committee will not interfere with the operations of the mine to enforce any purely local grievance until the full procedure of settling the dispute has been followed as outlined in Items 5 and 6.

9. Any change in mining methods or installation of equipment that relieves or hinders the mine worker of any of the duties incidental to his regular work and/or increases or decreases his productive capacity shall be recognized and a new piece-work rate established by mutual agreement in accordance with previous earnings of the men employed thereon.

10. Independence Day, Labor Day, Thanksgiving Day and Christmas Day will be observed as holidays, except for necessary maintenance or repair work, and those employees whose occupations require continuous duty.

11. (a) An eight hour day and five days per week employee shall prevail, exclusive of the lunch period. The eight hour day means eight hours of work in the usual working places, exclusive of the lunch period. The Sloss Company shall have the right during the entire period of this understanding to operate the mine one; two or three-hour shifts by different crews of men within each twenty four hour period.

(b) The eight hours per shift will not apply in case of accidents which may temporarily necessitate longer hours for those employees required on account thereof, and also excepting the number of men required to handle man trips, and those required to remain on duty while men are entering or leaving the mine.

12. After company men have gone into the mine in the morning they shall be entitled to two hours' pay, whether or not the mine works two hours, providing the work is not interrupted by labor dispute.

13. When an employee working on piece work is required by mine officials to leave his work at the face to

perform other work, he shall be paid at the rate for a miner on company work.

14. When an employee has no work at the face and is given other labor, he shall be paid at the scale for such labor.

15. A helper, or helpers, are employees who work under the direction of a skilled man.

16. In the event of a shut-down in which the company supplies its employees with provisions and supplies at the company store, on resumption of operations the employees' wages shall be cut in accordance with his ability to pay.

17. Present practices not in conflict with this understanding will be continued.

SLOSS SHEFFIELD STEEL & IRON CO.,
BEN DAVIS.
EMPLOYEES' REPRESENTATIVES,
JOHN HILL,
JESSE GAINES,
W. A. O'NEAL,
W. H. GUNTER,

Dated this 21st day of July, 1936.

Sloss-Sheffield Steel & Iron Company.

Red Ore Mines.

Outside Rates.

Occupation	Hourly Rate	Amount per Shift	Hours per Shift
Truck Driver	$ .38	$3.04	8
Teamster	.35	2.80	8
Engineers—Main Hoist	.58	5.80	10
Dumpers	.375	3.60	8
Tipplemen	.375	3.00	8
Conveyor Men	.375	3.00	8
Weighmen	.50	4.50	9
R. R. Car loaders	.375	3.00	8
Crusher Men	.47	3.76	8
Machinist	.625	5.00	8
Blacksmith	.65	5.20	8
Blacksmith helper	.38	3.04	8
Carpenter	.48	3.84	8
Car Repairmen	.47	3.76	8
Car Repairmen helpers	.42	3.36	8
Drill Sharpener	.555	4.44	8
Compressor Man	.52	4.68	9
Watchman	.36	2.88	8
Laborers	.30	2.40	8

Sloss-Sheffield Steel & Iron Company.

Red Ore Mines.

Inside Rates.

Occupation	Hourly Rate	Amount per Shift	Hours per Shift
Company drillers	$ .57	$4.56	8
Driller helpers	.50	4.00	8
Rockmen	.51	4.08	8
Rockmen helpers	.43	3.44	8
Timbermen	.51	4.08	8

Timbermen helpers	.43	3.44	8
Pipemen	.47	3.76	8
Pipemen helpers	.43	3.44	8

Chainers—contract .0182 and .015 ton, amount per shift based on production.

Company chainers	.46	3.68	8
Company chainers helpers	.435	3.48	8
Engineers—main hoist	.57	4.56	8
Engineers—Auxiliary hoist	.51	4.08	8
Stablemen	.47	3.76	8
Trackmen	.51	4.08	8
Trackmen Helpers	.43	3.44	8
Roller Men	.44	3.52	8
Pumpers	.44	3.52	8
Electric repairmen	.605	4.84	8
Machinist	.605	4.84	8
Miner on company work*	.50	4.00	8

* See item 13 for application.

Sloss-Sheffield Steel & Iron Company.

Red Ore Mines.

Hand Loading Entries 18 Feet or Less in Width.

Normal crew 5 men. Base 35 tons per shift of 8 hrs. @ .58 per ton.

Actual crew to be determined by Mine Foreman to comply with local conditions.

Occupation	Earnings per Hour	Earnings per Shift
Driller	$0.57	$4.56*
Driller Helper	.50	4.00
Muckers	.50	4.00

All excess tonnage above base will be paid for on a pro rata basis at $0.58 per ton.

Credit for yardage to go to driller, or head miner.

Where company trams ore to slope knuck task per loader will be increased on a pro rata basis to compensate haulage crew for this work.

* After expenses are deducted.

Sloss-Sheffield Steel & Iron Company.

Red Ore Mines.

Entry Yardage Rates.

Main Slope 12 feet wide	$16.50 per lin. yd.
Lateral Heading 10 x 18	9.20 per lin. yd.
Upset	7.30 per lin. yd.

Sloss-Sheffield Steel & Iron Company.

Red Ore Mines.

Hand Loading Entries or Stopes over 18' in Width.

Normal crew of 5 men. Base 43 tons per shift of 8 hrs. @ .58 per ton.

Normal crew of 6 men. Base 56 tons per shift of 8 hrs. @ .58 per ton.

Actual crew to be determined by Mine Foreman to comply with local conditions.

Occupation	Hourly Rate	Amount per Shift
Driller	$0.57	$4.56*
Driller Helper	.50	4.00
Muckers	.50	4.00

All excess tonnage above base will be paid for on a pro rata basis of $0.58.

Where company trams ore to slope knuck task per loader will be increased on a pro rata basis to compensate haulage crew for this work.

* After expenses are deducted.

Sloss-Sheffield Steel & Iron Company.

Red Ore Mines.

Drag Loading.

Maximum crew 9 men. Base 130 tons per shift of 8 hrs. @ .455 per ton.

Actual crew to be determined by Mine Foreman to comply with local conditions.

Occupation	Hourly Rate	Amount per Shift
Head Miner	$0.64	$5.12*
Driller	.57	4.56
Driller helper	.50	4.00
Drag engineer	.57	4.56
Haulage engineer	.435	3.48
Muckers	.50	4.00

All excess tonnage above base will be paid for on a pro rata basis of $0.455 per ton.

* After expenses are deducted.

3704

SLOSS EXHIBIT No. 9.

To the Employees of Sloss Red Ore Mine:

1. This is to confirm understandings reached at conference between representatives of employees of our red ore mine and the management, regarding the position of this company as to its red ore mining operations.

2. We are entirely willing to deal with a committee on matters of collective bargaining as they arise for our red ore mine employees as they shall represent.

3. The employees at our red ore mine have been free to join or not to join any organization they chose without prejudice or discrimination and no employee is required to join any organization in order to retain or obtain a job with Sloss Company.

4. It is understood that the wage scale attached to this letter constitutes the rates to be paid by us for the various classifications as shown to Sept. 13, 1938, unless changed by mutual agreement between the management and the representatives.

5. Our men are free to select a committee to represent them in adjusting any grievance that may arise between them and the management which the employee himself cannot settle satisfactorily with the Mine Foreman and Superintendent. It is understood that such committee will not take up any grievance until the employee has endeavored to adjust the matter himself with the Mine Foreman and Superintendent.

6. Should the employee and the Mine Superintendent fail to adjust the grievance, the matter will then be taken up by the committee with the Mine Superintendent. Fail-

ing to reach an agreement in this event, it will be taken up with the General Superintendent of Ore Mines. If they should fail to agree, the matter shall be submitted to arbitration, two arbitrators, to be named by the committee and two to be named by the management of the company and these four shall select a fifth within thirty days. Any expense incurred by the arbitration shall be borne equally by the company and employees.

7. It is understood that the management of the mine and direction of the working forces are vested exclusively in the company, and the duties of the mine committee shall be confined as outlined in Items 5 and 6.

8. It is distinctly understood that the mine committee will not interfere with the operations of the mine to enforce any purely local grievance until the full procedure of settling the dispute has been followed as outlined in Items 5 and 6.

9. Any change in mining methods or installation of equipment that relieves or hinders the mine worker of any of the duties incidental to his regular work and/or increases or decreases his productive capacity shall be recognized and a new piecework rate established by mutual agreement in accordance and previous earnings of the men employed thereon.

10. Independence Day, Labor Day, Thanksgiving Day and Christmas Day will be observed as holidays, except for necessary maintenance or repair work, and those employees whose occupations require continuous duty.

(a) An eight hour day and five days per week per employee shall prevail, exclusive of the lunch period. The eight hour day means eight hours of work in the usual working places, exclusive of the lunch period. The Sloss

Company shall have the right during the entire period of this understanding to operate the mine one, two or three eight-hour shifts by different crews of men within each twenty-four hour period.

(b) The eight hours per shift will not apply in case of accidents which may temporarily necessitate longer hours for those employees required on account thereof, and also excepting the number of men required to handle man trips, and those required to remain on duty while men are entering or leaving the mine.

12. After the company men have gone into the mine in the morning they shall be entitled to two hours' pay, whether or not the mine worked two hours, providing the work is not interrupted by labor disputes.

13. When an employee working on piece work is required by mine officials to leave his work at the face to perform other work, he shall be paid at the rate for a miner on company work.

14. When an employee has no work at the face and is given other labor, he shall be paid at the scale for such labor.

15. A helper, or helpers, are employees who work under the direction of a skilled man.

16. In the event of a shut-down in which the company supplies its employees with provisions and supplies at the company store, on resumption of operations the employees' wages shall be cut in accordance with his ability to pay.

17. Present practices not in conflict with this understanding will be continued.

SLOSS-SHEFFIELD STEEL & IRON CO.,
BEN DAVIS.
EMPLOYEES' REPRESENTATIVES,
JOHN HILL,
W. A. O'NEAL,
JESSE GAINES.

Dated this 13th day of September, 1937.

Red Ore Mines.

Outside Rates.

Occupation	Hourly Rate	Amount per Shift	Hours per Shift
Truck Driver	$ .490	$3.92	8
Teamster	.455	3.64	8
Engineers—Main Hoist	.720	7.20	10
Dumpers	.485	3.88	8
Tipplemen	.485	3.88	8
Conveyor Men	.485	3.88	8
Weighmen	.625	5.62	9
R. R. Car Loaders	.485	3.88	8
Crusher Men	.585	4.68	8
Machinist	.770	6.16	8
Machinist Helper—1st Class	.520	4.16	8
Machinist Helper—2nd Class	.490	3.92	8
Blacksmith	.795	6.36	8
Blacksmith Helper	.490	3.92	8
Carpenter	.60	4.80	8
Carpenter Helpers	.455	3.64	8
Car Repairman	.585	4.68	8
Car Repairman Helpers	.530	4.24	8

Occupation	Hourly Rate	Amount per Shift	Hours per Shift
Drill Sharpener	.690	5.52	8
Compressor Man	.645	5.81	9
Watchman	.465	3.72	8
Laborers	.40	3.20	8
Slate Pickers	.40	3.20	8
Ore Inspector	.53	4.24	8

Note: One and one-half times the above hourly rates will be paid for all time in excess of eight (8) hours per day or forty (40) hours per week, excepting supervisors, foremen and a few occupations, where application of this rule is not practical.

Red Ore Mines.

Inside Rates.

Occupation	Hourly Rate	Amount per Shift	Hours per Shift
Company drillers	$ .705	$5.64	8
Driller helpers	.625	5.00	8
Motormen	.635	5.08	8
Coupler	.550	4.40	8
Rockmen	.635	5.08	8
Rockmen helpers	.545	4.36	8
Track cleaners	.506 Ton	—	—
Timbermen	.635	5.08	8
Timbermen helpers	.545	4.36	8
Pipemen	.585	4.68	8
Pipemen helpers	.545	4.36	8

Chainers-Contract—.022 and .01815 ton, amount per shift based on production.

Company chainers	.575	4.60	8
Company chainer helpers	.550	4.40	8

Engineers—Main hoist	.705	5.99	8½
Engineers—Auxiliary hoist	.635	5.08	8
Stablemen	.585	4.68	8
Rock, Timber and Track Foremen	.705	5.64	8
Trackmen	.635	5.08	8
Trackmen helpers	.545	4.36	8
Roller men	.555	4.44	8
Pumpers	.555	4.44	8
Electric repairmen	.745	5.96	8
Machinist	.745	5.96	8
Miner on company work*	.625	5.00	8

* See items 13 and 14 for application.

Note: One and one-half times the above hourly rates will be paid for all time in excess of eight (8) hours per day or forty (40) hours per week, excepting supervisors, foremen and a few occupations where application of this rule is not practical.

Red Ore Mines.

Entry Yardage Rates.

Main slope, 12 feet wide	$17.80 per lin. yd.
Lateral heading 10 x 18	9.90 per lin. yd.
Upset	7.85 per lin. yd.
Splitting a single stope into a double stope	25.00

Division of Tonnage Rate to Men of Crews.

Hand Loaded Ore.

	Entries or Stopes Over 18 Feet in Width				Entries 18 Feet or Less in Width	
	5 Man Crew		6 Man Crew		5 Man Crew	
Occupation—	Number Men	Rate per Ton	Number Men	Rate per Ton	Number Men	Rate per Ton
Drill Man	1	$.129	1	$.109	1	$.153
Drill Man	–	.112*	–	.112*	–	—
Drill Man Helper	1	.116	1	.098	1	.138
Muckers	3	.351	4	.389	3	.417
Total	5	$.708	6	$.708	5	$.708

* To credit of Day Shift Drill Man for Explosives and Tools.

Drag Loaded Ore.

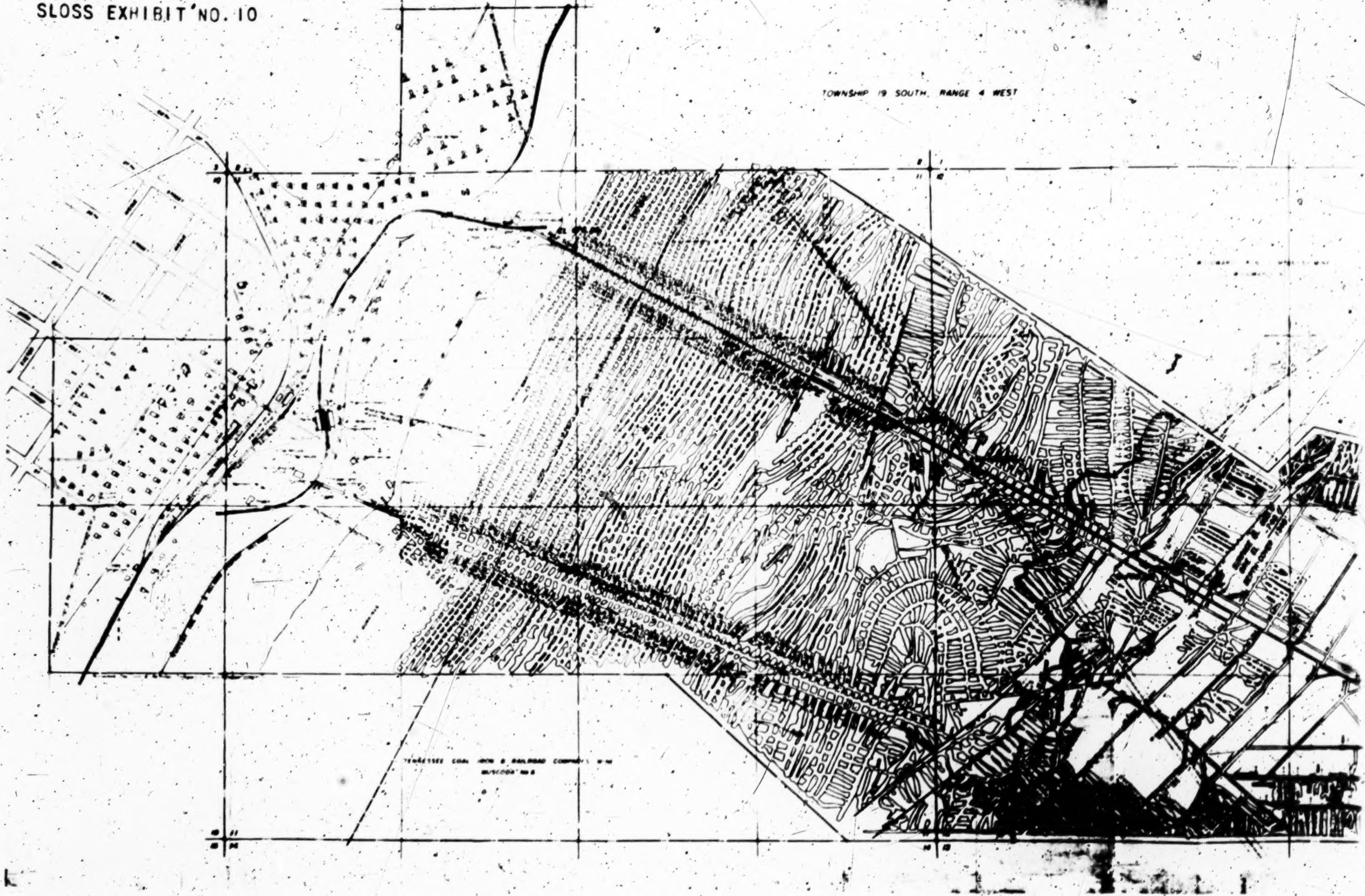
	10 Man Crew		12 Man Crew		13 Man Crew		15 Man Crew	
	(5 Men on Day 5 Men on Night)		(6 Men on Day 6 Men on Night)		(7 Men on Day 6 Men on Night)		(8 Men on Day 7 Men on Night)	
	Number Men	Rate per Ton	Number Men	Rate per Ton	Number Men	Rate per Ton	Number Men	Rate per Ton
Occupation—								
Head Miner	1	$.057	1	$.048	1	$.045	1	$.041
Head Miner	–	.110*	–	.110*	–	.110*	–	.110*
Drag Engineer—Night Shift	1	.046 (1)	1	.039 (2)	–	—	–	—
Drag Engineers—								
(1 Day—1 Night)	–	—	–	—	2	.070	2	.062
Drill Men	2	.093	4	.152	4	.139	4	.121
Drill Men Helpers	2	.081	2	.066	2	.061	2	.053
Muckers	2	.081	2	.066	2	.061	4	.106
Haulage Engineers	2	.071	2	.058	2	.053	2	.046
Total	10	$.539	12	$.539	13	$.539	15	$.539

* To credit of Head Miner for Explosives and Tools.

(1) Pay $.092 on Night Shift Tonnage only—No credit for Day Shift Tonnage.

(2) Pay $.078 on Night Shift Tonnage only—No credit for Day Shift Tonnage.

SLOSS EXHIBIT NO. 10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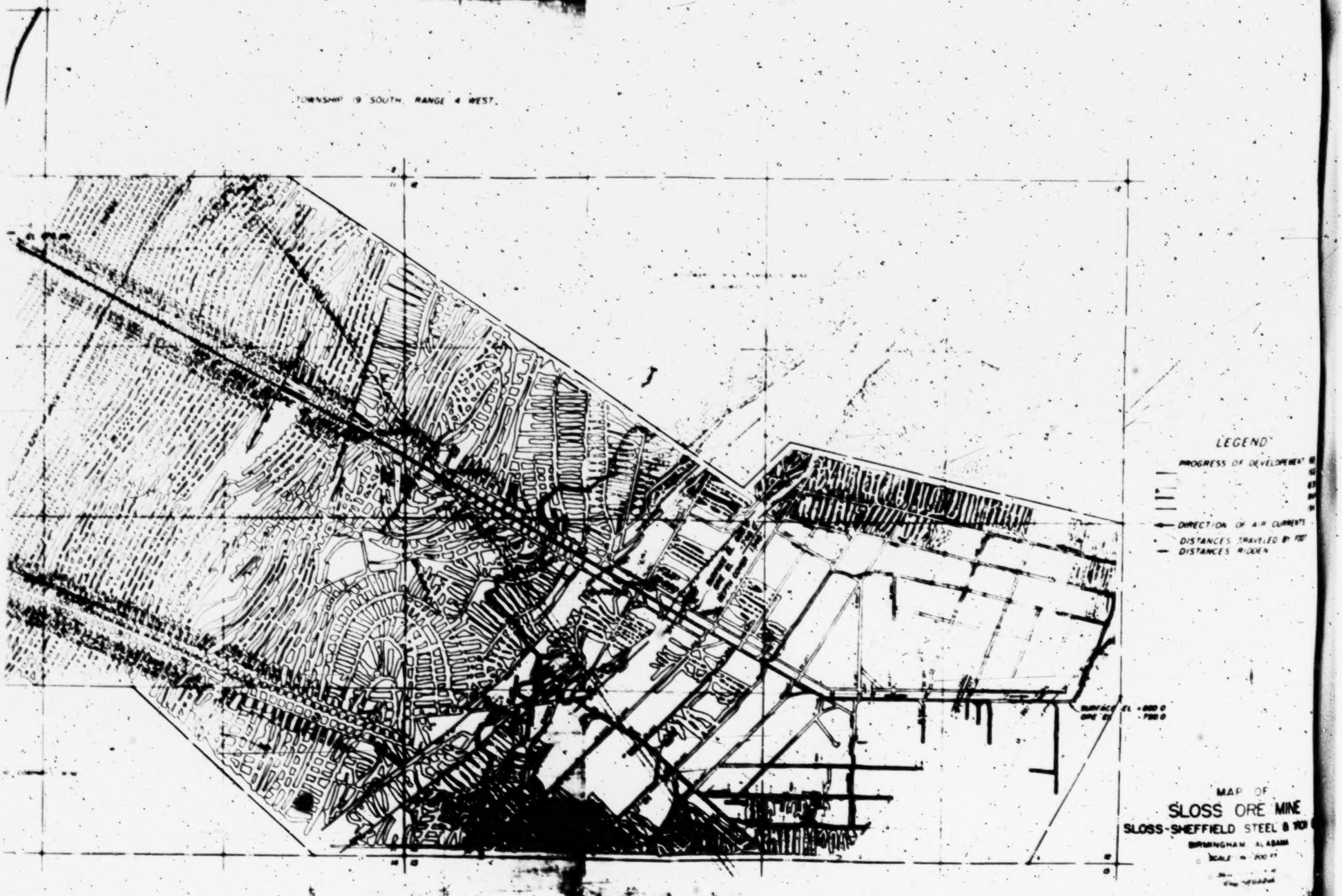
TENNESSEE COAL IRON & RAILROAD COMPANY'S [illegible]
MUSCODA NO. 5


TOWNSHIP 19 SOUTH, RANGE 4 WEST.
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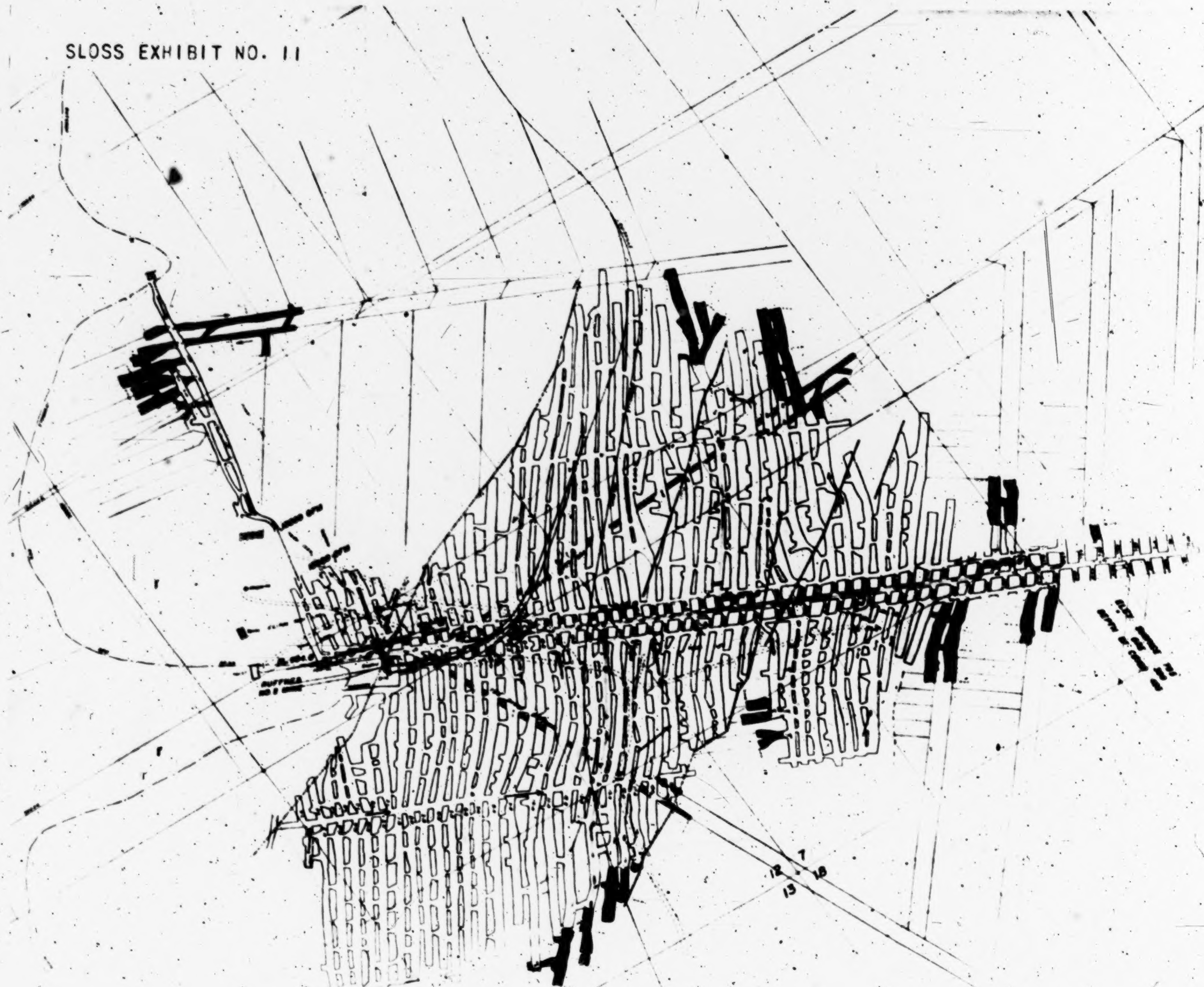
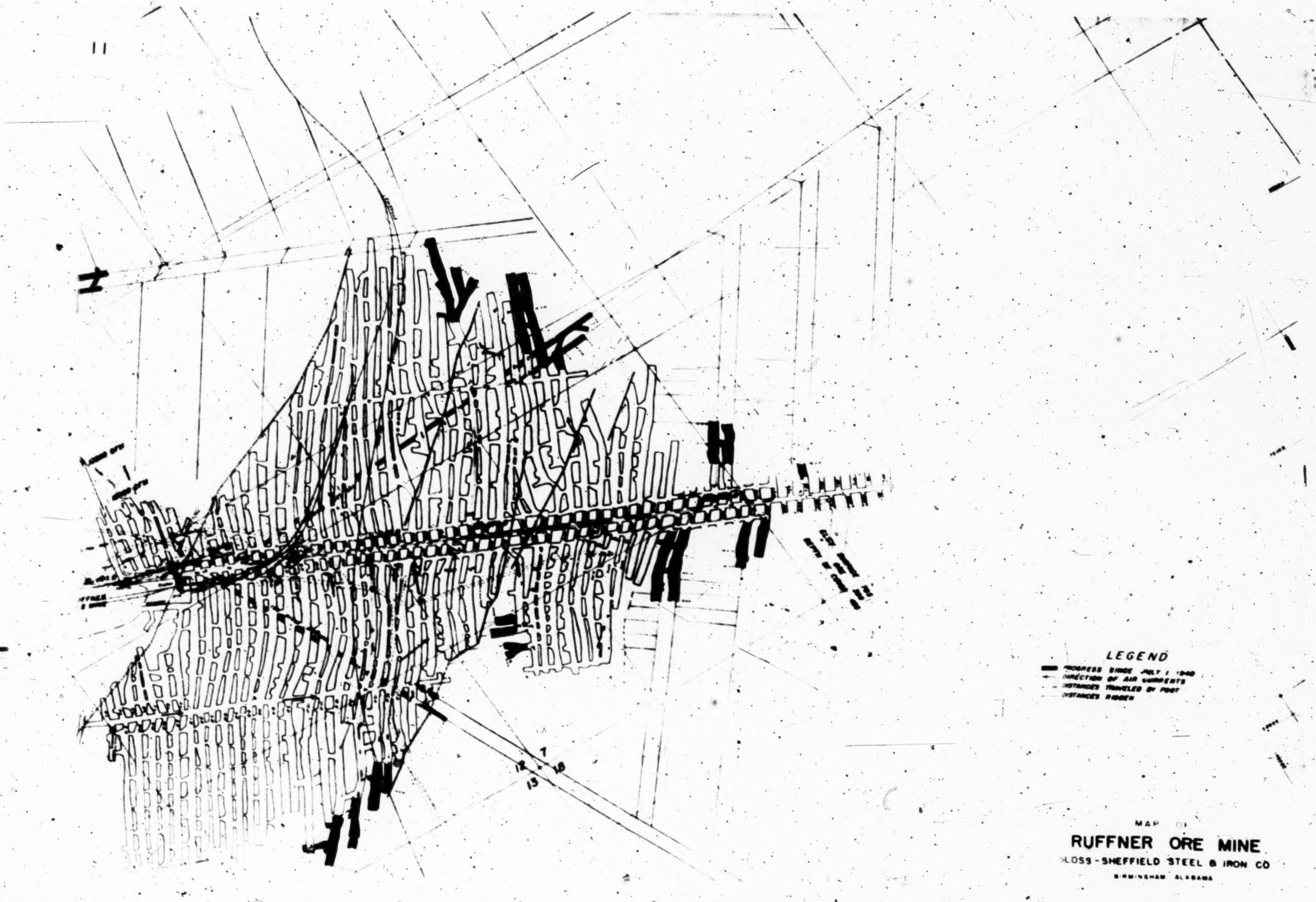
PROGRESS OF DEVELOPMENT
DIRECTION OF AIR CURRENTS
DISTANCES TRAVELED BY FOOT
DISTANCES RIDDEN
SURFACE EL +800.0
ORE EL -700.0
MAP OF
SLOSS ORE MINE
SLOSS-SHEFFIELD STEEL & IRON
BIRMINGHAM ALABAMA
SCALE 1 IN = 200 FT

SLOSS EXHIBIT NO. 11




11
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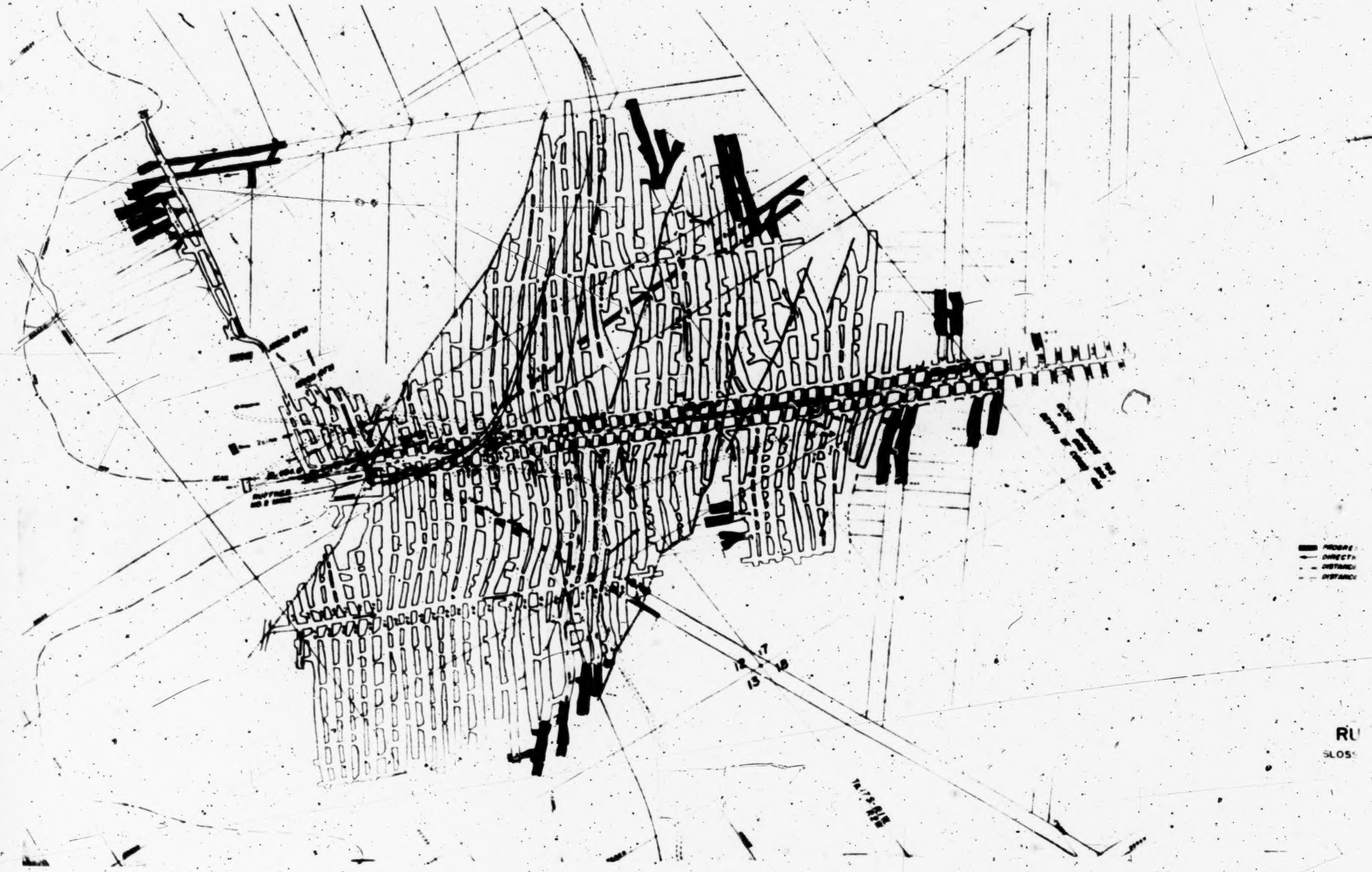
LEGEND
PROGRESS SINCE JULY 1 1940
DIRECTION OF AIR CURRENTS
DISTANCES TRAVELED BY FOOT
DISTANCES RIDDEN

MAP OF

RUFFNER ORE MINE

SLOSS-SHEFFIELD STEEL & IRON CO

BIRMINGHAM ALABAMA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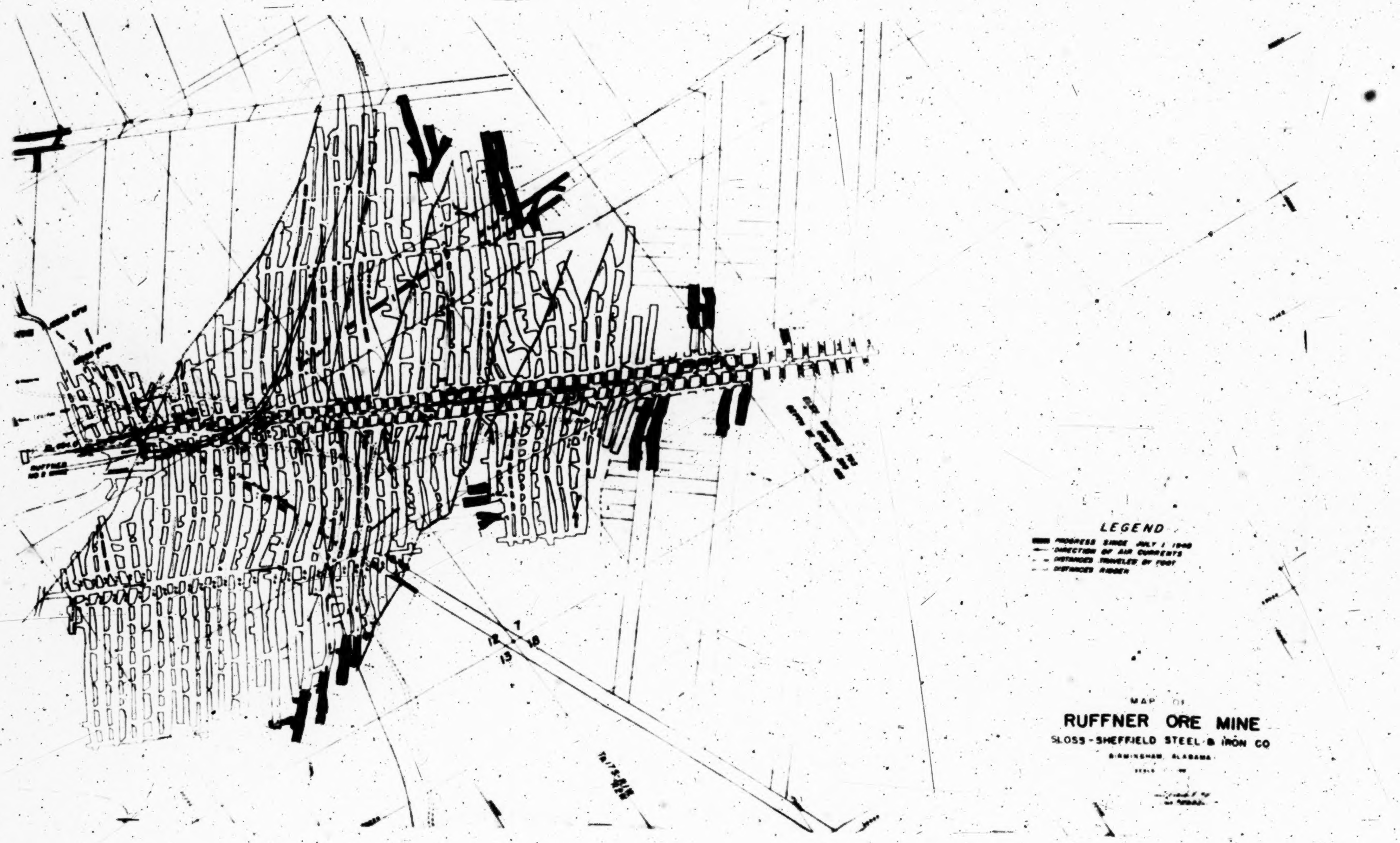LEGEND
PROGRESS SINCE JULY 1 1940
DIRECTION OF AIR CURRENTS
DISTANCES TRAVELED BY FOOT
DISTANCES RIDDEN
MAP OF
RUFFNER ORE MINE
SLOSS-SHEFFIELD STEEL & IRON CO
BIRMINGHAM, ALABAMA
SCALE
RUFFNER NO 2 MINE
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18

3713

SLOSS EXHIBIT No. 12.

1. That all employees of Sloss Red Ore Mines be given a 10 per cent increase in pay.

2. That the Sloss-Sheffield Steel & Iron Co. deduct from the aforesaid Company, Dues and assessments as designated by each employee of Sloss Red Ore Mines, the same to be paid to designated officer of Sloss Red Ore Local No. 109 I. U. of M. M. and S. W.

3. That the Executive Board of Sloss Red Ore Local No. 109 composed of seven (7) duly elected representatives of the employees of Sloss Red Ore Mines be recognized as the Grievance Committee for all collective Bargaining purposes for all employees of Sloss Red Ore Mines.

4. That the Company furnish Carbide for all employees.

5. That the eight (8th) day of May, Known as Emancipation Day, and November 11, Known as Armistice Day be added to the list of Holidays.

6. That all employees pay house rent in accordance with the days the Mines Operate, Using twenty-two days per month as basis for full time rent.

7. That the Blacksmith and the Drill Steel Sharpener be given one (1) helper each.

8. That Ivey Carrington be rated as Hanyman and do the work of Handy man.

9. That some adjustment be made in regard to the Crusher Man doing repair work.

10. That all employees trading in the Company Store be given an itemized ticket the same to be signed at time of purchase by the purchaser.

11. That all employees be paid each Saturday.

12. That all water pipes furnishing water to the Camps be repaired so as to give efficient service, and that the reservoir be cleaned at least once every six (6) months.

13. That the Camps be cleaned at least once each week and that each house be supplied with a garbage can.

14. That all employees moving or loading slate be paid for same by rate to be established by mutual agreement.

15. (a) That the Company and not the Contractors shall pay the engineer and chainer where same handle cars for two or more places.

(b) That the Company shall place cars in a reasonable distance to the working face.

(c) That in cases where Section A. and B. does not give the men an opportunity to shift, the Company will take full responsibility and pay the employees in these particular places at rate of miners on Company work.

16. That in case of breakdowns which hinder the employees from shifting, all employees in these particular places shall be paid for time lost on repairs.

17. That all employees entering the mines and not being permitted to work through no fault of their own shall be paid two (2) hours, or if detained more than two (2) hours shall be paid for same at rate of miner on Company work.

18. That some adjustment be made in regard to the following men on Company work: Motor Runners, Pumpmen, Electricians, Machinist, Blacksmith, Drill Steel Sharpner, Crusher Man, Crusher Feeders, Weighman, Engineers inside, Truck Drivers, Slope Scrapers and Spragger on top house.

19. That the hard and easy places on drag work be divided equally between Day and Night crews.

20. That the Company shall turn off all Drags Stope to a width of twenty-five (25) feet.

21. That all drag stopes driven under twenty-five (25) feet in width shall be paid yardage.

22. That all Contractors who are required to do the work of one (1) of their men shall receive pay for same.

23. That hand driven places be rated for places driven 12, 14, 16 and 18 feet in width.

24. That the hand loading places loading 42 tons per shift be given an equal share of cars in proportion with the places loading 36 tons.

25. That all Haulage Ways be classed as slope work and be paid for at slope work rate.

26. That a new rate be established by mutual agreement for the men loading in places 12 feet or less in width. (Slope Hdg. only.)

27. That men going into mines and not being able to work due to rock fall etc. shall be given work cleaning up Haulage ways or other work usually done on idle days.

28. That a number of emergency places be driven so as to give the men not having a place to work an opportunity to make a shift.

29. That the Heading or Han Loading Contractors be required to leave enough Powder and supplies for the opposite crew to make a shift with.

30. That no Ore trip shall leave the bottom on Day shift later than 3:15 o'clock and on night shift later than 2:15 o'clock.

31. That the Company shall deduct from all employees on Contract labor, a nominal sum, the same to be paid to the check-weighmen.

The following memorandum appears at the head of this memorandum in pencil:

"Received from Sloss Committee on Aug. 3, 1938. Advised committee it would be about Aug. 25th before we could again discuss this, which was satisfactory with them.

T. E. C."

The following memorandum appears at foot of this memorandum in pencil:

"This paper given me by O'Neal on August 18 at Sloss Shop. He asked that it be affixed to original contract presented us.

COSTNER."

3716

SLOSS EXHIBIT No. 13.

Sloss-Sheffield Steel & Iron Company

Birmingham, Alabama.

Continuation of Sloss Red Ore Mine Working Agreement.

Confirming understanding reached at conference between representatives of employees of our Sloss Red Ore Mine and the Management with reference to working agreement dated September 13, 1937 and which expires September 13, 1938, it is hereby agreed to extend this agreement for 12 months and expiration date is hereby changed to September 13, 1939.

SLOSS-SHEFFIELD STEEL &
IRON COMPANY,
By BEN DAVIS.
EMPLOYEES' REPRESENTATIVES,
JOHN HILL,
JESSE GAINES,
J. W. GILBERT,
W. A. O'NEAL.

Dated this 3rd day of September, 1938.

3717

SLOSS EXHIBIT No. 14.

Agreement.

Section 1. This Agreement dated .... and entered into by and between the Sloss-Sheffield Steel & Iron Company, (Hereinafter referred to as the Company) and Sloss Red Ore Local No. 109 of the International Union of Mine, Mill and Smelter Workers, (Hereinafter referred to as the Union), on behalf of those employees employed in the production and Maintenance Departments of Sloss Red Ore Mines, located at or near Bessemer, Jefferson County, Alabama.

Section 2. (a) It is the intent and purpose of the parties hereto that this Agreement will promote and improve the industrial and economic relationship between the employees of the Company employed in the production and Maintenance Departments of Sloss Red Ore Mine and the Company.

(b) The term employee used in this Agreement does not include the foremen or supervisors who do not perform any regular work.

Section 3. Recognition: The Company recognizes the Union, as the sole and exclusive collective bargaining agency for those employees employed in the production and maintenance Departments of Sloss Red Ore Mine, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

Section 4. Holidays: The following Holidays shall be observed by the Company: May 8, (Emancipation Day); July 4, (Independence Day); Labor Day; Thanksgiving Day; and Christmas.

Section 5. Hours of Work: Eight (8) hours shall constitute a days' work and forty (40) hours shall constitute a weeks' work. Time and one-half shall be paid for all work in excess of eight (8) hours in any one day or forty (40) hours in any one week.

(b) Provided no employee shall be paid both daily and weekly overtime for same hours worked.

Section 6. Vacations: Each employee who has completed one or more years service with the Company prior to February 1, 1940, or subsequent thereto, shall receive one day's vacation with pay for each year of service with the Company, provided no employee shall receive more than ten (10) days vacation with pay in any one year. Total hours of vacation pay shall be based upon the average rate of earnings per hour for the two pay-periods immediately preceding their vacation, provided it shall not be less than eight hours per day nor forty hours per week. Provided further, the annual vacation shall be given in a single period.

Section 7. Seniority: Seniority shall govern in all cases of promotion and increase or decrease in forces. Provided further, that seniority shall be based upon length of continuous service and eligibility.

Section 8. Check-Off: The Company shall deduct from each of its employees wages covered by this Agreement upon presentation of an order signed by such employee such dues and assessments as authorized in said order, provided dues shall not exceed $1.00 in any one pay period, the order to be for period covered by this Agreement unless revoked by employee in writing.

(a) Initiation Fees: (Not to exceed $10.00 for any one man and in sums not to exceed $2.00 in any one pay-period per man), where proper written authorization has been made to the Company by the employee, shall be deducted by the Company.

(b) The Company shall remit to the Officer of the Union authorized in the Order above mentioned an itemized list of the names and amounts deducted from each employee not later than the 10th day of each month after said deductions have been made.

(c) In case any worker shall enter suit or process against the Company for the amount of dues or assessments paid under this section pursuant to such check-off paid to the Union, Sloss Red Ore Local 109, I. U. of M. M. & S. W. will reimburse the Company the amount of any loss sustained by the Company by reason thereof, including cost and expense of the suit.

Section 9. Grievances and Methods of Adjustments: If any employee, or employees, shall consider that he, or they, have any grievance against the Company an earnest effort shall be made to adjust such grievance as quickly as possible by the following successive steps:

(a) Between employee and his foreman.

(b) Between Mine Committee and Foreman.

(c) Between Grievance Committee and Superintendent of Mine.

(d) Between Grievance Committee or Representatives of the Union and the Representatives of the Management or the Company.

(e) If said Committees shall arrive at a decision on such Grievance it shall be reduced to writing and signed by a majority of each Committee and copies thereof shall be given to the Union and the Company and shall be deemed to have finally settled such controversy.

(f). If any such controversy or grievance arising under the terms of this Agreement cannot be amicably adjusted and settled in the manner herein provided, the same shall be promptly submitted to a Board of Arbitration to be selected as follows: Two (2) to be chosen without delay by the Company, and Two (2) to be chosen without delay by the Union, and the fifth to be chosen within five (5) days by the first four; if the first four members cannot agree upon the fifth man within ten (10) days, the latter shall be a conciliator of the Department of Labor to be selected by the then Director thereof. The decision of such Board of Arbitration shall be rendered without delay, and the decision of a majority of said Board shall be final and binding on all parties involved in such controversy or grievance and shall conclusively determine same.

(2) If it shall be determined at the end of the negotiations and hearings as hereinabove mentioned, that an employee or employees shall have been discharged without just cause, the Company shall immediately reinstate the employee, or employees, and compensate same for time lost at regular rates of pay.

(3) It is expressly understood and agreed that any employee having any grievance against the company it shall be presented to the Company in writing within five (5) days after cause for grievance, otherwise such grievance will not be considered by the Company or the Union.

Section 10. It is distinctly understood that the Management of the mine and the direction of the working forces are vested exclusively in the Company.

(b) There shall be no stoppage of work either by the Company or the Union, until full procedure of methods of settling grievances as outlined in this Agreement have been complied with.

Section 11. Any change in mining methods or installation of machinery that relieves or hinders the employee of any of the duties incidental to his regular work and/or increases or decreases his productive capacity shall be recognized and a new piecework rate shall be established by agreement between the company and the Union in accordance with the previous earnings of the men employed thereon.

Section 12. After an employee has reported either for regular work or at the request of the Foreman, he shall receive two (2) hours pay whether the mines operate two hours or not, provided the work is not interrupted by a Labor dispute.

Section 13. When an employee working on piecework is required by mine officials to leave his work at the face and perform other work he shall be paid at the rate for a miner on Company work.

Section 14. When an employee has no work at the face, and is given other work, he shall be paid at the scale for such labor.

Section 15. In event of any kind of shut down, the employees shall be permitted to trade in the Company store until he or they are put back to work. Upon resumption of operations the employees' wages shall be cut in accordance with his ability to pay.

Section 16. The Tally Sheets shall be so kept that all ore loaded on each shift shall be placed on the sheet for each particular day.

Section 17. The Company shall keep the working places as dry as possible to do so, where wet places are driven, the amount of pay for the extra inconvenience shall be agreed upon between the mine foremen and the miner affected.

Section 18. All stopes 12 feet or less in width will be paid for at the rate of $17.80 per Lin. Yd.

All Stopes not over 15 feet in width nor less than 12 feet in width will be paid for at the rate of $15.00 per Lin. Yd.

All Stopes 18 feet will be paid for at the rate of $9.90 per Lin. Yd.

Section 19. A timber crew and a pipe man shall be placed on night shift.

Section 20. All idle day work shall be equally divided between the men working night and day at the mines.

Section 21. A man trip shall be run on both the 55 L. and 48 R. slopes at the end of each shift.

Section 22. (a) The day shift shall begin hoisting ore at 7 A. M. and quit at 3:15 P. M. and the night shift shall begin hoisting ore at 6 P. M. and quit at 2:15 A. M.

(b) The mantrip shall leave 48 L yard at 3:20 P. M., on day shift at 2:20 A. M. on night shift.

Section 23. That a committee be chosen by the Union to investigate all accidents, both on the day and night shifts, and that a copy of the findings of this committee be sent to the Safety Engineer of the Company, the Mine Superintendent, and a copy be retained in the files of the Union.

Section 24. That a drill steel sharpener helper and a machinist helper be added to the force now working in the shop.

Section 25. That the Contractors be given more authority over their working places and in the handling of their labor.

Section 26. The revised wage rates hereto attached will be the prevailing rates of pay for the duration of this Agreement.

Section 27. This Agreement shall become effective on the .... day of ...., 19.., and shall be operative and remain in full force and effect for one (1) year from said date and from year to year thereafter, subject, however, to the right of either party to terminate the agreement at the end of any yearly period by written notice given to the other party not more than thirty (30) days prior to nor less than fifteen (15) days prior to the end of any such year. This Agreement may be amended or revised in any its provisions during its existence, provided such amendments or revisions are approved, in writing, and subscribed to by the Union and the Company.

Section 28. That a contractor be allowed only one contract place.

In Testimony Whereof; witness the signatures and seals of the undersigned, this .... day of ...., 1939.

SLOSS-SHEFFIELD STEEL &
IRON COMPANY,
By ....
As ....
By ....
As ....
By ....
As ....

SLOSS RED ORE LOCAL #109,
I. U. of M. M. & S. W.,
By ....
As. President.
By ....
As Vice-President.

By ....

As Chairman Executive Board.

INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS,

By ....

As International Representative.

3724 **SLOSS EXHIBIT No. 15.**

Agreement.

Section 1. This agreement dated September 9th, 1939, and entered into by and between the Sloss-Sheffield Steel & Iron Company, (hereinafter referred to as the "Company") and Sloss Red Ore Local No. 109 of the International Union of Mine, Mill and Smelter Workers, (hereinafter referred to as the "Union") on behalf of employees employed in the Production and Maintenance Departments of the Sloss Red Ore Mine, located at Bessemer, Alabama.

Section 2. The term employee used in this Agreement does not include foremen, supervisors, technical and clerical employees.

Section 3. The Union shall be and is hereby recognized as the exclusive bargaining agency for the employees in the Production and Maintenance Departments for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

Section 4. The following Holidays shall be observed by the Company—Independence Day, Labor Day, Thanksgiving Day and Christmas Day; except for necessary maintenance or repair work, and those employees whose occupations require continuous duty.

Section 5. (a) Eight hours work per day shall constitute a day's work and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period.

The Company shall have the right during the life of this Agreement to operate the mine one, two or three eight-hour shifts by different crews of men within each twenty-four hour period.

(b) The eight hours per shift will not apply in case of accidents or breakdowns which may temporarily necessitate longer hours for those employees required on account thereof, and also excepting the number of men required to handle man trips, and those required to remain on duty while men are entering or leaving the mine.

(c) Time and one-half shall be paid for all work performed in excess of eight hours per day or forty hours per week excepting a few occupations where application of this rule is not practical.

Section 6. (a) The duties of the Mine Committee shall be confined to the adjustment of disputes arising from this Agreement with the employees represented by them that the mine management and employee, or employees, have failed to adjust. The Mine Committee shall have no other authority nor exercise any other control, nor in any way interfere with the operation of the mine. The Mine Committee has no authority to direct the working forces in or about the mine or any part thereof. For violation of these clauses or any of them the Committee or any member thereof shall be immediately removed from the Committee, and shall be ineligible to serve as a committeeman for six months thereafter.

Section 7. If an employee, or employees, shall consider that he or they have any grievance against the Company, an earnest effort shall be made, subject to the terms and provisions of this contract, to adjust same by the following successive steps:

(a) Between employee and his foreman.

(b) Between Mine Committee and Superintendent of the Mine.

(c) Between Mine Committee or Representatives of the Union and the General Superintendent of Ore Mines.

(d) If such grievance arising under the terms of this contract is not adjusted and settled in the manner herein provided, then such grievance, that has not been settled by one of the modes aforesaid provided, shall be submitted to a Board of Arbitration, who shall be appointed to consider such unadjusted grievance, and shall be selected as follows: Two (2) to be chosen by the Company and two (2) to be chosen by the Union, and these four to choose a fifth member within ten (10) days. If these four fail to agree upon the fifth member, then within ten additional days he shall be chosen by the President of Sloss-Sheffield Steel & Iron Company and the Board Member of District 5 of the International Union of Mine, Mill and Smelter Workers. The decision of such Board of Arbitration shall be rendered without unreasonable delay, and the decision of a majority of said Board shall be final and binding on all parties involved in such grievance. Any expense incurred by the arbitrators shall be borne equally by the Company and the Union.

(e) There shall be no stoppage of work either by the Company of the Union, until full procedure of methods of settling grievances as outlined in this Agreement have been complied with.

Section 8. It is understood and agreed that Section 7 (d) (Settlement of Grievances) shall not be effective in the arbitration of wage increases, wage reductions or wage adjustments.

Section 9. If it shall be determined that an employee has been discharged or suspended without just cause, the Company shall immediately reinstate the employee and compensate same for time lost at his regular rate of pay.

Section 10. It is distinctly understood that the Management of the mine and the direction of the working force, and the right to hire and discharge are vested exclusively in the Company.

Section 11. Any change in mining methods or installation of machinery that relieves or hinders the employee of any duties incidental to his regular work and/or increases or decreases his productive capacity shall be recognized and a new piecework rate shall be agreed to therefor, and same shall be properly related to the basic rates for such work.

Section 12. Whenever an employee has been directed by the foreman to proceed to his usual working place in the mine and is then subsequently ordered by the foreman to return to the surface without having been permitted to perform any work, he shall be entitled to two hours' pay, providing the work is not interrupted by labor dispute.

Section 13. When an employee working on piecework is required by mine officials to leave his work at the face and perform other work, he shall be paid at the rate for a miner on Company work.

Section 14. When an employee has no work at the face, and is given other work, he shall be paid at the scale for such labor.

Section 15. In the event of a shut-down and if the Company gives the employees credit to purchase provisions and supplies at the Company Commissary, on resumption of operations the employees' wages shall be cut in accordance with his ability to pay.

Section 16. It is agreed to observe during the life of this contract the same practices and customs in regard to the promotion, or increases and decreases in the working forces, as have been practiced in the past.

Section 17. This contract shall not conflict with any present State or Federal law, or laws that may be enacted during the life of said Agreement.

Section 18. The wage rates attached hereto will be the prevailing rates of pay for the duration of this Agreement.

Section 19. (a) It is agreed that hourly and tonnage workers, who have had five or more years of continuous service, will be entitled to five days vacation with pay, the amount to be determined as follows:

Tonnage Workers: Average daily earnings for the last four pay periods prior to vacation, times 5.

Hourly Workers: Regular daily rate, times 5.

(b) During the five year period prior to June 1st, 1940, any employee who voluntarily left the service of the Company for one or more days will not be entitled to vacation pay.

(c) An employee must be in the active service of the Company at time of allotment of vacation to be entitled to same and vacations will, so far as possible, be granted at times most desired by the employees but the final right to allotment of vacation period is exclusively reserved to the Company in order to insure the orderly operation of the plant.

(d) Service will be considered continuous where employee has not been off payroll more than three months in the past year prior to June 1st, 1940, or a total of fifteen months in past five years prior to June 1st, 1940, through being laid off by the Company account of curtailed operations.

Section 20. This Agreement may be amended or revised in any of its provisions during its existence, provided such amendments or revisions are approved in writing, and subscribed to by the Union and the Company.

Section 21. It is agreed that in event general wage advances are granted or decreases made to red ore miners by a majority of the red ore producing companies in this district during the life of this agreement, it is understood that the question of consisting wage adjustments for Sloss employees will then become a subject for collective bargaining under terms of this agreement.

Section 22. This agreement shall become effective on the 16th day of September, 1939, and shall be operative and remain in full force and effect for one (1) year from said date and from year to year thereafter, subject, however, to the right of either party to terminate the agreement at the end of any yearly period by written notice given to the other party not more than thirty (30) days prior to nor less than fifteen (15) days prior to the end of any such year.

In Witness Whereof, witness the signatures of the undersigned, this 9th day of September, 1939.

SLOSS-SHEFFIELD STEEL &
IRON COMPANY,
By BEN DAVIS,
SLOSS RED ORE LOCAL #109,
I. U. of M. M. & S. W.,
By JOHN HILL,
President.
By JESSE GAINES,
Vice President.
By W. H. GUNTER,
Chairman Executive Board.
By VAN D. JONES,
Board Member District #5,
I. U. of M. M. & S. W.

Red Ore Mines.

Outside Rates.

Occupation	Hourly Rate	Amount per Shift	Hours per Shift
Truck Driver	$ .490	$3.92	8
Teamster	.455	3.64	8
Engineers—Main Hoist	.720	7.20	10
Dumpers	.485	3.88	8
Tipplemen	.485	3.88	8
Conveyor Men	.485	3.88	8
Weighmen	.625	5.62	9
R. R. Car Loaders	.485	3.88	8
Crusher Men	.585	4.68	8
Machinist	.770	6.16	8
Machinist Helper—1st Class	.520	4.16	8

Machinist Helper—2nd Class	.490	3.92	8
Blacksmith	.795	6.36	8
Blacksmith Helper	.490	3.92	8
Carpenter	.600	4.80	8
Carpenter Helpers	.455	3.64	8
Car Repairman	.585	4.68	8
Car Repairman Helpers	.530	4.24	8
Drill Sharpener	.690	5.52	8
Compressor Man	.645	5.81	9
Watchman	.465	3.72	8
Laborers	.40	3.20	8
Slate Pickers	.40	3.20	8
Ore Inspector	.53	4.24	8

Note: One and one-half times the above hourly rates will be paid for all time in excess of eight (8) hours per day or forty (40) hours per week, excepting supervisors, foremen and a few occupations, where application of this rule is not practical.

Red Ore Mines.

Inside Rates.

Occupation	Hourly Rate	Amount per Shift	Hours per Shift
Company drillers	$ .705	$5.64	8
Driller helpers	.625	5.00	8
Motormen	.635	5.08	8
Coupler	.550	4.40	8
Rockmen	.635	5.08	8
Rockmen helpers	.545	4.36	8
Track cleaners	.506 Ton	—	—
Timbermen	.635	5.08	8
Timbermen helpers	.545	4.36	8
Pipemen	.585	4.68	8
Pipemen helpers	.545	4.36	8

Chainers-Contract—.022 and .01815 ton, amount per shift based on production.

Company chainers	.575	4.60	8
Company chainer helpers	.550	4.40	8
Engineers—Main hoist	.705	5.99	8½
Engineers—Auxiliary hoist	.635	5.08	8
Stablemen	.585	4.68	8
Rock, Timber and Track Foremen	.705	5.64	8
Trackmen	.635	5.08	8
Trackmen helpers	.545	4.36	8
Roller men	.555	4.44	8
Pumpers	.555	4.44	8
Electric repairmen	.745	5.96	8
Machinist	.745	5.96	8
Miner on company work*	.625	5.00	8

* See items 13 and 14 for application.

Note: One and one-half times the above hourly rates will be paid for all time in excess of eight (8) hours per day or forty (40) hours per week, excepting supervisors, foremen and a few occupations where application of this rule is not practical.

Sloss Red Ore Mine.

Yardage Rates.

Slopes, 12′ wide or less	$17.80 per lin. yd.
Slopes, 18′ wide	9.90 per lin. yd.
Headings, 18′ wide, or less	9.90 per lin. yd.
Upsets	7.85 per lin. yd.
Stope necks, 12′ wide or less	17.80 per lin. yd.
Stope necks, 15′ wide or less	13.90 per lin. yd.
Stope necks, 18′ wide or less	9.90 per lin. yd.
Splitting a single stope into a double stope	25.00 per lin. yd.

Division of Tonnage Rate to Men of Crews.

Hand Loaded Ore.

	Entries or Stopes				Entries 18 Feet	
	Over 18 Feet in Width				or Less in Width	
	5 Man Crew		6 Man Crew		5 Man Crew	
	Number Men	Rate per Ton	Number Men	Rate per Ton	Number Men	Rate per Ton
Occupation—						
Drill Man	1	$.129	1	$.109	1	$.153
Drill Man	–	.112*	–	.112*	–	—
Drill Man Helper	1	.116	1	.098	1	.138
Muckers	3	.351	4	.389	3	.417
Total	5	$.708	6	$.708	5	$.708

* To credit of Day Shift Drill Man for Explosives and Tools.

Drag Loaded Ore.

	10 Man Crew		12 Man Crew		13 Man Crew		15 Man Crew	
	(5 Men on Day 5 Men on Night)		(6 Men on Day 6 Men on Night)		(7 Men on Day 6 Men on Night)		(8 Men on Day 7 Men on Night)	
	Number Men	Rate per Ton	Number Men	Rate per Ton	Number Men	Rate per Ton	Number Men	Rate per Ton
Occupation—								
Head Miner	1	$.057	1	$.048	1	$.045	1	$.041
Head Miner	--	.110*	–	.110*	–	.110*	–	.110*
Drag Engineer—Night Shift	1	.046 (1)	1	.039 (2)	–	—	–	—
Drag Engineers— (1 Day—1 Night)	–	—	–	—	2	.070	2	.062
Drill Men	2	.093	4	.152	4	.139	4	.121
Drill Men Helpers	2	.081	2	.066	2	.061	2	.053
Muckers	2	.081	2	.066	2	.061	4	.106
Haulage Engineers	2	.071	2	.058	2	.053	2	.046
Total	10	$.539 (3)	12	$.539 (3)	13	$.539 (3)	15	$.539 (3)

* To credit of Head Miner for Explosives and Tools.

(1) Pay $.092 on Night Shift Tonnage only—No credit for Day Shift Tonnage.

(2) Pay $.078 on Night Shift Tonnage only—No credit for Day Shift Tonnage.

(3) For ore loaded by drags in headings, total tonnage rate will be $.554.

Vol. VI
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 409

TENNESSEE COAL, IRON & RAILROAD COMPANY, SLOSS-SHEFFIELD STEEL & IRON COMPANY AND REPUBLIC STEEL CORPORATION, PETITIONERS,

vs.

MUSCODA LOCAL No. 123, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 4, 1943.

CERTIORARI GRANTED NOVEMBER 15, 1943.

VOLUME VI.

TRANSCRIPT OF RECORD

UNITED STATES

CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT.

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Appellant,
versus
MUSCODA LOCAL No. 123, ETC., ET AL.,
Appellees,

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
Appellant,
versus
SLOSS RED ORE LOCAL No. 109, ETC., ET AL.,
Appellees,

REPUBLIC STEEL CORPORATION,
Appellant,
versus
RAIMUND LOCAL No. 121, ETC., ET AL.,
Appellees.

Appeals from the District Court of the United States for
the Northern District of Alabama.

(ORIGINAL RECORD RECEIVED APR. 4 42.)

U. S. CIRCUIT COURT OF APPEALS
FILED

SLOSS EXHIBIT No. 16.

Agreement.

Section 1. This Agreement dated .... 1940, and entered into by and between the Sloss-Sheffield Steel & Iron ompany, (Hereinafter referred to as the "Company") and Sloss Red Ore Local No. 109 of the International Union of Mine, Mill and Smelter Workers, (hereinafter referred to as the "Union") on behalf of employees employed in the Production and Maintenance Departments of the Sloss Red Ore Mine, located at Bessemer, Alabama.

Section 2. The term employee used in this agreement does not include foreman, supervisors, technical and clerical employees.

Section 3. The Union shall be and is hereby recognized as the exclusive bargaining agency for the employees in the Production and Maintenance Departments for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

Section 4. The following holidays shall be observed by the Company—Emancipation Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day; except for necessary Maintenance or repair work, and those employees whose occupations require continuous duty.

Section 5. Hours of Work. Except as otherwise provided, eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work, and time and one-half shall be paid for all work in excess of eight hours in any one day or forty hours in any one calendar week. Provided further, a day's work shall mean eight hours including the time entering and leaving the mines and exclusive of lunch period.

(a) The Company shall have the right during the life of this Agreement to operate the mine one, two or three eight (8) hour shifts by different crews of men within each twenty-four (24) hour period.

(b) The eight hours per shift will not apply in case of accidents or breakdowns which may temporarily necessitate longer hours for those employees required on account thereof, and also excepting the number of men required to handle man trips, and those required to remain on duty while men are entering or leaving the mine.

(c) Time and one-half shall be paid for all work performed in excess of eight hours per day or forty hours per week except a few occupations where application of this rule is not practical.

Section 6. The duties of the Mine Committee shall be confined to the adjustment or disputes arising from this Agreement with the employees represented by them that the mine Management and employee, or employees, have failed to adjust. The Mine Committee shall have no other authority nor exercise any other control, nor in any way interfere with the operations of the mine. The Mine Committee has no authority to direct the working forces in or about the mine or any part thereof.

Section 7. If an employee, or employees, shall consider that he or they have any grievance against the Company an earnest effort shall be made, subject to the terms and provisions of this contract, to adjust same by the following successive steps:

(a) Between employee and his foreman.

(b) Between Mine Committee and Superintendent of the Mine.

(c) Between Mine Committee or Representative of the Union and the General Superintendent of Ore Mines.

(d) If such grievance arising under the terms of this contract is not adjusted and settled in the manner herein provided, then such grievance, that has not been settled by one of the modes aforesaid provided, shall be submitted to a Board of Arbitration, who shall be appointed to consider such unadjusted grievance, and shall be selected as follows:

Two (2) to be chosen by the Company and two (2) to be chosen by the Union, and these four to choose a fifth member within ten (10) days. If these four fail to agree upon the fifth member, then within ten additional days he shall be chosen by the President of Sloss-Sheffield Steel & Iron Company and the Board Member of District Five (5) of the International Union of Mine, Mill & Smelter Workers. The decision of such Board of Arbitration shall be rendered without unreasonable delay, and the decision of a majority of said Board shall be final and binding on all parties involved in such grievance. Any expense incurred by the Arbitrators shall be borne equally by the Company and the Union.

(e) There shall be no stoppage of work either by the Company or the Union, until full procedure of methods of settling grievances as outlined in this Agreement have been complied with.

Section 8. If it shall be determined that an employee has been discharged or suspended without just cause, the

Company shall immediately reinstate the employee and compensate same for time lost at his regular rate of pay.

Section 9. It is distinctly understood that the Management of the mine and the direction of the working forces, and the right to hire and discharge are vested exclusively in the Company.

Section 10. Any change in mining methods or installation of machinery that relieves or hinders the employee of any of the duties incidental to his regular work and/or increases or decreases his productive capacity, shall be recognized and a new piecework rate shall be agreed to therefor, and same shall be properly related to the basic rates for such work.

Section 11. Whenever an employee has been directed by the foreman to proceed to his usual working place in the mine and is then subsequently ordered by the foreman to return to the surface without having been permitted to perform any work, he shall be entitled to two hours' pay, providing the work is not interrupted by labor disputes.

Section 12. When an employee working on piecework is required by mine officials to leave his work at the face and perform other work he shall be paid at the rate for a miner on Company work.

Section 13. When an employee has no work at the face, and is given other work, he shall be paid at the scale for such labor.

Section 14. In the event of a shut-down and if the Company gives the employee credit to purchase provisions and supplies at the Company Commissary, on resumption of operations the employees' wages shall be cut in acocrdance with their ability to pay.

Section 15. It is agreed to observe during the life of this contract the same practices and customs in regard to the promotion, or increases and decreases in the working forces, as have been practiced in the past.

Section 16. This contract shall not conflict with any present State or Federal law, or laws, that may be enacted during the life of said Agreement.

Section 17. The wage rates and all other rates under this contract shall be twenty per cent (20%) higher than the prevailing rates under the 1939-40 contract. Provided, however, that all day rates as set out in the 1939-40 contract shall mean the minimum of basic rates paid for an eight hour day, and in no event shall a man receive less than a full day's pay for eight hours as provided in said rates, and time and one-half shall be paid for more than eight hours in any one day and for more than forty hours in any one calendar week.

Section 18. (a) It is agreed that hourly and tonnage workers who have one or more years of continuous service will be entitled to one (1) day for each year of such service, but not in excess of ten (10) days, vacation, with pay, the amount to be determined as follows:

Tonnage workers: The average daily earnings for the last past four pay periods of employee prior to vacation, times years of service.

Hourly Workers: Regular daily rates, times years of service. Provided, however, temporary unemployment shall not deprive or defeat the vacation rights of employees nor shall temporary unemployment be considered in determining the amount of vacation pay due the employee.

(b) An employee must be in the service of the Company at time of allotment of vacation to be entitled to same and vacations will, so far as possible, be granted at times most desired by the employees but the final right to allotment of vacation period is exclusively reserved to the Company in order to insure the orderly operation of the plant.

(c) Service will be considered continuous where employee has not been off payroll more than three months in the past year prior to June 1st, 1940, or a total of fifteen months in past five years prior to June 1st, 1940, through being laid off by the Company on account of curtailed operations.

Section 19. This agreement may be amended or revised in any of its provisions during its existence, provided such amendments or revisions are approved in writing, and subscribed to by the Union and the Company.

Section 20. It is agreed that in event Wage or tonnage rates are increased or decreased, or in the event that any working conditions or substantial changes relative to pay days, hours of work or other working conditions are made by any of the iron ore producing companies of this district during the life of this agreement, then in that event the question of such changes will be a subject for collective bargaining and neither the Company or the Union shall be bound by the present rates of pay and working conditions provided in this contract.

Section 21. (a) The Company shall deduct from each of its employee's wages covered by this agreement upon presentation by the Union of an order signed by such employees, such dues, initiations and assessment as authorized in said order provided deductions shall not exceed one dollar ($1.00) in any one pay period, the order to be for the period covered by this agreement unless revoked by employee in writing.

(b) The Company shall remit to the Financial Secretary of the Union authorized in the order above mentioned an itemized list of the names and amounts deducted from each employee not later than the 10th day of each month after said deductions have been made.

(c) In case any worker shall enter suit or process against the Company for the amount of deductions under this section pursuant to such check-off paid the Union, the Union will reimburse to the Company the amount of any loss sustained by the Company by reason thereof including costs and expense of the suit.

Section 22. It is agreed that the Company shall furnish, in addition to the man-trips already supplied, a man-trip for each slope for the employees leaving their working places.

Section 23. This agreement shall become effective on the .... day of ...., 1940 and shall continue in effective until the .... day of ...., 1941, subject to the conditions and limitations above set out, and also subject to termination by either party on 10 days notice in writing for breach in any substantial respect by the other party or by those whom they may represent.

SLOSS-SHEFFIELD STEEL &
IRON COMPANY,
By ....
As Vice-Pres. & Gen. Mgr.
Birmingham, Alabama.
By ....
As President.
By ....
As Vice President.

By ....
As Chairman Executive
Board.
By ....
As Board Member District
No. 5, I. U. M. M. & S. W.

3741 SLOSS EXHIBIT No. 17.

This Agreement originally given to committee as a proposal from the Company for the 1940-1941 Agreement. It was taken up on 9/11/40 when a substitute contract was proposed and accepted.

TEC.

1939-1940 contract.

Agreement.

Section 1. This agreement dated .... and entered into by and between the Sloss-Sheffield Steel & Iron Company, (hereinafter referred to as the "Company") and Sloss Red Ore Local No. 109 of the International Union of Mine, Mill and Smelter Workers, (hereinafter referred to as the "Union") on behalf of employees employed in the Production and Maintenance Departments of the Sloss Red Ore Mine, located at Bessemer, Alabama.

Section 2. The term employee used in this Agreement does not include foremen, supervisors, technical and clerical employees.

Section 3. The Union shall be and is hereby recognized as the exclusive bargaining agency for the employees in the Production and Maintenance Departments for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

Section 4. The following Holidays shall be observed by the Company—Independence Day, Labor Day, Thanksgiving Day and Christmas Day; except for necessary maintenance or repair work, and those employees whose occupations require continuous duty.

Section 5. (a) Eight hours work per day shall constitute a day's work and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period.

The Company shall have the right during the life of this agreement to operate the mine one, two or three eight-hour shifts by different crews of men within each twenty-four hour period.

(b) The eight hours per shift will not apply in case of accidents or breakdowns which may temporarily necessitate longer hours for those employees required on account thereof, and also excepting the number of men required to handle man trips, and those required to remain on duty while men are entering or leaving the mine.

(c) Time and one-half shall be paid for all work performed in excess of eight hours per day or forty hours per week excepting a few occupations where application of this rule is not practical.

Section 6. (a) The duties of the Mine Committee shall be confined to the adjustment of disputes arising from this Agreement with the employees represented by them that the mine management and employee, or employees, have failed to adjust. The Mine Committee shall have no other authority nor exercise any other control, nor in any way interfere with the operation of the mine. The Mine Committee has no authority to direct the working forces in or about the mine or any part thereof. For violation of these clauses or any of them the Committee or any member thereof shall be immediately removed from the Committee, and shall be ineligible to serve as a committeeman for six months thereafter.

Section 7. If an employee, or employees, shall consider that he or they have any grievance against the Company, an earnest effort shall be made, subject to the terms and provisions of this contract, to adjust same by the following successive steps:

(a) Between employee and his foreman.

(b) Between Mine Committee and Superintendent of the Mine.

(c) Between Mine Committee or Representatives of the Union and the General Superintendent of Ore Mines.

(d) If such grievance arising under the terms of this contract is not adjusted and settled in the manner herein provided, then such grievance, that has not been settled by one of the modes aforesaid provided, shall be submitted to a Board of Arbitration, who shall be appointed to consider such unadjusted grievance, and shall be selected as follows: Two (2) to be chosen by the Company and two (2) to be chosen by the Union, and these four to choose a fifth member within ten (10) days. If these four fail to agree upon the fifth member, then within ten additional days he shall be chosen by the President of Sloss-Sheffield Steel & Iron Company and the Board Member of District 5 of the International Union of Mill, Mine and Smelter Workers. The decision of such Board of Arbitration shall be rendered without unreasonable delay, and the decision of a majority of said Board shall be final and binding on all parties involved in such grievance. Any expense incurred by the arbitrators shall be borne equally by the Company and the Union.

(e) There shall be no stoppage of work either by the Company or the Union, until full procedure of methods of settling grievances as outlined in this Agreement have been complied with.

Section 8. It is understood and agreed that Section 7 (d) (Settlement of Grievances) shall not be effective in the arbitration of wage increases, wage reductions or wage adjustments.

Section 9. If it shall be determined that an employee has been discharged or suspended without just cause, the Company shall immediately reinstate the employee and compensate same for time lost at his regular rate of pay.

Section 10. It is distinctly understood that the Management of the mine and the direction of the working force, and the right to hire and discharge are vested exclusively in the Company.

Section 11. Any change in mining methods or installation of machinery that relieves or hinders the employee of any of the duties incidental to his regular work and/or increases or decreases his productive capacity shall be recognized and a new piecework rate shall be agreed to therefor, and same shall be properly related to the basic rates for such work.

Section 12. Whenever an employee has been directed by the foreman to proceed to his usual working place in the mine and is then subsequently ordered by the foreman to return to the surface without having been permitted to perform any work, he shall be entitled to two hours' pay, providing the work is not interrupted by labor dispute.

Section 13. When an employee working on piecework is required by mine officials to leave his work at the face and perform other work he shall be paid at the rate for a miner on Company work.

Section 14. When an employee has no work at the face, and is given other work, he shall be paid at the scale for such labor.

Section 15. In the event of a shut-down and if the Company gives the employees credit to purchase provisions and supplies at the Company Commissary, on resumption of operations the employees' wages shall be cut in accordance with his ability to pay.

Section 16. It is agreed to observe during the life of this contract the same practices and customs in regard to the promotion, or increases and decreases in the working forces, as have been practiced in the past.

Section 17. This contract shall not conflict with any present State or Federal law, or laws that may be enacted during the life of said Agreement.

Section 18. The wage rates attached hereto will be the prevailing rates of pay for the duration of this Agreement.

Section 19. (a) Each employee who, prior to June 1st, 1941, shall have been continuously in the service of the Company for a period of three (3) years shall receive a vacation with pay on the following basis:

Three (3) years and less than five (5) years—three (3) working days.

Five (5) years and less than ten (10) years—six (6) working days.

Ten (10) years and less than fifteen (15) years—eight (8) working days.

Fifteen (15) years and over—Ten (10) working days.

(b) During the three-year period prior to June 1st, 1941, any employee who voluntarily left the service of the Company for one or more days will not be entitled to vacation pay.

(c) An employee must be in the active service of the Company at time of allotment of vacation to be entitled to same and vacations will, so far as possible, be granted at times most desired by the employees, but the final right to allotment of vacation period is exclusively reserved to the Company in order to insure the orderly operation of the plant.

(d) Service will be considered continuous where employee has not been off payroll more than three months in the past year prior to June 1st, 1941, or a total of fifteen months in past five years prior to June 1st, 1941, through being laid off by the Company account of curtailed operations.

Section 20. This agreement may be amended or revised in any of its provisions during its existence, provided such amendments or revisions are approved, in writing, and subscribed to by the Union and the Company.

Section 21. It is agreed that in event general wage advances are granted or decreases made to red ore miners by a majority of the red ore producing companies in this district during the life of this agreement, it is understood that the question of considering wage adjustments for Sloss employees will then become a subject for collective bargaining under terms of this agreement.

Section 22. The Company agrees upon individual written authorization by the employee to deduct Union dues in the amount not to exceed one dollar ($1.00) per month from such employees. Initiation and other fees (not to exceed two dollars ($2.00) for any one man, and in sums not to exceed one dollar ($1.00) per man in any one pay period), wherein individual written authorization has been made to the Company by the employee, shall be deducted by the Company. All such deductions shall be forwarded to the financial secretary of Local Union 109 on or before the tenth of the following month.

In case any employee shall enter suit or process against the Company for the amount deducted under this section pursuant to such check-off paid to its representatives, the Union will reimburse to the Company the amount of any loss sustained by the Company by reasons thereof, including costs and expense of the suit.

Section 23. This Agreement shall become effective on the .... day of ...., 1940, and shall be operative and remain in full force and effect for two (2) years from said date and from year to year thereafter, subject, however, to the right of either party to terminate the agreement at the end of any yearly period by written notice given to the other party not more than thirty (30) days prior to nor less than fifteen (15) days prior to the end of any such year.

In Witness Whereof, witness the signatures of the undersigned, this .... day of ....

SLOSS-SHEFFIELD STEEL &
IRON COMPANY,
By ....
SLOSS RED ORE LOCAL #109,
I. U. of M. M. & S. W.,
By ....
President.
By ....
Vice President.
By ....
Chairman Executive Board.
By ....
Board Member District #5,
I. U. of M. M. & S. W.

Red Ore Mines.

Outside Rates.

Occupation	Hourly Rate	Amount per Shift	Hours per Shift
Truck Driver	$ .540	$4.32	8
Teamster	.505	4.04	8
Engineers—Main Hoist	.770	7.60	10
Dumpers	.535	4.28	8
Tipplemen	.535	4.28	8
Conveyor Men	.535	4.28	8
Weighmen	.675	6.02	9
R. R. Car Loaders	.535	4.22	8
Crusher Men	.635	5.08	8
Machinist	.820	6.56	8
Machinist Helper—1st Class	.570	4.56	8
Machinist Helper—2nd Class	.540	4.32	8
Blacksmith	.845	6.76	8
Blacksmith Helper	.540	4.32	8
Carpenter	.650	5.20	8

Carpenter Helpers	.505	4.04	8
Car Repairmen	.635	5.08	8
Car Repairmen Helpers	.580	4.68	8
Drill Sharpener	.740	5.92	8
Compressor Man	.695	6.21	9
Watchman	.515	4.12	8
Laborers	.450	3.60	8
Slate Pickers	.450	3.60	8
Ore Inspector	.580	4.64	8

Note: One and one-half times the above hourly rates will be paid for all time in excess of eight (8) hours per day or forty (40) hours per week, excepting supervisors, foremen and a few occupations where application of this rule is not practical.

Red Ore Mines.

Inside Rates.

Occupation	Hourly Rate	Amount per Shift	Hours per Shift
Company drillers	$ .755	$6.04	8
Driller helpers	.675	5.40	8
Motormen	.685	5.48	8
Coupler	.600	4.80	8
Rockman	.685	5.48	8
Rockmen helpers	.595	4.76	8
Track Cleaners	.506 Ton	—	—
Timbermen	.685	5.48	8
Timbermen helpers	.695	4.76	8
Pipemen	.635	5.08	8
Pipemen helpers	.595	4.76	8
Chainers-Contract—.022 per ton or	.625	5.00	8
Company chainers	.625	5.00	8
Company chainer helpers	.600	4.80	8
Engineers—Main hoist	.755	6.39	8½

Engineers—Auxiliary hoist	.685	5.48	8
Stablemen	.635	5.08	8
Rock, Timber and Track Foremen .	.755	6.04	8
Trackmen	.685	5.48	8
Trackmen helpers	.595	4.76	8
Roller men	.605	4.84	8
Pumpers	.605	4.84	8
Electric repairmen	.795	6.36	8
Machinist	.795	6.36	8
Miner on Company work*	.625	5.00	8

* See items 13 and 14 for application.

Note: One and one-half times the above hours rates will be paid for all time in excess of eight (8) hours per day or forty (40) hours per week, excepting supervisors, foremen and a few occupations where application of this rule is not practical.

Hand Loaded Ore.

Places 18 feet or less in Width.

Basic Tonnage—35 tons per Shift.

5 Man Crew.

Occupation	No. Men	Rate Per Ton
Drill Man	1	$ .153
Drill Man Helper	1	.138
Muckers	3	.417
Total		$ .708

Any additional tonnage produced will be paid for at the above rates.

When conditions develop beyond the control of a crew that prevents them from loading the basic tonnage and they are required to stay at the working place for the full 8-hour shift, wages equivalent to 90% of the basic tonnage earnings will be paid the crew on a pay period basis.

Hand Loaded Ore.

Places Over 18 Feet in Width.

Basic Tonnage—43 Tons Per Shift.

5 Man Crew.

Occupation	No. Men	Rate Per Ton
Drill Man	1	$ .129
Drill Man*	—	.112*
Drill Man Helper	1	.116
Muckers	3	.351
Total	5	$ .708

* To credit of Head Drill Man for Explosives and Supplies.

Any additional tonnage produced will be paid for at the above rates.

When conditions develop beyond the control of a crew that prevents them from loading the basic tonnage and they are required to stay at the working place for the full 8-hour shift, wages equivalent to 90% of the basic tonnage earnings will be paid the crew on a day period basis.

Drag Loaded Ore.

Basic Tonnage—100 Tons Per Shift.

15 Man Crew.

Occupation	No. Men	Rate Per Ton
Head Miner	1	$ .041
Head Miner	—	.110*
Drill Man	4	.121
Drag Engineers	2	.062
Drill Men Helpers	2	.053
Muckers	4	.106
Haulage Engineers	2	.046
Total	15	$ .539

* To credit of Head Miner for Explosives and Supplies.

Any additional tonnage produced will be paid for at the above rates.

When conditions develop beyond the control of a crew that prevents them from loading the basic tonnage and they are required to stay at the working place for the full 8-hour shift, wages equivalent to 80% of the basic tonnage earnings will be paid the crew on a pay period basis.

Drag Loaded Ore.

Headings Only.

Basic Tonnage—75 Tons Per Shift.

7 Man Crew.

Occupation	No. Men	Rate Per Ton
Head Miner	—	$ .041*
Drag Engineer	1	.083
Drill Men	2	.160

Drill Men Helper	1	.070
Muckers	2	.140
Haulage Engineer	1	.060
Total	7	$ .554

* Head Miner will be credited with yardage driven.

Any additional tonnage produced will be paid for at the above rates.

When conditions develop beyond the control of a crew that prevents them from loading the basic tonnage and they are required to stay at the working place for the full 8-hour shift, wages equivalent to 80% of the basic tonnage earnings will be paid the crew on a day period basis.

Sloss Red Ore Mine.

Yardage Rates.

Slopes, 12′ wide or less	$17.80 per lin. yd.
Slopes, 18′ wide	9.90 per lin. yd.
Headings, 18′ wide, or less	9.90 per lin. yd.
Upsets	7.85 per lin. yd.
Stope necks, 12′ wide or less	17.80 per lin. yd.
Stope necks, 15′ wide or less	13.90 per lin. yd.
Stope necks, 18′ wide or less	9.90 per lin. yd.
Splitting a single stope into a double stope	25.00 per lin. yd.

3754

SLOSS EXHIBIT No. 18.

Sloss Exhibit No. 18 is in all respects identical with Exhibit "B" to the Petition of Petitioner-Plaintiff Sloss-Sheffield Steel & Iron Company, heretofore set out. (Record p. 133.)

3755 SLOSS EXHIBIT No. 19.

Bessemer, Alabama, October 12th, 1940.

In Re: Sloss Red Ore Local No. 109 of International Union of Mine, Mill and Smelter Workers, District No. Five and Affiliate of the Bessemer Smelters Council.

W. M. N. Oct. 21, 1940.

Whereas, there now exists a controversy between this Local and the *Sloss-Sheffield Steel & Iron Company*, at its mines near Bessemer, Alabama, and this controversy is of long standing and deals with the travel pay time of our members employed by the above mentioned Company at its iron ore mines in its production and maintenance departments; and these employees are required to report at the mouth or collar of the mines at 6 o'clock, A. M. in the morning for the purpose of being loaded into man-trips, and other methods of entering the mines, they being underground workers; and at the mouth or collar of the mines are checked in at six o'clock and immediately given supplies, tools, equipment and instructions, and then they proceed to their working places, which is approximately 2 miles from the mouth or collar of the mines and down under the ground, which requires and consumes approximately one hour's time before they then arrive at their usual working places; all of this time being spent on the premises of the Company, and after the men are checked in and given supplies, equipment and instructions they then proceed to their working places to perform their usual tasks, after which they return to the mouth or collar of the mines arriving there about four o'clock in the afternoon, and are checked out, thus requiring the employees to be on the premises on duty and in the performance of their work for the Company ten (10) hours per day in the mines, totaling fifty hours per work week, and

Whereas, immediately after our Union was set up, and ever since that time, we have been protesting the travel pay of our members in this mine, and this controversy is of the Company each work week and being in excess of based upon the time spent by our members on the premises the hours required to work under the law, and as we understand it, in violation of the rules and law, and which time amounts to approximately 10 hours per work day, and employees affected by this condition numbering approximately 450. And we further believe that in view of the fact that the Fair Labor Standards Act was passed primarily for the purpose of reducing excessive required hours on the premises of the employer during any given work week, and

Whereas, the Fair Labor Standards Act is recognized and being complied with in many instances without any controversy on the part of the employers, but notwithstanding that fact and in the face of many ruling by the Wage & Hour Board supporting our position and conditions of work, we are still required by the said Company to be on the premises of the Company many hours in excess of the work week, and for which we receive no pay.

Therefore: Be it Resolved by this Local in regular meeting assembled that we authorize and request our local and National officers to immediately bring about a correction of these conditions and require the Company to immediately comply with the Fair Labor Standards Act from now on, and also require the Company to pay all back time since the effective date of this law.

And we further authorize our officers to bring this Resolution to the attention of the Hon. Robert P. Amis, Regional Director of the Wage & Hour Division of the Department of Labor in Birmingham, Alabama, and also with Col. Philip B. Fleming, Administrator of the Wage and

Hour Division of the Department of Labor, Washington, D. C. And our officers, both local and National, are further authorized to take such steps as may be necessary and expedient by negotiations, or suit, in order to bring about a speedy conclusion of this controversy.

Be it further resolved that copies of this Resolution be immediately forwarded to all interested parties.

This is to certify that the above is a true and exact copy of a Resolution unanimously adopted by Local No. 109 in its regular meeting of October 12th, 1940.

(S.) JOHN HILL,
As President of Local #.. of
I. U. M. M. & S. W.

Attested by:
(S.) W. C. BURT,
Recording Secretary.

Copy.

3758 SLOSS EXHIBIT 20.

International Union of Mine, Mill and Smelter Workers.

Offices: 303 Railway Exchange Building
Denver, Colorado.

Bessemer, Alabama, September 12, 1940.

Mr. Ben Davis, General Manager,
Sloss-Sheffield Steel & Iron Company,
3131 First Avenue North,
Birmingham, Alabama.

Dear Mr. Davis:

This is to advise, that although the working agreement, or contract by and between the Sloss-Sheffield Steel and

Iron Company and the Sloss Red Ore Local Union No. 109, International Union of Mine, Mill and Smelter Workers, has been signed by the Committee representing the Union, which provides among other things, 'that eight hours means eight hours work in and around the usual working places', the signing of this agreement does not preclude the right of the organization to continue in its request for pay for travel time spent by the employees in going to and from their working places, nor does it in any way waive the contentions of the local union that said travel time should be treated as hours worked.

As you know, this matter of travel time is now before the Wage and Hour Division of the U. S. Department of Labor, and a decision is still pending.

Very truly yours,
(S.) VAN D. JONES,
(Van D. Jones)
Int'l Board Member.

VDJ:P.

3759 **SLOSS EXHIBIT 21.**

September 14, 1940.

Mr. Van D. Jones,
Int'l. Board Member,
I. U. M. M. & S. W.,
Bes[illegible]mer, Alabama.

Dear Mr. Jones:

I have your letter of September 12, referring to the Agreement signed between this Company and Sloss Red Ore Local Union No. 109, International Union of Mine, Mill and Smelter Workers.

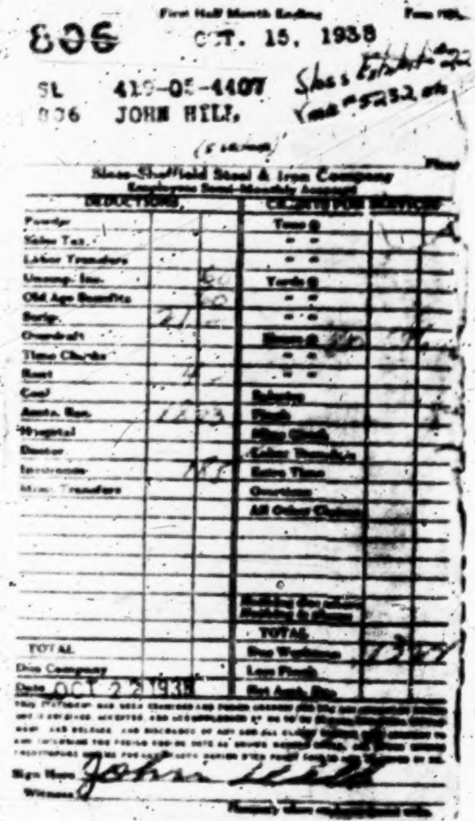
As you of course realize, the agreement was arrived at through the process of collective bargaining, and was signed by both parties in good faith after fully threshing out the matter you now refer to.

The Company expects to carry out the agreement and believes that the union will carry it out as made.

Yours very truly,
BEN DAVIS,
Vice President.

BD/wrm.

SLOSS EXHIBIT NO. 22



First Half Month Ending · Form 19A

806 OCT. 15, 1938

SL 419-05-4407

806 JOHN HILL

Sloss Exhibit 22 Vmc #5232 etc

(5 items)

Plant

Sloss-Sheffield Steel & Iron Company

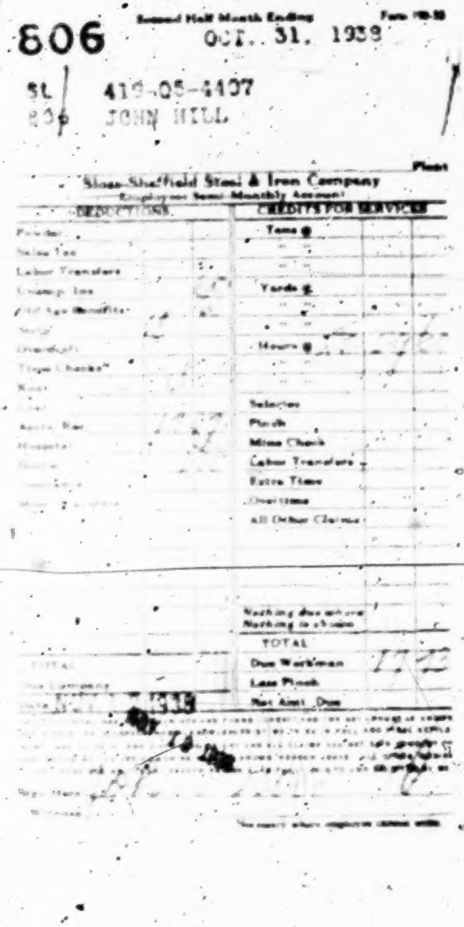
Employees Semi-Monthly Account

DEDUCTIONS			CREDITS FOR SERVICES		
Powder			Tons @		
Sales Tax			" "		
Labor Transfers			" "		
Unemp. Ins.		50	Yards @		
Old Age Benefits		50	" "		
Scrip	21		" "		
Overdraft			Hours @	[illegible]	
Time Checks			" "		
Rent	4		" "		
Coal			Salaries		
Auto. Ins.	12	23	Pinch		
Hospital			Mine Check		
Doctor			Labor Transfers		
Insurance	1	55	Extra Time		
Misc. Transfers			Overtime		
			All Other Claims		
			Nothing due where Nothing is shown		
			TOTAL		
TOTAL			Due Workman	17	27
Due Company			Less Pinch		
Date OCT 22 1938			Net Amt. Due		

Sign Here John Hill

Witness

SLOSS EXHIBIT NO. 22-1



Second Half Month Ending · Form 19-B

806 OCT. 31, 1938

SL 419-05-4407

806 JOHN HILL

Plant

Sloss-Sheffield Steel & Iron Company

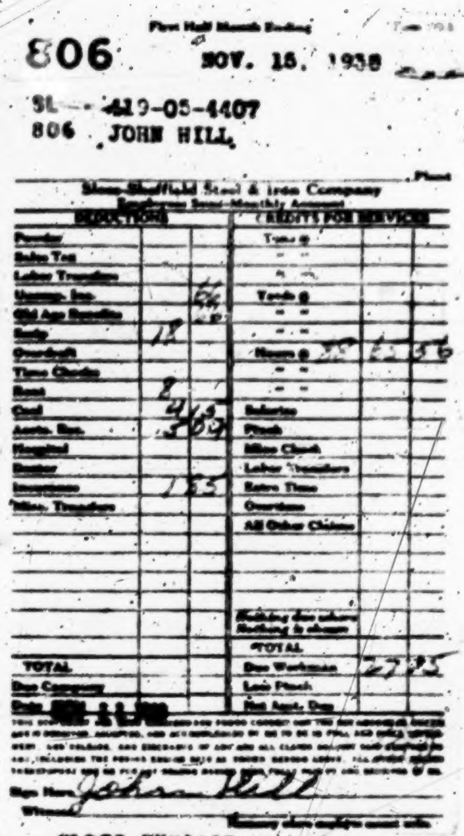
Employees Semi-Monthly Account

DEDUCTIONS			CREDITS FOR SERVICES		
Powder			Tons @		
Sales Tax			" "		
Labor Transfers			" "		
Unemp. Ins.			Yards @		
Old Age Benefits			" "		
Scrip			" "		
Overdraft			Hours @		
Time Checks			" "		
Rent			" "		
Coal			Salaries		
Auto. Ins.			Pinch		
Hospital			Mine Check		
Doctor			Labor Transfers		
Insurance			Extra Time		
Misc. Transfers			Overtime		
			All Other Claims		
			Nothing due where Nothing is shown		
			TOTAL		
TOTAL			Due Workman	17	72
Due Company			Less Pinch		
Date NOV 1938			Net Amt. Due		

Sign Here

Witness

SLOSS EXHIBIT NO. 22-2



First Half Month Ending · Form 19A

806 NOV. 15, 1938

SL 419-05-4407

806 JOHN HILL

Plant

Sloss-Sheffield Steel & Iron Company

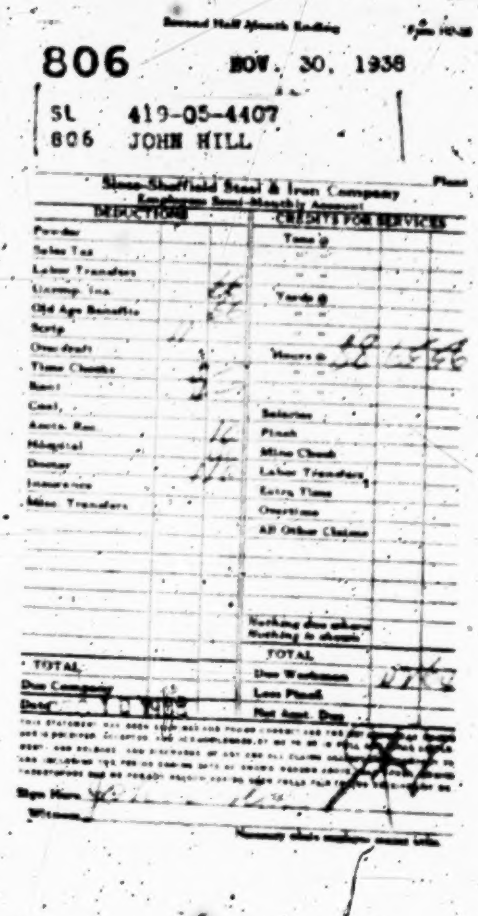
Employees Semi-Monthly Account

DEDUCTIONS			CREDITS FOR SERVICES		
Powder			Tons @		
Sales Tax			" "		
Labor Transfers			" "		
Unemp. Ins.		56	Yards @		
Old Age Benefits		20	" "		
Scrip	18		" "		
Overdraft			Hours @	[illegible]	5 56
Time Checks			" "		
Rent	2		" "		
Coal	4	65	Salaries		
Auto. Ins.	5	09	Pinch		
Hospital			Mine Check		
Doctor			Labor Transfers		
Insurance	1	55	Extra Time		
Misc. Transfers			Overtime		
			All Other Claims		
			Nothing due where Nothing is shown		
			TOTAL		
TOTAL			Due Workman	27	95
Due Company			Less Pinch		
Date			Net Amt. Due		

Sign Here John Hill

Witness

SLOSS EXHIBIT NO. 22-3



Second Half Month Ending · Form 19-B

806 NOV. 30, 1938

SL 419-05-4407

806 JOHN HILL

Plant

Sloss-Sheffield Steel & Iron Company

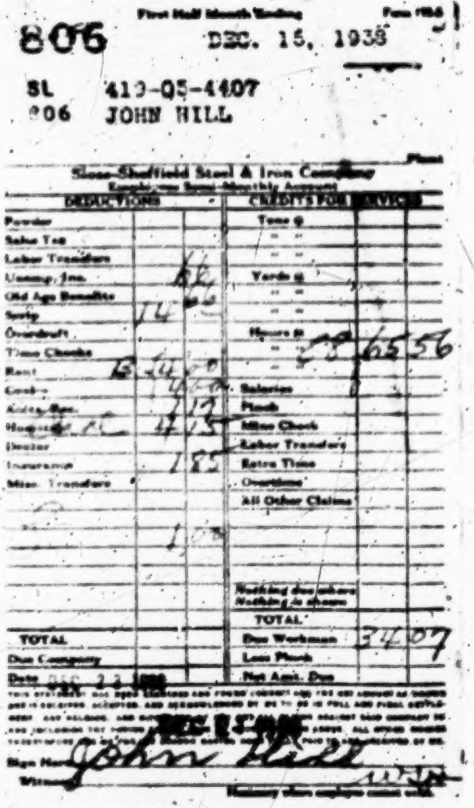
Employees Semi-Monthly Account

DEDUCTIONS			CREDITS FOR SERVICES		
Powder			Tons @		
Sales Tax			" "		
Labor Transfers			" "		
Unemp. Ins.		55	Yards @		
Old Age Benefits			" "		
Scrip	11		" "		
Overdraft			Hours @	[illegible]	
Time Checks	3		" "		
Rent	2		" "		
Coal			Salaries		
Auto. Ins.			Pinch		
Hospital		12	Mine Check		
Doctor			Labor Transfers		
Insurance	1	72	Extra Time		
Misc. Transfers			Overtime		
			All Other Claims		
			Nothing due where Nothing is shown		
			TOTAL		
TOTAL			Due Workman	[illegible]	
Due Company			Less Pinch		
Date			Net Amt. Due		

Sign Here

Witness

SLOSS EXHIBIT NO. 22-4



First Half Month Ending — Form

806 DEC. 15, 1938

SL 419-05-4407
806 JOHN HILL

Sloss-Sheffield Steel & Iron Company
Employees Semi-Monthly Account — Plant

DEDUCTIONS			CREDITS FOR SERVICES		
Powder			Tons @		
Sales Tax			" "		
Labor Transfers			" "		
Unemp. Ins.		66	Yards @		
Old Age Benefits		66	" "		
Scrip	14		" "		
Overdraft			Hours @		
Time Checks			" " 55	65	56
Rent	15 24		" "		
Coal		4 60	Salaries		
Acctg. Rec.	7	17	Pinch		
Hospital	4	15	Misc. Check		
Doctor			Labor Transfers		
Insurance	1	85	Extra Time		
Misc. Transfers			Overtime		
			All Other Claims		
	1	08			
			Nothing due where Nothing is shown		
			TOTAL		
TOTAL			Due Workman	34	07
Due Company			Less Pinch		
Date DEC 22 1938			Net Amt. Due		

[illegible]

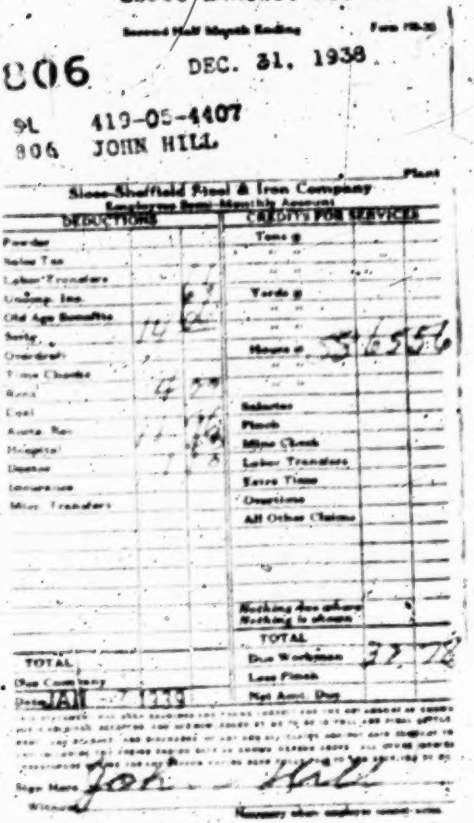
DEC 2 2 1938

Sign Here John Hill

Witness

Necessary where employee cannot write.

SLOSS EXHIBIT NO. 22-5



Second Half Month Ending — Form

806 DEC. 31, 1938

SL 419-05-4407
806 JOHN HILL

Sloss-Sheffield Steel & Iron Company
Employees Semi-Monthly Account — Plant

DEDUCTIONS			CREDITS FOR SERVICES		
Powder			Tons @		
Sales Tax			" "		
Labor Transfers			" "		
Unemp. Ins.		67	Yards @		
Old Age Benefits		67	" "		
Scrip	14		" "		
Overdraft			Hours @ 55	65	56
Time Checks			" "		
Rent	4	50	" "		
Coal			Salaries		
Acctg. Rec.			Pinch		
Hospital			Misc. Check		
Doctor			Labor Transfers		
Insurance			Extra Time		
Misc. Transfers			Overtime		
			All Other Claims		
			Nothing due where Nothing is shown		
			TOTAL		
TOTAL			Due Workman	37	72
Due Company			Less Pinch		
Date JAN 7 1939			Net Amt. Due		

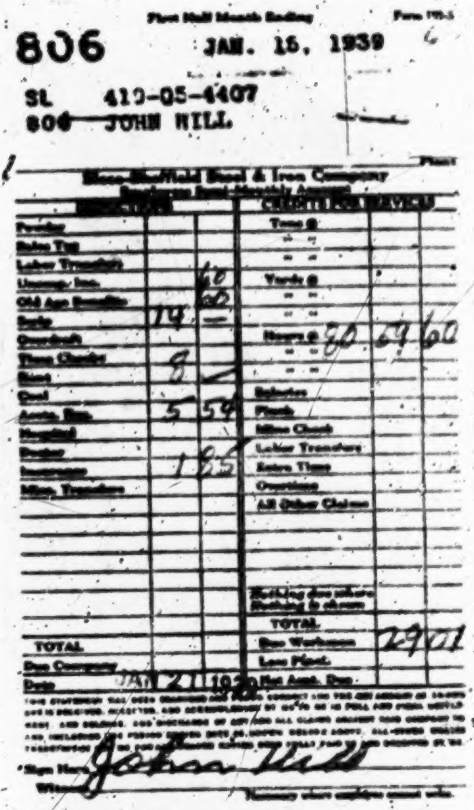
[illegible]

Sign Here John Hill

Witness

Necessary where employee cannot write.

SLOSS EXHIBIT NO. 22-6



First Half Month Ending — Form

806 JAN. 15, 1939

SL 419-05-4407
806 JOHN HILL

Sloss-Sheffield Steel & Iron Company
Employees Semi-Monthly Account — Plant

DEDUCTIONS			CREDITS FOR SERVICES		
Powder			Tons @		
Sales Tax			" "		
Labor Transfers			" "		
Unemp. Ins.		60	Yards @		
Old Age Benefits		60	" "		
Scrip	14	—	" "		
Overdraft			Hours @ 80	59	60
Time Checks	8		" "		
Rent	8	—	" "		
Coal			Salaries		
Acctg. Rec.	5	59	Pinch		
Hospital			Misc. Check		
Doctor			Labor Transfers		
Insurance	1	85	Extra Time		
Misc. Transfers			Overtime		
			All Other Claims		
			Nothing due where Nothing is shown		
			TOTAL		
TOTAL			Due Workman	29	01
Due Company			Less Pinch		
Date JAN 21 1939			Net Amt. Due		

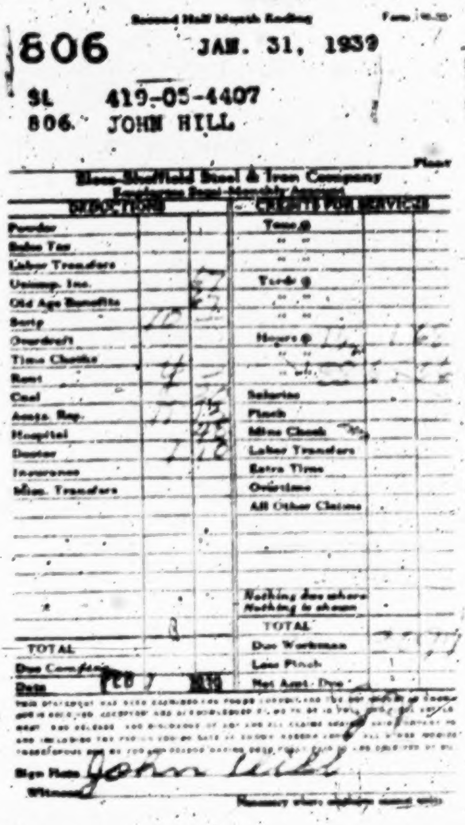
[illegible]

Sign Here John Hill

Witness

Necessary where employee cannot write.

SLOSS EXHIBIT NO. 22-7



Second Half Month Ending — Form

806 JAN. 31, 1939

SL 419-05-4407
806 JOHN HILL

Sloss-Sheffield Steel & Iron Company
Employees Semi-Monthly Account — Plant

DEDUCTIONS			CREDITS FOR SERVICES		
Powder			Tons @		
Sales Tax			" "		
Labor Transfers			" "		
Unemp. Ins.		57	Yards @		
Old Age Benefits		57	" "		
Scrip	10		" "		
Overdraft			Hours @		
Time Checks	4		" "		
Rent			" "		
Coal			Salaries		
Acctg. Rec.			Pinch		
Hospital			Misc. Check		
Doctor	1	12	Labor Transfers		
Insurance			Extra Time		
Misc. Transfers			Overtime		
			All Other Claims		
			Nothing due where Nothing is shown		
			TOTAL		
TOTAL			Due Workman	[illegible]	
Due Company			Less Pinch		
Date FEB 7 1939			Net Amt. Due		

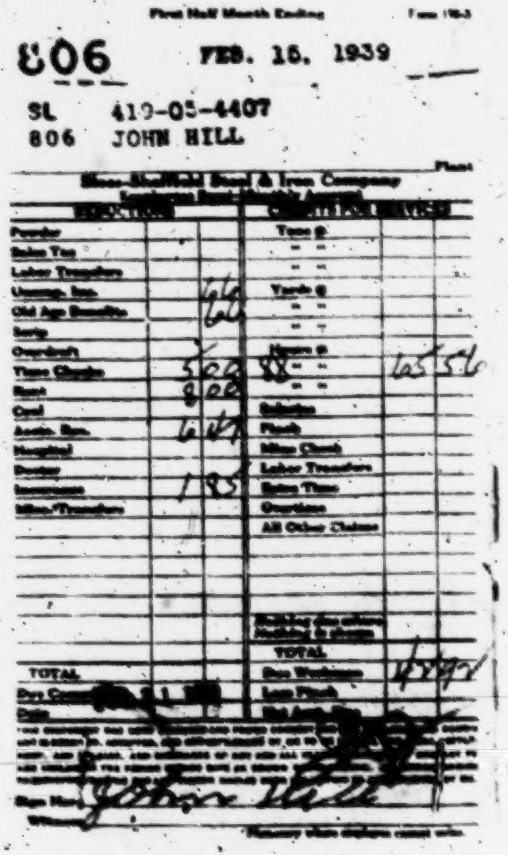
[illegible]

Sign Here John Hill

Witness

Necessary where employee cannot write.

SLOSS EXHIBIT NO. 22-8



First Half Month Ending

Form 10-3

806 FEB. 15, 1939

SL 419-03-4407
806 JOHN HILL

Plant

Sloss-Sheffield Steel & Iron Company

DEDUCTIONS			CREDITS FOR SERVICES		
Powder			Tons @		
Sales Tax			" "		
Labor Transfers			" "		
Unemp. Ins.		16	Yards @		
Old Age Benefits		16	" "		
Scrip			" "		
Overdraft			Hours @		
Time Checks	5	00	88 " "	105	56
Rent	8	00	" "		
Coal			Salaries		
Assn. Ben.	6	47	Flush		
Hospital			Mine Check		
Doctor			Labor Transfers		
Insurance	1	85	Sales Time		
Misc./Transfers			Overtime		
			All Other Claims		
			[illegible]		
			TOTAL		
TOTAL			Due Workman	[illegible]	
Day Com[illegible]			Less Flush		
Date			Net Amount Due		

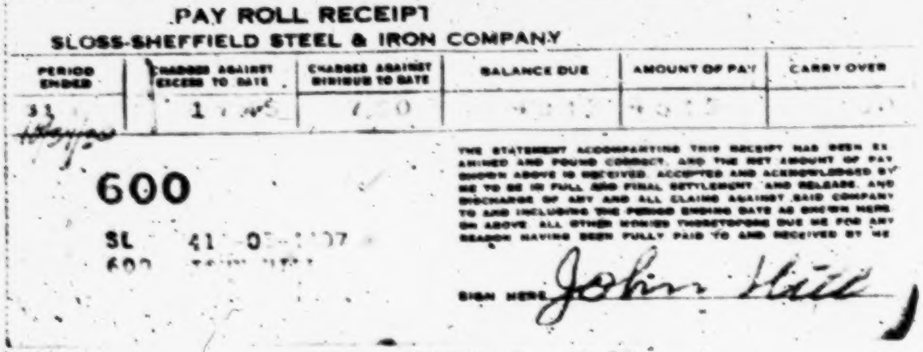
[illegible]

Sign Here John Hill

Witness

[illegible]

SLOSS EXHIBIT NO. 22-9



PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
15 [illegible]	1 [illegible]	[illegible]	[illegible]	[illegible]	[illegible]

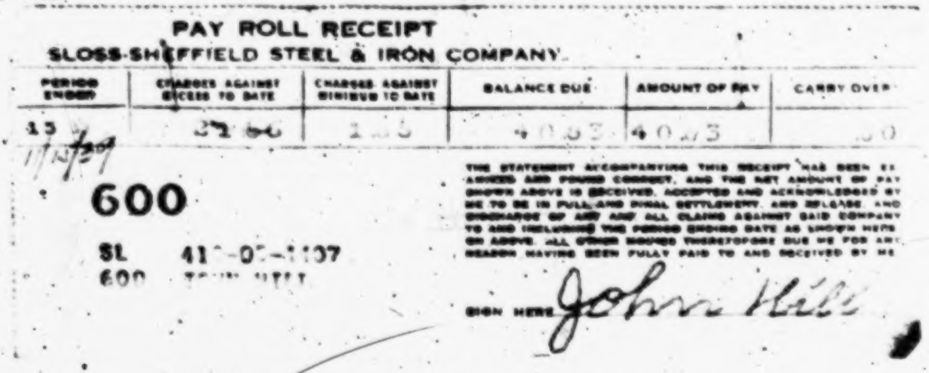
THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

600

SL 41[illegible]-0[illegible]-[illegible]07
600 [illegible]

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-10



PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
15 [illegible] 11/15/39	[illegible]	[illegible]	40 [illegible]	40 [illegible]	.00

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

600

SL 41[illegible]-0[illegible]-[illegible]107
600 [illegible]

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-11

PAY ROLL RECEIPT
SLOSS SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]				[illegible]	

600

SL 41[illegible]-0[illegible]-1[illegible]07
600 [illegible]

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-12

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	

600

SL 41 -0[illegible]-1107
600 [illegible]

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-13

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
11		[illegible]	[illegible]	[illegible]	.00

1/31/30

600

SL 41[illegible]-0[illegible]-1107
600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-14

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
12	1[illegible]	6[illegible]5	4113	4113	.00

1/[illegible]/40

600

SL 41[illegible]-0[illegible]-1107
600 JOHN HILL.

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT 22-15

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE

SLOSS EXHIBIT 22-16

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE

SLOSS EXHIBIT 22-17

SLOSS EXHIBIT 22-18

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-19

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

600

SL 41[illegible]-0[illegible]-1107
600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-20

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

600

SL 41[illegible]-0[illegible]-1107
600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-21

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

600

SL 41[illegible]-0[illegible]-1107
600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-22

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES, AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

[illegible]0

[illegible]

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE

SLOSS EXHIBIT NO. [illegible]

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

COO

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

SIGN HERE [illegible]

SLOSS EXHIBIT NO. [illegible]-24

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

COO

SL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-25

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

SIGN HERE [illegible]

SLOSS EXHIBIT NO. [illegible]

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

COO

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

SIGN HERE [illegible]

SLOSS EXHIBIT NO. 22-27

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

00

SL 41[illegible]

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-28

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
	[illegible]	[illegible]	[illegible]	[illegible]	

600

SL 41[illegible]-0[illegible]-4107
600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-39

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

600

SL 41[illegible]-0[illegible]-4107
600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-30

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

600

SL 41[illegible]-0[illegible]-4107
600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-31

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

600

SL 41
600

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-32

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

600 OCT. 15, 1940

SL 41-02-1107
600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-33

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
31					

600 OCT. 31, 1940

SL 41-02-1107
600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-34

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
15	17	1235	4310	4310	

600 NOV. 15, 1940

SL 41-02-1107
600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-35

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

600

SL 41

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE

SLOSS EXHIBIT NO. 22-36

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

600

SL 41

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-37

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]			[illegible]	[illegible]	[illegible]

600

SL 41

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-38

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

[illegible]

600

SL 41

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-39

SLOSS EXHIBIT NO. 22-40

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

[illegible]

600

SL 11

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-41

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

600

SL 11

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE

SLOSS EXHIBIT NO. 22-42

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

[illegible]

600

SL 41

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-43

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[illegible]

600

SL 41[illegible]-0[illegible]-[illegible]7
600 [illegible]

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME [illegible] IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-44

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	[illegible]	130	[illegible]	[illegible]	.00

[illegible]

600

SL 41[illegible]-03-1107
600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME [illegible] FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-45

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	[illegible]		[illegible]	[illegible]	

[illegible]

600

SL 41[illegible]-0[illegible]-[illegible]7
600 [illegible]

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME [illegible] FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill
Mrs John Hill

SLOSS EXHIBIT NO. 22-46

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
				[illegible]	[illegible]

600

SL 41[illegible]
600 [illegible]

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME [illegible] FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-47

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

600

SL 41[illegible]-0[illegible]-[illegible]107

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY [illegible] IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND [illegible]S OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

SIGN HERE Hill

SLOSS EXHIBIT NO. 22-48

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

600

SL 41[illegible]-[illegible]-[illegible]

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISC[illegible] ANY AND ALL CLAIMS AGAINST SAID COMPANY TO A[illegible]ING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-49

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	[illegible]		2470	2470	00

600

SL 41[illegible]-0[illegible]-1107

600

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY [illegible] FULL AND FINAL SETTLEMENT, AND RELEASE, AND [illegible] OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-50

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	00

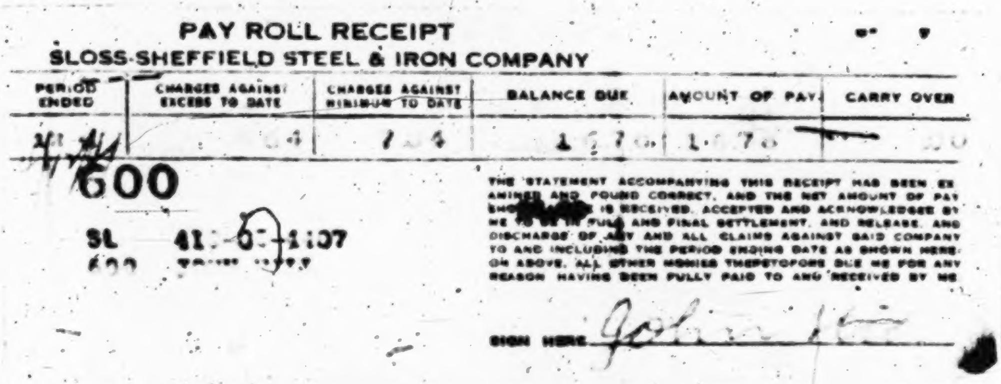
600

SL 41[illegible]-0[illegible]-[illegible]107

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO [illegible] AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE [illegible] ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE Hill

SLOSS EXHIBIT NO. 22-51



PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible] 41	64	7[illegible]4	1676	1676	.00

4/41

600

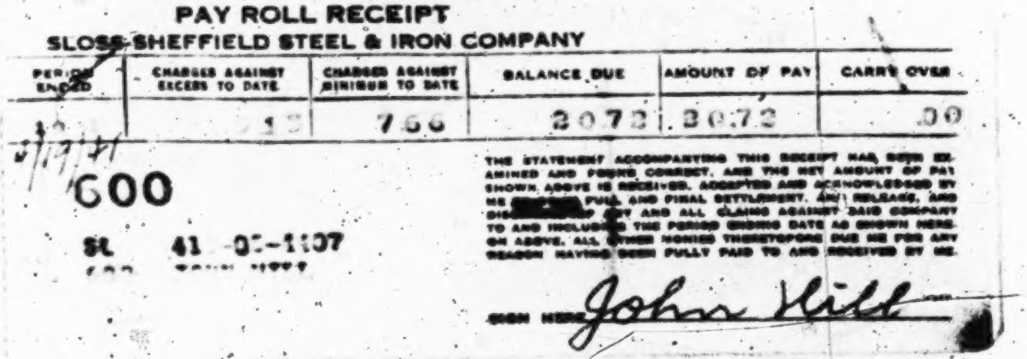
SL 41[illegible]-0[illegible]-1107

600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHO[illegible] IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-52



PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	13	766	2072	2072	.00

5/17/41

600

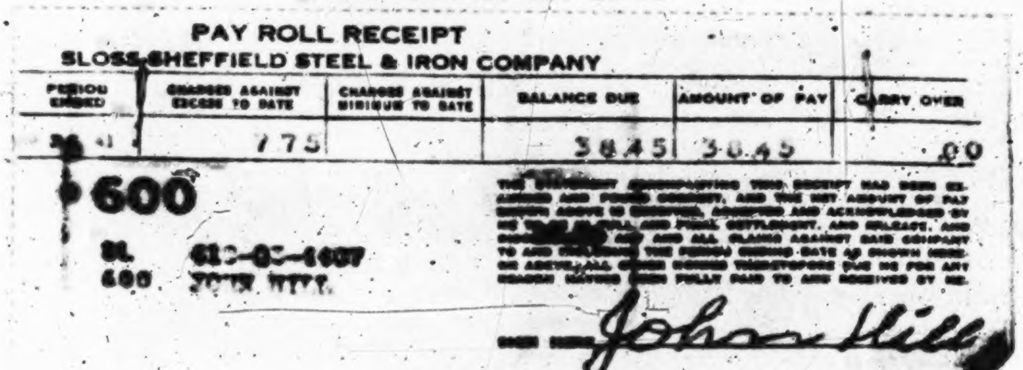
SL 41 -0[illegible]-1107

600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME [illegible] FULL AND FINAL SETTLEMENT, AND RELEASE, AND DIS[illegible] ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-53



PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible] 41	775		3845	3845	.00

600

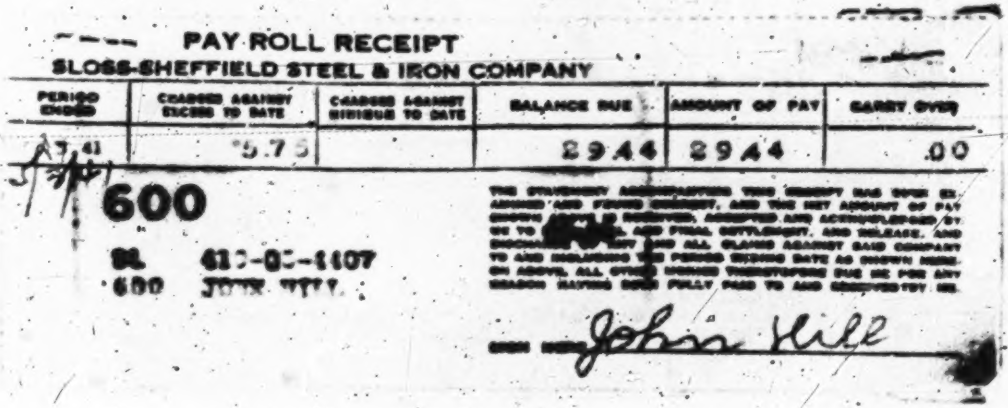
SL 610-0[illegible]-1107

600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME [illegible] FULL AND FINAL SETTLEMENT, AND RELEASE, AND [illegible] ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND [illegible] THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL [illegible] MONIES THERETOFORE DUE ME FOR ANY REASON HAVING [illegible] FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 23-54



PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]7 41	575		2944	2944	.00

5/[illegible]/41

600

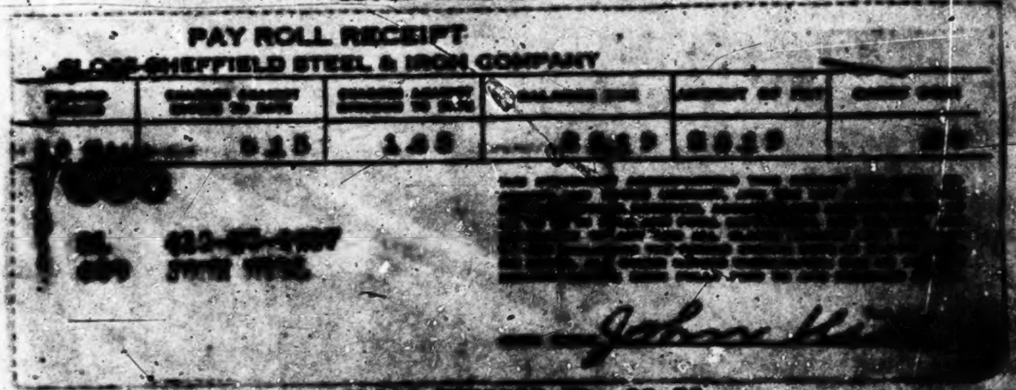
SL 610-0[illegible]-1107

600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN [illegible] RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO [illegible] AND FINAL SETTLEMENT, AND RELEASE, AND DISCHA[illegible] AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE, ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 28-55



PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	815	145	[illegible]	[illegible]	[illegible]

600

SL [illegible]
600 [illegible]

John [illegible]

SLOSS EXHIBIT NO. [illegible]

PAY ROLL RECEIPT

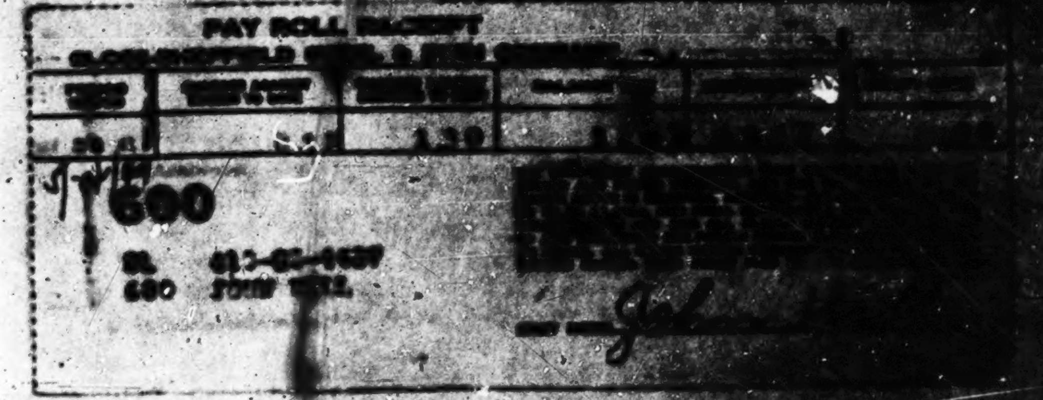
SLOSS-SHEFFIELD STEEL & IRON COMPANY

600

SL [illegible]
600 [illegible]

John [illegible]

SLOSS EXHIBIT NO. [illegible]



PAY ROLL RECEIPT

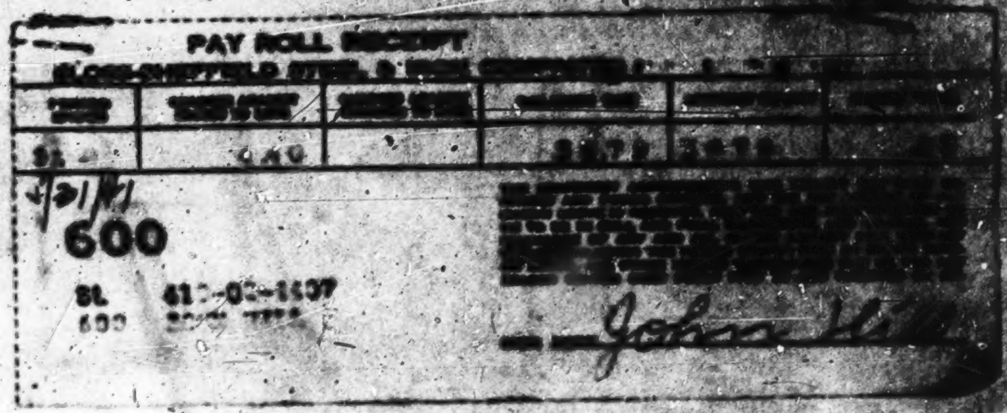
SLOSS-SHEFFIELD STEEL & IRON COMPANY

600

SL [illegible]
600 [illegible]

John [illegible]

SLOSS EXHIBIT NO. [illegible]



PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

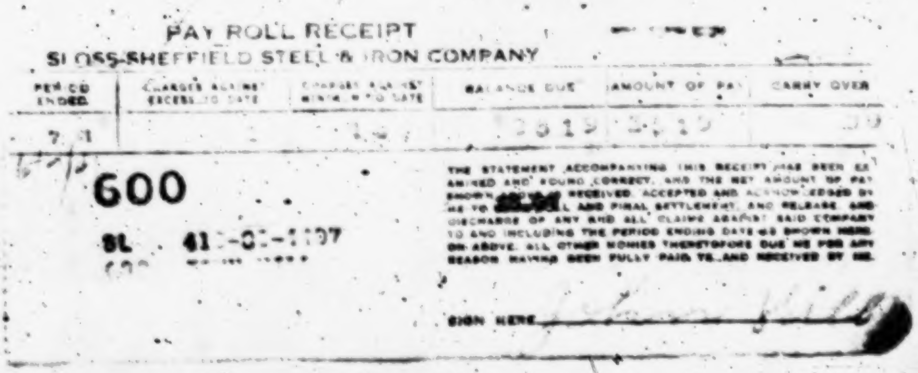
[illegible]/21/41

600

SL 61[illegible]-02-1607
600 [illegible]

John [illegible]

SLOSS EXHIBIT NO. 22-59



PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
7 [illegible]	[illegible]	[illegible]	2519	2519	.00

6-[illegible]

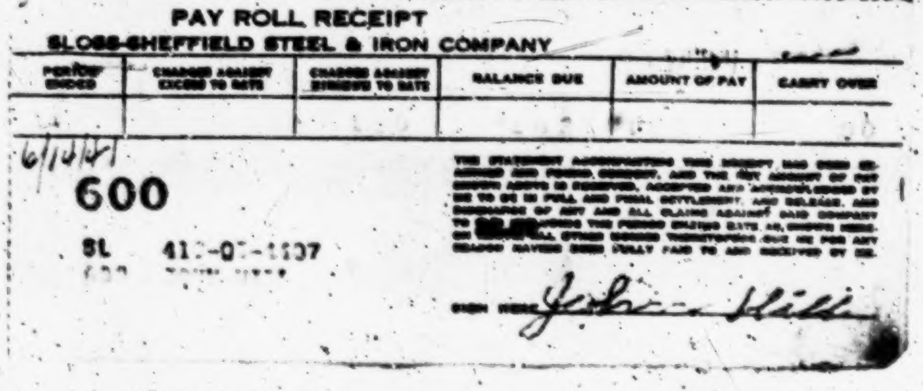
600

SL 41[illegible]-0[illegible]-1107
600 [illegible]

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN [illegible] RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO [illegible]L AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-60



PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]		[illegible]	[illegible]	[illegible]	[illegible]

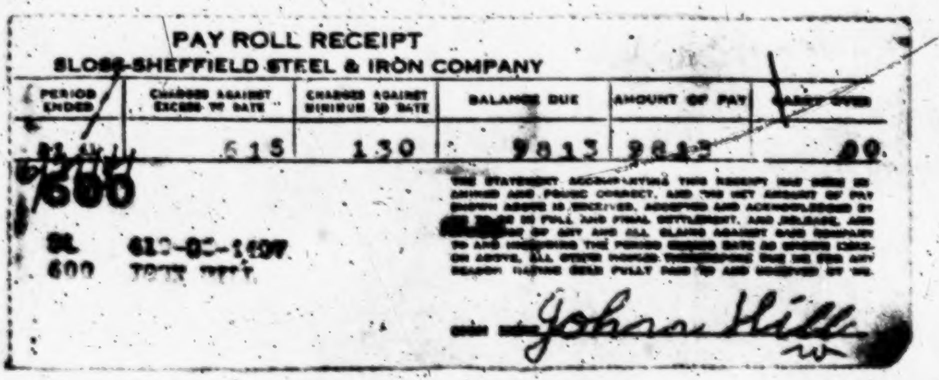
6/14/[illegible]

600

SL 41[illegible]-0[illegible]-1107
600 [illegible]

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-61



PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

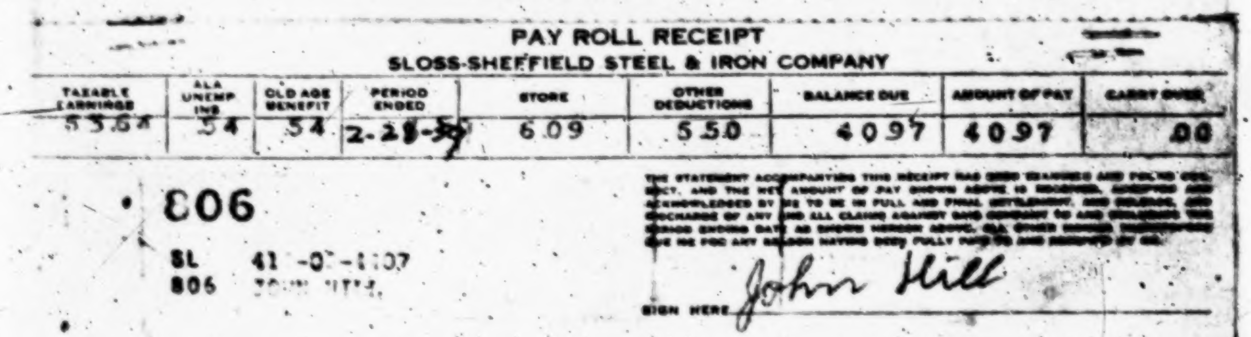
PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	615	130	9813	9813	.00

600

SL 41[illegible]-03-1107
600 [illegible]

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-62



PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	ALA UNEMP INS	OLD AGE BENEFIT	PERIOD ENDED	STORE	OTHER DEDUCTIONS	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
5568	54	54	2-28-39	6.09	5.50	4097	4097	.00

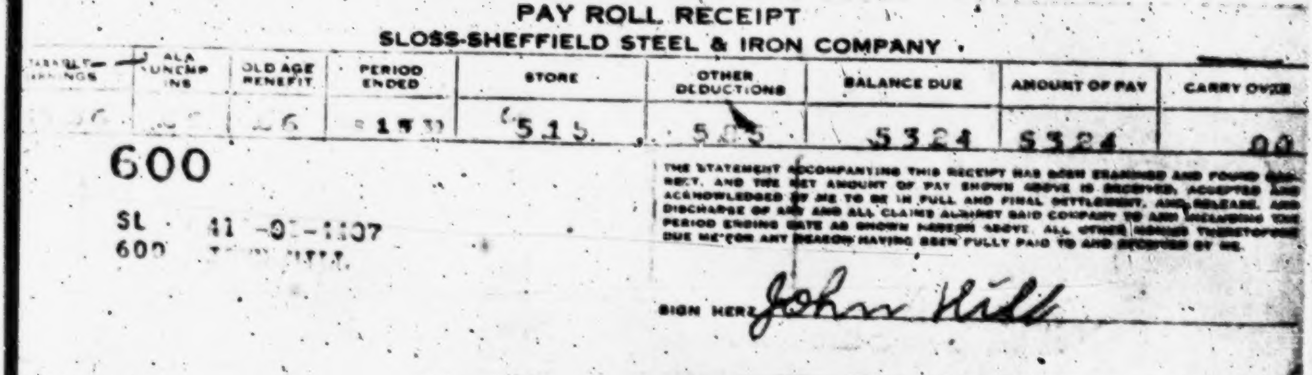
806

SL 41[illegible]-0[illegible]-1107
806 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-63



PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	ALA. UNEMP. INS.	OLD AGE BENEFIT	PERIOD ENDED	STORE	OTHER DEDUCTIONS	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	[illegible]	[illegible]	[illegible]	515	5[illegible]5	5324	5324	00

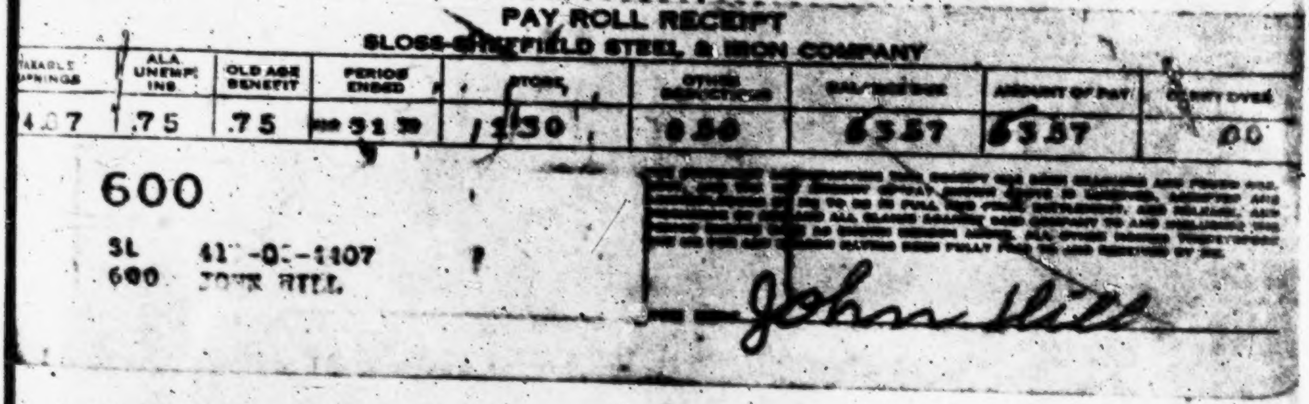
600

SL 41 -0[illegible]-1107
600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-64



PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

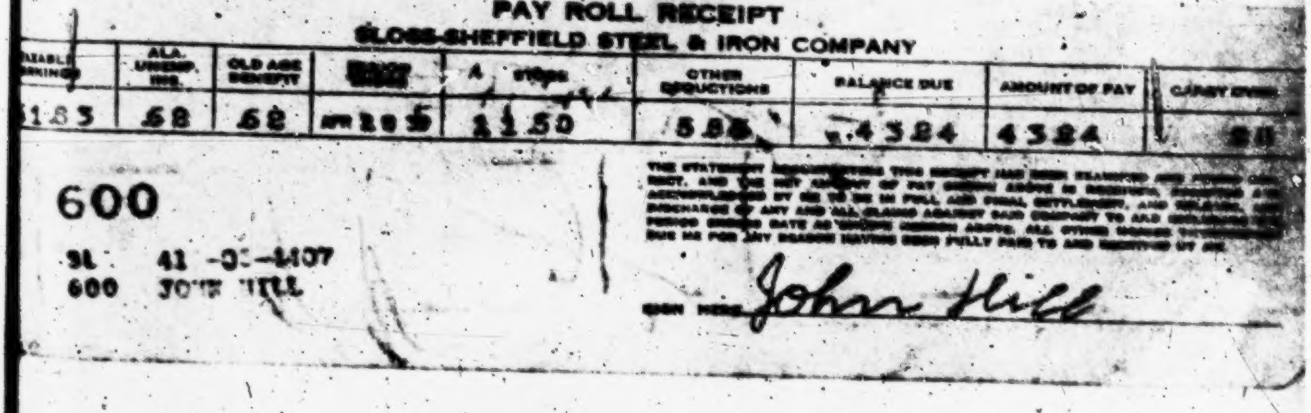
TAXABLE EARNINGS	ALA. UNEMP. INS.	OLD AGE BENEFIT	PERIOD ENDED	STORE	OTHER DEDUCTIONS	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
4[illegible]7	.75	.75	[illegible] 5 1 39	1[illegible]50	[illegible]	6357	6357	00

600

SL 41 -0[illegible]-1107
600 JOHN HILL

John Hill

SLOSS EXHIBIT NO. 22-65



PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	ALA. UNEMP. INS.	OLD AGE BENEFIT	PERIOD ENDED	STORE	OTHER DEDUCTIONS	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]183	.68	.68	[illegible]	1150	588	4324	4324	[illegible]

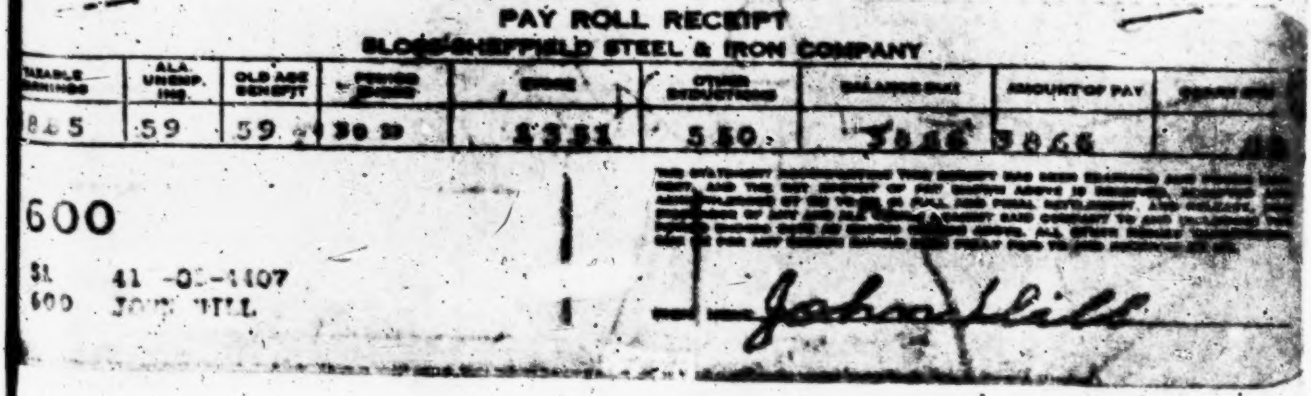
600

SL 41 -0[illegible]-1107
600 JOHN HILL

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-66



PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	ALA. UNEMP. INS.	OLD AGE BENEFIT	PERIOD ENDED	STORE	OTHER DEDUCTIONS	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
8[illegible]5	.59	.59	30 39	[illegible]	550	3866	3866	[illegible]

600

SL 41 -0[illegible]-1107
600 JOHN HILL

John Hill

SLOSS EXHIBIT NO. 22-67

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	ALA. UNEMP. INS.	OLD AGE BENEFIT	PERIOD ENDED	STORE	OTHER DEDUCTIONS	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
59 60	.60	.60	18 39	9 61	5 85	42 94	42 94	.00

[illegible]

600

SL 410-05-4407
600 JOHN HILL

John Hill

SLOSS EXHIBIT NO. 22-68

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	ALA. UNEMP. INS.	OLD AGE BENEFIT	PERIOD ENDED	STORE	OTHER DEDUCTIONS	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
70 03	.70	.70	26 39	[illegible]	[illegible]	[illegible]	[illegible]	.00

[illegible]

600

SL 410-05-4407
600 JOHN HILL

John Hill

SLOSS EXHIBIT NO. 22-69

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	ALA. UNEMP. INS.	OLD AGE BENEFIT	PERIOD ENDED	STORE	OTHER DEDUCTIONS	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
65 56	.66	.66	18 39	10 31	5 85	48 08	48 08	.00

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER WAGES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

600

SL 410-05-4407
600 JOHN HILL

John Hill

SLOSS EXHIBIT NO. 22-70

PAY ROLL RECEIPT
SLOSS-SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	ALA. UNEMP. INS.	OLD AGE BENEFIT	PERIOD ENDED	STORE	OTHER DEDUCTIONS	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
55 64	.54	.54	4 30 39	10 57	5 90	36 49	36 49	.00

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT, AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER WAGES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

600

SL 410-05-4407
600 JOHN HILL

John Hill

SLOSS EXHIBIT NO. 22-71

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	UNEMP. INS	OLD AGE BENEFIT	PERIOD ENDED	STORE	OTHER DEDUCTIONS	BALANCE DUE	AMOUNT OF PAY	CARRY OVER

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

600

SL [illegible]

SIGN HERE

SLOSS EXHIBIT NO. 22-72

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	ALA. UNEMP. INS	OLD AGE BENEFIT	PERIOD ENDED	STORE	OTHER DEDUCTIONS	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
[illegible]	[illegible]	[illegible]	31	[illegible]		[illegible]	[illegible]	

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

600

SL 41 -0

600 [illegible]

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-73

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	ALA. UNEMP. INS	OLD AGE BENEFIT	PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
65 56	66	66	15 39	13 74	1 85	48 65	48 65	00

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

600

SL 413-03-1407

600 JOHN HILL

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-74

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	ALA. UNEMP. INS.	OLD AGE BENEFIT	PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
65 56	66	66	30 39	13 55	6 50	44 19	44 19	00

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT, AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE, AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME.

600

SL 413-03-1407

600 JOHN HILL

SIGN HERE John Hill

SLOSS EXHIBIT NO. 22-75

PAY ROLL RECEIPT

SLOSS SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	ALA. UNEMP. INS.	OLD AGE BENEFIT	PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
65 56	.66	.66	[illegible] 15 39	17 46	1 85	44 93	44 93	.00

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

600

SL 412-05-1107
600 [illegible]

SIGN HERE

SLOSS EXHIBIT NO. 22-76

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	ALA. UNEMP. INS.	OLD AGE BENEFIT	PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
59 60	.60	.60	1-30 39	18 06	1 50	38 82	38 82	.00

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

600

SL 412-05-1107
600 [illegible]

SIGN HERE John [illegible]

SLOSS EXHIBIT NO. 22-77

PAY ROLL RECEIPT

SLOSS-SHEFFIELD STEEL & IRON COMPANY

TAXABLE EARNINGS	ALA. UNEMP. INS.	OLD AGE BENEFIT	PERIOD ENDED	CHARGES AGAINST EXCESS TO DATE	CHARGES AGAINST MINIMUM TO DATE	BALANCE DUE	AMOUNT OF PAY	CARRY OVER
56 62	.57	.57	6-15 39	16 27	7 85	31 36	31 36	.00

THE STATEMENT ACCOMPANYING THIS RECEIPT HAS BEEN EXAMINED AND FOUND CORRECT AND THE NET AMOUNT OF PAY SHOWN ABOVE IS RECEIVED, ACCEPTED AND ACKNOWLEDGED BY ME TO BE IN FULL AND FINAL SETTLEMENT AND RELEASE AND DISCHARGE OF ANY AND ALL CLAIMS AGAINST SAID COMPANY TO AND INCLUDING THE PERIOD ENDING DATE AS SHOWN HEREON ABOVE. ALL OTHER MONIES THERETOFORE DUE ME FOR ANY REASON HAVING BEEN FULLY PAID TO AND RECEIVED BY ME

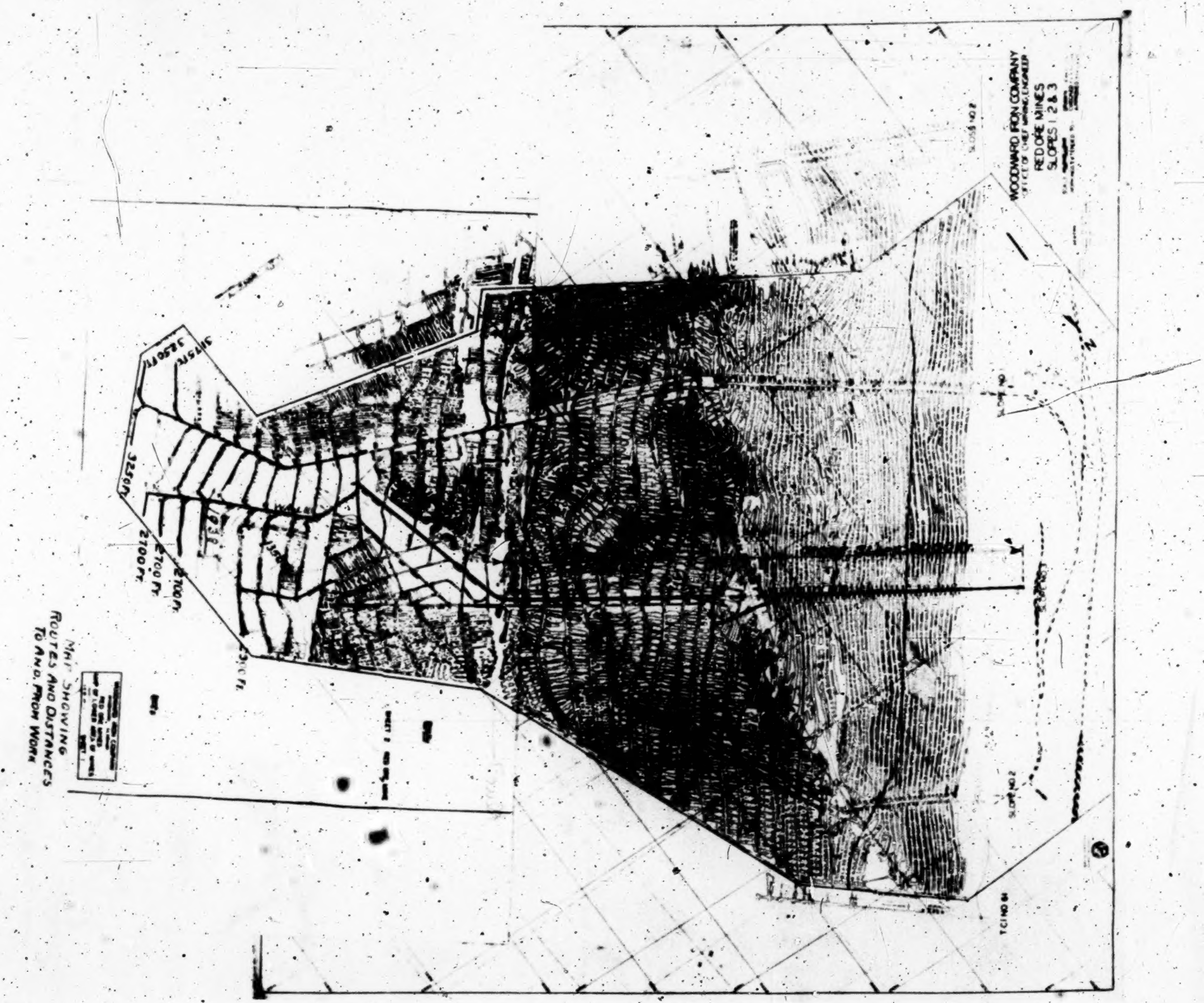
600

SL 412-05-1107
600 [illegible]

SIGN HERE John [illegible]

3860

SLOSS EXHIBIT NO. 23.


WOODWARD IRON COMPANY
OFFICE OF CHIEF MINING ENGINEER
RED ORE MINES
SLOPES 1 2 & 3
SLOSS NO 2
MAP SHOWING
ROUTES AND DISTANCES
TO AND FROM WORK
3250 FT.
3175 FT.
3250 FT.
2700 FT.
2700 FT.
2700 FT.

3781

SLOSS EXHIBIT No. 24.

Woodward, Ala., July 6, 1934.

Commissioner C. L. Richardson,
Representative of Secretary of Labor,
United States Department of Labor,
Birmingham, Alabama.

This is to confirm the understandings reached today at the conference between representatives of employees of our Ore Mines and the management, which was presided over by Commissioner Richardson, regarding the position of this Company as to its ore mining operations. This is furnished to you as the representative of the United States Government, as a part of your record in this matter.

We are informed that the following named men have been chosen as a Committee to deal with the management on collective bargaining matters:

George R. Coles, V. P. International.
J. B. McGraw, Pres., Local.
Clarence Demott, Rep., Local.
J. Walter Wood, Rep., Local.
John H. Graham, Rep., Local.

We are entirely willing to deal with this Committee on matters of collective bargaining as they arise for all our Ore Mines employees as they may represent.

The employees at our Ore Mines have been free to join any organization they chose without prejudice or discrimination and this is the policy of our Company.

It is understood that the wage scale attached to this letter constitutes the rate to be paid by us for the various classifications as shown, for the period of one year from this date, unless changed by mutual agreement between the management and the representatives.

Our men at each mine are free to select a committee to represent them in adjusting any grievance that may arise between them and the management which the employee himself cannot settle satisfactorily with his immediate supervisor. It is understood that such committee will not take up any grievance with the management unless and until the employee has endeavored to adjust the matter himself. If the Committee and the Foreman of the mine fail to adjust any grievance, the matter will then be taken up by the Committee with the Mine Superintendent. Failing to reach agreement in this event, it will be taken up with the General Superintendent of Ore Mines. If they should fail to agree, the matter may be submitted to arbitration, one arbitrator to be named by the Committee and one to be named by the management of the Company and these two may select a third.

It is understood that the management of the mines is vested exclusively in the Company and the duties of the mine committees shall be confined as above outlined.

It is understood that no such mine committee will interfere with the operations of the mine to enforce any purely local grievance until the full procedure of settlement has been followed.

The Company, of course, will be bound by all the terms and conditions of the Ore Mining Code when such Code has been adopted and signed by the Company to the extent that it applies to our operations in this District.

As a condition of the above understandings reached between the Committee and the management, it is understood the strike at all our Ore Mines is called off and that all men are to return to their former occupations without prepudice or discrimination.

It is further understood that an investigation will be made by H. A. Berg as to the .605c per hour rate paid machinists and electrical repairman, and if such investigation reveals .655c to be a fair rate, the .655 rate will apply.

Yours truly,

H. A. BERG,

President.

Woodward Iron Company. 7-3-34

Red Ore Division. 7-5-34

7-6-34

	Present Hourly Rate	Proposed Hourly Rate	Hours
Rockman	.4675	.51	8
Rockman Helper	.40	.43	8
Timberman	.4675	.51	8
Timberman Helper	.40	.43	8
Company Drag Engineer	.4675	.57	8
Pipeman	.44	.47	8
Company Drillman	.4675	.51	8
Company Drillman Helper	.40	.44	8
Car Repairer	.44	.54	8
Car Repairer Helper	.40	.44	8
Company Chainer	.4175	.46	8
Greaserman	.40	.44	8
O. H. Hoist Engr. 1st Cl.	.55	.58	9
O. H. Hoist Engr. 2nd Cl.	.4025	.46	8
Latch Boy	.40	.44	8
Motorman	.4675	.57	8
Rollerman	.4175	.46	8
Rollerman Helper	.40	.44	8
Stableman Helper	.40	.44	8
Trip Rider	.4175	.46	8
Trackman	.4676	.51	8
Trackman Helper	.40	.43	8
Truck Driver	.33	.38	8
Teamster	.30	.35	8
Crusherman	.325	.375	8
R. R. Car Loader	.30	.35	8
Tippleman	.385	.435	8
Skip Loader	.4175	.46	8
Skip Loader Helper	.40	.44	8

	Present Hourly Rate	Proposed Hourly Rate	Hours
Weighman	.5125	.5425	8
O. S. Hoist Engineer	.55	.58	8
Safetyman—Man Trips	.33	.38	8
Pumpers	.40	.44	8
Blacksmith 2nd Cl.	.495	.5275	8
Blacksmith Helper	.40	.44	8
Carpenter	.44	.48	8
Drill Steel Sharpener	.505	.555	8
Drill Steel Sharpener Helper	.40	.44	8
Electrician	.66	.69	8
Electrical Repairman	.55	.605	8
Machinist	.55	.605	8
Laborer	.30	.30	8
Haulage Motorman	.4675	.57	8
Haulage Laborer	.40	.44	8
Pensioners	.265	.30	8
Drill Repairman	.4675	.605	8
Sanitary & Garbage Drivers	.30	.35	8
Fireman	.30	.44	8
Compressor Engineer	.4225	.52	8
Asst. Mine Foreman	.66	.72	9
Section Foreman	.5775	.64	9
Watchman	.33	.36	8
Drillman	.4675	.57	8
Drillman's Helper	.40	.47	8
Muckers	tons average	.50	8
Drag Foreman	.55	.60-.62-.70	8
Drag Engineer	.4675	.55-.57-.65	8
Drag Motorman	.4675	.55-.57-.65	8
Drag Drillman	.4675	.55-.57-.65	8
Drag Drill Helper	.40	.45-.47-.55	8
Drag Mucker	.40	.48-.50-.58	8
Loading Slate Helper	.40	.44	8
Contract Chainer Laborer	.4175	.46	8

Tons	0—180—	.45	.48	.55	.60	
	181—210	.47	.50	.57	.62	
	211—240	.49	.52	.59	.64	Small drags do.
	241—270	.51	.54	.61	.66	
	271—300	.53	.56	.61	.68	
	300 & over	.55	.58	.65	.70	

3785 SLOSS EXHIBIT No. 25.

Copy of proposed agreement presented to Company. *Not signed.*

Bessemer, Alabama, April 13th, 1934.

To: Woodward Iron Company,

Attention, Mr. H. A. Berg, President.

In Re: Woodward Red Ore Mine Division.

Gentlemen:

We, the duly chosen representatives of more than 90 percent of your employees, who were working for you on the first day of April, 1934, submit the following demands in working agreements and wage scales:

First: That the Company recognize our Union and deal with our chosen representatives, as required by Section 7 and 7 (a) of the National Recovery Act.

Second: That the Union be recognized and check-off system be given the employees, which system included the collection of dues collectively by the Company and paying same to the Financial Secretary. The Financial Secretary to send list of names in duplicate to pay master, and one list to be marked and returned to Financial Secretary of respective local. This list to be sent in for deduction from first pay day of month.

Third: That there be no discrimination or coercion against any employee for his activities and affiliations with the organization.

Fourth: That Union employees heretofore discharged and victimized be immediately reinstated with full seniority rights, and pay ~~for time lost on a~~ccount of their activities in our organization.

Fifth: That the Company desist in attempting to compel by force, duress, threats and bribery to compel employees to join company union, or "Company Representation Plan."

Sixth: That the write-up system be abolished, or when any member of the organization, or employee, having violated any safety rule, and being written up, shall have the right to appeal to the Shops Committee for investigation, of said violation, and if not satisfied with the report of the Shops Committee, shall have the right to appeal to the State's Compliance Board, or, if he deems it necessary, the right to take his appeal to the National Labor Board.

Seventh: That the Company put any employee who has been laid off or discharged, back to work immediately, and give him preference over new men, and any employee, that has just grounds for thinking, or being convinced, that he has been demoted, shall be given a fair hearing, and if proven that he has been demoted, shall be put back to his former position.

Eighth: In view of the fact that the Company can force men to enter and leave the mines at any time stated by the

Company, we ask the right to enter on our own time and leave on the Company's time.

Ninth: In view of the fact that the National Recovery Act was passed for the purpose of employing more men and increasing the purchasing power, we ask for a 7-hour day, the maximum of 35 hours per week, time and one-half for all overtime, double time for Sunday, (except where continuous operation is necessary), and double time shall be paid for the following holidays: Fourth of July, Labor Day, Armistice Day and Christmas. And where there is the contract system no man shall be paid less than the daily minimum rate.

Tenth: And where the men work on tonnage or contract basis, that they shall have the right to designate the check weighman, he to be paid by the employees, and the right to ask for inspection of scales at any time, if they deem it necessary.

Eleventh: And in the event of slack time, that time among the various employees be equitably divided.

Twelfth: That all scrips and substitutes for money be made negotiable without discount.

Thirteenth: That the employees have the right to take any matter up with the company in regard to the doctor who is not giving satisfaction, and by solicitation and petition, shall submit to the company any fault which they might find with the doctor, as the employees pay the doctor. When an employee receives any defect caused by injury on the job the company to reinstate him when he is discharged by company physicians. When company physician turns a man down he has right to go to private physician and if found sound and able to work the company is to reinstate said man.

Fourteenth: That periodical physical examination be abolished.

Fifteenth: Any employee required to do work for the Union, shall be granted leave of absence, and said employee to be reinstated with full seniority rights upon his return to work.

Sixteenth: That no employees be required to live in a company house, unless said employee chooses to.

Seventeenth: That no employee be required to trade in the company store.

Eighteenth: That a Union committee shall take up the investigation of any officer or discharged member of the organization, and, in the event that there is no settlement agreed to, they shall appeal it to the Industrial Arbitration Board for their investigation.

Nineteenth: Should any controversy arise which cannot be straightened out by a committee designated by the Union, in conference with the Company officials, they shall set up an arbitration board consisting of two (2) men chosen by the Union; two (2) men chosen by the Company, and one man appointed by the Regional or National Labor Board. Each party having the right to appeal the findings of the Arbitration Board.

Twentieth: Should any man, living in a company house, be reasonably and justifiably discharged, or should quit the services of the company, that he shall be given a reasonable length of time to vacate said house, and, in the event of a strike or lock out, the employees living in company houses shall have the right to remain in same until strike or lock out is adjusted satisfactory to both sides, and after adjustments and satisfactory agreements have been reached by the company and the employees, the employees shall be required to pay one-half of the rent they are in arrears.

Twenty-first: That the employers shall have the right to discharge any man for a justifiable cause, but the employee shall have the right to appeal his case to the Arbitration Board, and, in the event the Arbitration Board hands the decision in favor of the men, the company shall have the right to take it before the Regional Board, and, if necessary, the National Board.

Twenty-second: Wage Scale: That the minimum rate of pay shall be, for outside common labor, $4.60 per day. For inside common labor $5.00 per day. And that the differential as existing as of April 1st, 1934, between common labor and skilled labor shall be maintained as of this date.

Respectfully submitted, and in witness whereof, we hereunto subscribe our names as the chosen representatives of more than 90 percent of your employees.

(Signed) J. B. McCRAY,
BEN WINSTON,
G. R. VINES.
(Seal) I. U. M. M. & S. W.,
Lipscomb Red Ore Local No. 103, Bessemer, Ala.

3789 **SLOSS EXHIBIT No. 26.**

July 3, 1935.

Mr. H. H. Norred,
Chairman of Negotiations Committee,
Woodward Red Ore Mines.

Dear Sir:

This is to confirm the understanding reached at conference on June 24th, June 27th and July 1st, between your Committee and the Management.

It is not possible for the Company to grant an increase in wages at this time. It is, however, agreed that wages, hours and working conditions, for Woodward Iron Company Red Ore miners, as outlined in letter under date of July 6, 1934, written by the President of Woodward Iron Company to Commissioner C. L. Richardson, of United States Department of Labor, (copy of which letter is attached hereto) will continue in effect until such time as the arrangement is no longer practical. Any necessary revision will be negotiated with Committee for Employees, and it is agreed that thirty days notice will be given by either side for any change in this arrangement.

It is understood that in addition to the conditions outlined in the above referred to letter, the Company agrees that during periods of reduced operations, all times will be as evenly distributed among all men involved as is practical. It is also understood that the Management will continue consideration of seniority in service when force is reduced or force is increased after curtailed operations. The Company also agrees not to work men, other than those essential to the maintenance of the mine, on Sundays and the following Holidays: The Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.

Yours very truly,

....................,
President.

Present at Negotiations:

Committee: H. H. Norred, A. E. Horn, P. C. Long, J. C. Patterson, W. W. Martindale, Robert Rencher, Charles Jones.

Management: H. A. Berg, J. E. Urquhart.

(The enclosure referred to in Sloss Exhibit No. 26 is a copy of the letter dated July 26, 1934, addressed to Commissioner C. L. Richardson by H. A. Berg, President Woodward Iron Company, above set out as Sloss Exhibit Number 24.)

3791 SLOSS EXHIBIT No. 27.

Copy of agreement proposed and presented to Company by Red Ore Committee. (1936.)

Not signed.

Working Agreement Between the Woodward Iron Company and Their Employees, Members of the International Union of Mine, Mill and Smelter Workers.

This agreement made and entered into this .... day of ...., 1936, by and between the Woodward Iron Company of Jefferson County, in the State of Alabama, hereinafter called the Company, and the Employees of the Woodward Iron Company, members of Local Union Lipscomb No. 103, of the International Union of Mine, Mill and Smelter Workers, employed at the Red Ore Mines of the Woodward Iron Company, located in Jefferson County, in the State of Alabama, hereinafter called the Employees.

Witnesseth: That,

Your employees, members of the Lipscomb Local No. 103, have chosen the undersigned officers or members of the International Union of Mine, Mill and Smelter Workers, District Number 5, to represent them in colleective bargaining with the Company, and,

Whereas, The said Woodward Iron Company Local No. 103, through its Presidents and other representatives thereof and the International Union of Mine, Mill and Smelter Workers through its President and other International Officers and District 5, International Union of Mine, Mill and Smelter Workers through its President and other District Officers and representatives, being recognized as parties to this Agreement to the extent that they or said representatives or either of them shall now or hereafter represent the Employees of the Company at said mines.

Now, therefore, this said Agreement entered into as of date hereinafter stated, between the Company and said representatives and other parties referred to herein above for and on accounts of the Employees at said Mines (not excepted from the operations hereof) who have chosen or who may hereafter choose said representatives or parties or any of them for the purpose of collective bargaining with the Company, or who may ratify their action hereunder, which have been or shall be conclusively determined for the purpose of this Agreement by the execution of assignment of dues under other sections hereof.

Witnesseth: That the parties hereto mutually agree to and with each other as follows: That the Company has entered into this Agreement with the understanding that all similar agreements relating to wages, working conditions and hours throughout the Alabama field shall be on a uniform basis, subject only to such differences as may be required by conditions peculiar to different mines, and it is understood and agreed that if the International Union of Mine, Mill and Smelter Workers, through their representatives, negotiate an agreement relating to wages, working conditions and hours with any other company on a basis more favorable than the basis of this Agreement, this Agreement shall then be modified so that the Company signatory hereto will receive like benefits.

Representation.

The employees not now represented by said representatives may by written notice to the Company authorize said representatives to represent them in negotiations with representatives of the Company as to all matters arising under this contract.

Check-Off.

Employees shall have the right upon written assignment by the Local to have dues not exceeding an amount predetermined by the Local in lawful and regular session checked off the wages of such Employees. The amount shall be remitted to the person provided in the assignment, on or immediately following the date of the regular pay day.

No assessments or dues other than provided in this section shall be checked off for the account of Woodward Iron Company Lipscomb Local #103, except upon authorization by the Executive Board of said Local, except funeral and sick benefits may be checked off along with each month's dues.

Initiation fees (not exceeding $10.00 for any one man, and in sums not to exceed $2.00 per man in any pay period), where proper written authorization has been made to the Company by the Employee, shall be deducted by the Company and remitted to the Financial Secretary of Woodward Lipscomb Local No. 103.

Maximum Hours.

An eight hour day and five day week, (40 hours per week) shall prevail, exclusive of the thirty minute lunch period, with option to run through without suspension, if agreed to beween the Company and the Mine Committee.

The eight hour days mean eight hours in or about the mines, at the usual working places for all classes of labor, (other than those excepted from this Agreement), exclusive of the lunch period, whether they be paid by the day or paid by tonnage, except in cases of accident, which temporarily necessitates longer hours for those Employees required on account thereof, and also except those whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mines. The following employees are excepted from the foregoing provisions as to maximum hours of work: All employees engaged in handling transportation of ore and men shall work additional time necessary to handle the man-trips or ore in transit, and shall be paid the regular hourly rate. A maximum of fifteen minutes after quitting time of loaders shall be allowed for the handling of ore in transit. Overtime work shall be done to take care of accident and to do other repair work necessary so that the machinery may operate on the following shifts; and also to do any emergency work to protect property and make the main haulageway safe.

In doing this necessary emergency work employees are to receive time and one-half for all time worked in excess of eight hours in any one twenty-four hour period, this period extending from twelve midnight to twelve midnight, with the exception as stated above, where man trips and ore in transit is being handled.

For all work performed by Employees on Independence Day, Labor Day, Thanksgiving Day and Christmas Day, double the regular rates of pay shall be received, with the exception that necessary continuous occupational jobs, such as pumpers, will be paid in the usual manner.

The usual lunch period, as hereintofore observed unless changed by mutual agreement is to be given.

Day wage men going into the mines in the morning shall be entitled to three hours pay whether or not the mines work three full hours but after the first three hours the men shall be paid for every hour thereafter, by the hour, for the hours worked or fractional part thereof.

Mine Committee.

A mine committee of three Employees shall be elected, each member of which shall be eligible to serve as a committee member only so long as he is employed at the mines, to represent the Employees who are members of the Local Union, the Committee to be properly certified to the Company by their Local representatives. No meeting shall be held during working hours except by mutual agreement between the Mine Officials and the Mine Committee, nor shall members of a Mine Committee leave their working places except when called in by the Mine Officials, who shall, on request, permit the committee to look after the interest of the employees represented by them involved in any dispute.

Discharge Cases.

In cases of controversy regarding the justice of employer in discharging or suspending an employee, the case will be disposed of according to the manner and method as set out under the heading "Settlement of Disputes". Should it be decided that an injustice has been done to the employee the Company will be obligated to re-instate and compensate the employee at the rate of pay based on the average earnings of his five immediately preceding full work days, prior to such discharge or suspension. Further, that such cases shall be taken up within three days from the date of discharge or suspension and disposed of as soon thereafter as possible and in any event not more than thirty days. The Company may employ the complainant during the time the hearing is in progress.

Settlement of Disputes.

In cases of controversy arising between the Company or Employees as to the meaning or application of any of the provisions or terms of this Agreement, or as to matters not specifically mentioned in the Agreement, it is agreed that there shall be no suspension of work either by strike or lockout for a period of at least thirty days, during which time an honest and lawful effort will be made to settle such difficulty by the following procedure:

1. The complaining party taking his grievance up with the Local Pit Committee who in turn in company with the complaining party presents it to the Mine Foreman.

2. The Superintendent of the Mines and the Mine Committee.

3. Through the Superintendent of the Mines and the representatives of District No. 5, I. U. M. M. & S. W., who have signed this Agreement or their representatives.

4. Through the Management or their representatives who have signed this Agreement and the representatives of District No. 5 of the I. U. M. M. & S. W., who have signed this Agreement on behalf of the Employees.

5. In case an agreement is not reached by negotiations through one of the four methods set out above, the controversy shall be arbitrated by a board of four members, two of whom shall be designated by the signers of this Agreement, representing the Management and two designated by the signers representing District No. 5, I. U. M. M. & S. W.

In case of a tie in this board the four shall select a fifth member who after having all the facts before him, shall cast the deciding vote. In the event of failure, to agree upon a fifth member the President of District No. 5 or his representative and the President of the Company or his representative, shall agree upon a fifth member within five days. In the event they fail in this the Commissioner of the Department of Labor for Alabama, shall select the fifth member. All expenses incident to the services of the fifth member shall be paid equally by the Company and District No. 5. The decision of this arbitration board shall become a part of this Agreement continuing as such until its expiration.

Miscellaneous.

Payments shall be made semi-monthly in lawful money or par check at or near the location in which the employee works. The Company shall keep the working places as dry as possible; when wet places are driven the amount of pay incidental to furnishing proper protection and inconvenience shall be agreed upon between the Mine Boss and the Employee affected. When the Employee working on piece work is required by a Mine Official to leave his work at the face to perform other work he shall be paid at a rate for a Miner on Company work.

When an employee has no work at the face and is given other labor he shall be paid at the scale for such labor.

A helper is an employee who works under the direction of a skilled man.

In the event of strikes or lockouts employees request that they be permitted to place watchmen about the mines or workings in equal number with the regularly employed company watchmen, this to forestall, if possible, any damage or vandalism to company property as has been the case in past difficulties, in effort to discredit your employees and their organization. In the event this is granted and the mines do not attempt to operate there will be no picketing on the part of your employees while on the contrary your property will be guarded with their lives.

In the event of shut-downs in which the Company supplies its employees with provisions and supplies at their Company stores, on resumption of operation, the employees wages shall be cut in payment for these supplies in the following manner:

Up to and including first forty hours, current debts. After forty hours, 15% of earnings applied to back debts.

In the event the employee desires to make a more substantial payment out of current earnings than at the rate given above, he may do so by voluntarily making a written assignment to the Company.

At least once each month employees are to be given a statement setting out the amounts paid and amounts due on back indebtedness.

The Company shall grant a general increase in wages of 10% to all Employees, plus equitable adjustments, in specific instances to be taken up at the time of negotiations on this Agreement.

In cases of curtailment or other reduction of the number of Employees, whatsoever the cause, the Company agrees that the men shall be paid off in rotation in service, the seniors in service to be the last laid off, and the last man laid off to be the first reemployed in his respective line of work.

The work day shall consist of eight hours in any twenty-four hour period, the time to run from midnight to midnight.

Time and one-half is to be paid for all overtime in excess of eight hours in any twenty-four hour period and double time for Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

In case of controversy neither party to the Agreement is to cause the cessation of operation for a period of at least thirty days, during which time negotiations shall be extended, with the exception that in the event either party deliberately and knowingly violates this Agreement the aggrieved party may consider this contract terminated from that time on.

Any and all monies due from Employees to their Local is to be deducted from the first half of the month earnings, with the exception that in the case the employee only worked two full days the deduction is to be made from the second half earnings.

This Agreement is to terminate on .... day of ...., 1937.

For and in consideration of the above Agreement your Employees, members of Lipscomb Local #103, of the International Union of Mine, Mill and Smelter Workers bind themselves to in every way consistent with sound judgment, through their Local and Officials, to faithfully carry out this Agreement.

In Witness Whereof, said parties have hereunto set their hands and seals this .... day of ...., 1936.

GENERAL COMMITTEE OF
LOCAL #103, I. U. M. M. &
S. W.,

By ....,
...................,
...................,
....

WOODWARD IRON
COMPANY,

By ....

3799 SLOSS EXHIBIT No. 28.

Copy of letter of 6/26/36, which accompanied letter-agreement with Red Ore Local dated 6/26/36.

June 26, 1936.

Mr. H. H. Norred,
Chairman of Negotiations Committee,
Woodward Red Ore Mines.

Dear Mr. Norred:

I am enclosing the letter agreement you asked for at yesterday's meeting. You will please note that I have changed the three hours to two hours for "day wage men going into the mines in the morning, etc." as two hours are now in effect elsewhere at Woodward Iron Company and I believe two hours are fair and equitable. Your request for adjustment of wages for Hollerman, Skipman, and Pipeman will also be granted with the amended agreement.

Yours very truly,

....

HAB/mk
Copy—J. E. Urquhart

Copy of letter-agreement with Red Ore Local—6/6/36 Supplementing agreement dated 7/3/35.

June 26, 1936.

Mr. H. H. Norred,
Chairman of Negotiations Committee,
Woodward Red Ore Mines.

Dear Sir:

Confirming discussion at meeting between your committee and the management in my office on June 24 and supplementing the working agreement now in effect, which was outlined in a letter from the President of Woodward Iron Company to you July 3, 1935, a copy of which is attached hereto, it is agreed that:

1. When day men go into the mines in the morning they shall be entitled to two hours' pay whether or not the mine works full two hours but after the first two hours the men shall be paid by the hour for every or fractional part thereof worked.

2. No employee shall work more than eight hours in any twenty-four hour period, this period extending from twelve midnight to twelve midnight.

3. When an employee has no work at the face and is given other labor he shall be paid at the scale for the position to which he is assigned.

All provisions of the present agreement will otherwise continue in effect. Any further necessary revision will be negotiated with the committee for employees. It is also agreed that thirty days' notice will be given by either party for any change in this arrangement.

Yours very truly,

....

President.

Present at Negotiations:

Committee: H. H. Norred, W. C. Stringfellow, P. C. Long, John Crumpton, Ben Winsted, Oliver Johnson, John Henry Woodly.

Management: H. A. Berg, J. E. Urquhart.

3802 SLOSS EXHIBIT No. 29.

Copy of agreement presented by Red Ore Committee to Company May 31, 1937.

Not signed.

This agreement, dated ...., 1937, between the Woodward Iron Company, hereinafter referred to as the Company, and Lipscomb Red Ore Local Union No. 103, for members of the International Union of Mine, Mill and Smelter Workers or its successor, hereinafter referred to as the Union.

Section I:

It is the purpose and intent of the parties hereto that this agreement will promote and improve economic relationships between the members of the Union and the Company and to set forth herein the basic agreement covering rates of pay, hours of work, and conditions of employment to be observed between the parties hereto.

The term 'employee' as used in this agreement shall not include General Foremen or Watchmen.

Section II: Recognition:

The Company recognizes the Union as the sole bargaining agency for the employees of the Company. The Company recognizes and will not interfere with the right of its employees to become members of the Union. There shall be no interference, restraint or coercion by the Company or any of its agents against any member for membership in the Union. The Union agrees not to intimidate or coerce employees into membership.

Section III:

The Company through its responsible representatives will at all reasonable times meet the duly chosen representatives of its employees, for the purpose of collective bargaining on matters concerning wages, hours and working conditions and the adjustment of grievances for the purpose of maintaining fair standards which will be satisfactory to all concerned.

Section IV. Hours of Work:

Effective ...., 1937, there shall be established an eight hour day and a forty hour week. Time and one-half shall be paid for all time in excess of eight (8) hours in any one day and for all time in excess of forty (40) hours in any one week.

A day may be a calendar day or any 24 hour period and a week may be a calendar week or any five (5) regular eight hour turns on consecutive days followed by a 48 hour rest period, at the option of the Company.

Any employee who is a member of the Union, shall not be paid both daily and weekly overtime for the same hours so worked. All work performed on Sunday and following holidays, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day shall be paid at the rate of time and one-half with the exception of that regularly required for maintenance.

When day wage men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works full two hours, but after the first two hours the men shall be paid by the hour for every hour or fractional part thereof worked. When an employee has no work at the face and is given other labor, he shall be paid at the scale for the position to which he is assigned.

Section V. Seniority:

In case of curtailment or other reduction of the number of employees, whatsoever the cause, the Company agrees to practice seniority as follows:

(a) Company seniority and ability entitle an employee a job with the Company.

(b) Departmental seniority and ability entitles an employee to a job in his specific department.

(c) Job seniority and ability are deciding factors as to the particular job an employee is to have in that department.

(d) Qualifications or reasonable ability to hold a job: When a man shall have given reasonable service on any job for a period of time not to exceed ninety (90) days, it shall be evidence of his qualifications to hold that job should his seniority permit.

Section VI. Grievances:

When a grievance shall arise it shall be handled as hereinafter provided:

(a) Any member having a grievance shall report same to the grievance committee of the Union.

(b) The grievance committee shall make a detailed investigation of the grievance and decide whether or not it shall be taken up with the Company.

If the grievance is to be taken up then it must be handled thereafter as follows:

(c) The General Mine Foreman shall be notified and the grievance discussed thoroughly with him and every effort made to settle same.

(d) If a settlement with the General Mine Foreman cannot be reached the grievance shall then be taken up and thoroughly discussed with the Superintendent of Ore Mines and every effort made to settle same.

(e) If a settlement with the Superintendent of Ore Mines cannot be reached, the grievance shall then be taken up and thoroughly discussed with the General Manager and every effort made to settle same.

(f). If a settlement with the General Manager cannot be reached the grievance shall be taken up and thoroughly discussed with the President of the Company and every effort made to reach an amicable settlement.

(g) Until grievances have been handled exactly in accordance with this agreement there shall be no suspension of work by strike, lockout or otherwise, and both parties shall endeavor in every way to reach an amicable adjustment.

Section VII. Checkoff:

The Company shall make stoppages from wages which are understood to be deductions from gross earnings for which authority is given and any deductions which the majority of the employees may authorize in the future by written request.

Section VIII. Termination Date:

This Agreement shall remain in full force and effect until April 1, 1938, inclusive.

....................,
For the Company,

....................,
....................,
....................,
....................,

For Lipscomb Red Ore Local
No. 103, International Union
of Mine, Mill and Smelter
Workers.

3806 SLOSS EXHIBIT No. 30.

This agreement, dated *October 2nd*, 1937, between the Woodward Iron Company, hereinafter referred to as the Company, and Lipscomb Red Ore Local Union No. 103, for members of the International Union of Mine, Mill and Smelter Workers or its successor, hereinafter referred to as the Union.

1. Eight (8) hours shall constitute a maximum scheduled day's work and forty (40) hours a maximum scheduled week's work.

2. Time and one-half shall be paid for all time in excess of eight (8) hours in any one day and for all time in excess of forty (40) hours in any one week.

3. An employee shall not be paid for both daily and weekly overtime for same hours so worked.

4. Fourth of July, Labor Day, Thanksgiving Day and Christmas Day shall be considered holidays and only such men as are essential to maintenance of the mine shall be required to work on these days.

5. When day wage men go into the mine in the morning they shall be entitled to two (2) hours' pay whether or not the mine works a full two (2) hours; but after the first two (2) hours, the men shall be paid by the hour for every hour or fractional part therof worked.

6. When an employee has no work at the face and is given other labor he shall be paid at the scale for the position to which he is assigned.

7. In cases of promotion, increase or decrease in forces, the following factors will be taken into consideration:

a. Length of service.

b. Knowledge, skill, ability, training and efficiency.

c. Physical fitness.

In all cases where (b) and (c) are relatively equal, length of continuous service shall govern.

8. All provisions of the present agreement shall otherwise continue in effect: Any necessary revision will be negotiated with the committee for employees.

9. It is also agreed that thirty (30) days' notice will be given by either party for any change in this agreement.

WOODWARD IRON
COMPANY,
By ....,
LIPSCOMB RED ORE LOCAL
#103, I. U. M. M. & S. W.,
By W. O. COLWELL,
G. R. VINES,
SAM McCORD,
GEORGE CHILDS,
OLIVER JOHNSON.

3808

SLOSS EXHIBIT No. 31.

Copy of agreement presented to Company by Red Ore Committee—1938.

Not signed.

This agreement dated this....day of......, 1938 between the Wood(w)ard Iron Company (hereinafter referred to as the Company) and the International Union of Mine, Mill and Smelter Workers or its successor (hereinafter referred to as the Union).

Section I:

It is the intent and purpose of the parties hereto that this agreement will promote economic relationship between the members of the Union and the Company and to set forth herein the basic agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties hereto.

The term "employee" as used in this agreement shall not include salaried employees, watchmen, foremen and supervisors who have authority to employ or discharge.

Section II. Recognition:

The Company recognizes the Union as the sole bargaining agency for the employees of the Red Ore Mines. The Company recognizes and will not interfere with the right of its employees to become members of the Union. There shall be no discrimination, interference, restraint or coercion by the Company or any of its agents against any employee for membership in the Union.

Section III. Hours of Work:

Effective on the ...... day of ......, 1938, there shall be established an eight (8) hour day and a forty (40) hour week. Time and one half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week. A day may be a calendar day or any 24 hour period, and a week may be a calendar week or any five (5) eight (8) hour turns at the option of the Company.

All Sunday work with the exception of that regularly required for maintenance shall be paid for at the rate of time and one-half.

Section IV. Vacations:

Any employee who prior to January 1, 1939, was continuously in the service of the Company three (3) years or more shall receive a week's vacation, and for each three (3) years in addition to the first three (3) years one additional day vacation will be granted, up to five (5) additional days, this vacation to be taken in a single period. Those who are granted vacations will be paid on their average rate of earnings per hour for the two (2) pay periods immediately preceding their vacation. The total hours of vacation pay will be the average hours they work per week during that period, but not less than forty (40) hours nor more than forty-eight (48) hours. The vacation must be taken in the calendar year.

Vacations will, so far as possible, be granted at times desired by Employee, with the final right of allotment of vacation period exclusively reserved by the Company in order to insure orderly operation of the mines.

Section V. Seniority:

It is understood and agreed that in all cases of promotion or increase or decrease of forces the following factors will be considered and where (b) and (c) are relatively equal length of continuous service shall govern.

a. Length of continuous service;

b. Knowledge, training, ability, skill and efficiency;

c. Physical fitness.

The Company shall furnish the Union with a list of ages in the Company service of all Red Ore employees.

Section VI. Adjustment of Grievances.

Should differences arise between the Company and the Union, or its members employed by the Company, as to the meaning and application of the provisions of this contract. An earnest effort shall be made to settle such differences immediately in the following manner:

I. Between the employee and his immediate foreman.

II. Between the member or members of the Grievance Committee designated by the Union and the Superintendent of the plant.

III. Between the committee and the representatives of the executives of the Company.

Section VII. Discharge Cases:

In the event an employee shall be discharged from his employment from and after the date hereof, and he believes he has been unjustly dealt with, such discharge shall constitute a case arising under the method of adjustment of grievances herein provided.

In the event it should be decided under the rules of this agreement that an injustice has been dealt the employee with regard to the discharge, the Company shall reinstate such employee and full pay compensation at the *employemployer's* regular rate for the time lost.

Section VIII. Holidays:

The following days shall be considered holidays during which days there shall be no regular production work, except regularly required maintenance. The holidays are July 4th, Labor Day, Thanksgiving Day and Christmas.

Section IX. Termination Date:

This agreement shall remain in full force and effect until May 1, 1939, inclusive.

INTERNATIONAL UNION OF
MINE, MILL AND SMELTER
WORKERS.

WOOD(W)ARD IRON COMPANY.

3811 SLOSS EXHIBIT 31-A.

Copy of letter from Company to Red Ore Local No. 103 in reply to their letter of Sept. 26, 1938.

September 29, 1938.

Lipscomb Red Ore Local #103,
Bessemer, Alabama.

Attention: Messrs. J. L. Robinson and G. B. Colwell.

Gentlemen:

We acknowledge receipt of your letter of September 26 in which you advised that you did not intend that the contract be terminated on September 12 thru the notice of August 12.

The notice read: "This is to notify you that thirty days from this date Lipscomb Red Ore Local will begin to negotiate a *new* contract with the Woodward Iron Company."

We naturally took this to be termination notice for contract in effect August 12, 1938.

As we now thru your letter of September 26 understand that you desire the notice of August 12 disregarded and for the contract to continue in effect, this is merely to advise you that the Company has no objection thereto and the contract will be considered by it to be in effect.

Yours very truly,

HAB/mk
BC-J. U. Urquhart
T. C. DeSollar

3812 SLOSS EXHIBIT No. 32.

Copy of agreement presented by Red Ore Local to Company March 10, 1939.

Not signed.

Supplementary Agreement.

This Agreement, dated ...., is between the *Woodward Iron Company* (hereinafter referred to as the "Company") and *Lipscomb Red Ore Local #103* of the International Union of Mine, Mill and Smelter Workers, (hereinafter referred to as the "Union") on behalf of its members employed by the Company in its ore mines located at Lipscomb, Jefferson County, Alabama.

Section 1. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships between those employees who are members of the Union and the Company, and to set forth herein the basic Agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties hereto.

It is understood and agreed that this Agreement pertains only to the members of the Union employed in and around the ore mines of the Company located at Lipscomb, Jefferson County, Alabama.

The term "employee" as used in this Agreement shall not include Foremen, Assistant Foremen or Supervisors in charge of any classes of labor who do not perform any regular work, or Watchmen or Patrolmen.

Section 2. Recognition: The Company recognizes the Union as the Collective bargaining agency for those employees of the Company who are members of the Union. The Company recognizes and will not interfere with the right of its employees to become members of the Union. There shall be no discrimination, interference, restraint or coercion by the Company or any of its agents against any member because of membership in the Union.

Section 3. Wages: It is agreed that the following rates of pay shall exist. (Copy is hereto attached.) Copy of rates of pay in accordance with and substantially as the Tennessee Company rates.

Schedule of Pay Days. (a) Schedule of pay days in accordance with and substantially as the Tennessee Company pay days.

Section 4. Hours of Work: Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.

Eight (8) hours day ,mean eight hours of work in or about the mine at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis.

Any employee who is a member of the Union shall not be paid both daily and weekly overtime for the same hours so worked.

Section 5. Irregular Work: When an employee absents himself from his work for a period of two days without the consent of the Company, other than because of proven sickness or a satisfactory explanation. For the first offense he may be laid off not more than three (3) days for the second offense he may be laid off not more than five (5) days. When an employee makes a habit of laying off for single days, other than because of proven sickness and continues to do so after having been warned by the Company he shall be subject to discharge.

Section 6. Vacations: Each employee who is a member of the Union and who prior to February 1, 1939, was continuously in the service of the Company three (3) years shall receive one weeks vacation with pay, and for each additional years service shall receive one additional days vacation, but not to exceed ten (10) days. Vacations to begin in May. Such vacation to be taken in a single period. Those who are granted vacations will be paid on the average rate of earnings per hour for the two day periods immediately preceding their vacation. Total hours of vacation pay will be the average hours they worked per week during that period, but not less than forty (40) and not more than forty-eight (48) hours.

Section 7. Seniority: It is understood and agreed that in all cases of promotion and increase or decrease of forces the following factors shall be considered, and where (a) and (b) are relatively equal, length of continuous service shall govern.

(a) Length of continuous service.

(b) Knowledge, training, ability, skill and efficiency.

Section 8. Adjustment of Grievances: Should differences arise between the Company and the Union or its members employed by the Company as to the meaning and application of the provisions of this Agreement, or should any local trouble of any kind arise there shall be no suspension of work on account of such differences but an earnest effort shall be made to settle such differences immediately in the following manner:

First, between members of the Grievance Committee, designated by the Union, and the Foreman and Superintendent of the Mines;

Second, between the representatives of the Union and the representatives of the Executives of the Company.

Third, by a board consisting of four members, two of who shall be designated by the representatives signatory hereto, and two by the Company, failing to agree, the matter shall then be appealed to an impartial umpire to be appointed by the mutual agreement of the parties hereto. The umpire shall render a decision within five (5) days after receipt of evidence. The umpires decision shall be final. The expense and salary incident to the services of the umpire shall be paid jointly by the Company and the Union.

Pending the hearing of disputes, the employees represented by the parties signatory hereto shall not cease work because of any dispute; and a decision reached at any stage of the proceedings shall be binding on both parties hereto; and shall not be subject to reopening by either parties except by mutual agreement.

Specified period shall be agreed upon between the Grievance Committee and the Superintendent of the mines for the presentation of grievance hereunder. Provided, however, that matter pertaining to discharges or other matters that cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provisions.

The Grievance Committee shall consist of not less than three employees and not more than six such employees, designated by the Union, who will be afforded such time off, without pay, as may be required.

First, to attend regularly scheduled committee meetings:

Second, To attend meetings pertaining to discharge or other matters, which cannot reasonably be delayed until the time of the next regular meeting, and

Third, Any member of the Grievance Committee shall have the right to visit departments other than his own at all reasonable times for the purpose of transacting the legitimate business of the Grievance Committee, after notice to and permission from his Foreman or his designated representatives.

The actual number of members of the Grievance Committee at the Mines shall be mutually agreed upon between the Superintendent of the Mines and the Union.

Section 9. Illegal Suspension of Work: A strike or stoppage of work on the part of the employees represented by the parties signatory hereto shall be a violation of this Agreement, and there shall be no strike or cessation of work until and unless the matter of complaint shall have been submitted and determined by all the methods provided for in the Agreement for the adjustment of disputes.

Section 10. Management: The management of the mines and the direction of the working forces, including the right to hire, suspend or discharge for proper cause and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for purpose of discrimination against any member of the Union.

Section 11. Discharge Cases: In the event a member of the Union shall be discharged from his employment from and after the date hereof, and he believes he has been unjustly dealt with such discharge shall constitute a case arising under the methods of adjusting grievances herein provided. In the event it should be decided under the rules of this Agreement that an injustice has been dealt the employee with regards to the discharge, The Company shall reinstate such employee and pay full compensation at the employees regular rate for the time lost. All such cases of discharge shall be taken up within five (5) days from the date of discharge and disposed of as promptly as possible.

Section 12. Safety and Health: The Company shall continue to make reasonable provisions for the safety and health of its employees at the mines during the hours of their employment. Protective devices, wearing apparel and other equipments necessary to properly protect employees from injury shall be provided by the Company in accordance with the practice now prevailing in the mines.

Section 13. Individual Wage Rates: Where alleged inequalities in wage rates prevail, the matter may be taken up for adjustment with Superintendent of the Mines, and settlement made on a mutually satisfactory basis.

Section 14. Holidays: The following days shall be considered holidays, during which days there shall be no regular production of work; however, it is understood that regular maintenance work will be carried on:

July 4th
Labor Day
Thanksgiving
Christmas

If for any reason work other than regular maintenance work is performed on these days, it shall be paid for at the rate of time and one-half.

Section 15. Term of Agreement: This Agreement shall continue in full force and effect until the .... day of ...., 1940.

(a) In the event neither party serves written notice to the other party within thirty (30) days before the expiration of this contract of their desire to change the terms and conditions thereof, then in that event it is understood and agreed that this contract is to remain in full force and effect for an additional twelve (12) months from the date of expiration thereof.

(b) In the event that either Party desires to change this contract in any way at the expiration thereof, both parties shall be obligated to attend the conference and negotiate in good faith and the neglect or refusal of the party to whom notice is given to so attend and to participate in the negotiations shall be the equivalent of a failure to agree and the refusal of either party to change any position which it may take as to changes proposed in the negotiations shall (not) be considered as a lack of good faith in the negotiations.

Section 16. It is understood that this Agreement is subject to all Federal and State laws, rules and regulations, amendments and revisions that now exists or may hereafter exist pertaining to this Agreement.

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.........................,
.........................,
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.........................,
.........................,
....

Abolish the present system of mining and establish a guaranteed basic rate of pay for 8 hours work for all employees now on contract.

All Company crews, track, timber and material shall consist of: 1 Foreman and 6 helpers.

Large draw crews shall consist of: 1 head miner, 3 drill men and helpers, 1 drag engineer, 1 motor runner, and 3 muckers.

Tons	Head Miner	Drill Runner	Drag Engineer	Motor Runner	Muckers	Drill Helper
140	$6.16	$5.60	$5.60	$5.60	$4.92	$4.92
145	6.25	5.68	5.68	5.68	5.01	5.01
150	6.38	5.80	5.80	5.80	5.10	5.10
155	6.52	6.93	6.93	6.93	5.21	5.21
160	6.65	6.05	6.05	6.05	5.31	5.3[illegible]
165	6.79	6.17	6.17	6.17	5.42	5.42
170	6.92	6.29	6.29	6.29	5.53	5.53
175	7.06	6.41	6.41	6.41	5.64	5.64
180	7.19	6.54	6.54	6.54	5.74	5.74
185	7.32	6.66	6.66	6.66	5.85	5.85
190	7.46	6.78	6.78	6.78	5.96	5.96
195	7.59	6.91	6.91	6.91	6.07	6.07
200	7.73	7.03	7.03	7.03	6.17	6.17
205	7.85	7.15	7.15	7.15	6.28	6.28
210	8.00	7.27	7.27	7.27	6.39	6.39
215	8.13	7.39	7.39	7.39	6.49	6.49
220	8.27	7.51	7.51	7.51	6.60	6.60
225	8.40	7.64	7.64	7.64	6.71	6.71
230	8.53	7.76	7.76	7.76	6.82	6.82
235	8.67	7.88	7.88	7.88	6.92	6.92
240	8.80	8.00	8.00	8.00	7.03	7.03
245	8.94	8.13	8.13	8.13	7.14	7.14
250	9.07	8.25	8.25	8.25	7.25	7.25
255	9.21	8.37	8.37	8.37	7.35	7.35

3

6

Tons	Head Miner	Drill Runner	Drag Engineer	Motor Runner	Muckers	Drill Helper
260	9.34	8.49	8.49	8.49	7.56	7.56
and above	"	"	"	"	"	"

Small drags shall consist of: 1 head miner, 2 drill runner and helpers, 1 drag engineer, 1 motorman and 2 muckers.

Tons	Head Miner	Drill Runner	Drag Operator	Motor Runner	Muckers	Drill Helper
70	$6.10	$5.60	$5.60	$5.60	$4.92	$4.92
75	6.52	5.92	5.92	5.92	5.21	5.21
80	6.87	6.25	6.25	6.25	5.49	5.49
85	7.22	6.57	6.57	6.57	5.77	5.77
90	7.58	6.89	6.89	6.89	6.05	6.05
95	7.93	7.21	7.21	7.21	6.33	6.33
100	8.28	7.53	7.53	7.53	6.61	6.61
105	8.63	7.85	7.85	7.85	6.90	6.90
110	8.99	8.17	8.17	8.17	7.18	7.18
115	9.25	8.49	8.49	8.49	7.46	7.46
and above	"	"	"	"	"	"

Hand load in wide work, slab and robbing shall consist of: 1 head miner, 1 drill man and helper, 1 motorman, 3 muckers and trip rider when motor pulls more than one place. A mucker will trip ride when motor pulls only 1 place.

Tons	Head Miner	Drill Runner	Motor Runner	Muckers	Drill Helper
25	$6.16	$5.60	$5.60	$4.92	$4.92
30	6.29	5.72	5.72	5.02	5.02
35	6.66	6.05	6.05	5.32	5.32
40	7.03	6.39	6.39	5.61	5.61
45	7.40	6.73	6.73	5.91	5.91
50	7.77	7.06	7.06	6.20	6.20
55	8.14	7.40	7.40	6.50	6.50
60	8.51	7.74	7.74	6.80	6.80

Tons	Head Miner	Drill Runner	Muckers	Drill Helper	
65	8.88	8.07	8.07	7.09	7.09
70	9.25	8.41	8.41	7.39	7.39
and above	"	"	"	"	"

Narrow work and stope neck shall consist of: 1 head miner, 1 drill runner, 1 motor runner, muckers, 1 drill helper and trip rider where motor pulls more than one place.

The Company shall allow for Explosives 16¢ per ton for narrow and stope neck work and 14¢ per ton for wide work. Powder savings will be divided among all members of the crew where said explosives are used. All Company men with (T) before their ratings will share in tonnage bonus as soon as a basic tonnage can be agreed to between the Company and the Representatives of the Union. Each man will have to furnish his own carbide where slate has to be handled by tonnage men, they will be allowed 60¢ per three ton car for loading and 60¢ for unloading. This plan cuts out all pay for yardage. The Company will furnish all supplies and tools except carbide. In hand loading places where mule is used instead of motor, mule boy shall be paid at the rate of 55¢ per ton.

Occupation		Rate Per Hour
Material Foreman	T	.77
Timber Man	T	.73
Track Man	T	.73
Helpers	T	.54½
Electric Pumper	T	.59
Sub-station tender	T	.60½
Motorman at 10 R&tunnel	T	.74½
Other Company Motors	T	.70½

Occupation		Rate Per Hour
Trip Rider	T	.64½
Pocket Man	T	.60½
Hoist 3 class	T	.59½
Hoist 2 class	T	.70
Hoist 1 class	T	.78
Inside stable cleaner	T	.58½
Car Repairman	T	.70
Car Repairman Helper	T	.56½
Mine Mechanic	T	.91
Mine Electrician	T	.91
Crusher Foreman	T	.61½
Crusher Feeder	T	.56½
Crusher Helper	T	.45½
Compressor Engineer	T	.70
Fireman		.58½
Truck Driver		.64
Teamster (2 mule)		.52
Laborer		.45
Labor Foreman		.61½
Weighman	T	.66
Office Janitor		.50
Air Drill Repairman		.76½
Machinist		.95
Shop Laborer		.46½
Chainer	T	.61½
Blacksmith		.81½
Steel Sharpener		.70
Carpenter		.78½
Outside Electrician		.78½
Outside Mechanic		.78½
Pipeman	T	.64½
Latch Boy	T	.57½
Assistant Engineer	T	.76
Rock Foreman	T	.73
Slate Foreman	T	.73

Occupation			Rate Per Hour
Roller Man			.59½
Sinking Hoist		.57½	..
C Drill Runner	T		.65
Trolley Wire Man	T		.76½
Teamster (1 mule)	T		.47
Inside Muler Boy	T		.55

3823 SLOSS EXHIBIT No. 33.

Copy of Agreement presentd by Red Ore Committee to Company, after election conducted by NLRB to determine bargaining agency—presented 9/1/39.

Not signed.

Supplementary Agreement.

This Agreement, dated ...., is between the *Woodward Iron Company* (hereinafter referred to as the "Company") and *Lipsiomb Red Ore Local #103* of the International Union of Mine, Mill and Smelter Workers, (hereinafter referred to as the "Union") on behalf of the employees, employed by the Company in its ore mines located at *Lipscomb*, Jefferson County, Alabama.

Section 1. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships between the employees and the Company, and to set forth herein the basic Agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties hereto.

It is understood and agreed that this Agreement pertains only to employees employed in and around the ore mines of the Company located at *Lipscomb,* Jefferson County, Alabama.

The term "employee", as used in this Agreement shall not include foremen, Assistant Foremen or Supervisors in charge of any classes of labor who do not perform any regular work, or Watchmen or Patrolmen.

Section 2. Recognition: The Company hereby recognizes the Union as the exclusive representatives of all employees of said company in its red ore mine, located at Lipscomb, Jefferson County, Alabama, who came under the jurisdiction of the Union, for the purpose of collective bargaining on all matters pertaining to wages, hours and conditions of employment as provided for in the National Labor Relations Act.

Section 3. Wages: It is agreed that the following rates of pay shall exist. (Copy is attached hereto.) Copy of rates of pay in accordance with and substantially as the Tennessee Company rates.

Schedule of Pay Days: Schedule of pay days in accordance and substantially as the Tennessee Company pay days.

Section 4. Hours of Work: Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.

No employee shall be paid both daily and weekly overtime for the same hours so worked.

Section 5: Irregular Work: When an employee absents himself from his work for a period of two days without the consent of the Company, other than because of proven sickness or a satisfactory explanation, for the first offense he may be laid off not more than three (3) days; for the second offense he may be laid off not more than five (5) days. When an employee makes a habit of laying off for single days, other than because of proven sickness and continues to do so after having been warned by the Company he shall be subject to discharge.

Section 6. Vacations: Each employee who prior to February 1, 1939, was continuously in the service of the Company three (3) years shall receive one week's vacation with pay, and for each additional year's service shall receive one additional day's vacation, but not to exceed ten (10) days. Vacations to begin in May. Such vacations to be taken in a single period. Those who are granted vacations will be paid on the average rate of earnings per hour for the two day periods immediately preceding their vacation. Total hours of vacation pay will be the average hours they worked per week during that period, but not less than forty (40) and not more than forty-eight (48) hours.

Section 7. Seniority: It is understood and agreed that in cases of promotion and increase or decrease of forces the following factors shall be considered and where factors (a) and (b) are relatively equal, length of continuous service shall govern.

(a) Length of continuous service.

(b) Knowledge, training, ability, skill and efficiency.

Section 8. Adjustment of Grievances: Should differences arise between the Company and the Union or the employees employed by the Company as to the meaning and application of the provisions of this Agreement, or should any local trouble of any kind arise there shall be no suspension of work on account of such differences but an earnest effort shall be made to settle such differences immediately in the following manner:

First, Between members of the Grievance Committee, designated by the Union, and the Foreman and Superintendent of the Mines;

Second; between the representatives of the Union and the representatives of the Executives of the Company;

Third, by a board consisting of four members, two whom shall be designated by the representatives signatory hereto, and two by the Company. Failing to agree, the matter shall then be appealed to an impartial umpire to be appointed by mutual agreement by the parties hereto. Failing to agree on the fifth member within five days, the Director of Conciliation Service, U. S. Department of Labor shall be authorized to appoint the fifth member. The umpire shall render a decision within five days after receipt of evidence. The umpire's decision shall be final. The expense and salary incident to the services of the umpire shall be paid jointly by the Company and the Union.

Pending the hearing of disputes, the employees represented by the parties signatory hereto shall not cease work because of any dispute; and a decision reached at any stage of the proceedings shall be binding on both parties hereto; and shall not be subject to reopening by either parties except by mutual agreement.

Specified period shall be agreed upon between the Grievance Committee and the Superintendent of the Mines for the presentation of grievances hereunder. Provided, however, that matters pertaining to discharges or other matters that cannot reasonably be delayed until time of the next regular meeting may be presented at any time in accordance with the foregoing provisions.

The Grievance Committee shall consist of not less than three employees and not more than six such employees, designated by the Union, who will be afforded such time off, without pay, as may be required.

First, to attend regularly scheduled committee meetings.

Second, to attend meetings pertaining to discharge or other matters which cannot reasonably be delayed until the time of the next regular meeting, and

Third, any member of the Grievance Committee shall have the right to visit departments other than his own at all reasonable times for the purpose of transacting the legitimate business of the Grievance Committee, after notice to and permission from his Foreman or his designated representatives.

The actual number of members of the Grievance Committee at the Mines shall be agreed upon between the Superintendent of the Mines and the Union.

Section 9. Illegal Suspension of Work: A strike or stoppage of work on the part of the employees represented by the parties signatory hereto shall be a violation of this Agreement, and there shall be no strike or cessation of work until and unless the matter of complaint shall have been submitted and determined by all the methods provided for in this Agreement for the adjustment of disputes.

Section 10. Management: The management of the mines and the direction of the working forces, including the right to hire, suspend or discharge for proper cause, and the right to relieve employees from duty because of lack of work for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for the purpose of discrimination against any member of the Union.

Section 11. Discharge Cases: In the event an employee shall be discharged from his employment from and after the date thereof, and he believes he has been unjustly dealt with such discharge shall constitute a case arising under the methods of adjusting grievances herein provided. In the event it should be decided under the rules of this Agreement that an injustice has been dealt the employee, with regard to the discharge, the company shall reinstate such an employee, and pay full compensation at the employees regular rate for the time lost. All such cases of discharge shall be taken up within five (5) days from the date of discharge and disposed of as promptly as possible.

Section 12. Safety and Health: The company shall continue to make reasonable provisions for the safety and health of its employees at the mines during the hours of their employment. Protective devices, wearing apparel and other equipments necessary to properly protect employees from injury shall be provided by the Company in accordance with the practices now prevailing in the mines.

Section 13. Individual Wage Rates: Where alleged inequalities in wage rates prevail, the matter may be taken up for adjustment with Superintendent of the Mines, and settlement made on a mutually satisfactory basis.

Section 14. Holidays: The following days shall be considered Holidays, during which days there shall be no regular production of work; however, it is understood that regular maintenance work will be carried on:

July 4th
Labor Day
Thanksgiving
Christmas

If for any reason work other than regular maintenance work is performed on these days, it shall be paid for at the rate of time and one-half.

Section 15. Check-Off: The Union agrees to furnish the Company an affidavit showing the names of employees of the Company who are members of the Union in good standing, and from time to time, if, as and when the same does occur, the names of any employees of the Company becoming members of the Union and the names of employes ceasing to be members. The Company agrees that it will deduct from wages or salary owing to each Union member so shown the amount of the monthly dues of such members, and to pay the same to the designated agent of the Union, not later than the fifth day of the month following such deductions, and to furnish, at such time, a list of employees from whose pay said deductions were made showing amount of such deductions. The Union agrees to furnish the Company at the same time it supplies list of its members, with a written consent to this provision of this contract, executed by such Union members affected hereunder, and, in the event of suit or other process against the Company, its officers or agents, by anyone on account of or growing out of the action by the Company in making such deductions, the Union hereby agrees to and does indemnify, save and hold Company harmless from any loss or damage on account of the making of any such deductions, including the cost of any such suit, attorney's fees, and cost of defense of the same. The Union hereby agrees to reimburse the Company for any amount it expends or is caused to expend by any such suit or proceedings, including all amounts of any such deductions made by the Company hereunder for which it is, in any such proceedings held liable. It is agreed that any employee affected may, by written notice to the Company and financial secretary of the Union, cancel at any time the authority of the Company to make any deductions hereunder and, in that event, the Company shall not be required to make such deductions, unless and until any such employees shall have subsequently executed his written agreement and consent thereto and filed the same with the Company.

Section 16. Term of Agreement: This agreement shall continue in full force and effect until the .... day of ...., 1940.

(a) In the event neither party serves written notice to the other party within thirty (30) days before the expiration of this contract of their desire to change the terms and conditions thereof, then, in that event it is understood and agreed that this contract is to remain in full force and effect for an additional twelve (12) months from the expiration date thereof.

(b) In the event that either party desires to change this contract in any way at the expiration thereof, both parties shall be obligated to attend the conference and negotiate in good faith, and the neglect or refusal of the party to whom notice is given to so attend and to participate in the negotiations shall be the equivalent of a failure to agree, and the refusal of either party to change any position which it may take as to changes proposed in the negotiations shall be considered as a lack of faith in the negotiations.

Section 17. It is understood that this Agreement is subject to all Federal and State laws, rules and regulations, amendments and revisions that now exist or may hereafter exist, pertaining to this Agreement.

....

....

(Copy of rates proposed by committee September 22, 1939—Counter-proposal to Company's proposed rates September 31, 1939.)

Abolish the present system of mining and establish a guaranteed basic rate of pay for 8 hours work for all employees now on contract.

All Company crews, track, timber, and material shall consist of: 1 Foreman and 4 helpers.

Large drag crews shall consist of: 1 head miner, 3 drill men and helpers, 1 drag engineer, 1 motor runner, and 3 muckers.

Tons	Head Miner	Drill Runner	Drag Engineer	Motor Runner	Muckers	Drill Helper
140	$6.16	$5.48	$5.48	$5.48	$4.80	$4.52
145	6.25	5.56	5.56	5.56	4.89	4.57
150	6.38	5.68	5.68	5.68	4.78	4.66
155	6.52	5.81	5.81	5.81	5.09	4.77
160	6.55	5.93	5.93	5.93	5.19	4.87
165	6.79	6.05	6.05	6.05	5.30	4.98
170	6.92	6.17	6.17	6.17	5.41	5.09
175	7.06	6.29	6.29	6.29	5.52	5.20

Tons	Head Miner	Drill Runner	Drag Engineer	Motor Runner	Muckers	Drill Helper
180	7.19	6.42	6.42	6.42	5.62	5.30
185	7.32	6.54	6.54	6.54	5.73	5.41
190	7.46	6.66	6.66	6.66	5.84	5.52
195	7.59	6.79	6.79	6.79	5.95	5.63
200	7.73	6.91	6.91	6.91	6.05	5.73
205	7.85	7.03	7.03	7.03	6.16	5.84
210	8.00	7.15	7.15	7.15	6.27	5.95
215	8.13	7.27	7.27	7.27	6.37	6.05
220	8.27	7.39	7.39	7,39	6.48	6.16
225	8.40	7.52	7.52	7.52	6.59	6.27
230	8.53	7.64	7.64	7.64	6.70	6.38
235	8.67	7.76	7.76	7.76	6.80	6.48
240	8.80	7.88	7.88	7.88	6.91	6.59
245	8.94	8.01	8.01	8.01	7.02	6.70
250	9.07	8.13	8.13	8.13	7.13	6.81
255	9.21	8.25	8.25	8.25	7.23	6.91
260	9.34	8.37	8.37	8,37	7.44	7.12
and above	“	“	“	“	“	“

Small Drags shall consist of: 1 head miner, 2 drill runner and helpers, 1 drag engineer, 1 motorman, and 2 muckers.

Tons	Head Miner	Drill Runner	Drag Operator	Motor Runner	Muckers	Drill Helper
70	$6.16	$5.48	$5.48	$5.48	$4.80	$4.52
75	6.52	5.80	5.80	5.80	5.09	4.77
80	6.87	6.14	6.14	6.14	5.37	5.05
85	7.22	6.45	6.45	6.45	5.65	5.33
90	7.58	6.75	6.75	6.75	5.93	5.61
95	7.93	7.09	7,09	7.09	6.21	5.89
100	8.28	7.41	7.41	7.41	6.49	6.17
105	8.63	7.73	7.73	7.73	6.78	6.46
110	8.99	8.05	8.05	8,05	7.00	6.74
115	9.25	8.37	8.37	8.37	7.34	7.02
and above	“	“	“	“	“	“

Hand load in wide work, slab and robbing shall consist of: 1 head miner, 1 drill man and helper, 1 motorman, 3 muckers and trip rider when motor pulls more than one place. A mucker will trip ride when motor pulls only one place.

Tons	Head Miner	Drill Runner	Motor Runner	Muckers	Drill Helper
40	$6.16	$5.48	$5.48	$4.80	$4.52
45	6.29	5.60	5.60	4.90	4.58
50	6.66	5.93	5.93	5.20	4.88
55	7.03	6.27	6.27	5.49	5.17
60	7.40	6.61	6.61	5.79	5.47
65	7.77	6.94	6.94	6.08	5.76
70	8.14	7.28	7.28	6.38	6.06
75	8.51	7.62	7.62	6.68	6.36
80	8.88	7.95	7.95	6.97	6.65
85	9.25	8.29	8.29	7.27	6.95
and above	"	"	"	"	"

Narrow work and stope rock shall consist of: 1 head miner, 1 drill runner, 1 motor runner, 3 muckers, 1 drill helper and trip rider where motor pulls more than one place.

Tons	Head Miner	Drill Runner	Muckers	Drill Helper	
30	$6.16	$5.48	$5.48	$4.80	$4.52
35	6.47	5.76	5.76	5.05	4.73
40	6.93	6.18	6.18	5.42	5.10
45	7.39	6.60	6.60	5.78	5.46
50	7.85	7.02	7.02	6.15	5.83
55	8.32	7.44	7.44	6.52	6.20
60	8.78	7.86	7.86	6.89	6.47
65	9.24	8.28	8.28	7.26	6.94
and above	"	"	"	"	"

The Company shall allow for explosives 16¢ per ton for narrow and stope neck work and 14¢ per ton for wide work. Powder savings will be divided among all members of the crew where said explosives are used. All Company men with (T) before their rating will share in tonnage bonus just as soon as a basis tonnage can be agreed to between the Company and the Representatives of the Union. Each man will have to furnish his own carbide where slate has to be handled by tonnage men, they will be allowed 60¢ per three-ton car for loading and 60¢ for unloading. This plan cuts out all pay for yardage. The Company will furnish all supplies and tools except carbide. In hand loading places where mule is used instead of motor, mule boy shall be paid at rate of 55¢ per hour.

	Hours	8 hours
Blacksmith	65½	524
Compressor Engineer	64½	512
Crusher Man	48	384
Carpenter	64½	516
Co. Drill Runner	63½	508
Co. Drill Helper	55½	444
Car Repairman	67	536
Car Repairman Helper	55½	444
Chainer	57½	460
Crusher Foreman	58	464
Drill Repairman	74½	596
Drill Steel Sharpener	69	552
Drill Steel Sharpener Helper	55½	444
Electrical Repairman (outside)	74½	596
Electrical Repairman (inside)	76½	612
Fireman	55½	444
Greaser Man	55½	444
Hoist Engineer (Outside)	72	576
Hoist Engineer (Overhead)	72	576
Hoist Engineer (Manway)	65	520
Hoist Engineer (Side slope and 50L)	57½	460

	Hours	8 hours
Haulage Motorman	70½	564
Haulage Helper	55½	444
U. G. Stableman Helper	55½	444
Laborer	40	320
Latch Boy	55½	444
Mechanical Repairman (Outside)	74½	596
Mechanical Repairman (Inside)	76½	612
Motorman	70½	564
Pumper	55½	444
Pipe Man	60½	484
Railroad Car Man	45½	364
Rockman	63½	508
Rockman Helper	54½	436
Slate Picker (Laborer)	40	320
Sanitary and Garbage Wagon Driver	40	320
Skip Loader	59½	476
Skip Loader Helper	55½	444
Slope Repairman	59½	476
Slope Repairman Helper	55½	444
Truck Driver	49	392
Trip Rider	57½	460
Timberman	63½	508
Timberman Helper	54½	436
Trackman	63½	508
Trackman Helper	54½	436
Weighman	67	536
Carpenter	64½	516
Wagon Driver	45½	364

3835 SLOSS EXHIBIT No. 34.

Agreement.

This Agreement, dated *November 13, 1939*, is between the *Woodward Iron Company*, (hereinafter referred to as the "Company") and *Lipscomb Red Ore Local #103* of the International Union of Mine, Mill and Smelter Workers, (hereinafter referred to as the "Union") on behalf of the employees employed by the Company in its ore mines located at *Lipscomb*, Jefferson County, Alabama.

Section 1. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationship between the employees and the Company, and to set forth herein the basic Agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties hereto.

It is understood and agreed that this Agreement pertains only to employees employed in and around the ore mines of the Company located at *Lipscomb*, Jefferson County, Alabama.

The term "employee", as used in this Agreement shall not include foremen, assistant foremen or supervisors in charge of any classes of labor who do not perform any regular work, or watchmen or patrolmen.

Section 2. Recognition: The Company hereby recognizes the Union as the exclusive representative of all employees of said Company in its red ore mine, located at Lipscomb, Jefferson County, Alabama, who come under the jurisdiction of the Union, for the purpose of collective bargaining on all matters pertaining to wages, hours and conditions of employment.

Section 3. Wages: It is agreed that the following rates of pay shall exist. (Copy is hereto attached.)

Pay Days: Pay days to remain at present, namely, 10th and 25th of each month, but during weeks on which there is no pay day a cash order will be instituted, the day for cash orders to be set by the Company and posted on bulletin board one week in advance.

Section 4. Hours of Work: Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.

No employee shall be paid both daily and weekly overtime for the same hours so worked.

Section 5. Vacations: Each employee who prior to May 1, 1940, was continuously in the service of the Company for three (3) years shall receive vacations in accordance with the following schedule:

3 years service and less than 5 years service to May 1, 1940	3 days
5 years service and less than 10 years service to May 1, 1940	6 days
10 years service and less than 15 years service to May 1, 1940	8 days
15 years service and over to May 1, 1940	10 days

Vacations to begin in May. Such vacations to be taken in a single period. Those who are granted vacations will be paid on the average rate of earnings per hour for the two (2) pay periods immediately preceding their vacation. Total hours of vacation pay will be the average hours they worked per week during that period, but not less than forty (40) and not more than forty-eight (48) hours.

Section 6. Seniority: It is understood and agreed that in any cases of promotion and increase or decrease of forces the following factors shall be considered, and where factor (a) and (b) are relatively equal, length of continuous service shall govern.

(a) Length of continous service.

(b) Knowledge, training, ability, skill and efficiency.

Section 7. Adjustment of Grievances: Should differences arise between the Company and the Union or the employees employed by the Company as to the meaning and application of the provisions of this Agreement, or should any local trouble of any kind arise there shall be no suspension of work on account of such differences but an earnest effort shall be made to settle such differences immediately in the following manner:

First, between members of the Grievance Committee, designated by the Union, and the Foreman and Superintendent of the Mines;

Second, between the representatives of the Union and the representatives of the Executives of the Company;

Third, by a board consisting of four members, two of whom shall be designated by the representatives signatory hereto, and two by the Company. Failing to agree, the matter shall then be appealed to an impartial umpire to be appointed by mutual agreement by the parties hereto. Failing to agree on the fifth member within five days the Director of Conciliation Service, U. S. Department of Labor, shall be authorized to appoint the fifth member. The umpire shall render a decision within five days after receipt of evidence. The umpire's decision shall be final. The expense and salary incident to the services of the umpire shall be paid jointly by the Company and the Union.

Pending the hearing of disputes; the employees represented by the parties signatory hereto shall not cease work because of any dispute; and a decision reached at any stage of the proceedings shall be binding on both parties hereto; and shall not be subject to reopening by either parties except by mutual agreement.

Specified period shall be agreed upon between the Grievance Committee and the Superintendent of the mines for the presentation of grievance hereunder. Provided, however, that matter pertaining to discharges or any other matters that cannot reasonably be delayed until time of the next regular meeting may be presented at any time in accordance with the foregoing provisions.

The Grievance Committee shall consist of not less than three employees and not more than six such employees, designated by the Union, who will be afforded such time off, without pay, as may be required.

First, to attend regularly scheduled committee meetings.

Second, to attend meetings pertaining to discharge or other matters which cannot be reasonably delayed until the time of the next regular meeting, and

Third, any member of the Grievance Committee shall have the right to visit departments other than his own at all reasonable times for the purpose of transacting the legitimate business of the Grievance Committee, after notice to and permission from his foreman or his designated representatives.

The Superintendent is to be advised, in writing, by the Union of the names of the Grievance Committee, also of any changes that may be made in this committee.

It is understood and agreed that this section of the Agreement shall not be effective in the arbitration of wage increases, wage reductions or wage adjustments.

Section 8. Illegal Suspension of Work: A strike or stoppage of work on the part of the employees represented by the parties signatory hereto shall be a violation of this Agreement, and there shall be no strike or cessation of work until and unless the matter of complaint shall have been submitted and determined by all the methods provided for in this Agreement for the adjustment of disputes.

Section 9. Management: The management of the mines and the direction of the working force, including the right to hire, suspend or discharge for proper cause, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for the purpose of discriminating against any member of the Union.

Section 10. Discharge Cases: In the event an employee shall be discharged from his employment from and after the date hereof, and he believes he has been unjustly dealt with such discharge shall constitute a case arising under the methods of adjusting grievances herein provided. In the event it should be decided under the rules of this Agreement that an injustice has been dealt the employee, with regard to discharge, the Company shall reinstate such employee and pay full compensation at the employee's regular rate for the time lost. All such cases of discharge shall be taken up within five (5) days from the date of discharge and disposed of as promptly as possible.

Section 11. Safety and Health: The Company shall continue to make reasonable provisions for the safety and health of its employees at the mines during the hours of their employment. Protective devices, wearing apparel and other equipments necessary to properly protect employees from injury shall be provided by the Company in accordance with the practice now prevailing in the mines.

Section 12. Individual Wage Rates: Where alleged inequalities in wage rates prevail, the matter may be taken up for adjustment with Superintendent of the Mines, and settlement made on a mutually satisfactory basis.

Section 13. Holidays: The following days shall be considered holidays, during which days there shall be no regular production work; however, it is understood that regular maintenance work will be carried on:

July 4th
Labor Day
Thanksgiving
Christmas

If for any reason work other than regular maintenance work is performed on these days, it shall be paid for at the rate of time and one-half.

Section 14. Wage Advances or Reductions: It is agreed that in event general wage increases are granted or decreases made to red ore miners by a majority of the red ore producing companies in this district during the life of this Agreement, it is understood that the question of consideration of wage adjustments for Woodward Red Ore employees will then become a subject for collective bargaining under the terms of this Agreement.

Section 15. Term of Agreement: This Agreement shall continue in full force and effect until the 12th day of November, 1940.

(a) In the event neither party serves written notice to the other party within thirty (30) days before the expiration of this contract of their desire to change the terms and conditions thereof, then, in that event it is understood and agreed that this contract is to remain in full force and effect for an additional twelve (12) months from the date of expiration thereof.

(b) In the event that either party desires to change this contract in any way at the expiration thereof, both parties shall be obligated to attend the conference and negotiate in good faith, and the neglect or refusal of the party to whom notice is given to so attend and to participate in the negotiations shall be the equivalent of a failure to agree, and the refusal of either party to change any position which it may take as to changes proposed in the negotiations shall not be considered as a lack of good faith in the negotiations.

H. A. BERG,
Pres.

VAN D. JONES,
J. L. ROBINSON,
JOHN CRUMPTON,
OLIVER JOHNSON,
WILL RENCHER.

Red Ore Mines.

Hourly Rates.

Occupation	Hourly Rate	Amount per Shift	Hours per Shift
Rockman	$0.635	$5.08	8
Rockman Helper	.545	4.36	8
Timberman	.635	5.08	8
Timberman Helper	.545	4.36	8
Company Drag Engineer	.705	5.64	8
Company Drillman	.635	5.08	8
Company Drillman Helper	.555	4.44	8
Pipeman	.605	4.84	8
Car Repairer	.67	5.36	8
Car Repairer Helper	.555	4.44	8
Chainer	.575	4.60	8
Greaserman	.555	4.44	8
Hoist Engineer—1st class	.72	5.76	8
Hoist Engineer—2nd class	.575	4.60	8
Latch Boy	.555	4.44	8
Motorman	.705	5.64	8
Rollerman	.595	4.76	8
Rollerman Helper	.555	4.44	8
Stableman Helper	.555	4.44	8
Trip Rider	.575	4.60	8
Trackman	.635	5.08	8
Trackman Helper	.545	4.36	8
Manway Hoist Engineer	.65	5.20	8
Truck Driver	.49	3.92	8
Teamster	.455	3.64	8
Railroad Car Loader	.455	3.64	8
Skip Loader	.595	4.76	8
Skip Loader Helper	.555	4.44	8
Tippleman	.58	4.64	8
Weighman	.67	5.36	8
Hoist Engineer—outside	.72	5.76	8

Occupation	Hourly Rate	Amount per Shift	Hours per Shift
Hoist Engineer—relief	.49	3.92	8
Crusherman	.48	3.84	8
Pumper	.555	4.44	8
Blacksmith—2nd class	.655	5.24	8
Blacksmith Helper	.555	4.44	8
Carpenter	.645	5.16	8
Drill Steel Sharpener	.69	5.52	8
Drill Steel Sharpener Helper	.555	4.44	8
Electrical Repairman	.765	6.12	8
Shop Machinist	.745	5.96	8
Machinist—outside	.745	5.96	8
Machinist—inside	.765	6.12	8
Laborer	.40	3.20	8
Haulage Laborer	.555	4.44	8
Drill Repairman	.745	5.96	8
Sanitary & Garbage wagon driver	.455	3.64	8
Fireman	.555	4.44	8
Compressor Engineer	.645	5.16	8

Red Ore Mines.

Tonnage Rates.

Large Drags.

Tonnage Rates Based on:	Rate Per Ton
1 to 180 tons per day	.365
181 to 210 tons per day	.370
211 to 240 tons per day	.375
241 to 270 tons per day	.395
271 to 300 tons per day	.410
301 tons plus per day	.420

Basic Hourly and Shift Rates:	Hour	Shift
Head Miner	.875	$7.00
Drag Foreman	.74	5.92

Engineer	.685	5.48
Motorman	.685	5.48
Drillman	.685	5.48
Drillman Helper	.565	4.52
Mucker	.60	4.80

Note: Regular tonnage and yardage rates will govern gross earnings.

After deductions for total labor, explosives and supplies cost, etc., the remaining amount will be divided as follows:

20% to Head Miner
80% to remainder of crew, split proportionately to each man's base pay.

Red Ore Mines.

Tonnage Rates.

Small Drags.

Tonnage Rates Based on:	Rate Per Ton
1 to 75 tons per day	.4725
76 to 85 tons per day	.4875
86 to 95 tons per day	.50
96 to 105 tons per day	.51
106 to 115 tons per day	.525
116 plus tons per day	.53

Basic Hourly and Shift Rates:	Hour	Shift
Head Miner	.875	7.00
Foreman	.74	5.92
Engineer	.685	5.48
Motorman	.685	5.48
Drillman	.685	5.48
Drillman Helper	.565	4.52
Mucker	.60	4.80

Note: Regular tonnage and yardage rates will govern gross earnings.

After deductions for total labor, explosives and supplies cost, etc., the remaining amount will be divided as follows:

20% to Head Miner
80% to remainder of crew, split proportionately to each man's base pay.

Red Ore Mines.

Tonnage Rates.

9-Foot Development Headings—Shovel Loaded.

Occupation	Rates Hour	Rates Shift	Details of mining yardage 9 feet wide by thickness of seam—ore belonging to Company.
Head Miner . . .	.875	7.00	
Drillman	.705	5.64	Mining yardage—$26.00 per lineal yard.
Drillman Helper	.585	4.68	
Motorman	.705	5.64	
Shovel Operator	.705	5.64	

Note: Regular yardage rates will govern the gross earnings. After deductions for total labor, explosives, supplies, etc., the remaining amount will be divided as follows:

30% to Head Miner.
20% to Shovel Operator.
50% to remainder of crew, split proportionately to each man's base pay.

9-Foot Development Headings—Hand Loaded.

Occupation	Rates Hour	Rates Shift	Details of mining yardage 9 feet wide by thickness of seam—ore belonging to Company.
Head Miner . . .	.875	7.00	8 ft. high—$33.25 per lin. yd. 9 ft. high— 34.25 per lin. yd.

9-foot Development Headings—Hand Loaded.

Occupation	Rates		Details of mining yardage 9 feet wide by thickness of seam—ore belonging to Company.
	Hour	Shift	
Drillman	.705	5.64	10 ft. high— 35.25 per lin. yd.
			11 ft. high— 36.25 per lin. yd.
Drillman Helper	.585	4.68	12 ft. high— 37.25 per lin. yd.
			13 ft. high— 38.25 per lin. yd.
Motorman	.705	5.64	14 ft. high— 39.25 per lin. yd.
Mucker	.60	4.80	

Note: Regular yardage rates will govern the gross earnings. After deductions for total labor, explosives and supplies cost, etc., the remaining amount will be divided as follows:

20% to Head Miner
80% to remainder of crew, split proportionately to each man's base wage rate.

Red Ore Mines.

Hand Mined Tonnage & Yardage Rates.

Description	Rate
Wide heading ore (over 18' in width)	.72 per ton
Hand slab ore	.67 per ton
Stope neck ore	.72 per ton

Basic Hourly & Shift Rates.

	Hour	Shift
Head Miner	.875	$7.00
Motorman	.705	5.64
Drillman	.705	5.64
Drillman Helper	.585	4.68
Mucker	.60	4.80

Note: The regular tonnage and yardage rates will govern gross earnings. After deductions for total explosives and supplies cost, etc., the remaining amount will be split as follows:

20% to head miner.
80% to remainder of crew, split proportionately to each man's base pay.

Yardage Rates.

Narrow Headings—9 ft. wide by thickness of seam, ore belonging to Company.

8 ft. high	$33.25 per lineal yard
9 ft. high	34.25 per lineal yard
10 ft. high	35.25 per lineal yard
11 ft. high	36.25 per lineal yard
12 ft. high	37.25 per lineal yard
13 ft. high	38.25 per lineal yard
14 ft. high	39.25 per lineal yard

Miscellaneous Yardage—ore belonging to miners.

Short headings (under 18 ft. in width)	$16.50 per lin. yd.
Stope necks	16.50 per lin. yd.
12 ft. wide (drag) stopes	9.00 per lin. yd.
Loading slate	.69 per car

Chaining Rates.

Rate per ton	$ .0128 per ton

	Hour	Shift
Head Chainer	.875	$7.00
Chainer Laborer	.575	4.60

Note: Regular tonnage rate will govern gross earnings.

After deductions for fixed labor cost the balance will be divided as follows:

59% to head chainer
41% to chainer labor to be split equally.

3848 SLOSS EXHIBIT No. 35.

Copy of Agreement presented by Red Ore Committee November 6, 1940; not signed.

Proposed Amendments and Changes in the Present Contract By and Between Woodward Iron Company, and Lipscomb Red Ore Local No. 103, of International Union of Mine, Mill and Smelter Workers, All of Which Is to Supersede the Existing Contract, Including the Parts Retained to Be Incorporated In the New Contract.

Preamble clause of old contract to be retained.

Section 1. Retained.

Section 2. Retained.

Section 3. Retained as amended or changed.

(a) Pay Days shall be weekly and shall include all earnings due except the last three (3) days. Provided further, that the work week shall start Sunday night at 12 o'clock P. M. and end Saturday night at 12 o'clock P. M.

Section 4. Add to Section 4 as follows immediately after the first paragraph thereof: "Provided time worked shall be computed from collar to collar. That is to say, the employees shall be paid for all time in each day they are required to be on the premises of the Company, except of course lunch period when so provided".

Second Paragraph of Section 4 O. K.

Section 5. To retain as is.

Section 6. To be retained, and add:

(c) All employees who volunteer or are required to serve our Country in the present defense program, or in the event of war, shall retain their seniority status as of the date of induction into the service, and these employees who volunteer or are required to serve our Country shall, upon return, be restored to their former occupations with the Company.

Section 7. Strike out the following words in paragraph Third, as same appear in the third line thereof, namely: "representatives signatory hereto", and add in lieu thereof "Union".

Section 8. Strike out word "signatory" in the fourth line thereof.

Section 9. To be retained, and add Section 9(b):

(b) The Head Miner's duty will be to supervise the work, look after materials, supplies, and safety of the place, and nothing more.

Section 10. To be retained.

Section 11. To be retained, and add the following:

(a) Outside pumpers, inside pumpers, boiler men, and the outside hoisting engineers who are required to haul the pumpers in and out of the mine, shall be designated as maintenance men.

(b) Any place or Heading loading ore double shift shall require a Head Miner for each shift.

(c) The Company shall deduct from each of its employees wages, upon presentation by the Union of an order signed by such employee, such dues, initiations and assessments as authorized in said order provided deductions shall not exceed ($7.00) Seven Dollars in any one calendar month, such order to remain in force for the duration of this Agreement.

(d) That, subject to the terms and conditions of this Agreement, the Company hereby agrees to employ or work no person who is not a member of the Union or who is not willing to make application to join said Union within two (2) weeks after becoming employed by the Company. In the event any employee fails or refuses to make such application to join the Union within two weeks (2) after becoming employed by the Company, the Company hereby agrees to discharge such employee upon receipt of a notice in writing from the duly authorized Secretary of the Union that such employee has failed or refused to make such application within the period of time hereinabove specified.

The Company shall remit to the Financial Secretary of the Union an itemized list of the names and amounts deducted from each employee not later than the 10th day of each succeeding month of all deductions so made.

Should any employee enter legal proceedings against the Company to recover the amount of deductions made by him under this Section the Union agrees to reimburse to the Company the amount of any loss sustained thereby, including all costs and expenses.

Section 12. To be retained.

Section 13. To be retained.

Hourly Rates: Strike out rates appearing on Pages 9 and 10 and add in lieu thereof the following:

	Hour	Shift
Rockman	.755	$6.04
Timber man	.755	6.04
Co. Drag Engr.	.755	6.04
Co. Drill Man	.685	5.48
Car Repairman	.720	5.76
Chainer	.625	5.00
Hoist Engr. 1st C.	.770	6.16
Latch Boy	.605	4.84
Motorman Tunnel & 10 R.	.775	6.20
Roller Man Hpr.	.605	4.84
Trip Rider	.625	5.00
Track Man Hpr.	.595	4.76
Rock-wall Bldr.	.535	4.28
Skip Loader	.675	5.40
Tippleman	.630	5.04
Hoist Engr., Outside	.815	6.52
Crusherman	.560	4.84
Blacksmith, 2nd Class	.705	5.64
Carpenter	.695	5.56
Drill Steel Hpr.	.720	5.76
Shop Machinist	.850	6.80
Machinist, inside	.845	6.76

	Hour	Shift
Laborer	.450	3.60
Haulage Laborer	.605	4.84
Sanitary and Garbage Wagon Driver	.505	4.04
Compressor Engr.	.695	5.56
Teamster	.505	4.04
Rockman Helper	.595	4.76
Timber man Helper	.595	4.76
Pipe man	.655	5.24
Co. Drill man Hpr.	.605	4.84
Car Repairman Hpr.	.605	4.84
Grease man	.605	4.84
Hoist Engr. 2nd C.	.685	5.48
Motorman	.755	6.04
Roller man	.645	5.16
Stableman	.635	5.08
Trackman	.755	6.04
Man-way Hoist Engr.	.700	5.60
R. R. Car Loader	.535	4.28
Skip Loader Helper	.605	4.84
Weighman	.720	5.76
Hoist Engineer Relief	.54	4.32
Pumper	.675	5.40
Blacksmith Hpr.	.605	4.84
Drill Steel Sharpener	.805	6.44
Electrical Repairman	.845	6.76
Machinist, Outside	.845	6.76
Outside Foreman	.695	5.56
Haulage Motorman	.755	6.04
Drill Repairman	.795	6.36
Fireman	.605	4.84
Truck Driver	.550	4.40

and adding thereto: "All men covered by these rates are to receive a "bonus" for all tonnage in excess of 1675 tons per shift, bonus to be divided according to base pay".

(a) Slate, Bottom, Slabbing Rates:. Where two or more cars of slate are picked out of ore in any one shift same shall be paid for one way.

Taking up Bottom shall be paid for at the rate of $4.00 per cubic yard, and the slate shall be paid for two ways at 69¢ per car.

Hand slab ore from 9 feet to 18 feet, $8.25 per lineal yard, and 69¢ per ton.

Robbing work, 75¢ per ton.

Tonnage Rates: (Page 11.) Tonnage rates as appearing on Page 11 to remain the same, with the exception that strike out "20% to Head miner and 80% to remainder of crew" and add in lieu thereof: "To be proportionately divided according to each man's base pay".

Tonnage rates for Large Drag shall be three classifications as follows:

"A" Drags		"B" Drags.		"C" Drags	
Per Ton		Per Ton		Per Ton	
1 to 180	.365	1 to 160	.365	1 to 140	.365
181 to 210	.370	161 to 180	.370	141 to 160	.370
211 to 240	.375	181 to 200	.375	161 to 180	.375
241 to 270	.395	201 to 220	.395	181 to 200	.395
271 to 300	.410	221 to 240	.410	201 to 220	.410
301 to . . .	.420	241 to . . .	.420	221 to . . .	.420

And $9.00 per yard.

Tonnage rates for Small Drags shall be three classifications, as follows:

"A" Drags		"B" Drags	
1 to 75 tons per day	.4725	1 to 65 tons per day	.4725
76 to 85 tons per day	.4785	66 to 75 tons per day	.4785
86 to 95 tons per day	.50	76 to 85 tons per day	.50
96 to 105 tons per day	.51	86 to 95 tons per day	.51
106 to 115 tons per day	.525	96 to 105 tons per day	.525
115 Plus tons per day	.53	105 Plus tons per day	.53

"C" Drags	
1 to 55 tons per day	.4725
56 to 85 tons per day	.4875
66 to 75 tons per day	.50
76 to 85 tons per day	.51
86 to 95 tons per day	.525
96 Plus tons	.53

Page 12. Strike out last three lines on Page 12, and add in lieu thereof, "To be proportionately divided according to each man's base pay."

Page 12. Tonnage Rates: Strike out $26.00 per lineal yard and add in lieu thereof, "$30.00 per lineal yard".

Also, strike out "30% to Head Miner, 20% to Shovel Operators, and 50% to remainder of crew, etc.," and add in lieu thereof: "To be proportionately divided according to each man's base pay".

Shovel Work.

8 feet high	$30.00
9 feet high	31.00

10 feet high	32.00
11 feet high	33.00
12 feet high	34.00
13 feet high	35.00
14 feet high	36.00

Section 14. Wage Advances or Reductions: Strike out Section 14 and add in lieu thereof the following: "It is agreed that in event any change in economic conditions or increase in the price of pig iron, then in that event the question of wage adjustments, tonnage, rates, yardage, and all other rates of pay set out in this Agreement shall be a subject for collective bargaining by and between the Company and the Union".

(a) There shall be a 15% increase in base rates, tonnage rates and yardage rates.

Section 15. Term of Agreement: This agreement shall continue in full force and effect until the 12th day of November, 1942, subject to the conditions and provisions herein contained.

Strike out Section 15 (a).

Strike out Section 15 (b).

(Signed) J. L. ROBINSON,
President,
E. A. WILDMAN,
Financial Secretary.

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SLOSS EXHIBIT No. 36.

December 30, 1940.

Mr. Van D. Jones, Exec. Board Member,
I. U. M. M. & S. W.,
Bessemer, Ala.

Dear Sir:

Correcting an error in the contract between Lipscomb Red Ore Local #103 of the I. U. M. M. & S. W. and Woodward Iron Company dated December 30th, 1940, the rate of the blacksmith shall be $0.805 instead of $0.705 as listed on the rate sheet.

WOODWARD IRON
COMPANY,
By J. E. URQUART,
General Superintendent.

Approved:
J. L. ROBINSON,
Pres. Local 103,
VAN D. JONES,
Board Member.

December 30th, 1940.

Mr. J. L. Robinson, President,
Lipscomb Red Ore Local No. 103,
I. U. M. M. & S. W.

Dear Sir:

During the term of the agreement between the Woodward Iron Company and the Lipscomb Red Ore Local No. 103 of the I. U. M. M. & S. W., dated December 30th, 1940, the Company agrees to maintain, adjacent to the pay window, a booth which may be used by representatives of the Union on pay days only, for the sole purpose of collecting union dues.

WOODWARD IRON
COMPANY,
By J. E. URQUHART,
General Superintendent.

Agreement.

This Agreement, dated December 30th, 1940, is between the Woodward Iron Company, (hereinafter referred to as the "Company") and Lipscomb Red Ore Local #103 of the International Union of Mine, Mill and Smelter Workers, (hereinafter referred to as the "Union") on behalf of the employees employed by the Company in its ore mines located at Lipscomb, Jefferson County, Alabama.

Section 1. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationship between the employees and the Company, and to set forth herein the basic agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties hereto.

It is understood and agreed that this Agreement pertains only to employees employed in and around the ore mines of the Company located at Lipscomb, Jefferson County, Alabama.

The term, "employee", as used in this Agreement shall not include foremen, assistant foremen or supervisors in charge of any classes of labor who do not perform any regular work, or watchmen or patrolmen.

Section 2. Recognition: The Company hereby recognizes the Union as the exclusive representatives of all employees of said Company in its red ore mines located at Lipscomb, Jefferson County, Alabama, who come under the jurisdiction of the Union, for the purpose of collective bargaining on all matters pertaining to wages, hours, and conditions of employment.

Section 3. Wages: It is agreed that the following rates of pay (copy is attached hereto) shall remain in effect during the term of this contract unless changed by agreement.

It is undedrstood that the third step, namely, arbitration of grievances, of Section 7, Adjustment of Grievances, shall not apply to this clause.

It is also understood and agreed that Section 8, Illegal Suspension of Work, is not applicable to this clause.

Pay Days. Effective January 1st, 1941, pay days shall be weekly.

Section 4. Hours of Work: Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.

No employee shall be paid both daily and weekly overtime for the same hours so worked.

Section 5. Vacations: Each employee who prior to May 1, 1941, was continuously in the service of the Company for three (3) years shall receive vacations in accordance with the following schedule:

3 years service and less than 5 years service to May 1, 1941	3 days
5 years service and less than 10 years service to May 1, 1941	6 days
10 years service and less than 15 years service to May 1, 1941	8 days
15 years service and over to May 1, 1941	10 days

The same vacation schedule will apply for the second year of this contract, except that the years of service shall be calculated to May 1st, 1942.

Vacations to begin in May. Such vacations to be taken in a single period. Those who are granted vacations will be paid on the average rate of earnings per hour for the two (2) pay periods immediately preceding their vacation. Total hours of vacation pay will be the average hours they worked per week during that period, but not less than forty (40) and not more than forty-eight (48) hours.

Section 6. Seniority: It is understood and agreed that in cases of promotion and increase or decrease of forces the following factors shall be considered, and where factor (a) and (b) are relatively equal, length of continuous service shall govern.

(a) Length of continuous service.

(b) Knowledge, training, ability, skill and efficiency.

Section 7. Adjustment of Grievances: Should differences arise between the Company and the Union or the employees employed by the Company as to the meaning and application of the provisions of this Agreement, or should any local trouble of any kind arise there shall be no suspension of work on account of such differences but an earnest effort shall be made to settle such differences immediately in the following manner:

First, between members of the Grievance Committee, designated by the Union and the Foreman and Superintendent of the Mines;

Second, between the representatives of the Union and the representatives of the Executives of the Company;

Third, By a board consisting of four members, two of whom shall be designated by the Union and two by the Company. Failing to agree, the matter shall then be appealed to an impartial umpire to be appointed by this board. Should the board be unable to agree, within five days, on the selection of an umpire, he shall be designated by the Director of Conciliation Service, U. S. Department of Labor. The umpire shall render a decision within five days after receipt of evidence. The umpire's decision shall be final. The expense and salary incident to the services of the umpire shall be paid jointly by the Company and the Union.

Pending the hearing of disputes, the employees represented by the Union shall not cease work because of any dispute; and a decision reached at any stage of the proceedings shall be binding on both parties hereto; and shall not be subject to reopening by either party except by mutual agreement.

Specified period shall be agreed upon between the Grievance Committee and the Superintendent of the Mines for the presentation of grievances hereunder. Provided, however, that matter pertaining to discharges or any other matters that cannot reasonably be delayed until such time of the next regular meeting may be presented at any time in accordance with the foregoing provisions.

The Grievance Committee shall consist of not less than three employees and not more than six such employees, designated by the Union, who will be afforded such time off, without pay, as may be required:

First, to attend regularly scheduled committee meetings.

Second, to attend meetings pertaining to discharge or other matters which cannot be reasonably delayed until the time of the next regular meeting, and

Third, any member of the Grievance Committee shall have the right to visit departments other than his own at all reasonable times for the purpose of transacting the legitimate business of the Grievance Committee, after notice to and permission from his foreman or his designated representatives.

The Superintendent is to be advised, in writing, by the Union of the names of the Grievance Committee, also of any changes that may be made in this committee.

Section 8. Illegal Suspension of Work: A strike or stoppage of work on the part of the employees represented by the Union shall be a violation of this Agreement, and there shall be no strike or cessation of work until and unless the matter of complaint shall have been submitted and determined by all the methods provided for in this Agreement for the adjustment of disputes.

Section 9. Management: The management of the mines and the direction of the working forces, including the right to hire, suspend or discharge for proper cause, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for the purpose of discrimination against any member of the Union.

Section 10. Discharge Cases: In the event an employee shall be discharged from his employment from and after the date hereof, and he believes he has been unjustly dealt with such discharge shall constitute a case arising under the methods of adjusting grievances herein provided. In the event it should be decided under the rules of this Agreement that an injustice has been dealt the employee, with regard to discharge, the Company shall reinstate such employee and pay full compensation at the employee's regular rate for the time lost. All such cases of discharge shall be taken up within five (5) days from the date of discharge and disposed of as promptly as possible.

Section 11. Safety and Health: The Company shall continue to make reasonable provisions for the safety and health of its employees at the mines during the hours of their employment. Protective devices, wearing apparel and other equipments necessary to properly protect employees from injury shall be provided by the Company in accordance with the practices now prevailing in the mines.

Section 12. (a) Any place or heading drilling, shooting and loading ore double shift shall require a head miner for each shift.

(b) On the side slope where drilling, shooting and loading is done on one shift and loading only on the second shift; it is agreed that a shift leader shall be appointed for the shift on which the head miner is not working. For acting as shift leader this man shall be paid eighty (80) cents per shift above his base pay.

(c) The usual amount of slate is to be handled one way by the miners without extra pay. It is understood that in case of re-handling, this slate is to be paid for at the rate of sixty-nine (69) cents per car. It is also understood that should conditions arise resulting in an unusual amount of slate, it is then to be paid for at the rate of sixty-nine (69) cents per car. All the above is in accordance with the practice now prevailing.

Section 13. Individual Wage Rates: Where alleged inequalities in wage rates prevail, the matter may be taken up for adjustment with Superintendent of the Mines, and settlement made on a mutually satisfactory basis.

Section 14. Holidays: The following days shall be considered holidays, during which days there shall be no regular production work; however, it is understood that regular maintenance work will be carried on:

July 4th
Labor Day
Thanksgiving Day
Christmas

If for any reason work other than regular maintenance work is performed on these days, it shall be paid for at the rate of time and one-half.

Section 15. Any employee who enters the service of the United States under the provisions of the "Selective Training Service Act of 1940", and who satisfactorily completes his period of training or service thereunder, or who in the event of war, enters the service of the United States as a volunteer or by draft shall, upon honorable discharge from such service, be restored to his former position with the Company or to a position of like seniority and status, provided such employee makes application to the Company within forty days after he is discharged from such service, and is still physically and otherwise qualified to perform the duties of such position, and provided further that the Company's circumstances have not so changed as to make his restoration to such position impossible or unreasonable.

Section 15. Term of Agreement: This Agreement shall continue in full force and effect until the 30th day of December, 1942.

VAN D. JONES,
J. L. ROBINSON,
Pres. Local 103,
WILL COLVIN,
Vice Pres.,
JOHN CRUMPTON,
Committee,
CARL VANDERBURG,
Committee,
JEWETT WARREN,
Committee,
WILL RENCHER,
Committee,
JOHN W. WHITE,
Committee.

(Signed) H. A. BERG,
Pres., Woodward Iron Co.

Red Ore Mines.

Hourly Rates.

Occupation	Hourly Rate	Amount per Shift	Hours per Shift
Rockmen	$0.755	$6.04	8
Rockman Helper	.595	4.76	8
Timberman	.755	6.04	8
Timberman Helper	.595	4.76	8
Company Drag Engineer	.755	6.04	8
Company Drillman	.685	5.48	8
Company Drillman Helper	.605	4.84	8
Pipeman	.655	5.24	8
Car Repairer	.72	5.76	8
Car Repairer Helper	.605	4.84	8
Chainer	.625	5.00	8
Greaserman	.605	4.84	8
Hoist Engineer—1st class	.77	6.16	8
Hoist Engineer—2nd class	.685	5.48	8
Latch Boy	.605	4.84	8
Motorman	.755	6.04	8
Motorman—Tunnel and 10 Right	.775	6.20	8
Rollerman	.645	5.16	8
Rollerman Helper	.605	4.84	8
Stableman Helper	.635	5.08	8
Trip Rider	625	5.00	8
Trackman	.755	6.04	8
Trackman Helper	.595	4.76	8
Manway Hoist Engineer	.70	5.60	8
Truck Driver	.55	4.40	8
Teamster	.505	4.04	8
Railroad Car Loader	.535	4.28	8
Skip Loader	.675	5.40	8
Skip Loader Helper	.605	4.84	8
Tippleman	.63	5.04	8
Weighman	.72	5.76	8

Occupation	Hourly Rate	Amount per Shift	Hours per Shift
Hoist Engineer—outside	.815	6.52	8
Hoist Engineer—relief	.54	4.32	8
Crusherman	.56	4.48	8
Pumper	.675	5.40	8
Blacksmith—2nd class	.705	5.64	8
Blacksmith Helper	.605	4.84	8
Carpenter	.695	5.56	8
Drill Steel Sharpener	.805	6.44	8
Drill Steel Sharpener Helper	.72	5.76	8
Electrical Repairman	.845	6.76	8
Shop Machinist	.85	6.80	8
Machinist—outside	.845	6.76	8
Machinist—inside	.845	6.76	8
Laborer	.45	3.60	8
Haulage Laborer	.605	4.84	8
Drill Repairman	.795	6.36	8
Sanitary & Garbage Wagon Driver	.505	4.04	8
Fireman	.605	4.84	8
Compressor Engineer	.695	5.56	8
Rock-wall Builder	.685	5.48	8

Red Ore Mines.

Tonnage Rates.

Large Drags.

Tonnage Rates Based On:	Rate Per Ton
1 to 180 tons per day	.365
181 to 210 tons per day	.370
211 to 240 tons per day	.375
241 to 270 tons per day	.395
271 to 300 tons per day	.410
301 tons plus per day	.420

Basic Hourly and Shift Rates:	Hour	Shift
Head Miner	.875	$7.00
Drag Foreman	.74	5.92
Engineer	.685	5.48
Motorman	.685	5.48
Drillman	.705	5.64
Drillman Helper	.565	4.52
Mucker	.60	4.80

Note: Regular tonnage and yardage rates will govern gross earnings. After deductions for total labor, explosives and supplies cost, etc., the remaining amount will be divided as follows:

20% to Head Miner.
80% to remainder of crew, split proportionately to each man's base pay.

Red Ore Mines.

Tonnage Rates.

Small Drags.

Tonnage Rates Based On:	Rate Per Ton
1 to 75 tons per day	.4725
76 to 85 tons per day	.4875
86 to 95 tons per day	.50
96 to 105 tons per day	.51
108 to 115 tons per day	.525
116 plus tons per day	.53

Basic Hourly and Shift Rates:	Hour	Shift
Head Miner	.875	7.00
Foreman	.74	5.92
Engineer	.685	5.48
Motorman	.685	5.48
Drillman	.705	5.64
Drillman Helper	.565	4.52
Mucker	.60	4.80

Note: Regular tonnage and yardage rates will govern gross earnings. After deductions for total labor, explosives and supplies cost, etc., the remaining amount will be divided as follows:

20% to Head Miner
8% to remainder of crew, split proportionately to each man's base pay.

Red Ore Mines.

Tonnage Rates.

9-foot Development Headings—Shovel Loaded.

Occupation	Rates Hour	Rates Shift	Details of mining yardage 9 feet wide by thickness of seam—ore belonging to Company.
Head Miner	.875	7.00	
Drillman	.705	5.64	Mining yardage—$26.00 per lineal yard.
Drillman Helper	.585	4.68	
Motorman	.705	5.64	
Shovel Operator	.705	5.64	

Note: Regular yardage rates will govern gross earnings. After deductions for total labor, explosives, supplies, etc., the remaining amount will be divided as follows:

30% to Head Miner
20% to Shovel Operator
50% to remainder of crew, split proportionately to each man's base pay.

9-foot Development Headings—Hand Loaded.

Occupation	Rates Hour	Shift	Details of mining yardage 9 feet wide by thickness of seam—ore belonging to Company.
Head Miner	.875	7.00	8 ft. high—$33.25 per lin. yd.
			9 ft. high— 34.25 per lin. yd.
Drillman	.705	5.64	10 ft. high— 35.25 per lin. yd.
			11 ft. high— 36.25 per lin. yd.
Drillman Helper	.585	4.68	12 ft. high— 37.25 per lin. yd.
			13 ft. high— 38.25 per lin. yd.
Motorman	.705	5.64	14 ft. high— 39.25 per lin. yd.
Mucker	.60	4.80	

Note: Regular yardage rates will govern gross earnings. After deductions for total labor, explosives and supplies cost, etc., the remaining amount will be divided as follows:

20% to Head Miner.
80% to remainder of crew, split proportionately to each man's base wage rate.

Red Ore Mines.

Hand Mined Tonnage and Yardage Rates.

Description	Rate
Wide heading ore (over 18′ in width)	.72 per ton
Hand slab ore	.72 per ton
Stope neck ore	.72 per ton
Robbing ore	.72 per ton

Basic Hourly and Shift Rates.

	Hour	Shift
Head Miner	.875	7.00
Motorman	.705	5.64
Drillman	.705	5.64
Drillman Helper	.585	4.68
Mucker	.60	4.80

Note: The regular tonnage and yardage rates will govern gross earnings. After deductions for total explosives and supplies cost, etc., the remaining amount will be split as follows:

20% to Head Miner.

80% to remainder of crew, split proportionately to each man's base pay.

Yardage Rates.

Narrow Headings—9 ft. wide by thickness of seam, ore belonging to Company.

8 ft. high	$33.25 per lineal yd.
9 ft. high	34.25 per lineal yd.
10 ft. high	35.25 per lineal yd.
11 ft. high	36.25 per lineal yd.
12 ft. high	37.25 per lineal yd.
13 ft. high	38.25 per lineal yd.
14 ft. high	39.25 per lineal yd.

Miscellaneous Yardage—ore belonging to miners.

Short headings (under 10 ft. in width)	$16.50 per lineal yd.
Stope necks	16.50 per lineal yd.
12 ft. wide (drag) stopes	9.00 per lineal yd.

Taking up bottom (drilling, shooting and loading or gobbing rock)	2.56 per cu. yd.	Measured in solid
Driving in solid rock (drilling, shooting and loading or gobbing rock)	4.52 per cu. yd.	
Loading slate	.69 per car	

Chaining Rates.

Rate per ton .... .0128 per ton

	Hour	Shift
Head Chainer	.875	7.00
Chainer Laborer	.575	4.60

Note: The regular tonnage rate will govern gross earnings. After deductions for fixed labor cost the balance will be divided as follows:

59% to head chainer.
41% to chainer labor to be split equally.

3866 T. C. I. EXHIBIT No. 23.

No. 4 Mine.

Heading: 3-L-#2. Shift: Day. Date: December 14, 1940.

Badge	Name—Occupation	Arrived	Left	Total Time—Less Lunch Period
243	Jim Simmons, Head Miner ...	6:15	3:12	8:27
17	Rich Moss, Drill Runner	7:00	3:12	7:42
489	Bill Didiway, Drill Runner ..	6:55	3:12	7:47
1084	Cleo Jones, Drag Operator ..	6:40	3:02	7:52
261	Cleve Mallett, Section Helper	6:55	3:06	7:49
441	Mose Hayes, Section Helper ..	6:55	3:12	7:55
541	John Croom, Section Helper	6:55	3:06	7:49
592	Fred Olvey, Hoist Engineer ..	6:31	3:02	8:01

Timed by:

WILSON GOODWIN,
Mine Foreman.

TCI EXHIBIT No. 24.

Tennessee Coal, Iron & Railroad Company.

Ore Mines and Quarries.

Statement Showing Iron Ore Tonnage Deficiency During May and June 1941.
Based upon Average Tons Per Turn for January, February, March and April 1941.

May 1941.

Mine Number	(*) Standard Tons Per Turn	Turns Operated May 1941	Standard Tonnage May 1941	Actual Tonnage May 1941	Plus or Minus Tonnage Deficiency May 1941	Percent Deficiency Plus or Minus
4	1,390	44	61,160	56,376	Minus 4,784	Minus 7.82
6	2,066	45	92,970	86,202	Minus 6,768	Minus 7.28
7	838	45	37,710	34,225	Minus 3,485	Minus 9.24
8	707	45	31,815	31,027	Minus 788	Minus 2.48
9	1,058	45	47,610	40,762	Minus 6,848	Minus 14.38
10	787	45	35,415	31,104	Minus 4,311	Minus 12.17
11	1,096	45	49,320	44,206	Minus 5,114	Minus 10.37
13	1,238	45	55,710	51,907	Minus 3,803	Minus 6.83
Total		359	411,710	375,809	Minus 35,901	Minus 8.72

June 1941.

Mine Number	(*) Standard Tons Per Turn	Turns Operated May 1941	Standard Tonnage May 1941	Actual Tonnage May 1941	Plus or Minus Tonnage Deficiency May 1941	Percent Deficiency Plus or Minus
4	1,390	42	58,380	51,881	Minus 6,499	Minus 11.13
6	2,066	42	86,772	78,698	Minus 8,074	Minus 9.30
7	838	42	35,196	29,915	Minus 5,281	Minus 15.00
8	707	42	29,694	31,834	Plus 2,140	Plus 7.21
9	1,058	42	44,436	37,454	Minus 6,982	Minus 15.71
10	787	42	33,054	30,579	Minus 2,475	Minus 7.49
11	1,096	42	46,032	38,743	Minus 7,289	Minus 15.83
13	1,238	42	51,996	47,381	Minus 4,615	Minus 8.88
Total		336	385,560	346,485	Minus 39,075	Minus 10.13
May & June 1941		695	797,270	722,294	Minus 74,976	Minus 9.40

(*) Standard Tons Per Turn based upon January, February, March and April, 1941.

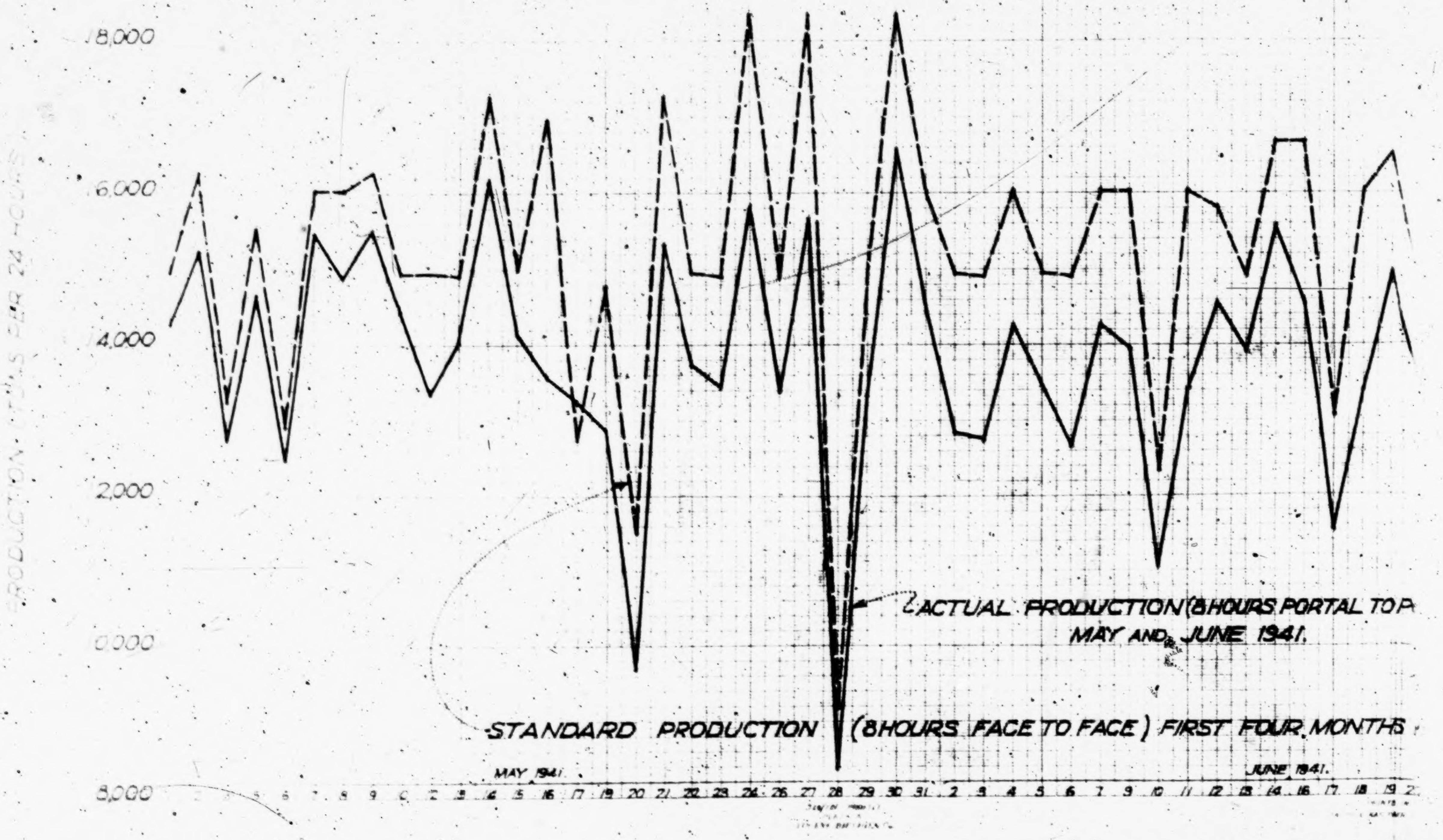
W. W. Skewes—wow

7/2/41.

TENNESSEE COAL, IRON AND RAILROAD COMPANY
ORE MINES AND QUARRIES

STATEMENT SHOWING IRON ORE TONNAGE DEFICIENCY DU MAY AND JUNE, 1941. BASED UPON AVERAGE TONS PER T FOR JANUARY, FEBRUARY, MARCH AND APRIL, 1941.

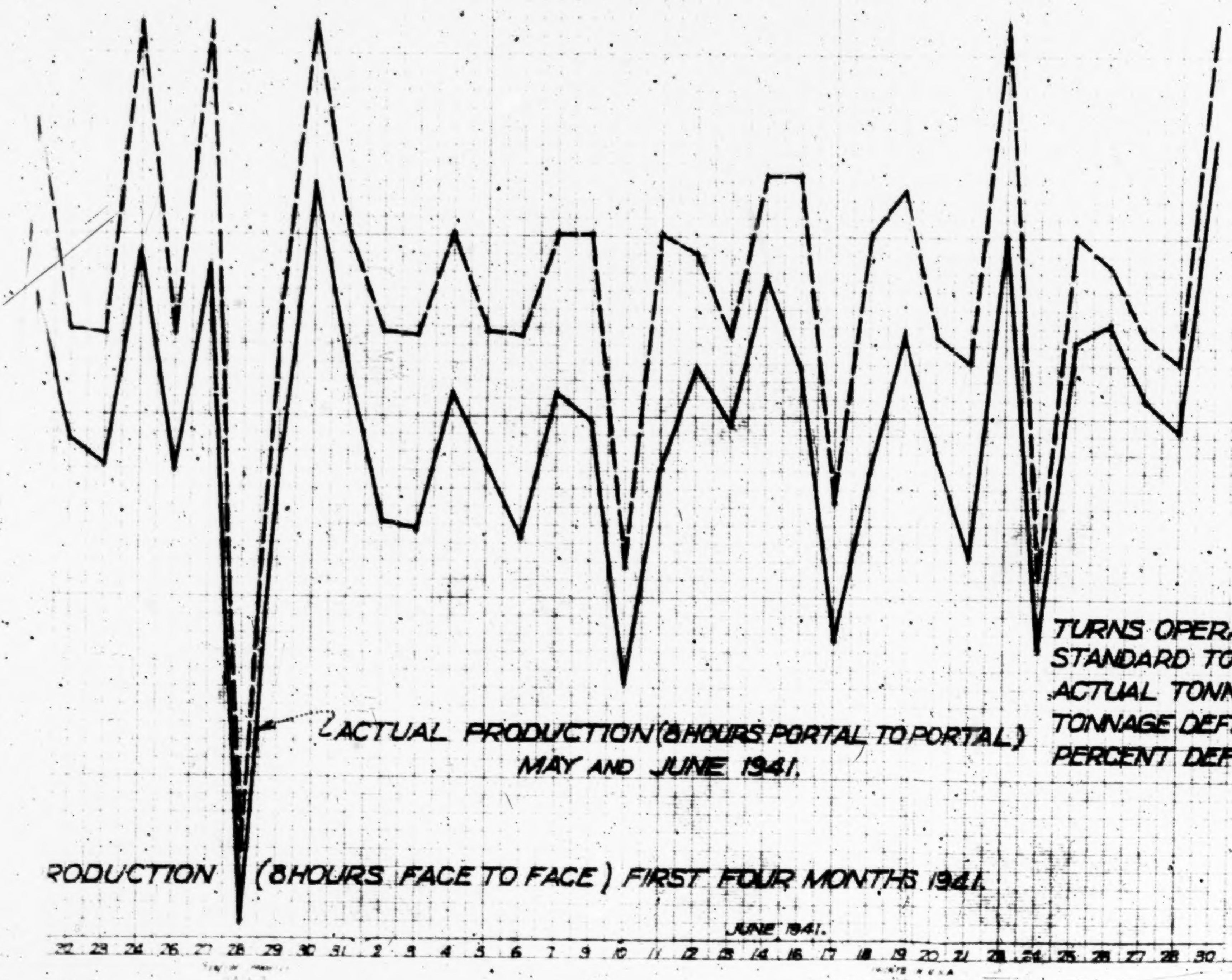
ALL IRON ORE MINES



TENNESSEE COAL, IRON AND RAILROAD COMPANY
ORE MINES AND QUARRIES

TEMENT SHOWING IRON ORE TONNAGE DEFICIENCY DURING Y AND JUNE, 1941. BASED UPON AVERAGE TONS PER TURN FOR JANUARY, FEBRUARY, MARCH AND APRIL, 1941.

ALL IRON ORE MINES



	MAY	JUNE	TOTAL
TURNS OPERATED	359	336	695
STANDARD TONNAGE	411,710	385,560	797,270
ACTUAL TONNAGE	375,809	346,485	722,294
TONNAGE DEFICIENCY	-35,901	-39,075	-74,976
PERCENT DEFICIENCY	-8.72	-10.13	-9.40

3869 T. C. I. EXHIBIT No. 26.

Description of Incentive Plan.

Tennessee Coal, Iron and Railroad Company.

Iron Ore Mines and Quarries.

Statement of Present General Conditions Necessitating Change in Method of Payment for Mining Red Ore and Limestone from Hourly Rate to Incentive Basis.

During the past five years of bad business and low production the Tennessee Company has taken care of men on the payroll by sharing the work reasonably among its Employees in the Ore Mines. This caused high labor costs for ore so produced and placed the Tennessee Company at a disadvantage in competing for business, so that the Company has operated at a loss during these years. In the opinion of the Management the time has now arrived to review this condition. Special studies have been made which show that by the application of a proper incentive plan of wage payment the difference between our competitors and ourselves in the market can be changed to our advantage. To insure success of a plan of this sort, entire cooperation between the Employees and the Management is essential.

Present Conditions:

A survey made by our Mining and Industrial Engineers disclosed the fact that there are many waiting periods during the average turn. The men are unable to work because of delay due to idleness over which they have no control, such as, waiting for trams, waiting for powder, and other items of which all miners have correct knowledge. The Management undertakes to eliminate so far as they are concerned such delays and waiting periods to a minimum. This will add to the productive time of the men working the sections and will enable them to produce more tons of ore per turn than under existing conditions.

Increased Production:

"The increased production that will result when such delays are reduced will give a lower cost per ton produced. In fairness to the Employees the Company feels that such saving in cost should be in part passed on to the Employees, as well as in part to the Company's customers. To accomplish this the following incentive plan has been set up for section crews.

Incentive Plan of Payment for Section Crews.

Standard of Production:

Careful studies have been made to establish a base of production and a standard has been set at a fair day's work on the present basis of hourly rate payment. For all tonnage produced above eighty per cent of this standard a bonus will be paid each man in proportion to his occupational rate. It is expected that a section crew will be able to earn a consistent average of twenty-five to thirty per cent over their present occupational rates without undue exertion, but by intelligent application of the time available for mining ore.

Guarantee of Occupational Rates Over Each Payroll Period:

In order that there shall be no chance of a member of a section crew receiving less than his present occupational rate, *when his failure to do so is due to circumstances beyond his control*, the Management guarantees over each payroll period the present occupational rates for the turns worked of all members of the section crews. That is, if the earnings under the incentive plan during any payroll period fail to amount to as much as an employee would have received under his present occupational rate, the Company will pay him his occupational rate for that pay period regardless of his production.

Increased Orders:

The Tennessee Company is an integral part of the United States Steel Corporation and many of the orders filled in this district by this Company are sent here by that Corporation. The placing of these orders with this Company is based strictly on the cost of delivered product. Therefore, if we are able by intelligent work to reduce our unit cost, it is reasonable to expect that more of such orders will be placed with this Company.

In addition to the orders received through the Corporation, the Tennessee Company procures orders through their own sales organization in competition with other steel producers. If we are to get our proper share of these orders it is necessary that we have costs at least as low as those of our competitors. The incentive plan will assist in this.

It is believed that our employees are not only willing but also anxious to do everything in their power to assist in bringing about this much desired condition.

Earnings under the Incentive Plan:

The following statements A-1, A-2, A-3, and A-4 show the present, standard, and expected earnings of the section crews at the various mines under the incentive plan. All production standards are based on gross tons of 2240 pounds each.

Section Crews:

Head Miners will choose their buddy and crew from employees on the Company's Payroll, subject to approval of the General Superintendent and Superintendent. Standard crew shall consist of 1 Head Miner, 2 Drillers, 1 Drag Operator and required number of Helpers. Change in standard crew may be made with the approval of the Mine Foreman.

In order to insure flexibility in operation, the occupation of Drill Helper now paid 47 cents an hour, has been changed to Section Helper at 50 cents per hour. The occupation of Mucker has been changed to Section Helper at 50 cents per hour.

Working Conditions:

Sections will be assigned by the Mine Foreman or his assistant to two Head Miners working as buddies on alternate shifts.

Levels and stopes will be inspected before being assigned to Head Miner who will thereafter while working his section be responsible for maintaining section in a safe and proper working condition. Abnormal or improper conditions shall be reported immediately to Mine Foreman or Assistant by Head Miner.

Slate or Sandstone:

All slate and stone up to 12" thickness and normal falls to be handled by the Head Miner and crew, such work to be considered part of mining covered by Incentive rate. Slate and stone in excess of 12" thickness and abnormal or heavy falls to be handled at the Company's expense. Section crew shall do this work where possible and be paid at regular occupational rates.

Records:

Head Miner shall attach tag to loaded cars. He shall make such reports as may be requested by the Management in connection with the operation of his section.

Weights:

All railroad cars shall be weighed on Wenonah Scales —payment shall be made on basis of average gross tons weight of load per tram for previous month..

Explosives:

Head Miner shall furnish explosives. These are to be bought from the Company and charged against Head Miner's account. The following allowances shall be credited to Head Miners for explosives:

No. 13 Mine	9	cents per ton
No. 7, 8, 9, and 11 Mines	9½	cents per ton
No. 6 Mine	10	cents per ton
No. 5 Mine	12	cents per ton

Settlement shall be made at the close of each day period. The above allowances for explosives are based on the prevailing prices as of April 1, 1936. In the event of any change in purchase price, the explosive allowances will be adjusted accordingly.

Head Miners shall be credited with 50% of any saving made and balance shall be divided equally among the Drill Runners in his crew. If only one Driller Runner is working in the crew, Head Miner shall receive 70% and Drill Runner 30% of any savings made.

Method of Figuring Production & Earnings:

At the end of each day period the production of the two Head Miners and their crews working a section will be added together to obtain total production for the working place. In the event of this production exceeding the standard, each member of the crews will be paid additional earnings in proportion to his occupational rate. Production record and earnings statement (A-5) will be posted daily for information of Head Miners and crews. No changes shall be made in rates or allowances without approval of the General Superintendent.

Store Checks and Cash Advances:

Head Miners and crews may draw store checks and obtain cash advances in accordance with present regulations, based upon their occupational rates.

Work to be done by Head Miner and Crew:

Drilling, Blasting, Loading and Tramming.

Duties:

Head Miner: Under supervision of Mine Foreman and Assistant, is responsible for Section Crew and for loading in trams clean ore that is free from slate, sandstone and other foreign matter.

Mining his section in accordance with Engineer's layout, and *care* and efficient operation of all equipment in his section. Checking his crew in and out of mine.

Inspection of working place at beginning of shifts, and making gas inspection as instructed.

Direction of hanging of flexible tubing.

Direction of quarrying of working places.

Layout of drilling.

Setting all necessary temporary timbers.

Direction of operation of mechanical loader.

Calling for and advising timber crew as to placing permanent timbers. Replacing timbers knocked out, to satisfaction of Mine Foreman or Assistant.

Abstracting time of his crew.

Estimating and requisitioning explosives, and supervising blasting.

Reporting to Mine Foreman or Assistant, progress of work and delays, ore loaded, drilling done, explosives used, accidents, timbers placed and general condition of section at end of turn.

Moving trams between loading ramp and side track. Where ore is trammed directly to main or auxiliary slope. Head Miner shall deliver loads to and empties from dumping point. Head Miner is also responsible for mules.

Drag Operator: Under supervision of Head Miner.
Is responsible for lubrication and operating efficiency of mechanical loader.

Assists in hanging flexible tubing.

Moves mechanical loader to operating position as directed by Head Miner.

Operates Mechanical loader and signals spotting of trams under loading ramp.

At end of turn moves mechanical loader and flexible tubing out of way of blasting.

Performs such other duties as may be assigned him by Head Miner.

Drill Runner: Under supervision of Head Miner:
Is responsible for lubrication and operation of drills.

Quarries working places making it safe from loose rock.

Assists Head Miner in checking Engineer's layout (run lines).

Extends air and water lines to drill and sets up and drills holes as directed by Head Miner.

At end of turn takes down drill and accessories and places out of way of blasting.

Makes up exploder, loads and tamps holes and blasts at end of shift in accordance with standard drilling and blasting practice, and at beginning of each shift inspects working place for failed holes and reports to Head Miner before setting up drill.

Performs such other duties as may be assigned him by Head Miner.

Helpers: Under supervision of Head Miner, Drill Runner and Drag Operator:

Helps drill Runner and Drag Operator move equipment to working places and set up.

Helps quarrying to make working places safe.

Drills holes for/and sets hanger skidding blocks. Changes skidder blocks during turn. Signals Drag Operator for placing scraper.

Keeps slate or sand out of trams.

Breaks large pieces of rock.

Helps moving trams between loading ramp and side track.

Helps take down equipment at end of turn and places out of way of blasting.

Helps drill runner oil and change steel.

Fetches explosives from magazine on order of Head Miner.

Helps load and Blast holes.

Takes drill steel to collecting point for resharpening.

Performs such other duties as may be assigned him.

Work to be Done and Equipment Provided and Installations Made by Company:

Company shall:

Install, maintain and advance telephone to a point convenient to each section.

Deliver empty trams to, and draw loads from, side tracks. Where ore is trammed directly to main or auxiliary haulage slope, Head Miner will deliver loads to, and tram empties from dumping point. Head Miner will also be responsible for mules.

Supply drills and accessories including hose and bits.

Supply all equipment for loading and handling trams.

Supply flexible tubing (hanging to be done by Head Miner and crew).

Supply and advance auxiliary blowers.

Supply pump, air and discharge lines when necessary. Setting up and operation to be done by Head Miner and Crew.

Place loading ramps and move as necessary.

Lay permanent tracks.

Do all timbering (Head Miner to set temporary timbers).

Do all wiring for fans, telephones, lights, trolleys, hoists, and mechanical loaders.

Lay permanent piping; Air and water lines to be laid in working level and convenient locations. Extension into stopes and levels to be done by Head Miner and crew.

Supply auxiliary hoist for pulling trams to side track. Head Miner and crew to move and operate hoist as necessary.

Definitions.

Standard of Production:

A fair day's work: This is the daily production of an average section crew working at the average rate of skilled miners with average allowances for personal necessities, fatigue, and general mining delays and conditions.

Expected Earnings: Average Crew:

Twenty percent in excess of present occupational rates, or 20 cents added to each dollar now earned, on hourly rate basis.

Possible Earnings: Under Best Conditions:

Thirty-five per cent in excess of present occupational rates or 35 cents added to each dollar now earned on hourly rate basis.

May, 1936.

3878 (A-1.)

Tennessee Coal, Iron and Railroad Company.

Ore Mine and Quarries.

Earnings Per Turn—For Mine No. 8.

Crew No. Men	Production Trams	Production Tons	Head Miner No.	Head Miner Amount	Drill Runner No.	Drill Runner Amount	Drag Operator No.	Drag Operator Amount	Helpers No.	Helpers Amount
7	23	115	1	5.12	2	4.56	1	4.56	3	4.00
7	29	145	1	5.66	2	5.04	1	5.04	3	4.42
7	35	175	1	6.19	2	5.51	1	5.51	3	4.83
7	41	205	1	6.72	2	5.99	1	5.99	3	5.25
7	47	235	1	7.26	2	6.46	1	6.46	3	5.67
7	53	265	1	7.78	2	6.93	1	6.93	3	6.08
6	23	115	1	5.46	2	4.86	1	4.86	2	4.27
6	29	145	1	6.08	2	5.42	1	5.42	2	4.75
6	35	175	1	6.71	2	5.97	1	5.97	2	5.24
6	41	205	1	7.33	2	6.53	1	6.53	2	5.73
6	47	235	1	7.96	2	7.09	1	7.09	2	6.22
6	53	265	1	8.55	2	7.62	1	7.62	2	6.68
8	23	115	1	5.12	2	4.56	1	4.56	4	4.00
8	29	145	1	5.33	2	4.75	1	4.75	4	4.16

Crew No. Men	Production Trams	Production Tons	Head Miner No.	Head Miner Amount	Drill Runner No.	Drill Runner Amount	Drag Operator No.	Drag Operator Amount	Helpers No.	Helpers Amount
8	35	175	1	5.80	2	5.17	1	5.17	4	4.54
8	41	205	1	6.25	2	5.56	1	5.56	4	4.88
8	47	235	1	6.73	2	6.00	1	6.00	4	5.26
8	53	265	1	7.22	2	6.43	1	6.43	4	5.64

Note: The above earnings are based on trams averaging five tons. Actual earnings will vary according to previous months average tram weights.

3878 (A-2.)

Tennessee Coal, Iron and Railroad Company.

Ore Mines and Quarries.

Earnings Per Turn—Mines Nos. 4-6-7-9-11.

Crew No. Men	Production Trams	Production Tons	Head Miner No.	Head Miner Amount	Drill Runner No.	Drill Runner Amount	Drag Operator No.	Drag Operator Amount	Helpers No.	Helpers Amount
7	24	120	1	5.12	2	4.56	1	4.56	3	4.00
7	30	150	1	5.63	2	5.02	1	5.02	3	4.40
7	36	180	1	6.15	2	5.48	1	5.48	3	4.80
7	42	210	1	6.65	2	5.94	1	5.94	3	5.20
7	48	240	1	7.17	2	6.40	1	6.40	3	5.60
7	54	270	1	7.68	2	6.84	1	6.84	3	6.00
6	24	120	1	5.45	2	4.86	1	4.86	2	4.26
6	30	150	1	6.05	2	5.39	1	5.39	2	4.73
6	36	130	1	6.65	2	5.92	1	5.92	2	5.19
6	42	210	1	7.26	2	6.47	1	6.47	2	5.67
6	48	240	1	7.83	2	6.98	1	6.98	2	6.12
6	54	270	1	8.44	2	7.51	1	7.51	2	6.59
8	24	120	1	5.12	2	4.56	1	4.56	4	4.00
8	30	150	1	5.31	2	4.74	1	4.74	4	4.16

Crew No. Men	Production Trams	Tons	Head Miner No.	Amount	Drill Runner No.	Amount	Drag Operator No.	Amount	Helpers No.	Amount
8	36	180	1	5.76	2	5.13	1	5.13	4	4.50
8	42	210	1	6.21	2	5.52	1	5.52	4	4.84
8	48	240	1	6.66	2	5.93	1	5.93	4	5.20
8	54	270	1	7.10	2	6.33	1	6.33	4	5.55

Note: The above earnings are based on trams averaging five tons. Actual earnings will vary according to previous months average tram weights.

3879 (A-3.)

Tennessee Coal, Iron and Railroad Company.

Ore Mines and Quarries.

Earnings Per Turn—Mines Nos. 13 and 5.

Crew No. Men	Production Trams	Tons	Head Miner No.	Amount	Drill Runner No.	Amount	Drag Operator No.	Amount	Helpers No.	Amount
7	25	125	1	5.12	2	4.56	1	4.56	3	4.00
7	31	155	1	5.61	2	5.00	1	5.00	3	4.38
7	37	185	1	6.10	2	5.44	1	5.44	3	4.77
7	43	215	1	6.59	2	5.87	1	5.87	3	5.15
7	49	245	1	7.09	2	6.31	1	6.31	3	5.54
7	56	280	1	7.66	2	6.82	1	6.82	3	5.98
6	25	125	1	5.46	2	4.87	1	4.87	2	4.27
6	31	155	1	6.04	2	5.38	1	5.38	2	4.72
6	37	185	1	6.70	2	5.89	1	5.89	2	5.16
6	43	215	1	7.18	2	6.40	1	6.40	2	5.61
6	49	245	1	7.75	2	6.90	1	6.90	2	6.06
6	56	280	1	8.42	2	7.50	1	7.50	2	6.58
8	25	125	1	5.12	2	4.56	1	4.56	4	4.00
8	31	155	1	5.29	2	4.72	1	4.72	4	4.14

Crew No. Men	Production Trams	Production Tons	Head Miner No.	Head Miner Amount	Drill Runner No.	Drill Runner Amount	Drag Operator No.	Drag Operator Amount	Helpers No.	Helpers Amount
8	37.	185	1	5.72	2	5.10	1	5.10	4	4.47
8	43	215	1	6.15	2	5.48	1	5.48	4	4.81
8	49	245.	1	6.59	2	5.87	1	5.87	4	5.15
8	56	280	1	7.09	2	6.21	1	6.21	4	5.54

Note: The above earnings are based on trams averaging five tons. Actual earnings will vary according to previous months average tram weights.

3880 (A-4.)

Tennessee Coal, Iron and Railroad Company.

Ore Mines and Quarries.

Earnings Per Turn—Mines No. 6-7-8-9-11-13.

Narrow Work—12 Feet or Less.

Five Man Crew.

Crew No. Men	Production Trams	Production Tons	Head Miner No.	Head Miner Amount	Drill Runner No.	Drill Runner Amount	Drag Operator No.	Drag Operator Amount	Helpers No.	Helpers Amount
5	8	40	1	5.12	1	4.56	1	4.56	2	4.00
5	10	50	1	5.63	1	5.02	1	5.02	2	4.40
5	12	60	1	6.14	1	5.47	1	5.47	2	4.80
5	14	70	1	6.66	1	5.93	1	5.93	2	5.20
5	16	80	1	7.17	1	6.38	1	6.38	2	5.60
5	18	90	1	7.68	1	6.84	1	6.84	2	6.00

Four Man Crew.

4	8	40	1	5.63	1	5.02	1	5.02	1	4.40
4	10	50	1	6.25	1	5.57	1	5.57	1	4.88
4	12	60	1	6.90	1	6.15	1	6.15	1	5.40

3971

Crew No. Men	Production Trams	Tons	Head Miner No.	Amount	Drill Runner No.	Amount	Drag Operator No.	Amount	Helpers No.	Amount
4	14	70	1	7.52	1	6.70	1	6.70	1	5.88
4	16	80	1	8.19	1	7.30	1	7.30	1	6.40
4	18	90	1	8.85	1	7.88	1	7.88	1	6.92

Note: The above earnings are based on tramloads averaging five tons. Actual earnings will vary according to previous months average tram weights.

Explosives:

On narrow work the following allowances will be credited for explosives:

No. 6 Mines	—13 cents per ton
No. 7, 8, 9, 11 & 13 Mines	—14 cents per ton

Head Miner will be credited with 70% and Drill Runner with 30% of savings on explosives.

See note under "Explosives" for price changes and other general conditions.

3881 (A-5.).

Production Record and Earnings Statement.

Daily Production Record—Section . . . . . Mine No. . . . . .

Date	4/11		4/12		4/13		4/14		4/15		4/16.	
Turn	N	D	N	D	N	D	N	D	N	D	N	D
Tons	120	150	125	100	150	100	150	180	200	250	200	200
Average	120	135	132	124	129	124	128	134	142	153	157	160
No. In Crew	7	7	6	7	7	7	8	7	7	7	7	7

Table for Calculating Earnings.

Crew No. Men	Production Trams	Production Tons	Head Miner No.	Head Miner Amount	Drill Runner No.	Drill Runner Amount	Drag Operator No.	Drag Operator Amount	Helpers No.	Helpers Amount
7	*24*	*120*	*1*	*5.12*	*2*	*4.56*	*1*	*4.56*	*3*	*4.00*
7	30	150	1	5.63	2	5.02	1	5.02	3	4.40
7	36	180	1	6.15	2	5.48	1	5.48	3	4.80
7	42	210	1	6.65	2	5.94	1	5.94	3	5.20
7	48	240	1	7.17	2	6.40	1	6.40	3	5.60
7	54	270	1	7.68	2	6.84	1	6.84	3	6.00
6	*24*	*120*	*1*	*5.45*	*2*	*4.86*	*1*	*4.86*	*2*	*4.26*
6	30	150	1	6.05	2	5.39	1	5.39	2	4.73
6	36	180	1	6.65	2	5.92	1	5.92	2	5.19
6	42	210	1	7.26	2	6.47	1	6.47	2	5.67
6	48	240	1	7.83	2	6.98	1	6.98	2	6.12
6	54	270	1	8.44	2	7.51	1	7.51	2	6.59
8	*24*	*120*	*1*	*5.12*	*2*	*4.56*	*1*	*4.56*	*4*	*4.00*
8	30	150	1	5.31	2	4.74	1	4.74	4	4.16
8	36	180	1	5.76	2	5.13	1	5.13	4	4.50
8	42	210	1	6.21	2	5.52	1	5.52	4	4.84
8	48	240	1	6.66	2	5.93	1	5.93	4	5.20
8	54	270	1	7.10	2	6.33	1	6.33	4	5.55

Note: The above earnings are based on trams averaging five tons. Actual earnings will vary according to previous months average tram weights.

Figures underscored [italicized] indicate eighty per cent (80%) of standard production for which regular occupational rates are paid. Additional payment will be made for production over these figures.

(A-6.)

Tennessee Coal, Iron and Railroad Company.

Ore Mines and Quarries.

Increase in Earnings per Turn for each Tram in Excess of Base.

Mine No. 4-6-7-9-11.

No. Men In Crew	Base Trams	Earnings Per Tram Increase Over Base Head Miner	Drill Runner	Drag Operator	Helper
7	24	.085	.076	.076	.067
6		.100	.088	.088	.078
8		.066	.059	.059	.052

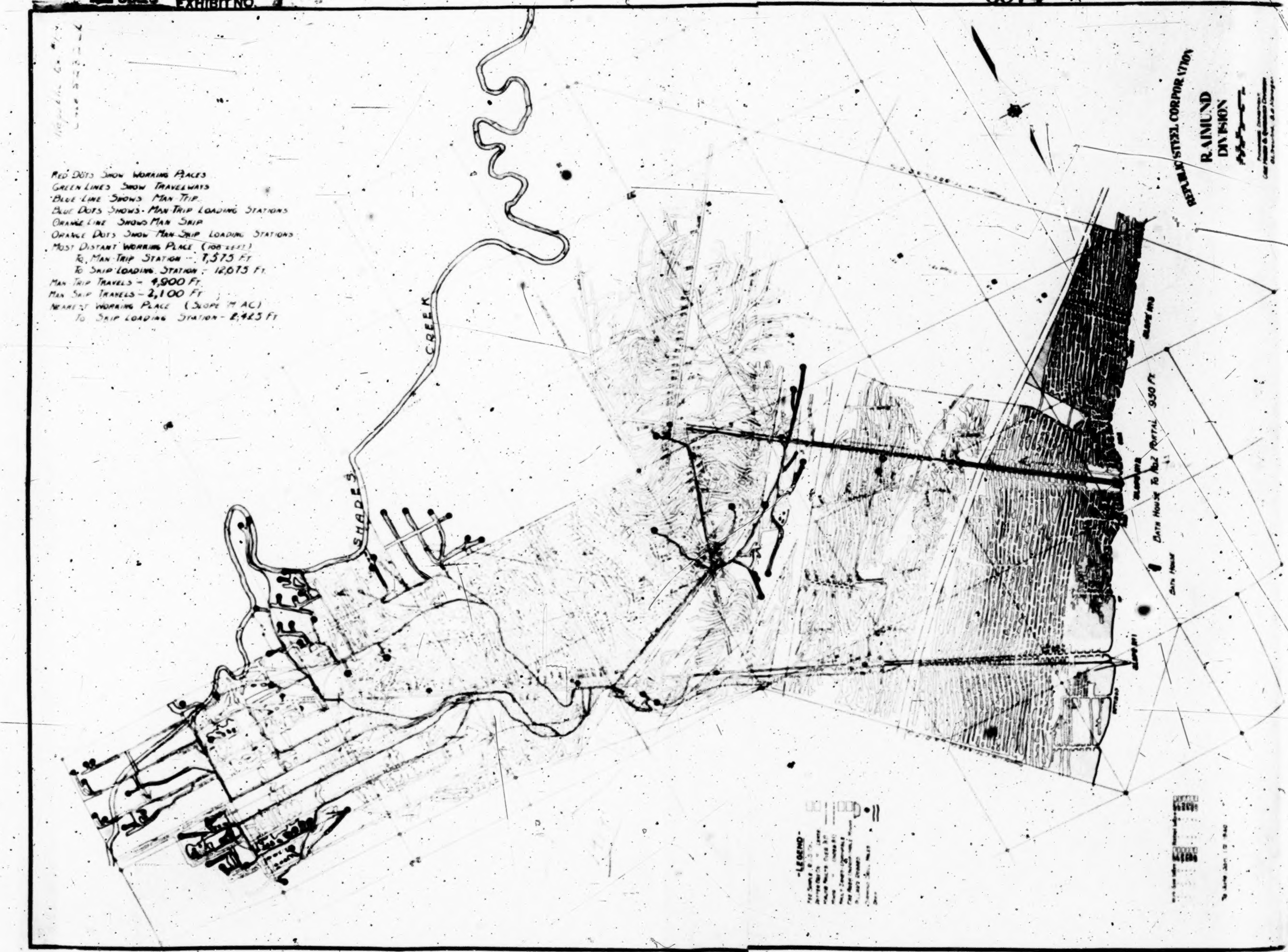
Mine No. 8.

No. Men In Crew	Base Trams	Head Miner	Drill Runner	Drag Operator	Helper
7	23	.089	.079	.079	.069
6		.103	.092	.092	.080
8		.070	.062	.062	.055

Mine No. 13-5.

No. Men In Crew	Base Trams	Head Miner	Drill Runner	Drag Operator	Helper
7	25	.082	.073	.073	.064
6		.095	.085	.085	.075
8		.064	.053	.053	.050

REPUBLIC EXHIBIT NO. 4



RED DOTS SHOW WORKING PLACES
GREEN LINES SHOW TRAVELWAYS
BLUE LINE SHOWS MAN TRIP
BLUE DOTS SHOWS - MAN-TRIP LOADING STATIONS
ORANGE LINE SHOWS MAN SKIP
ORANGE DOTS SHOW MAN-SKIP LOADING STATIONS
MOST DISTANT WORKING PLACE (10B LEFT)
To MAN-TRIP STATION - 7,575 FT
To SKIP LOADING STATION - 12,075 FT
MAN-TRIP TRAVELS - 4,900 FT
MAN SKIP TRAVELS - 2,100 FT
NEAREST WORKING PLACE (SLOPE #4 AC)
To SKIP LOADING STATION - 2,425 FT

REPUBLIC STEEL CORPORATION
RAIMUND
DIVISION
SHADES CREEK
BATH HOUSE TO NO. 2 PORTAL 950 FT
BATH HOUSE
-LEGEND-

3884 **REPUBLIC EXHIBIT No. 2.**

Demands Received from International Union of Mine, Mill & Smelter Workers, Raimund Local #121.

Received by hand—Handed to Mr. N. E. Thompson, Supt. of Raimund Ore Mine at Raimund on September 30, 1933.

9-30-33.

We, as a duly appointed committee, to represent Raimund Local 121, the Frank Delano Roosevelt Local No. 137, bona fide labor organization, composed of a majority of the workers of the Republic Steel Corporation, Raimund Mines division and Thomas Furnace division, respectively, and are authorized to act for these Local Unions and represent them in discussing and adjusting discriminatory methods used against members of their organizations. These discriminations are laying men off, or causing them to be laid off from work on account of the fact that they are members of the union, or demoting the members or transferring them to a job that paid less, or give them time off, and grievances of other and different natures affecting the membership in these locals.

This committee believes that it would be to the best interest of the company and the employees that (1) the company recognizes these local unions, and that (2) Mr. Will Barrett, Mr. A. J. Rector, and Mr. Matt Wesson be removed from their positions as supervisors, and that (3) wage discriminations among the men be discontinued, and that (4) employees discharged by these said supervisors be reinstated with full seniority rights, and that (5) the "write up" system be abolished, and that (6) the men enter the mine on their own time and come out of the mine on the company time, and that (7) the eight-hour working day and the forty-hour week be instituted, and that (8) the rates of pay be increased accordingly, and that (9) a man be chosen by the employees to be weighman, and that (10) (a) the company doctor be on the job full time, and that (b) he be subjected to call at any time without any extra fee from the employees that call him, and that (c) a three mile radius be set as his jurisdiction limits, and that (d) a fee of $1.00 per month be charged within this limit and a fee of $0.50 per month be charged outside of this limit, and that (11) the reporting off systems be abolished, and that (12) the tonnage and contract system be abolished, and that (13) the drill runner or drill man will not be responsible for the muckers.

C. C. BURCHELL,
Chairman.

Seal—I. U. M. M. & S. W., Bessemer District, Smelters Council, Bessemer, Alabama.

3886 REPUBLIC EXHIBIT No. 3.

Atlanta, Georgia, January 15, 1934.

Mr. Marion Smith, Chairman,
Regional Labor Board,
Hurt Building,
Atlanta, Georgia.

In Re: Republic Steel Corporation.

Dear Mr. Smith:

At the adjournment of the hearing in the above matter on January 10 the Board requested the Company to consider and advise the Board later as to whether or not the Company would be willing to reemploy its striking employees at the Raimund Mine. We have given this matter careful consideration.

In order to cooperate with the desire and function of the Board to lessen and prevent unemployment, and notwithstanding the decision of the Company to shut down the Raimund Mine was reached prior to the strike and its reopening will be an economic loss requiring the stocking of the ore, the Company, without prejudice to its position and without waiving in any way its claim that the Board is without authority in this matter, will reopen its Raimund Mine immediately under the following conditions:

(1) It will operate on a day shift of eight (8) hours for five (5) days a week.

(2) The Company will reemploy on this shift and operation a minimum of not less than sixty percent (60%) of the number employed by it prior to December 17, 1933. This is a minimum and not a maximum.

(3) The Company agrees to continue the resumption of work until there has been mined a minimum of Thirty Thousand Tons (30,000 T.) of iron ore and will continue the operation for such additional period of time as, in their opinion, business conditions justify.

(4) If market conditions improve and the Company finds business so justifies, it will increase the operation and the number of employees in accordance with its business judgment.

(5) The Company in the resumed operations will reemploy the striking miners, giving them priority of employment without discrimination, in accordance with sen-

iority, provided the agreement to reemploy in this instance on the basis of seniority shall not be considered a precedent, and provided the miners return to work under the same conditions of employment that existed on December 16, 1933.

It is understood, of course, that this proposition is submitted under the understanding, as suggested by the Board, that its making and its acceptance, if accepted by the miners, shall not in any way prejudice the existing rights and or claims of either pending the final determination of this matter.

Very truly yours,

Attorney for Republic Steel
Corporation.

BB RR

3888 REPUBLIC EXHIBIT No. 4.

Bessemer, Alabama, March 13, 1934.

To: Republic Steel Corporation,
Raimund Mine Division.

Attention: Mr. W. H. Oldham, Vice President, Mr. Walsh, General Superintendent, Ore Mines Div., N. E. Thompson, Superintendent, Raimund Mine, and W. T. Barrett, Assistant Superintendent.

Gentlemen:

We, the duly chosen representatives of more than 90 percent of your employees who were working for you on the 16th day of December, 1933, and approximately 65 percent of said number now actually working for you. And also the above number are now your employees under that certain ruling handed down by the Atlanta Regional Labor Board, January 16th, 1934, and amended by rider attached by said board January 23, 1934, wish at this time to discuss with the Company through you as its representatives the following complaints and improvements of working conditions including therein violations by the Company and against us as your employees of the above referred to Atlanta Regional Board decision and the agreement voluntarily entered into by you through your attorney, Borden Burr, in that certain letter written to the Atlanta Regional Board on January 15, 1934, which letter became a part of the working agreement by and between the Company and its employees immediately afterwards, including a proposition by the Company, the existence of which is that pending the final outcome of the hearing and decision in Atlanta would be the working agreement in the meantime.

Without waiving the employees position and jurisdiction of the National Labor Board, or the exceptions reserved by the Company, but with the idea and purpose of resuming working operations as of December 16th, 1933.

We are now, as the chosen representatives of the employees of the above referred to controversy, at this time wish to call your attention to the following violations of the above referred to agreement and the National Recovery Act, and urge and request you to discuss with the committee, with the end in view of making adjustments, agreements and future working conditions in and by the method of collective bargaining:

First: That the Company recognize the Union and deal with our chosen representatives, as required by Section 7 and 7(a) of the National Recovery Act.

Second: That wage discrimination be discontinued.

Third: That Union employees heretofore discharged and victimized be immediately reinstated with full seniority rights, and pay for time lost on account of their activities in our organization.

Fourth: That all men that ceased work and participated in the work holiday be placed back to work without discrimination.

Fifth: That the Company desist in attempting to compel by force, duress, threats and bribery to compel employees to join the Company Union, or Representative Plan.

Sixth: That their special officers desist from harrassing, cursing, striking and shooting the employees who reside at and around Raimund.

Seventh: That the Company, having failed to enter into the agreement made by them under the Atlanta Regional Board, immediately put that agreement into force in letter and spirit.

Eighth: That the write up system be abolished.

Ninth: That the company put former employees back to work immediately and give them preference over new men, which agreement has not been complied with.

Tenth: That the men not be required to enter and leave their place of work on their own time.

Eleventh: Whereas it is apparent by reason of the fact that approximately 200 employees are still idle since December 16th, 1933, and the purpose of the National Recovery Act is to put all men to work, therefore we respectfully ask for the six-hour work day, with time and one-half for all over the six hours in any one given twenty-four (24) hours, and no over time when idle men are available, and that thirty (30) hours shall constitute a week's work, and that the prevailing rate of the T. C. I. red ore mines be now installed at the Raimund Mines, as the present discrimination is a violation and unfair practice. And a rate of pay based on the six (6) hour day, as is now paid by the Tennessee Coal, Iron & Railroad Company for eight (8) hours be established. And abolishing all tonnage work or contract work.

Twelfth: That the Union be given the right to designate the weighman or scale man, and that the mine committee have, at reasonable times, access to an inspection of the scales and tally sheets, and including all records of weights.

Thirteenth: That the Company at Raimund Red Ore Mines install the check off system, which system includes the collection of dues by the Company and paying same to the Financial Secretary or other designated officers of our Union.

Fourteenth: That, in event of slack work, the time among the various employees be equitably divided among all of them.

Fifteenth: That all scrip and substitutes for money be made negotiable and without discount.

Sixteenth: That the employees have the right to select and designate their own Company doctor and hospital facilities, and all collections made for such purposes by the Company to be kept in separate fund and supervised by the Union mine committee, deducting therefrom a reasonable charge for service rendered by the Company at that end.

Seventeenth: That no employee be required to live in a Company house.

Eighteenth: That no employee be required to trade in a Company store.

Nineteenth: That the Company immediately cause investigation to be had of all of the officers and Executive Board Members, including other members of our Union that has been discharged for their activities in our organization by the Company immediately be called and hearing had by the Company, and a mine committee for the purpose of adjusting any and all charges the Company may have against them.

Twentieth: In compliance with the Atlanta Regional Labor Board in its decree, we, the chosen representatives of Raimund Red Ore Local No. 121, a bona fide labor organization, here and now respectfully request the Republic Steel Corporation to immediately go into and collectively bargain with the committee for the purpose of ironing out and adjusting all grievance that exist on both sides, including the requests herein made in conformity with the Atlanta Regional Board's direction of which we have accepted and carried out in full faith, and especially do we call the Company's attention to the fourth section, or last paragraph, of the Atlanta Labor Board's decision under date of January 16, 1934.

Twenty-first: That the Company immediately desist from attempting to evict employees and victimizing officers of the Union from its houses on account of their activities in our Union.

Twenty-second: That no employees be discharged without a fair trial and hearing and, in which he be given the right to present his side of the case.

Respectfully submitted, in witness whereof, we hereunto subscribe our names as the chosen representatives of more than 90 percent of your employees working in and at Raimund mines and members of Raimund Red Ore Local No. 121, I. U. M. M. & S. W.

BYRD H. BARKSDALE,
CHESTER KNOWLES,
GUS GATEWOOD,
J. A. LIPSCOMB,
V. C. FINCH,
C. Q. BURCHELL,
M. C. ANDERSON.

3893 REPUBLIC EXHIBIT No. 5.

Republic Steel Corporation

Raimund, July 14th, 1934.

Mr. C. L. Richardson,
Commissioner of Conciliation,
Representing the Secretary of Labor,
Washington, D. C.

Dear Sir:

This is to confirm the understandings reached today at the conference between representatives of employees of our Ore Mines and the Management, which was presided over by Commissioner Richardson, regarding the position of this Company as to its ore mining operations. This is furnished to you as the representative of the United States Government as a part of your record in this matter.

We are informed that the following named men have been chosen as a Committee to deal with the Management on collective bargaining matters:

Geo. R. Coles,
Rufus Kendrick,
Herbert Jones,
Will Boatner,
Chas. Waliford,
Preston Lee,
P. E. Steel,
Virgil Thomas.

We are entirely willing to deal with this Committee on matters of collective bargaining as they arise for all our Ore Mines employees as they may represent.

The employees at our Ore Mines have been free to join any organization they choose without prejudice or discrimination and this is the policy of our Company.

It is understood that the wage scale attached to this letter constitutes the rates to be paid by us for the various classifications as shown, for the period of one year from date of this agreement, unless changed by mutual agreement between the management and the representatives.

Our men at each mine are free to select a committee to represent them in adjusting any grievance that may arise between them and the management which the employee himself cannot settle satisfactorily with his immediate supervisor. It is understood that such committee will not take up any grievance with the Management unless and until the employee has endeavored to adjust the matter himself.

If the Committee and the Foreman of the mine fail to adjust any grievance, the matter will then be taken up by the Committee with the Mine Superintendent. Failing to reach agreement in this event, it will be taken up with the General Superintendent of Ore Mines. If they should fail to agree, the matter may be submitted to arbitration, one arbitrator to be named by the Committee and one to be named by the Management of the Company, and these two may select a third.

It is understood that the Management of the mines is vested exclusively in the Company and the duties of the mine committee shall be confined as above outlined.

It is understood that no such mine committee will interfere with the operations of the mine to enforce any purely local grievance until the full procedure of settlement has been followed.

The Company, of course, will be bound by all the terms and conditions of the Ore Mining Code when such Code has been adopted and signed by the Company to the extent that it applies to our operations in this District.

It is understood that the strike will be called off and the Company will resume operations at Raimund Mine when conditions warrant the mining of this ore. Further, it is the intent of the Company to stock some 20,000 to 30,000 tons of ore, in case our miners return to work. It is also understood that the Company will reemploy such men as is commensurate with the needs of the furnace, and the most economical operation of the mine, for the purpose of stocking the above mentioned amount of ore. At the time of reemployment, we shall recognize seniority when it is consistent with ability.

Yours very truly,
W. H. OLDHAM,
District Manager, Birmingham
District.

Bessemer, Alabama, July 15, 1934.

Mr. C. L. Richardson,
Commissioner Conciliator,
United States Department of Labor,
Birmingham, Alabama.

Dear Sir:

This is to inform you that the proposition submitted to the Committee in regard to rates of pay and collective bargaining has been unanimously accepted.

We understood in the conference of yesterday that the Company would agree to let the 325 employees who left the service of the Company May 4th return to work, but would not have as much as four or five days per week for this amount of men. With this understanding we are willing to call the strike off providing that 325 men can return to work and share the work proposition if it is only two or three days per week for them.

We would also like for it to be understood that there is 34 per cent of the employees who was formerly employed by the Republic Steel Corporation who have been out of work since the 28th of January, and suggest that these men be given preference if competent and worthy before hiring new employees, when business conditions warrant such.

Asking that you take this up with the management and have an understanding and communicate with us as to their understanding of this subject.

Yours truly,
GEORGE R. COLES,
RUFUS KENDRICK.

Republic Steel Corporation.

July 16th, 1934.

Mr. C. L. Richardson,
Commissioner of Conciliation,
Representing the Secretary of Labor,
Washington, D. C.

Dear Sir:

We will agree to return back to work the 325 men that were working on May 4th, as per our scherule submitted to you last Saturday, and we also will endeavor, where possible and consistent with ability, if there are any additional men to be put on due to increase in operations, that we will take these from the men out of work employed prior to December 17th, 1933.

Yours very truly,
W. H. OLDHAM,
District Manager, Birmingham District.

Republic Steel Corporation.

July 17th, 1934.

Mr. C. L. Richardson,
Commissioner of Conciliation,
Representing the Secretary of Labor,
Washington, D. C.

Dear Sir:

On the last page of wage scale attached to our letter of July 14th, there were several typographical errors made, therefore we are enclosing a corrected sheet and would thank you to substitute same for the ones you have.

Under the column headed tonnage, listed contractors, muckers, etc., you will note the figures set forth are the average earnings per hour for April and in no sense denote the rate, as it was agreed no change was made in tonnage rates. The only change being the last two items of drill helpers, drag, and muckers, drag, which were placed on a day rate of 50c per hour. In the first note, at the bottom of the page, was shown "where it is necessary for the Company drillmen to use drillmen or contractors on company work". The first drillmen should not have been shown, inasmuch as a drillman could not use a drillman, and it should read "where it is necessary for the company to use drillmen or contractors". The second note should read "day rate" instead of "drill rate."

Yours very truly,
W. H. OLDHAM,
District Manager.

bc C. L. BRANSFORD,
J. L. HAGY,
J. G. WALSH.

Republic Steel Corporation.

Raimund Mine.

Occupation	Quota	Present Rate	Proposed Rate
Janitor	1	$ .265	$ .30
Machinist, 1st Class	2	.615	.62½
Machinist, 2nd Class	2	.505	.55½
Machinist Helper, 1st Class	1	.44	.47
Machinist Helper, 2nd Class	2	.40	.40
Blacksmith, 1st Class	1	.68	.68
Blacksmith, 2nd Class	1	.54	.54
Blacksmith Helper	1	.37	.42
Drill Sharpener (Inside)	1	.615	.615
Drill Sharpener Helper (Inside)	1	.54	.54
Carpenter	3	.47	.48
Mechanical Helper (Inside)	1	.49	.52

Occupation	Quota	Present Rate	Proposed Rate
Electricians (Outside)	2	.55	.55
Electr. Helper (Outside)	1	.455	.475
Electricians (Inside)		.565	.605
Change House Man	2	.38	.40
Truck Driver—Light	2	.39	.39
Truck Driver—Heavy		.39	.41
Laborers	6	.30	.30
Hoist Engineers	4	.625	.625
Compressor Man	3	.44	.52
Crusher Feeder	2	.325	.40
Car Loaders	4	.325	.35
Tipple Foreman	2	.495	.495
Slate Pickers—Laborers	4	.30	.30
Powderman & Safety Man	1	.495	.495
Weighman	2	.51	.5425
Material & Slope Track Man	1	.665	.665
Slope Track Labor	8	.40	.43
Material Helpers (Inside)	2	.40	.43
Car Repairman (Inside)	1	.47	.54
Car Cleaners (Inside)	3	.40	.43
Stableman (Inside)	1	.445	.46
Pipeman	2	.44	.47
Skip Loaders	2	.42	.46
Motorman	16	.47	.55
Motor Couplers	15	.42	.46
Chainers	4	.42	.46
Chainer, 2nd Class	6	.40	.435
Track Foreman	3	.47	.51
Track Labor	12	.40	.43
Timber Foreman	4	.47	.51
Timber Labor	16	.40	.43
Salvage Man	1	.47	.51
Salvage Labor	4	.40	.43
Electric Hoistman, Slope "A"	2	.50	.57
Electric Hoistman, Auxiliary	4	.46	.50

Occupation	Quota	Present Rate	Proposed Rate
Electric Pumpman	5	.445	.445
Mule Drivers	1	.40	.43
Drillman (Company Work) (x)		.485	.51
Contractor (Company Work) (x)		.47	.51

No. 2 Mine (Idle).

Maintenance Man (Foreman)	1	.47	.51
Maintenance Helpers	5	.40	.43
Electric Pumpman	2	.445	.445

Tonnage.

Contractors, Heading		.7475	
Muckers, Heading		.5525	
Contractors, Drag		.580	
Hoistman, Drag		.53	
Drillman, Drag		.585	
Drill Helpers, Drag (xx)		.45	.50 Day
Muckers, Drag. (xx)		.45	.50 Day

(x) Pertaining to drillmen (Company work) and contractors (Company work) on special development work, such as through faults, etc., where it is necessary for the company to use drillmen or contractors on company work for two days or in excess of two days, the rate shall be 57¢ per hour.

(xx). Drill helpers and muckers on drag tonnage rate are to be changed to day rate of 50¢ per hour. This pertains only to drag work.

Republic Steel Corporation.

July 30th, 1936.

Mr. A. E. Horn, President,
District No. 5,
International Union of Mine, Mill & Smelter Workers,
Bessemer, Alabama.

Dear Sir:

This is to advise you that we will continue our present policy as to wages, hours and working conditions at Raimund Ore Mine until further notice.

I have discussed this with Mr. Barco, of the U. S. Department of Labor, and he says he feels this would be entirely satisfactory.

You know well enough, Mr. Horn, that we do not need any understanding. When I gave my word as I did in a meeting at Raimund, that we are going to live up to it, and we expect you to do the same. In other words, a fifty-fifty proposition. Our past record stands for itself.

Yours very truly,
W. H. OLDHAM,
District Manager.

cc Mr. Newcomb Barco,
U. S. Department of Labor.

bc Messrs. C. L. Bransford,
J. G. Walsh

3903 REPUBLIC EXHIBIT No. 6.

This Agreement made and entered into by and between the Republic Steel Corporation, hereinafter called the

Company, and the Raimund Local Union No. 121, of the International Union of Mine, Mill and Smelter Workers, hereinafter called the Local,

Witnesseth:

1. That the Company fully recognizes the Local and through its properly accredited officers will meet and confer with the properly accredited officers and committees of the Local upon all grievances and questions which may arise under this agreement.

2. Any controversy concerning hours, wages, and conditions of employment, arising under this agreement between the Company and the Local shall, if possible, be adjusted locally.

3. For the purpose of collective bargaining on matters of mutual interest, including wages, hours, and or conditions of employment or any grievance affecting its membership, the Local shall select a representative committee who shall be recognized as the accredited representatives of the Company as the proper medium through which the Company and the Local are to negotiate.

4. Each grievance shall be handled as hereinafter provided:

(a) Any member having a grievance shall first discuss it thoroughly with his foreman, and an honest effort made to settle same.

(b) If the individual and foreman cannot agree on a satisfactory settlement, the member having the grievance shall report same to the grievance committee.

(c) The grievance committee shall make a detailed investigation of the grievance and decide whether or not it shall be handled further with the Company. If the grievance is to be handled further then it must thereafter be handled as follows:

(d) The superintendent of the department in which the grievance arose shall be notified and the grievance shall be thoroughly discussed with him and every effort made to settle same.

(e) If a settlement with the superintendent cannot be made the grievance shall then be taken up and thoroughly discussed with the Manager or General Manager of the Company and an effort made to reach an amicable adjustment.

5. Until grievances have been handled exactly in accordance with this agreement there shall be no suspension of work by strike or lockout and both parties shall endeavor in every way to reach an amicable adjustment.

6. The Company retains the right to discharge any employee, but upon request by the Local he agrees to show cause for such discharge. If satisfactory cause cannot be shown, the discharged employee shall be reinstated and shall be paid for all time lost at his regular rate of pay.

7. In case of curtailment or other reductions of the number of employees, whatsoever the cause, the Company agrees that the men shall be laid off in rotation in service, the seniors in service to be the last laid off and the last man to be laid off to be the first reemployed.

8. It is agreed that if for any cause there is a stoppage of production, it shall be mutually agreed between the management and the representative committee of the em-

ployees as to the number of, and who shall be permitted to work as are required in connection with the operation of pumps and other equipment, or on such work as is necessary to protect the properties from damage or destruction. It is further agreed that no charges shall be made for house rent shall be made during the stoppage of production.

9. It is agreed that the employees shall enter the mines on their own time and come out of the mines on the Company's time.

10. It is agreed that the contract system shall be abolished.

11. Eight (8) hours shall constitute a day's work, not to exceed forty (40) hours per week. Time worked in any day in addition to the regular hours per day shall be paid for at the rate of time and one-half. Double time shall be paid for the following holidays: Independence Day, Labor Day, Thanksgiving Day and Christmas Day, regularly employed operations and maintenance men, by mutual agreement, to be excepted.

12. The regular semi-monthly pay days now in force shall be continued.

13. It is agreed that all employees coming under the jurisdiction of this Local shall have checked off from their wages any monies due the Local for Initiations, Dues, Fines, and or Assessments, the same to be monthly to the Financial Secretary of the Local on or before the tenth day of the month following such deductions.

14. There shall be no discriminations of any kind against any member of the Local by Foreman, Superintendents, or any other persons in the employ of the Company.

15. Members of the Local shall be granted leave of absence on Local business upon request. Any member who holds office or shall be elected to office in the Local

which requires his absence from the Company's service, shall upon retirement from such office be reinstated in his position with the Company, without loss of seniority.

16. Effective date of signing, wages shall be increased ten per cent (10%) over and above rates now in effect.

17. It is agreed that the officers and committeemen of the Local will use their best efforts at all times to see that the members are conscientious and honest in all respects, and that they conduct themselves in such a manner as to clearly indicate that they have not only the interests of their fellow employees in mind, but also the interests of the employer as well, because for employer and employee success it is necessary that there be the fullest cooperation between employer and employes at all times.

18. It is further agreed that this agreement supersedes any and all other agreements that have been signed mutually by each party herein named, and shall terminate one year from the date of signing, and is subject to change to conform to or with any National labor legislation passed during the life of this agreement.

In Witness Whereof, the parties hereto have executed this agreement on the .... day of ...., 1935.

REPUBLIC STEEL CORPORATION,

By ....

....

....

RAIMUND LOCAL UNION No. 121, I. U. M. M. & S. W.,

By ....

....

....

....

....

3907 REPUBLIC EXHIBIT No. 7.

(Same as T. C. I. Exhibit No. 10 heretofore set out on page 3573 of this transcript.)

3908 REPUBLIC EXHIBIT No. 8.

Republic Steel Corporation.

July 13, 1935.

To Committee of Employees:
Mr. A. E. Horn, International Repr., Dist. #5, I. U. M. M. & S W.,
R. H. Kendricks, Chairman,
C. D. Milford,
Gordon Moore,
Fred Ward.
A. E. Posey,
Preston Lee,
McKinley Belcher,
Elbert McCoy,
Virgil Thomas.

Dear Sirs:

Referring to list of demands which you presented as a committee representing a portion of our Raimund Mine Employees, under date of June 17th, 1935, to Mr. N. E. Thompson, Superintendent.

Beg to advise that it is the intent and purpose of this Corporation to continue its present policy.

Owing to the unsettled conditions prevailent throughout the country at this time we feel it unwise to make any changes in our present policy. This policy has given satisfaction for the past twelve months, and we see no reason for either employee or employer making any change.

Therefore, these request or demands, as set out, are denied, and we will continue indefinitely, as stated above, consistent with future business conditions.

We refer you to our letter of understanding to Mr. C. L. Richardson, Commissioner of Conciliation, Representing the Secretary of Labor, Washington, D. C., dated July 14, 1934, and wish to advise that we shall abide by this until such time as it is more definitely indicated that such an arrangement is no longer practical.

Yours very truly,
W. H. OLDHAM,
District Manager.

3909 REPUBLIC EXHIBIT No. 9.

Proposed Contract Presented to Company by Union
September 26, 1939.

This Agreement, dated ...., is between *Republic Steel Corporation* (Hereinafter referred to as the "Company") and Raimund Red Ore Local #121 of the International Union of Mine, Mill & Smelter Workers, (hereinafter referred to as the "Union") on behalf of its members employed by the Company in its ore mines located at *Raimund*, Jefferson County, Alabama. Section 1. It is the intent and purpose of the parties hereto that this Agreement will promote and improve industrial and economic relationships between the employees and the Company, and to set forth herein the basic Agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties hereto.

It is understood and agreed that this Agreement pertains only to the employees employed in and around the ore mines of the Company located at *Raimund*, Jefferson County, Alabama.

The term "employee", as used in this Agreement, shall not include Foreman, Assistant Foreman or Supervisors in charge of any classes of labor who do not perform any regular work, or Watchmen or Patrolmen.

Section 2. Recognition: The Company hereby recognizes the Union as the exclusive representatives of all employees of said Company in its red ore mine, located at Raimund, Jefferson County, Alabama, who come under the jurisdiction of the Union, for the purpose of collective bargaining, on all matters pertaining to wages, hours and conditions of employment as provided for in the National Labor Relations Act.

Section 3, Wages. It is understood and agreed to that in the event the muckers fail to load the required amount of tonnage, and the delay is through no fault of his own, they shall receive the prevailing occupational rate.

Section 4. Schedule Of Pay Days. Schedule of pay days in accordance with and substantially as Tennessee Company pay days.

Section 5. Hours Of Work. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.

No employee shall be paid both daily and weekly overtime for the same hours so worked.

Section 6. Vacations. Each employee who prior to August 1, 1939 was continuously in the service of the Company three (3) years shall receive one weeks vacation with pay, and for each additional years service shall receive one additional days vacation, but not to exceed ten (10) days. Vacation to begin in May, such vacation to be taken in a single period. Those who are granted vacations will be paid on the average rate of earnings per hour for the two pay periods immediately preceding their vacations. Total hours of vacation pay will be the average hours they worked per week during that period, but not less than forty (40) hours nor more than forty-eight (48) hours.

Section 7. Seniority. It is understood and agreed that in all cases of promotion and increases or decreases of forces the following factors shall be considered, and where factors (a) and (b) are relatively equal, length of continuous service shall govern.

(a) Length of continuous service.

(b) Knowledge, training, ability, skill and efficiency.

Section 8. Adjustment Of Grievances. Should differences arise between the Company and the Union or the employees employed by the Company as to the meaning and application of the provisions of this agreement, or should any local trouble of any kind arise there shall be no suspension of work on account of such differences but an earnest effort shall be made to settle such differences immediately in the following manner:

First, between members of the Grievance Committee, designated by the Union, and the Foreman and Superintendent of the Mines:

Second, between the representatives of the Union and the representatives of the Executives of the Company.

Third, by a board consisting of four members, two of whom shall be designated by the representatives signatory hereto, and two of the Company. Failing to agree, the matter shall then be appealed to an impartial umpire to be appointed by mutual agreement by the parties hereto. Failing to agree on the fifth member within five days, the Director of Conciliation Service, U. S. Department of Labor shall be authorized to appoint the fifth member. The umpire shall render a decision within five days after receipt of evidence. The umpire's decision shall be final. The expense and salary incident to the services of the umpire shall be paid jointly by the Company and the Union.

Pending the hearing of disputes, the employees represented by the parties signatory hereto shall not cease work because of any disputes; and a decision reached at any stage of the proceedings shall be binding on both parties thereto and shall not be subject to reopening by either party except by mutual agreement.

Section 9. Illegal Suspension Of Work. A strike or stoppage of work on the part of the employee represented by the parties signatory hereto shall be a violation of this Agreement, and there shall be no strike or cessation of work until and unless the matter of complaint shall have been submitted and determined by all the methods provided for in this Agreement for the adjustment of disputes.

Section 10. Management. The management of the mines and the directions of working forces, including the right to hire, suspend, or discharge for proper cause, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclu-

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sively in the Company, provided that this will not be used for purpose of discriminatin gagainst any member of the Union.

Section 11. Discharge Cases. In the event an employee shall be discharged from his employment from and after the date hereof, and he believes he has been unjustly dealt with, such discharge shall constitute a case arising under the method of adjusting grievances herein provided. In the event it should be decided under the rules of this Agreement, that an injustice has been dealt the employee with regard to the discharge, the Company shall reinstate such employees and pay full compensation at the employee's regular rate for the time lost. All such cases of discharge shall be taken up within five (5) days from the date of discharge, and disposed of as promptly as possible.

Section 12. Individual Wage Rates. Where alleged inequalities in wage rates prevail, the matter may be taken up for adjustment with Superintendent of the Mines, and settlement made on a mutually satisfactory basis.

Section 13. Safety And Health. The Company shall continue to make reasonable provisions for the safety and health of its employees at the mines during the hours of their employment. Protective devices, wearing apparel and other equipment necessary to properly protect employees from injury shall be provided by the Company in accordance with the practice now prevailing in the mine.

Section 14. Holidays: The following days shall be considered Holidays, during which days there shall be no regular production of work; however, it is understood that regular maintenance work will be carried on.

July 4th
Labor Day
Thanksgiving
Christmas

If for any reason work other than regular maintenance work is performed on these days, it shall be paid for at the rate of time and one-half.

Section 15. Term Of Agreement. This agreement shall continue in full force and effect until the ..... day of ...., 1940.

(a) In the event neither party serves written notice to the other party within thirty (30) days before the expiration of this Contract of their desire to change the terms and conditions thereof then in that event it is understood and agreed that this contract is to remain in full force and effect for an additional (12) months from the date of the expiration thereof.

(b) In the event that either party desires to change this contract in any way at the expiration thereof both parties shall be obligated to attend the conference and negotiate in good faith and the neglect or refusal of the party to whom notice is given to so attend and to participate in the negotiations shall be the equivalent of a failure to agree and the refusal of either party to change any position which it may take as to changes proposed in the negotiations shall not be considered as a lack of good faith in the negotiations.

Section 16. It is understood that this Agreement is subject to all Federal and State laws, rules and regulations, amendment and revisions that now exists or *any* hereafter exist pertaining to this Agreement.

....

....

....

....

3914 REPUBLIC EXHIBIT 10.

Stamped Received Dec. 27, 1939, Raimund Mine office.

International Union of Mine, Mill and Smelter Workers

Offices: 303 Railway Exchange Building

Denver, Colorado

233 Fairfax Ave.

Bessemer Alabama, December 26, 1939.

Mr. N. E. Thompson, superintendent,
Raimund Ore Mines, of the Republic Steel Company,
Bessemer, Alabama.

Dear Mr. Thompson:

I am writing you in reference to the proposed working agreement submitted to you in October at which time a conference was requested after you had had a few days to consider the proposal.

The writer is of the opinion that reasonable time has been granted, Therefore I am requesting a conference with you to discuss wages, hours, and working conditions at your earliest convenience.

Yours very truly,
VAN D. JONES.
(Van D. Jones)

Copy to:
Mr. C. L. Bransford,
Birmingham Alabama,
and to Mr. Tom R. Gerduler,
Cleveland Ohio.

(Attached to this letter is a registered envelope addressed to: Mr. N. E. Thompson, Superintendent Raimund

Ore Mines of the Republic Steel Company Bessemer Alabama, and showing the return card of International Union of Mine, Mill & Smelter Workers, 233 Fairfax Ave. Bessemer Alabama, with return receipt requested.

Attached to the letter, Republic Exhibit ≠10, is a form of proposed contract in all respects identical with Republic Exhibit ≠9, set out above.

3916

REPUBLIC EXHIBIT No. 11.

United States of America

Before the National Labor Relations Board
Tenth Region

In the Matter of Republic Steel Corporation and International Union of Mine, Mill and Smelter Workers:

Case No. X-C-548.

Date filed Mar. 9, 1939.

Charge.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Republic Steel Corporation, Bessemer, Alabama, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2), (3), (4) of said Act, in that said company at its Raimund mines, Bessemer, Alabama, has at all times since the effective date of the Act, and prior thereto from 1933 to July 5, 1935, through its officials and supervisory employees, attempted to force its employees to cease affiliation with and activity in behalf of the International Union of Mine, Mill and Smelter

Workers by inquiry into union status, threats, because of union activity and other acts.

Said company has dominated and interfered with the formation and administration of the Brotherhood of Mine Workers of Captive Ore Mines, by actually organizing said organization, by discriminating against employees who did not join said organization, by using said organization as a source of recommendation for employment, by furnishing said organization with financial and other support in supplying said organization with a meeting place, in financing social affairs of said organization, and by other acts,

(1) Said company has discriminated against its employees by discharging and refusing to reinstate the following, solely, because of their union activities:

Stanfield Malachi, Robert Sears, Jerry Kelly, C. S. Pettway, George Thomas, Wallace Norah, Wilson Mitchell, Joe Washington, Albert Clark, Fred Murphy, Will Robinson, Artesia Crowe, O. T. Jackson, Gordon Moore, Charlie Smith, L. N. Mashburn, Roosevelt Hill, Robert Smith, James Crews.

(2) By harsh and inequitable treatment during tenure of employment of the following employees, solely because of their union activities:

Earl Woods, Henry Jones, Scott Logan

(3) By refusing to reemploy the following, solely because of their union activities:

John Smith, Lou Jones, W. L. Bullock, Elisha McKinley, West Pender, Cleo Wallace, Jessie May, Jessie Robinson, Chalmers Humphries, James Pope, Jessie Mayes, Wallace Turner, J. C. Knowles, Jack Sims, Clarence Jackson, Johnnie Mayes, Albert Walker, Lucius Harris, Robert Ware, Albert Clark, Sidney Smith, Henry Walker, Oneal Allred, Fred A. Duncan, Hazel Hinkel.

(3) b. By delaying the reinstatement of the following while new miners were being hired, solely because of their union activities:

Jimmie Morgan, Elijah Boyd, Robert Hill, Albert Hardy, Pierce Holly, Walter Johnson, Felix Bryant, McKinley Bryant, Ernest Graham, Arthur Locket, Clarence Tolbot, Albert Johnson, Clifton Wyatt.

Said company did discharge Willie White on April 27, 1938, solely because of testimony before the National Labor Relations Board at Tennessee Coal, Iron and Railroad Company hearing in Birmingham, Alabama, during November, 1937.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL UNION OF
MINE, MILL AND SMELTER
WORKERS,
(S.) By VAN D. JONES,
International Executive Board
Member.

233 Fairfax Ave.,
South, Bessemer, Alabama.

Subscribed and sworn to before me this 8 day of March, 1939.

WILLIE RUSSELL,
(Seal) Notary Public.

My Com. Expires 3-8-1942.

3919 REPUBLIC EXHIBIT No. 12.

United States of America

Before the National Labor Relations Board
Tenth Region

N. L. R. B. 29 a

Revised 8-25-37

In the Matter of Republic Steel Corporation and International Union of Mine, Mill and Smelter Workers.

Case No. X-C-548.

Date Filed 1-5-1940.

Amended Charge.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Republic Steel Corporation, Bessemer, Alabama, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1), (2), (3), and ( ) of said Act, in that:-

Said Company at its Raimund Mines, Bessemer, Alabama, has at all times since the effective date of the Act, and prior thereto from 1933 to July 5, 1935, through its officials and supervisory employees, attempted to force its employees to cease affiliation with and activity in behalf of the International Union of Mine, Mill and Smelter Workers by inquiry into union status, threats because of union activity and other acts.

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Said Company has dominated and interfered with the formation and administration of the Brotherhood of Mine Workers of Captive Ore Mines, by actually organizing said organization, by discriminating against employees who did not join said organization, by using said organization as a source of recommendation for employment, by furnishing said organization with financial and other support in supplying said organization with a meeting place, in financing social affairs of said organization, and by other acts.

(1) Said Company has discriminated against its employees by discharging and refusing to reinstate the following, solely because of their union activities:

Stanfield Malachi, Robert Sears, Jerry Kelly, C. S. Pettway, George Thomas, Wallace Norah, Wilson Mitchell, Joe Washington, Albert Clark, Fred Murphy, Will Robinson, Artesia Crowe, O. T. Jackson, Gordon Moore, Charlie Smith, L. N. Mashburn, Roosevelt Hill, Robert Smith, James Crews.

Said Company did discharge Willie White on April 27, 1938, solely because of testimony before the National Labor Relations Board at Tennessee Coal, Iron and Railroad Company hearing in Birmingham, Alabama, during November, 1937.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

INTERNATIONAL UNION OF
MINE, MILL AND SMELTER
WORKERS,
(S.) By VAN D. JONES,
Executive Board Member.

233 Fairfax Ave.,
Bessemer, Ala.

Subscribed and sworn to before me, this 2nd day of January, 1940 at Bessemer, Alabama.

(S.) WILLIE RUSSELL,
Notary Public.

3921

REPUBLIC EXHIBIT No. 13.

United States of America

Before the National Labor Relations Board
Tenth Region

In the matter of Republic Steel Corporation and International Union of Mine, Mill and Smelter Workers.

Case No. X-C-548.

Stipulation.

It is hereby stipulated by and between Borden Burr, as Attorney of Record for Republic Steel Corporation, hereinafter referred to as the "Respondent", J. A. Lipscomb, as attorney of Record for the International Union of Mine, Mill and Smelter Workers, hereinafter referred to as the "Union," Horace C. Wilkinson, as Attorney of Record for Unit No. 8, Brotherhood of Miners of Captive Ore Mines of Alabama, hereinafter referred to as the "Brotherhood", and Alexander E. Wilson, Jr., Attorney, Tenth Regional, for the National Labor Relations Board, hereinafter referred to as the "Board", that upon the record herein and upon this stipulation, if approved by the Board, respondent at all times denying it has committed any unfair labor practice as alleged in the complaint, an order may be entered by said Board providing as follows:

1. Respondent shall offer reinstatement to the same position formerly occupied, by each at the Raimund Ore Mine, or, if such position is not then available, equivalent employment at the Raimund Ore Mine, to the following named persons:

Stanfield Malachi, Robert Sears, Jerry (Jury) Kelly, O. S. (Sears) Pettway, George Thomas, Wallace Norah, Fred Murphy, Will Robinson, Artesia Crowe,

before June 1, 1940, providing each of the above named is found by the company physician to be physically fit for employment.

2. Respondent shall pay to the Regional Director for the Tenth Region, National Labor Relations Board, in trust, the aggregate sum of Three Thousand One Hundred and Fifty Dollars ($3150.00) to be divided by him on or before June 1, 1940, among the individuals named in the paragraphs above in such amounts as he shall detemine; said aggregate amount to be in lieu of all back pay claimed by the persons named.

3. The reinstatement of such employees and the payment of said sums of money shall be done and performed in the manner as agreed upon by the parties hereto and at this day read into and made a part of the official record.

4. After the first day of July 1940, the company shall not allow the use of any of its property or premises for meetings of any labor organization, except for such meetings as it may be necessary for respondent to hold with Grievance or other committees of such labor organizations, and no labor organization shall solicit membership within working hours after the date of the final approval of this stipulation.

5. The respondent shall post in conspicuous places about its Raimund Mine for a period of sixty (60) days after receipt of a copy of the order to be entered herein by the National Labor Relations Board the following notice:

"The policy of the Republic Steel Corporation has been, and is now, that every employee is entitled to determine for himself, free from discrimination, interference, restraint, coercion, or intimidation by anyone, whom he wishes to represent him in the matter of collective bargaining."

6. Upon the compliance by the respondent with the terms hereof, all rights, claims, or demands of the Union and its past, present, and future members, against the respondent on account of any claimed violation of the National Labor Relations Act, occurring prior to the date hereof, shall be, in accordance with the stipulation of the parties as read into the official record, considered as fully and finally settled.

7. Respondent shall inform the Regional Director of the National Labor Relations Board for the Tenth Region within thirty (30) days of the service of dais order of the manner in which the respondent has complied therewith.

8. Respondent agrees that the order of the National Labor Relations Board may be entered in any decree of a United States Circuit Court of Appeals in any act or proceeding in the premises; the respondent hereby expressly waiving any and all requirements of notice or proceedings for the enforcement of such order.

9. This stipulation is made subject to approval by the National Labor Relations Board.

This the 1 day of May, 1940.

BORDEN BURR,
As Attorney of Record for Republic Steel Corporation.
J. A. LIPSCOMB,
As Attorney of Record for International Union of Mine, Mill and Smelter Workers.
HORACE C. WILKINSON,
As Attorney of Record for Unit No. 8, Brotherhood of Miners, of Captive Ore Mines of Alabama.
ALEXANDER E. WILSON, JR.,
Attorney, Tenth Region, National Labor-Relations Board.

3925 STIPULATION.

United States of America

Before the National Labor Relations Board
Tenth Region

In the matter of Republic Steel Corporation and International Union of Mine, Mill, and Smelter Workers.

Case No. X-C-548.

It is hereby stipulated by and between Borden Burr, as Attorney of Record for Republic Steel Corporation, hereinafter referred to as the "Respondent", J. A. Lipscomb, as Attorney of Record for the International Union of Mine, Mill and Smelter Workers, hereinafter referred to as the "Union", Horace C. Wilkinson, as Attorney of Record for Unit No. 8, Brotherhood of Miners of Captive Ore Mines of Alabama, hereinafter referred to as the "Brotherhood", and Alexander E. Wilson, Jr., Attorney, Tenth Region, for the National Labor Relations Board, hereinafter referred to as the "Board", as follows:

I.

That the stipulation heretofore signed on May 1, 1940, and read into the record on said date as Board's Exhibit No. 6, shall be and hereby is withdrawn from the record.

II.

That the stipulation for the record as agreed upon between the Respondents, the Union, and the Brotherhood on this the 20th day of May, 1940, a copy of which is attached hereto marked Joint Exhibit "A", be considered as read into the record in amendment to the stipulation between said parties as read into the record on the 1st day of May, 1940, and as appearing in the official report on Pages 1078 to 1085, both inclusive.

This May 20, 1940.

(S.) BORDEN BURR,
As Attorney of Record for Republic Steel Corporation.

(S.) J. A. LIPSCOMB,
As Attorney of Record for International Union of Mine, Mill and Smelter Workers.

(S.) HORACE C. WILKINSON,
As Attorney of Record for Unit No. 8, Brotherhood of Miners of Captive Ore Mines of Alabama.

(S.) ALEXANDER E. WILSON, JR.,
(Alexander E. Wilson, Jr.)
Attorney, Tenth Region, National Labor Relations Board.

3927

JOINT EXHIBIT "A".

United States of America

Before the National Labor Relations Board
Tenth Region

In the matter of Republic Steel Corporation and International Union of Mine, Mill, and Smelter Workers.

Case No. X-C-548.

Stipulation.

It is hereby stipulated by and between Borden Burr, as Attorney of Record for Republic Steel Corporation, hereinafter referred to as the "Respondent", J. A. Lipscomb, as Attorney of Record for the International Union of Mine, Mill, and Smelter Workers, hereinafter referred to as the "Union", Horace C. Wilkinson, as Attorney of Record for Unit No. 8, Brotherhood of Miners of Captive Ore Miners of Alabama, hereinafter referred to as the "Brotherhood", respondent at all times denying it has committed any unfair labor practice as alleged in the complaint, as follows:

I.

That the stipulation heretofore entered into between the parties hereto and read into the record hereof on May 1st, 1940, and as the same appears in the official report of proceedings hereof from Pages 1078 to 1085, both inclusive, shall be and the same hereby is amended in the following particulars:

(a) There shall be stricken from the preamble the words: "Subject to the approval of the Board".

(b) Section I(a) shall be changed so as to substitute for the following words:

"Every person named above who desires reemployment shall present himself at any time between the 13th day May, 1940, and the first day of June, 1940," the following words:

"Every person named above who desires reemployment shall present himself at any time within fifteen (15) days after the withdrawal with prejudice by the Union of the charges filed herein and the dismissal by the Board of the complaint filed herein".

(c) Section I(c) shall be changed so as to substitute for the following words:

"The Company shall, subject to medical examination, as above provided for, promptly not later than June 1, 1940"

the following words:

"The Company shall, subject to medical examination as above provided for, promptly and not later than fifteen (15) days after the said withdrawal with prejudice of said charges and said dismissal of said complaint".

(d) Section I(e) shall be changed so as to substitute for the following words:

"On or before the first day of June, 1940",

the following words:

"Within the time hereinabove provided for":

(e) Section II, Paragraph One, shall be changed so as to substitute for the following words:

"The Company shall pay to the Regional Director for the Tenth Region, National Labor Relations Board, in trust, the aggregate sum of Three Thousand One Hundred and Fifty Dollars ($3150.00), to be divided by him on or before June 1, 1940, among the individuals named in the paragraph above in such amounts as he shall determine; said aggregate amount to be in lieu of all back pay claimed by the persons named."

the following words:

"The Company shall promptly upon, and not later than three (3) days after the said withdrawal with prejudice of said charges and the said dismissal of said complaint, pay to the Regional Director for the Tenth Region, National Labor Relations Board, in trust, the aggregate sum of Three Thousand One Hundred and Fifty Dollars ($3,150.00), to be divided equally by him as soon as possible among the individuals named in Paragraph I above; said aggregate sum to be in lieu of all back pay claimed by the persons named."

(f) Section V shall be changed so as to substitute for the following words:

"The charges heretofore filed by the National Labor Relations Board shall be at once withdrawn, or, at the option of the Board, shall be used as a basis for an appropriate order carrying into effect the terms of this stipulation",

the following words:

"The charges heretofore filed with the National Labor Relations Board shall be at once withdrawn with prejudice by the Union, and the complaint filed herein by the Board shall be dismissed by the Board."

(g) Section V shall be further changed by striking out the following words:

"In the event of the approval of the Board".

(h) Section VII shall be changed so as to substitute for the following words:

"This stipulation shall become effective only upon the approval of the said Board of the Stipulation this day executed by counsel and filed in this proceeding, and if not so approved it shall be withdrawn from the record without prejudice to the Board, or any of the parties, and the status of all shall be as if it had not been made."

the following words:

"This stipulation shall become effective only upon the withdrawal with prejudice by the Union of said charges and the dismissal by the Board of the complaint filed herein, and if said charges are not so withdrawn and said complaint so dismissed, it shall be withdrawn from the record without prejudice to the Board, or any of the parties, and the status of all shall be as if it had not been made."

II.

Except as, wherein above amended, said stipulation as previously made between the parties and as read into the record on May 1, 1940, shall remain in full force and effect.

The undersigned attorneys stipulate that the stipulation as previously made on May 1st, 1940, and as then read into the record and appearing in the official report of proceedings on pages 1078 to 1085, both inclusive, shall be modified and changed as above set forth, and with such changes shall be considered as if made on May 1, 1940, and as if appearing in the record at such time.

3931 REPUBLIC EXHIBIT No. 14.

Bessemer, Alabama, October 12, 1940.

In Re: Raimund Local No. 121, of the International Union of Mine, Mill and Smelter Workers, District No. Five, An Affiliate of the Bessemer Smelters Council.

Whereas, there now exists a controversy between this Local and the Republic Iron & Steel Company, at its mine near Bessemer, Alabama, and this controversy is of long standing and deals with the travel pay of our members employed by the above mentioned Company at its iron ore mines in its production and maintenance departments; and these employees are required to report at the mouth or collar of the mines at 6 o'clock A. M. in the morning for the purpose of being loaded into man-trips and others methods of entering the mines, they being under-ground workers; and at the mouth or collar of the mines are checked in at six o'clock and immediately given supplies, tools, equipment and instructions, and then they proceed to their working places, which is approximately 2 miles from the mouth or collar of the mines and down under ground, which requires and consumes approximately one hour's time before they then arrive at their usual working places; all of this time being spent on the premises of the Company, and after the men are checked in and given supplies, equipment and instructions then they proceed to their working places to perform their usual tasks, after which they return to the mouth or collar of the mines arriving there about four o'clock in the afternoon, and are checked out, thus requiring the employees to be on the premises on duty and in the performance of their work for the Company ten (10) hours per day in the mines, totaling fifty hours per work week, and

Whereas, immediately after our Union was set up, and ever since that time, we have been protesting the travel pay of our members in this mine, and this controversy is based upon the time spent by our members on the premises of the Company each work week and being in excess of the hours required to work under the law, and as we understand it, in violation of the rules and law, and which time amounts to approximately 10 hours per work day, and employees affected by this condition numbering approximately 600. And we further believe that in view of the fact that the Fair Labor Standards Act was passed primarily for the purpose of reducing excessive required hours on the premises of the employer during any given work week, and

Whereas, the Fair Labor Standards Act is recognized and being complied with in many instances without any controversy on the part of the employers, but notwithstanding that fact and in the face of many rulings by the Wage & Hour Board supporting our position and conditions of work, we are still required by the said Company to be on the premises of the Company many hours in excess of the work week, and for which we receive no pay.

Therefore: Be it Resolved by this Local in regular meeting assembled that we authorize and request our local and National officers to immediately bring about a correction of these conditions and require the Company to immediately comply with the Fair Labor Standards Act from now on, and also require the Company to pay all back time since the effective date of this law.

And we further authorize our officers to bring this Resolution to the attention of the Hon. Robert P. Amis, Regional director of the Wage & Hour Division of the Department of Labor in Birmingham, Alabama, and also with Col. Philip B. Fleming, Administrator of the Wage & Hour Division of the Department of Labor, Washington, D. C. And our officers both local and National are further authorized to take such steps as may be necessary and expedient, by negotiations or suit, in order to bring about a speedy conclusion of this controversy.

Be it further resolved that copies of this Resolution be immediately forwarded to all interested parties.

This is to certify that the above is a true and exact copy of a Resolution unanimously adopted by Local No. .... in its regular meeting of October 12, 1940.

LOUIS TARRANT,
As President of Local #121 of
I. U. M. M. & S. W.

Attested by:
B. G. STEPHENS,
As Recording Secretary.

Seal I. U. M. M. & S. W. Raimund Local No. 121, Bessemer, Ala.

3934 REPUBLIC EXHIBIT 15.

Statement Period Ending.

.... Hours @ ....
.... Hours @ ....
.... Tons @ ....
.... Tons @ ....
Yards @ ....
Total Wages ....

F. O. A. B. Tax				
Ala. Unemployment Tax				
Cash Advance				
Checks				
Rent				
Coal				
Physician				
Commissary A C				
Change House				
Brass Checks				
Miners' Supplies				
Hospital				
Lights				
Safety Lamp				
Insurance				
Total Deductions				
Cash Pay Day				

Republic Steel Corporation,
Birmingham District.

Raimund Mine.

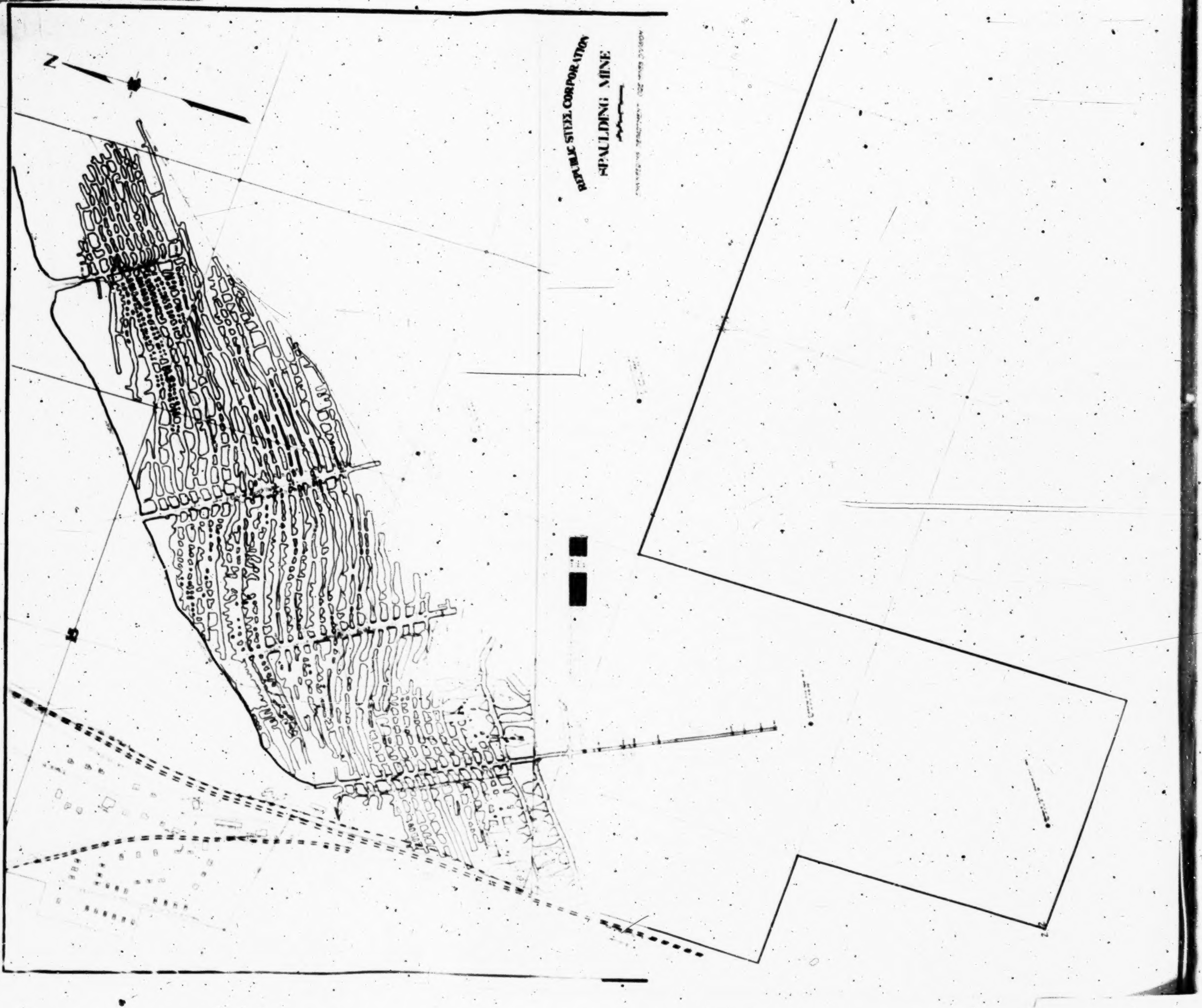
Received payment ....

Bir. 211 10M-11-40.

The reverse of the sheet on which the above form is printed is carbonized, and the sheet is attached to the back of an envelope of the same size as the sheet, and on the back of which sheet is printed a form in all respects the same as the above form.

REPUBLIC EXHIBIT NO. 16

Republic Ex #16
Case #5237-C


Z
REPUBLIC STEEL CORPORATION
SPAULDING MINE
13

PLAINTIFF'S EXHIBIT NO. 7

UNITED STATES DEPARTMENT OF THE INTERIOR
Harold L. Ickes, Secretary
BUREAU OF MINES
R. R. Sayers, Director

IRON ORE, PIG IRON FERRO-ALLOYS, AND STEEL

BY ROBERT H. RIDGWAY AND H. W. DAVIS

Chapter from

MINERALS YEARBOOK 1940
REVIEW OF 1939

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1941

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Washington, D. C., for $2.00

IRON ORE, PIG IRON, FERRO-ALLOYS, AND STEEL

By Robert H. Ridgway and H. W. Davis[1]

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War-geared international economy drove world production of iron and steel to record or virtually record levels in 1939. Although other nations expanded their near-capacity activities of 1938, the major part of the world increase in 1939 was due to the gain in American output, which rose precipitously during the latter half of the year. Relatively small quantitative increases established new production peaks in Germany, Italy, Japan, the U. S. S. R., and the United Kingdom. Some of the gain in Germany, the second largest world producer and the largest producer in Europe, was due to territorial accession during 1939; but production in that country, even as formerly constituted, advanced despite some slowing down in certain Saar works during the first stages of the war. As a result of hostilities, output of iron and steel in several of the principal countries is under strict control and is oriented to armament and munitions, with little attention to civilian requirements. World production of pig iron (including ferro-alloys) and steel increased 23 percent and 24 percent, respectively, compared with 1938; domestic production of each increased 66 percent, and output of each in the rest of the world rose 10 percent. Of the total world output of pig iron and steel in 1939 the United States furnished about 32 and 35 percent, respectively, compared with the 23 and 27 percent in 1938. Since the depression the United States has been supplying a smaller proportion of the total world iron and steel production than formerly.

---

[1] Figures on imports and exports compiled by M. B. Price, of the Bureau of Mines, from records of the Bureau of Foreign and Domestic Commerce.

Salient statistics of iron ore, pig iron, ferro-alloys, and steel in the United States, 1938–39

	1938		1939	
	Gross tons	Value	Gross tons	Value
Iron ore:				
Production by—				
Districts:				
Lake Superior	21,308,410	(1)	41,679,608	(1)
Southeastern	4,325,729		6,011,420	
Northeastern	2,306,910		3,112,893	
Western	506,233		917,448	
	28,447,282	(1)	51,721,369	(1)
Mining methods:				
Open pit	[2] [3] 14,705,349	(1)	[2] 32,741,636	(1)
Underground	[2] [3] 13,741,933		[2] 18,979,733	
	28,447,282	(1)	51,721,369	(1)
Varieties:				
Hematite	[4] [5] 25,607,467	(1)	[4] [5] 47,756,770	(1)
Brown ore	363,146		586,372	
Magnetite	[4] [5] 2,476,221		[4] [5] 3,377,764	
Carbonate	448		463	
	28,447,282	(1)	51,721,369	(1)
Shipments (exclusive of ore for paint)	26,430,910	$74,322,405	54,820,589	$158,511,338
Average value per ton at mine		2.81		2.89
Stocks at mines Dec. 31	7,611,048	(1)	4,746,507	(1)
Imports	2,122,455	5,288,195	2,412,515	5,865,510
Exports	591,524	1,954,287	1,057,304	3,578,086
Pig iron:				
Production	18,582,322	(1)	31,075,914	(1)
Shipments	18,202,354	356,875,369	32,091,485	626,824,690
Average value per ton at furnaces		19.61		19.53
Imports	30,400	598,461	38,592	663,091
Exports	432,851	7,135,129	177,024	3,435,739
Ferro-alloys:				
Production	584,724	(1)	735,171	(1)
Shipments:				
Ferromanganese	223,720	19,144,884	296,631	24,137,211
Spiegeleisen	24,939	[3] 728,830	84,739	2,484,042
Ferrosilicon	163,775	7,999,661	343,822	16,850,356
Other varieties	51,678	14,586,138	115,970	32,684,979
	464,112	[3] 42,459,513	841,162	76,156,588
Imports:				
Ferromanganese	26,258	1,770,948	41,227	2,935,214
Spiegeleisen	17,248	625,480	38,264	1,329,814
Ferrosilicon	5,325	134,067	8,203	237,543
Steel production:				
Open hearth:				
Basic	25,691,963	(1)	42,704,197	(1)
Acid	272,337		518,839	
Bessemer	1,880,661		2,999,032	
Crucible	6		831	
Electric	505,024		918,810	
	28,349,991	(1)	47,141,709	(1)

---

[1] Figures not available. [2] Some underground included with open pit. [3] Revised figures.
[4] Small quantity of hematite included with magnetite.
[5] Small quantity of magnetite included with hematite.

As iron and steel manufacture the major implements of war, unsettled conditions in Europe and Asia dominated the iron-ore industry in 1939 and disturbed the usual routes of flow. Faced with problems of restricted imports and national self-sufficiency, certain European powers in recent years have focused their attention on development and treatment of low-grade ore bodies within their national boundaries. These activities were accelerated in 1939, particularly in Germany and the United Kingdom; even so, both countries still depend heavily on foreign ore supplies. The supply of raw materials especially iron ore in Germany and England and to a smaller exten coal in France and Italy, is of utmost importance in maintaining th steel-production rate. The present international situation is furnishing further impetus to the nationalistic spirit of self-sufficiency particularly as to iron and steel, in other nations.

In the first half of 1939 the domestic iron and steel industry maintained the gain of the last half of 1938, and steel operations were about 53 percent of capacity or slightly below those during the last quarter of 1938. During the latter half of 1939, however, production increased rapidly, amounting to nearly 5,500,000 tons in November or more than 93 percent of capacity compared with 62 percent in November, the peak month for 1938. Slightly more than one-third of the 1939 output was made in the final 3 months, when the production rate for steel ingots rose to new heights. At the close of 1939, activities were off a little but were still at a high rate (86 percent of capacity for December); the average rate of production in the last quarter of 1939 was 89 percent compared with 51 percent in the second quarter. The average operating rate during 1939 was 64 percent compared with 40 percent in 1938. The producers of such mineral products as iron ore, manganiferous iron ore, fluorspar, fluxing stone, and coke, which depend on iron and steel furnaces for their chief market, felt the increased demand during the last half of 1939. Domestic production of iron ore, the principal raw material, increased 82 percent over 1938 but still was 21 percent under the 1925–29 average. Figure 1 shows the trends in domestic production of iron ore, pig iron, and steel for more than half a century.

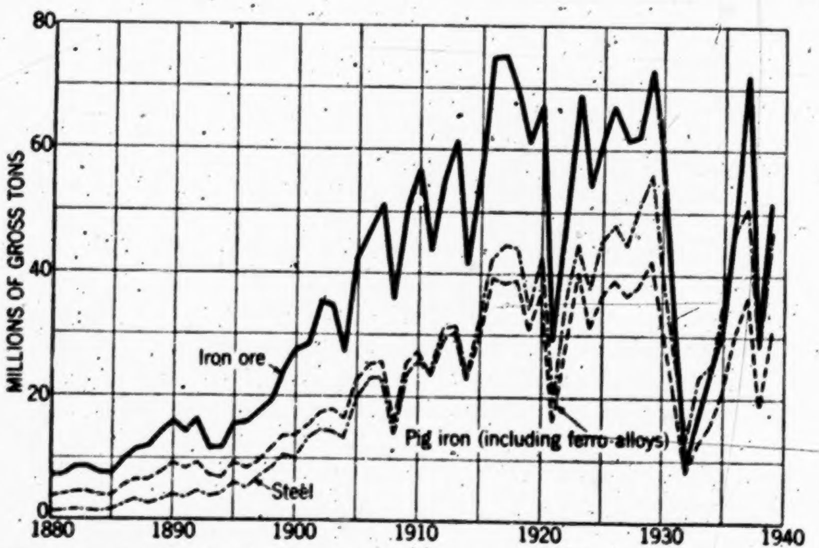

FIGURE 1.—Trends in production of iron ore, pig iron, and steel in the United States, 1880-1939.

A factor in the rise of domestic steel output in 1939 was the decision of consumers to change their inventory position. The advent of war in Europe created uncertainties that caused consumers of steel to rush to build up stocks of raw material. The automobile industry, with a strong fourth-quarter demand, was the largest consuming outlet for steel, taking about one-sixth of the total. Production of automobiles in 1939 increased 44 percent over 1938 and amounted to

3,577,058 units—still somewhat below the 5-million car year 1929. Although the farmer's cash income rose about 5 percent in 1939, the quantity of steel moving into this outlet was lower than in 1938. Exports of steel in 1939 increased over 1938 and were more than treble the quantity moving into agriculture. The relative quantity of steel used in containers, the third largest consuming outlet, was about the same in 1939 as in 1938.

The capital-goods industries expanded in 1939, and more steel was consumed in this outlet. Buying of equipment by the railroads rose sharply in September, and they participated in the business expansion of the fall when full utilization of capacity was approached. The problem of insufficient capacity of railroad equipment owing to the small outlays for new rolling stock during the last decade was brought into focus by the 1939 peak carloadings and heavy railway traffic. Recent replacements of rolling stock are designed for increased speed and efficiency, both for passenger and freight service. New freight cars made of low-alloy, high-strength steels increase capacity and lighten dead weight. Thus less steel may be used as a new unit replaces an old one. Large expenditures, however, will be necessary to correct the accumulated obsolescence.

The shipbuilding industry revived in 1939, and at the end of the year the total tonnage under construction in American shipyards was the highest since 1920. Activity increased in both private and Government yards on merchant and naval ships. The shipbuilding industry was bolstered by the acceleration of the building program of the Maritime Commission in September.

The construction industry had a better year in 1939 than in 1938, as activities continued to advance for the sixth consecutive year. Both public and private work contributed to the increase, with residential building especially active. Industrial and commercial building were only moderately higher in 1939 than in 1938, but increases were more pronounced after conditions changed in September. Despite the increase, total expenditures for construction in 1939 were less than three-quarters of those in the peak years 1926 to 1929; however, the physical volume and consumption of raw material, including steel, undoubtedly were greater as construction costs have changed during the last decade.

Continuing the movement of 1938, the price of steel products dropped during the first half of 1939 as demand weakened and the upturn of production late in 1938 flattened and receded. Price reduction during the first half of 1939 on nearly all steel products brought down the composite price of finished steel, as compiled by Iron Age, to 2.236 cents per pound in June from 2.286 cents at the beginning of the year. Recovery followed, and before the year ended there was frenzied buying of many products as consumers sought to fill their needs in advance because of fears that war would cause higher prices and delayed deliveries. At the beginning of the last quarter of 1939 the mills were generally sold out for the rest of the year, and prices advanced, the Iron Age average rising to 2.242 cents for November and 2.261 cents for December. The average for the year was 2.257 cents a pound. Pig-iron prices followed somewhat the same pattern, but buying during the earlier months was restricted by hold-over contracts. September saw a big "pick-up" in demand as prices advanced $1 to $2 a ton on most grades. The Iron Age composite pig-iron price, which was $20.61 a long ton until the end of August, advanced $1 a ton in September and $1 more in October; it held the October level the rest of the year. Scrap prices, which had been fairly steady until September, rose 44 percent by early October but were off several dollars per ton during the rest of the quarter. The price of ferromanganese at seaboard was reduced $12.50 a ton, in January, but in September it was raised to $100 a ton. Spiegeleisen, which had been quoted at $28 during the year, also increased in price in September, that of the 19-21 percent manganese grade advancing to $32. The quotations on Lake ores for the 1939 season were unchanged from 1938.

Figure 2 gives trends in prices of iron ore, pig iron, steel, and steel scrap since 1890.

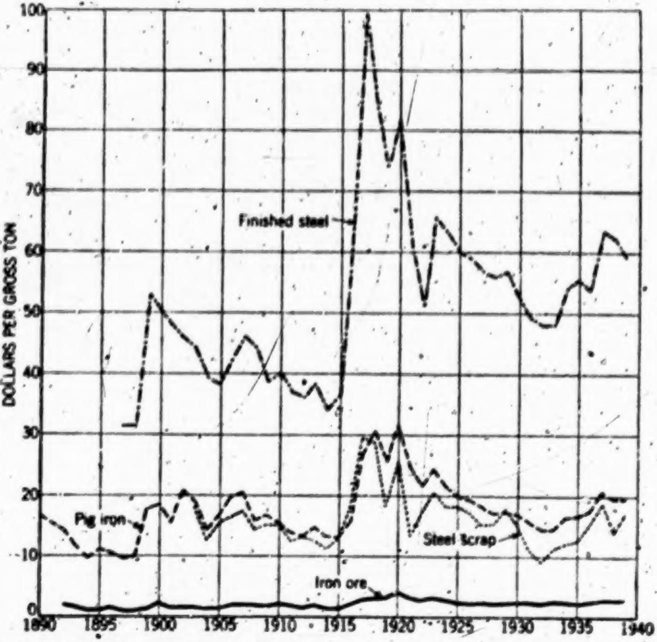

FIGURE 2.—Trends in prices of iron ore, pig iron, finished steel, and steel scrap, 1890–1939. The prices of iron ore and pig iron are the averages f. o. b. mines and furnaces, respectively, as reported to the Bureau of Mines; the price of finished steel is an average composite computed by American Metal Market; that of steel scrap is an average at Pittsburgh of No. 1 Heavy Melting, computed by Iron Age.

Employer-employee relationships, which have been receiving increased attention in recent years, were better in 1939 than in 1938 as employment rose to a higher level. As operations at plants increased there were steady gains in employment and earnings of wage earners during the year. According to the American Iron and Steel Institute average hourly earnings were 84 cents, the highest for any year in the history of the industry. Total pay rolls in the industry in 1939, according to the same source, were $810,000,000 compared with $600,000,000 in 1938. The contract entered into in March 1937 between the steel-manufacturing subsidiaries of the United States Steel Corporation and representatives of the Steel Workers Organizing Committee, one of the affiliates of the Congress of Industrial Organizations, as the collective bargaining agency for employees who were members of the Amalgamated Association of Iron, Steel, and Tin-workers of America, expired in February 1938. The agreement was renewed subject to change upon 10 days' notice from either party and to termination if changes are not agreed to within 20 days of the notice. This affords an opportunity for adjustment of operations to varying economic conditions. Apparently, the agreement is working out satisfactorily to the parties concerned, as there have been no changes since the signing. There were no major strikes in the iron and steel industries in 1939, although the Bureau of Labor Statistics, United States Department of Labor, lists 57 strikes that began in 1939, which involved 14,466 workers and resulted in 212,760 man-days idle during the year; however, all of the strikes were minor in extent. The wages-and-hours law, which provided for a change from 25 to 30 cents in the hourly rate and a reduction of the workweek from 44 to 42 hours effective October 24, 1939, had little or no effect on the iron and steel industry.

The record rate of activity in the steel industry during the closing months of 1939 brought production to near capacity. As the rise was abrupt, little time was available for expansion, and problems of immediate production were paramount. Present steel making and finishing capacity can take care of any reasonable demands, and little new capacity was added in 1939. War orders might serve as an incentive to increase capacity; but industry, recalling events of the last war, is chary of making investments on this basis Three blast-furnace stacks were remodeled during the year, and four stacks were dismantled, resulting in a decrease in blast-furnace capacity. Only one open-hearth furnace (Alton, Ill.) was added to capacity in 1939. Considerable capacity was added to finishing operations of the steel processes, thereby rounding out activities of various producers.

Imports of iron ore into the United States in 1939 increased 14 percent over 1938 and were equivalent to 5 percent of the domestic production. Imports of pig iron rose 27 percent but were equivalent to only 0.1 percent of the domestic output. Imports of ferro-alloys also increased owing to much larger receipts of ferromanganese and spiegeleisen, the latter having more than doubled the 1938 figure. Imports of iron and steel manufactures, although relatively small, gained 19 percent over the low total for 1938. Exports of iron and steel products, which are much higher than imports, likewise advanced, topping those of 1938 by 16 percent. Exports of pig iron amounted to 177,024 long tons and were much lower than in 1938, whereas exports of iron ore, largely to Canada, increased 79 percent. Exports of ferro-alloys were higher than in 1938 but still did not represent much tonnage. Although exports of scrap increased 20 percent over 1938, they were 13 percent below the 1937 total.

Import duties on a few minor iron and steel products were lowered in 1939 under the Trade Agreements Act of June 12, 1934. These changes, which were provided for in the new trade agreement with Canada signed November 17, 1938, became effective January 1, 1939, and superseded the agreement signed November 15, 1935. There were also some changes, including a reduction in the duty on low-phosphorus (0.04 percent and under) pig iron from $1.125 to $0.75 per long ton, in the trade agreement with the United Kingdom, which likewise was signed November 17, 1938, to become effective January 1, 1939. Chromite was bound on the free list in the Turkish Agreement signed April 1, 1939, to become effective May 5, 1939.

In connection with its studies on the concentration of economic power, the Temporary National Economic Committee held hearings on various phases of the iron and steel industry late in the year. Testimony was taken from men in the industry with a view to developing information on the competitive position of different factors of the industry.

CONSUMPTION OF FERROUS SCRAP AND PIG IRON

Data on the consumption of ferrous scrap and pig iron, formerly included in this chapter, will be found in the chapter on Iron and Steel Scrap. Data on the consumption of pig iron will be found in the pig-iron section of this chapter.

IRON ORE

Production and shipments.—Mining of iron ore in the United States experienced the second best year since 1930. Production amounted to 51,721,369 gross tons, a gain of 82 percent over 1938 but 21 percent under the 1925-29 average. Output in 1939 came from 208 mines (this figure does not include an undetermined number of small operations whose aggregate output is only a fraction of 1 percent of the total), of which 11 produced more than 1 million tons each compared with 172 mines having only 4 in the million-ton class in 1938. Sixteen States were active producers in 1939 as well as in 1938. Minnesota, with 31,547,704 tons, supplied 61 percent of the domestic total, and Michigan, with 9,159,222 tons or 18 percent, was the second largest producer. These two States and Wisconsin (972,685 tons or 2 percent) constitute the Lake Superior region, which furnished 81 percent of the domestic total. Of the 1939 total, about three-fifths came from open-pit operations compared with about one-half in 1938. Shipments of iron ore likewise were much larger in 1939, amounting to 54,820,589 gross tons, an increase of 107 percent over 1938 but 18 percent less than the 1925-29 average. The greater part of the iron ore mined in the United States is used in the manufacture of iron and steel, but 56,763 tons of domestic ore were shipped in 1939 for other uses as follows: Cement, 33,140 tons; paint, 12,235 tons; ferromagnesite, 3,000 tons; flux at nonferrous smelters, 6,640 tons; and other industries, 1,748 tons.

The quantities of iron ore shown in the following tables include ore that was beneficiated—that is, treated in any way—as well as ore that did not require treatment. Although included in the figures on production, the iron ore sold for the manufacture of paint—12,235 tons in 1939 valued at $66,817 ($5.46 a ton) compared with 9,694 tons in 1938 valued at $44,249 ($4.56 a ton)—is not included in shipments from mines. The output of manganiferous ore that contained 5 to 35 percent manganese also is not included; 709,247 tons, valued at $2,148,321, were shipped in 1939 compared with 308,860 tons, valued at $858,356, in 1938. Moreover, the statistics do not include iron sinter recovered from the roasting of domestic pyrites concentrates in Tennessee.

Iron ore mined in the United States in 1939, by States and varieties, in gross tons

[Exclusive of ore containing 5 percent or more manganese]

State	Number of active mines	Hematite	Brown ore	Magnetite	Carbonate	Total
Alabama	58	5,445,868	514,639			5,960,507
California	4	[1] 17,173		(1)		17,173
Georgia	10	7,867	18,219	247		26,333
Michigan	36	9,159,222				9,159,222
Minnesota	65	31,547,701				31,547,701
Missouri	[2] 12	9,824	29,415			39,239
New Jersey	4			399,289		399,289
New York	4	(3)		[3] 2,713,141	463	2,713,604
Pennsylvania	2					
South Dakota	1		300			300
Tennessee	[2] 2	781	23,799			24,580
Virginia	2					
Utah	2			262,087		262,087
Washington	3	7,757		3,000		10,757
Wisconsin	2	972,685				972,685
Wyoming	1	587,892				587,892
Total: 1939	[2] 208	[1] [3] 47,756,770	586,372	[1] [3] 3,377,764	463	51,721,369
1938	[2] 172	[1] [3] 25,607,467	363,146	[1] [3] 2,476,221	448	28,447,282

---

[1] Small quantity of magnetite included with hematite.

[2] Excludes an undetermined number of small pits. The output of these pits is included in the tonnage given.

[3] Small quantity of hematite included with magnetite.

Quantity and tenor of iron ore mined in the United States, 1938-39, by States and mining methods

State	1938				1939			
	Open pit (gross tons)	Underground (gross tons)	Total		Open pit (gross tons)	Underground (gross tons)	Total	
			Gross tons	Iron content, natural (percent)			Gross tons	Iron content, natural (percent)
Alabama	332,717	3,970,612	4,303,329	36.36	533,665	5,426,842	5,960,507	36.42
California	28,380		28,380	55.07	17,173		17,173	56.40
Georgia	8,944	277	9,221	39.33	26,333		26,333	47.91
Michigan	686,981	5,317,330	6,004,311	52.23	1,246,550	7,912,672	9,159,222	51.68
Minnesota	[1] 11,195,117	[1] 3,254,187	14,449,304	52.31	27,639,063	3,908,638	31,547,701	52.43
Missouri	27,409	1,135	28,544	51.33	37,989	1,250	39,239	52.51
New Jersey		185,639	185,639	63.24		399,289	399,289	63.32
New Mexico	1,826		1,826	61.11				
New York	[2] 2,121,271	(2)	2,121,271	67.10	[2] 2,713,604	(2)	2,713,604	66.85
Pennsylvania				42.76				40.15
Tennessee	13,179		13,179	47.15	24,580		24,580	46.41
Virginia				52.53				53.28
Utah	167,933		167,933	54.11	262,087		262,087	53.18
Washington	1,825	1,730	3,555	39.41	8,326	2,431	10,757	44.48
Wisconsin		854,795	854,795	53.26		972,685	972,685	53.10
South Dakota					300		300	53.22
Wyoming	119,767	156,228	275,995	52.80	231,966	355,926	587,892	
	[1] [2] 14,705,349	[1] [2] 13,741,933	28,447,282	49.55	[2] 32,741,636	[2] 18,979,733	51,721,369	50.28

---

[1] Revised figures.

[2] Some underground included with open pit.

Iron ore mined in the United States, by mining districts and varieties in 1939, in gross tons

[Exclusive of ore containing 5 percent or more manganese]

District	Hematite	Brown ore	Magnetite	Carbonate	Total
Lake Superior	41,679,608				41,679,608
Birmingham	5,443,372	291,316	[2]		5,734,688
Chattanooga	11,144	97,467	247		108,858
Adirondack and Cornwall			[1] 2,713,141		[1] 2,713,141
Northern New Jersey			399,289		399,289
Other districts	[1] [2] 622,646	197,589	[2] 265,087	463	[1] 1,085,785
	[1] [2] 47,756,770	586,372	[1] [2] 3,377,764	463	51,721,369

[1] Small quantity of hematite from "Other districts" included with magnetite from Adirondack and Cornwall districts.

[2] Small quantity of magnetite included with hematite.

Iron ore shipped from mines in the United States, 1938–39, by States

[Exclusive of ore containing 5 percent or more manganese and ore sold for paint]

State	1938		1939	
	Gross tons	Value	Gross tons	Value
Alabama	4,281,332	$7,341,620	5,985,208	$9,971,024
California	28,378	(1)	17,173	(1)
Georgia	9,221	11,375	25,846	51,078
Michigan	4,092,902	13,139,823	11,238,605	37,026,665
Minnesota	14,535,744	44,361,534	32,370,241	97,113,591
Missouri	20,671	31,514	36,638	53,839
New Jersey	139,890	760,929	394,709	1,865,037
New Mexico	1,826	(1)		
New York Pennsylvania	2,232,837	5,867,320	2,693,856	7,403,750
Tennessee Virginia	13,456	(1)	23,759	(1)
Utah	169,947	(1)	262,087	(1)
Washington	3,333	(1)	10,747	44,188
Wisconsin	625,378	1,886,477	1,173,828	3,526,980
Wyoming	275,995	(1)	587,892	(1)
Undistributed		[2] 921,813		[2] 1,455,186
	26,430,910	74,322,405	54,820,589	158,511,338

[1] Included under "Undistributed."

[2] Includes value for States entered as "(1)."

Principal mines.—The importance of large mining units in the iron-mining industry is shown by the fact that 11 yielding more than 1,000,000 tons each produced about half the entire output in 1939. In years of heavy demand this situation is more pronounced, thus concentration of production was greater in 1939 than in 1938, when 13 mines yielding more than 500,000 tons each furnished about half the output. Of the eleven 1-million-ton producers in 1939, 9 were in Minnesota (all on the Mesabi range), with 1 each in Alabama and Pennsylvania. Only 4 contributed a million tons or more in 1938. Of the 11 principal producers in 1939, 7 were open pits; 1 was operated by underground methods, and 3 were combinations. Except for 1 mine that produced magnetite, all principal mines produced hematite.

Iron-ore mines of the United States in 1939, by size of output

Name of mine	State	Nearest town	Range or district	Mining method	Gross tons
Hull-Rust-Burt-Sellers group.	Minnesota	Hibbing	Mesabi	Open pit	5,389,179
Red Mountain group	Alabama	Bessemer	Birmingham	Underground	3,350,184
Missabe Mountain	Minnesota	Virginia	Mesabi	Open pit	2,739,250
Mahoning	do	Hibbing	do	do	2,525,921
Hill Annex	do	Calumet	do	do	2,166,603
Adams-Spruce group	do	Eveleth	do	Combination	1,606,295
Minnewas	do	Virginia	do	Open pit	1,393,281
Morris	do	Hibbing	do	Combination	1,183,718
Hill-Trumbull	do	Marble	do	Open pit	1,019,673
Frazer	do	Chisholm	do	do	1,000,317
Woodward No. 3	Alabama	Bessemer	Birmingham	Underground	885,223
Mesabi Chief	Minnesota	Nashwauk	Mesabi	Open pit	839,325
Hartley-Burt	do	Chisholm	do	do	809,505
Montreal	Wisconsin	Montreal	Gogebic	Underground	808,973
Raimund Nos. 1 and 2	Alabama	Bessemer	Birmingham	do	662,473
Susquehanna	Minnesota	Hibbing	Mesabi	Open pit	618,639
Grant	do	Buhl	do	do	601,118
Sunrise	Wyoming	Sunrise	Hartville	Combination	587,892
Biwabik	Minnesota	Biwabik	Mesabi	Open pit	575,740
Morrison	do	Coleraine	do	do	569,378
Webb	do	Hibbing	do	Combination	564,781
Pioneer	do	Ely	Vermilion	Underground	555,127
Godfrey	do	Chisholm	Mesabi	do	554,454
Negaunee	Michigan	Negaunee	Marquette	do	551,362
Anvil-Palms-Keweenaw.	do	Bessemer	Gogebic	do	533,027
Sloss Nos. 1 and 2	Alabama	do	Birmingham	do	528,962
Maas	Michigan	Negaunee	Marquette	do	520,944
Leonidas	Minnesota	Eveleth	Mesabi	do	508,360
Output of 28 [1] mines producing more than 500,000 tons each					[1] 33,649,704
Output of 10 [1] mines producing between 400,000 and 500,000 tons each					[1] 5,945,198
Output of 10 mines producing between 300,000 and 400,000 tons each					3,340,130
Output of 11 mines producing between 200,000 and 300,000 tons each					2,762,501
Output of 28 mines producing between 100,000 and 200,000 tons each					4,181,991
Output of 17 mines producing between 50,000 and 100,000 tons each					1,216,178
Output of 104 [2] mines producing less than 50,000 tons each					625,667
Grand total of United States (208 [2] mines)					51,721,369

[1] Output of 1 mine producing more than 500,000 tons included with mines producing between 400,000 and 500,000 tons each.

[2] Excludes an undetermined number of small pits. The output of these pits is included in the tonnage given.

Beneficiation.—Beneficiation of iron ore was reported at 51 mines in 8 States compared with 43 mines in 7 States in 1938. At many mines the ore is crushed and screened to improve its structure, but ore so improved is not included in the statistics on beneficiated ore. Some iron ore is recovered in the form of dust from blast furnaces; data on ore so recovered, however, have been accounted for previously in shipments from mines.

Beneficiated ore shipped from domestic mines in 1939 increased 95 percent over 1938 and comprised 17 percent of the total shipments in 1939 compared with 18 percent in 1938.

Beneficiated iron ore shipped from mines in the United States, 1938–39

[Exclusive of ore containing 5 percent or more manganese and of ore sold for paint]

State	Variety	1938		1939	
		Gross tons	Value	Gross tons	Value
Alabama	Brown ore	263,766	$605,226	471,054	$995,860
Georgia	do			11,840	21,312
Minnesota	Hématite	2,805,996	8,150,937	6,658,596	18,082,918
New Jersey	Magnetite	139,890	760,929	321,037	1,438,902
New York Pennsylvania	do do	1,613,602	4,443,421	1,933,404	5,869,653
Tennessee California	Brown ore Magnetite	13,181	34,542	23,367	52,848
		4,836,435	13,995,055	9,419,298	26,461,493

The quantity of crude ore beneficiated in the Lake Superior district (all in Minnesota) in 1939 totaled 10,194,506 gross tons and the beneficiated ore recovered 6,170,779 tons—a ratio of 1.652 to 1. In 1938 the crude ore treated totaled 5,112,485 tons and the beneficiated ore recovered therefrom 2,999,464 tons—a ratio of 1.704 to 1. Most of the concentration in this district is done by washing, but a few plants are equipped with jigs. Processes have been described by Zappfe and Hunner.[2] Most of the concentrated ore shipped from Minnesota is obtained in the treatment of wash ores from the western end of the Mesabi range which yield 65 percent concentrates and 35 percent tailings containing about 22 percent iron. Preliminary tests of a limited number of samples indicate that wash ore tailings are amenable to concentration by flotation [3] and that a merchantable commodity can be produced.[4] Improved concentration of low-grade ores is being given increased attention.

In recent years a process has been developed on the Mesabi range for roasting ore to the magnetic state and concentrating it on magnetic separators.[5] More recently heavy-density separation has been developed by Butler Bros. at the Harrison plant on the Mesabi range. The aim is to make a high-grade concentrate rather than a clean tailing. Finely ground ferrosilicon is used as a suspension medium in two 7½-foot-diameter cone separators that have a surprisingly large capacity. The material treated passes 1¼-inch but is retained on 4-mesh.[6] The ferrosilicon adhering to the concentrate and tailing is washed off on screens, thickened, passed through a magnetizing coil, and recovered by Crockett magnetic separators; it is then demagnetized and reused. The rated capacity of the plant is 160 tons of feed per hour to each cone, or a total of 320 tons per hour.[7] Experiments are being conducted on heavy-medium concentration of materials finer than 4-mesh.

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[2] Zappfe, Carl, and Hunner, E. E., Preparation for Market Requirements, Shipment and Reduction: Lake Superior Iron Ores, chap. 6, Lake Superior Iron Ore Assoc., Cleveland, 1938, pp. 77–84.

[3] Searles, John N., Some Tests with Flotation on Mesabi Wash-ore Tailings: Eng. and Min. Jour., vol. 139, No. 6, June 1938, pp. 42–44.

[4] Counselman, T. B., Dollars in Current Tailings of Mesabi Washing Plants: Eng. and Min. Jour., vol. 140, No. 4, April 1939, pp. 34–36.

[5] Craig, J. J., Magnetic Concentration on the Mesabi Makes Progress: Eng. and Min. Jour., vol. 139, No. 1, January 1938, pp. 48–52.

[6] Engelmann, E. W., Concentration and Milling: Min. and Met., vol. 21, No. 397, January 1940, p. 37.

[7] Rudolph, J., Iron-ore Beneficiation: Eng. and Min. Jour., vol. 141, No. 2, February 1940, pp. 83–84.

The first concentration plant to be erected on the Vermilion range is under construction. The plant will treat ore left in underground workings by earlier operators.

Wet magnetic methods will replace dry magnetic machines in the new mill in the Mineville-Port Henry district of New York. In the Birmingham (Ala.) district the Tennessee Coal, Iron & Railroad Co. has under way a central ore conditioning and sintering plant. The Bureau of Mines continued its work on milling of the red iron ores and ferruginous sandstones of the Birmingham area by scuffing. Results indicate possible commercial application, and plans were materializing rapidly for installation of a plant incorporating this innovation.[8] Application of this principle to ferruginous sandstones that are low in phosphorus may result in production of a commodity useful in acid steel processes.

Beneficiated ore comprised a slightly smaller part of the total shipments in 1939. As pressure for production increases, a relatively larger proportion of the total comes from direct shipping ores. Thus in 1939 the percentage of beneficiated ore was about the same as in 1937, a year of very high production. Furthermore, in 1939, the immediate need for a high tonnage late in the year also favored production of the more easily obtainable direct shipping ores. Data for recent years are shown in the following table, and corresponding statistics for 1914 (the first year for which they were gathered) to 1929 are given in Mineral Resources, 1930. Data for 1930 to 1934, inclusive, are given in Minerals Yearbook, 1935.

Iron ore shipped from mines in the United States, 1925–29 (average) and 1935–39, in gross tons, and percentage of beneficiated ore compared to the total shipped

[Exclusive of ore containing 5 percent or more manganese and of ore sold for paint]

Year	Beneficiated	Total	Percentage of beneficiated to total	Year	Beneficiated	Total	Percentage of beneficiated to total
1925–29 (ave.)	8,653,590	66,697,126	13.0	1937	12,350,136	72,347,785	17.1
1935	6,066,601	33,426,486	18.1	1938	4,836,435	26,430,910	18.3
1936	9,658,699	51,465,648	18.8	1939	9,419,298	54,820,589	17.2

Average value.—The average value per gross ton of iron ore at the mines was $2.89 in 1939 compared with $2.81 in 1938.

The table that follows gives the average value at the mines of the different classes of iron ore in 1938–39 for each of the producing States or groups of States, except where there are fewer than three shippers of a certain variety of ore in a State and permission was not given to publish the value. These data are taken directly from statements of producers and probably represent the commercial selling prices only approximately, as not all reports are comparable. Some evidently include mining costs only; others contain, in addition, the cost of selling and insuring the ore; others include an allowance for a sinking fund; and still others comprise only costs charged against blast furnaces. None of the reports, however, is supposed to include freight charges.

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[8] Dean, R. S., Annual Report of the Metallurgical Division. Progress Report 34: Bureau of Mines Rept. of Investigations 3480, January 1940, pp. 67–69.

Average value per gross ton of iron ore at mines in the United States, 1938–39

[Exclusive of ore containing 5 percent or more manganese and of ore sold for paint]

State	Hematite		Brown ore		Magnetite	
	1938	1939	1938	1939	1938	1939
Alabama	$1.67	$1.62	$2.34	$2.16		
Georgia		2.53	1.23	1.74		
Michigan	3.21	3.29				(1)
Minnesota	3.05	3.00				
Missouri	1.51	2.14	(1)	(1)		
New Jersey						
New York					$5.44	$4.73
Pennsylvania					2.63	2.75
Wisconsin	3.02	3.00				
Other States [2]	1.35	1.13	2.49	2.42	2.76	2.83
	2.82	2.69	2.31	2.12	2.79	2.99

[1] Less than 3 producers; permission to publish not given, therefore value may not be shown.

[2] 1938: California, New Mexico, Tennessee, Utah, Virginia, Washington, and Wyoming; 1939: California, Tennessee, Utah, Virginia, Washington, and Wyoming.

Consumption.—The production of 31,075,914 gross tons of pig iron in 1939 required 53,422,383 tons of iron and manganiferous iron ores, 3,735,132 tons of mill cinder and roll scale, and 721,286 tons of purchased scrap, an average of 1.862 tons of metalliferous materials (exclusive of home scrap and flue dust) per ton of iron made.

The greater part of the iron ore used in Alabama furnaces in 1939 was hematite, chiefly from mines in Jefferson County, but some came from Etowah and St. Clair Counties. Considerable brown ore, iron sinter, pyrite ash, and imported iron ore and manganese ore and small quantities of domestic manganese-bearing ores were used. The brown ore originated chiefly in mines of the Birmingham and Russellville districts, Alabama. In addition to the iron sinter (sintered pyrite ash) from Tennessee, considerable pyrite ash was shipped to Birmingham in 1939 from acid plants in other Southern States. The pyrite from which the ash was made was of both domestic and foreign origin. The domestic manganese-bearing ores came chiefly from Alabama, Arkansas, Georgia, and Tennessee. Imported manganese-bearing ores came from Cuba. In 1939 Alabama furnaces consumed an average of 2.440 tons of ore in making 1 ton of pig iron, the highest average for any State.

Maryland furnaces consumed considerable domestic ore in 1939, in addition to ores from Africa, Australia, Brazil, Chile, Cuba, and Sweden. These furnaces used an average of 1.544 tons of ore per ton of pig iron; however, they used proportionately more cinder, scale, and scrap than furnaces in any other State except Minnesota.

Illinois, Indiana, Kentucky, Michigan, Minnesota, and West Virginia blast furnaces handled Lake Superior iron ore and manganiferous iron ore exclusively. Kentucky furnaces had the lowest consumption of metal-bearing material per ton of iron.

In New York the furnaces in the Buffalo district used ore chiefly from the Lake Superior district, as well as considerable magnetite from New York, and the furnace at Standish consumed magnetite from the Chateaugay mine at Lyon Mountain, N. Y.

Blast furnaces in Ohio consumed considerable magnetite from New York, hematite and brown ore from Missouri, and some ore from Africa, in addition to ore from the Lake Superior district.

Virtually all the ore consumed in western Pennsylvania furnaces came from the Lake Superior district. Those in the eastern part of the State used some Lake ores; magnetite ores from Pennsylvania New Jersey, and New York; and considerable ore from Africa, Australia, Chile, Cuba, Sweden, and the U. S. S. R.

The Pueblo (Colo.) blast furnaces handled hematite from the Sunrise mine in Wyoming and manganese-bearing ores, chiefly from Colorado and New Mexico.

The Provo (Utah) furnace treated chiefly semialtered magnetite from the Iron Mountain mine near Cedar City, Utah, and manganese-bearing ores from Idaho and Utah.

The Tennessee furnace used Tennessee brown ore and iron sinter.

Iron ore and other metallic materials consumed and pig iron produced in 1939, by States, in gross tons

State	Metalliferous materials consumed				Pig iron produced, exclusive of ferro-alloys	Materials consumed per ton of iron made		
	Iron and manganiferous iron ores		Cinder, scale, and purchased scrap	Total		Ores	Cinder, scale, and purchased scrap	Total
	Domestic	Foreign						
Alabama	6,381,465	14,551	97,621	6,493,637	2,621,268	2.440	0.037	2.477
Illinois	4,577,855		300,040	4,877,895	2,650,541	1.727	.113	1.840
Indiana	5,680,528		479,053	6,159,581	3,309,903	1.716	.145	1.861
Kentucky	332,172		45,279	377,451	231,494	1.435	.196	1.631
Maryland	641,020	2,114,937	360,579	3,116,536	1,784,959	1.544	.202	1.746
Michigan	1,546,733		157,896	1,704,629	963,946	1.604	.164	1.768
Minnesota	314,621		38,012	352,633	176,699	1.781	.215	1.996
New York	3,515,369	582	142,452	3,658,403	2,046,447	1.718	.070	1.788
Ohio	11,739,847	7,395	1,089,897	12,837,139	7,216,278	1.628	.151	1.779
Pennsylvania	14,129,449	100,291	1,654,169	15,883,909	8,730,118	1.630	.189	1.819
West Virginia	1,272,943		54,549	1,327,492	750,016	1.697	.073	1.770
Undistributed[1]	1,028,338	24,287	36,871	1,089,496	594,245	1.771	.062	1.833
	51,160,340	2,262,043	4,456,418	57,878,801	31,075,914	1.719	.143	1.862

[1] Includes Colorado, Iowa, Massachusetts, Tennessee, and Utah.

Foreign iron and manganiferous iron ore consumed in the manufacture of pig iron in the United States, 1938–39, by sources of ore, in gross tons

Source of ore	1938	1939	Source of ore	1938	1939
Africa	8,711	47,084	Newfoundland		19,479
Asia	108	1,133	Norway		271
Australia	61,473	54,941	Sweden	4,215	7,718
Brazil	9,597	12,917	U. S. S. R.	77	54
Chile	1,232,156	1,841,797	Undistributed	16,203	4,317
Cuba	175,044	272,332			
				1,507,584	2,262,043

Stocks at mines.—During 1939 stocks at the mines declined 38 percent from 1938 and at the end of the year were the lowest since 1907.

Stocks of iron ore at mines, Dec. 31, 1938–39, by States, in gross tons

State	1938	1939	State	1938	1939
Alabama	27,506	2,805	North Carolina	200	200
Michigan	5,299,847	3,384,077	Pennsylvania	79,125	95,492
Minnesota	1,728,263	986,467	Virginia	3,086	3,126
Missouri	4,523	2,207	Washington	255	265
New Jersey	95,093	99,674	Wisconsin	356,579	158,939
New York	16,571	13,255			
				7,611,048	4,746,507

Foreign trade.—Imports of iron ore in 1939 increased 14 percent over 1938. Chile continued to be the chief source of imports into this country, furnishing 66 percent of the 1939 total, while Cuba and Sweden supplied 11 percent each. In addition to the figures in the following table, 266 tons of dross or pyrites ash were imported from Canada in 1939.

Iron ore imported for consumption in the United States, 1937–39, by countries, in gross tons

Country	1937		1938		1939	
	Gross tons	Value	Gross tons	Value	Gross tons	Value
Algeria	3,700	$17,424	7,480	$32,170	7,000	$25,167
Australia	79,588	137,444	82,827	138,614	16,520	30,184
Brazil	11,000	26,620	9,650	44,170	16,700	68,267
British West Africa (other)					11,540	55,677
Canada	5,046	44,156	875	26,441	23,275	129,251
Chile	1,438,886	2,608,696	1,577,750	2,853,060	1,586,625	2,824,252
China					10	22
Cuba	441,500	1,065,929	148,701	357,730	269,866	596,318
India, British	845	10,567				
Iran (Persia)	3,385	55,713	5,648	90,969	110	5,207
Mexico	4,183	9,613			1,722	3,319
Newfoundland and Labrador	45,080	115,804			14,450	41,183
Norway	252,657	919,936	75,625	394,705	199,966	845,355
Philippine Islands	350	4,200			22	230
Sweden	156,233	796,953	213,616	1,339,393	264,353	1,227,864
U. S. S. R.	5,100	8,466				
United Kingdom	516	20,116	228	10,131	356	13,214
Yugoslavia			55	812		
	2,442,069	5,841,637	2,122,455	5,288,195	2,412,515	5,865,510

Exports of iron ore from the United States totaled 1,057,304 gross tons valued at $3,578,086 ($3.38 a ton) in 1939 compared with 591,524 tons valued at $1,954,287 ($3.30 a ton) in 1938. Of the 1939 total, 1,032,635 tons went to Canada.

Mining in Cuba.—Shipments of iron ore from Cuba to the United States increased 84 percent in 1939 over 1938. The 1939 total of 279,133 gross tons included 164,210 tons of hematite carrying (dried) 54.90 percent iron and 72,204 tons of siliceous ore carrying (dried) 31.05 percent iron from the Daiquiri-Juraguá mines on the southern coast and 42,719 tons of nodulized brown ore carrying (dried) 54.52 percent iron from the Mayari mines near the northern coast. The Mayari mine was nonproductive in 1939.

The total stock of ore reported on hand was 164,059 gross tons at the end of the year compared with 170,044 at the end of 1938.

The following table shows shipments of iron ore from Cuba since the mines were opened in 1884. The statistics on shipments of Cuban iron ore are collected by the Bureau of Mines.

Iron ore shipped from mines in the Province of Oriente, Cuba, 1884-1939, in gross tons

Year	Juragua (hematite and magnetite), Daiquiri (hematite and a little magnetite)	Sigua (hematite)	Mayari (brown ore)	Guamá (hematite)	El Cuero (hematite)	Total
1884-1937	[1] 21,784,498	20,438	3,847,577	41,241	903,103	26,596,857
1938	141,212		10,887			152,099
1939	236,414		42,719			279,133
	22,162,124	20,438	3,901,183	41,241	903,103	27,028,089

[1] Of this quantity, 5,932 tons were sent to Pictou, Nova Scotia, and 64,228 tons to other ports outside of the United States.

REVIEW OF LAKE SUPERIOR DISTRICT

Production and shipments.—Activities in the Lake Superior district (the principal producing district) were at a much higher rate, particularly during the closing months of 1939. The season began at about the level of 1938, but the quick rise in iron and steel output during the latter half of the year caused much greater demand for iron ore. Over three-fourths (81 percent in 1939) of the domestic output comes from the Lake Superior region, where in the third quarter of 1939 mine schedules were revised upward on short notice and immediately available lake transportation capacity was pressed into service. Monthly shipments down the Lakes, the main artery of iron-ore movement, reached high levels. As much of the lake ore comes from the Mesabi range (71 percent in 1939) where open-pit operations predominate, great flexibility in output is attained and increases of considerable magnitude are possible on short notice. The mild fall weather and the late closing of navigation permitted revised requirements to be filled from a lake movement of 45,000,657 tons of iron ore and manganiferous iron ore compared with 19,263,886 tons in 1938. More ore could have moved if the season had been longer, but the tonnage shipped was sufficient to raise combined stocks at furnaces and lower Lake ports at the end of the season above those on hand at the end of the 1938 season, notwithstanding the fact that consumption was at a much higher rate. Shipments of ore from the Lake Superior district totaled 44,849,573 gross tons (44,197,610 gross tons of iron ore and 651,963 tons of manganese-bearing ores containing 5 percent or more manganese) compared with 19,546,835 tons (19,254,171 tons of iron ore and 292,664 tons of manganese-bearing ore containing 5 percent or more manganese) in 1938. The iron-ore-shipment figures given above include 872 tons of paint ore in 1939 and 147 tons in 1938.

Production in the Lake Superior region in 1939 increased 96 percent over 1938 but was considerably below the record. The district furnished 81 percent of the United States total compared with 75 percent in 1938, thereby regaining part of the ground lost to other districts, particularly the Birmingham district, in 1938. Several ranges contributed to the district total. The Mesabi was the largest producer, furnishing 71 percent of the district output and 57 percent of the United States total. The output by ranges is shown in the following table. After 1905 the figures do not include manganiferous iron ore containing 5 percent or more manganese.

Iron ore mined in the Lake Superior district, 1854–1939, by ranges, in gross tons

[Exclusive after 1905 of ore containing 5 percent or more manganese]

Year	Marquette	Menominee	Gogebic	Vermilion	Mesabi	Cuyuna	Total
54-1937	194, 940, 914	181, 565, 297	206, 589, 891	64, 802, 561	1, 030, 463, 863	25, 170, 759	1, 703, 533, 285
38	2, 686, 713	1, 283, 563	2, 888, 830	932, 505	13, 256, 605	260, 194	21, 308, 410
39	3, 906, 195	1, 921, 704	4, 304, 008	1, 400, 341	29, 522, 227	625, 133	41, 679, 608
	201, 533, 822	184, 770, 564	213, 782, 729	67, 135, 407	1, 073, 242, 695	26, 056, 086	1, 766, 521, 303

In 1939, 69 percent of the ore produced on the iron ranges of the Lake Superior district came from open-pit mines. A large part of the open-pit production originates in operations on the Mesabi range, which in 1939 supplied 65 percent of the open-pit ore mined in the district. There is no open-pit mining in Wisconsin and relatively little in Michigan. In addition to the output on the Mesabi range, there is some open-pit production in Minnesota on the Cuyuna range.

Recent years have witnessed significant changes in open-pit mining practice in the iron country.[9] The use of small tractor shovels, tractors, wagons, scrapers, scraper hoists, heavy trucks, and conveyors continued to expand in 1939. In May 1939, six trucks were received at the Mahnomen mine on the Cuyuna range to replace railroad haulage. These trucks[10] are four-wheeled, with 13.50-inch by 24-inch dual tires on the rear and 12-inch by 24-inch tires on the front. The gross load capacity is 62,000 pounds and the payload capacity 36,000 pounds. The average load per truck was 12.9 long tons in 1939. The 9-cubic yard water-level-capacity body is carried over the rear axles, is rear dump and scoop-ended, and is raised and lowered by a horizontal double-acting hydraulic cylinder through rocker arms. The oil-burning engine delivers 185 horsepower, and the trucks move 8 to 10 miles per hour up an 8-percent grade when loaded. The average haul at the Mahnomen mine was 0.73 mile loaded and 0.70 mile empty; the ore was elevated an average of 206 feet. For the 304,168 tons hauled during 1939 the total ton-mile cost was $0.0644.[11]

Of interest in 1939 was the shipments from the Michipicoten range in Ontario, Canada. Although this output is not included in Bureau production figures, it enters the same commercial channels. The ore came from the old Helen mine of the Algoma Steel Corporation, which in August 1939 began production from new open-pit operations and shipments for the first time since 1922. A total of 111,307 tons of sinter, made from the carbonate ores, was shipped during the season. Other Canadian production in the lake region of Ontario will come from the Steep Rock Lake some 150 miles west of Port Arthur, where large reserves of high-grade hematite are reported to have been developed. The Ontario Government is encouraging production of iron ore by a bonus of 2 cents per unit of iron.

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[9] Ridgway, Robert H., and Davis, H. W., Iron Ore, Pig Iron, Ferro-alloys and Steel: Bureau of Mines Minerals Yearbook, 1939, pp. 547-548.

[10] Gallagher, W. H., Truck Haulage at the Mahnomen Mine: Min. Cong. Jour., vol 25, No 11, November 1939, pp. 28-30.

[11] Data from unpublished manuscript by F. A. Kelley, general supt., Pickands, Mather & Co., Crosby, Minn.

Analyses.—The following table, compiled by the Lake Superior Iron Ore Association, summarizes the average analyses of the total tonnages of all grades of ore shipped and shows the remarkable uniformity maintained during the past 5 years. This uniformity does not mean, of course, that the average grade of available Lake Superior ore is not declining. The grade of shipments has been maintained partly by beneficiation and partly by mixing ores from different deposits. The method of sampling and grading Lake Superior iron ores has been described by Bayer [12] and the method of classification and sampling by Murray.[13]

Average analyses of total tonnages (bill-of-lading weights) of all grades of iron ore from all ranges of Lake Superior district, 1935–39

Year	Gross tons	Iron (natural)	Phosphorus	Silica	Manganese	Moisture
		Percent	*Percent*	*Percent*	*Percent*	*Percent*
1935	28,214,056	51.44	0.093	8.93	0.79	10.7
1936	44,745,754	51.45	.091	8.62	.81	10.9
1937	61,972,823	51.53	.091	8.27	.82	11.3
1938	19,353,497	51.90	.089	8.25	.81	10.13
1939	44,983,754	51.75	.085	8.27	.76	10.7

Stocks at Lake Erie ports.—At the close of navigation in 1939, according to the Lake Superior Iron Ore Association, 5,216,496 gross tons were in stock at Lake Erie ports compared with 5,290,294 tons on the corresponding date in 1938. At the opening of navigation in May 1940, 2,950,752 tons were in stock at these ports, a decrease of 1,534,215 tons from the figure on May 1, 1939. Withdrawals from docks were therefore 2,265,744 tons during the winter of 1939–40.

Prices of Lake Superior ore.—The prices established May 4, 1939, for the four standard grades of Lake Superior ore were the same as in 1937 and 1938 but were 45 cents a ton more than the price that had been maintained from 1929 to 1936. The unit prices for 1937, 1938, and 1939 for base ore of the various grades quoted at Lake Erie ports were as follows: Old-range bessemer, 10.194 cents; Mesabi bessemer, 9.903 cents; old-range nonbessemer, 9.903 cents; and Mesabi nonbessemer, 9.612 cents. The prices that correspond to these unit prices are, respectively, $5.25, $5.10, $5.10, and $4.95 a gross ton. The base of the four standard grades for 1925–39 is an iron content of 51.5 percent natural. For the bessemer grades the phosphorus content is 0.045 percent (dry), and for the nonbessemer grades the phosphorus content ranges from 0.045 to 0.18 percent. Ores containing more than 0.18 percent phosphorus are classed as high-phosphorus ores, whereas those containing 18 percent or more silica are classed as siliceous ores.

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[12] Bayer, E. P., Sampling and Grading Mesabi Iron Ore: Min. and Met., vol. 18, No. 372, December 1937, pp. 547–548.
Bayer, E. P., Grading Lake Superior Iron Ores: Eng. and Min. Jour., vol. 139, No. 3, March 1938, pp. 50–51.

[13] Murray, C. B., Classification and Sampling: Lake Superior Iron Ores, chap. 4, Lake Superior Iron Ore Assoc., Cleveland, 1938, pp. 69–72.

Reserves.—Estimates of ore reserves for Minnesota, furnished by the Minnesota Tax Commission, and for Michigan, furnished by the Michigan Board of Tax Commissioners, are shown in the following tables. These estimates reveal decreases from 1938 of 9,581,775 gross tons in Minnesota and 6,097,470 tons in Michigan. Reserves in Wisconsin have been estimated recently at 5,500,000 tons.

Unmined iron-ore reserves in Minnesota, May 1, 1935–39, in gross tons

Range	1935	1936	1937	1938	1939
Mesabi	1,163,087,457	1,164,802,947	[1] 1,172,908,376	[2] 1,143,339,871	1,132,513,348
Vermilion	13,307,031	13,074,509	13,943,325	13,599,025	13,631,484
Cuyuna	46,709,113	63,066,428	61,922,739	60,690,596	61,902,885
	1,223,103,601	1,240,943,884	1,248,774,440	1,217,629,492	1,208,047,717

[1] 200,000 tons removed from tax roll by applications granted.

[2] 8,152,896 tons removed from tax roll—land has reverted to State.

Iron-ore reserves in Michigan, Jan. 1, 1936–40, in gross tons

Range	1936	1937	1938	1939	1940
Gogebic	45,615,323	42,757,025	40,706,291	40,456,002	37,160,900
Marquette	52,461,173	51,339,347	49,869,363	52,130,385	49,573,794
Menominee	66,347,752	59,936,572	58,031,692	57,168,510	56,922,733
	158,424,248	154,032,944	148,607,346	149,754,897	143,657,427

MINING BY STATES

Alabama.—Production of iron ore in Alabama during 1939 increased 39 percent over 1938. About 91 percent of the 1939 production came from underground mines and the remainder from open-cuts. Hematite represented 91 percent of the 1939 total, and much of this red ore contained enough or nearly enough lime to be self-fluxing. The hematite is derived chiefly from underground mines on Red Mountain near Birmingham in Jefferson County, where in 1939 Raimund Nos. 1 and 2, Red Mountain group (comprising the Muscoda, Wenonah, and Ishkooda groups), Sloss Nos. 1 and 2, and Woodward No. 3 mines were producers. Several smaller mines (open-pit and underground) in Etowah, Jefferson, and St. Clair Counties contributed to the total output of hematite ore. The iron content of the hematite produced in 1939 averaged (natural) 35.40 percent, manganese 0.15 percent, phosphorus 0.31 percent, and lime 16.12 percent. The Red Mountain group, with 3,350,184 tons, was the second largest producer in the United States in 1939.

Limonite (brown ore) is mined from a number of widely scattered deposits in Alabama, but production is not nearly so large as that of red ore. In 1939 the output of brown ore comprised 9 percent of the

Alabama total. Brown ores, however, are of higher grade and usuall have been subjected to beneficiation, although some operations ar rather crude. The brown ore mined in 1939 averaged (natural) 4 percent iron and 0.67 percent manganese. Brown ore is mined from open-cuts and was produced chiefly from the Russellville mines in Franklin County, the Champion mine in Blount County, and the Martaban, Reno, and Woodstock mines in Tuscaloosa County.

California.—Production in California in 1939 was small and came from four mines, two producing magnetite (one in Santa Cruz County and one in Inyo County) and two producing hematite (one in San Bernardino County and one in Inyo County). The magnetite averaged 64 percent iron; the hematite, which averaged 56 percent iron, was absorbed chiefly by the cement industry.

Georgia.—Production of iron ore in Georgia increased to 26,33 gross tons in 1939 from 9,221 tons in 1938. Ten mines—three in Bartow County, one each in Dade, Haralson, and Polk Counties, and four in Walker County—furnished the output in 1939. The output from Georgia in 1939 comprised 18,219 tons of brown ore containing (natural) 41 to 47 percent iron and 0.13 to 3 percent manganese; 7,867 tons of hematite containing (natural) 45 to 60 percent iron and 0.15 to 1 percent manganese; and 247 tons of magnetite averaging (natural) 64.76 percent iron, 0.1 percent manganese, and 0.03 percent phosphorus. Shipments of iron ore comprised 19,64 tons to blast furnaces, 6,203 tons to cement plants, and 487 tons to paint manufacturers.

Michigan.—Output from Michigan comes from three ranges—the Marquette, the Menominee, and the Gogebic. All ranges increased their production in 1939, the Gogebic showing the largest tonnage gain. Production in Michigan rose 53 percent in 1939 over 193 and totaled 9,159,222 gross tons. Of the 1939 total, 86 percent came from underground mines; the Negaunee mine, an underground producer on the Marquette range, was the largest producer. The iron content (natural) of the ore mined in Michigan in 1939 average 51.68 percent compared with 52.23 percent in 1938.

Iron-ore reserves in Michigan at the end of 1939 totaled 143,657,42 gross tons, a decrease of 6,097,470 tons during the year.

A report of the iron-ore mines of Michigan for 1939, published by the Geological Survey Division of the Michigan Department of Conservation,[14] shows that the average number of men employed was 5,818 (5,633 in 1938), the average number of days worked 206 (15 in 1938), the average daily wage $7.07 ($7.59 in 1938), the average yearly earning $1,457.12 ($1,192.29 in 1938), and the average tons of ore mined per man per day 6.63 (5.32 in 1938).

The data in the following table on average per-ton costs of mining ore at underground mines and at siliceous open pits have been abstracted from statistics published in much greater detail by the Geological Survey Division of Michigan.

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[14] Pardee, F. G., and Eddy, G. E., General Statistics Covering Costs and Production of Michigan Ir Mines: Michigan Dept. of Conservation, Geol. Survey Div., Lansing, 1940.

Average per-ton costs of mining iron ore at underground mines and at siliceous open pits in Michigan in 1939

Item	Underground				Siliceous open pits
	Gogebic	Marquette	Dickinson and Iron	Total	
Cost of mining	$1.5481	$1.6936	$1.6611	$1.6359	$0.4447
Deferred mining cost	.2032	.0731	.1230	.1296	.0394
Taxes	.3042	.2824	.2016	.2750	.0470
General overhead	.2299	.2533	.1750	.2294	.1005
Transportation	1.8208	1.4959	1.6324	1.6480	1.5211
Marketing	.0550	.0904	.0775	.0756	.0798
Royalty	.4008	.2960	.2497	.3228	.0967
Interest on borrowed money	.0001	.0133	.0125	.0086	.0014
Total ore cost	4.5621	4.1980	4.1328	4.3249	2.3306
Lake Erie value per ton	5.3086	5.2377	5.0370	5.2218	2.4791
Gross ore profit [1]	.7465	1.0397	.9042	.8969	.1485

[1] This figure does not represent true profit, as much ore is sold below the Lake Erie price.

Minnesota.—More than 1 billion gross tons (1,166,434,188) of iron ore have been produced in Minnesota. In 1939 output increased 118 percent over that in 1938. Three ranges contribute to Minnesota's production—the Cuyuna, the Mesabi, and the Vermilion. The Mesabi range supplies a large part of the Minnesota total and in 1939 produced 29,522,227 tons. Output from open-pit mines in 1939 furnished 88 percent of the total compared with 77 percent in 1938 and 88 percent in 1937. Of the 11 domestic mines producing more than 1 million tons each in 1939, 9 were in Minnesota; of these 7 were open pits, and 2 used combination open-pit and underground methods. Of the 65 mines in Minnesota active in 1939 (55 in 1938), 45 (29 in 1938) yielded more than 100,000 tons each. The iron content (natural) of the ore mined in 1939 averaged 52.43 percent compared with 52.34 percent in 1938.

According to the annual report of the mine inspector of St. Louis County, the average number of men employed in iron mines in St. Louis County was 4,589 in 1939 (3,773 in 1938), and the average daily wage was $6.61 ($6.60 in 1938) for 8 hours. In 1939, 3,098,991 cubic yards of overburden were removed compared with 3,762,318 yards in 1938.

According to the annual report of the mine inspector of Itasca County, the average number of men employed in iron mines was 2,567 in 1939 (2,132 in 1938), and the average daily wage was $6.08 ($5.82 in 1938) for 8 hours. In 1939, 4,555,471 cubic yards of overburden were removed compared with 3,807,920 yards in 1938.

Unmined iron-ore reserves in Minnesota on May 1, 1939, totaled 1,208,047,717 gross tons, a decrease of 9,581,775 tons from 1938.

Missouri.—An undetermined number of small mines in Butler, Carter, Crawford, Dent, Franklin, Howell, Iron, Madison, Phelps, Pulaski, Ripley, St. Francois, Shannon, and Wayne Counties supplied the iron-ore output of Missouri in 1939. The ore, which averaged 52.51 percent iron, comprised both hematite and brown ore, was mined by open-pit and underground methods, and was shipped to paint and steel plants as well as nonferrous smelters.

New Jersey.—Output of iron ore in New Jersey increased in 1939 over 1938 and totaled 399,289 tons. The ore, all magnetite and all produced from underground operations, came from three mines in Morris County and one mine in Warren County in the northern part of the State. New Jersey ores are crushed and concentrated before shipment. Most of the concentration is done magnetically, although some nonmagnetic martite is recovered by gravity methods and some hand sorting is practiced, principally to recover high-grade lump used in open-hearth steel furnaces. The concentrates produced in 1939 averaged (natural) 63.32 percent iron. The largest output came from the Scrub Oaks mine. Other producers were the Mt. Hope, Richard, and Washington mines.

New York.—The iron ore produced in New York during 1939 was chiefly magnetite from underground operations at the Harmony and Old Bed shafts in Essex County and the Chateaugay mine in Clinton County. Some hematite was mined for paint in Oneida and Wayne Counties. Shipments from New York in 1939 included sinter averaging 68 percent iron, lump averaging 61 percent iron, and concentrates averaging 68 percent iron.

The largest producer was the Republic Steel Corporation, which operates properties at Mineville near Port Henry and at Lyon Mountain. The Chateaugay mine at Lyon Mountain was acquired by the corporation on August 1, 1939.

Pennsylvania.—Pennsylvania is the most important source of magnetite in the United States. The output comes from the Cornwall mine in Lebanon County, where the ore is extracted by both open-pit and underground methods. In addition, some carbonate ore for use in paint was mined in Carbon County in 1939. Hickok[15] has summarized the history of iron-ore production in Pennsylvania and the changing economic conditions that affect the industry and control its history; he also discusses the geological environment, mode of origin, and future reserves of the various types of iron ore.

South Dakota.—A small quantity (300 gross tons) of brown iron ore was mined at a property in Pennington County and shipped to paint plants in 1939.

Tennessee.—The output of iron ore (brown ore and hematite) in Tennessee in 1939 came from two mines (one in Hickman County and one in Lewis County) and an undetermined number of small surface workings in Hamilton County; it contained 46.41 percent iron and was shipped to blast-furnace and paint plants.

In addition, considerable sintered pyrite ash was made at the plants of the Tennessee Copper Co. in Ducktown Basin. This sinter, which contained 67.4 percent iron and 0.005 percent phosphorus in 1939, moved largely to the blast furnaces in the Birmingham district, where it was added to the blast-furnace burden. Such sinter is not included in iron-ore production or shipment figures for the United States.

Utah.—Two operators in Iron County supplied the Utah total in 1939. By far the larger output came from the Iron Mountain mine while a relatively small quantity came from the Great Western mine. The ore, principally semialtered magnetite, contained (natural) 53.14

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[15] Hickok, W. O., IV, Iron Ores of Pennsylvania: Pennsylvania Geol. Survey Bull. M 18-B, 4th ser., 1939, 21 pp.

percent iron and moved largely to the blast furnace at Provo, Utah, although small quantities went to steel and cement plants.

Virginia.—The output of iron ore in Virginia is small. The entire 1939 production was brown ore from Botetourt County and averaged (natural) about 53 percent iron. The ore was used in the manufacture of hydrogen gas.

Washington.—Two open-pit mines and one underground mine produced the total output of Washington in 1939. Two mines—the Napoleon in Stevens County and the Keystone in Pend Oreille County—yielded hematite averaging (natural) 35.10 percent iron, which was used for cement manufacture, and the Neutral mine in Okanogan County yielded magnetite averaging (natural) 68.73 percent iron, which was used in making ferromagnesite.

Wisconsin.—The Montreal underground mine in Iron County was the larger producer of iron ore in Wisconsin, contributing 808,973 gross tons of the 972,685 produced in 1939. The ore—hematite—averaged (natural) 52.88 percent iron, 1.17 percent manganese, and 0.057 percent phosphorus. The Cary underground mine, also in Iron County, was the other producer in 1939 and furnished 163,712 tons of hematite containing (natural) 53.98 percent iron, 0.62 percent manganese, and 0.048 percent phosphorus. Shipments from Wisconsin mines totaled 1,173,828 tons in 1939.

Wyoming.—The output of iron ore from Wyoming in 1939 came from the Sunrise mine and comprised 587,892 gross tons of hematite containing (natural) 53.22 percent iron, 0.07 percent manganese, and 0.066 percent phosphorus. Much of the ore is a red, earthy hematite similar to Mesabi ore. Production came from both open-pit and underground operations.

Iron ore mined in the United States, 1938–39, by States and counties

[Exclusive of ore containing 5 percent or more manganese]

State and county	1938		1939	
	Active mines	Gross tons	Active mines	Gross tons
Alabama:				
Bibb and Tuscaloosa	3	143,736	3	238,708
Blount	2	31,764	2	40,374
Butler, Conecuh, and Crenshaw	2	4,509	2	20,082
Calhoun	5	21,378	9	34,107
Cherokee	5	12,826	12	27,186
Chilton	2	5,559	2	4,651
Cleburne	2	2,138		
Coosa	1	47	1	1,631
Etowah	1	77	1	509
Franklin	2	101,790	2	120,183
Jefferson	6	3,970,604	8	5,443,372
Lamar			2	494
Marshall			1	83
Pike			1	3,316
St. Clair	3	233	6	1,987
Shelby	2	4,417	1	7,583
Talladega	1	7,251	5	16,241
	37	4,303,329	58	5,960,507
California:				
San Bernardino	1	28,380	1	17,173
Inyo	1		2	
Santa Cruz	1		1	
	3	28,380	4	17,173
Georgia:				
Bartow	3	9,176	3	18,129
Dade			1	42
Haralson			1	247
Polk	1	45	1	90
Walker			4	7,825
	4	9,221	10	26,333
Michigan:				
Dickinson	3	270,777	3	428,454
Gogebic	10	2,034,035	9	3,331,323
Iron	12	1,012,786	10	1,493,250
Marquette	14	2,686,713	14	3,906,195
	39	6,004,311	36	9,159,222

Iron ore mined in the United States, 1938-39, by States and counties—Continued

[Exclusive of ore containing 5 percent or more manganese]

State and county	1938		1939	
	Active mines	Gross tons	Active mines	Gross tons
Minnesota:				
Crow Wing	4	260,194	5	625,133
Itasca	17	3,603,483	24	7,415,016
St. Louis	34	10,585,627	36	23,507,552
	55	14,449,304	65	31,547,701
Missouri:				
Butler, Carter, Crawford, Howell, Phelps, Pulaski, Ripley, Shannon, and Wayne	[1] 10	25,995	[1] 7	33,314
Dent	1	1,135	1	1,250
Franklin	1	1,200	1	1,646
Iron			1	1,369
Madison			1	985
St. Francois	1	214	1	684
	[1] 13	28,544	[1] 12	39,239
New Jersey:				
Morris	3	185,639	3	399,289
Warren			1	
	3	185,639	4	399,289
New Mexico:				
Grant	1	1,826		
New York:				
Essex	1	2,120,823	1	2,713,141
Clinton	1		1	
Oneida	1		1	
Wayne	1		1	
Pennsylvania:				
Lebanon	1		1	
Carbon	1	448	1	463
	6	2,121,271	6	2,713,604
South Dakota:				
Pennington			1	300
Tennessee:				
Hamilton			(2)	24,580
Hickman	1	13,179	1	
Lewis	1		1	
Virginia: Botetourt	2		2	
	4	13,179	[1] 4	24,580
Utah: Iron	2	167,933	2	262,087
Washington:				
Okanogan			1	3,000
Pend Oreille	1	1,730	1	2,431
Stevens	1	1,825	1	7,326
	2	3,555	3	12,757
Wisconsin: Iron	2	854,795	2	972,685
Wyoming:				
Platte	1	275,995	1	587,892
	[1] 172	28,447,282	[1] 208	51,721,369

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[1] In addition there is an undetermined number of small pits. The output of these pits is included in the tonnage given.

[2] Undetermined number of small pits. The output of these pits is included in the tonnage given.

MEN EMPLOYED AND OUTPUT PER MAN AT MINES

Although complete information on employment at iron-ore mines in 1939 is not yet available, incomplete figures indicate that about 22,000 men working about 39,000,000 man-hours were required to produce 51,721,369 tons of merchantable ore, an average of 1.326 tons per man-hour. Thus, the total man-hours worked in 1939 advanced 27 percent over 1938, whereas the output of merchantable ore increased 82 percent; in consequence, output per man-hour increased 43 percent. The gain in output per man-hour in 1939 compared with 1938 was due mainly to a shift in the production of ore from underground to open-pit mines and to nearer-capacity operation of large units. Specifically, about three-fifths of the output came from open-pit mines in 1939 compared with about one-half in 1938, and 11 mines produced more than 1 million tons each in 1939 compared with 4 in 1938.

Figure 3 shows trends in employment and output at iron-ore mines in the United States from 1923 to 1938.

During 1938, the last year for which complete statistics are available, the low level of iron-ore output resulted in a decrease in labor at the mines. The average number of men decreased, as did the average number of days and total man-hours worked. In 1938, 19,788 men working 30,625,760 man-hours produced 28,447,282 tons of merchantable ore, an average output of 0.929 ton per man-hour, whereas in 1937, 25,945 men working 51,416,193 man-hours produced

72,093,548 tons of merchantable ore, or 1.402 tons per man-hour. Thus, although the output of merchantable ore declined 61 percent from 1937 to 1938, the number of men, total man-hours worked, and output per man-hour decreased only 24, 40, and 34 percent, respectively. The output per man-hour in 1937 exceeded that for any year since records have been compiled and undoubtedly was greater than in any other year. The relatively larger labor requirements in 1938 than in 1937 resulted from several factors—the proportionately smaller output of open-pit mines and of direct shipping ore, the partial-capacity production of operating units, and the stripping of proportionately more overburden in preparation for future mining.

The number of man-hours of labor decreased in all districts in 1938 from 1937, but the decrease was relatively more in the Lake Superior and Northeastern districts than in the Southeastern and Western districts. In the Lake Superior district, the principal producing region, output of merchantable ore decreased 65 percent in 1938 from 1937, but this decrease was more pronounced than the decline in labor requirements, as the total man-hours worked dropped only 42 percent. Much of the Lake Superior output comes from Minnesota, where open pits furnished 77 percent of the State total in 1938. Because of this preponderant production from open pits, output per man-hour in Minnesota is greater than in any other State or district and in 1938 amounted to 1.390 tons. Output per man-hour in 1938, however, was substantially less than in 1937 (2.479 tons) owing to the smaller proportion of ore from open-pit mines and to partial-capacity operations. Although, as was pointed out in Minerals Yearbook, 1934 (p. 322), the improved performance in mining iron ore has been closely related to advances in mechanization, better mining methods, operation of larger units, and more efficient management of mines, the gain in the 6-year period 1933–38 compared with the 10-year period 1923–32 was due chiefly to expansion of open-pit operations in Minnesota. For example, whereas about 75 percent of the merchantable ore produced in Minnesota from 1923 to 1932 came from open-pit mines, 85 percent was so produced in 1933–38. The significance of this

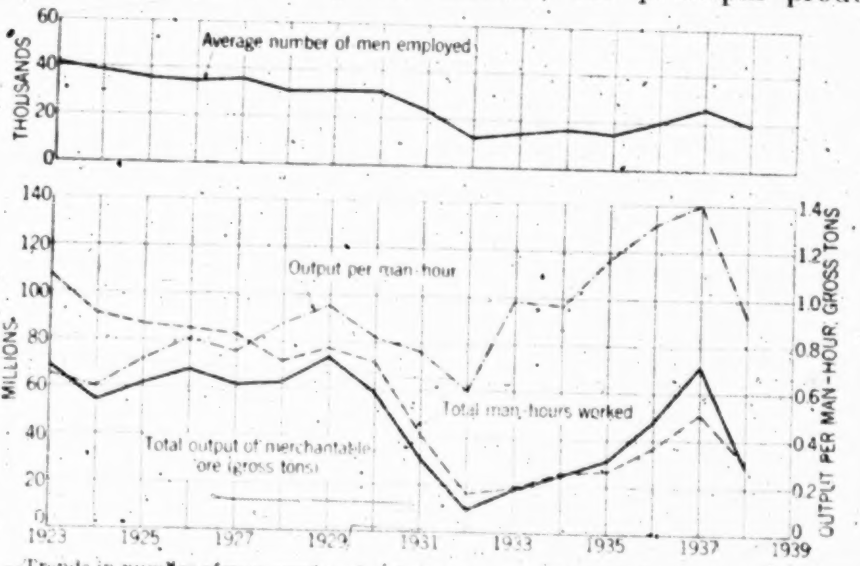

FIGURE 3.—Trends in number of men employed at iron-ore mines, output of merchantable ore, man-hours worked, and output per man-hour in the United States, 1923–38.

shift can be appreciated when it is recalled that Minnesota contributed 61 percent of the total merchantable ore produced in 1923–38 and that during this period the output of men at open-pit mines averaged 2.019 tons per man-hour compared with only 0.699 ton per man-hour for workers at underground mines.

The greater output per man-hour in recent years also was due partly to the stripping of proportionately less overburden in Minnesota in 1933–38 than in 1923–32, in preparation for future mining. In 1933–38 about one-fourth cubic yard of overburden was removed for each ton of merchantable ore mined in Itasca and St. Louis Counties, Minn., whereas in 1923–32 about one-half cubic yard of overburden was removed for each ton of merchantable ore mined. Any material shift in the labor force used for direct mining of the ore at the expense of that used in stripping will result in a much higher output per man-hour for any year. This is illustrated strikingly in figure 4, which shows that in 1926, 1933, 1935, 1936, and 1937, when only about one-fourth cubic yard of overburden was removed for each ton of merchantable ore mined at both open-pit and underground mines, the output per worker increased substantially, whereas in the other years, when one-third to four-fifths cubic yard of overburden was removed for each ton of ore mined, the output per worker decreased.

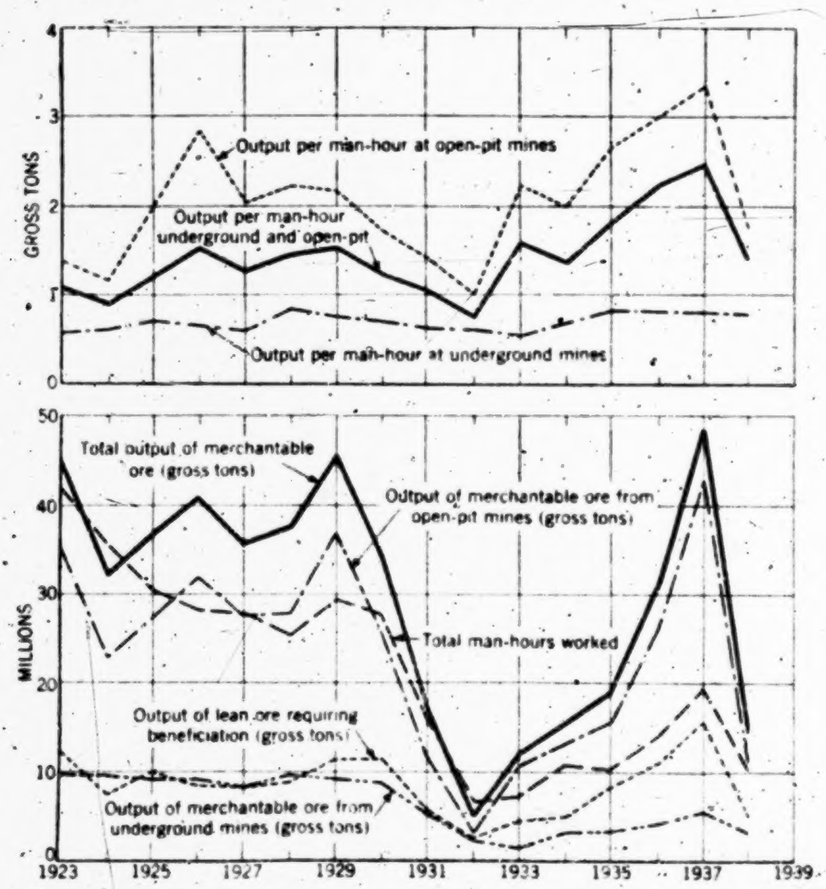

FIGURE 4.—Trends in output of merchantable iron ore per man-hour at open-pit mines in Minnesota compared with production of merchantable and lean ore and total man-hours worked, 1923–38.

Another factor that affects the output per man-hour is the tendency to mine leaner ore. Proportionately more lean ore requiring beneficiation has been mined in Minnesota in recent years than during the period 1923–32. In 1933–38, for instance, beneficiated ore represented 21 percent of the total merchantable ore compared with an average of only 16 percent in 1923–32.

Most of the ore mined in the Southeastern district—the second largest producing region—is obtained from underground operations. Output of merchantable ore per man-hour in this area increased slightly to 0.631 ton in 1938 from 0.624 ton in 1937. The largest and most consistent producing mines in the Southeastern district are in Jefferson County, Ala., where 3,803 men working 6,058,805 man-hours in 1938 produced 3,970,604 tons of merchantable ore, equivalent to an average output of 0.655 ton per man-hour. Virtually all ore produced in Jefferson County comes from underground mines. In comparing the man-hour cost of mining ore in Jefferson County, Ala., with that at underground mines in the Lake Superior district one should remember that whereas the ore in the Lake Superior district is considerably richer in iron the ore from the Jefferson County mines contains enough or almost enough lime to make it self-fluxing. Thus, the lower iron content is partly offset by the self-fluxing nature of the ore, although it is impossible to show this important characteristic in the productivity figures.

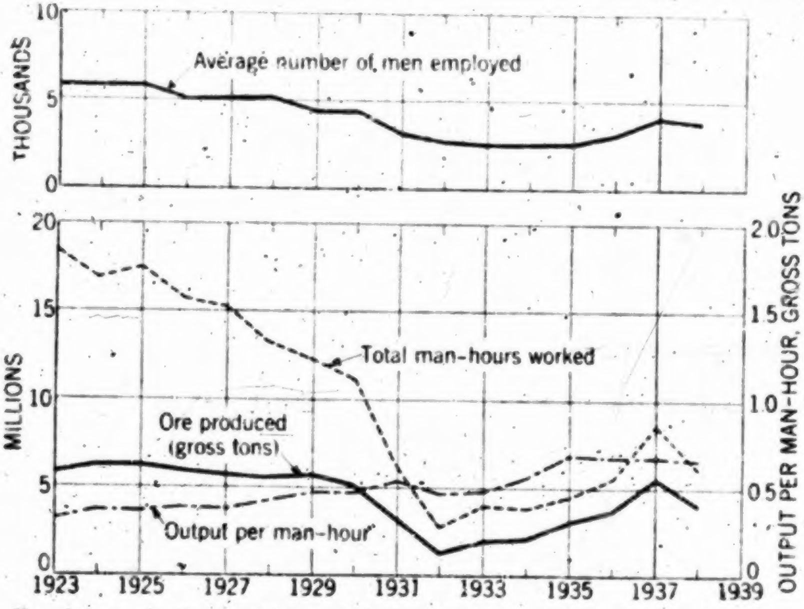

FIGURE 5.—Trends in production, man-hours worked, output per man-hour, and number of men employed at iron-ore mines in Jefferson County, Ala., 1923–38.

Figure 5 shows trends in production and employment at iron-ore mines in Jefferson County, Ala., 1923–38.

In the Northeastern district the average output of merchantable ore per man-hour increased to 0.735 ton in 1938 from 0.523 ton in 1937. The gain in productivity was due partly to the fact that proportionately more ore was produced in 1938 than in 1937 from the Cornwall open pit, where a relatively high output per man-hour is attainable.

The following table shows employment at iron mines and beneficiating plants, quantity and tenor of ore produced, and average output per man by districts and States in 1938. Corresponding statistics and supplementary data are given in Minerals Yearbook, 1934 to 1939, inclusive.

Employment at iron-ore mines and beneficiating plants, quantity and tenor of ore produced, and average output per man in 1938, by districts and States

[Exclusive of ore containing 5 percent or more manganese]

District and State	Employment					Production									
	Average number of men employed	Time employed				Crude ore (partly estimated), gross tons	Merchantable ore			Average per man (gross tons)					
		Average number of days	Total man-shifts	Man-hours			Gross tons	Iron contained		Crude ore (partly estimated)		Merchantable ore			
				Average per shift	Total			Gross tons	Per cent natural	Per shift	Per hour	Per shift	Per hour	Iron contained	
														Per shift	Per hour
Lake Superior:															
Michigan	5,712	190	1,085,278	8.0	8,684,421	6,004,311	6,004,311	3,135,807	52.23	5.533	0.691	5.533	0.691	2.889	0.361
Minnesota	7,113	183	1,298,860	8.0	10,396,059	16,560,932	14,449,394	7,558,445	52.31	12.750	1.593	11.125	1.390	5.819	.727
Wisconsin	546	253	138,126	8.0	1,105,018	854,795	854,795	455,306	53.26	6.189	.774	6.189	.774	3.296	.412
	13,371	189	2,522,264	8.0	20,185,498	23,420,038	21,308,410	11,149,558	52.32	9.285	1.160	8.448	1.056	4.420	.552
Southeastern:															
Alabama	4,262	197	838,572	8.1	6,785,808	4,903,761	4,303,329	1,564,626	36.36	5.848	.723	5.132	.634	1.866	.231
Georgia	94	82	7,694	9.3	71,830	9,221	9,221	3,627	39.33	7.100	.761	2.911	.312	1.281	.137
Tennessee						45,412	13,179	6,233	47.15						
Virginia									52.53						
	4,356	194	846,266	8.1	6,857,638	4,958,394	4,325,729	1,574,486	36.40	5.859	.723	5.112	.631	1.861	.230
Northeastern:															
New Jersey	483	216	104,195	8.0	833,338	311,320	185,639	11[illegible],405	63.24	2.988	.374	1.782	.223	1.127	.141
New York	1,180	215	289,262	8.0	2,303,830	2,521,514	2,121,271	983,412	67.10	8.717	1.094	7.333	.921	3.400	.427
Pennsylvania									42.76						
	1,663	237	393,457	8.0	3,137,168	2,832,834	2,306,910	1,100,847	47.72	7.200	.903	5.863	.735	2.798	.351
Western:															
California	192	139	26,646	8.8	235,760	28,917	28,380	15,629	55.07	8.661	.979	8.641	.977	4.641	.525
Missouri						28,544	28,544	14,652	51.33						
New Mexico						1,826	1,826	1,116	61.11						
Utah						167,933	167,933	90,874	54.11						
Washington						3,555	3,555	1,401	39.41						
Wyoming	206	127	26,212	8.0	209,696	275,995	275,995	145,725	52.80	10.529	1.316	10.529	1.316	5.559	.695
	398	133	52,858	8.4	445,456	505,770	503,233	269,397	53.22	9.587	1.138	9.577	1.136	5.097	.605
	19,788	193	3,814,845	8.0	30,625,760	31,718,036	28,447,282	14,094,288	49.55	8.314	1.036	7.457	.929	3.695	.460

WORLD PRODUCTION

The following table shows the production of iron ore by countries from 1935 to 1939, insofar as statistics are available. Although complete returns for 1939 are not yet available it is evident that world production was considerably greater than in 1938. Output in the atter year amounted to 162,000,000 metric tons, of which the United States supplied only 18 percent, compared with 211,000,000 tons in 937, of which the United States supplied 35 percent.

World production of iron ore, 1935–39, by countries, in metric tons

[Compiled by M. T. Latus]

Country[1]	1935	1936	1937	1938	1939
North America:					
Cuba (shipments)	228,408	456,827	496,258	154,540	283,613
Guatemala			101		(2)
Mexico	95,590	123,121	136,018	118,251	(2)
Newfoundland	677,137	907,646	1,635,554	1,707,180	1,679,625
United States	31,030,423	49,571,804	73,250,649	28,903,861	52,551,197
South America:					
Brazil (exports)	47,184	110,997	209,715	359,115	396,938
Chile[3]	841,300	1,347,831	1,489,637	1,608,390	1,626,490
Europe:					
Belgium	164,520	190,660	265,540	189,920	(2)
Bulgaria	2,370	6,498	11,920	16,771	(2)
Czechoslovakia	731,058	1,089,623	1,836,495	(4)	(2)
France	32,045,900	33,302,620	37,839,000	33,137,000	(2)
Germany[5]	5,851,634	7,539,836	9,575,234	10,938,650	(2)
Austria	775,421	1,024,288	1,884,694	2,600,063	(2)
Greece	204,146	280,271	300,498	348,613	(2)
Hungary	192,396	279,673	290,044	369,935	(2)
Italy	551,454	838,833	997,805	990,043	(2)
Luxemburg	4,133,808	4,895,992	7,766,254	5,140,632	(2)
Norway	765,152	846,809	1,008,225	1,425,297	(2)
Poland	332,536	466,659	780,152	872,591	(2)
Portugal	880	6,539	7,700	2,519	418
Rumania	93,813	108,549	129,060	138,942	131,992
Spain	2,633,165	2,045,890	990,783	2,513,827	(2)
Sweden	7,932,854	11,249,605	14,952,549	13,928,023	(2)
Switzerland (exports)	5,894	31,833	148,578	133,998	171,279
U. S. S. R.[6]	26,845,000	27,918,000	26,000,000	26,529,700	(2)
United Kingdom: Great Britain[7]	11,070,256	12,905,243	14,443,146	12,049,531	(2)
Yugoslavia	234,729	450,859	629,172	607,111	666,863
sia:					
Burma	23,456	26,738	25,834	18,340	(2)
Chosen	228,220	234,400	207,500	(4)	(2)
India, British	2,378,788	2,567,488	2,883,548	2,787,711	(2)
Indochina	635	10,017	33,285	130,298	(2)
Japan	515,529	754,400	(4)	(4)	(2)
Malay States:					
Federated Malay States		457	1,165	938	(2)
Unfederated Malay States	1,434,293	1,681,102	1,686,990	1,606,289	(2)
Philippine Islands (exports)	283,311	654,458	601,190	910,952	(2)
Turkey				71,375	239,335
U. S. S. R.	(6)	(6)	(6)	(6)	(2)
frica:					
Algeria	1,674,628	1,884,281	2,427,230	3,105,037	[8] 2,750,000
Belgian Congo				2,650	(2)
Egypt	15				(2)
Morocco:					
French					(2)
Spanish	1,167,900	1,047,041	66,864	266,100	(2)
Northern Rhodesia		2	1,424,737	1,341,658	138
Sierra Leone	440,498	575,689	528	208	(2)
South-West Africa			644,160	875,789	19,500
Tunisia	503,000	750,000	14,280	23,861	(2)
Union of South Africa	304,048	364,981	943,763	822,653	490,136
eania:			461,796	505,314	
Australia:					
New South Wales	7,785				(2)
Queensland	1,137	2,338	4,551	5,207	3,526
South Australia	1,898,712	1,917,589	1,896,370	2,281,404	2,613,036
Tasmania			62		(2)
New Caledonia				36,279	83,567
New Zealand	10,817		586	1,228	(2)
	138,000,000	170,000,000	211,000,000	162,000,000	(2)

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[1] In addition to the countries listed, China, Finland and Madagascar report production of iron ore, but mplete data are not available.

[2] Data not available.

[3] Production of Tofo Mines

[4] Estimate included in total.

[5] Exclusive of manganiferous iron ore carrying 12 to 30 percent manganese.

[6] Russia in Asia included with Russia in Europe.

[7] Exclusive of bog ore, which is used mainly for the purification of gas.

[8] Estimated.

PIG IRON

Production and shipments.—Domestic production of pig iron, exclusive of ferro-alloys, increased 67 percent in 1939 over 1938 and was the second best year since 1929. The output in 1939 comprised 31,031,973 gross tons using coke and 43,941 tons using charcoal as fuel. Pennsylvania was the largest producer of pig iron in 1939, with 28 percent of the total; Ohio ranked second, with 23 percent. Of the pig iron manufactured in 1939, it is calculated that 1,360,174 tons valued at $23,141,343 were made from 2,262,043 tons of foreign ores, including ore from Africa, Australia, Brazil, Chile, Cuba, Newfoundland, Palestine, Sweden, and the U. S. S. R., indicating an average yield of 60.13 percent from imported ore. Domestic ore (51,160,340 tons) and cinder, scale, and purchased scrap (4,456,418 tons) totaling 55,616,758 tons were reported as used in the manufacture of 29,715,740 tons of pig iron, indicating an average pig-iron yield of 53.43 percent from domestic materials. In addition, 1,004,565 tons of home scrap and 1,737,000 tons of flue dust were consumed in making pig iron in 1939.

Shipments of pig iron, exclusive of ferro-alloys, were 76 percent above 1938 in both quantity and value in 1939. The values given represent the approximate amounts received for the iron f. o. b. furnaces and do not include freight costs, selling commissions, and other items that are figured in some of the market prices for pig iron published by trade journals.

Pig iron produced and shipped in the United States, 1938–39, by States

State	Produced		Shipped from furnaces			
	1938	1939	1938		1939	
	Gross tons	Gross tons	Gross tons	Value	Gross tons	Value
Alabama	2,023,269	2,621,268	1,990,342	$29,130,091	2,717,502	$43,902,6
Colorado	(1)	(1)	(1)	(1)	(1)	(1)
Illinois	1,656,591	2,650,541	1,519,572	30,899,012	2,860,577	57,718,8
Indiana	1,791,085	3,309,903	1,807,808	37,025,980	3,375,325	68,164,6
Iowa	(1)	(1)	(1)	(1)	(1)	(1)
Kentucky	126,102	231,494	126,102	(1)	231,494	(1)
Maryland	1,201,374	1,784,559	1,219,611	(1)	1,805,080	(1)
Massachusetts		(1)	(1)	(1)	(1)	(1)
Michigan	556,230	963,946	558,782	9,806,994	1,138,964	18,872,1
Minnesota	(1)	(1)	135,931	(1)	167,869	(1)
New York	1,338,907	2,046,447	1,222,832	25,450,764	2,210,223	45,275,7
Ohio	4,210,514	7,246,278	4,186,217	85,186,824	7,249,172	147,154,9
Pennsylvania	4,836,093	8,730,118	4,684,017	101,266,844	8,979,649	186,302,5
Tennessee	(1)	(1)	(1)	(1)	(1)	(1)
Utah	(1)	(1)	(1)	(1)	(1)	(1)
Virginia	(1)		(1)	(1)	(1)	(1)
West Virginia	472,738	750,016	496,905	(1)	761,812	(1)
Undistributed	[2] 369,419	[2] 770,944	[2] 254,235	[2] 38,048,860	[2] 593,818	[2] 59,433,3
	18,582,822	31,075,914	18,202,354	356,875,369	32,091,485	626,824,6

[1] Included under "Undistributed."

[2] Includes statistics for States entered as "(1)."

Pig iron shipped from blast furnaces in the United States, 1938–39, by grades

Grade	1938			1939		
	Gross tons	Value		Gross tons	Value	
		Total	Average		Total	Average
Charcoal	26, 558	$657, 885	$24. 77	57, 778	$1, 404, 719	$24. 31
Foundry	1, 538, 349	28, 308, 696	18. 40	2, 155, 874	40, 820, 296	18. 93
Basic	13, 058, 455	250, 310, 020	19. 17	23, 559, 239	448, 263, 976	19. 03
Bessemer	2, 611, 015	56, 680, 050	21. 71	4, 618, 440	98, 823, 031	21. 40
Low-phosphorus	120, 195	2, 830, 256	23. 55	294, 276	6, 838, 917	23. 24
Malleable	765, 780	16, 489, 173	21. 53	1, 284, 449	27, 775, 986	21. 62
Forge	1, 347	27, 653	20. 53	5, 750	110, 009	19. 13
All other (not ferro-alloys)	80, 655	1, 571, 636	19. 49	115, 679	2, 787, 756	24. 10
	18, 202, 354	356, 875, 369	19. 61	32, 091, 485	626, 824, 690	19. 53

The number of furnaces in blast on June 30 and December 31 and the total number of stacks recorded for 1938 and 1939, exclusive of electric reduction furnaces, were as follows:

Blast furnaces (including ferro-alloy blast furnaces) in the United States, 1938–39[1]

State	In blast June 30, 1938	Dec. 31, 1938			In blast June 30, 1939	Dec. 31, 1939		
		In	Out	Total		In	Out	Total
Alabama	6	16	4	20	14	18	1	19
Colorado	2	1	2	3	1	3		3
Illinois	4	9	14	23	8	14	9	23
Indiana	5	8	11	19	9	17	2	19
Kentucky	1	1	1	2	2	2		2
Maryland	4	5	1	6	6	6		6
Massachusetts			1	1	1	1		1
Michigan	4	5	3	8	5	7	1	8
Minnesota	1	1	1	2	1	2		2
Missouri			1	1				
New York	5	9	8	17	8	11	4	15
Ohio	17	29	19	48	28	43	5	48
Pennsylvania	20	29	49	78	32	65	13	78
Tennessee	1		3	3	1	1	2	3
Utah	1	1		1	1	1		1
Virginia	1	1		1	1	1		1
West Virginia	1	1	2	3	3	3		3
	73	116	120	236	121	195	37	232

[1] American Iron and Steel Institute.

Value at blast furnaces.—The average value of all kinds of pig iron given in the accompanying table is based upon reports of manufacturers to the Bureau of Mines. The figures represent the approximate values f. o. b. blast furnaces and do not include the values of ferroalloys. The general average value for all grades of pig iron at the furnaces was $19.53 a gross ton in 1939—only 8 cents less than in 1938.

Average value per gross ton of pig iron at blast furnaces in the United States, 1935–39, by States

State	1935	1936	1937	1938	1939
Alabama	$14.67	$15.01	$16.68	$14.67	$16.16
Illinois	17.58	18.24	21.11	20.33	20.18
Indiana	17.78	18.14	21.71	20.48	20.19
Michigan	15.64	15.56	16.99	17.55	16.57
New York	15.95	15.87	20.65	20.81	20.48
Ohio	16.70	17.02	21.63	20.35	20.30
Pennsylvania	18.38	18.82	21.73	21.62	20.73
Other States[1]	14.46	17.50	18.92	17.04	16.69
Average for United States	16.91	17.59	20.76	19.61	19.53

[1] Colorado, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Tennessee, Utah, Virginia, and West Virginia.

Commercial quotations.—The average monthly prices of foundry, basic, and bessemer pig iron at Valley furnaces and of foundry pig iron at Birmingham furnaces, according to published market quotations, are summarized in the following table:

Average monthly prices per ton of chief grades of pig iron, 1938–39 [1]

Month	Foundry pig iron at Valley furnaces		Foundry pig iron at Birmingham furnaces		Bessemer pig iron at Valley furnaces		Basic pig iron at Valley furnaces	
	1938	1939	1938	1939	1938	1939	1938	1939
January	$24.00	$21.00	$20.38	$17.38	$24.50	$21.50	$23.50	$20.50
February	24.00	21.00	20.38	17.38	24.50	21.50	23.50	20.50
March	24.00	21.00	20.38	17.38	24.50	21.50	23.50	20.50
April	24.00	21.00	20.38	17.38	24.50	21.50	23.50	20.50
May	24.00	21.00	20.38	17.38	24.50	21.50	23.50	20.50
June	23.35	21.00	19.61	17.38	23.85	21.50	22.85	20.50
July	20.00	21.00	16.38	17.38	20.50	21.50	19.50	20.50
August	20.00	21.00	16.38	17.38	20.50	21.50	19.50	20.50
September	20.16	22.20	16.54	18.50	20.66	22.70	19.66	21.70
October	21.00	23.00	17.38	19.38	21.50	23.50	20.50	22.50
November	21.00	23.00	17.38	19.38	21.50	23.50	20.50	22.50
December	21.00	23.00	17.38	19.38	21.50	23.50	20.50	22.50
Average	22.21	21.60	18.58	17.97	22.71	22.10	21.71	21.10

[1] Metal Statistics, 1940.

Foreign trade.—Imports of pig iron for consumption in 1939 increased 27 percent over 1938 owing to larger receipts from Canada and British India. British India supplied 64 percent of the 1939 total.

Pig iron imported for consumption in the United States, 1935–39, by countries, in gross tons

Country	1935	1936	1937	1938	1939
North America: Canada	13, 771	11, 603	6, 638	2, 656	6, 862
South America: Brazil					155
Europe:					
Belgium	100	973			
Czechoslovakia		37			
Denmark					1
France	50				
Germany	4, 877	4, 749	510		
Netherlands	48, 122	60, 363	28, 772	14, 236	6, 473
Norway	2, 420	2, 649	875	850	
Sweden	907	689	600	205	261
U. S. S. R	9, 124	24, 556	4, 581		
United Kingdom	14, 500	4, 354	100	42	
Asia:					
Hong Kong		200			
India, British	37, 016	55, 426	69, 621	12, 411	24, 840
Japan	50				
Kwantung		209			
	130, 937	165, 808	111, 697	30, 400	38, 592
Value	$1, 979, 324	$2, 336, 236	$1, 701, 304	$598, 461	$663, 091

Exports of pig iron from the United States in 1939 decreased to 177,024 gross tons from 432,851 in 1938 but were still much higher than normal. Sweden (64,767 tons) and the United Kingdom (64,769 tons) together took 73 percent of the total.

Pig iron exported from the United States, 1938–39, by countries, in gross tons

Country	1938	1939	Country	1938	1939
North America:			Asia:		
Canada	4, 759	3, 423	China	6, 553	9, 149
Other North America	506	1, 069	Hong Kong	1, 970	1, 281
South America:			Japan	316, 280	9, 812
Argentina		1, 385	Philippine Islands	734	488
Chile	1, 426	1, 262	Other Asia	665	869
Colombia	233	614	Africa:		
Peru	215	797	Algeria	6, 236	
Other South America	76	140	Union of South Africa	1, 462	
Europe:			Oceania: New Zealand	15	
Belgium	3, 349	1, 041			
France	12, 241	200		432, 851	177, 024
Germany	10, 075	60	Value	$7, 135, 129	$3, 435, 739
Greece		1, 705			
Hungary	13, 825	650			
Italy	6, 672	5, 240			
Netherlands	610	175			
Norway	96	6, 601			
Sweden	3, 603	64, 767			
United Kingdom	40, 615	64, 769			
Other Europe	635	1, 527			

Consumption.—Consumption of pig iron rose 70 percent in 1939 over 1938. Pig iron, a product of the blast furnace, is a semiraw material and, except for the small quantity used in direct castings, moves to other type furnaces for further refining or mixture with other required ingredients. In general, it goes to steel-making or iron-making furnaces. By far the larger part is taken to steel-making furnaces (open-hearth, bessemer, and electric) for refining and processing into steel. In 1939, 86.5 percent of the pig iron was consumed in steel making. Direct castings took 3 percent of the 1939 total, and the remaining 10.5 percent was consumed in iron-making furnaces, of which the cupola is by far the most important. The consumption of pig iron by types of furnace for 1936 to 1939 is shown in the following table. Typically, the quantities of pig iron used in these furnaces are supplemented by the addition of ferrous scrap. The proportion of pig iron to scrap used in steel furnaces increased in 1939 compared with 1938, whereas the proportion of pig iron in cupola furnaces decreased.

Consumption of pig iron in the United States, 1936–39, by type of furnace

Type of furnace or equipment	1936		1937		1938		1939	
	Gross tons	Percent of total	Gross tons	Percent of total	Gross tons	Percent of total	Gross tons	Percent of tota
Open hearth	21,960,842	73.0	25,118,216	73.8	13,729,371	74.2	23,951,940	76.
Bessemer	3,635,562	12.1	3,688,335	10.8	1,946,048	10.5	3,217,142	10.
Electric	22,866	.1	44,715	.1	15,893	.1	27,270	
Cupola [1]	3,633,720	12.1	4,195,234	12.3	2,404,637	13.0	2,990,355	9.
Air	407,038	1.3	444,988	1.3	185,514	1.0	294,033	
Brackelsberg								
Crucible	34	(2)	43	(2)	218	(2)	82	(
Puddling	30,498	.1	31,489	.1	5,343	(2)	24,963	
Direct castings [1]	408,074	1.3	533,507	1.6	227,325	1.2	951,982	3.
	30,098,634	100.0	34,056,527	100.0	18,504,349	100.0	31,457,767	100

[1] Some pig iron used in making direct castings included in cupola.

[2] Less than 0.05 percent.

The consumption of pig iron in this country is widespread, and plants using pig iron are situated in all 48 States, the District of Columbia, and Alaska. As expected from the nature of its use, consumption is concentrated largely in the iron- and steel-making centers of the North Central, Middle Atlantic, and Southeastern States. These areas in 1939 used 98 percent of the pig iron, Pennsylvania (the leading consumer taking nearly 29 percent of the total and Ohio (the second largest consumer) 21 percent. Of the chief consuming areas in 1939 the Middle Atlantic district made the largest gain over 1938—85 percent compared with 65 percent in the North Central district and 53 percent in the Southeastern district, including the Birmingham district of Alabama. The following table shows the distribution of pig-iron consumption by States from 1936 to 1939.

Consumption of pig iron in the United States, 1936–39, by States and districts

State and district	1936		1937		1938		1939	
	Consumers	Gross tons	Consumers	Gross tons	Consumers	Gross tons	Consumers	Gross tons
Connecticut	53	79, 208	58	87, 912	57	47, 746	59	74, 005
Maine	16	9, 257	16	8, 824	16	4, 052	15	6, 006
New Hampshire	13		13	2, 180	14	1, 248	15	1, 630
Massachusetts	87	75, 389	103	98, 407	98	59, 774	97	103, 156
Rhode Island	13	25, 983	14	35, 140	13	14, 362	12	23, 444
Vermont	14	3, 866	14	7, 086	13	3, 019	12	5, 830
Total New England	196	193, 703	218	239, 549	211	130, 201	210	214, 065
Delaware	6	215, 460	7	309, 065	7	199, 944	7	250, 893
New Jersey	79		81		80		79	
New York	191	1, 371, 661	192	1, 793, 421	194	927, 350	193	1, 622, 545
Pennsylvania	341	9, 074, 405	348	10, 578, 554	345	4, 781, 482	365	9, 064, 876
Total Middle Atlantic	617	10, 661, 526	628	12, 681, 040	626	5, 908, 776	644	10, 938, 314
Alabama	50	1, 453, 524	59	1, 802, 027	59	1, 395, 369	57	2, 123, 905
District of Columbia	1	501	1	444	1	1, 353, 414	2	2, 112, 084
Kentucky	18	1, 489, 375	22	1, 724, 693	21		24	
Maryland	24		25		26		26	
West Virginia	21	618, 882	22	746, 015	22	501, 920	23	785, 770
Florida	9	41, 051	11	64, 357	10	33, 965	12	55, 049
Georgia	34		40		40		40	
Mississippi	7	351	7	301	6	327	7	323
North Carolina	26	11, 064	27	11, 033	30	10, 929	32	12, 369
South Carolina	14	1, 912	12	2, 086	13	1, 533	13	2, 010
Tennessee	46	142, 994	53	143, 542	53	119, 626	52	134, 432
Virginia	44		45		44		46	
Total Southeastern	294	3, 789, 654	324	4, 494, 498	325	3, 417, 083	334	5, 225, 942
Arkansas	3	2, 273	6	4, 732	5	1, 797	6	1, 788
Oklahoma	8		9		7		6	
Louisiana	8		8		8		8	
Texas	20	4, 699	22	19, 171	23	2, 691	24	2, 297
Total Southwestern	39	6, 972	45	23, 903	43	4, 488	44	4, 085
Illinois	176	2, 770, 746	193	3, 077, 837	182	1, 468, 762	179	2, 473, 833
Indiana	109	3, 473, 415	116	3, 661, 133	120	1, 891, 230	124	3, 419, 691
Iowa	41	62, 576	51	80, 893	51	39, 214	49	48, 959
Minnesota	48	46, 024	49	206, 903	52	131, 618	53	166, 050
Missouri	48	40, 367	54	51, 885	50	25, 319	53	33, 714
Kansas	13	3, 726	17	5, 108	15	2, 529	14	3, 137
Nebraska	8		9		8		7	
Michigan	142	1, 567, 890	165	1, 828, 870	158	980, 742	168	1, 651, 448
Wisconsin	110		118		116		118	
South Dakota	1	9					2	132
Ohio	258	7, 013, 146	278	7, 173, 926	276	4, 274, 412	290	6, 748, 630
Total North Central	954	14, 977, 899	1, 050	16, 086, 555	1, 028	8, 813, 826	1, 057	14, 545, 594
Arizona	4	72	2	43	1	22	1	32
Nevada								
New Mexico								
Colorado	16	320, 514	15	371, 688	17	136, 366	19	368, 054
Utah								
Idaho	4	2, 805	5	482	4	196	5	275
Wyoming								
Montana								
Total Rocky Mountain	24	323, 391	22	372, 213	22	136, 584	25	368, 361
Oregon	16	8, 223	18	6, 810	18	4, 927	19	5, 636
Washington	35		41		33		37	
California	90	137, 266	94	151, 959	90	88, 464	95	155, 770
Total Pacific Coast	141	145, 489	153	158, 769	141	93, 391	151	161, 406
Total United States	2, 265	30, 098, 634	2, 440	34, 056, 527	2, 396	18, 504, 349	2, 465	31, 457, 767

World production.—World production of pig iron (including ferro-alloys) in 1939 increased 23 percent over 1938 to 102,000,000 metric tons and was 19 percent above the 1925–29 average. The United States supplied 32 percent of the 1939 total compared with 23 percent in 1938. Thus, while American production increased 66 percent, that for the rest of the world increased only 10 percent.

World production of pig iron (including ferro-alloys), 1935–39, by countries, in metr tons

[Compiled by M. T. Latus]

Country [1]	1935	1936	1937	1938	1939
Australia [2]	709,704	795,804	963,163	941,551	[3] 1,100,000
Belgian Congo			565	[4] 600	[4] 600
Belgium	3,029,600	3,161,340	3,803,750	2,426,130	3,068,200
Brazil	64,082	78,418	98,108	118,580	150,000
Canada	667,028	766,625	996,671	773,573	844,760
China (Manchuria)	607,949	647,402	[4] 650,000	[4] 700,000	[4] 700,000
Chosen	245,196	216,752	168,344	[4] 200,000	[4] 200,000
Czechoslovakia	810,938	1,139,886	1,675,064	1,233,987	[3] 1,000,000
Finland	11,035	13,107	11,258	27,000	[4] 30,000
France	5,789,780	6,230,420	7,916,000	6,061,322	[3] 7,900,000
Germany [5]	12,846,204	15,302,477	15,959,806	18,596,000	[3] 20,300,000
Austria	193,170	248,111	389,118		
Hungary	185,883	306,290	357,935	335,016	[3] 460,000
India, British	1,489,216	1,568,089	1,655,457	1,583,284	[3] 1,800,000
Italy	703,844	815,490	865,305	928,847	[3] 1,000,000
Japan	1,964,613	2,072,445	2,750,000	[4] 2,800,000	[4] 3,000,000
Luxemburg	1,872,372	1,986,604	2,512,495	1,500,000	[3] 1,800,000
Mexico	64,139	88,032	89,717	98,376	[4] 100,000
Netherlands	253,616	274,883	311,773	266,956	284,004
New Zealand	4,981				
Norway	130,751	167,357	181,238	173,748	[4] 175,000
Poland	394,097	581,869	724,296	967,668	[3] 1,000,000
Rumania	81,989	97,096	127,234	130,388	[4] 140,000
Spain	348,078	220,815	128,000	439,897	[3] 500,000
Sweden	612,596	631,736	692,865	713,579	[3] 640,000
Union of South Africa	173,486	202,186	276,236	294,406	300,227
U. S. S. R	12,606,100	14,546,077	14,520,000	15,179,856	[3] 15,200,000
United Kingdom	6,527,105	7,844,922	8,629,313	6,871,546	[3] 8,300,000
United States	21,715,541	31,571,224	37,749,575	19,474,677	32,321,653
Yugoslavia	21,793	44,453	41,006	58,458	[4] 60,000
	74,125,000	91,620,000	104,200,000	82,895,000	102,000,000

[1] In addition to countries listed, pig iron is produced in Chile and the Philippine Islands, but production figures are not available.

[2] Year ended June 30.

[3] Approximate production as published by Steel, vol. 196, No. 1, January 1940, p. 269.

[4] Estimated production.

[5] Beginning with March 1935, production of the Saar is included with that of Germany. Production of the Saar in January and February 1935 amounted to 302,196 metric tons.

FERRO-ALLOYS

Production and shipments.—The production of ferro-alloys was 735,171 gross tons in 1939 compared with 584,724 in 1938, an increase of 26 percent. In 1939 ferro-alloys were made at 13 blast-furnace plants, 16 electric-furnace plants, and 3 aluminothermic plants; in addition 3 plants made ferrophosphorus and 2 plants made ferrosilicon as a byproduct. Of the 1939 total, 486,098 tons were made in blast furnaces and 245,236 tons in electric furnaces.

Shipments of all classes of ferro-alloys in 1939 rose 81 percent in quantity and 79 percent in total value over 1938. Compared with the 5-year average for 1925–29 (715,250 tons), 1939 shipments increased 18 percent.

Ferro-alloys shipped from furnaces in the United States, 1938–39, by varieties

Variety of alloy	1938		1939	
	Gross tons	Value	Gross tons	Value
Ferromanganese	223,720	$19,144,884	296,631	$24,137,211
Spiegeleisen	24,939	[1] 728,830	84,739	2,484,042
Ferrosilicon (7 percent or more silicon)	163,775	7,999,661	343,822	16,850,356
Ferrophosphorus	6,593	469,940	13,320	898,471
Ferrotungsten	484	1,453,227	1,609	4,846,386
Other varieties [2]	44,601	12,662,971	101,041	26,940,122
	464,112	[1] 42,459,513	841,162	76,156,588

[1] Revised figures.

[2] Ferroboron, ferrochromium, ferrocolumbium, ferromolybdenum and calcium-molybdenum compounds, ferrotitanium, ferrovanadium, ferrozirconium, silicomanganese, silicospiegeleisen, and zirconium ferrosilicon.

Ferromanganese.—Shipments of ferromanganese in 1939 increased 33 percent over 1938 but were 2.4 percent below the 5-year average for 1925–29 (303,883 gross tons). The average value per ton, f. o. b. furnaces, reported for ferromanganese was $81.37 in 1939 compared with $85.58 in 1938.

The production of ferromanganese in 1939 increased 11 percent over 1938 and was made at seven blast-furnace plants and one electric-furnace plant in both 1938 and 1939. In both years most of the output was made in blast furnaces.

Ferromanganese produced in the United States and metalliferous materials consumed in its manufacture, 1935–39

Year	Ferromanganese produced			Materials consumed (gross tons)				Manganese ore used per ton of ferromanganese made (gross tons)
	Gross tons	Mn contained		Manganese ore (35 percent or more Mn, natural)		Iron and manganiferous iron ores	Cinder, scale, and purchased scrap	
		Percent	Gross tons	Foreign	Domestic			
35	214,290	79.41	170,168	401,846	4,286	9,195	8,921	1.895
36	316,000	79.09	249,933	595,114	5,987	12,467	2,821	1.902
37	376,443	79.54	299,425	698,052	9,444	17,511	6,017	1.879
38	242,994	78.65	191,104	416,738	22,548	9,696	8,462	1.808
39	270,111	79.24	214,040	502,986		8,324	6,250	1.862

The tonnage of manganese ore used per ton of ferromanganese produced increased slightly in 1939. As shown in the following table all manganese ore used in making ferromanganese in 1939 came from foreign sources.

Quantity and tenor of manganese ore used in manufacture of ferromanganese in the United States, 1938–39

Source of ore	1938		1939	
	Gross tons	Manganese content (percent, natural)	Gross tons	Manganese content (percent, natural)
Africa	152,698	48.99	129,227	48.14
Brazil	64,060	41.44	58,284	43.75
Chile			856	48.16
Cuba	36,295	48.07	58,909	48.16
India	55,965	49.24	86,309	49.84
U. S. S. R	107,720	47.61	169,311	47.54
United States	22,548	53.20		
	439,286	47.72	502,986	47.7[illegible]

Spiegeleisen.—Shipments of spiegeleisen from domestic furnaces in 1939 rose 240 percent over 1938. The average value per ton at the furnaces was $29.31 in 1939 compared with $29.22 (revised figure) in 1938. The entire production, which increased to 91,491 tons in 1939 from 11,311 tons in 1938, was made in blast furnaces. Output in 1939 averaged 20.18 percent manganese. Most of the spiegeleisen was manufactured from domestic ores in 1939, only 206 tons of foreign manganese ore being used.

Ferrosilicon.—Shipments of ferrosilicon in 1939 increased 110 percent over 1938. The production of ferrosilicon in 1939 totaled 279,964 gross tons, including 144,948 tons made by blast furnaces, 134,844 tons by electric furnaces, and 172 tons as a byproduct in the manufacture of artificial abrasives in electric furnaces. The silicon content of the production in 1939 ranged from 7 to 95 percent but averaged 24 percent. Most of the raw material used in making ferrosilicon was of domestic origin.

Ferrophosphorus.—Production of ferrophosphorus decreased slightly to 15,465 gross tons containing 24.37 percent phosphorus in 1939 from 15,842 tons containing 24.14 percent phosphorus in 1938, but shipments from furnaces increased 102 percent. Most of the 1939 output was made in electric furnaces, and all of it was manufactured from domestic materials.

Ferrotungsten.—Shipments of ferrotungsten gained 232 percent in quantity and 233 percent in total value over 1938. The 1939 shipments contained 78.43 percent (2,827,282 pounds) tungsten and were valued at $1.71 per pound of contained tungsten. Production totaled 1,586 gross tons containing 78.45 percent tungsten (2,786,686 pounds). In addition to domestic ores (chiefly from California, Colorado, and Nevada), foreign ores from China, the Malay States, Mexico, and South America were used. All ferrotungsten was made in electric furnaces.

Foreign trade.—Imports of all alloys of the rarer metals are not recorded separately but are grouped as shown in the following table. Ferromanganese and spiegeleisen comprised most of the imports in both 1938 and 1939. Imports of ferromanganese for consumption (chiefly from Norway and the Netherlands) were 41,227 gross tons—57 percent more than in 1938. Imports of spiegeleisen for consumption (chiefly from Canada) were 38,264 tons, an increase of 122 percent over 1938. The duty on ferrosilicon containing 8 percent but less than 30 percent silicon was cut from 1½ cents to 1 cent per pound of silicon content, effective January 1, 1939, in the new trade agreement with Canada. That country supplies most of the imports of this material.

Exports of ferro-alloys, which are relatively unimportant in tonnage, rose in 1939 over 1938. Exports of ferromanganese and spiegeleisen in 1939 were 2,923 gross tons and of other ferro-alloys 4,042 tons.

Ferro-alloys and ferro-alloy metals imported for consumption in the United States, 1938–39, by varieties

Variety of alloy	1938			1939		
	Gross weight (gross tons)	Content (gross tons)	Value	Gross weight (gross tons)	Content (gross tons)	Value
Ferromanganese:						
Containing over 1 percent carbon	26,001	20,903	$1,739,501	40,210	32,565	$2,815,465
Containing not over 1 percent carbon	257	215	31,447	1,017	849	119,749
Manganese silicon (manganese content)				(1)	17	1,240
Manganese boron, manganese metal, and spiegeleisen not more than 1 percent carbon (manganese content)	(1)	19	8,798	(1)	22	9,247
Spiegeleisen	17,248	(1)	625,480	38,264	(1)	1,329,814
Ferrochrome or ferrochromium:						
Containing 3 percent or more carbon	(2)	(3)	5	6	3	646
Containing less than 3 percent carbon	175	121	29,953	188	127	38,558
Ferrosilicon	5,325	626	131,067	8,203	1,036	237,543
Chrome or chromium metal	39	(1)	48,343	56	(1)	59,520
Chromium and zirconium silicon and calcium silicide	899	(1)	93,319	1,773	(1)	225,312
Ferromolybdenum, molybdenum metal and powder, calcium molybdate, and other compounds and alloys of molybdenum (molybdenum content)	(1)	(4)	81	(1)	12	32,327
Ferrotitanium				(1)	(5)	77
Tungsten and combinations, in lumps, grains, or powder:						
Tungsten metal (tungsten content)	(1)	9	23,994	(1)	18	41,440
Combinations containing tungsten or tungsten carbide (tungsten content)	(1)	1	7,523	(1)	(6)	1,430
Tungsten acid and other compounds of tungsten, n. s. p. f. (tungsten content)	(1)	(7)	1,606	(1)	(8)	4,424

[1] Not recorded.
[2] 100 pounds.
[3] 60 pounds.
[4] 25 pounds.
[5] 350 pounds.
[6] 251 pounds.
[7] 241 pounds.
[8] 700 pounds.

Ferromanganese and ferrosilicon imported for consumption in the United State
1938–39 by countries.

Country	Ferromanganese (manganese content)				Ferrosilicon (silicon content)			
	1938		1939		1938		1939	
	Gross tons	Value	Gross tons	Value	Gross tons	Value	Gross tons	Value
Canada			(1)	$50	626	$134,067	1,036	$237,5
Czechoslovakia [2]	3,043	$211,356	2,050	162,091				
France	1,137	152,068	846	190,905				
Germany [2]			391	24,622				
Japan	308	37,118						
Netherlands	5,848	403,561	7,974	561,509				
Norway	10,547	953,045	19,563	1,909,610				
Poland and Danzig [2]			1,598	118,015				
Sweden			22	3,356				
Yugoslavia	240	13,800	970	55,056				
	21,118	1,770,948	33,414	2,935,214	626	134,067	1,036	237,5

[1] Less than 1 ton.
[2] For statistical purposes, trade with the Sudeten area, as far as ascertainable, is included with German
while trade with the other Czechoslovak Provinces occupied by Germany and Poland has been inclu
with these countries since March 18 or 19, 1939. After November 16, 1939, trade with Danzig and th
part of Poland occupied by Germany has been included with Germany.

Ferro-alloys and ferro-alloy metals exported from the United States, 1938–39,
varieties

Variety of alloy	1938		1939	
	Gross tons	Value	Gross tons	Value
Ferromanganese and spiegeleisen	247	$18,799	2,923	$247,
Other ferro-alloys [1]	1,197	1,171,869	4,042	1,024,

[1] Includes ferrosilicon, ferrotungsten, ferrovanadium, and other ferro-alloys.

STEEL

Production.—The domestic steel industry operated at 53 perce
of capacity in the first half of 1939, maintaining production at th
level of the latter half of 1938. During the second half of 193
however, the operating rate increased progressively from 52.4 pe
cent of capacity in July to 93.3 percent in November but dropped
85.6 percent in December. Slightly more than one-third of the 19
output of steel was made in the final 3 months, when the productio
rate rose to an all-time high. The average operating rate was 6
percent in 1939 compared with 40 percent in 1938. The followin
figures covering the output of steel were compiled by the America
Iron and Steel Institute. Production of steel ingots and castings
1939 totaled 47,141,709 gross tons, 4 percent below the 1925–
average but an increase of 66 percent over 1938.

Of the 1939 total, 91.7 percent was made in the open hearth, 6
percent in bessemer converters, 1.9 percent in electric furnaces, a
only 831 tons in crucible furnaces. The bulk (42,704,197 tons)
the total open-hearth output in 1939 was made in basic furnaces.

Of the total output of steel ingots and castings, 46,908,428 gross ons were ingots in 1939 compared with 28,210,841 tons in 1938.

A large part of the steel production comes from the contiguous States ennsylvania and Ohio. In 1939 these two States produced about 50 ercent of the total steel, 49 percent of the open-hearth steel, and 76 ercent of the bessemer steel.

pen-hearth steel ingots and castings manufactured in the United States, 1935-39, by States, in gross tons

cludes only that portion of the steel for castings produced in foundries operated by companies manufacturing steel ingots]

State	1935	1936	1937	1938	1939
w England States	248,778	301,161	276,021	163,658	256,116
ew York and New Jersey	1,275,496	2,109,946	2,789,413	1,347,802	2,346,348
nnsylvania	7,850,710	12,913,903	14,561,700	7,072,157	12,162,743
hio	7,702,018	9,789,985	9,067,944	5,372,234	8,851,298
diana	4,376,998	5,963,501	5,947,368	3,435,360	5,791,520
linois	2,534,811	3,663,011	3,913,318	1,950,224	3,292,745
her States	6,726,618	8,794,621	9,716,539	6,622,865	10,522,266
	30,715,429	43,536,128	46,272,303	25,964,300	43,223,036

ssemer-steel ingots and castings manufactured in the United States, 1935-39, by States, in gross tons

cludes only that portion of the steel for castings produced in foundries operated by companies manufacturing steel ingots]

State	1935	1936	1937	1938	1939
hio	1,361,933	1,639,329	1,747,710	1,074,032	1,285,383
nnsylvania	764,403	952,971	830,440	348,060	990,251
linois	375,445	866,157	871,777	458,569	723,398
her States	333,250				
	2,835,031	3,458,457	3,449,927	1,880,661	2,999,032

Steel electrically manufactured in the United States, 1935-39, in gross tons

cludes only that portion of the steel for castings produced in foundries operated by companies manufacturing steel ingots]

Year	Ingots	Castings	Total	Year	Ingots	Castings	Total
	521,818	19,674	541,492	1938	468,610	36,414	505,024
	704,213	68,242	772,455	1939	849,573	69,237	918,810
	814,310	31,227	845,537				

The steel-production figure for 1939 includes 2,867,817 gross tons of loy-steel ingots and castings, which represent 6 percent of the total. his figure includes steels in which the minimum of the range specified any of the elements named exceeds the following percentages: ickel, 0.40 percent; chromium, 0.30 percent; copper, 0.50 percent; anganese, 1.65 percent; silicon, 0.50 percent; molybdenum, 0.10 ercent; vanadium, tungsten, cobalt, titanium, and zirconium, any ercent. The output of alloy steels in 1939 increased 94 percent and at of [illegible]tal steel 66 percent over 1938. Of the total alloy-steel output in 1939, 72 percent came from basic open hearths, 5 percent from acid open hearths, 23 percent from electric furnaces, 206 tons from crucible furnaces, and 3,113 tons from bessemer furnaces.

Production of alloy-steel ingots and castings, 1935–39, by processes, in gross tons

[Includes only that portion of the steel for castings produced in foundries operated by companies manufacturing steel ingots]

Process	1935	1936	1937	1938	1939
Open hearth, basic	1,633,541	2,239,885	2,285,000	1,052,706	2,055,601
Open hearth, acid	73,400	115,766	146,835	91,151	139,804
Bessemer				12	3,113
Crucible	154	209	241	4	206
Electric	412,563	527,762	600,550	332,475	669,093
	2,119,658	2,883,622	3,032,626	1,476,348	2,867,817

From the foregoing tables it will be seen that most of the steel made in electric furnaces (73 percent in 1939) is alloy steel. Typically, steels with higher alloy content are made in electric furnaces and steels with lower alloy content by the open-hearth process.

Foreign trade.—Although exports of iron and steel products (excluding scrap) in 1939 did not approach the high figure established in 1937, they were 16 percent above 1938 and surpassed those in any other year since 1929. Because of unsettled conditions and expanded armament activities foreign producers have been unable to meet demands in their own countries, and buyers have turned to the United States for supplies. Shortage of necessary raw materials, inadequate smelting capacity, and finishing and fabricating facilities insufficient to meet expanded demands in other nations have caused abnormal exports in a wide range of semimanufactured and manufactured American products. The situation abroad, however, is being rectified by the construction and equipment of new plants and the search for and development of sources of raw material. The success of these programs may make other nations more important factors in export markets, with a consequent lower demand in this country. Barter methods now being used may make competition difficult for American producers.

Exports of iron ore, pig iron, and ferro-alloys are covered in other sections of this report. All important items in the 1939 movement of iron and steel products, except pig iron and rails, registered gains. Exports of iron and steel scrap (including tin-plate scrap), although lower than the unprecedented total of 4,101,549 tons in 1937, amounted to 3,584,439 tons. Of the 1939 scrap exports 83 percent went to three countries—Japan (57 percent), United Kingdom (14 percent), and Italy (12 percent).

Although exports of American iron and steel products in 1939 reached most of the world markets, seven countries took 52.6 percent of the total—Canada 15.6 percent, Japan 8.1 percent, the United Kingdom 6.5 percent, Brazil 6.0 percent, Sweden 5.9 percent, the Philippine Islands 5.8 percent, and the Netherlands 4.7 percent.

Iron and steel exported from the United States, 1938–39

Article	1938		1939	
	Gross tons	Value	Gross tons	Value
imanufactures:				
Steel ingots, blooms, billets, slabs, and sheet bars	167, 641	$5, 905, 201	215, 750	$8, 090, 822
Iron and steel bars and rods:				
Iron bars	1, 310	106, 803	866	89, 298
Concrete reinforcement bars	26, 105	1, 366, 775	47, 255	2, 267, 422
Other steel bars	123, 417	8, 873, 068	166, 446	12, 897, 431
Wire rods	23, 465	1, 381, 414	31, 450	1, 330, 141
Iron and steel plates, sheets, skelp, and strips:				
Boiler plates	6, 753	460, 613	9, 278	536, 366
Other plates, not fabricated	214, 355	10, 883, 283	244, 800	11, 479, 538
Skelp iron or steel	59, 867	2, 465, 104	81, 662	3, 359, 890
Iron and steel sheets, galvanized	76, 037	7, 020, 398	110, 968	9, 594, 599
Steel sheets, black, ungalvanized	205, 278	16, 442, 444	269, 025	19, 698, 555
Iron sheets, black	7, 566	614, 6[illegible]3	10, 448	812, 392
Strip band, and scroll iron or steel:				
Cold-rolled	25, 514	2, 714, 356	26, 243	2, 841, 861
Hot-rolled	37, 041	2, 469, 958	62, 710	3, 740, 975
Tin plate, terneplate, and taggers' tin	161, 576	19, 078, 015	311, 016	33, 032, 832
anufactures—steel-mill products:				
Structural iron and steel:				
Water, oil, gas, and other storage tanks complete and knocked-down material	37, 730	3, 284, 095	28, 735	2, 646, 797
Structural shapes:				
Not fabricated	83, 691	4 507, 428	115, 465	5, 549, 454
Fabricated	38, 057	3, 668, 049	37, 154	3, 505, 595
Plates fabricated, punched, or shaped	2, 348	219, 003	6, 791	505, 833
Metal lath	863	160, 272	1, 656	303, 258
Frames, sashes, and sheet piling	4, 909	519, 986	8, 878	797, 021
Railway track material:				
Rails for railways	82, 721	3, 111, 734	59, 092	2, 375, 481
Rail joints, splice bars, fishplates, and tieplates	7, 343	444, 081	8, 814	618, 666
Switches, frogs, and crossings	1, 645	325, 514	2, 009	365, 830
Railroad spikes	2, 606	186, 529	3, 513	253, 848
Railroad bolts, nuts, washers, and nut locks	1, 236	148, 132	1, 950	221, 653
Tubular products:				
Boiler tubes	8, 124	1, 541, 236	15, 170	1, 959, 587
Casing and oil-line pipe	63, 703	6, 916, 700	87, 905	8, 717, 000
Seamless black pipe, other than casing and oil line	7, 459	1, 286, 813	10, 219	1, 355, 699
Welded black pipe	13, 779	1, 407, 519	23, 957	2, 279, 376
Welded galvanized pipe	17, 404	1, 762, 457	33, 398	3, 245, 345
Malleable-iron screwed pipe fittings	3, 102	1, 088, 644	4, 608	1, 440, 524
Cast-iron screwed pipe fittings	1, 891	506, 202	2, 365	582, 190
Cast-iron pressure pipe and fittings	20, 015	1, 312, 048	31, 805	1, 618, 952
Cast-iron soil pipe and fittings	9, 957	656, 704	11, 978	744, 917
Riveted-steel or iron pipe and fittings	945	189, 307	7, 574	2, 115, 909
Wire and manufactures:				
Barbed	33, 942	2, 457, 339	53, 323	3, 743, 725
Galvanized wire	25, 792	1, 946, 316	28, 259	2, 098, 188
Iron or steel wire, uncoated	24, 080	1, 830, 283	32, 235	2, 417, 065
Wire rope, and strand	4, 372	1, 181, 125	6, 058	1, 514, 691
Woven-wire fencing and screen cloth	3, 541	682, 452	5, 294	1, 155, 051
All other	6, 2[illegible]2	1, 504, 675	11, 899	2, 491, 593
Nails and bolts (except railroad):				
Wire nails	20, 720	1, 369, 771	25, 796	1, 697, 071
Horseshoe nails	888	179, 128	931	208, 364
All other nails, including tacks and staples	4, 348	476, 580	5, 527	610, 143
Bolts, nuts, rivets, and washers (except railroad)	8, 057	2, 082, 898	8, 856	2, 349, 658
Castings and forgings:				
Horseshoes and calks	103	13, 114	224	29, 576
Iron and steel, including car wheels and axles	37, 634	4, 536, 947	51, 854	7, 033, 534
dvanced manufactures:				
House heating boilers and radiators		333, 101		279, 443
Oil burners and parts		1, 125, 993		1, 085, 111
Tools:				
Axes		476, 610		607, 445
Shovels and spades		248, 392		316, 817
Hammers and hatchets		232, 008		303, 707
Saws, wood and metal cutting		1, 225, 686		1, 754, 048
All other tools		9, 356, 596		11, 923, 674

Imports for consumption of iron and steel (exclusive of scrap) in 1939 were 19 percent greater than in 1938. The import trade was much lower than the export trade. Ferromanganese, pig iron, and spiegeleisen accounted for most of the increase in 1939, as manufactured and unmanufactured articles gained only 4 percent. Imports came principally from European countries, Canada, and British India. Imports of scrap in 1939 were only 29,492 long tons (21 percent above 1938), and 92 percent of the 1939 total came from Canada.

Iron and steel imported for consumption in the United States, 1938–39, by commoditie

Commodity	1938		1939	
	Gross tons	Value	Gross tons	Value
Semimanufactures:				
Steel bars:				
Concrete reinforcement	1,531	$51,924	2,364	$74,28
Solid or hollow, n. e. s	18,899	1,122,228	17,060	906,87
Hollow and hollow drill steel	865	131,386	1,357	198,75
Iron slabs, blooms, or other forms	(1)	5		
Bar iron	504	29,005	930	76,48
Wire rods, nail rods, and flat rods up to 6 inches in width	5,280	410,454	10,692	928,65
Boiler or other plate iron or steel, except crucibles and saw-plate steel	355	18,900	18	96
Sheets or plates of iron or steel	(1)	17	10	13,01
Steel ingots, blooms, and slabs	205	5,586	18	4,00
Billets, solid or hollow	553	65,413	727	90,90
Die blocks or blanks; shafting, etc	96	34,191	89	7,84
Circular saw plates	32	14,233	52	23,65
Sheets of iron or steel, common or black and boiler or other plate iron or steel	5,651	290,289	750	31,28
Sheets and plates and steel, n. s. p. f	361	29,634	604	39,52
Tin plate, terneplate, and taggers' tin	109	32,013	99	24,80
Manufactures:				
Structural iron and steel	39,624	1,494,869	39,533	1,351,8
Rails for railways	3,336	98,029	7,020	175,8
Rail braces, bars, fishplates or splice bars, and tie plates	288	14,935	765	29,8
Pipes and tubes:				
Cast-iron pipe and fittings	1,619	59,420	1,841	69,7
Other pipes and tubes	29,102	2,481,334	30,587	2,621,2
Wire:				
Barbed	12,528	720,378	15,249	926,5
Round iron and steel	1,531	308,223	2,310	497,2
Baling	152	10,170	202	13,2
Telegraph, telephone, etc., except copper, covered with cotton jute, etc	27	14,144	8	3,2
Flat and steel strips not thicker than ¼-inch and not over 16 inches wide	2,096	1,626,961	3,153	1,727,6
Rope and strand	2,020	376,406	1,663	291,3
Galvanized fencing wire and wire fencing	1,459	96,865	1,474	89,3
Hoop or band iron or steel for baling	9,403	406,246	23,227	855,5
Hoop, band, strips, or scroll iron or steel, n. s. p. f	16,728	644,974	443	52
Nails	7,598	649,998	7,287	557,
Castings and forgings, n. e. s	3,815	427,788	1,124	148,

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[1] Less than 1 ton.

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BUREAU OF MINES,
WASHINGTON, D. C.

3937

SLOSS EXHIBIT No. 2.

Sloss-Sheffield Steel & Iron Company

Pig Iron, Coal, Coke, By-Products

Address All Communications To The Company

Birmingham, Ala., July 7th, 1934.

Commissioner C. L. Richardson,
Representative of Secretary of Labor,
United States Department of Labor,
Birmingham, Alabama.

This is to confirm the understanding reached today at the conference between representatives of employees of our red ore mines and the management, which was presided over by Commissioner Richardson, regarding the position of this Company as to its red ore mining operations. This is furnished to you as the representative of the United States Government as a part of your record in this matter.

We are informed that the following named men have been chosen as a Committee to deal with the management on collective bargaining matters:

Geo. R. Coles, V. P. International.
John Hill, Pres. Local.
Jessie Gaines, V. P. Local.
Dave E. Smith, Fin. Sec. Local.
W. A. O'Neal, Chairman, Executive Board.
J. W. Gilbert, Chairman, Executive Board.
Tony Costa, Chairman, Executive Board.
Martin Walker, Chairman, Executive Board.
Sam Knox, Chairman, Executive Board.

We are entirely willing to deal with this Committee on matters of collective bargaining as they arise for all our red ore mines employees as they may represent.

The employees at our Ore Mines have been free to join any organization they chose without prejudice or discrimination and this is the policy of our Company.

It is understood that the wage scale attached to this letter constitutes the rates to be paid by us for the various classifications as shown, for the period of one year from this date, unless changed by mutual agreement between the management and the representatives.

Our men at each mine are free to select a committee to represent them in adjusting any grievance that may arise between them and the management which the employee himself cannot settle satisfactorily with his immediate supervisor. It is understood that such committee will not take up any grievance with the management unless and until the employee has endeavored to adjust the matter himself.

If the Committee and the Foreman of the mine fail to adjust any grievance, the matter will then be taken up by the Committee with the Mine Superintendent. Failing to reach agreement in this event, it will be taken up with the General Superintendent of Ore Mines. If they should fail to agree, the matter may be submitted to arbitration, one arbitrator to be named by the Committee and one to be named by the management of the Company and these two may select a third.

It is understood that the management of the mines and direction of the working forces are vested exclusively in the Company, and the duties of the mine committee shall be confined as above outlined. These duties are not to conflict with the proper execution of the assigned Company occupations.

It is understood that no such mine committee will interfere with the operations of the mine to enforce any purely local grievance until the full procedure of settlement has been followed.

The Company, of course, will be bound by all the terms and conditions of the Ore Mining Code when such Code has been adopted and signed by the Company to the extent that it applies to our operations in this District.

As a condition of the above understandings reached between the Committee and the management, it is understood the strike at our Ore Mines is called off and that all men are to return to their former occupations without prejudice of discrimination.

Yours truly,
R. M. MARSHALL,
Vice President and General Manager.

Sloss-Sheffield Steel & Iron Company.

Red Ore Mines.

Inside Rates.

Occupation	Present Rate	Amount Per Shift	Proposed Rate	Amount Per Shift	Hours Present and Proposed
Section Foreman	$0.58	$4.64	$0.64	$5.12	8
Company Drillers	.47	3.76	.51	4.08	8
Helpers	.40	3.20	.44	3.52	8
Magazine Man	.42	3.36	.45	3.60	8
Rockmen	.47	3.76	.51	4.08	8
Rockmen Helpers	.40	3.20	.43	3.44	8
Timbermen	.47	3.76	.51	4.08	8
Timbermen Helpers	.40	3.20	.43	3.44	8
Pipemen	.44	3.52	.47	3.76	8
Pipemen Helpers	.40	3.20	.43	3.44	8
Drivers	.40	3.20	.43	3.44	8
Chainers—contract	.0182 ton	5.40 avg.	.0182 ton	5.40	
Company chainers	.42	3.36	.46	3.68	8
Company chainers	.40	3.20	.435	3.48	8
Engineers—Main Hoist	.47	3.76	.57	4.56	8

Occupation	Present Rate	Amount Per Shift	Proposed Rate	Amount Per Shift	Hours Present and Proposed
Engineers—Auxiliary Hoist	.42	3.36	.46	3.68	8
Stableman	.42	3.36	.47	3.76	8
Trackmen	.47	3.76	.51	4.08	8
Trackmen Helpers	.40	3.20	.43	3.44	8
Roller Man	.40	3.20	.44	3.52	8
Pumpers	.40	3.20	.44	3.52	8
Electric Repairman	.47	3.76	.605	4.84	8
Machinist	.47	3.76	.605	4.84	8
Laborers	.40	3.20	.415	3.32	8

Sloss Sheffield Steel & Iron Company.

Red Ore Mines.

Outside Rates.

Occupation	Present Rate	Amount Per Shift	Proposed Rate	Amount Per Shift	Hours Present and Proposed
Truck Driver	$0.33	$2.64	$0.38	$3.04	8
Teamster	.30	2.40	.35	2.80	8
Engineers—Main Hoist	.495	4.95	.58	5.80	10
Tipple Foreman	.385	3.08	.42	3.36	8
Dumpers	.30	2.40	.35	2.80	8

Occupation	Present Rate	Amount Per Shift	Proposed Rate	Amount Per Shift	Hours Present and Proposed
Tipplemen	.30	2.40	.35	2.80	8
Conveyor Men	.30	2.40	.35	2.80	8
Weighmen	.455	4.10	.50	4.50	9
R. R. Car Loaders	.30	2.40	.35	2.80	8
Crusher Men	.385	3.08	.42	3.36	8
Oiler	.30	2.40	.35	2.80	8
Machinist	.55	4.40	.625	5.00	8
Blacksmith	.57	4.56	.65	5.20	8
Blacksmith Helpers	.33	2.64	.38	3.04	8
Carpenter	.44	3.52	.48	3.84	8
Car Repairman	.44	3.52	.47	3.76	8
Car Repairman Helpers	.385	3.08	.42	3.36	8
Drill Sharpener	.44	3.52	.535	4.28	8
Drill Sharpener Helper	.33	3.64	.40	3.20	8
Compressor Men	.44	3.52	.52	4.16	8
Watchmen	.33	2.64	.36	2.88	8
Laborers	.30	2.40	.30	2.40	8

Sloss-Sheffield Steel & Iron Company.

Red Ore Mines.

Hand Loading Entries.

Normal crew 5 men. Base 35 tons per shift of 8 hours. Tonnage rates.

Occupation	Present Rate	New Rate	Earnings Per Hour	Earnings Per Shift
Driller	$0.099 per ton	$0.1303 per ton	$0.57	$4.56*
Helper	.088 per ton	.1074 per ton	.47	3.76
Muckers	.088 per ton	.1143 per ton	.50	4.00

All excess tonnage above base each day period will be paid on pro rata basis at $0.58 per ton.

* After expenses are deducted.

Credit for yardage to driller, or head miner, if employed.

Entry Yardage Rates.

Main Slope	$16.50 per lin. yd.
10 x 16 Entry ...	11.00 per lin. yd.
10 x 18 Entry ...	9.20 per lin. yd.
Upset	7.30 per lin. yd.

Drag Loading.

Normal crew 9 men. Base 130 tons per shift of 8 hours.

Occupation	Present Rate	New Rate	Earnings Per Hour	Earnings Per Shift
Head Miner	$0.1170 per ton	$0.1400 per ton	$0.64	$5.12**
Drillers	.0319 per ton	.0351 per ton	.57	4.56
Helpers	.0264 per ton	.0290 per ton	.47	3.77
Drag Engineers	.0273 per ton	.0351 per ton	.57	4.56
Haulage Engineer	.0264 per ton	.0268 per ton	.435	3.48
Muckers	.0264 per ton	.0308 per ton	.50	4.00

** After Expenses are deducted.

All excess tonnage above base each pay period will be paid on pro rata basis at $0.455 per ton.

3943 PLAINTIFFS' EXHIBIT No. 35.

Wage and Hour Division

Minneapolis, Minnesota.

406 Pence Building,

Minneapolis, Minnesota, Monday, June 30, 1941.

Depositions.

Depositions taken in the matter of File Nos. 5232, 5233 and 5234 of Sam E. Swanson, George Micheal Burck, Leander A. Runn, John Debeltz, Anton Pechek, Joseph Bovitz, Andrew Sopko, Florindo Pilotto, Frank Eagloski and William Hartman.

Present:

Donald M. Murtha, 406 Pence Building, Minneapolis, Minnesota, appearing for the Intervener, Philip B. Fleming, Administrator, Wage and Hour Division.

Borden Burr, Brown Marx Building, Birmingham, Alabama, and S. M. Bronaugh, 2100 Comer Building, Birmingham, Alabama, appearing jointly for Tennessee Coal, Iron and Railroad, Company; Republic Steel Corporation; and Sloss-Sheffield Steel and Iron Company, plaintiffs.

3945 NOTICE OF INTERVENER OF TAKING DEPOSITION OF WITNESSES AT MINNEAPOLIS, MINN., ON 6/28/41, omitted from the printed record, pursuant to Rule 23 of this Court.

* * * * * * * * *

3948 NOTICE OF TAKING OF DEPOSITIONS OF WITNESSES AT MINNEAPOLIS, MINN., ON 6/30/41, omitted from the printed record, pursuant to Rule 23 of this Court.

* * * * * * * * *

3950 PROCEEDINGS.

Mr. Murtha:

Depositions of George Michael Burck, John Debeltz, Anton Pachek, Sam E. Swanson, Leander A. Runn, Joseph Bovitz, William Hartman, Andrew Sopki, Frank Eagloski, and Florindo Pilotto, taken at 406 Pence Building, Minneapolis, Minnesota, at 1:00 o'clock, on June 30, 1941, before Everett D. Nelson, Notary Public, in and for the County of Hennepin, State of Minnesota, pursuant to notices of taking depositions in the above-entitled actions, served on the plaintiffs on the 20th day of June, 1941, and the 24th day of June, 1941.

Appearing for the Intervener, Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, in each case, Donald M. Murtha, Regional Attorney of the Wage and Hour Division, 406 Pence Building, Minneapolis, Minnesota.

Now, Mr. Burr, what is your full name?

Mr. Burr:

Appearing for the Plaintiffs, Borden Burr and Sam M. Bronaugh, Birmingham, Alabama.

Mr. Murtha:

Now these other gentlemen are not appearing, I take it?

Mr. Burr:
No, sir, they are not appearing; they are spectators.

Mr. Murtha:
Well, then, let the record show that the Defendants and Intervener call as the first witness, Sam E. Swanson.

(Discussion off record between counsel.)

Mr. Murtha:
It is stipulated between the parties that the examination and reading of the deposition by the witnesses after the deposition is fully transcribed is hereby waived; and it is further stipulated that the signing of each page of the deposition and the signing of the deposition is hereby waived—

Mr. Burr:
Provided the Notary Public certifies his transcript is a correct transcription of the testimony of the witnesses as taken down.

Mr. Murtha:
All right. I will call Mr. Sam E. Swanson.

3951 SAM E. SWANSON was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Murtha:
Q. What is your name?
A. My full name is Samuel Elmer Swanson.
Q. Are you also known as Sam E. Swanson?
A. That is what I am generally known as.

Q. Where do you live?

A. Ely Minnesota, 538 East James Street.

Q. What do you do for a living?

A. I am a contract miner, underground.

Q. How long have you been a miner?

A. I have been a contract miner underground for over twenty years.

Q. Do you know what year you started to mine?

A. I started in as a contract miner in July of 1920.

Q. At what mine?

A. At the Boeing Mine, Cleveland Cliffs Iron Company at Hibbing, Minnesota.

Q. You stayed there how long?

A. Until September, 1927. The lease had expired and the superintendent told me that—

Mr. Burr:

Wait a minute; we object to any conversations, of course.

By Mr. Murtha:

Q. How long did you stay there?

A. Seven years.

Q. Until what year?

A. Until 1927—until the month of September, 1927.

Q. Do you recall during the period you were at the Boeing Mine the hours you worked?

Mr. Burr:

Just a minute, Mr. Swanson. The plaintiffs wish to interpose an objection to that question. I suggest that by stipulation the same objection may be interposed to similar questions, that it is irrelevant, immaterial and incompetent in this case, and it involves operations not in any way connected or associated with the mines of the plaintiffs in the State of Alabama, and it is in reference to matters with which the plaintiffs in this case have no connection.

In other words, I want to make it plain that we are objecting to any testimony in reference to conditions in Minnesota as in any way having a relevancy to the conditions that actually exist in the State of Alabama. Now, if the attorney is willing to stipulate that it is understood that I have that objection to each question asked with reference to those matters, why, it won't be necessary for me to interrupt you.

Mr. Murtha:
Well, my instructions are rather limited.

Mr. Burr:
Well, I should think you could certainly have authority to do that, because I would have to be objecting to every question you ask him.

By Mr. Murtha:
Q. Now, is this an iron mine?
A. Iron ore mine—underground and open pit, both.

Mr. Burr:
Now, is it understood that I have that objection, or shall it be necessary for me to interpose an objection each time?

Mr. Murtha:
Oh, it is understood.

By Mr. Murtha:
Q. This is an iron ore mine?
A. Do I answer your question now?
Q. Yes.
A. Regarding what time we went to work?
Q. Well, I will restate that. Is this an iron ore mine?
A. Yes.
Q. What range is it?
A. The Mesabi Range.
Q. How do you spell that?

A. I understand that the correct way is Mesabi.

Q. Was the Boeing Mine an underground mine?

A. It was both, an underground and an open pit.

Q. Did you do underground mining?

A. I never worked in the pit. I worked underground all the time I was on the Boeing.

Q. Now, in your own words, describe the miner's day at Boeing during the period that you were there.

Mr. Burr:

Now, just a minute. In addition to the objections that we have stipulations about I also want to have the record show that we object to this on the part of time. This gentleman left there in September, 1927, and it could have no effect on matters in issue in this case.

A. At the Boeing?

By Mr. Murtha:

Q. Go ahead.

A. The Boeing was a shallow mine and climbed down about ten minutes to eight in the morning. At about ten minutes to eight in the morning they blew two short blasts, which was a signal for us to start climbing down, and at eight o'clock all the miners and underground employees would be under ground. Of course, we wouldn't be at our working place, but we would be underground at eight o'clock.

Q. About what time did you arrive at the face?

A. Well, it would vary, depending on the distance from the shaft, but I would say possibly ten or fifteen minutes after eight.

Q. Go ahead.

A. At twelve o'clock we would start climbing up for our lunch hour, so we generally left the face around 11:45 or possibly 11:50, depending on the distance we had to go. And again, at ten minutes to one, they would blow two short blasts again, and we would start down and at one o'clock we were all underground. At ten or fifteen minutes after one, we were all in our working places. At about ten or fifteen minutes to five, why, we would go back to the shaft, and at five o'clock start climbing up again,—generally arriving on the surface in about five minutes. A little later on—I think this continued for about five years,—later on they changed it and we worked from seven to three and three to eleven. We would go down at ten minutes to seven, eat lunch on company time, and about ten minutes to three—no, I believe we met our partners right in the place. We met them at three o'clock, so it would probably be ten or fifteen minutes after three when we arrived on the surface.

The next shift, of course, was the same.

Q. What time would you leave the face during this latter period?

A. We would leave the face,—well, our partners would relieve us. They would come down at ten minutes to. They were supposed to relieve us at three o'clock. It might have been a few minutes after three; it might have been five minutes after three that they would relieve us.

Q. At Boeing was it customary for the next shift to move in and take up the work, continue on without any delay?

A. It was.

Q. Who did you work for after 1927?

A. I went to Ely and got a job at the Pioneer Mine as a contract miner, and I have been there ever since, worked steady, with the exception of a few months during 1933 when the mine was closed down.

Q. Who operates that?

A. The Oliver Mining Company.

Q. What kind of a mine is it?

A. An iron ore.

Q. Underground?

A. Underground.

Q. How many changes have there been in your working day at the Pioneer?

A. One.

Q. When was that?

A. I am quite sure it was in '35.

Q. Then there was another May 1st, 1940?

A. Oh, that is right, I forgot that.

Q. So that makes two?

A. That is right.

Q. Well, now, taking them in order, what was the miner's day during that first period? Give the dates.

A. Well, up until 1929, we would work eight hours a day on the day shift, and nine hours on the night shift, and if you worked the five nights, you got a bonus of three hours for Saturday evening, when you wouldn't work at all. It was customary for us to start going down at 7:30 in the morning, and we would get back up on the surface around five minutes after twelve. We would go down again around twenty-five minutes to one and get back on surface again about five minutes after five. I am talking about the first cages. We had three cages, and naturally the others go down later and come up later.

Q. You are talking about your own situation?

A. Yes.

Q. Now, after 1929?

A. Well, after 1929 we—

Q. And up until when?

A. I think it might have been in the early part of 1930 that we started working a five-day week. All Saturday work was eliminated as far as the miners were concerned. Then, of course, in 1931 they cut it down still more. I think we worked a four-day week, and finally we worked four days for two successive weeks, and then we stayed home for two weeks, and in '32 we worked, I think, three days a month for a while. In '33 the mine closed down entirely for six month—around six months. It was the custom then to go down—as I stated, the first cage went down around 6:30 in the morning and came up about five minutes after twelve, noon, and went down again about twenty-five to one and came up about five after five.

Q. Was that 6:30 or 7:30?

A. I beg your pardon, 7:30, because we worked from eight to five.

Q. Now, what are the dates of the second period?

A. In 1935, while we were under the Employees' Representation Plan, why, we tried to get our representatives to get an eight hour collar-to-collar workday for us. They reported to us that they had met with the superintendent and that he had refused this request. But he said that we possibly could get some changes made in the time, in our working time, because the night-shift men complained that coming home at six o'clock in the morning—

Mr. Burr:

Of course, I want to interpose an objection to statements made by third parties.

By Mr. Murtha:

Q. Go ahead.

A. I want to explain why we asked for this change. The night-shift men coming home in the morning on a hot summer day, found they weren't able to get enough sleep to feel in a good condition to do a good night's work. We felt that if we worked from seven to three on the day shift and three to eleven on the night shift, why, we would turn out more work in the time that we were underground.

Q. Now, give the miner's day during this period you speak of, which, I believe, you said was 1935 to 1941.

A. Yes.

Q. In May?

A. Yes.

Q. What was the miner's day?

A. We would go down at 6:30 in the first cage and we would come up about 3:35.

Q. You had lunch down—

A. Underground, with a half hour lunch period underground.

Q. During this first and second periods, both, would you engage in any activities prior to going down into the mine?

A. Well, coming to work about—

Q. After you arrived at work?

A. After I arrived at the dry?

Q. Yes, from then on.—

A. Arriving at the dry about ten minutes after six, we would change our clothes, pick up our brass checks, pick up our carbide for our lamps—

Q. What is a brass check?

A. We are required to wear a brass check whenever we are underground, giving our check number. We carry that with us at all times.

Q. Do you pick that off a board?

A. Off a board.

Q. And where was that situated?

A. In the dry house.

Q. How far was the dry house from the shaft?

A. I would say about a hundred feet.

Q. Where was the carbide?

A. That was about twenty feet on one side of the dry house.

Q. Anything else?

A. Well, we would pick up our carbide and go down to the shaft collar, and sometimes our foreman had some orders for us, and then we would wait until it was time to step on the cage and go down.

Q. If your working conditions or place were to change from the day before, would you discuss it with your foreman at the shaft collar?

A. If there was something unusual to do, or if you were to work in a different place, why, you would discuss it with your foreman. But if you were to go and work in the same place, and there was nothing unusual, why, you wouldn't bother to discuss it with him.

Q. Now, this is at the Pioneer Mine?

A. At the Pioneer.

Q. How many cages?

A. Well, I think about three would be the average for the time that I worked there.

Q. That means three cage trips?

A. Yes.

Q. Do you have an idea as to the length of time required for a cage trip?

A. A round trip?

Q. Round trip.

A. Oh, about eight, or probably nine minutes. I think that is about as close as I can get it.

Q. How many men were in each cage?

A. That ruling has been changed a couple of times, but I think about 30 men on each deck and two decks would make about 60 men on a cage.

Q. Would the cage take you down to the working level?

A. It would take you down to the working level.

Q. Was there a place called the station, where you got off the cage?

A. Yes, sir.

Q. What level did you work on?

A. When I first started in 1927, I got off at the 12th level. I worked above the 12th level. For the last five years or more, though, I have been getting off at the 13th level. I have been working above the 13th level.

Q. By the expression working above the 12th level or the 13th level, you mean, don't you, you were between the 11th and 12th, and the 12th and 13th levels?

A. Yes.

Q. How long did it take you to walk from the station to the face?

A. The station to the face, about twelve to fifteen minute. I think fifteen minutes, about.

Q. Of course, that would depend on how far you were away from it?

A. Yes.

Q. The face of the mine is what?

A. Your working place. That is what I understand it to be.

Q. Is that the place where the drilling is done?

A. That is your face.

Q. The blasting?

A. Yes.

Q. Where the ore is taken from?

A. Yes.

Q. What does the miner do at the face? Describe his activities.

A. Well, it depends upon—

Q. What did you do as a miner on the face?

A. It depends upon the condition I find the place in. Of course, safety is first, to examine your place and see if it is safe. You sprinkle your place and trim down any loose ore that might be in the face or on the sides. If there is dirt, a pile of dirt there, why, you put that in the chute, and put up a set of timber, drill and blast, depending on how you find the place.

Q. Do you blast at any particular time during the day?

A. Up where we are working, we do We are in a hard ore body. It requires more than eight hours to drill a full cut and we have good ventilation up there. I mean, the smoke is carried away quite fast, so we blast whenever we are ready.

Q. Then you go right back in and work?

A. Well, right back, I would not say right back, it depends upon the place you are working in. You might be able to go back after fifteen or twenty minutes, depending on when the smoke is gone.

Q. Well, at present you are working in hard ore?

A. Yes.

Q. Has that been true all during your experience?

A. No, the pillar in has been getting harder as we go down.

Q. And with soft ore, can you blast whenever you please?

A. Why, I understand they do blast whenever they please.

Mr. Burr:

Of course, we want to object to the statement that he understands how they blast in the soft ore.

By Mr. Murtha:

Q. When you were working in the soft ore, did you blast whenever you wished?

A. Yes, when we were working in the soft ore, we blasted whenever we were ready to blast.

Q. Now, in the mines you have worked in, what is the ordinary practice in the average run of ore, as to the number of times a day that blasting is done?

A. Well, in a soft ore place you generally blast once a shift. In a hard ore place, the hardness of the ore varies so much, that it is hard to give any definite answer there. It may require eight hours to drill your breast. It may require as much as sixteen.

Q. In the soft ore, do you ordinarily blast about once a day?

A. Ordinarily about once a day.

Q. Do you recall occasions when you blasted more than once a day?

A. Oh, yes, there have been times.

Q. And did you go back to work immediately afterwards?

A. As soon as the smoke was cleared out, yes.

Q. How many minutes?

A. Well, it varied from five to twenty, depending on the ventilation.

Q. Has this been true during the entire period?

A. Yes.

Q. Ordinarily, do you attempt to blast at the end of the day—that is, in the soft ore?

A. Yes, if it is convenient, or you could blast it possibly ten or fifteen minutes before quitting time. But you wouldn't do that; you would let it go and blast at quitting time, because the miners in the vicinity would be able to work until quitting time. You might stop three or four gangs from working by blasting. The foreman would generally allow you to use your own judgment in regard to that.

Q. I think you have testified that during a part of your experience shifts have come in immediately after another shift has completed their day?

A. Yes.

Q. And at the present time, in the hard ore, you occasionally blast at the end of the day?

A. Just occasionally.

Q. And when you do, does the next shift come on immediately?

A. No, there was an hour between shifts before May 1st.

Q. Yes.

A. And now there is more than an hour between shifts —I mean, the actual time.

Q. All right. Let's take your new period. That is the third different set of circumstances. What is your—

Mr. Burr:

Just a minute; we wish to interpose an objection to any question relating to conditions since May 1, 1941, on the same grounds as objected to before.

By Mr. Murtha:

Q. What is the miner's day since May 1, 1941?

A. They don't load the cage until after the seven o'clock whistle blows. Brass checks are hung up at the shaft and your lamp is hung on the locker. So nobody goes underground before seven o'clock in the morning, outside of—I think there is an electrician and a helper, who will go down at six, and turn on the fans, but I am talking of the regular crew.

Q. Are you on the first cage now?

A. Yes.

Q. When does the second cage go down?

A. I think it is about from eight to ten minutes after seven.

Q. And then the next one?

A. (Continuing)—Would be about eighteen to twenty minutes after, I think. The third cage would go down eighteen to twenty minutes after.

Q. Let's try it again. The first one at seven?

A. Yes.

Q. The next about what time?

A. Well, I will say nine minutes.

Q. Make it 7:09, you mean?

A. Yes.

Q. And the next one?

A. About eighteen.

Q. 7:18?

A. Yes.

Q. Do you come up for lunch now?

A. No.

Q. You haven't for the last several years?

A. We haven't since we changed shifts.

Q. You stop working at lunch time?

A. Yes.

Q. How many minutes?

A. What is that?

Q. Do you eat at the face?

A. We generally do.

Q. What time do you have lunch?

A. Well, I ought to explain that starting a short while ago in our ore body we started working three shifts. On a day shift we have our lunch period from 11:00 to 11:30.

Q. Yes.

A. And the afternoon shift, I think it is 7:30 to 8:00, and on the 11:00 to 7:00 shift, why, from 3:00 to 3:30.

Q. When is the end of the day now?

A. When we arrive on the surface.

Q. When is the end of your working day that you are paid for?

A. When we arrive at the collar of the shaft on surface.

Q. What time is that?

A. Oh, it is generally about—the day shift is about 3:29 or 3:30.

Q. What time do you leave the face of the mine now?

A. Now?

Q. Yes.

A. Well, around shortly after 3:10—between 3:10 and 3:15 on the day shift.

Q. So I won't forget, you are here under subpoena, are you not?

A. Yes.

Q. When does the next shift after yours come on? You get up to the surface at 3:30? When does the next shift go down?

A. They go down at 3:00 o'clock.

Q. And you pass them?

A. Yes, we pass them on their way in; we meet them on our way out.

Q. I wish you would clear up your statement of a few moments ago, that there was about an hour between shifts.

A. Well, the big majority of the men down there work two shifts, a day shift and the afternoon shift—or rather, the day shift and the night shift. A small group working up in the hard ore body works three shifts. We work—the day shift works from 7:00 to 3:30 and the next shift from 3:00 to 11:30. I mean, the afternoon shift works from 3:00

to 11:30, and the night shift from 11:00 to 7:30 in the morning.

Q. Now, it is possible where you are working now that one shift follows the other immediately?

A. Yes.

Q. As a matter of fact, they come to the face as you leave the face?

A. Yes, they come to the face a few minutes after we leave the face and formerly they came to the face just as we were leaving.

Q. Now, occasionally~~, do~~ you blast just as you are leaving?

A. Yes.

Q. Do you work on the second shift?

A. Yes.

Q. You mean, you follow another shift?

A. Yes.

Q Has it prevented you from going to the face and working?

A. Well, up in our end it hasn't, because of the fact that we don't blast very often at the end of the shift, and because we have good ventilation up there so the smoke clears our fast.

Q. Now where there are two shifts only, how much time elapses between the shifts?

A. It was about an hour before May 1st, but since May 1st, I think about an hour and a half is a good guess.

Q. Several years ago, before 1935, the night shift used to go on at 7:00 or 7:30 following the day shift which ended at 5:00 o'clock?

A. Yes.

Q. Did you say there was some dissatisfaction about that when they narrowed that time down? Is that correct?

A. You mean, the time spent?

Q. The time between shifts, where there were two shifts?

A. Yes.

Q. Now, what other changes are there since May 1, 1941, relative to the powder, for example? Where do you get your powder now?

A. The powder we get at the same place.

Q. Where is that?

A. Underground—each foreman has a place where he keeps his powder. We call it the powder house.

Q. Near the station on the level?

A. No, it is generally up in his ore bodies, wherever his crew works.

Q. Do you have to go there each day to get the powder?

A. You get the powder every time you are ready to blast.

Q. Sometimes that would occur the first thing in the morning?

A. Yes.

Q. And other times it would be later on in the day?

A. Yes.

Q. Has that always been true?

A. As far back as I can remember, yes.

Q. How about tools? Where are they kept?

A. The tools are—

Q. Let's take the full period that you have been working.

A. Starting from the beginning?

Q. Yes.

A. Well, years ago it was the custom to carry your own tools in from the station underground, and it was also the custom to carry certain tools, nails and different supplies that you might need from the warehouse over to the shaft collar, and after they were taken down on the cage, why, you would carry them in from the station.

Q. At the Boeing mine how far was the tool house from the shaft collar?

A. Well, only about 25 feet.

Q. And how far at the Pioneer?

A. At the Pioneer, it is about a quarter of a mile to the warehouse and tool shop.

Q. Now, how long did that practice continue, that the miners would go to the warehouse and get what tools they needed?

A. I can't remember exactly, but it might have been around 1931 or '2 that some changes were made. Other changes have been made since, generally after the Grievance Committee had had a meeting with the management, and protested against some of these customs.

Q. And what did they do after that, the company, in respect to the tools?

A. They made it easier for us in that respect that we don't need to go to the warehouse for anything any more. Our foreman orders whatever we need and it is brought to the shaft and sent down and brought in by the timber trucks, practically to our working face. We may have to carry or hoist it up a short distance ourselves.

Q. And that has been since when?

A. That has come by stages. I think that it is pretty hard to state definitely just what year a certain thing was granted—a certain request was granted. I would say it was over a period of five years from 1931 to 1936. That is my best recollection.

Q. Now, in walking from the station to the face of the mine, do you walk along a perfectly level corridor, or—

A. Well, you walk along the tracks where the iron ore motor cars haul out the iron ore.

Q. You walk all the way along that until you get to the face?

A. Well, you walk in as far as you can, and then you climb up. We climb up to our working face.

Q. Now, how far up do you climb?

A. Oh, right now we are climbing up 50 feet.

Q. Occasionally carry tools with you when you do that?

A. Well, we are not allowed to do that any more. That is a safety measure that was adopted some years ago. We are not allowed to carry any tools up.

Q. When did they start that?

A. Well, that was during this period that I spoke of. I think it was between '31 and '36—around in there. We hoist them up now.

Q. After '36 then, you climb up? Is that a raise?

A. We call them ladders—a ladder road.

Q. Would you climb up onto the top of a ladder?

A. Yes.

Q. And then life up the tools?

A. Well, alongside these ladder roads you climb up, there is generally an open raise for hoisting timber and tools and other things which you require.

Q. Before May 1, 1941, would you lift the tools up before your time had started for the day?

A. Well, perhaps I ought to say occasionally—not always.

Q. Now, you were on the Grievance Committee?

A. I am on the Grievance Committee at the present time.

Q. Of what?

A. Of the steel workers' organizing committee, Ely Local Union No. 1664.

Q. How long have you been on that committee?

A. About a year now.

Q. What is the purpose of the committee?

A. The purpose of our union—

Mr. Burr:

Note an objection to this line of questioning, also. I don't see the relevancy of this testimony.

By Mr. Murtha:

Q. Go ahead.

A. When the members of your union feel that they have a grievance, why they present it at the union meeting where it is discussed or else they bring it up to the Grievance Committee and we bring it up to the management when we meet with them.

Q. Now, what are some of the grievances which you have discussed with the management?

A. Well, they are very numerous, but if you want to go back to the Employees' Representation Plan, or just while the union has been organized, or during the time that I have been on the Grievance Committee—

Q. Just during the time you have been on the Grievance Committee.

A. Well, some employees felt that they were being discriminated against in that certain men had been promoted who had less continuous service for the company than they had, and another grievance was where the surface foreman had tried to intimidate an officer of the union from belonging to the union. And there have been various small things like—one was not enough hot water in the dry house and change house at all times.

Q. Would the members come to you with their complaints?

A. They would generally go to the Chairman, or the President of the Local. That was the general procedure, or else they would bring them up at the local union meeting.

Q. And among these complaints, was there any complaint relative to the payment for all hours worked?

A. There has been several of them in the past, but not since I was on the Grievance Committee.

Mr. Burr:

Of course, we want to move to exclude his answer, as not responsive to the question, because it would appear from his answer he is talking about something that he has heard, and has no knowledge of.

A. I have the knowledge that these claims have been presented to the management.

By Mr. Murtha:

Q. Now, ~~during the period that you~~ have been mining since 1920, have you ever heard the problem discussed as to what hours should be paid for?

Mr. Burr:

We want to object to that question as incompetent, immaterial and irrelevant, and not within the issues of this case.

A. Well, back on the Mesabi Range I know I have often heard the old-timers there discuss the different things that had happened in the past and one of them was that during the labor disturbances they had during the first world war days, when the IWW'S were organizing, one of the demands was an eight-hour collar-to-collar day. And at the Pioneer, since I have worked there, I have always heard and the underground men felt—

Mr. Burr:

We want to object, in addition to the other objections, to testimony as to how the underground men felt.

A. Well, supposing I say that the underground men put in a longer day than the men who worked on surface the same number of hours. I think about 1934 the Oliver adopted an eight-hour day for its surface and stock employees. Before that they worked ten hours. Well, a surface man would appear on the job at five minutes to eight, and at five o'clock he was through, with a full hour lunch period. We would have to appear on the job, or be ready at the change house, at about 7:15. Our lunch period on surface wouldn't be much over a half hour and we wouldn't leave the change house until fifteen or twenty minutes past five.

That was the reason we felt we were putting in a much longer day than the surface men, and we were both getting paid for an eight-hour day. In 1936 when this change of shifts was brought up to the employees' representatives, our representative was requested to ask the management for an eight-hour collar-to-collar day. He reported back to us that he had asked for it, and that this request had been refused, but some changes would be made in the working time. They were made in the working time, but we were still required to put in more than eight hours from collar-to-collar.

Q. When was the collar-to-collar question presented to the company?

A. Well, at this time I spoke of, under the Employees' Representation Plan; it was presented to the management again in 1937, after we organized our local union, and decided to ask for a contract covering our members. One of the demands there was an eight-hour collar-to-collar day.

Q. What does that mean to you, that expression "collar-to-collar"?

A. I have always through a collar-to-collar day meant from the time you stepped onto the cage in the morning; until you got off the cage on surface at the end of the working day.

Q. And did you believe that you should be paid for those hours?

A. We felt—

Mr. Burr:

Just a minute. That is so patently inadmissible that I shouldn't have to make an objection, but I want to note my objection.

A. Well, we certainly felt that we were entitled to compensation.

By Mr. Murtha:

Q. Did you yourself feel—

Mr. Burr:
The same objection.

By Mr. Murtha:
Q. Were you active at meetings?

Mr. Burr:
The same objection; note an objection to that.

By Mr. Murtha:
Q. Were you active at group meetings, or did you yourself discuss that question?

Mr. Burr:
Same objection to that question.

A. I have discussed that question many times with my fellow workers both at union meetings and probably during the lunch period.

By Mr. Murtha:
Q. Over how long a period?

Mr. Burr:
Objected noted.

A. Oh, ten years.

By Mr. Murtha:
Q. Have you heard it discussed by other miners?
A. Yes.

Mr. Burr:
Objection to that, please.

By Mr. Murtha:
Q. Now, when you say you heard it discussed, what do you mean?

A. Well, if you were in the dry at 8:10 or five minutes before the time you were required to go down, why, in the winter time, especially, you would sit around and discuss different things, and it was at various times when we were discussing things that this question came up.

Q. After the Grievance Committee had presented their requests to be paid for all hours from collar-to-collar about 1935, or '36—

A. The employees' representatives.

Q. Yes. After the company refused to grant that request, was there any dissatisfaction among the miners?

Mr. Burr:
Note an objection.

A. Well, there was a certain amount of dissatisfaction, but we felt that there was nothing we could do about it at that time. Our Employees' Representation Plan wasn't very satisfactory. We hadn't gotten very much results from it, and we were rather dissatisfied with the whole plan.

By Mr. Murtha:

Q. So what did you do?

A. In 1937 we organized our—

Mr. Burr:
Note an objection to that, also.

A. We organized our local union and affiliated with the Steel Workers' Organizing Committee.

By Mr. Murtha:

Q. And was this demand to be paid collar-to-collar included in your union program?

A. Yes, it was discussed at several union meetings. It was included in the program and has been discussed many times since.

Mr. Murtha:

I would like to have this book marked as an exhibit, and then mark each of the separate minutes.

(The book referred to was marked Defendants-Intervener's Exhibit No. 1, and sub-lettered A to Z-31, inclusive.)

By Mr. Murtha:

Q. Mr. Swanson, since May 1, 1941, is the check rack in a different place than it was formerly?

A. Yes, it was formerly in the dry house, but now they hand it up by the shaft collar.

Q. How far is the shaft collar from the dry house?

A. About a hundred feet.

Q. Is there a change in what you do with your carbide lamp at present?

A. Well, a few months ago, they introduced an electric light; and we have been using that. Prior to May 1st; we would step up to the rack in the dry house and get our lamp and battery, but now, since May 1st, we find our lamps and batteries hanging on our locker doors and we don't pick them up.

Q. If you need a new battery, what do you do? Or is that all taken care of for you?

A. The battery is the same one. It is recharged after each shift.

Q. Oh, you are required to do nothing at all about it, except hang it up?

A. No, take it off and put it on; that's all.

Q. Before May 1st, 1941, what did you have to do?

A. Well, we generally picked up our lamps as we stepped into the dry, because it was in on our way to our lockers—pick it up and take it over to your locker, and put it on while you were dressing, or changing your clothes; generally pick it up about a quarter after six.

Q. You say now the tools are brought almost to the face?

A. Yes.

Q. Now, since May 1, 1941, have there been any changes in the amount of ore that you have been able to produce?

Mr. Burr:

Note an objection to that, in addition to the other objections that I have.

A. Well, not that I can notice in our particular territory. I discussed it with the foreman, and he said that—

Mr. Burr:

Note an objection to any discussion with any third parties.

A. He hadn't noticed any decided change.

By Mr. Murtha:

Q. How about your own personal production experience since May 1, 1941, as compared to before?

Mr. Burr:

Note an objection to that also.

A. Well, it appears to be about the same. It is pretty hard to tell whether you would have produced more, if you had worked an additional fifteen or twenty minutes. You see, I have been mining for twenty years and I generally map out a day's work. If you have got a stiff day's work ahead of you, you dig in right from the start and keep going. Some days, why you haven't got as heavy a day's work ahead of you. Maybe the fellows are working just a little faster or harder now. After working that many years in a place, you get accustomed to producing a certain amount of work, and you feel tired after you have produced that much work, and that is just about the way it goes.

By Mr. Murtha:

Q. Now, you have attended union meetings quite often?

A. As far as I know, I have only missed one in four years.

Q. Have you ever had occasion to act as secretary?

A. Yes, on at least two occasions I have acted as recording secretary.

Q. I hand you Defendants-Intervener's Exhibit S and ask you what it is?

Mr. Burr:

We wish to note an objection to that question. We object to this question and any other questions relating to the exhibit that has been presented to the witness, on the ground that it is immaterial, irrelevant and not within the issues in this case. It is not binding in any way upon the plaintiffs.

By Mr. Murtha:

Q. What is it?

A. It is a copy—

Mr. Burr:

Wait a minute. So you won't misunderstand me, it doesn't appear that it constitutes all of the minutes. It doesn't appear that the witness who is testifying has knowledge of all the minutes he is testifying about.

A. This is a copy of the minutes of a union meeting held on Friday, August 26, 1938 (indicating).

Mr. Burr:

Let me see that, please, sir. I want to certainly object to the witness testifying as to any exhibit until I have had the opportunity of seeing what it is.

By Mr. Murtha:

Q. I asked you what it was.

A. It is a—

Mr. Burr:

Wait just a minute. Do I understand you to decline to let me examine it?

Mr. Murtha:

No.

Mr. Burr:

I am going to ask for that privilege. That is all I am asking for.

(Exhibit handed to Mr. Burr.).

Mr. Burr:

I should think you would make this appear as Intervener alone, as other defendants are not here.

Mr. Murtha:

Well, I am appearing for the defendants and the intervener.

Mr. Burr:

You are appearing for all the defendants?

Mr. Murtha:

Yes.

Mr. Burr:

By what authority, please, sir? Are you appearing for the other defendants, or just for the Administrator?

Mr. Murtha:

I am appearing for Philip B. Fleming, Administrator.

(Discussion outside the record.)

By Mr. Murtha:

Q. Now, the question is, what is Defendants-Intervener's Exhibit S?

Mr. Burr:

Now, of course, it is understood I have an objection to all of these questions.

Mr. Murtha:

On the grounds of immateriality—

Mr. Burr:

On the grounds I mentioned.

Mr. Murtha:

You don't object at this time at least to the competency? Your objection goes to immateriality?

Mr. Burr:

My objections are as I stated above: I want them understood as being put into the record as to each question that is asked him about these books. I will state them again, if you wish me to.

Mr. Murtha:

Yes, do that.

Mr. Burr:

I object to that as incompetent, immaterial, illegal and irrelevant testimony. It is in reference to matters that are not involved within the issues of this case, and not binding on the plaintiffs in this case, and not shown sufficiently to be the minutes of the organization that is referred to, and not sufficiently proven as the minutes, and not clear as being all the minutes of the organization over the period of time that is involved.

Mr. Murtha:

Well, now, if you wish to make your objection as you made it before, and confine it to generally your position—

Mr. Burr:

Of course we want to get back to a good climate as soon as we can, but if I have to make the same objection each time—

Mr. Murtha:

I won't agree that you can have the same objection as to the lack of foundation, and so forth on each question.

Mr. Burr:

Then I would have to make it. Now, Mr. Swanson, just understand that every time he asks you a question, give me time to get my objections in.

By Mr. Murtha:

Q. What is Exhibit S?

A. A copy of the—

Mr. Burr:

Just wait a minute. We object to that question on the ground that it calls for incompetent, irrelevant and immaterial and illegal testimony, and matters not within the issues of this case and not binding upon the plaintiffs in this case. The genuiness of the paper presented is not sufficiently proven. It doesn't appear that it is the minutes and it doesn't appear that it constitutes all of the minutes, and it is not shown to be in the handwriting of the witness or made by the witness.

A. Shall I answer it?

By Mr. Murtha:

Q. Yes.

A. This is a copy of the minutes of the union meeting which was held on Friday, August 26, 1938. Our recording secretary asked me to record the minutes of the meeting because he was not able to be there. These are the minutes as I recorded them on a sheet of paper. They are very brief, but I thought he would probably fix them up, but he recorded them exactly as I had written them and he signed my name as acting secretary.

Mr. Burr:

We renew the objection and move to exclude the answer.

By Mr. Murtha:

Q. Have you examined Exhibit S, which consists of a sheet of paper as being part of a bound book?

A. Yes, I have.

Q. Do you know what book this is that is marked Exhibit 1?

A. It is our recording secretary's minute book for the Ely Local Union.

Q. You have seen it before?

A. I have seen it many times.

Q. Now, will you examine Exhibit S and see if it is correctly recorded the way that the minutes were taken, and tell whether or not it constitutes a true and correct record of what occurred at the meeting of Local Union No. 1664 on August 26, 1938?

Mr. Burr:

We object to that, on the same grounds as we objected to the last question, and on the additional ground that it now affirmatively appears from the testimony of the witness it is not the original minutes.

A. This is the minutes as I recorded them.

By Mr. Murtha:

Q. That is a true and correct copy?

A. Yes.

Q. Did you record the minutes yourself?

A. I recorded them.

Q. At the meeting?

A. At the meeting I recorded the minutes myself.

Q. And did you make notations on a piece of paper?

A. On a black piece of paper, and I handed that over to our recording secretary. He copied these meeting minutes I had put down in here.

Q. You have examined them and they are the same minutes that you prepared at that meeing at that time?

A. Yes.

Mr. Burr:

The same objection.

By Mr. Murtha:

Q. Now, I hand you Defendants-Intervener's Exhibit Z-15, consisting of a page in a bound book marked "Defendants-Intervener's Exhibit 1" and ask you what that is?

Mr. Burr:

The same objection to that question.

A. It is a copy of the minutes of the regular monthly meeting of the Steel Workers' Organizing Committee, Local No. 1664, held in Ely on April 13 or 1940. The minutes were recorded by me at the meeting. That is my handwriting.

Q. And your signature?

A. My signature.

Q. And you were appointed as acting secretary for the purpose of taking those minutes?

A. Minutes, yes.

Q. And is that also true of Exhibit S?

A. Yes.

Mr. Burr:

The same objection to that as I had to the other question.

By Mr. Murtha:

Q. And Exhibit Z-15?

A. Yes,—

Mr. Burr:

The same objection.

By Mr. Murtha:

Q. (Continuing) Is a true and correct copy of the minutes on the date indicated?

A. Yes.

Q. Now, Mr. Swanson, are you willing to waive your right to examine the transcript of the deposition?

A. I will.

Q. Or examine the deposition after it is transcribed, and also waive the reading of it or having it read to you?

A. Yes.

Mr. Murtha:

You may cross examine.

Cross Examination.

By Mr. Burr:

Q. Now, as I understand you, your mining experience has been in connection with two operations, is that correct?

A. You mean hard and soft coal, or two different ranges?

Q. Two different companies that you have worked for.

A. Two different companies.

Q. The first one was—.

A. The Cleveland Cliffs Iron Works.

Q. And they are the mines that you referred to there, is that right?

A. The Boeing.

Q. The Boeing Mine, and in 1927 you left there and came over to the Ely mine of the Oliver Company?

A. Yes, the Oliver Mining Company.

Q. And you have been working there ever since?

A. Yes, with the exception of a few months in '33 when the mine was closed down.

Q. I understand that. That was during the depression?

A. Yes.

Q. For a while you said the mines worked limited days and kind of staggered the shifts. You used all kinds of devices to get by during the time of the depression?

A. Right.

Q. But so far as your actual working knowledge is concerned, it is confined to those two mines?

A. I have acquaintances and relatives who work in many different mines.

Q. I know, but I am talking about your own personal knowledge.

A. I have watched them working and I know what time they go to work and what time they come home.

Q. But these are the only two mines you have ever worked in?

A. These are the only two.

Q. You have never worked down in Alabama, I am sure?

A. No, I prefer this climate.

Q. Well, if you had been down there with me and seen me how I feel now, you wouldn't.

And none of your relatives or acquaintances, so far as you know, have worked for the mines in Alabama?

A. I am not acquainted with any.

Q. You haven't any knowledge at all about the conditions or the departments or character of the equipment or anything else with reference to Alabama mines?

A. Only what I have read.

Q. Only what you have read. Well, of course, that we are not particularly interested in. So your mines here, as I understand it from your testimony, are underground mines, and you enter them in what you call a cage?

A. Yes.

Q. It is a vertical shaft, is it not?

A. Yes.

Q. Is that true of both of the mines you have worked in?

A. Yes.

Q And that vertical shaft goes down by levels, as I understand it?

A. Yes.

Q. And the first level, of course, is nearest to the top?

A. Yes, sir.

Q. And about how far in this Ely Mine is the first level from what you call the collar of the mine?

A. The first working level?

Q. Yes, the first working level.

A. The first working level is called the 13th level, and I understand--I have heard the engineers say it is approximately 1,200 feet now.

Q. And that is the first working level?

A. Yes.

Q. Well, how far below that is the next working level?

A. The 14th level is approximately 100 feet below the 13th level.

Q. Then how many more levels are there below that?

A. There is a 15th level, and a 16th, but the 16th is just in its preliminary stages, just opening up. There are no mining operations on either the 15th or the 16th.

Q. How many levels have you had working there, prior to May 1, 1941?

A. Two, the 13th and the 14th?

Q. Now, the questions that I am going to ask you will all relate to prior to May 1, 1941.

A. All right.

Q. Will you remember that, please?

A. I will remember that.

Q. About how many miners, prior to May 1, 1941, did you have at this Ely mine?

A. I understand there is about 160 on the day shift and about 140 on the night shift.

Q. I see.

A. And then there are a few—around 25, who work on the third shift. What I mean is, that they are included in the day shift, the 160 on the day shift, but they are not included in the 140 on the night shift because they go to work at 3:00, whereas the regular night shift goes to work at 4:30.

Q. I don't know whether I understand you or not. What I was trying to get is, what is the overall number of underground workers on the payroll?

A. Oh, I would guess around 350. I have never asked the timekeeper and I couldn't give you the exact number.

Q. That is your best judgment?

A. That is my best judgment.

Q. That includes material crews?

A. That includes everybody working underground.

Q. Everybody working underground?

A. Everybody working underground.

Q. Do you happen to know, or do you have any judgment as to what proportion of that are service men or material men?

A. Oh, I haven't included any surface men.

Q. I don't mean surface; I mean service.

A. Maintenance men?

Q. Yes, maintenance men.

A. Well, I will tell you, I haven't discussed that with anybody, so any answer I give to that will be just a guess.

Q. Well, I wouldn't want you to make a guess at it. Well, now, to get back, I want to ask you a very few questions about that first mine you worked in. Could you give me some idea of the number of employees who worked there, the one prior to 1927?

A. In the underground section?

Q. I mean underground employees.

A. Yes, that was a combination underground and open pit mine. On the underground it varied, of course, during the seven years. In 1921 I was actually laid off for a few months. All the single men were laid off, and I don't think I went to work again until October or November of the same year.

Q. Can you give us just about an estimate of the number of men?

A. Well, over a period of seven years, I would say not over a hundred men on each shift, and it might have been sixty or seventy at times.

Q. Have you any knowledge, Mr. Swanson, of the—take 1940, for instance—of the proportion of iron ore that is produced up there in underground operations, as contrasted with open pit operations?

A. I know that the open pit operations are producing a lot more than the underground.

Q. Several times as much?

A. Several times as much, yes.

Q. As a matter of fact, the percentage of underground out of the total is about 16 or 17 percent, isn't it?

A. I can believe that.

Q. That is about right?

A. Yes.

Q. Now, of course, this question that you are talking about of collar-to-collar, as you describe it—

A. Yes.

Q. (Continuing)—that doesn't apply to open pit operations at all, does it?

A. I couldn't answer that question. I am not acquainted as to how the open pit workers feel about that. They walk down into the open pits.

Q. I see. But do you know enough about the actual conditions to be able to give your own judgment of it? You wouldn't insist that they were entitled to be paid on a collar-to-collar basis, would you?

A. If they are working two shifts, and they are required to walk a long distance to work, I would feel that—I know if I was an open pit worker, I would feel that I ought to be compensated for that time consumed in walking to work.

Q. In other words, your idea is that you should be paid for the time that it takes you to get to the working place, after you get onto the company's property?

A. On the company's property.

Q. That is your idea of it?

A. Well, as an underground miner, we have taken the view that we should receive compensation from the time we stepped on the cage until we stepped off.

Q. An open pit miner doesn't step on any cage, does he?

Mr. Murtha:

I object to that—

A. I wouldn't be able to give an opinion on that.

Mr. Burr:

Are you through with your objection?

Mr. Murtha:

I object to your line of examination as improper cross examination. It goes beyond the scope of the direct examination, and this witness doesn't seem particularly qualified.

(Discussion outside the record.)

By Mr. Burr:

Q. I understood you to say, Mr. Swanson, that there is no cage for the open pit miner to get on?

A. No.

Mr. Murtha:

I object to any questions—

Mr. Burr:

Now, to save time, I am perfectly willing to have it understood that on every question I ask him, that you can note an objection on any ground that you care to make hereafter, or at the time the evidence is offered, if that is satisfactory.

Mr. Murtha:

I would like a continuing objection, on any questions involving operations and mining activities, other than the witness has testified to, and I add the further objection regarding open pit mining, as he stated that he is not an open pit miner, and he is not entirely familiar with open pit mining. Consequently, my objection would be based upon the lack of foundation and qualification of the witness.

Mr. Burr:

All right, sir; now, I understand you have the same objection to any question I ask him about the matter, so we can go ahead.

By Mr. Burr:

Q. Now, Mr. Swanson, as I understood you, just trying to get your reasons for your position here, you say your position is that on these underground mines in Minnesota, you should be paid from the time you step on the cage going to your work until you step off the cage coming away from your work?

A. Yes, sir.

Q. Now, then, I believe you said that so far as the open pit operations are concerned, that there is no cage, of course, to go down or come up on. That is matter where they are transported or walk in, in other ways?

A. They have no cages on open pit workings.

Q. Now, these cages that go down into these mines, the underground mines, are they really elevators?

A. They are. We call them cages, but they are really elevators.

Q. And they go, as you said—I believe you said they make this round trip at the Ely mine in about eight or nine minutes?

A. Yes, I judge that a round trip is about eight or nine minutes.

Q. You have never had to go down one of these sloped operations, like we have in Alabama?

A. We have two shafts at the Pioneer Mine. The shaft on which we hoist the dirt is an inclined shaft, called the "B" shaft. The vertical shaft is known as the "A" shaft and is used for lowering and hoisting men, supplies and timber.

Q. That is the shaft that you go down on into the mine?

A. And come out of the mine in. For a while, during 1937, while they were repairing the "A" shaft, we descended in the "B" shaft, which is the inclined shaft. That was just for a few months, and it was temporary.

Q. Do you remember what grade that shaft was?

A. I couldn't tell you. It is quite steep, though; it isn't very much of an incline.

Q. Was the speed of going down it slower or faster than going down in your cage on your vertical shaft?

A. Well, I think that they are approximately the same. I wouldn't be able to judge very closely.

Q. Did they hit your level, the same way that the vertical shaft hits it?

A. Yes, they stopped at every level.

Q. Did you use cages on that?

A. Yes.

Q. The same kind of cages?

A. There was just a little different type of cage, but it was a cage.

Q. Now, when you were over at Boeing Mine in 1927, you say at that particular mine, when you started to work there it was a shallow mine?

A. Yes.

Q. And for a while you had no transportation at all. You climbed down and climbed back?

A. We climbed down and climbed up the entire time I worked at the Boeing.

Q. You did?

A. Yes.

Q. All right. Now, during that entire time, how was your pay computed and paid for? Did you get paid for the climbing back, or were you paid on a face-to-face basis?

A. We were paid for eight hours.

Q. At the face?

A. Eight hours of work while we worked from eight to five, and an hour for noon, and we were also paid eight hours pay when we worked from 7:00 to 3:00.

Q. What I was trying to find out, Mr. Swanson, was whether over there you were paid for the time you spent in going to and from the working face, or did your eight hours include only the time you were at your working face?

A. As I stated, we were underground at eight o'clock, but we were not in our working place. Going out, we were back at the shaft, or back at the station, at five o'clock, and at twelve o'clock noon were ready to climb up, so we were paid for the time that we spent underground in Boeing. That is the way I would explain it.

Q. You were then paid all the time you were underground at that particular mine?

A. Yes.

Q. Without reference to whether you had reached your working place or not?

A. Yes.

Q. You had no complaints there to make about not being paid on a collar-to-collar basis?

A. Like I say, we went down at ten minutes to eight. I explained that.

Q. That is ten minutes you were not paid for?

A. Yes, that was ten minutes, and we also started climbing up.

Q. Now, wait a minute. You went to work at eight, and that is when your pay started?

A. Our pay started at eight.

Q. All right. Now, when did you quit working?

A. Well, in time to get back to the shaft at twelve or five. That would depend on the distance you worked from the shaft. You might quit five minutes from the hour, or ten or fifteen, depending on how far you were away from the station.

Q. Then it would be the ten minutes you were there ahead of time in the morning, plus whatever the time was that you—

A. Climbed up.

Q. (Continuing)—over the eight hours climbing out, you didn't get paid for that?

A. No, we didn't get paid for that.

Q. Now, when you got over here at the Pioneer Mine, prior to May 1, 1941, let's go back to the time when you first started working there. That was in 19—

A. '27.

Q. 1927. When you first started working there, were you then working all day an eight-hour day or a ten-hour day?

A. We were working on an eight-hour day shift and nine-hour night shift.

Q. I see.

A. And by putting in your night shifts you were given a three-hour bonus on a Saturday night.

Q. Let's take the eight-hour shift.

A. All right, the day shift.

Q. You got on the cage at what time? Say you went down on the first cage.

A. We went down on the first cage at 7:30.

Q. 7:30?

A. Yes.

Q. Now, then, then you went to your working place, and commenced working at eight, is that right?

A. Well, it was generally—I think those that had the farthest to walk took the first cage. They were at the working face at approximately eight o'clock. It might have been a few minutes either way; I can't tell exactly.

Q. All right. Then they stayed at the face working until when?

A. I believe we had a half hour lunch period and ate under ground during the time we were lowered at the "B" shaft, and I believe that we were supposed to work until 4:30 in the afternoon, instead of 5:00, and around 4:35, or so, they would start hoisting the first cage load. So you would be required to leave your face probably ten minutes, or maybe fifteen minutes before 4:30—probably left the face at 4:15 or 4:20.

Q. You would go down to the main loading station?

A. Yes, we worked down there.

Q. Well, now, the time that a man spends walking to his working place—

A. Underground.

Q. (Continuing)—depends altogether on the individual?

A. Some individuals—some on the individual, and also the distance from your working face to the shaft.

Q. Yes, that is right:

A. Yes.

Q. And, of course, that distance increases all the time?

A. Yes.

Q. When you first turn off your drift—I believe that is what you call it?

A. Yes.

Q. (Continuing)—the working face is comparatively near?

A. Yes.

Q. And then as you extend the drift—

A. It becomes greater.

Q. It becomes greater, and as I understand your method of mining, it is entirely different from ours. You go up from the drift, up these ladders, and your working face is up above the drift?

A. In our particular ore body, it has been, because we are higher—we are behind the rest of the mine. We are located in an ore body, which is known as the high country, because we are higher than the rest of the mine. That is the reason, as I understand it, that we were put on a three-shift basis to bring it down so as to be at a more equal level with the rest of the operations.

Well, the miners who work between the 13th and the 14th levels, they get off at the 13th level and walk in and climb down.

Q. Then they climb up coming out?

A. No, they climb down to the 14th and load up on 14.

Q. And you climbed up the other way?

A. We have to climb up to go to work, and then climb down to come out.

Q. Your vertical shaft is like this (indicating)?

A. Yes.

Q. And then you come down to what you call the 13th level. That would be out this way, wouldn't it (indicating)?

A. Yes.

Q. At right angles with the shaft?

A. Yes.

Q. Now, the way you mine that, as I understand it, is that they work what they call the drift first?

A. The main drifts are put in.

Q. The main drifts are put in. Now, those main drifts are so put in, are they not, so that the ore lies above them?

A. Yes.

Q. And has to be loaded down to them?

A. Yes.

Q. And your working face is above the main level?

A. The main level, yes. We call it the sub-level.

Q. And that is true all the way down as far as you go?

A. Yes.

Q. Well, now, for instance, in this mine you have gotten down to—I believe you said the 16th level. The 16th is not working now?

A. No, it is the 13th and 14th.

Q. Well, now, back in years gone by, levels 1, 2, 3, 4, 5, and 6 had all been worked out? That is the reason they are not worked now?

A. I suppose. I have heard talk of a sixth level, but I can't remembr any talk of any smaller number than 6. I have heard of the 6th, 7th, 8th, 9th, 10th, 11th, and 12th.

Q. Once upon a time, level No. 1 was worked, wasn't it?

A. I suppose so.

Q. That is, you can see indications there?

A. Yes.

Q. Well, of course, if it was worked, the time in getting from the surface to No. 1 was much less than it is now in getting down to your present level?

A. Yes.

Mr. Murtha:

Objected to, as not being a question—it is testimony by counsel, and asking for a conclusion of this witness. This witness has not shown himself qualified to answer that.

By Mr. Burr:

Q. How far apart did you say those levels were?

A. Approximately one hundred feet.

Q. One hundred feet. Now, then, when you get off at your level—

A. Yes, sir.

Q. Just take your individual level. You go down to the bottom, I beileve you said, so you go down on the first cage?

A. Yes.

Q. That is the usual way it is handled, first in and first out?

A. That is the way it is handled.

Q. The man that has to go the furthest, he generally takes the first cage down and gets the first one out?

A. Yes.

Q. Now, you drop down very rapidly in that cage, after you get on it?

A. It doesn't take long.

Q. Now, I am talking about before May 1st.

A. Yes.

Q. And then after you get down there, why, you walk up the drift, if you call it up, to the place where you have to go up to your working face?

A. Yes, sir.

Q. And walking up that drift, you use your own gait, or do you get there when you please? Of course, I know that a man like you would try to get there as quickly as you can, but you go up slow or fast, as you please?

A. Well, the group generally has about the same gait, because when a cage discharges its load, it is a customary habit to walk in together. There may be a few that are a little faster, but practically all of them seem to have the same gait.

Q. All right. Now, then, when you get to your working face—talking about yourself—then you use this ladder?

A. You climb up the ladder.

Q. To climb up to your face. Now, how far did you say that was up?

A. About fifty feet.

Q. About 50 feet?

A. Yes.

Q. And then when you get up there, you are at the face?

A. Yes.

Q. That is where you actually get down to work?

A. I feel that I started to work when I stepped on the cage.

Q. That is the way you feel now. But what I am talking about, Mr. Swanson, is when you actually begin producing ore. That is when you get to your working face? Is that where you first do any work, aside from walking and traveling?

A. I picked up my carbide on surface. I also looked over the tools—this is prior to May 1st?

Q. All right. Is there anything else now?

A. I may even carry certain tools in.

Q. But if you do that, that is an exception; and you do it of your own voluntary wish? You don't have to do that?

A. Yes, the foreman might mention that there is—

Q. Now, what I am trying to ask you, if you don't mind telling me, is, where is the first place that you do any manual labor in the way of getting the ore out of there, using a pick or shovel, or blasting or drilling, or anything of that sort?

A. I don't do any drilling or blasting, until I get into—

Q. Into your work place?

A. Into my place.

Q. Yes. Now, do you finish the work when you finish your shift?

A. Yes.

Q. You mean by your shift the eight hours. That is what it has been?

A. Yes.

Q. And when you finish that, why, you come back to the main loading station and go out of the mine on the first trip out, if you took the first trip in?

A. Yes.

Q. Now, without going into the details of the time, up until May 1, 1941, isn't it a fact that you miners always went out of that mine on the company's time, and went in on your own time? Isn't that the way it was handled?

A. Well, not always. If a man knew he was going to take the third cage, why he wouldn't necessarily leave—

Q. Let's confine it to you now.

~~A. Oh,~~ to me—the first cage, yes.

Q. Yes. Isn't it a fact that during this period of time you have always had your time computed and paid on the basis of going into the mine on company time?

A. Yes.

Q. That is right. You go into the mine on company time and come out on your own time.

A. Going in on company time?

Q. Or going in on your own time and coming out on company time.

A. Well, that would be closer to it.

Q. Well, wasn't that the way it was? Isn't that the way you have had your pay computed ever since you have been working there, up until May 1, 1941?

A. We would go in our own time, you mean?

Q. Yes.

A. And we could come out on the company time?

Q. Is that the way it was, or not?

A. You mean to the station, not to the collar?

Q. To the station, yes?

A. To the station, yes.

Q. To the station. Now, let's see if I understand it. You have been going down to the mine on your own time, isn't that right?

A. Absolutely.

Q. And then you have been going to your working place—

A. On our own time.

Q. On your own time. You have been coming from your working place to the loading station on company time?

A. Yes.

Q. And you going out on whose time?

A. Going up from the station on our own time again.

Q. On your own time?

A. Yes.

Q. So that is the way it has been without going into hours. That is the way you have had your time computed and paid ever since 1927, we will say, until May 1, 1941?

A. Yes.

Q. Taking your own case, for instance, Mr. Swanson, could you give me an estimate prior to May 1, 1941, as to how long you were actually under ground each day you worked? Do you know what I mean—from the time you left the collar until you got back. What was the spread of hours that that covered?

A. We figured we were putting in nine hours underground, or approximately nine hours, with a half hour for lunch.

Q. In other words, you figured that you were not being paid for thirty minutes?

A. Yes.

Q. Now, that situation, the same situation, existed uniformly, so far as you know, up until the time of May 1st, 1941?

A. Yes.

Q. Now, you said something about—

A. I want to make a correction there. Where we came up for dinner we also put in an extra half hour there, so when we worked from eight to five we considered we really should have been paid for two half hours.

Q. You lost an hour during that time?

A. Lost an hour.

Q. When you came out for lunch?

A. Yes.

Q. And you claim that you lost a half hour between the other times—between the time when you were eating lunch and the time when you were going down underneath?

A. Well, I meant the time that we lost going down both in the morning and at noon, and the time spent coming up on our own time. That, both at noon and at night, amounted to an hour during the time we worked from eight to five.

Q. And when you worked the other period, it amounts to a half hour?

A. Amounts to a half hour, yes.

Q. Now, then, let me see if I understand this, the way you say you handled your underground mining operations. Prior to May 1, 1941, you picked up a brass check in your change house, is that right?

A. Yes, sir.

Q. Now, that brass check, did it hang on a board?

A. It did.

Q. And did that board have hooks of some kind on it?

A. Yes.

Q. That would indicate the working place that the check belonged to?

A. No, just the check number.

Q. The check number. And you had to have your check in order to get your pay?

A. Yes.

Q. Then they knew who was in the mine and who was not in the mine?

A. That is right.

Q. In other words, there was no timekeeper then, or anything like that, because it wasn't necessary—the company wasn't interested in your time in the bath house, was it?

A. No, I don't think they were.

Q. I see. And then when you came out, did you deposit your check at the bath house, just like you took it up?

A. When you came up you hung it on the same hook you took it off, yes.

Q. Well, that served two purposes. Didn't it enable the management to know who was in the mine?

A. Yes.

Q. And it also enabled them to supply vacancies to crews, if somebody didn't show up?

A. Yes.

Q. And that is the way you did that?

A. Yes.

Q. (Continuing.) —Prior to May 1, 1941. Now, then, I believe you said, in addition to getting your check, you picked up your carbide?

A. That is right.

Q. When did you get these electric lamps?

A. Oh, about four or five months ago, I would say.

Q. That was before May 1st?

A. Yes.

Q. All right. Now, before you got the electric lamps, the carbide—each miner owned his own lamp, I suppose?

A. Yes, furnished his own lamp.

Q. Furnished his own lamp. And it would be up to him to get a sufficient supply of carbide to last him?

A. Yes.

Q. Did you have to get a supply every morning, or did you get a supply once or twice a week, sufficient to carry you over the week?

A. We would get a supply every morning, because the carbide, when exposed to air, deteriorates and becomes powder, and it makes it worthless.

Q. And you got it in the change house?

A. No, we got that in the carbide shack. We would go off to one side and get our carbide, and then go down the shaft collar.

Q. Of course, there was no specific rule to get the carbide. You could pick it up to suit yourself?

A. You could pick it up when you came to work, if you had a chance.

Q. If you had a chance. I don't know whether you miners up here did it, but did you ever get it somewhere else, other than on company property?

A. They never made any charge for carbide.

Q. They gave it to you free?

A. It was part of our supplies.

Q. That is ~~another~~ thing on which you are ahead of Alabama—not on the climate, but you are on that.

A That makes two.

Q. That makes two the way you have got it. But you haven't been down there, and I have been up here, you see. Now, Mr. Swanson, after you get your carbide ready to go down, you walk down to the shaft collar, and you said that there you occasionally—if your foreman wanted to change your working place, he might tell you?

A. If he had some orders, or if there had been reported a missed hole in your place.

Q. It was just matters of that sort that occasionally happened?

A. Yes.

Q. Now, of course, it didn't take you over a few seconds to get your check, did it?

A. No.

Q. And it doesn't take you but a few seconds to get your carbide, does it?

A. Well, a minute.

Q. A minute, maybe?

A. Yes.

Q. And it doesn't delay you any to get the orders of your foreman, if he has anything to give you?

A. No.

Q. In other words, you get them out on the cage?

A. That is right, sir.

Q. Now, those things—it has been customary to do it that way ever since you have been working there, hasn't it?

A. Yes, sir.

Q. Always those incidental matters in that way?

A. Yes, sir.

Q. And that has been a continuous universal custom in your experience?

A. I couldn't say it was a universal custom.

Q. Within your experience?

A. Within my experience, yes.

Q. That is all I am asking you for. Now, you do occasionally work three shifts, I believe?

A. We are working three shifts now, a small group of miners.

Q. Well, of course, if there are three eight-hour shifts, that takes up the twenty-four hours, doesn't it?

A. Yes, sir.

Q. And you can work three shifts in your mine, because, as you explained it to us, on account of your ventilation, and on account of the fact that you can shoot when you please?

A. Yes.

Q. You don't have to wait for any clearing up of conditions or any special safety arrangements. You can go right in and work?

A. Well, you have to wait until the smoke clears out, but the smoke clears out in our end quite quickly.

Q. That is what I say.

A. But if you have any misfires, any misfires on your blasts, and you are short a number of reports, a safety rule requires you to stay out of your place for a half hour.

Q. I understand that. But the conditions are such that you are able, with your ventilation and the way you do your shooting, and the conditions in your mine, you can work three shifts there?

A. Yes.

Q. And you do work three shifts there?

A. Yes.

Q. Of course, you don't know what sort of shape we are in down in poor Alabama about that, do you?

A. I haven't been down there.

Q. Now, with reference to powder, I believe you said that the powder was always given to you—prior to May 1, 1941, how did you get your powder?

A. You would notify the foreman that you wanted a box of powder and at the powder house we would take a box of powder and sign an order, showing the foreman that we had it.

Q. Showing that you had gotten that powder?

A. Gotten the powder, yes.

Q. And that has been substantially the same, all the time you have worked there, up until May 1, 1941?

A. Yes, the same.

Q. Now, your tools. I believe you said there has been only one change made in that. You said that years ago you would have to carry your own tools?

A. Yes.

Q. And I believe you said that you even carried them sometimes from the warehouse on the outside?

A. Yes, a quarter of a mile away.

Q. Now, about how many years has it been since that custom ceased?

A. Oh, it is—like I say, the changes came about by degrees. In the cold weather a man would object if he had to carry a bunch of steel drills. It gets around 40 below in the winter, sometimes.

Q. Just give us some idea of when it was you got into the custom of doing it like you have been for the past ten years.

A. Well, I think under the Employees' Representation Plan our representatives brought this matter up as a grievance, and it has been adjusted from time to time since, so I think that this started probably in '33 also.

Q. All right, since '33.

A. It was something like that.

Q. Since about 1933—

A. Things have been changing.

Q. And since then they have been carrying the tools?

A. Not since '33. First they eliminated our work of bringing supplies from the warehouse over to the shaft collar.

Q. Yes.

A. Then later on, why, they started bringing in more and more of our supplies or tools into our working place, until now they bring in practically everything.

Q. About when did they commence bringing in practically everything?

A. They have brought in practically everything since May 1, 1940.

Mr. Murtha:
'40 or '41?

The Witness:
'41.

Q. Well, now, prior to May 1, 1941, how were your tools handled, say along in April of 1941?

A. Well, up until then our tools were supposed to be brought in, but if we didn't think we were getting quick service, or quick enough service on them, we could carry them in ourselves.

Q. You were on a tonnage basis, were you?

A. Yes.

Q. And if you didn't think you got them fast enough, you would get them yourself to increase your tonnage?

A. Yes.

Q. All right. At that time when you got them that way to increase your tonnage, where did you get them, at an underground tool house?

A. Back of the shaft collar—I mean, back of the shaft station.

Q. Underground?

A. Underground station.

Q. It is the level station where you get off?

A. That is it:

Q. And the ones they got in that way they carried from the station to the working place?

A. Yes.

Q. So the situation with reference to tools has gradually improved until the present situation exists, is that right?

A. Yes.

Q. Now, you spoke about a Grievance Committee, Mr. Swanson. I believe you said these grievance committees have existed for how long a period? When did you first begin to have what you would call a Grievance Committee out there?

A. Well, our union has had a Grievance Committee ever since it is organized, in 1937.

Q. And that was what date?

A. '37.

Q. Well, now, did the Employees' Representation Plan have one previous to that?

A. Well, we didn't call them a grievance committee, but they functioned as such.

Q. And that was since when?

A. I think it is about 1934.

Q. Well, now, as you said, these grievance committees—or by whatever name you may call them—they took up with the company from time to time such complaints and grievances as they had?

A. Yes.

Q. And the company would either refuse the requests or grant them, is that right?

A. Yes.

Q. And you have been free, and have in all this period of time been presenting your grievances in that way to the management?

A. Yes.

Q. Through your committees?

A. Yes.

Q. And the management never has declined to meet with you? I know they have not agreed to grant them all, but they have always given you the courtesy of a hearing and dealt with you about the grievances?

A. They have always given us a hearing.

Q. Yes. I believe you said there has been only one or two occasions when you presented to the management the question of your being paid on a portal-to-portal basis—

A. We call it collar-to-collar.

Q. You understand that when I say portal-to-portal, I mean collar-to-collar?

A. Yes.

Q. I am trying to accustom myself to your terms.

Mr. Murtha:

Do you mean, Mr. Burr, under the Employees' Representation Plan?

By Mr. Burr:

Q. I am asking him now first about 1937. That was under your union plan, wasn't it?

A. Yes, I am quite sure the union Grievance Committee presented their demands for a contract, which included this eight-hour collar-to-collar, twice.

Q. All right. Now, when was the first time?

A. It was in 1937, shortly after we were organized.

Q. All right. Now, was that included amongst a number of other requests?

A. Yes.

Q. Your contract?

A. Yes.

Q. In other words, you presented to them, I suppose, a proposed working contract?

A. Yes.

Q. And amongst the things that you proposed, was that you had your time computed and paid on a collar-to-collar basis?

A. Yes.

Q. All right, sir. Now, I believe that was refused?

A. I believe the answer they got was that the management required more time to consider it. At least, they did not grant it. They did not sign any contract at the time.

Q. Let me ask you right here now whether you were on the committee that discussed it with the management?

A. I was not on the committee that discussed it with the management.

Q. So you were not present then when the management gave that answer to the committee?

A. No.

Q. What you know is what the committee reported back to your meeting?

A. Exactly that.

Q. That is what you meant. All right, sir. Now, that, I believe you said, was in '37?

A. Yes.

Q. Do you remember what time of the year it was?

A. I think it was in June.

Q. I notice here a reference in your minutes—is that the time it was when the minutes here state that a contract was presented on June 13th, 1937?

A. If it states that.

Q. It was moved and seconded that the following contract be adopted, which consisted of the following demands: One, recognition of the CIO as the sole collective bargaining agent; two, eight (8) hours from collar-to-collar?

A. Yes.

Q. Does that refresh your recollection as to the time now when that occurred?

A. I attended that meeting, and I remember that.

Q. Now, when was the other time? You said you thought there was another time. Was that before or after this?

A. It was after that.

Q. Do you remember the date?

Mr. Murtha:

What you were reading from was marked as Exhibit C, being a part of the bound book, Exhibit 1?

Mr. Burr:
Yes.

By Mr. Burr:

Q. What is your best recollection of what the second time was?

A. It seems to me it was brought up—

Q. Before the management, I am speaking about.

A. Yes, I think it was brought up again in the fall of the same year.

Q. In the fall of 1937?

A. Yes, that is my present recollection.

Q. Could you testify as to whether or not if it was brought up it would appear in your minutes somewhere?

A. Well, I wouldn't say that. The committee had been told to negotiate this contract with the management, and, as I understood it from their report, they were told that the management would have to more time, that the management would require more time before they could sign a contract. If I remember correctly, I think the report that the Grievance Committee gave the second time was that the management refused.

Q. I see. Both times, though, what you know about it, is the report that was made by the committee? You didn't serve on the committee that met with the management either of these two times?

A. I wasn't on the committee that met with the management, no, sir.

Q. All right, sir. Now, then, the only other time you mentioned in your direct examination was back on some occasion when the Employees' Representation Committee presented a request of this sort? Do you remember about when that was?

A. Well, it would be a year or two prior to this.

Q. Prior to this?

A. Yes.

Q. Were you on the committee that went to see the management then?

A. No, there wasn't any committee. The employees' representatives handled it.

Q. Well, were you one of the representatives?

A. No, I was not a representative.

Q. So I imagine what you know about that is what they told you about it afterwards?

A. Exactly.

Q. Now, those the only three occasions that you know of where the matter was ever, within your knowledge, either by reports made to the union by the Grievance Committee of the union, or the reports made by the employees' representatives—those are the only times you know of that that was presented to the management?

A. No.

Q. There was another one?

A. There were several more. In early 1938 we wrote to our District Director Burkhammer—

Q. I am talking about to the company. I am not talking about what you did among yourselves.

A. We did that among ourselves.

Q. I don't want that at all. I want to know if there are any other times when your committee took the matter up with the management?

A. This particular committee did not take it up with the management, but they did take it up with our representative.

Q. I don't care a thing in the world about what you did among yourselves. What I want to know is if there are any other occasions when your committees took it up with the company, other than the three times you have mentioned.

A. The committee itself, as far as I can recollect, did not take it up with the officials in Ely at any other time.

Q. Did they take it up with the officials of the company anywhere else?

A. In Duluth.

Q. With what officials?

A. Our representatives took it up in Duluth.

Q. With what officials in Duluth? Officials of the company?

A. Yes, of the Oliver Iron Mining Company.

Q. Who were they, do you know?

A. Our representative and District Director, Mr. Burkhammer, and Mr. Hartman in Duluth visited our local union up there, and we spoke of presenting our demands for a contract to the Ely officials.

Q. To the what?

A. To the Ely management. Mr. Burkhammer advised us that it would probably be unwise at that time.

Q. Now, Mr. Swanson, what I am trying to get at is the times that you talked to officials of the Oliver Company about it. If there were any other times, other than these three you mentioned that you know about?

A. This committee, I say, talked to the officials of the Oliver through our representatives, yes, at various times afterwards. At least, they so reported to us.

Q. Who reported to you?

A. Our representatives, Hartman and the District Director, Burkhammer, reported that to us.

Q. Said that they had discussed it with officers of the Oliver Iron Mining Company?

A. The Oliver Iron Mining Company.

Q. They had discussed the question of putting this on a portal-to-portal basis?

A. Of signing a contract, and this contract contained that clause, eight-hours collar-to-collar. It is the only contract, as far as I know, that has ever been submitted to the Oliver Company by our representatives.

Q. Well, these times that you claim that someone told you, the representatives presented it to the officials of Duluth, of the Oliver Iron Mining Company?

A. Our representatives.

Q. They told you, and that is all you know about it? All you know is something they told you?

A. Yes.

Q. You were not there?

A. I was not at the meeting, no.

Q. Have you ever seen anything in writing about this matter?

A. Mr. Burkhammer has written us in regard to this matter that he has met with the Oliver officials.

Q. I don't mean what he has written you. I mean, any correspondence between the Oliver Iron Mining Company with reference to it?

A. No, I have not seen any correspondence.

Q. Have you any records anywhere, any letters that you wrote, or any written contracts that you presented to the Oliver Iron Mining Company about it at different times?

A. I am quite sure our secretary may have a letter—he should have something in the minutes about writing to our District Director about seeking this contract with the Oliver Iron Mining Company.

Q. Your minutes are supposed to contain everything that took place at these meetings of any importance?

A. They are very brief in some places. All our correspondence has not been placed in the minutes.

Q. Have you ever seen any letter written by the Oliver Iron Mining Company about this matter?

A. I have never seen any letter written by the Oliver but I have seen letters written by our secretary to our representative.

Q. Who has charge of those letters?

A. I haven't charge of them—our secretary probably would have charge of them.

Q. Have you had charge of the minutes?

A. No, only on those two occasions when the recording secretary was not able to be present, and he asked me to act for him, and our Chairman appointed me as acting secretary on those two occasions.

Q. Did you deliver this minute book to the gentleman representing the Wage and Hour Division?

A. No, sir, our recording secretary.

Q. You didn't deliver it to him at all?

A. No.

Q. Do you know whether or not there were any minutes kept prior to this time, the first date here, which seems to be May 23, 1937?

A. We had a couple of preliminary meetings before that, but I would call this the first official meeting.

Q. I see. And so far as you know, this book contains the minutes down to date?

A. Yes, as far as I know.

Q. There are no minute books?

A. No.

Q. This resolution that was presented on June 13, 1937, as shown on Exhibit C of this book—

A. What resolution is that?

Q. The one I just read to you.

A. This contract?

Q. The contract, yes.

A. Yes.

Q. Were you the author of that resolution in the contract, or not?

A. No, I don't believe I was.

Q. As a matter of fact, then your national headquarters or your district headquarters sent it down for your local to present?

A. Absolutely not. They had nothing to do with the eight-hour collar-to-collar, because it has never been included in any contract that I have seen made by the Steel Workers' Organizing Committee.

Q. You say you never have seen that provision included in a CIO contract?

A. I didn't say CIO. I mean the SWOC.

Q. That is what I mean, the SWOC. Are there any SWOC contracts up in this section of the country?

A. Yes, there are.

Q. About how many?

A. Up in the mining ranges?

Q. Yes.

A. Yes, they have them with the International Mining Company, Butler Brothers, Wisconsin Steel, which we call the International Harvester Company, and—

Q. Are there any others that you can remember?

A. And I don't know if it is a contract or some sort of an agreement with the Evergreen Mining Company at Crosby.

Q. Aside from those that you have mentioned, there are no SWOC contracts in this part of the country? I mean, with the mining industry.

A. Would you include the steel plants as the mining industry?

Q. No, I am talking about the mining of ore.

A. All right, mining of ore.

Q. That includes all that you can remember?

A. That includes all I can remember, yes.

Q. Have you got an idea of what percent of the production in this district is represented by the ones that he mentioned?

A. I haven't any idea, no.

Q. Do you know about how many employees those different ones employ underground that you have mentioned?

A. No, but from what I have heard I understand that they employ a large force during the summer months, and a small force during the winter months.

Q. You don't know anyhow, so I won't—

A. I know that the Nashwauk Local—the Butler Bros. contract covered that Local—I think has about 800 employees.

Q. None of those contracts contain the eight-hour from collar-to-collar provision?

A. They are not underground properties, and, of course, there would be no reason to.

Q. Are any of those underground properties?

A. Well, I beg your pardon—the International Harvester has an underground property and it does not contain a collar-to-collar provision.

Q. How about Butler's?

A. I don't think they have any underground properties.

Q. Any others?

A. The Interstate has an underground property, and the Evergreen, I think that they have both underground and pit; I couldn't state as to whether the agreement they have with them covers underground or open pit, or both.

Q. Now, I am not asking this question in the sense of saying anything improper, you understand, but merely for the purpose of getting some dates. When was the first time that any representative of the Wage and Hour Division talked with you about this matter?

A. It was.

Mr. Murtha:

Well, I am going to object to that on the ground that it is incompetent, irrelevant and immaterial.

A. It was on a Sunday, a couple of three weeks ago.

By Mr. Burr:

Q. Well, was it since May 1, 1941?

A. Yes, it was.

Q. Up until that time you never had been approached by any of them at all?

A. No, absolutely not.

Q. And so far as you know they hadn't been in this territory investigating this matter prior to that time?

A. No.

Mr. Burr:

I think that is all.

Re-Direct Examination.

By Mr. Murtha:

Q. You are still a member of this Grievance Committee of the union?

A. Yes, I am a member of the Grievance Committee.

Q. And it is the desire of the men to be paid on a collar-to-collar basis, and that is still—

Mr. Burr:

Note an objection as to the desire of the men.

By Mr. Murtha:

Q. (Continuing.) —one of the main points of complaints of the employees?

A. Yes.

Mr. Burr:

I didn't ask you this, Mr. Swanson:

By Mr. Burr:

Q. Back prior to May 1, 1941, how was your timekeeping kept?

Did you have a timekeeper in the mine?

A. Yes.

Q. And did he keep a time book?

A. Yes.

Q. And visited your working place, I suppose, once or twice a day?

A. Once a day, yes—possibly twice.

Q. Possibly twice. He would check on the men, and it was on that time book that your payroll was made up?

A. Yes.

Q. I am anxious to know if you handled it the same way we do down home. How would you handle overtime? For instance, if you had an emergency that a man had to work overtime, would the foreman make a report on that, on the overtime work?

A. I have never worked any overtime since 1937 and I wouldn't know.

Q. You wouldn't know?

A. But I would think that that would be—

Mr. Burr:

That is all.

The Witness:

About this here timekeeper taking our time and marking us down for eight hours, you understand that we, as contract miners, were getting paid for tonnage.

By Mr. Burr:

Q. I understand that.

A. On a tonnage basis—we were paid on a tonnage basis, and the eight hours was just a mark that we were in the place. Your actual wages were computed by the amount of ore that we turned out.

Q. Of course, you did have in the mine, though, a number of day men?

A. Yes; I am talking about myself.

Q. You are talking about yourself. They day men at that time were kept, and they were paid on the actual hours worked?

A. Yes.

Mr. Burr:
All right.

By Mr. Murtha:

Q. Now, on this method of payment were you paid solely on a contract basis, or did you have a combination method?

A. We had a combination method. We were paid a certain price for each car of dirt we mined, and we were also allowed what was called extras. The captain, if he felt we were entitled to some extra compensation, why, he would allow us that. He would allow us what was known as extras. They totalled the amount you received from your price per car and your extras, and divided that by the number of hours that were turned in, or days turned in, and that was your price, your wage.

Q. Did you have a guaranteed wage?

A. Well, I understand that a contract miner has a guaranteed wage at the present time of $6.84, which we call "repairmen's wages" or "miner's company account."

Q. So at the present time you have a guaranteed minimum?

A. Well, I have never been told that, but I understand that we have. I have never been told that by the superintendent or the captain, but I think that the men themselves have that idea now. I couldn't state positively.

Q. How long has that been in effect?

Mr. Burr:
We want to note an objection.

A. It has been for years that we have always felt there was a minimum wage which was known as the miner's company account.

Q. What was the basis of your guaranteed minimum?

A. You mean the amount?

Q. Yes.

A. Well, it was what I said, whatever the miner's company account was at that time.

Q. If you made more on the contract basis, why—

A. We received it.

Q. You received it.

A. And I don't have any recollection of anybody making less than minimum. Practically everybody makes quite a bit more.

Q. Everybody in the Pioneer Mine has the same method of payment among the miners?

A. Among the miners, yes. You understand me, that we get paid on a tonnage basis. There are others who get paid on a foot basis.

Q. For a while, in the Boeing Mine, you ate lunch down underground on the company's time?

A. Yes, when we worked from 7:00 to 3:00 and 3:00 to 11:00, we ate our lunch on company time.

Q. Was there any difference, or is there any difference now, about the place where you talked to your foreman about the day's work, as to whether it is above, whether it is on the surface, or at the station on the level?

A. Well, I haven't noticed it. It may be that he gives us all the orders on the station below now. It has been the custom in the past to receive orders at the station—wherever you saw your foreman, whether it happened to be at the shaft collar or at the station.

Q. Were there two decks on the cages?

A. Yes.

Q. That was just one cage?

A. One cage with two decks at the Pioneer Mine.

Q. Each cage holds about how many?

A. I said before that I thought we had about 30 on each deck, but it may be that there are only 25 or so.

Mr. Murtha:

That is all.

Mr. Burr:

I have a few more questions.

Re-Cross Examination.

By Mr. Burr:

Q. Has the contract price been changed since May 1, 1941?

A. Not that I know of.

Q. Yours is the same?

A. As far as I know, yes.

Q. As far as you know. Now, would you mind telling me how much you make in a day?

A. Well, you mean since the last wage increase, or before?

Q. Before you got your 10 percent?

A. Well, I think that about $6.90 would be pretty fair.

Q. That would be a pretty fair average?

A. A pretty fair average since 1937 when we received our wage increase.

Q. Otherwise, from 1937 until May 1, 1941,—

A. I think that we got out—

Q. (Continuing.) —until April 1st when you got your 10 percent increase, you made what?

A. Around $6.90.

Q. $6.90, yes.

(Witness excused.)

Mr. Burr:

I want to invoke the rule here. We don't want other witnesses present while some other witnesses is testifying.

Mr. Murtha:

Just let the record show that counsel for the plaintiffs objects to the presence of other witnesses, while one witness is testifying, and let the record show that counsel for the defendants-intervener has requested that other witnesses stay outside of the room during the examination of any one witness.

4020 GEORGE MICHEAL BURCK was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Murtha.

Q. Your name is?

A. George Micheal Burck.

Q. Where do you live?

A. 502 East Camp Street, Ely, Minnesota.

Q. What is your occupation?

A. I am a miner.

Q. How long have you been a miner?

A. I have worked in the iron mines since 1924.

Q. How long have you been a miner?

A. Since 1916.

Q. And what kind of mines have you worked in?

A. I have worked in the coal mines in North Dakota up until about 1922. From there I went to the iron mines, and I have worked there since.

Q. And what range did you work on?

A. The Vermilion Range.

Q. Iron ore?

A. Yes.

Q. What company have you worked for?

A. The Oliver Iron Mining Company.

Q. Any other company?

A. Not in the iron mines.

Q. How many mines does the Oliver Mining Company operate on the mining range?

A. On the mining range I don't know, but I have heard in Minnesota, Wisconsin and Michigan—in those three states, 42.

Mr. Burr:

We make an objection to what he has heard, of course.

By Mr. Murtha:

Q. Go ahead.

A. I heard 42.

Q. They have open pit and underground mines both?

A. Yes, I have read that.

Q. You have worked for nearly 20 years on the—what range is that, the Mesabi?

A. The Vermilion Iron Range.

Q. The Vermilion Iron Range. Is the Oliver Mining Company one of the largest mining companies in Minnesota?

A. I am quite sure they are.

Q. What mines have you worked in?

A. I have worked in the Sibley Mine and the Pioneer Mine at Ely.

Q. By the way, are you married?

A. Yes, sir.

Q. Any children?

A. I have five.

Mr. Burr:

We want to note an objection to how many children he has.

By Mr. Murtha:

Q. How many years did you work in the coal mines in North Dakota?

A. About six—not full time.

Q. Were they underground mines?

A. Yes.

Q. On what basis were you paid there—how many hours a day did you work?

A. We were paid on a tonnage basis.

Q. How many hours did you work each day?

A. We worked eight hours.

Q. Now, where would you be when the eight hour period started?

A. On the surface. We started underground—

Mr. Burr:

We want to note an objection to this line of testimony, the same way I did in the testimony of Mr. Swanson, that it is relating to matters too far back in connection with, and has no relationship with the Alabama mines, and no connection with the Alabama mines on the ground that such testimony is illegal, irrelevant and immaterial. It is understood that I have an objection on the same grounds to all of these questions?

Mr. Murtha:

Very well.

By Mr. Murtha:

Q. Where would you be at the end of the eight-hour period?

A. At the end of the eight-hour period we would still be underground. It was eight and a half hours.

Q. All right. Where did you have lunch?

A. Underground.

Q. Did you have lunch on your own time or company time?

A. Our own time.

Q. When would a day end—would it be eight and a half hours after the start?

A. Yes, eight and a half hours after we started work.

Q. And where would you be at the end of eight and a half hours?

A. On the surface.

Q. Are you familiar with this expression "collar-to-collar"?

A. Yes.

Q. Were you paid collar-to-collar in the coal mines of North Dakota during that period?

A. The company men were.

Q. Now, will you state how long you worked in the Sibley Mine?

A. About five years.

Q. What years?

A. 1924 to 1928.

Q. Did you work day and night shifts?

A. Yes.

Q. Give us, as briefly as you can, a description of the miner's day during the day shift.

A. We went underground about 7:30, or a little after—a few minutes, possibly. We were hoisted to surface at 12:00 o'clock for our lunch period. We were lowered underground about 12:30 or a little after, and we were hoisted to surface again at five o'clock.

Q. What did you call your day? Was it an eight-hour day?

A. I would like to call it an eight-hour day.

Q. How much time actually expired from the moment you left the surface until you returned?

A. About four and a half hours.

Q. In the morning?

A. In the morning, until dinner time.

Q. And then after you went back—

A. It would be about the same.

Q. How much time was required for actual eating?

A. About fifteen minutes.

Q. How about the night shift? Were they on the same basis?

A. The night shift worked what they called nine hours, and they did not work on Saturday night.

Q. Whether you worked night or day, what hours were you paid for?

A. Eight.

Q. What?

A. Eight.

Q. Where were you working those eight hours?

A. I was a miner most of the time, working in—putting out iron ore.

Q. Well, would it be correct to say that during your eight hours you were at the face of the mine?

A. Yes.

Q. Now, before you entered the mine, did you perform any duties preparatory to your day's work?

A. Not at Sibley Mine.

Q. You went directly in?

A. After we were lowered underground, if we had any tools, drills, jack emery machines, or picks to take in, we would take them in with us.

Q. Where would you pick them up?

A. At the station at the back shaft.

Q. Did you use carbide at that time?

A. Yes.

Q. Where would you get your carbide to fill your lamp?

A. There was a small building 15 or 20 feet from the dry.

Q. What is the dry?

A. The place where we changed clothes and took showers.

Q. How far is the dry from the shaft at Sibley? How far away is it?.

A. About a hundred feet.

Q. And on your way from the dry to the shaft, did you pick up your carbide?

A. Yes.

Q. Did you also pick up a check?

A. Yes.

Q. Where was that?

A. That was at the entrance of the dry on a board.

Q. How about powder?

A. Powder was delivered underground.

Q. At the Sibley Mine how many cage loads were required to lower the men?

A. I think it was three.

Q. Do you know how many men were working at Sibley?

A. I think they put 25 or 30 men on each cage load.

Q. Cage level?

A. On each cage load.

Q. Oh! Was it a single or double?

A. Single.

Q. What level did you work on at Sibley?

A. I worked on the 4th and 5th levels.

Q. How much time was required for you to leave the surface and get to the working face?

A. Possibly 12 or 15 minutes.

Q. Now, what you say of the day shift, is that true of the night shift, in regard to the amount of time required?

A. Yes.

Q. When would you report to the mine for work each morning on the day shift?

A. We left home about ten minutes to six, and it would take us about ten minutes to drive down there.

Q. What time were you at the face at Sibley?

A. I would say a quarter after eight,—no, I think we got there sooner. I couldn't say just exactly—I never looked at a watch.

Q. I think you stated that you went down about 7:30, is that correct?

A. About that time, yes.

Q. Can you recall how long—you said a few moments ago it took you around 12 or 15 minutes from the surface to the face. Can you recall now about what time you were at the face ready to drill or blast?

A. Well, possibly a quarter to eight, or about that.

Q. What time would you leave the face? This is at Sibley.

A. Five o'clock.

Q. You would be on the surface—

A. Or a few minutes before. It was not very often it would be any before.

Q. Would you quite often blast at the end of the day?

A. We blasted there at any time.

Q. When you blasted, you had to go away from the place where you would blast?

A. Yes.

Q. That would take you toward the station, wouldn't it?

A. It would take you either toward the station, or away from it. You would follow the drift one way or the other.

Q. When you arrived on the surface at the end of the day, what did you do?

A. We hung up our checks, changed clothes, and took a shower.

Q. What was the approximate time required for a round trip in the cage at Sibley?

A. I don't understand the question.

(The question was read by the reporter as above recorded.)

A. Do you mean the cage going up and down?

Q. Right.

A. Possibly five minutes.

Q. Would you walk into the mine after you arrived at the level?

A. Yes.

Q. Would you have to do some climbing in order to get to the place where you were drilling?

A. Yes.

Q. About how far would you have to climb at the Sibley Mine?

A. It was different heights at different times. We climbed possibly 60 or 70 feet sometimes, and sometimes about 15 or 20 feet.

Q. Sometimes you would carry tools with you?

A. Yes.

Q. Would that make the climbing any more difficult or slower?

A. Yes.

Q. What would also have an effect on the time that you would walk in?

A. Yes.

Q. What effect would it have?

A. Well, when you are loaded down with tools, you can't walk as fast as you can without them.

Q. Now, you came over to the Pioneer Mine in 1928, is that right?

A. Yes.

Q. Did you work the day shift and night shifts both, there?

A. Yes.

Q. Oh, at Sibley, what time did the night shift go on?

A. I think they went on the same time on the night shift as they did on the day shift in the morning.

Q. Oh, you mean it started out at 7:30?

A. Yes.

Q. Over at Pioneer what time would you start down from the shaft collar?

A. About 6:20; that was the day shift.

Q. Prior to that time had you changed, picked up your carbide and so forth?

A. We was already changed, had carbide, checks, and everything.

Q. How about tools?

A. If we needed tools, we were required to go to the warehouse and bring them.

Q. How far away was the warehouse?

A. About a quarter of a mile.

Q. How many cage loads were required at the Pioneer?

A. Three.

Q. How many men were day men?

A. About thirty men were loaded on each deck –it is a double-deck cage.

Q. Three cages at night?

A. About that.

Q. And three in the daytime?

A. Yes.

Q. Thirty on each deck?

A. Yes.

Q. And two decks on each cage?

A. Yes, sir; about that.

Mr. Burr:

Is this the Pioneer you are asking about?

Mr. Murtha:

The Pioneer.

By Mr. Murtha:

Q. The lifts stop at all levels, is that right?

A. Yes.

Q. And at the beginning?

A. And at the beginning.

Q. At Pioneer you also walk in?

A. Yes.

Q. And you also have to do some climbing to get on the face of the mine?

A. Yes.

Q. Where you are drilling, and so forth?

A. Yes.

Q. You left the surface at 6:20. About what time would you arrive at the face at the Pioneer?

A. About 12 or 15 minutes after you got to the bottom of the cage.

Q. Were you on an eight-hour basis there?

A. I think so, yes.

Q. So you would start working some time before seven?

A. Yes.

Q. But time was counted from seven on?

A. That is right.

Q. And you had to take lunch below or on top?

A. When I started at Pioneer, we ate our lunch on surface.

Q. And that continued until when?

A. About '35 or '36.

Q. 1935 or '6?

A. 1935 or '6.

Q. When you ate on the surface, what time did you leave the face at noon?

A. About 12:00 o'clock—or a few minutes before—two or three, possibly.

Q. What time were you back at the face?

A. About twenty minutes to one.

Q. And in the meantime you would be raised to the surface, have eaten your lunch and returned?

A. Yes.

Q. After the change in 1936 and 1937, what arrangements were made about lunch?

A. I was elected as representative by the miners on my shift and we were asked by the miners to—

Mr. Burr:

Just a minute, we want to interpose an objection to any requests or conferences between the men in the mine, and any other questions along that line.

A. I was elected as representative by the miners on my shift and we were asked by the miners to have the shift changed so that we could eat underground and come to surface earlier on the night shift.

Q. Were the conditions changed then?

A. Yes.

Q. And did you eat underground?

A. Yes.

Q. And at the face or nearby?

A. At the working face. That is, within 50 or 60 feet of the face.

Q. Of the face. And how much time was required?

A. For eating lunch?

Q. Yes.

A. About 15 minutes.

Q. But it was counted as 30?

A. Yes.

Q. At Pioneer, what time did you reach the surface?

A. After the change?

Q. Before and after?

A. About five minutes after five,—that was before the change.

Q. And then after they changed to a 30-minute lunch hour?

A. We would leave underground at 3:30, and it would be a few minutes more for hoisting the men up.

Q. When you arrived at the surface shortly after five, what time had you started work in the morning?

A. Seven, or fifteen to seven, about that.

Q. Was there any change in your starting time at the Pioneer Mine during the period you were there?

A. Yes.

Q. What change was that?

A. I was asked to have the shift changed by the miners,—to have the day shift go underground at [illegible] o'clock in the morning, and have a half hour—

Q. You are sure that you didn't used to go to [illegible] and then changed it to seven?

A. Yes, that is right, seven.

Q. Let's get that straight. From 1928 at Pioneer, until about 1935, is it, or '36—

A. Yes, we went underground at seven.

Q. Or eight?

A. Eight, yes.

Q. You went underground at eight?

A. At eight.

Q. Or rather, your time commenced at the face at eight o'clock, is that right?

A. That is right, yes.

Q. You went underground before that?

A. Before eight, yes.

Q. And you were raised to the surface then at five minutes after five?

A. About that.

Q. And then about 1935, was it, you went to work an hour earlier?

A. Yes, about 1935 or '36.

Q. And you got through an hour and a half earlier?

A. An hour and a half earlier, yes.

Q. Because they not only started an hour earlier, but they cut the lunch hour down to 30 minutes?

A. They cut the lunch period to a half hour.

Q. At Pioneer, how much time was required to go from the surface to the mine at the face on an average, according to your experience?

A. About 14 or 15 minutes.

Q. And the same time required to come out?

A. Yes.

Q. Since May 1, 1941, have there been any changes in your miner's day?

A. Yes.

Mr. Burr:

We want to note our objections to any testimony in reference to changes in conditions since May 1, 1941, on the same grounds that we have previously stated.

By Mr. Murtha:

Q. Describe in full any changes that have been made, including any changes in the handling of tools and powder and carbide, or the time you began work, ended work, and so forth. Just start in at the day's beginning and describe it to us.

Q. We leave home about ten minutes after six. We go to the dry and change and we have a buzzer. When that rings, we take our lamps and checks and go to the shaft to be lowered underground.

Q. What shift are you on?

A. I work one week day shift and the next week night shift.

Q. What cage are you on?

A. Second cage.

Q. What time does your buzzer ring?

A. About eight minutes after seven.

Q. When does the first cage go down?

A. Seven o'clock.

Q. That is the first buzzer?

A. Yes.

Q. When does the third buzzer ring?

A. I never looked at a watch, but I would think it would be possibly eight minutes.

Q. You arrive at the face about what time, now?

A. 7:12 or 7:15.

Q. What time do you leave the face at the end of the day?

A. 3:24, I think it is.

Q. You reach the surface then at what time?

A. About 3:34, I think, or thereabouts.

Q. Where do you eat lunch?

A. Underground, near the working face.

Q. Thirty minutes?

A. We have thirty minutes.

Q. Do you use your thirty minutes?

A. We don't eat thirty minutes, but we sit down the balance of the time.

Q. You take a full thirty-minute lunch period?

A. Yes.

Q. Compare your production since May 1, 1941, with your production before.

Mr. Burr:

Note an objection to that, please.

A. My wages have been about the same.

By Mr. Murtha:

Q. How about your production of ore?

A. What is that?

Q. How about your production of ore each day, compared to before May 1, 1941?

A. I don't remember the number of cars of either month, but I believe it is about the same.

Q. You do the same work now each day that you did before?

A. Yes.

Q. Where do you get your tools at the present time?

A. They are mostly delivered almost to the working place.

Q. And how long has that condition prevailed?

A. There have been many changes made since about 1936.

Q. What kind of changes?

A. By requests to the management to have our tools brought closer to the working place.

Q. That allows you more time to work at the face?

A. It does.

Q. When does the night shift come on now, where there are two shifts?

A. At 4:30, we start underground.

Q. Do you blast during the day, occasionally?

A. Anytime of the day.

Q. And you continue working after you have blasted?

A. It takes fifteen minutes to twenty minutes, or a half hour sometimes, for the smoke to go out.

Q. The night shift could come in immediately after you leave each day, could they?

A. They could, yes.

Q. Are you a member of the Employees' Representation Plan?

A. I was elected representative by the miners on my shift.

Q. That is under what they call the Employees' Representation Plan?

A. Yes, and the initials were "E. R. P."

Q. What was the purpose of this plan?

A. For the miners to bring any grievance to us to bring to the management.

Q. What grievances were there that caused the setting up of this plan?

A. There were many of them, such as getting tools from the warehouse and taking them from the shaft to the working place, making wedges underground with the axe, and instead of doing that we asked them to make them in the shops with a machine. And we asked to have the shifts changed from the system we had before to what they were all talking about, collar-to-collar—that is, have the eight-hour collar-to-collar.

Q. And there were other complaints as well?

A. Yes.

Q. How many people were on this committee?

A. I represented the miners on my shift. One man represented the miners on the other shift, and the trammers also had a representative.

Q. When were you elected to this committee?

A. About 1935 or '36.

Q. Did you meet with the officials of the company?

A. Once a month.

Q. Wasn't it 1935?

A. It might have been. I don't recall the year.

Q. What officials did you meet with?

A. The superintendent, Bruce Strachn.

Q. You met with him once a month, is that right?

A. Once a month.

Q. For how long a period of time?

A. I was representative of the miners for one year.

Q. During this year did you receive complaints from the men?

A. Yes.

Q. And did you present these complaints and grievances to the superintendent of the mine?

A. Yes.

Q. Of the company. Among these grievances, was there a demand for payment of all hours worked from collar-to-collar?

A. I think that was the idea. They were putting in too much time.

Q. Did the company grant your requests?

A. No.

Q. They made some minor concessions, however, didn't they?

A. Such as delivering tools?

Q. Now, later on, did you report the attitude of the company back to the men?

A. We had no other way of reporting back to them, only after we got into the dry, to be talking with them, before we would go on our shift.

Q. What was the result of your report to the men?

A. They didn't feel so good toward it, sometimes.

Q. They didn't feel so good about it?

A. No, they didn't feel so good about it, sometimes, on some of the reports.

Q. Was this Grievance Committee,—or was this Employees' Representation Committee ever able to obtain a collar-to-collar basis for the pay?

A. No, it was asked for, but we did not get it.

Q. Is there an Employees' Representation Plan in operation now?

A. No, we have the union there now.

Q. When was that organized?

A. In 1937.

Q. Does that take the place of the Employees' Representation Plan, as far as your method of bringing grievances to the company is concerned?

A. Yes.

Q. What did the company official or officials state in regard to the granting of your requests, in connection with the collar-to-collar plan, prior to the formation of the union?

A. The superintendent said that we would never get it until there was a law passed to compel them to give it to us.

Q. But you continued to try to get it? To get it through the union, is that right?

Mr. Burr:

I ought not to have to make an objection to leading the witness. I have never heard from anyone that they made this request to the management more than one time.

Mr. Murtha:

Well, I think that counsel overlooked the fact that—

Mr. Burr:

Why don't you ask him how many times and not you tell?

By Mr. Murtha?

(Continuing.) —that the members of the Employees' Representative group made requests.

Mr. Burr:

All right, now ask him how many times the union did. I suppose you have got an interest in this case, in having the facts come out.

Mr. Murtha:

I think it is better to have it in chronological order—

Mr. Burr:

Then ask him.

Mr. Murtha:

(Continuing.) —so that neither you nor anyone else will be confused.

Mr. Burr:

In the question you asked him, it was intimated that they asked every day, and I asked you to ask him how many times, and not lead the witness.

(The last question was read by the reporter as above recorded.)

A. We did.

By Mr. Murtha:

Q. Are you and were you a member of the union?

A. Yes.

Q. And it was organized when?

A. March, 1937.

Q. Did the union have a program—

Mr. Burr:

Note an objection to what program the union had.

By Mr. Burtha:

Q. Just answer yes or no—did the union have a program?

A. Yes.

Q. Of things they wanted?

A. Yes.

Q. What was the main thing that they wanted?

Mr. Burr:

Note an objection to the form of the question.

A. In the first meeting we had, they asked to have a contract signed in which was included the eight-hour collar-to-collar.

Q. I think you were an officer of the charter committee, is that right?

A. That is right.

Q. You were what?

A. I was president of the charter committee.

Q. And then were you elected an officer of the union?

A. I was elected vice-president after the union was established, and then I was elected president the following year.

Q. Have you held other offices?

A. I was temporary recording secretary for a few months.

Q. During this period that the union had been organized, had they continued to urge the adoption of this contract?

Mr. Burr:
Make the same objection to that question, please.

By Mr. Murtha:
Q. Or have they not?
A. Yes, they have.
Q. Did they have a committee to meet with the company officials?
A. Yes.
Q. You weren't a member of that committee?
A. I have been on the Grievance Committee.
Q. Have you met with the officials of the company?
A. Yes.
Q. Do you know when that was?
A. No, I don't remember.
Q. Sometime since 1937, is that right?
A. Yes.
Q. How many times do you recall meeting with the company when you were present?
A. Quite a number of times—I couldn't say how many.
Q. At these meetings was this contract discussed?
A. Yes.
Q. There were other committees?
A. Yes.
Q. And they met at times when you weren't there?
A. Yes.
Q. During the period you have been a member of the union, have you attended the meetings, regularly?
A. Yes.
Q. And have the men discussed the collar-to-collar question?
A. Yes, many times.

Q. What does that expression mean to you?

A. Well, it means less time from the time I get home in the morning until I get back.

Q. But those words, I mean, what does that mean to you? I don't mean results—I mean, what does that mean?

A. It means I get more time away from my work.

Q. Under the collar-to-collar plan, what hours would be considered working hours? What hours would you be paid for as working hours?

A. Eight hours.

Q. And where would the miner be during this eight hours? Where would he be when the time started and where would he be when it ended?

A. At the present time?

Q. No. Well,—

A. At the present time we are still on the surface when it starts, and we are on the surface when it ends.

Q. Is that what the miners were talking about at the union meetings?

A. That is what it was.

Q. Now, you have been mining for how many years?

A. I have been mining since 1916.

Q. Have you heard the miners discuss the contract and the matter of being paid for all hours worked, instead of just for the hours at the face?

Mr. Burr:

Note a special objection to that question.

A. Many times I have heard it discussed.

By Mr. Murtha:

Q. During this period?

A. Yes; during the entire period.

Q. You came from North Dakota having worked from collar-to-collar. Did you tell the miners at the iron ore mines as to the conditions out there?

Mr. Burr:

Note an objection to that question.

A. I would mention some of the things in regard to working conditions we had there, and I was told to shut up and not let anybody hear me, because I would get fired.

By Mr. Murtha:

Q. What has been the result of the refusal of the company to pay the men for all of the hours surface-to-surface or collar-to-collar?

Mr. Burr:

Note another special objection.

A. They have organized with the intention of getting paid for all the time that they work.

By Mr. Murtha:

Q. What was your own reaction to the refusal of the company in '35 during that period?

Mr. Burr:

Make another special objection to the same kind of testimony.

By Mr. Murtha:

Q. And also the request of the union from its formation in '37 up to May 1, 1941?

A. I did not like the refusal.

Q. All of the men now, since May 1, 1941, do not quit work at the same time?

A. No.

Q. Those that go down first come out first?

A. Yes, sir.

Q. And so on. But there has been no change in your blasting time?

A. No.

Q. I hand you Defendants-Intervener's Exhibit No. 1, and ask you if you know what that is?

A. This is a recording of all the minutes of our local union.

Q. Were any of those meeting minutes there prepared by you?

A. Yes, sir.

Q. Or under your supervision?

A. Yes, sir.

Q. State which ones they are.

A. This is the first one (indicating).

Q. Is it marked Exhibit D?

A. Yes.

Q. And what is Exhibit D?

Mr. Burr:

We want to note our same objections to all this line of questions, as we did to the other witness.

A. It is the proceedings of what went on at our union meetings.

Q. And on what date?

A. July 10, 1937.

Q. It is written on a page of Exhibit 1, the whole book?

A. The book is Exhibit 1.

Q. Yes.

A. Yes.

Q. And did you act as secretary for the meeting on that date?

A. Yes.

Q. And is Exhibit D the minutes of what took place at that meeting?

A. Yes.

Q. As recorded by you?

A. Yes.

Q. Were there any other meetings—I show you Defendants-Intervener's Exhibit E, being a part of Exhibit 1, and ask you what that is (exhibiting document to witness)?

A. This is what occurred at our meeting on August 29, 1937.

Q. Of which you were the acting secretary?

A. Yes.

Q. The minutes were made by you?

A. Yes.

Q. It reflects what transpired at the meeting on that day?

A. That is right.

Q. Now, you are talking about the meeting of Local what?

A. 1664.

Q. Of Local 1664, of what?

A. Of the Amalgamated Association of Iron, Tin & Steel Workers.

Q. Of North America?

A. Yes.

Q. I show you Defendants-Intervener's Exhibit No. F, also a part of Exhibit 1, and ask you what that is (exhibiting document to witness)?

A. That is the proceedings of the meeting of September 12, 1937.

Q. This same local union?

A. The same union, yes, sir.

Q. At which you acted as secretary?

A. I did, yes.

Q. And took the minutes of the meeting?

A. Yes, sir.

Q. And recorded them and they reflect correctly what transpired at the meeting, is that true?

A. That is right, yes, sir.

Q. I show you Defendants-Intervener's Exhibit G, which is part of Exhibit 1, and ask you what that is (exhibiting document to witness)?

A. That is the proceedings of the minutes of the meeting of November 14, 1937.

Q. Did you act as secretary during that meeting of November 14, 1937?

A. Yes.

Q. Did you record the minutes, and do they actually and accurately reflect what transpired during that meeting?

A. Yes.

Q. That is also minutes of the same local meeting that you have been referring to?

A. Yes.

Q. You were present at the first meeting of the union, is that correct?

A. I was present, yes.

Q. What was the date of the first meeting?

A. May 23, 1937.

Q. When did they first propose to urge a contract by the Oliver Mining Company?

A. At that first meeting.

Q. Did they outline the clauses that they wanted incorporated in the contract?

A. Yes.

Q. Who acted as secretary of the first meeting?

A. Rudolph Krall.

Q. At that time were you the charter president?

A. Yes.

Q. And was there another meeting on May 30, 1937?

A. Yes.

Q. At which meeting did they decide to negotiate the contract?

A. I think the second meeting.

Q. I show you the Defendants-Intervener's Exhibit A, being a page in Defendants-Intervener's Exhibit No. 1, and ask you what that is (exhibiting document to witness)?

A. That is the proceedings of the minutes of our first meeting.

Q. At what date?

A. May 23, 1937.

Q. And I show you Defendants-Intervener's Exhibit B of the same book (exhibiting document to witness), and what is that?

A. May 30, 1937.

Q. That is the minutes of the meeting of May 30, 1937?

A. That is right.

Q. I show you Defendants-Intervener's Exhibit No. C, and ask you what that is (exhibiting document to witness)?

A. That is the minutes of the meeting of June 13, 1937.

Q. And the minutes as represented by these Exhibits A, B and C, were recorded by whom?

A. The minutes of these first three meetings were recorded by Rudy Krall.

Q. Now, will you refresh your memory by looking at the minutes of June 13, 1937, as to whether or not there was discussed at that meeting a recognition of the CIO as the sole collective bargaining agent?

A. Yes, I do remember.

Q. And was it at that time that they decided to negotiate a contract containing the eight-hour collar-to-collar clause?

A. Yes.

Q. I wish you would look at the exhibit.

A. Yes, I think I was remember it was that meeting.

Q. I wish you would also look at Defendants-Intervener's Exhibit D and refresh your memory. That was the first meeting at which you acted as recording secretary, is that right?

A. Yes, it was.

Q. And at the meeting of July 10, 1937, which is reflected by Exhibit D, did you read the minutes of the preceding meeting?

A. I did.

Q. Have you examined Exhibit D, as to whether or not those were the minutes that were read on July 10, 1937?

A. Those were the minutes that I read on July 10, 1937.

Q. And those minutes were approved as read?

A. They were.

Q. As a matter of fact, were you the one that read them?

A. I did.

Q. And you noted the approval in Exhibit D, is that correct?

A. That is right.

Q. Do you know whether or not a contract was drawn up then following those meetings?

A. I know there was a contract drawn up.

Q. Is it the same contract you are now urging?

A. Yes.

Q. And it contains a demand for collar-to-collar payment?

A. It does.

Q. I have just a couple more questions. You were subpoenaed to come here?

A. Yes.

Q. And do you waive the examination of your deposition after it is transscribed? Do you waive the examination of it, and also having it read to you, or reading it?

A. I will

Q. You will?

A. Yes.

Mr. Murtha:

You may cross examine.

Cross Examination.

By Mr. Burr:

Q. Mr. Burck, I believe your while mining experience has been as a coal miner in North Dakota, was it?

A. Yes, sir.

Q. And as a miner for the Oliver Company here in Sibley and Pioneer mines?

A. Yes, sir.

Q. Of course, you don't know anything about the conditions in Alabama?

A. No, sir.

Q. You have never been there and don't know anything about it at all?

A. No, sir.

Q. You have never had any connection with the Alabama situation?

A. I have not, no.

Q. You have no connection with them, and so far as you know they have no connection with you all up here?

A. Not that I know of.

Q. You are just as separate and apart as the two poles, as far as you know, isn't that right?

A. As far as I know, that is right.

Q. Now, just a few questions about the North Dakota experience. You say those were underground coal mines?

A. Yes, sir.

Q. What years were you there?

A. I started working underground in North Dakota in 1916.

Q. 1916?

A. Yes.

Q. And you worked until when?

A. About 1922.

Q. 1922. Did you belong to the United Mine Workers of America?

A. Yes, sir.

Q. Are they organized in the North Dakota fields?

A. Yes, sir.

Q. Were they at that time?

A. Yes, sir.

Q. Did they negotiate contracts with the companies out there?

A. Yes, sir.

Q. What was the name of the company you worked with?

A. Washburn Lignite Coal Company.

Q. How many men did they employ—about how many?

A. Three or four hundred.

Q. Three or four hundred. Did you ever see the contract with the United Mine Workers of America?

A. I made no examination of it, but I seen it on display at our meetings.

Q. Well, now, I will ask you if it isn't a fact that every contract the United Mine Workers of America have made since 1898 has contained a provision defining the working time as working at the face and excluding traveling time?

A. I don't know.

Q. You don't know whether that is true or not?

A. I do not.

Q. You do not know if that is true of the contract they had out there?

A. I—

Q. Now, be careful. I am asking you about the contract.

A. I want to be truthful, and I will say I don't know.

Q. I know you want to be. You don't know. All right, sir. That is enough for the coal mines. Now, then, you went into the Sibley Mine in what year?

A. 1924.

Q. 1924, and you worked there—

A. Until 1928.

Q. In '28, when you went into the Pioneer mine?

A. Yes, sir.

Q. Now, without going into any details, the conditions in reference to mining were practically the same in the same mines, were they not, except there were some improvements made later on in the Pioneer mine?

A. Yes.

Q. By setting up complaints and grievances, you improved the question of carrying tools and things of that sort that you have told us about?

A. There was no complaints presented to the company until the representative plan came into effect

Q That was in about '33 or '34—probably about '34 or '35?

A. Yes, about '35. It might have been '34.

Q. And then you presented some claims, and they presented them until the union was formed, and since then the Grievance Committee of the union has presented them?

A. Yes.

Q. Now, then, there never has been a time since you started working with Sibley, until May 1, '41—I want to get that date fixed in your mind, because every question I am asking you now is how things were prior to May 1, 1941.

A. That is right, prior to May 1st.

Q. Now, from the time you started working in '24, until May 1, 1941, what you called the Collar-to-collar plan never was in force or operation, was it?

A. No.

Q. You didn't have it all during that whole period of time?

A. No.

Q. Your time was computed and you received your pay and the company men, or day men, whatever you call them, received their pay on the basis of eight hours, not including traveling time?

A. Yes.

Q. That is right, isn't it?

A. That is right.

Q. And that was, so far as your experience is concerned, the universal custom during that period of time?

A. Yes.

Q. And that same custom continued in the Pioneer Mine until May 1st, when they instituted the new plan of not paying for traveling time?

A. Yes.

Q. Now, both the Sibley Mine and the Pioneer Mine, in general, have the same kind of transportation: You have an elevator?

A. Yes.

Q. On a vertical shaft?

A. Yes.

Q. With your work level No. 1 being nearest the surface, and then going on down?

A. Yes.

Q. And the biggest the number, the further you are away from the surface?

A. That is right.

Q. And then in the same way when you extended the workings on the level, the first thing you did was to make what you call a permanent drift?

A. That is right.

Q. And then from that drift, up above that drift is where your working face is?

A. That is right.

Q. And you worked that, and I guess put on chutes down to the permanent drift?

A. That is right.

Q. Now, then, in order to get to your working place, you could go in at one level and walk down to your working place, or if you went in another level you could walk up?

A. You could take a ladder up or down.

Q. Up or down, whichever way it happened to go. Have you had the system out there, prior to May 1, 1941, when you get your pay check—when did you get it, twice a month or once a week, or how?

A. When I started work?

Q. Just the last three or four years?

A. Twice a month.

Q. Twice a month?

A. Yes, sir.

Q. All right, sir. Now, when you got that pay check, was it computed on the eight-hour time that you spent in your working place and not on your traveling time?

A. Yes.

Q. And you signed a receipt?

A. Yes, sir.

Q. That receipt stated it was in full payment of your wages for that period of time?

A. I think it was.

Q. And you signed those receipts right along?

A. Yes.

Q. All the way through, and you still sign them, of course?

A. Yes.

Q. Still twice a month?

A. Yes, twice a month.

Q. Now, when was the first time, Mr. Burck, that any representative of the Wage and Hour Division came to see you about this matter?

Mr. Murtha:

Objected to as incompetent, irrelevant, and immaterial.

By Mr. Burr:

Q. All right, sir, now just go ahead. I will put it this way, has it been since May 1, 1941?

A. Yes.

Q. Now, up to that time, they had never been to see you at all before that time?

A. None of the Wage and Hour men.

Q. That is what I am talking about. Now, when did they did come to see you after May 1st, do you remember the names of the two gentlemen that came to see you?

Mr. Murtha:

I object to that as incompetent, irrelevant, and immaterial.

A. I remember the name of one man, but I don't remember—

By Mr. Burr:

Q. Was Mr. Miller one of them?

A. Yes.

Q. Was Mr. Harrigan another one?

A. Yes, sir.

Q. Were they the only two that came to see you?

A. There was one other man.

Q. Do you remember his name?

A. No, I don't.

Q. But you do remember those two?

A. Yes.

Q. And you told them just what you have testified here, in substance, because that is all you are trying to do, is tell the truth about it, I know.

A. Yes, sir.

Q. And you told them that you never had been paid out there at all for transportation time until May 1, 1941?

A. I think I did.

Mr. Burr:

I think that is all right now.

Mr. Murtha:

We will adjourn until whatever hour suits you in the morning.

Mr. Burr:

What time do you suggest? Is eight o'clock satisfactory?

Mr. Murtha:

That is satisfactory, and we will adjourn until eight o'clock.

(Whereupon, at 6:00 o'clock P. M., an adjournment was taken until 8:00 o'clock A. M., Tuesday, July 1, 1941.)

406 Pence Building,
Minneapolis, Minnesota, Tuesday, July 1, 1941.

Reconvened at eight o'clock a. m., pursuant to adjournment.

Present: Donald M. Burtha, S. M. Bronaugh.

Mr. Murtha:

The deposition having been adjourned on June 30, 1941, the examination of George M. Burck is continued at eight o'clock on July 1st, 1941, at the same place.

Those present are Donald M. Murtha on behalf of the defendants-intervener; and S. M. Bronaugh on behalf of Sloss-Sheffield Steel and Iron Company; Tennessee Coal, Iron & Railroad Company and Republic Steel Corporation, plaintiffs.

Mr. Bronaugh:
Are you ready to proceed?

Mr. Murtha:
We are ready.

4056 GEORGE MICHEAL BURCK resumed the stand, having been previously duly sworn, and testified further as follows:

Cross Examination (Continued).

By Mr. Bronaugh:

Q. Mr. Bruck, do you have any knowledge of the amount of iron ore produced at the Pioneer and the Sibley Mines—tons, I am referring to?

A. No, not in any round figures. I know there is a very large stock pile.

Q. Now, the Sibley Mine and the Pioneer Mine are operated by the same company, are they not?

A. Yes, sir.

Q. And are they right together—I mean close together and operated more or less as one mine?

A. They are about a mile or a mile and a half apart.

Q. And operated by the same company?

A. Yes, sir.

Q. Are the other underground mines close by those mines?

A. Yes.

Q. What distance away are they?

A. The Chandler Mine is right next to the Pioneer Mine and at one time you could enter through raises from one mine to the other. The Zenith Mine is on the other side, and at one time you could enter that mine through raises. I don't know if you can now or not.

Q. Well, then, are they right there together?

A. Yes, sir.

Q. Probably within a mile of each other?

A. Yes, sir.

Q. Now, the other underground mines in that general locality—

A. Those are the only ones.

Q. Are you acquainted with the general situation with respect to open pit and underground mining, with respect to which produces the most ore?

A. I am not so much acquainted with the open pit.

Q. Do you know whether or not the production in the open pit mines is by far larger and greater than in the underground mines in the Minnesota fields?

A. It might be.

Mr. Murtha:

I object to examining the witness about a matter which he has stated that he doesn't know, isn't familiar with.

By Mr. Bronaugh:

Q. Go ahead and answer, please.

A. Will you ask me the question again?

Q. Do you have any knowledge of that fact as to which produces the most ore, the open pits or the underground mines?

Mr. Murtha:

Answer yes or no.

A. No.

By Mr. Bronaugh:

Q. Is it true that since May 1st, the company for which you work has been paying the men—I mean May 1st, '41,—on the collar-to-collar basis?

A. Yes.

Mr. Bronaugh:

That is all.

Re-Direct Examination.

By Mr. Murtha:

Q. Did the miners at the Chandler Mine and the Zenith Mine,—did they sometimes come to your meetings, your union meetings?

A. Yes.

Q. Did they have the same complaints as your men did?

A. Yes.

Mr. Bronaugh:

I object to that.

By Mr. Murtha:

Q. Are you acquainted with the conditions, working hours and arrangements in the Zenith and the Chandler Mines?

A. Not so much.

Q. I want to clear up the situation which existed in the North Dakota coal mines during the years you worked there, relative to whether or not you were paid collar-to-collar. Were you, or were you not?

Mr. Bronaugh:

We object to that.

A. I was paid on a tonnage basis while I worked there.

By Mr. Murtha:

Q. How were your hours determined?

A. From the time we went in until the time we came out, I think, with the lunch period taken off.

Q. Were you on an eight hour a day basis?

A. Yes.

Q. From the lunch hour?

A. Yes.

Q. And your time ran from the moment you—

A. We left the surface.

Q. And until you reached—

A. Came out.

Q. Now, during the period you have been working for the Oliver Mining Company in Minnesota, in the Sibley and Pioneer Mines, you have worked eight hours a day or more at the face of the mine?

A. We worked more.

Q. After the union contract was drawn, did you, in 1937—that was in the summer of 1937?

A. Yes.

Q. Did you meet with the company officials at that time?

A. You mean on the Grievance Committee?

Q. In connection with the contract?

A. No, I didn't.

Q. I see.

Mr. Murtha:

That is all.

Re-Cross Examination.

By Mr. Bronaugh:

Q. You say that you did not meet with the company officials?

A. Not in regard to the committee.

Q. That is what I mean. That committee you referred to is the contract that had incorporated the provisions from the collar-to-collar basis of pay, didn't it?

A. It was drawn up by your union at our union meeting for that purpose.

Q. And you never discussed it with any official of the company yourself?

A. I did not.

Q. And the only thing you know is that it was brought to the attention of the officials of the company—is what somebody else told you?

A. What was brought to our meeting.

Q. Not what you personally know?

A. No.

Q. You weren't there?

A. No, I wasn't there.

Mr. Bronaugh:

That is all.

(Witness excused.)

4061 LEANDER RUNN was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Murtha;

Q. What is your name?

A. Leander Runn.

Q. R-u-n-n?

A. Yes.

Q. Where do you live?

A. Ely, Minnesota?

Q. Ely. What is your occupation?

A. Mining.

Q. Are you a miner?

A. Yes.

Q. How long have you been a miner?

A. Well, I have been mining about going on twelve years, I guess.

Q. What mines?

A. The Pioneer Mines at Ely.

Q. Iron ore?

A. Yes.

Q. What company?

A. The Oliver Iron Mine Company.

Q. Before that you worked in the mines? Or around the mines?

A. I worked for the Mesabi Iron Company. That is surface—not underground.

Q. As a what?

A. As a tool sharpener in the line of blacksmith work, and I was also a stationary fireman.

Q. During the period before you were a miner, did your duties take you down into the mines and around the mines?

A. Where, at Ely? At Ely, you mean?

Q. What?

A. At Ely, you mean?

Q. Wherever you were working. Were you in the mine part of the time and around the mines, in the mine works?

A. I was at Ely, yes.

Q. Where did you work from 1918 to 1928?

A. From 1917. I came from North Dakota at that time and I started working at the Aurora.

Q. Aurora?

A. That is the Mohawk Mining Company. I was there about two years. And then I quit then and I went out for a little trip and I came back and started to work for the James Mining Company at Aurora and then I started to work for the Mesabi Iron Company at Bambitz and then I came up here to Ely.

Q. How far away are these places from Ely?

A. Well, Aurora is about—I would say around 35 miles.

Q. Is that on a different range?

A. Yes. Aurora is on the Mesabi Range and Ely is at the Vermilion Range.

Q. All iron mines?

A. Yes.

Q. During this period you were on mining property in and around the mines, is that correct, as you were engaged in your work?

A. Yes.

Q. You are acquainted with the condition prevailing during that period in those mines?

A. Yes.

Q. And you went to work for the Pioneer in what year, '28?

A. No,—in '26, I believe it is, in August—the month of August 1926.

Q. As a miner?

A. Well, not exactly as a miner. I went there as a cage tender.

Q. What is a cage tender?

A. Well, a cage tender is a man who works on a cage taking down stuff, whatever they need down in the mine—timber and tools.

Q. And how long did you continue in that?

A. Well, I believe it was about eight months or so.

Q. And that—

A. Then we started concreting the shaft. That is what you call the "A" shaft, taking out all the old timbers and replacing it with concrete.

Q. "A". And then what did you do?

A. Well, after the shaft was finished, why then, they put me as a miner and I have been mining ever since.

Q. Did you work day and night shifts?

A. Yes.

Q. Have there been any changes in the working day of the day shift at Pioneer since you went to work there?

A. Oh, yes.

Q. About how many changes. Can you name the periods?

A. Well, there was one big change we had. We used to go down about—well, sometimes as early as 25 minutes after seven in the morning and at the present time we go down at seven.

Q. Well, now—

A. Me, I go down at seven-nine, because I take the second cage.

Q. Well, now, the most recent change was May 1, 1941?

A. Yes.

Q. And then before that, conditions were quite steady back to—

A. Yes, it was.

Q. (Continuing.) —back to what year?

A. Well, I suppose they had continued with that old time for quite a number of years back, I believe.

Q. Do you recall that you used to go to work at eight, up until about 1935?

A. Yes.

Q. And after that you went to work at seven—that is, to use the term the day at the face used to start at eight before '35, and after '35 the time started running at the face at seven, is that correct?

Q. So there are three periods?

A. Yes.

Q. The first time from 1928 to 1935, and the next from '35 up until May 1st, 1941, is that correct?

A. That is correct.

Q. Now, discuss the miners' working day during that first period from '28 to '35.

Mr. Bronaugh:

We want to object to that on the grounds that these conditions up here are not the same and on the contrary are shown to be, by the testimony of witness, vastly different from what they are in Alabama, in the Alabama mines, and on the ground that calls for incompetent, irrelevant and immaterial testimony.

By Mr. Murtha:

Q. Go ahead.

A. I didn't quite understand what you said there.

(The last question was read by the reporter as above recorded.)

Q. During the day shift?

A. Well, I can't recall exactly what time we went down. I believe we went down about 7:30 at that time and worked until eight to five, I believe it was, but I don't remember for sure on that there.

Q. Did you have lunch above ground or underground?

A. We had lunch above ground at one time.

Q. During that period?

A. Yes.

Q. How long a lunch period?

A. It was supposed to be an hour, twelve to one.

Q. Yes.

A. But we did not have a full hour, because the first cage come up, well, I would say, probably three minutes after twelve or so and then the first cage again went down around 25 minutes after or half past.

Q. And then the other cages continued a few moments afterwards?

A. Yes.

Q. About how long was required for a round trip of the cage?

A. Well, you mean in the morning or noon?

Q. Any time, for a cage to go down and up again?

A. Loaded with men?

Q. Yes.

A. Well, of course, it all depends on where they drop, too, you know. Now, say if they go down to the 13th level, it would take around eight minutes or so—eight or nine minutes, somewheres along there.

Q. Would you say eight or nine was the average round trip time?

A. Just about.

Q. Under those conditions. How many cage trips during this first period?

A. We generally have three cages.

Q. Double-deck?

A. Yes, sir.

Q. How many men to a deck?

A. There were supposed to be 28 to 30 men to a deck.

Q. After arriving at the station on the level on which you were taking out ore, how long would it take to walk into the face of the mine?

A. Well, to the face I am working at the present time now?

Q. No, during the first period.

A. Well, I would say around ten minutes.

Q. Would that include climbing from the level up a ladder—

A. Up to the face.

Q. Up to the face?

A Yes.

Q. How far would you climb?

A. Well, there was times we had, I would say, probably 50 or maybe 75 feet to climb.

Q. During this first period, where were you at the end of the time for which you were paid? I believe that was five o'clock. Where would a miner be at that time? Would he still be at the face of the mine?

A. Well, coming back—if the first cage went up at five o'clock, see; why the first bunch of miners would be at the shaft at that time.

Q. Yes.

A. And then they kept on coming in there.

Q. When was the last miner out at the end of the day?

A. Well, I couldn't tell you, because I was hardly ever on the last cage anyway. I was always on the second cage.

Q. When did the second cage get out?

A. The second cage generally goes about ten or twelve minutes after.

Q. It would be about—

A. You see, it takes about nine minutes for the first cage.

Q. And half that time to get up—it would be about eighteen minutes after five?

A. Somewheres around there.

Q. The third cage would reach the surface nine minutes after that. Would you get to the working face before seven o'clock during this first period?

A. Yes.

Q. You would stay at the face of the mine when you were on the second cage during this period, how long?

A. Well, it all depends—sometimes we have to take tools. Some tools were marked to be carried into our face or place, whatever you want to call it. Even at that we went in before time, because the first cage always went so early that the second cage got there before seven o'clock in the morning.

Q. As a matter of fact, the third one got there before seven o'clock?

A. Yes, even the third one got there before seven.

Q. Well, at the end of the day, when you were on the second cage, where would you be at five o'clock?

A. On the way into the back shaft—going back to the station.

Q. That is, would you work up until five o'clock?

A. Pretty near always.

Q. At the face?

A. Yes.

Q. Now, before you went down in the morning before this period, were there any other duties that you performed after you arrived at the mine?

A. Well, there was a time there where we had to get our tools sometimes from the warehouse.

Q. And how far away was the warehouse?

A. It is a good quarter of a mile.

Q. And what other things did you have to do?

A. We had to go up to our foreman or captain and get an order for tools, whatever tools we wanted, if we needed drills, hoses, or whatever we wanted. Then we would go over to the warehouse and get our tools and bring them back to the shaft.

Q. What were some of those tools?

A. Well, drills, sometimes, or air hoses.

Q. Are they little light drills, or heavy drills?

A. Well, no, they are not so light. Some of them are probably six or eight feet long.

Q. Steel rods?

A. Steel rods, yes. Sometimes we had to get a machine.

Q. How heavy is that?

A. Well, I couldn't tell you for sure. I guess they are probably around 50 pounds, maybe a hundred.

Q. Then would you carry them down into the mine with you?

A. They were taken down separately on the cage after the men were all down, and then they sent the tools down. Then we carried our tools into the face, when the tools came down.

Q. And carried them up this ladder to the face?

A. Yes.

Q. What other duties did you perform before you went down? Just tell what you did after you arrived at the mine proper.

A. We had to get our carbide for our lamps, and get our check numbers.

Q. Change your clothes?

A. Change our clothes, yes.

Q. You changed into your mining clothes?

A. Changed at the dry.

Q. Powder?

A: No. If we needed powder, we always ordered the powder from the foreman.

Q. How long has that been true?

A. That we ordered powder?

Q. Yes.

A. We always have been doing that since I came there.

Q. They kept the powder underground in all of these mines?

A. Whatever we ordered they kept underground. That was delivered to us.

Q. Now, after 1935, what time did you go down into the mine?

A. After '35,—that is the time we got the seven o'clock shift. The last one was supposed to go at twenty-five minutes to seven, but the cage pretty near always left at half past, or sometimes twenty-five after.

Q. Which cage were you on at that time?

A. On the second.

Q. Was there any difference during this period in the round trip time of the cage loaded with men?

A. What do you mean?

Q. Round trip time. Was it any shorter, or longer, or the same?

A. No, the same time.

Q. What level did you go down to?

A. Thirteenth.

Q. You have always worked on either the—

A. In that neighborhood, yes.

Q: (Continuing.) —twelfth or thirteenth?

A. Yes.

Q. How long would it take you to walk from the station to the face?

A. At the place where we are at now, or at that time?

Q. During the second period?

A. Let's see, now—

Q. Was there any difference?

A. No, I don't think so. It is about the same distance there, too.

Q. Ten minutes?

A. Yes, where we went at that time, too.

Q. Then you would arrive at the face before seven o'clock?

A. Yes.

Q. Did you eat lunch underground?

A. Yes.

Q. A half hour?

A. Half an hour.

Q. At the face of the mine?

A. Or nearby, yes.

Q. What time did your pay start running?

A. Pay?

Q. Yes, what time of day?

A. Seven or three-thirty.

Q. Where were you at that time?

A. At 3:30 we were on our way going back up.

Q. You were on an eight-hour day?

A. Yes.

Q. So eight and a half hours, that includes the lunch period? Eight and one-half hours after seven o'clock would find you where?

A. Eight and a half hours we were supposed to be at the face—that is, including your lunch hour.

Q. I see. Now, you were on the second cage going up?

A. Yes.

Q. And what time would you reach the surface?

A. Well, around 3:40, or so. Somewheres around there.

Q. Would it take you about the same length of time during this period to walk from the face of the mine to the station?

A. Yes, it would, about.

Q. I suppose it was a little quicker coming down the ladder, possibly, is that correct?

A. Well, it is a little easier going down than climbing up—maybe a few seconds.

Q. No appreciable difference?

A. No.

Q. You would arrive at the surface at what time, then? Let's see, you were at the face at 3:30, and how long would it take to reach the surface?

A. Around 3:38—somewheres around there.

Q. What time would you arrive at the mining property during this period from '35 to May 1, 1941?

A. Well, about—not later than ten after six in the morning, 6:10 or 6:15.

Q. 6:10 or 6:15?

A. It takes you about fifteen minutes to change your clothes.

Q. Pick up your carbide?

A. Pick up your carbide and check number.

Q. Occasionally get tools?

A. And by that time you are just about ready to go.

Q. And then at the end of the day after you reached the surface, what would you do during this period, up to May 1, 1941?

A. The first thing we had to hang up our check number.

Q. Yes.

A. And walk into the dry and change our clothes and wash up.

Q. And hang up your lamps?

A. Our lamps were on our hats.

Q. Did you ever bring up any tools at the end of the day with you?

A. We brought tools from our face to the back shaft,—not to the surface, just to the station.

Q. Now, since May 1, 1941, what time do you report at the mine?

A. You mean the time we come to the dry?

Q. Yes. What time do you have to be at work?

A. Well, we generally come into the dry about—I would say about a quarter to seven. Of course, the second cage goes down at 7:09.

Q. You are on the second cage?

A. I am on the second cage.

Q. Do they have a buzzer system?

A. No, the whistle blows at seven o'clock.

Q. You don't have a buzzer for the cage?

A. Oh, yes, they have in the dry.

Q. You still change clothes now?

A. Yes.

Q. And how about your carbide?

A. We have no carbide now.

Q. Do you have an electric lamp?

A. Yes.

Q. Where is the electric lamp kept?

A. Our lamps are placed right on our lockers.

Q. By somebody else?

A. And when we change our clothes, get ready to go, we take our lamps and go.

Q. Before May 1, 1941, where did they keep these electric lamps?

A. We got our electric lamps in—I believe it was the 28th day of April we got the first lamps.

Q. Yes.

A. And before that, we had carbide.

Q. I see. How about the checks? Where are those kept now?

A. We have a little small box right at the back shaft on the surface.

Q. No—your checks, where is the check rack?

A. Yes, the check number. You mean, where we pick it up?

Q. Yes, where do you pick it up?

A. Well, they have a big board where the check numbers hang on.

Q. Where is that?

A. That is at the back shaft.

Q. At the shaft collar?

A. It is at the shaft now, yes.

Q. What do you mean by the "back shaft"?

A. Well, that is what we always call it, at the shaft

Q. Where the men go down?

A. Where the men go down, yes. And when we come up, why, they have a little box there where we just throw our check number in and then they have the policeman to pick it up and put it on the board again so it will be there the next morning.

Q. I see. You don't have to hang your own check up any more?

A. No.

Q. How about tools?

A. The tools we need now, we give the foreman our order for tools, and that order goes to the warehouse and the tools are shipped down to the mine.

Q. As a matter of fact, that has been true since 1935 or '36?

A. Well, in '35 and '36, and even in '37, off and on, you know, we had to get our own tools.

Q. You did?

A. Yes. That was brought up on grievance.

Q. When was it that that practice finally came to an end?

A. I believe it was in the first part of '37. I don't remember for sure, but it was somewhere around there.

Q. But for the last few years they have been bringing your tools to the level?

A. Yes.

Q. Now, since May 1, 1941, is there any change in the practice in bringing the tools? Do they bring them closer to the face?

A. Well, pretty near all tools are brought right into our place. Sometimes if there is a tool that we need, you know, right away, why, we take it ourselves.

Q. From the—

A. From the station where we come down at.

Q. How long has it been since there has been any change in the practice, relative to bringing the tools to you?

A. Well, that is just now recently. It is since we got this eight-hour collar-to-collar. Before that we practically carried most of our tools in.

Q. You did what?

A. Before that we carried pretty near all of our tools in.

Q. At least, from the station?

A. From the station, yes.

Q. But now, since May 1, 1941, they bring the tools almost to the face?

A. Almost to the face, yes.

Q. That gives you more time for mining?

A. Yes, it does.

Q. How does your production compare now with before May 1, 1941?

A. I don't believe it is any different.

Q. You have lunch underground at the present time?

A. Yes.

Q. What hour?

A. The day shift is 11:00 to 11:30.

Q. Where are you at the end of eight and one-half hours from the time you leave the surface?

A. Eight and a half hours at the present, you mean?

Q. Yes.

A. We are out on the surface again.

Q. I see. What time is that? What time is it that you are at the surface again?

A. I am at the surface at 3:39. Of course, I go down at 7:09.

Q. Now, during all of the years that you have worked in the mines as a miner, would you receive your instructions from your foreman as to where to work, and discuss with him any unusual situation, such as the failure of some of the shots to explode? Did you discuss those things with your foreman?

A. Sometimes we did. If the place was unsafe, why the foreman would tell us. In case we had any missed holes, why, the foreman told us.

Q. Now, where would you be when he told you these things before May 1, 1941—on the surface before you went down?

A. A lot of times—oh, probably most of the time, we were told at the surface.

Q. Now, has that situation changed?

A. Yes.

Q. Where do you have these discussions with the foreman?

A. At the present time the foreman will tell us at the back shaft down at the station.

Q. After time has started?

A. Yes, after time starts.

Q. Prior to May 1, 1941, these directions would be given to you before time started running for the day, is that right?

A. Yes.

Q. Before you went down. Did you ever work the night shift?

A. Yes.

Q. During that first period from 1928 to 1935, about what time did the night shift leave the surface?

A. Well, I believe we left about the same as the day shift. I believe it was around 7:30; but I don't remember for sure so long ago back.

Q. Time was supposed to start running from 8:00 o'clock, is that right?

A. Yes.

Q. At night?

A. Yes, sir.

Q. And that was also an eight-hour day?

A. At the face of your place, yes.

Q. Well, didn't the night shift work nine hours?

A. The night shift at one time worked nine hours, yes.

Q. Then they got some time off on Saturday?

A. Yes.

Q. About 1935 did they change the system and bring the night shift on shortly after the day shift left?

A. Yes, they did.

Q. What time after 1935 did the night shift go down?

A. About 4:30 or so. Of course, they started at 5:00, I believe it was.

Q. In other words, they went right in as the day shift was coming out?

A. Well, there was an hour between the two shifts.

Q But after '35 the day shift was given credit from 7:00 o'clock on?

A From 7:00 o'clock until 3:30.

Q And the night shift, their time—

A They went on at 4:30 and they were supposed to be at the face 5:00.

Q I see. Did you ever work three shifts?

A Yes, we did.

Q Have you blasted during this period of years you have worked at the Pioneer, during the day?

A Oh, yes.

Q Have you blasted and gone back into work on the same day, the same shift?

A I didn't hear what you said.

Q How long after you blast is it, before you can return to work?

A Well, it all depends—sometimes it will probably take you ten minutes, and sometimes it will take half an hour. It all depends on the ventilation.

Q There is no reason that the night shift couldn't go to work immediately following the day shift?

A There is no reason why they couldn't.

Q Now, during this period that you have been connected with mining operations, in the iron ore fields in Minnesota, iron ore ranges, have there been any movements among the miners to improve their working conditions?

Mr. Bronaugh:

We object to that.

A. Yes.

By Mr. Murtha:

Q And have there been some conditions that have caused dissatisfaction among the miners?

Mr. Bronaugh:
We object to that:

A. Say that over again, please.

By Mr. Murtha:
Q. Have there been some conditions which caused dissatisfaction among the miners?
A. Yes.
Q. And what are some of those conditions?

Mr. Bronaugh:
We object to that.

A. Well, air conditioning.

By Mr. Murtha:
Q. They wanted air conditioning?
A. Wanted air condition. And another thing, some of the foremen kind of spoke roughly to the men. Of course, there were a lot of other things that the miners wanted, too. They wanted the minimum wage, and they wanted the eight-hour collar-to-collar, and they wanted eight-foot timber instead of ten-foot.
Q. What do you mean by eight-hour collar-to-collar? What do the miners mean by that?
A. They mean the time you step on your cage going down to the mine and also the time you get off on the surface coming up.
Q. You should be paid?
A. You should be paid on that time.
Q. Did the miners consider that period as hours worked?
A. Eight hours work.
Q. Did the miners consider that as hours worked?

Mr. Bronaugh:
We object to that.

A. They do, yes.

By Mr. Murtha:

Q. Have you ever acted on any committee, or belonged to any organization?

A. Yes.

Q. What committee, or what organization?

A. The Grievance Committee.

Q. When was that?

A. The Grievance Committee of the SWOC.

Q. You are a member of the union?

A. Yes.

Q. What Local?

A. 1664.

Q. And with whom are they affiliated?

A. The SWOC.

Q. The Steel Workers Organizing Committee?

A. Yes.

Q. Originally, that was called—

A. The Iron, Tin—

Q. It was originally the Amalgamated Association of Iron, Steel and Tin Workers of North America?

A. Yes.

Q. Were you ever an officer of that Local?

A. Yes.

Q. What was the address of the Local?

A. Ely.

Q. What office did you hold?

A. I am the Chairman of the Grievance Committee.

Q. And when was the union organized?

A. In 1936—the month of March.

Q. It might have been '37?

A. '36,—we started organizing in '36, I believe.

Q. Oh, you started organizing?

A. Yes, that is the time I joined the union.

Q. And in '37 you finally formed the organization?

A. Yes.

Q. You were made Chairman of the Grievance Committee?

A. Yes.

Q. And are you still Chairman of the Grievance Committee?

A. It was in '37—April 24, 1937, that is the date.

(Witness produces card.)

Q. Now, then, you have refreshed your memory. Can you recall when the union was organized?

A. In the spring of 1937.

Q. And you have been Chairman of the Grievance Committee since then?

A. I have, yes.

Q. What is the function of this particular grievance committee?

Mr. Bronaugh:
Objected to as irrelevant and immaterial.

A. If there was something that the miners wanted to change, why, we take their grievance down to the company and see if we can settle it with them.

Q. Who else was a member of the Commitee?

A. At that time there was Albin Jerich and Oscar Anderson.

Q. Now, where would the complaints come from?

Mr. Bronaugh:
We object to that.

A. From the miners,—from the union members.

Q. At these meetings?

A. Yes.

Q. Would they discuss their grievances?

A. Yes.

Q. And then would the committee meet with the mining officials of the Oliver Mining Company?

A. Yes, they would.

Q. Now, this union was organized to represent—to include miners, not only at Sibley and Pioneer, but others as well, is that true?

A. Yes.

Q. As a matter of fact, all iron underground mines, is that correct, on the ranges in Minnesota?

A. Yes.

Q. Now, would you also receive complaints at other times from the miners?

A. We have been receiving complaints right along from the miners at Ely.

Q. And would you take them up with the officials of the Oliver Mining Company?

A. Yes.

Q. You and the other members of the committee would go there and discuss these problems?

A. Yes.

Q. Now, can you tell us what these grievances were that you discussed with the mining officials?

A. Well, for instance, men who had been working there for a long time and they would not give them a contract,—put in some of the younger boys instead, you know, and let the old timers be pushed aside.

Mr. Bronaugh:

We object to this.

By Mr. Murtha:

Q. They wanted seniority rights?

A. Yes, and safety conditions, and many other things.

Q. Now, did they have any complaints about the hours worked?

A. Yes.

Mr. Bronaugh:

We object to that.

A. Yes.

By Mr. Murtha:

Q. What were they?

Mr. Bronaugh:

Object to that.

A. They figured they worked too long. They wanted to work eight hours collar-to-collar.

By Mr. Murtha:

Did the men object and complain that they worked hours that were not counted in the eight hours?

Mr. Bronaugh:

We object to that.

A. Yes.

By Mr. Murtha:

Q. And what hours were these that they were not given credit for?

A. Just from the time going down into the mine.

Q. And coming out?

A. And coming out, also.

Q. Did you yourself discuss these problems with the officials of the Oliver Mining Company?

A. I did, yes.

Q. How often did you have these meetings with the officials?

A. We met almost regularly the third Saturday of every month.

Q. Would you report back to the miners the results of these meetings?

A. Well, sometimes I would report and sometimes—

Q. The Committee reported back?

A. Yes.

Q. And when the minutes state that the Grievance Committee reported, that mean you reported the results of taking up the complaints with the mining officials?

A. Yes.

Q. And among these complaints was the collar-to collar complaint?

A. Yes.

Q. Did the mining company agree to make any changes, relative to the eight-hour collar-to-collar demand?

A. No.

Q. Was there any demand for a contract?

Mr. Bronaugh:

We object to that.

A. What did you say?

By Mr. Murtha:

Q. Was there any demand for a contract?

A. Yes.

Q. By the union?

A. By the union, yes.

Q. And they discussed that in the meeting?

A. Yes.

Q. And did they ever propose a contract—did they ever outline a contract?

A. The company?

Q. No, the union?

A. The union, yes.

Q. At any meeting, did they ever take any action in connection with the contract?

Mr. Bronaugh:

We object to that.

A. Yes.

By Mr. Murtha:

Q. The union?

A. Yes.

Q. What action did they take?

Mr. Bronaugh:

We object to that.

By Mr. Murtha:

Q. Tell me from the very beginning.

A. You mean, discuss the contract?

Q. Yes.

A. Well, the first thing of all was they wanted an eight-hour collar-to-collar and these minimum wage rates and those ten-foot timbers, and also seniority rights. I have the contract here (indicating).

Q. You might refresh your memory. (Witness reads contract.)

A. Recognizing our Grievance Committee, and we also wanted a vacation for the men who had worked for the company three years or more, instead of having it five years.

Q. Who did they want the company to recognize as the bargaining agent?

Mr. Bronaugh:

Objected to as immaterial.

A. What was that?

By Mr. Murtha:

Q. As the bargaining agent. Who did they want the company to recognize as the bargaining agent for the miners?

A. I don't understand you.

Q. Did they want the CIO to be the bargaining agent?

A. Yes, the CIO, for the union.

Q. Now, after they discussed what they wanted in the contract, was there any action taken by the union?

Mr. Bronaugh:

That is objected to as immaterial and incompetent.

A. On this contract we brought down, they strictly refused us.

By Mr. Murtha:

Q. No, the union—after they talked about the contract, then did they take any action about drawing up a contract?

A. Yes.

Mr. Bronaugh:

That is objected to as immaterial.

A. Yes, we did.

By Mr. Murtha:

Q. And who was authorized to draw up a contract?

Mr. Bronaugh:

The same objection.

A. Well, I believe it was quite a few of these union members who were up at the meeting, and also Martin Maki, the CIO organizer.

Q. Did you draw up a contract?

A. Yes.

Q. Did you help to draw it up?

Q. And was it this committee that you were chairman of, that was charged with preparing a contract?

A. Yes.

Q. And the contract was prepared?

A. Yes.

Q. Was that brought back to the meeting?

A. Brought back to a regular meeting.

Q. And was this in 1937?

A. In 1937 we drew up the contract, yes.

Q. Have you the contract with you?

A. Yes.

Q. Let me have it, please.

(Witness produces contract.)

Mr. Murtha:

I will ask to have this marked for identification as Defendants-Intervener's Exhibit 2.

(The contract referred to was marked for identification by the reporter as Defendants-Intervener's Exhibit 2.)

By Mr. Murtha:

Q. Now, I hand you the Defendants-Intervener's Exhibit No. 2, and ask you what it is?

A. Well, we asked the company to recognize the union.

Q. No, what is that? What is that Exhibit 2 that I just handed you?

Mr. Bronaugh:

He doesn't understand what you are driving at.

By Mr. Murtha:

Q. What do you call Exhibit 2 that you have in your hand?

A. A contract.

Q. That is the contract we have been talking about?

A. Yes.

Q. And does that contain the collar-to-collar demand?

A. Yes.

Q. Was that contract presented to the company?

A. Yes.

Q. Were you there?

A. I brought this contract to the company.

Q. Yes. And about when was that?

A. It was somewheres around April the 7th of 1938.

Q. Well, the first time that you took it up with the company—

A. It was in '37.

Q. Now, the contract as originally prepared was discussed, do you know what time, in 1937, with the company officials. Was it shortly after the union was organized?

A. I believe it was the month of June, 1937.

Q. And then about a year later you presented the contract to them again?

A. Yes.

Mr. Bronaugh:

That is objected to as leading and suggestive.

By Mr. Murtha:

Q. You have been chairman of that commitee all the time?

A. Yes.

Q. And this is the committee that is charged with presenting the contract to the mining officials?

A. Yes.

Q. And how many times have you presented the contract to the mining officials of the Oliver Mining Company?

A. Well, it was once or twice, but we asked them at least three or four times about this same contract.

Q. You gave the company a copy of the contract?

A. Yes.

Q. I notice some pencil notations on the front of Defendants-Intervener's Exhibit 2—

A. Yes.

Q. Did you make those?

A. No.

Q. Who were they made by?

A. That was made by the secretary, I believe, Anton Pechek.

Q. Did you report back to the union the result of the meeting of June, '37?

Mr. Bronaugh:
Objected to as incompetent.

By Mr. Murtha:

Q. Did you report back to the union the refusal of the Oliver Mining Company to enter into a contract?

A. Yes.

Q. And were the men pleased or displeased?

Mr. Bronaugh:
That is objected to as incompetent and immaterial.

A. Displeased.

By Mr. Murtha:

Q. Did they continue complaining and urging the things set out in the contract, including the collar-to-collar clause?

Mr. Bronaugh:

That is objected to as incompetent and immaterial.

A. Yes.

By Mr. Murtha:

Q. Was the contract later brought up for discussion?

A. Yes.

Q. Do you recall when that was?

A. To the company, you mean?

Q. No, at the meeting.

Mr. Bronaugh:

I object to that as incompetent and immaterial.

A. Yes, that was brought up and discussed several times.

By Mr. Murtha:

Q. Several times?

A. Several times at the meetings.

Q. Did they later urge you to present it to the company again?

Mr. Bronaugh:

That is objected to as incompetent and immaterial.

A. Yes, they did.

By Mr. Murtha:

Q. Reference in the minutes to union contracts, what do they refer to?

Mr. Bronaugh:

I object to that on the ground that the minutes speak for themselves, and are the best evidence, and on the ground that the question calls for incompetent and immaterial testimony.

By Mr. Murtha:

Q. Was there any other contract ever prepared by the union that Defendants-Intervener's Exhibit 2?

A. No.

Q. No other committee prepared any contract? You had the sole authority to prepare and negotiate?

A. Yes.

Q. That is, during 1937 and 1938?

A. Yes.

Q. Were you at the meeting of June 13, 1937, at which they determined the demands to be placed in the contract?

A. I am quite sure I was at that meeting.

Q. You are under subpoena to come here?

A. Yes.

Q. Do you waive the examination of the deposition after it has been transcribed—do you waive the reading of it yourself, or having it read to you?

A. I do, yes.

Q. And signing it?

A. Yes.

Mr. Murtha:

Then our stipulation with regard to the signing of the deposition applies to this witness?

Mr. Bronaugh:

To all of the witnesses.

Mr. Murtha:

You may cross examine.

Cross Examination.

By Mr. Bronaugh:

Q. Mr. Runn, this contract that you referred to is, I believe you said, the only contract that has ever been presented to the company by your union?

A. It is; yes, so far as I know.

Q. Well, you have been continuously on the Grievance Commitee and in charge of handling this matter?

A. That is the only contract that has been delivered by me to the company.

Q. To the company?

A. Yes.

Q. And if there had been another contract presented to them, it would have been through your committee?

A. Through my committee.

Q. And there has been none through your committee?

A. No.

Q. Now, you said that was first presented in the spring of 1937?

A. Somewheres along that time.

Q. And who did you discuss it with?

A. Our superintendent.

Q. What is his name?

A. Bruce Strachn.

Q. Did you discuss it with him on one occasion?

A. Strachn was there, and his assistant, Ed Jones, and Pete Himber. He was acting as a recorder, I guess. He took everything down that was said.

Q. All right. Now, you discussed this contract here, which has been marked—

Mr. Murtha:

Defendants'-Intervener's Exhibit 2.

Q. (Continuing)—Exhibit 2. That is the contract you discussed?

A. Yes, that is the contract.

Q. And then you said that later on in 1938 that you discussed it again. Who did you discuss it with at that time?

A. With the same men.

Q. Where was that, at the office?

A. At the office.

Q. And was this the contract that you discussed?

A. That was the contract we discussed.

Q. Now, who was with you when your had these two discussions with Mr. Strachan?

A. At one time, Mr. Maki.

Q. Who is Mr. Maki?

A. He is a CIO organizer, was at that time.

Q. On which of the occasions was he with you?

A. What do you mean?

Q. Was he with you in 1937 when you talked about it, or was it in '38 that he was with you?

A. I believe it was in '38 when he was with us; I wouldn't say for sure.

Q. And then your local committee was with you too?

A. Yes.

Q. All right. Now, was Maki interested in getting this contract over with the collar-to-collar proposition in there, or did he indicate to the company that he didn't care about the collar-to-collar, and that all he wanted was recognition?

A. He was interested in getting the eight-hour collar-to-collar, the same as we were.

Q. I see. Now, how was your proposal received by the company?

A. You mean the answer that they give us?

Q. Yes.

A. He said they would not give us the eight-hour collar-to-collar.

Q. Did he definitely refuse to give it to you, or did he tell you there would be further discussions about it, or what did he say?

A. Well, he said they would not give it to us before the law compelled them to do so.

Q. Did he give you anything else that you asked for?

A. Well, this timber—you see, we were using ten-foot caps and ten-foot posts, and we felt it was an unsafe place to work in with big timbers like that. So they gave us permission to use eight-foot caps, which would make our place safer.

Q. Now, have you ever gotten a contract with them?

A. No, we haven't.

Q. Have any of the miners up there in your region secured a contract with them?

A. Not on the Vermilion Range.

Q. That is the only one you know about, isn't it?

A. Well, the Mesabi Range.

Q. Through personal knowledge?

A. Well, the Mesabi Range—on that Range, they have a contract, I believe, from Butler Brothers.

Q. Is that an SWOC?

A. Yes, and also the Evergreen Mining Company at Nashwauk. I believe they have got a contract, too.

Q. Now, you are only familiar with the Pioneer Mine. That is the only one you have ever worked at?

A. That is the one I am interested in.

Q. And are you familiar with the practices and the way that the work is carried on in other mines in that section?

A. Not at the other mines,—just the mine that I am working at.

Q. Do you know anything about the pit mines—did you ever work in one of those?

A. Yes, I have.

Q. How long ago has that been?

A. That was back in 1918 or 1919.

Q. What were you doing in the pit mine?

A. I was firing a steam shovel.

Q. Well, now, where was that?

A. At Aurora.

Q. Was that in the same general territory?

A. No, that is on the Mesabi Range.

Q. How long were you there?

A. I worked for them eighteen months.

Q. All the time on the shovel?

A. Yes.

Q. What size operation was it? What was the size of the pit?

A. The pit itself was a little better than 40 acres.

Q. Forty acres?

A. The pit was a little bigger than forty acres.

Q. How did you get down to the shovel from the top surface of the ground?

A. Where the railroad tracks went down to the pit.

Q. You mean the railroad that hauled the ore out?

A. We hauled the dirt out, the strippings. The ore was underneath.

Q. And you would get on the engine or car?

A. We walked down all the way through, down to our shovel, our steam shovel.

Q. You walked down?

A. Yes.

Q. What did you do, walk from level to level, and circle around until you got down, or did you have a path?

A. We always took the shortest way, wherever the path was.

Q. How long did it take you to get down there?

Mr. Murtha:

Now, I want to interpose an objection to this line of questioning on the ground that it is improper. It is outside of the scope of the direct examination. It is improper cross examination, immaterial, incompetent and irrelevant.

By Mr. Bronaugh:

Q. All right, sir, go ahead.

A. It probably took us 15 minutes to go down into the pit.

Q. It took you as long to get to the pit, or longer, than it does to get to your working place where you are working now?

Mr. Murtha:

The same objection.

A. Of course, we had farther to walk down into the pit.

Q. Yes.

A. In length.

Q. You feel that they should have an eight-hour collar-to-collar basis in the pits?

A. You bet.

Q. They don't have it at the present time, do they?

A. No.

Q. Has the union taken any means or efforts to get collar-to-collar in the pit mines?

A. I understand so; so I hear.

Q. How many men work in the Pioneer Mine?

A. Well, I can't tell you.

Q. Well, your best judgment?

A. I believe it is around 600.

Q. Do you know how much ore they produce there a year?

A. A year?

Q. Yes.

A. No, I have no idea—I suppose in the neighborhood of a million tons, probably less.

Q. Now, these cages are vertical cages that you go down on?

They go right straight down?

A. Yes.

Q. That is what the men go in and out on?

A. Yes.

Q. It takes them nine minutes, I believe you said, to make a round trip?

A. About eight or nine minutes.

Q. And how much additional time is it from the time you get off the cage until the time you get to the face?

A. Around eight to ten minutes.

Q. So then it takes you about 15 or 20 minutes to get to the top from your working place?

A. About 15 minutes from the top to your face in the place. About that time, yes.

Q. Now, the first men that went in at the begining of the shift, were they the first men that came out at the end of the shift, ordinarily?

A. Yes.

Q. That was before May 1, 1941?

A. Yes.

Q. And has been true for a number of years back?

A. Yes.

Q. Now, this climbing up—you said you have to climb up sometimes 75 feet. Do you go up a ladder?

A. Sometimes we have to do that.

Q. And get to your face where you are working?

A. Yes.

Q. Is that ordinarily the case? Do you have to climb up or down?

A. We have to do that one way or the other. It depends on where the place is.

Q. And the distance that you have to climb varies from how many feet to how many feet?

A. Sometimes we have 20 feet to climb and sometimes 50 or 70 feet.

Q. How much have you got to climb now where you work?

A. At the present time?

Q. Yes.

A. We have got to climb 36 feet down; then we climb up 14 feet again.

Q. Now, in the mine that you are working in—I am speaking now of the period before May 1, 1941, you understand?

A. Yes.

Q. When do you shoot? Do you have a regular time for shooting, or do you shoot any time you get ready?

A. We blasted—you call it "shoot"; we call it blasting.

Q. I mean blasting.

A. We blasted any time we would get ready to blast.

Q. Now, did you blast more than one time a shift?

A. Sometimes.

Q. Sometimes?

A. Sometimes as high as 15 times.

Q. How many holes would you shoot off at a blast?

A. Sometimes we have hard ground and we might blast probably as high as 30 holes. After we blast it, we wait for the smoke to go out, and sometimes we find a lot of big chunks. Well, then we have to blast them over again before we scrape them in the chute. Sometimes we have to blast 10 or 15 times in a day to get rid of all the chunks.

Q. All right. What do you do after you blast, until the smoke clear out?

A. Well, sometimes we see so that we get our timbers and poles, and if we just have a minute or so, we sit down and wait for the smoke to go out.

Q. And, of course, if you blast as many as several times during the course of a shift, each time you blast you have to wait a little while to let the smoke get out?

A. Oh, yes, five or ten minutes at a time.

Q. Sometimes longer?

A. Well, it all depends on how your drafts are. Sometimes the smoke goes out almost right away.

Q. Now, how do they keep time in your mine—how did they prior to May 1, 1941?

A. They had a timekeeper.

Q. Down in the working place?

A. Yes, down in the mine.

Q. There is no time kept up on top?

A. No, except our check number.

Q. Well, now, your check number, what is the purpose of that, to let them know that you are in the mine?

A. The check number means that when you take your number, that that man is on the job, and when you come up again you hang your number on there, and it shows—

Q. And if the number is not there—

A. Then they have to send two men down to look for the fellow.

Q. That is more or less of a safety measure?

A. That is what it is for, more or less. Now, that is right.

Q. Now, you said, I believe, that back some years ago there were occasions when you men went to the warehouse and picked up some sort of tools and carried them into the mine with you?

A. Yes.

Q. It is true, isn't it, that during that time the company was putting tools down into the mine? You didn't have to carry the tools, did you?

A. Years ago, that was the only way we could get the tools.

Q. In other words, you were working on a contract basis, weren't you?

A. Yes.

Q. In other words, the amount of your compensation depended on how much ore you got out?

A. That was what we were getting paid for, yes.

Q. And if you didn't get it out, you didn't make as much money?

A. Yes.

Q. So notwithstanding that the company had men employed to bring the tools down, sometimes you felt you could get to work and produce a little more if you carried your own tools in, didn't you?

A. Of course, if we had our tools there, probably we could produce a little more.

Q. I say, the reason you carried them down, was because you didn't want to wait for somebody else to bring them down?

A. In those days, that was the only way we could get the tools. If we needed them we had to go to the warehouse.

Q. In other words, instead of waiting for the regular men to bring the tools, you got them yourself?

A. We had to.

Q. Didn't they have somebody there to bring in the tools?

A. Not in those days.

Q. When did that start?

A. Around '35 or '36, and also in '37, some of the men had to go and get some of the tools they needed on that day.

Q. In the last several years, though, they have been delivering practically all the tools down there?

A. All the tools have been delivered since.

Q. Now, these directions that you spoke about that you got from your foreman, you said sometimes he gave them to you up on the surface and sometimes down in the ground?

A. Yes.

Q. That was before May 1st?

A. Yes.

Q. Now, as a matter of fact, that was sort of an unusual proposition, wasn't it? If a man was working at a certain place, and was going to change his place of work, and there wasn't anything dangerous down there, he just went into the mine and went to work, and didn't say anything about it to anybody, did he?

A. Well, if there was a dangerous place, or if there were any missed holes, the foreman came and told us about it. Of course, if there were no reports from the other shift, there was nothing said.

Q. In other words, unless there was something wrong or something unusual, you went on with your work and knew as much about it as he did, didn't you?

A. Yes.

Q. Now, how many shifts did you work prior to 1941—in the last few years, prior to 1941?

A. How many shifts?

Q. Yes.

A. A week?

Q. A day—night and day shift?

A. Well, we worked two shifts.

Q. Have they worked three shifts?

A. Well, they have some working three shifts there, but I have not been on a third shift.

Q. Do you know that they have a third shift in the Pioneer Mine?

A. They do have three shifts in the Pioneer Mine.

Q. They can work three shifts in that mine all right?

A. Yes.

Q. Don't lose any time between shifts?

A. No.

Q. What is the temperature down in those mines?

A. The temperature?

Q. Yes—how hot or cold is it?

A. Well, there is places there where it is around 70 and up to 80 or 90.

Q. In other words, it is not unpleasant from the standpoint of heat?

A. Well, in some places it is quite warm.

Q. Quite warm?

A. Yes. They have pretty good ventilation there now. It is pretty fair all the way around, the conditions.

Q. Now, as I understand your testimony, Mr. Runn, until May 1, 1941, you have never been paid for travel time?

A. No, we have not.

Q. That is your contention, isn't it?

A. Yes.

Q. You contend that you have never been paid for any part of the travel time?

A. We have not gotten paid for any part of our traveling time.

Q. In other words, you haven't been going in on your time and coming out on company time? You have never done that?

A. We went down on our own time, and practically came out on our own time.

Q. You practically—

A. We have been coming up on our own time.

Q. You have been coming up on your own time, too?

A. Of course, we had to work eight hours at the face.

Q. Now, if you were working eight hours and getting paid for eight hours, you weren't getting paid for all your time?

A. You would be bound to travel on your own time both ways.

Q. And that has been the practice in the Minnesota mines ever since you have had anything to do with them?

A. Yes.

Q. In the mines you have worked and been acquainted with?

A. Yes.

Q. And your information is that it has always been that way?

A. Yes.

Q. That same thing is true, so far as you know, in the pit mines, isn't it?

A. Yes.

Q. Now, when you were required to get carbide for your lamp, where was that situated? Where did you get it?

A. Over at what we call the carbide shack, which was perhaps twenty feet.

Q. Right by the dry?

A. Right by the dry. They had a little shack there which held the carbide.

Q. Did they have the carbide lamps hanging up somewhere?

A. No, we have our own carbide lamps.

Q. You kept them?

A. We kept them in our own lockers.

Q. And when you got ready to go to work, you got your lamp out of the locker?

A. Yes.

Q. And you would get the carbide out and fill it?

A. Yes.

Q. How long did that take, a minute or two?

A. A minute.

Q. And then you would go down to the mine, to the collar?

A. Then we would go down to the collar of the shaft.

Q. And you said you went down on the second cage?

A. The second cage, practically all the way through in all these years.

Q. Did you ever know anything about any of the coal mines in Alabama?

A. No.

Mr. Murtha:

That is objected to as incompetent, irrelevant and immaterial.

A. I don't know nothing about them.

By Mr. Bronaugh:

Q. Now, as I understand it, Mr. Runn, the company has been paying you since May 1, 1941, for the time you worked on a collar-to-collar basis?

A. Yes.

Q. And that, as I understand it, was brought about by the ruling made by the Administrator of the Wage and Hour Division?

A. Yes.

Q. Who has interpreted the law to mean that the miners were to be paid on that basis?

A. Yes.

Q. Up until that time it was not done?

A. Up until that time it was not done.

Mr. Bronaugh:

I believe that is all.

Re-Direct Examination.

By Mr. Murtha:

Q. Does the timekeeper go through the mine making a record of the time of everybody?

A. The timekeeper goes around at least twice every day.

Q. Is that true now?

A. That is true. He goes around at least twice every day and sees what we are doing.

Q. And gets the number from your check, or looks at your check?

A. No, they don't look at our checks. The timekeeper knows who we are.

Q. If he didn't know who you were, he could identify you through your check?

A. Well, I suppose the foreman would tell him.

Q. Now, I want to clear this up: Before May 1, 1941, the tools were only brought as far as the station.

A. At the surface.

Q. Oh, just brought to the shaft collar on the surface?

A. The tools come from the shop and were brought down to the station and most of the time we took the tools in that we felt we would need during the day.

Q. That was the condition immediately before May 1, 1941?

A. Yes, before.

Q. And it is only since the date that they have brought the tools up to the face?

A. Close to the face, yes.

Q. New, Defendants-Intervener's Exhibit 2, has that been in your possession since the time it was prepared?

A. It has been in my possession ever since it was drawn up.

Mr. Murtha:

I think that is all.

(Witness Excused.)

4102 JOHN DEBELTZ was called as a witnes, having been first duly sworn, and testified as follows:

Direct Examination.

By Mr. Murtha:

Q. What is your name?

A. John Debeltz.

Q. Where do you live?

A. Ely, Minnesota.

Q. Are you, or have you been an iron ore miner?

A. Yes, sir.

Q. What mine?

A. The Pioneer.

Q. Ely, Minnesota?

A. Yes, sir.

Q. The Oliver Mining Company?

A. Yes, sir.

Q. When did you first start mining?

A. Well, I am not quite sure, but it is either in '23 or '24—1923 or 1924.

Q. Did you work underground?

A. Yes, sir.

Q. How long did you continue to mine?

A. Well, I started as a timber trammer.

Q. What is that?

A. That is carrying timber to contract miners.

Q. When did you start mining?

A. I started mining in '28.

Q. How long did you mine?

A. Until 1930, sir.

Q. And since then?

A. Well, I left the mines for about a year and a half—in 1930, I think it was, in November. Then I came back again in the latter part of '31, and then when I come back I started right in mining.

Q. And then how long did you mine?

A. Well, a couple of years—you see, I got hurt in '29.

Q. '29?

A. 1929, yes. It has bothered me all the time.

Q. I am confused now—how many years altogether have you actually been engaged as a miner mining ore underground?

A. Oh, I would say about five years.

Q. That is between 1928, and when was the last date?

A. Let's see, now—it must have been about '35 the last time I was mining.

Q. And that was at Pioneer?

A. Yes, sir.

Q. Do you recall at what time you used to arrive at the Pioneer during that period?

A. Well, before we changed our schedule, and before we had an hour lunch, well, we used to start at eight and work until twelve,—that is the time we were supposed to start.

Q. You were on an eight-hour day shift?

A. Well, they called it an eight-hour day.

Q. And when was that supposed to run?

A. Well, it was supposed to start at eight, run to twelve, and then from one to five.

Q. Eight hours, and an hour for lunch?

A. An hour for lunch.

Q. What time did you used to arrive on the mining property?

A. Oh, a quarter after seven.

Q. What time did you used to go down?

Mr. Bronaugh:

I suppose I can have the same sort of an agreement that we had here yesterday, on a general objection on the grounds of immateriality and incompetence, and on the ground further that this has no bearing upon the conditions existing in the Alabama mines.

Mr. Murtha:

Very well.

By Mr. Murtha:

Q. You started down at what time?

A. Well, the first cage went down—it was around 7:30.

Q. Were you on the first cage?

A. Yes.

Q. What would you do between 7:15 and 7:30?

A. Well, change clothes, and we used to get our tools a lot of times from the top. You see, they were short of tools underground all the time, and then you would go in the captain's office, which was about a hundred feet away or one hundred and fifty feet, and get an order, and then you would walk to the shop, which is about six or seven hundred feet away, and get your drills, or whatever you needed, and bring that back to the shaft. Then you would catch the last cage down, see.

Q. Yes. Now, how about the carbide lamps?

A. You would fill them up there.

Q. Was there a carbide house nearby the dry house?

A. About 25 feet away.

Q. You would start down at 7:30 on the first cage, is that right?

A. Yes.

Q. And it would take you about how long to get to the bottom?

A. Well, it only takes about four minutes, I think.

Q. And how long, on the average, to walk to the face where you worked?

A. Well, where I worked, it was pretty close to the shaft at that time. It would only ~~take about ten~~ minutes.

Q. So you would get to the face of the mine about 7:45?

A. Yes.

Q. Would you commence working then, drilling or blasting, or whatever was required?

A. My partner used to take the last cage down—

Q. Yes.

A. (Continuing)—and I used to have the top holes drilled many times before he would come in the place.

Q. Now, at noon you took one hour for lunch? What would occur during that one hour?

A. Well, the first cage would go up about two or three minutes after twelve, and then you would get up at probably six or seven minutes after, and by that time, after you washed up and ate, well, you were ready to go down.

Q At what time?

A. Half past.

Q. Half past twelve?

A. I remember that, because there was no more than a five-minute stop of cages during the dinner hour. When the men got through coming up for dinner, why, there was only five minutes between when the cages stopped, and they started going down again.

Q. Well, then you would get back to the face of the mine before one o'clock?

A. Yes.

Q. Would you start working then?

A. Yes.

Q. What time would you stop your activities at the face of the mine?

A. Well, sometimes 4:30 or—

Q. During this early period?

A. Yes.

Q. What time?

A. Well, 4:30 or a quarter to five, and then you would go back and make your report to your boss, where the boss had his office. You always went down where he was, because he had to see that all the men were out. You would make your report there and he would make notes on it for the night shift foreman coming down, and then we would go back shaft, and if we were on the first cage, why, we would get up and go out at five o'clock, and the second and third, and at that time they had four cages.

Q. *Would* time would you leave the station?

A. The first cage would leave about three after.

Q. Three after?

A. Anytime between two and three and four minutes after. It just depended—

Q. Did you occasionally blast at the end of the day?

A. Well, we never had that system.

Q. In other words, at this mine there was no set cycle of operations to be performed in a day? Sometimes you would blast twice a day?

A. Yes.

Q. Did you work after the change in '35?

A. Yes, I worked, but I can't just place it if I worked at mining.

Q. Well, now, during the period before '35, what time would you reach the surface?

A. That is before we had the change in shifts?

Q. Yes.

A. Well, what do you mean, quitting time?

Q. At the end of the day.

A. At the end of the day. Well, like I say, I used to leave home at seven or a few minutes after seven in the morning, and would get back just about six o'clock, or a quarter to six at home, and I only live about a half a mile away from the mine.

Q. Now, after you arrived on surface at the end of the day, what did you do?

A. Changed clothes, took a shower, and went home.

Q. Did you return the lamp and your check?

A. Yes, we had our check numbers, and we would hang them up as we come up, see, before we changed clothes. And, like our carbide lamp, we didn't fill it up, we just kept that right in our locker, and didn't fill it up until in the morning before we went down.

Q. Now, what time would you reach the surface when you were on the eight to five shift?

A. Eight to five, well, I would say that when I got the first cage I used to come up around six or seven minutes after.

Q. What time would you be able to leave the mine property?

A. Well, about half past.

Q. Now, you have worked for the Oliver Mining Company at the Pioneer Mine since then, haven't you?

A. Yes.

Q. What have you been doing since then, since 1935 or '6?

A. Well, I was on partial disability, see. I was laid up for about two and a half years.

Q. You had an injury in the mine?

A. Yes.

Q. But you are working for them now?

A. Well, I went back on partial disability. You see, I was cutting fuse for a while.

Q. Light work?

A. Yes.

Q. What else?

A. I am pump man now.

Q. Were you a representative of the miners?

A. Yes, sir.

Q. Under the Employees' Representation Plan?

A. Yes, sir.

Q. That was instituted about 1935?

A. Well, no, I think it was before.

Q. Before that?

A. I think it went in effect when the NRA came in, because I remember when the mines were closed at that time. The only ones that really got any time in were the bosses, and the service crew, so they had an election of representatives, and there was mostly bosses on the Grievance Committee. And then I think it was either—it was in '34 that the mine started working and that is when I was elected on it.

Q. You were a representative of the night shift or the day shift?

A. Well, I represented—you see, they had different systems. They had two representing the miners—that is, including all the miners underground. That is what they called the contract mining. They had one man from underground from the Pioneer Mine, representing what they called the dirt trammers, all the trammers carrying timber and such, and then they had a man from the surface representing the shops.

Q. Which groups did you represent?

A. I represented the miners two years and the trammers one year.

Q. Now, what was the purpose of this plan,—what were the duties of the representatives?

Mr. Bronaugh:

We object to that, on the ground that it is incompetent, illegal and immaterial.

A. I didn't get that question.

(The last question was read by the reporter as above recorded.)

A. Well, the miners would report to us what they would want and we met with the management every month, and we would bring it up with them to see if we could settle the grievance.

By Mr. Murtha:

Q. And is that how the system operated, that the employees would report to their representative whatever grievances they had and the employees' representative group would meet with the officials of the Oliver Mining Company and present these grievances to the company?

A. Yes.

Q. Do you recall during this period what the main grievances were?

Mr. Bronaugh:

We object to that as incompetent and immaterial.

A. Can I answer?

By Mr. Murtha:

Q. Yes.

A. Well, I remember we asked for quite a bit of stuff. We used to bring up everything the miners asked us. Well, I know the first thing that we were after was,—I think the first meeting that I was elected on—that we asked for eight hours collar-to-collar.

Q. You say that one of the grievances was the eight-hour collar-to-collar?

A. Yes.

Q. Explain more fully what you mean by that. Why was that a grievance? Just what was the grievance?

Mr. Bronaugh:

I object to that on the same ground.

A. Well, we always had the idea that there was a law that we couldn't be underground more than eight hours. All the men around the mines had the same idea, and they used to come and tell us—

Mr. Bronaugh:

We want to object to what the idea of the men was and what the men would tell each other.

By Mr. Murtha:

Q. You just go right ahead—

Mr. Bronaugh:

Just a minute; and on the ground that it relates to a remote period and it doesn't show that those conditions existed in recent year, nor does it have any bearing on the conditions in the Alabama mines. It is hearsay and his answer indicates that it is not responsive to the question.

By Mr. Murtha:

Q. Go ahead.

A. Well, they felt that as long as they were getting their tools from the shop and from back shaft at the station, and carrying them in,—and they carried most of them back at that time,—well, we felt that it was part of our job. I know we brought it up with our superintendent there, Mr. Strachn, and he explained that in some mines they have to feed the mules on their own time, and everything else. We told him that we had the understanding that they got paid for all that, and that that was on their regular time.

Mr. Strachn told us that the only way we would ever get collar-to-collar was if we had a law passed to that effect.

Mr. Bronaugh:

I want to make a motion to exclude his answer on the same grounds that I did the question.

By Mr. Murtha:

Q. Who is this Mr. Strachn?

A. He is our superintendent up there.

Q. And he is an official of the Oliver Mining Company?

A. Yes, sir.

Q. Well, under this proposed change in the working conditions, what did they want to accomplish? How many hours a day did they work and where would the men be during this period?

Mr. Bronaugh:

I object to that on the ground that it is incompetent and immaterial.

A. When we couldn't get this eight hours collar-to-collar, well we come back and reported to the rest of the employees, and we talked, you know, and different things, and so we tried to compromise by—well, if we went down on our own time and came up on what they called company time.

Q. Did you discuss that with the company?

A. Yes, sir.

Q. What did they say to that?

A. Well, we couldn't get no satisfaction at all. They refused us. Then the only thing we could do, was, we changed the shifts. We started going down at 6:30 in the morning, and we would come up after 5:00,—or 4:30. We would only take a half hour for lunch, and then the night shift would start at 4:30, I think.

Q. Wasn't it 3:30 instead of 4:30?

A. 3:30, yes, and then the night shift would start going down at four or five after four.

Q. You did accomplish that, the night shift went to work shortly after the day shift, and along about 4:00 o'clock in the afternoon, and that allowed them to get out earlier and to get a full night's sleep?

A. Yes, it helped the day shift, too, you see. You see, we had to go up for an hour for dinner. We had an hour for dinner and we had less time to eat in that hour than we have now when we have got a half hour underground.

Q. I see. And then you get through earlier at the end of the day?

A. Yes, sir.

Q. By eight hours collar-to-collar, do you mean the time would run from the moment they stepped on the cage until they stepped off?

A. Yes.

Q. How often did this representative's committee meet?

A. Once a month.

Q. And that lasted more than one year?

A. I think it was about four or five years.

Q. Was anything ever accomplished toward the securing of an eight-hour collar-to-collar day?

A. No, sir.

Q. Was there anything done by the employees in order to further their desire for an eight-hour collar-to-collar day?

Mr. Bronaugh:

We object to that on the same grounds as all the other questions.

A. We organized what they called a labor mutual benefit club.

Q. And what was that?

A. Well, that was—we took in all the miners, regardless of what mines they worked for, and we tried to get what they called a company store. And then we wrote down to Perkins and asked her if there was such a law in the State of Minnesota as eight hours collar-to-collar, and we got an answer back from her saying there was no labor law like that in Minnesota.

Q. Do you know when this was?

A. I think it was '35.

Q. Did the miners do anything else to further—to secure an adjustment of their grievances, including the collar to collar problem?

Mr. Bronaugh:

The same objection.

A. Well, the purpose really was to organize at that time. But the policemen, they used to hide behind the curtains on the stage, and they kind of scared everybody, so we just called it a club.

Mr. Bronaugh:

I make a motion to exclude that answer on the ground that it is not responsive: that it is immaterial and incompetent.

By Mr. Murtha:

Q. Do you remember any further activity?

A. Well, we had that club for, oh, about—I think it was about a year and a half, and then, well, it kind of broke up. The business men were against us, and everybody, because we were looking for a company store, and so that broke up.

Q. Was there a union organized at the Pioneer Mine?

A. In 1937.

Q. Did they attempt to carry on this program for the miners?

A. Yes.

Q. And just how did they go about it?

A. Well, at that time, see—when the NRA was declared unconstitutional in '35—well, this Employee's Representation Plan was outlined. The mines were working at that time two weeks on and one week off. The company wanted to keep the Employees' Representation Plan going on, see. I was on a committee at that time, and they called a meeting and asked us to go around and pick out an election board and judges and everything, and had regular ballots made, and we had an election at the mine. We went right from place to place on the job to see each miner, and asked them to vote for it, and—

Q. That was the Miners' Representation Plan?

A. Yes.

Q. Now, when was the union formed?

A. The union was formed in '37.

Q. Are you a member?

A. Yes.

Q. Did you attend the meetings?

A. Yes.

Q. Are you an officer?

A. I was chairman at that time.

Q. You were the first chairman?

A. Yes, sir.

Q. Elected in 1937?

A. Yes, sir.

Q. You held other offices?

A. No, that is all I held in there, was chairman.

Q. But you attended all the meetings?

A. Yes.

Q. Were you on any committee?

A. Well, the chairman was on all committees.

Q. I see. And the union still exists?

A. Yes.

Q. That is Local 1664 of the SWOC at Ely, Minnesota?

A. Yes.

Q. That was organized to represent what miners? What miners could belong to it?

A. All the miners. That included all the miners in Ely, regardless of which company.

Q. The iron ore—

A. The iron ore, yes.

Q. Do you know whether or not the union continued the efforts of the miners to secure an eight-hour collar-to-collar day?

A. Well, that was the objective of the union. I am positive that if they got that eight-hour collar-to-collar before that, they would never have had a union.

Q. What did they do to secure the eight-hour collar-to-collar?

Mr. Bronaugh:

I object to that as incompetent, irrelevant and immaterial.

A. Well, we had a meeting, and at that time the miners wanted to get the eight hours collar-to-collar, and wanted some raise in wages, and they wanted to stop using the ten-foot timber.

Q. Did they propose a contract?

A. Yes.

Q. Did these miners, at the union meetings, discuss what was to go into the contract?

A. Yes, sir.

Q. Was a contract drawn up?

A. Yes.

Q. I hand you Defendants-Intervener's Exhibit No. 2, and ask you if you know what that is (handing document to the witness)?

A. Yes, that is the contract.

Q. Do you know when that was first drawn up?

A. I can't remember the date.

Q. Or discussed—what year?

A. It was in '37, the first time.

Q. Shortly after the union was organized in the spring of '37?

A. Yes, I think it was May or April,—one of these months.

Q. Do you know whether or not the contract was presented to your company?

A. Yes.

Q. How do you know?

A. I was there.

Q. You were on the committee then?

A. Yes.

Q. And do you know who you discussed it with?

A. Well, the first time we brought it up, Mr. Strachn, our superintendent, was there, and an assistant superintendent.

Q. And was it drawn up again at a later date—who was the assistant superintendent?

A. Ed Jones.

Q. Who else was there?

A. Peter Hamburg—no, pardon me, I think George Metesha.

Q. Was it presented another time by you?

A. '38.

Q. '38?

A. Yes.

Q. What part of the year?

A. I can't remember—I think it was the beginning of the year. It must have been March or April.

Q. Who did you meet with at this meeting?

A. Well, we met with Strachn, Ed Jones and Pete Hamburg was there, and Bill Hartley.

Q. What town?

A. In Ely.

Q. Both meetings were at Ely?

A. Yes, the ones we attended.

Q. The company officers?

A. The company officers.

Q. Did they agree to the contract, or any part of it?

A. Well, we went over it pretty thoroughly and we were told that they couldn't act on it right away, and they discussed some of the points in there, like—well, like that collar-to-collar. They didn't think we could get that, and on the ten-foot timber, they couldn't see where they could cut that down, because it would cut their production down. And raises, why we couldn't get that, and—well, there wasn't much left in the contract that we could get.

So we went back and reported it to our local lodge and then when we went up with the contract we had all the Ely miners organized. We had a majority, a good majority up there. When we went over that contract, the contract didn't state in there whether it was for the two mines at Ely or for all the mines.

So we went back and we asked the men what they thought and they said, "Let's get a contract for the local mines." So we were all set to go down with that, and we got our representative from down below, Burkhammer, Henry Burkhammer. He come up and gave a talk on it, and felt that we shouldn't just ask for the two mines, that we should get a contract for the Oliver mines as a whole. So we changed it, in the contract, and asked for all the mines that Oliver has got.

Q. Did you present the contract again after March or April of 1938, at any time when you were present?

A. Yes, we brought it up that time. I was there, and Leander.

Q. Who?

A. Leander Runn.

Q. Yes.

A. And I can't just remember who was all there, but I know Martin Maki come up with us.

Q. Who was there on the part of the company?

A. The company—well, Bill was there, and—

Q. Mr. Hartley?

A. Mr. Hartley, and Ed. C. Jones.

Q. This was the third time.

A. And Mr. Strachn.

Q. Do you know the date of this third meeting?

A. No, he was—I think it was right after, because Mr. Hartley was the one that noticed that we didn't have in the contract for which mine.

Q. For which mine, yes.

A. So we come back and changed that all around.

Q. You went back and discussed it at another meeting?

A. Yes.

Q. Was there ever any other contract than this one?

A. No, that is the—

Q. Exhibit 2 is the only contract that you ever proposed to the company?

A. That is the original, yes.

Q. What was the effect on the men when you reported back the refusal of the company?

Mr. Bronaugh:

We object to the effect on the men on the grounds that that is incompetent, irrelevant and immaterial and not binding on the plaintiffs in this case.

A. Well, they didn't seem to like it very well, because they felt that we had the majority, and then we should get the contract. Of course, there was a little talk of a strike there at one time, but we tried to hold it off, as officers, because we didn't feel it was wise.

Q. You are here on subpoena?

A. Yes.

Q. Do you waive the examination of your deposition after it has been transcribed, and do you waive the read of it by having it read to you?

A. Yes.

Mr. Murtha:

You may cross examine.

Cross Examination.

By Mr. Bronaugh:

Q. Mr. Debeltz, you have not worked underground, as I understand it, since about 1935?

A. Well, I have worked underground, yes, but not mining.

Q. Do you do your pump work underground?

A. Yes, pretty near way to the bottom.

Q. You are then familiar with what goes on underground, now, and have been throughout your experience at Pioneer?

A. Yes.

Q. Have you worked at any other mines than Pioneer?

A. No, sir.

Q. Just briefly, I want to run over the conditions as quickly as I can. You have cages that go down vertically into the mines?

A. Yes.

Q. And as I understand it, three of those cages—it is a double-deck cage—and it makes three trips per shift?

A. That is what they have now.

Q. And how many men ride on a cage?

A. I think it is 28 or 30, on each deck.

Q. It would be about 55 or 60 men a trip?

A. Yes.

Q. And three trips?

A. Three trips, yes.

Q. How long does it take the men to get from the top to the working place?

A. To where he is working?

Q. Yes.

A. Well, that is pretty hard to answer. The mine is, you know, pretty big. It is probably, just like—myself, pumping now, well, when I left, well, when the cage hits the bottom, it is probably about four or five minutes—well, I would say six minutes, because it stops at more levels. Well, I am on my job right away. I just walk fifty feet.

Q. In other words, your place of work is within fifty feet of the unloading station?

A. Yes.

Q. The face—I understand that there are different distances from the unloading station to various places where the men work at the face?

A. What do you mean by the face?

Q. Well, I mean by where they drill the ore?

A. Yes.

Q. Yes, there is different places.

Q. But now, what I am trying to get at is more or less an average travel time, from the time you get off the cage until the time you get to work.

A. Well, I would say a man that works up in the high country—that is in the east—he takes the first cage down which leaves at seven o'clock, like now, it leaves at seven o'clock. Before it left—well, we will say before this new schedule come up.

Q. I am talking about before May the 1st.

A. Before May 1st. Well, the first cage used to leave about 6:30. Well, he would get in the place, well, about—about eight minutes to seven.

Q. So that it would—you think that the average would be somewhere around twenty to twenty-two minutes from the top to the place of work?

A. That is the farthest in the mine.

Q. And what would you think the average would be?

A. I would say about 15 minutes, average.

Q. All right. Now, I think that from what you said, that it is clear that the miners contend at least that the basis upon which their pay has been figured in the past, and up until May 1st, 1941, has been on the face—on the working time spent at the place of work and did not include any travel time going and coming from the work?

A. Well, I wouldn't know how to answer that. I know I personally felt that that was my job.

Q. I am not talking about what you felt. I am talking about what the miners contended was the basis on which they had been paid in the past.

A. Our employer felt that way, yes.

Q. Your employer felt. I am not talking what it should be. I am talking about what actually was done in the past.

A. Well, we were getting paid before May 1st, we were getting paid for, well, what we really were in the place, right at the face.

Q. Face?

A. Yes.

Q. So you contend that you weren't getting paid for any traveling time?

A. No.

Q. Was there any time during your experience in underground mines, that the men went in on their own time and came out on company time?

A. Never.

Q. That never has been done in Pioneer?

A. Never.

Q. Since you have been there?

A. Never.

Q. Now, the average working time--the average travel time would be, both ways, going and coming, would be 30 minutes?

A. Yes, I would say about 30 minutes.

Q. And as I understand it, pursuant to the Administrator's ruling on May 1, 1941, the system was changed, and since that time the companies have been paying under that rule?

A. Yes.

Q. From the time they leave the top until the time they get back to the top?

A. Yes.

Q. You say the timekeeper goes around twice a day? Is that true down in the mines?

A. Not any more. He used to, before May 1st.

Q. I am talking about before May 1st.

A. Yes.

Q. And he would see the men working and put—on two occasions during the day?

A. Well, I wouldn't say that he seen everyone twice a day, because I don't think he would make it. The place is too big for that.

Q. How many men were working down underground?

A. Well, there are three cages there—it would be about 180 on a shift.

Q. They don't have any regular time of shooting in the Pioneer Mine?

A. What do you mean?

Q. Blasting, you call it.

A. No. We never had it. I can't remember.

Q. You blast whenever you are ready to blast?

A. Yes.

Q. Sometimes you blast five holes and sometimes twenty-five and thirty holes?

A. Well, it just depends on the place.

Q. Yes. How long does it take you, or rather, how long does it take for the air to clear out so you can go back to work after you blast?

A. Well, now—

Q. I am talking about prior to May 1st. I guess the conditions, so far as working conditions, are the same now as before?

A. Yes, in the last three or four years it is pretty well the same. Pretty good now. It takes probably fifteen or twenty minutes in places. It just depends on where you are, see. You might have a place where you haven't the circulation, you know. Where you have to have the fan blowing air in to blow the smoke out, but if you are on a drift, where what you call, when the fan blows in, she pulls the smoke right away. Well, it goes out quicker.

Q. Well, now, you don't have then, as I understand it, in your opinion, a cycle of operations, like you do in some mines?

A. No.

Q. You just go forward with your work and shoot and get it out as you can?

A. Yes, we figure a good day's work. You know, if a man comes down and has a pile of dirt in his place—if he can clean that pile of dirt and put up timber and drill and blast—well, if he can do that in eight hours, we figure it is a good day's work.

Q. You do have these working levels, various working levels, and when you get off your unloading station—I am talking about the production men now, the ones that work at drilling.

A. Yes.

Q. They climb up or down to get to the face, to the place where they actually produce the ore, do they not?

A. Yes.

Q. And that climbing distance, as I understand it, varies from a few feet up to maybe 50, 60 or 75 feet?

A. Yes, I think there is a couple of places they have 80 feet now.

Q. They get the ore out there and through *shoots* it is run down?

A. You take most everybody climbs down outside, up in that high country. Well, they have *no* level up above it, see, because it is all the ore is mined closer to the shaft, and the main drifts are down already, so they started down below and rised up, and they got shoots there that is 60 and 70 feet, see.

Q. You have crews of men working at a particular place and producing ore?

A. Yes.

Q. How many men work together?

A. Well, they have got—there is only two men on each shift. There is only one place in the mine that they got, where they are actually working ore, that they got three men on each shift.

Q. The usual practice is for two men on each shift working place?

A. Yes.

Q. They do everything that is to be done in that working place?

A. Yes. That is, you know, as far as the mining end of it. Of course, any piping or wiring or anything to do, the electrician comes around for that.

Q. You have maintenance men that do that sort of work?

A. Yes.

Q. And those men are paid on an hourly rate?

A. Yes.

Q. As I understand it, the production men, I call them, the men that are actually mining the ore, they have a basis of pay that they have got more or less of a—

A. Contract.

Q. A guaranteed minimum, don't they?

A. Yes.

Q. But they do have a system whereby they are paid on the basis of the amount of ore they produce?

A. Well, it is sort of a system like that, but—

Q. Well, if you produce more ore in, don't you get more money than your minimum pay?

A. Well, you get more than a minimum. I don't know what their minimum is, but I wouldn't exactly say that a man that produces more ore makes more money.

Q. You wouldn't?

A. No, because there is different ground in a mine. A man might have a soft place. He could produce a lot more than a man that has got a hard place.

Q. What do you mean when you say that you do contract mining?

A. Contract mining?

Q. Yes.

A. Well, I don't know what—I can't even see how they call it contract, because, well, they have a minimum, all right, but I think they also have a maximum, because as soon as, well, probably they set you a price and—we will say a dollar a car, and if you work three weeks already and they see that you have made, you may have made a dollar and a half an hour. Well, then, the last week they will cut you and will bring you down to probably a dollar an hour.

Q. If you don't object to telling this—if you do, all right. Has there been any difference in your compensation—

A. No, not now.

Q. Do you know whether there has been any difference in production since May and Prior to May 1st?

A. I don't think there is a bit.

Q. The men have been earning about the same amount of money as they did before?

A. Yes.

Q. Now, as I understand it, your first experience with any organization on behalf of the employees was your "E. R. P."?

A. Yes.

Q. And that was in '35?

A. I don't—

Q. Or '36?

A. I think it must have been before that, because I have been on it three years myself and then it was on two years before that.

Q. And that was the first occasion that you know of when any contract was presented to the company on behalf of the men?

A. There was no contract presented.

Q. What was the basis of discussions at the time under the Employees' Representation Plan?

A. At that time the miners would tell us exactly, see, like myself, I represented the miners at that time. Well, they had one more man. I think George was on, George Burck. I was on one shift and George was on the other, and they would tell us what they would want and then we would meet once a month with the superintendent and they had a man by the name of Paul Chamberlain—I don't know what title he had.

Q. You mean the company?

A. Anyhow, I think he was supposed to represent the management from the higher office, and we used to bring our grievances right up to them, see, and well, we would have our meeting ourselves, just the representatives there. We had our chairman and secretary, and we would bring up exactly what we would want, and then discuss it and if it went through with all of us, then we would call the superintendent in and he would tell us if we could get it or not. He would say yes or no.

Q. When did you first talk to the company about this collar-to-collar?

A. Well, I don't know, I couldn't say exactly the year or even the month, but I remember it was the second meeting I attended.

Q. The second meeting?

A. After I was elected.

Q. And at that time, as I understood you to say a moment ago, the question came up as to whether or not you all were entitled to pay on a collar-to-collar basis under some law that either mine—or some other law—

A. Yes.

Q. And you made some inquiry along that line of the company and they said there wasn't any law, and then you wrote to Miss Perkins?

A. No this was after we organized the labor mutual benefit club, but when we had the representative plan, well, the miners have been after, trying to get the eight hours collar-to-collar for a long time, because they felt like there was different states that had that—

Q. Now, what I am driving at is, what your own experience with it—when it was first placed before the company, to your own knowledge?

A. Yes, they asked us to get that.

Q. That was in '33 or '34?

A. Yes, they asked us to get it for them and we brought it up and our superintendent told us that, well, he says, well, at different mines they even fed their mules on their own time, and he says, if you hired a carpenter, would you be paying him for bringing his tools from home to the job, and explained it in different ways, and we told him we wanted it.

Q. The upshot of it was that at that time nothing was done about it?

A. Yes, we tried to compromise with them.

Q. Now, then, when did you next take it up with them. That was in '33 or '34, wasn't it?

A. It was brought up several times.

Q. When was it that you wrote to Mrs. Perkins?

A. This was in '35.

Q. And what was the inquiry that you put to Mrs. Perkins?

A. Well, we would like to know—we wanted to know if there was a law in the state of Minnesota that the men working in underground mines work only eight hours.

Q. What did she say?

A. She says Minnesota has no labor laws.

Q. Was any inquiry made to her about any Federal laws at the time?

A. No.

Q. She said nothing about any Federal laws?

A. No, she didn't say nothing.

Q. Now, after that—that was in '35?

A. Yes.

Q. Then, as I understand it, the only other time that you personally had anything to do with presenting the contract was this occasion in '37—

A. '37.

Q. (Continuing)—and '38?

A. '38.

Q. There were two that came pretty close together, as I understand it?

A. I wouldn't swear to it.

Q. But that is what I understood you to say?

A. I think there was really three times that we presented it, because at one time we went right back with it.

Q. Those are the occasions when Mr. Hartley was present?

A. Yes.

Q. And, as I understand it, the men that you represented individually, were interested in getting a contract for their own mine and whoever the CIO man was, Berghammer, was interested not so much in the collar-to-collar proposition, as he was in representation of the union, but there was a little difference in the aims there between Burhammer and you fellows?

A. Well,—

Q. That is correct, isn't it?

A. We were more interested in seeing that a contract was drawn up for all the mine, because they felt that it would be better, you know, a working agreement. They says—the way they explained it to us—now, you wouldn't want a contract here for your local mines and then we go down here in Virginia and Hibbing and have another contract, a different contract. They felt that they wanted one contract, just like the U. S. Steel has with the steel mills.

Q. And that is what Burghammer was working for more than anything else?

A. Well, on his—you see, well, he was—

Q. What is his title?

A. He has got that district—

Q. Organizer for the CIO district?

A. For that district, yes.

Q. Well, now, those two occasions that you speak of when Mr. Hartley was present after the discussions were had with the representatives of the company, was the contract—Withdraw that.

The first contract that was presented to the company in '37 and '38, was simply a contract between the local there at Ely?

A. Yes.

Q. And the Pioneer?

A. And the Pioneer and Sibley.

Q. And Sibley. Well, now, it was then at Burghammer's suggestion, as I understand it, and insistence, that you changed your contract and made it include—be good enough to include all of the mining operations and the miners in the district?

A. Yes.

Q. And that was done?

A. Yes.

Q. Then that contract was never signed?

A. No.

Q. What was the attitude of the company? Did they turn you down flat or hold the thing open for further discussions or what?

A. You have me on that, myself. I know that at that time when we went there with the contract, they refused us on different items. They went over it and they said they had to take it up with their higher office. Well, then, when they told us, the lower office told us we should get a contract for all the mines, well, the employees up there, they insisted on us, us officers getting the contract for the local mines, but we kind of held them back, because we, the officers, felt that it would be better if we got a contract for all the mines.

Q. Well, this is a pretty fair statement of it, isn't it: that the local men were interested in their local union and they had certain objectives that they were trying to achieve and Mr. Burghammer and you men who were officers, were looking a little bit further along?

A. Yes.

Q. And the company didn't sign a contract with you?

A. No.

Q. Objected to many of the proposals that you made and the matter was just more or less left there, and you didn't press the matter after that 1938 meeting, because you wouldn't get a contract with them?

A. Yes.

Q. That is a pretty fair statement, isn't it?

A. Yes.

Q. And since that time, as I understand it, there has been no further presentation of the matter to the company, so far as you know?

A. Well, the reports we have been getting at our meetings.

Q. Well, I mean what you yourself know and what you took part in.

A. What we took part in, yes.

Q. That was the last time you had anything to do with it?

A. But we gave instructions to our representative in Duluth to hold meetings with Bill there and I don't know if he held them or not.

Q. I see.

A. But he made some reports on it. Said he was meeting with Hartley and I guess he felt that Hartley felt—one time he felt that, well, I think he should get a contract and the next time he says you ain't got no organization up there. So I brought it up myself and I says we ought to go down and meet with Hartley ourselves, but we never got down there.

Q. Now, Mr. Debeltz, the two mines that operated there together, the Sibley and Pioneer, right close together, are they not?

A. Well, they are about a quarter of a mile apart.

Q. And the Oliver Company has got other mines located probably within a miles of—

A. Well, you see, they got what they call a Pioneer "A" and a Pioneer "B". All the men go down in Pioneer "A", and the timber and the ore goes up in Pioneer "B".

Q. "A" and "B". Are you familiar with the operations in the open pits?

A. No, I never worked in them, no.

Mr. Bronaugh:

That is all.

Re-Direct Examination.

By Mr. Murtha:

Q. There has been some talk that you were not paid for traveling time prior to May 1st, 1941. Well, were there other times you weren't paid for, for example, climbing time?

A. Well, before this ruling went in effect, we never got paid for any of it.

Q. You didn't get paid for any time?

A. Well, it made no difference what time you got in the place. If you got there at 6:30 or 7:00 you got paid for your time was supposed to start at seven.

Q. You didn't get paid for change time?

A. No.

Q. Or the time required to pick up your carbide?

A. No, sir.

Q. Or the time required to get your check?

A. No.

Q. After you got your check, sometimes you got tools in the tool house and you didn't get paid for that time?

A. No.

Q. Or for the carrying time, or carrying tools back?

A. No.

Q. Or bringing them down, or climbing up into your place?

A. No, sir.

Q. You didn't get paid for the time you talked with your foreman about the day's work and about other matters pertaining to business of the company?

A. No.

Mr. Murtha:

I think that is all.

Mr. Bronaugh:

~~Let me~~ ask you this:

Re-Cross Examination.

By Mr. Bronaugh:

Q. You said you started in 1928, about that time?

A. Mining, yes, either '27 or '28.

Q. And it has been also a custom and practice since you have been familiar with it for the men up until May 1st, 1941, for the men to go by the tool house, or whatever you call it?—Warehouse, and pick up tools they might need that day. And also it has been the custom in your experience for them to pick up the carbide and the check as they go out to the mines and it has also been the custom and practice for them to, if an occasion arose where a foreman had to give some instructions, for instance, maybe some of the holes hadn't gone off, or some unusual circumstance of that sort, for the men to get that information from the foreman sometimes before he went down underground, and sometimes after he got down?

A. Yes.

Q. That has always been the custom?

A. Yes.

Q. And the men never have been paid for that, so far as you know?

A. Not that I know of.

Q. Well, now, so far as getting instructions from the foreman is concerned, I think, as I understand it, that is rather unusual up on top unless something is wrong down there, or some loose rock above or maybe it has been that all the holes didn't go off or some particular reason that the men don't usually—they just go on to the working places?

A. Well, they have got sort of a habit there that the boss, when he comes down, the foreman—well, he sees the men get off the cage and go in and he always tells what he has got in place or what he has got to do.

Q. Down in the mine?

A. Yes, at the lower end of the cage.

Q. Well, I don't know, I don't suppose it would take a very great amount of time to pick up a little carbide in a tin can, would it?

A. Not very much.

Q. A minute, half a minute?

A. Well, it just depends. Sometimes, you know, in the winter time it takes more time, because the carbide shack —your men stay in the dry until they see the cage coming, see They had a buzzer system where they pull it.

Q. All of them rush out together, is that it?

A. So that 50 men or 60, whatever went down, went, and they run and get the carbide and you would have to wait some.

Q. Now, in picking up the checks, they are on a board, aren't they?

A. Yes.

Q. A man walks up to the board and picks a check out. What does he do, pin it on?

A. You have a regular snap.

Q. And when he gets through at the end of the shift, he comes by and throws that in a bucket, doesn't he?

A. Now, yes. At that time we used to have a rack that we hang it up on.

Q. Go back and hang it on the same place you get it from?

A. Yes.

Q. All you do, then, is walk up to that place and stick it on a bolt.

Mr. Bronaugh:

I believe that is all.

4136 ANTON PECHEK called as a witness, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Murtha:

Q. What is your name, please?

A. Anton Pechek.

Q. Where do you live?

A. Ely.

Q. Minnesota?

A. Yes.

Q. What business are you engaged in?

A. Mining.

Q. For whom?

A. Oliver Iron Mining Company.

Q. At Ely?

A. At Ely.

Q. Iron ore mining?

A. Yes.

Q. How long have you worked as a miner?

A. As a miner, for the last five months.

Q. What were you before that?

A. A motorman and dirt trammer.

Q. How long?

A. About 16 years.

Q. Would you sum up briefly your activities prior to May 1st, 1941, as a miner?

A. As a miner?

Mr. Bronaugh:

I want an objection as to this and assume it will hold as with the other witnesses?

Mr. Murtha:

Yes.

Q. What do you want, right from the time you get up in the morning and go right through it?

By Mr. Murtha:

Q. Yes.

A. Well, generally I wake up about 5:30, have breakfast, and leave my home at 6:00. Got down at the dry house about ten after, change clothes, picked up our check number, our carbide, and went down to the shaft house; about 6:30 we leave the collar.

Q. And you arrived at the face?

A. Arrived at the face.

Q. Face.

A. At the face, it was about ten minutes to seven.

Q. You remained there how long?

A. Were in there until eleven and then we went for dinner.

Q. How long?

A. Until 11:30.

Q. At the face, you remained near the face for lunch?

A. Lunch, yes. And left there after lunch—we stayed at the face until about twenty after three—well, we started to change shirts then, cool off a little, and then start to walk back. When we got to the shaft, of course, maybe 3:30 or a little after.

Q And you were lifted. What cage were you on?

A. On the first one.

Q. What time would that start from your level?

A. Up from our level?

Q. Yes.

A. Well, we were on the three shifts now, but—

Q. Before May 1st, 1941, what time would it start up?

A. It would start up at 3:30, from the bottom level, and then I don't know just how long it took, maybe a minute or two on the level below that; started from the 15th first and then from the fourteenth and then picked us up at the 13th and went up. We maybe got up at surface, it was probably about twenty-five minutes to four. From there we went and hung up our check numbers, hung up our check numbers and changed clothes, took a shower and went home.

Q. What time did you leave the dry house?

A. I would say about between ten and five to four.

Q. Since May 1, 1941?

A. Since May 1st, we were working on the three shifts. We leave home it is about 6:30; we come to the change house about twenty minutes to seven; we change clothes, pick up our check number, wait at the shaft for the seven o'clock whistle, where we start to load. Then we go down and walk into the place and we come to the face about twenty minutes after seven. We work until eleven. We have dinner until 11:30, and then go back to work and we stay there until twenty after three or so, and start changing shifts. Then we walk back shaft—not twenty after three. We go a little earlier now. About fifteen after. And then we go back and we catch the cage there about twenty-six minutes after. We go up and change clothes and we leave now between fifteen and ten minutes to four.

Q. You are at the surface at 3:30?

A. Yes.

Q. You leave for home at what time?

A. Between fifteen and ten minutes to four.

Q. You mean 3:45?

A. Yes.

Q. Have you been working just about the same place these last five months, or have you moved around?

A. About the same place in the last five months.

Q. How long does it take to walk in there from the station?

A. From the station? Well, it doesn't take me very long. I go pretty fast most of the time in and out, maybe about ten minutes.

Q. Each way?

A. Yes, ten to twelve.

Q. Do you have to climb up to the working face?

A. Have to climb about 50 feet on ~~one~~ ladder and 12 feet on another. About a 16-foot ladder climb.

Q. Before May 1st, and after May 1, 1941, were you on an eight-hour day?

A. Well, eight-hour day. We were always at the face before the full eight hours, where we are not now. That is the difference.

Q. Before May 1, 1941 did you work longer hours than you are working now?

A. Yes.

Q. Was the eight hours counted from face-to-face before May 1, 1941?

A. No.

Q. What was it?

A. Say that again, please.

(The record was read by the reporter as above recorded.)

A. I don't understand that question.

Q. Well, now, you are paid eight hours from collar-to-collar?

A. Yes.

Q. That means from the collar shaft at the surface of the mine?

A. Yes.

Q. Paid from the time you start and the time you arrive back? That is when the eight hours runs?

A. Yes.

Q. Now, before May 1, 1941, you were supposed to be on an eight-hour basis, weren't you?

A. Yes.

Q. Well, now, which eight hours did the company count?

A. The company counted the eight hours at the face.

Q. Yes. Now, have there been any other changes since May 1, 1941?

A. In what respect?

Q. Tools?

A. Well, sometimes we don't want to wait for tools. We pick them up at the shaft, yet. Where before we practically always did, if there was anything there and now if there is something that we need, like a saw or something, and the saw is liable to break, if they haul it in, we take that in with us. Other tools we don't take.

Q. How do you get them?

A. They take them in with a motor, on trucks, and they hoist them up.

Q. They hoist them up for you?

A. Well, they got different men on the hoisting crews and they hoist it up and they leave them up there on top right by the hole and we take them in from there.

Q. Before May 1, 1941, you had to do your own hoisting?

A. Well—

Q. That is, from the level up to the face—did you have to do your own hoisting?

A. Not very often, either.

Q. Of course, your experience in regard to tools is limited to the last five months?

A. Yes.

Q. Are you a member of the local union No. 1664?

A. Yes.

Q. Were you a member of the original group?

A. Yes.

Q. Have you attended the meetings?

A. A few I have missed.

Q. Have you held any office in the union?

A. I am recording secretary.

Q. Have you held that position for some time?

A. Ever since the latter part of '37.

Q. I hand you Defendants-Intervener's Exhibit No. 1 and ask you what it is? (Handing document to the witness.)

A. This is my minute book of Local No. 1664.

Q. Have you been absent on a few occasions?

A. Yes, I have.

Q. Except for those occasions, have you recorded the minutes of the meetings of Local 1664?

A. I have.

Q. How do you record the minutes?

A. Well, I take notes and record it after.

Q. I see. That is what you have done throughout?

A. Yes.

Q. Have you kept the minute book lately?

A. Well, before it left my hands, when I give it to George Burck—and was called to bring it down here, I examined it.

Q. Well, examine it now.

(Witness examines minute book.)

Q. Now, I ask you, is Exhibit 1 in the same condition as it was when you saw it a few days ago?

A. Except for markings on the corner of every page it is the same.

Q. You are referring to—

A. "S" and "T" numbers behind.

Q. Letters and numbers?

A. Yes.

Q. Up in the lefthand corner?

A. Yes.

Q. In pencil?

A. In pencil.

Q. Other than that, the book is in the same condition as when you prepared the minutes during these last two years?

A. Yes.

Q. And the book has been in your custody throughout this period?

A. Yes.

Q. Now, I wish you would go through it and give us the—go through Exhibit No. 1 and state the letter or the number that appears in pencil up at the top of each page, which reflects the minutes which you took at any meetings.

Mr. Bronaugh:

Couldn't you simplify that by letting him say where his signature appears in there?

Mr. Murtha:

There are a couple of places he forgot to sign.

Mr. Bronaugh:

I don't see any reason why he should.

Q. I show you Defendants-Intervener's Exhibit Z-31 and ask you if that is a record of a meeting of Local 1664, at which you acted as Secretary and kept the minutes,—if that is a record of the minutes of that meeting, prepared by you?

A. (Witness reading minute book) Yes, it is.

Q. And the same question as to Defendants-Intervener's Exhibit H?

A. Yes, it is.

Q. Yes?

A. Yes.

Q. And is that true of E?

A. Yes.

Q. And J?

A. Yes.

Q. And K, L, M, N, O, P, Q, R, T, U, V, Y, Z, Z-1, A-2, Z-3, Z-4, Z-5, Z-6, Z-7, Z-8, Z-9, Z-10, Z-11, Z-12, Z-13, Z14, Z-16, Z-17, Z-18, Z-19, Z-20, Z-21, Z-22, Z-23, Z-24, Z-25, Z-25, Z-27, Z-28, Z-29, Z-30?

What is your answer?

A. I attended all those meetings.

Q. And you kept the minutes and those are the minutes of the meetings on the dates set out therein?

A. Yes.

Q. I wish you would look at Exhibit C. Would you refresh your memory by looking at that and then can you tell us to what contract reference is made there?

Mr. Bronaugh:

May we have an objection? I assume that you are going into the question now of negotiations between the union and the company with regard to this contract?

Mr. Murtha:

Yes.

Mr. Bronaugh:

And I would like to just have an objection to it on the ground that it is incompetent, irrelevant, immaterial and doesn't tend to prove any material issue in this case, and the evidence is not binding on the plaintiffs.

By Mr. Murtha:

Q. Is there a reference made to a contract?

A. Yes, I attended that meeting.

Mr. Bronaugh:

And on the ground that the minutes speak for themselves and are the best evidence.

A. It is with reference to a contract we drew up at that meeting with the Sibley and Pioneer miners and the company.

By Mr. Murtha:

Q. Yes. Now, I hand you Defendants-Intervener's Exhibit No. 2, and ask you if you know what that is (exhibit handed to witness)?

A. This is a copy of the contract presented to the company in '37.

Q. Pursuant to the resolution adopted at the June 13, 1937, meeting?

A. Yes.

Q. Now, is that the only contract that the union ever had?

A. This is the only contract that I know of. I haven't seen any others.

Q. There are some pencil notations on Defendants-Intervener's Exhibit 2. In whose handwriting are those pencil notations?

A. These notations were made in the spring of '38. They were all made by me.

Q. Was that contract then in the same form as it was in the spring of 1938?

A. Yes.

Mr. Murtha:

I offer in evidence Defendants-Intervener's Exhibit No. 2.

Mr. Bronaugh:

I would like to interpose an objection to it, to the introduction of Exhibit No. 2, on the grounds that it is incompetent, irrelevant and immaterial; on the ground that it doesn't tend to prove any material issue involved in this case; and it is not binding upon this company. It is not shown that the matters contained in this contract or all of the matters that appear in the contract were presented to and discussed with the company or demands made upon the company for the matters contained in the contract on behalf of the union and on the further ground it relates to matters that occurred between third parties, of which this company is not involved and has nothing to do with.

Q. Now, were you a member of the Grievance Committee or negotiating committee?

A. I was not.

Q. I wish you would refresh your memory by looking at Exhibit K.

A. (No answer.)

Q. At the meeting of March 3, 1938, was there any discussion of the contract?

Mr. Bronaugh:

I object to that on the ground that the record speaks for itself and is the best evidence.

By Mr. Murtha:

Q. Just answer my question.

A. Yes, that is the meeting that the changes that are—

Q. Just answer yes or no, was there a discussion about a contract?

A. Yes.

Q. And what contract was under discussion?

A. It is the same contract that we have here (indicating).

Q. Marked Defendants-Intervener's Exhibit 2?

A. Exhibit 2.

Q. Yes. Now, will you also refresh your memory by looking at the minutes marked as follows and dated as follows: L, March 27, 1938; Z-2, April 29, 1939; Z-11, December 16, 1939; Z-16, May 11, 1940; Z-17, June 11. 1940; Z-17, August 10, 1940.

Just look at those particularly with reference to a discussion concerning a contract. What contract is referred to?

A. The same contract that was talked of, Exhibit 2.

Q. And that was discussed at those meetings?

A. Yes.

Q. You have refreshed your memory by looking at the exhibits that I have just described?

A. Yes.

Q. Can you tell us whether or not a contract was discussed at those meetings?

A. Well, there wasn't much discussion going on—

Q. No. Can you tell us whether or not a contract was discussed at those meetings?

A. Yes.

Q. And do you know, of your own knowledge, which contract it was that is referred to in the minutes?

Mr. Bronaugh:

We object to that on the ground that the minutes show for themselves and they are the best evidence, and on the ground it calls for incompetent, irrelevant and immaterial testimony.

A. Yes.

By Mr. Murtha:

Q. And what contract is it that is referred to?

Mr. Bronaugh:

Same objection.

A. Exhibit 2.

By Mr. Murtha:

Q. There was never any other contract?

A. None.

Q. You kept the minutes of actually all of the meetings since 1937, haven't you?

A. Yes.

Q. And when there is a reference made in the minutes to a contract, it means what?

A. It means a reference to Exhibit 2.

Q. Yes. You are here under subpoena, are you?

A. Yes.

Q. Will you waive the examination of your deposition after it has been transcribed and will you also waive the reading of it or having it read to you?

A. I waive that.

Mr. Murtha:

You may cross examine.

Cross Examination.

By Mr. Bronaugh:

Q. As I understand it, you have been working underground for how many years?

A. Sixteen—better than sixteen.

Q. Only the last four months of that time you have been doing the production work?

A. Five.

Q. Mining, itself?

A. Yes.

Q. And the other time you have been occupied and been engaged in other occupations underground?

A. Yes.

Q. And you are familiar, aren't you, with what goes on in an underground mine at the Pioneer?

A. Yes.

Q. Is that the only mine you have ever worked in?

A. Yes.

Q. It is a mine that is operated with a vertical shaft?

A. Vertical, yes.

Q. Straight down?

A. Yes.

Q. And the men get on the shaft and they are taken down to levels—they are working at several levels under the ground?

A. Yes.

Q. The men are taken to their level where they get off and proceed to their working places?

A. Yes.

Q. I am speaking now with reference to a period of time prior to May 1, 1941.

A. Yes.

Q. What length of time did it take the average man in that mine that you worked in to get to his working place?

A. I couldn't tell you. Some work further than others and some walk slower.

Q. You wouldn't know the longest?

A. I can only tell you for myself.

Q. How long did it take you?

A. To walk in?

Q. To get to your working place.

A. It would take me from the bottom of the shaft?

Q. Yes.

A. About ten or twelve minutes to get to the face.

Q. And it took you how long to get to the bottom?

A. After the cage was lowered, about two minutes.

Q. From the top?

A. From the top.

Q. So twelve to fifteen minutes would be the time it would take you to get to your working place from the surface?

A. From the time you leave surface, yes.

Q. That is what I mean, yes. Now, then, when they get down walking to the working place, they have to climb up to get to the face that they work on, do they not?

A. Yes.

Q. Sometimes that is quite a climb, isn't it?

A. I have to climb about 62 and a half feet.

Q. It varies, doesn't it, in different locations in the mine?

A. It does.

Q. Now, that same amount of time that you speak about, twelve to fifteen minutes going in and it takes you about the same amount of travel time coming out, doesn't it?

A. Practically.

Q. It never has been and never was, prior to May 1, 1941, the custom and the practice of the company to pay the men for traveling time?

A. No.

Q. Either way, in or out?

A. Well, we went on company time, started off on the company's time and got to the shaft a few minutes later.

Q. I don't quite understand you. You mean coming out?

A. Yes.

Q. In other words, if that is the case, you go in and come out on your own time?

A. Practically.

Q. It never has been any other way?

A. No.

Q. That you know of?

A. No.

Q. Now, these minutes that he refers to, the only contract that I understand that was actually presented and drawn up and written up and presented to the company, was this exhibit (indicating Exhibit 2)?

A. Yes.

Q. Well, now, that contract is a proposed contract between the Oliver Iron Mining Company and the Steel Workers Organizing Committee? Was there ever a contract between Ely Local 1664 and the company?

A. This is the only contract that I recall.

Q. There never was any other presented on behalf of the Local, that you know of?

A. Not that I know of.

Q. Did you take part in any of the negotiations of these committees?

A. No.

Q. You were not on the committee?

A. No.

Q. And you don't know, of your own knowledge, what went on in the negotiations?

A. I do not.

Q. And these minutes that he asked you about here, do you know what the negotiations were that the men had with reference to the contract, after this was presented and later on with the negotiations as continued?

A. What was discussed at the meetings and what was brought up by the committee, yes.

Q. Do you know what the discussions were between the company and the negotiators, of your own knowledge?

A. Not of my own knowledge, no. What was presented at the meeting.

Q. And I ask you if it isn't a fact that after this contract was discussed with them on this occasion, the only other contract talked about was not this contract but a contract that covered the whole Oliver Mining Company's operations?

A. That speaks on behalf of—

Q. No, Minnesota, Michigan and everywhere else?

A. That speaks in behalf of Local 1664.

Q. That 1664 was written in there with a pencil. That is, the typewritten formal contract doesn't say anything about 1664?

A. That was the proposed change on the '38 contract.

Q. You don't know whether it was changed or anything about it?

A. 1938.

Q. 1938. Do you know whether that was ever taken up with the company or not, of your own knowledge, that change?

A. They were supposed to have gone up there.

Q. You supposed they had but you don't know, do you, Mr. Pachek?

A. I wasn't there.

Q. Now, I understood you to say that occasionally when your people in the mine felt like you needed a tool, you would occasionally go by and pick it up and take it in yourself?

A. We would pick it up on our way in.

Q. That is what I mean, you would pick it up on your way in?

A. Yes.

Q. That was not the usual practice, though, and it was only when you felt like you might need it and be delayed that you did that? Usually the company sent the tools in to you?

A. Yes.

Q. Now, I understood you, too, in answer to counsel's question here, with regard to before May 1st—I understood you to say that you didn't have any hoisting to do before May 1st—that is, any material amount of hoisting either before May 1st, or after May 1st—that is, tools?

A. No.

Q. And they work three shifts in that mine, don't they, at the present time?

A. Yes.

Q. And have they been doing that for some time?

A. Been working there for the last five months.

Q. In other words, you don't have a regular cycle there of operations in that mine, and they shoot whenever they get ready to shoot, and they don't shoot, in other words, at the end of the shift, necessarily?

A. No, they blast any time.

Q. That enables them to bring another shift in right behind—bring the third shift in right behind the second shift and run three shifts a day? They do that in that mine, all right, and they are doing it?

A. Yes.

Q. Now, you said, I believe, that when you come to the property, after changing clothes, you went by and picked up a check?

A. Yes.

Q. That was hanging on a board, as I understand it. All you had to do is go by and pick it up and put it on your shirt, or wherever you wore it?

A. Yes.

Q. Then when you came out—this is before May. 1st, that I am speaking of—you hung it back on the place where you got it from?

A. Yes.

Q. That was not a very involved and long drawn out operation, was it, Mr. Pechek?

A. No.

Q. All you had to do was reach up and pick it up and put it back?

A. Yes.

Q. And the carbide that you had to pick up in your can—what do you have, a small tin can?

A. Yes.

Q. And is this carbide located in a bin or something of that sort, a barrel that you just go by and dip up your carbide?

A. It was in a bin.

Q. A bin?

A. Yes.

Q. And you just dip up a tinful of it as you went by?

A. The "A" chute.

Q. "A" chute. And you put your cup under the chute and filled it and went on?

A. Yes.

Q. That didn't involve more than a half a minute, or a minute, did it, in filling up your tin?

A. Not much more.

Q. And then you went on from there to the shaft and went down?

A. Yes.

Q. And as I understood your direct examination, you said that you never had been paid prior to May 1st on any other basis than on an eight-hour day at the face?

A. That is right.

Q. Never had been paid for any travel time?

A. No.

Q. And it was only after May 1st, that a rule was handed down by the Department of Labor, that the company began paying you on the collar-to-collar basis and has been doing it since May 1st?

A. Yes..

Q. Now, there are not any material changes in the operations of the mine, other than the changing to collar-to-collar basis, since May 1st? Things are going along pretty much as they always did, aren't they?

A. Yes.

Q. Practically the same. There is no material difference?

A. No.

Mr. Murtha:

Did you ask him if his production is about the same?

By Mr. Bronaugh:

Q. Your production is about the same now as it was before?

A. About the same.

Q. Is your pay about the same?

A. Pay is about the same, too.

Q. Pay is about the same?

A. Yes.

Q. Are you paid on a production basis, contract basis, or what is the basis of your pay?

A. Company account and contract.

Q. Now, I take it that you mean by company account that you get a minimum whether you produce a certain amount of ore or not. Is that what you mean by company account?

A. Well, no, there is many times that the repairing of some sort involved.

Q. Well, I am not talking—then you would be paid on an hourly rate for the time you were working on repairs, is that correct?

A. That is right.

Q. I am talking about while you were producing?

A. That is on a contract.

Q. You mean you have a company account when you are producing?

A. No.

Q. That is all on a contract?

A. Yes.

Q. And that is based on the amount you get out?

A. Yes.

Q. And you say the time that your pay you have been getting—the production that you have been getting is about the same as it was before you went on this collar-to-collar basis?

A. Yes.

Q. How do you account for that. Are you working a little bit harder?

A. I don't know just what it is. I suppose it must be that. Trying to get more work done in a shorter time, maybe.

Q. You have never been in an Alabama mine, have you?

A. No.

Q. Don't know anything about them down there, do you?

A. Nothing.

Q. When your shoot—blast, I believe you call it up here, do you have to wait for a while until the gas or smoke clears out?

A. Yes, it is the general practice to wait for a while.

Q. How long?

A. Well, it all depends on the ventilation, between five to fifteen minutes, most places up in that country.

Q. What do you do while you are waiting for the mine to clear?

A. Well, we sharpen axes or if there is a missed hole, we have to watch the place for a certain length of time, so that nobody goes into it.

Q. You have two men working in the working place?

A. Yes.

Q. What do you call a working place?

A. Slices.

Q. Slices?

A. Yes.

Q. And are those slices as you call them, are they rooms or what we call a stope in our mine, and they lead off from—what do you call it, the drift?

A. The raises.

Q. The raises?

A. Yes.

Q. You have two men in each one of those workin places?

A. Yes.

Q. Per shift?

A. Yes.

Q. And those two men are supposed to do everythin done in that place?

A. Yes.

Q. Did you ever work in any of the pit mines?

A. Never.

Mr. Bronaugh:

That is all.

Re-Direct Examination.

By Mr. Murtha:

Q. Does the fact that they bring the tools almost up t the face of the mine enable you to save some time and produce more?

A. Well, naturally, they have got all the tools at th back shaft placed in one pile. Then you have got to pick out your own. Every contractor has their own tools marked and carry them in.

Q. They do that now, since May 1st?

A. I say something like a saw, we do, or a small tool

Q. The large tools are brought in to you?

A. Yes.

Q. Does that save some time?

A. Well, yes, what time it takes to look over the tools back shaft.

Q. That enables you to produce more now than before May 1, 1941?

A. Well, yes.

Q. You do, however, have a cycle of operations, don't you? Just tell what you do after you get to the face, on a normal day?

A. Well, it all depends on what condition we find the place in.

Q. All right, start with any spot.

A. Say we find a place all ready for timber.

Q. O. K.

A. Well, maybe the timber is not there. We have to hoist it up from a sub below, and the timber trammers hook it on for us, so the two of us hoist it up and take it off there and send timber up.

Q. Yes.

A. After the timber is up we start to drill, set up our machines and start to drill.

Q. First you timber. Then you drill, and then what?

A. Then we blast.

Q. Then you blast. And then what do you do?

A. Then we bridge up ahead.

Q. Break up the big chunks?

A. We bridge up first, put up poles over—

Q. Is that a sort of a temporary timbering?

A. Well, it is only poles ahead and a covering so you can walk under there. There is nothing falling down on you.

Q. And then what do you do next?

A. Then we start to scrape, or if there is chunks or anything, we have to blast them again.

Q. And after you scrape, what do you do?

A. Start with the timber again.

Q. And then you repeat that process?

A. Yes.

Q. So there is a definite cycle of operations?

A. Yes.

Q. But up in the Pioneer Mines, iron ore mines, you have no set schedule each day, so that you also end up by blasting or at the end of the shift?

A. No, some places are harder than others. Some places you can't make it.

Q. So you just go along as fast as you can and sometimes you may blast twice a day or timber twice a day or—

A. Sometimes it is a possibility.

Q. But you don't end each shift at any particular spot?

A. No.

Q. While you are waiting for the smoke to clear, don't you sometimes get wedges and timber and drills and sharpen tools, and other minor jobs?

A. Yes.

Q. You have a good ventilating system, apparently, is that true, to get the smoke out after the blasting?

A. Up there it is pretty good.

Q. You are on the 12th or 13th level, are you?

A. Between the 12th and 13th.

Q. They are about a hundred feet apart?

A. Practically a hundred feet—some are less.

Q. And then how far are you in from the station?

A. Better than a quarter of a mile, I would say.

Q. There are no natural facilities for removing smoke. The only way that smoke is removed is through ventilation, isn't that right?

A. That is right.

Q. Do they have blowers and fans?

A. Fans.

Q. Do they use the "A" and "B" shafts for the ventilation, or are there other tubes?

A. They use the "A" and "B" shafts for ventilation.

Q. Do they run tubes from the—

A. No.

Q. (Continuing)—from the shafts?

A. No, they have booster fans. On the 13th level, I know they have two of them. There is one not very far from where we work, and there is one that is coming in from the "A" shaft and one going out, maybe about 200 feet from the "B" shaft.

Mr. Murtha:

I think that is all.

Re-Cross Examination.

By Mr. Bronaugh:

Q. Do you have loading machines?

A. We have scrapers and tuggers.

Q. And the loading is done by machine?

A. The loading is done by—where at? Underground the loading is done by hand.

Q. With shovels?

A. No, the chute men load into the cars and we fill up these raises.

Q. Yes.

A. We scrape.

Mr. Murtha:

Can you explain that briefly?

The Witness:

Yes, we have raises about four feet through, and we have a scraper in there. We put a boom in the breast and a tugger cable running from the tugger to the scraper and then from the scraper to the boom and back to the tugger. It keeps your scraper in motion all the time; it pulls it back and forth.

By Mr. Murtha:

Q. You scrape the ore?

A. Into the raise.

Q. It goes down a hole or chute?

A. Into the raise.

Q. Down to the level, is that right?

A. Yes, down to the level.

Q. And then it goes into a car?

A. Yes, and there is somebody else taking it out there.

Q. You are up in a little room above the level?

A. Yes.

Q. You are between levels?

A. Yes.

Q. You are?

A. Yes.

Mr. Murtha:

I think that is all.

By Mr. Bronaugh:

Q. How much ore do you produce in a day's time?

A. Sometimes maybe for two or three shifts there is nothing.

Q. What would be an average production per week in the mine for two men that are working—average production?

A. I never heard how much the average was.

Q. How about yourself—you and your partner?

A. Well, it is on a three-shift basis, and we work around four rounds a week—about 25 cars per round. It is about a hundred or so cars, per week.

Q. How many men doing that?

A. Six men.

Q. Six men?

A. Yes.

Q. The six men would average around a hundred cars a week?

A. Somewhere around there.

Q. Is that about the average throughout the mine?

A. No, some places they have got a soft place and they can maybe average 25 cars per day, two men.

Q. Are you in the hard part, or the soft part?

A. In a hard part.

Q. So that in the soft part, why, the two men would have a very much easier job in getting out the same amount of ore as it takes six in your place to do it?

A. Yes.

Mr. Bronaugh:
That is all.

(Witness excused.)

4162 SAM E. SWANSON, resumed the stand, having been previously duly sworn, and testified further as follows:

Direct Examination.

By Mr. Murtha:

Q. Mr. Swanson, will you look at Intervener's Exhibit W and tell me what that is?

A. Yes, that is—I don't believe I identified this page.

Q. No, I don't think you did. What is it?

A. It is the minutes of the regular monthly meeting of the Steel Workers' Union that was held on December 9th.

Q. 1938?

A. 1938, yes. I acted as secretary at that time. Our regular recording secretary was unable to be present and he gave me the minute book and our chairman appointed me as acting secretary for that meeting.

Q. And does Exhibit W reflect the minutes of the meeting of Local 1664, on the date mentioned?

A. Yes; it is my handwriting.

Q. All right. I think you testified you have been mining about twenty years?

A. Yes, over twenty years.

Q. Is there any natural ventilation in these iron ore mines in Minnesota, after blasting, or is it done by forced draft?

A. We could say that there is both. In the wintertime, your air below surface is naturally warmer than your outside air, and the warm air has a tendency to go up and would cause a draft in the shaft. But we have fans in our mines, forced draft, to keep the working air clear of smoke and bring in fresh air. Is that satisfactory?

Q. Yes, that is all.

Mr. Murtha:

Do you want to cross examine?

Mr. Bronaugh:

No.

4163 JOSEPH BOVITZ, was called as a witness, having been first duly sworn, and testified as follows:

Direct Examination.

By Mr. Murtha:

Q. What is your name, please?

A. Joseph Bovitz.

Q. Where do you live?

A. Chisholm, Minnesota.

Q. How long have you lived in Chisholm?

A. Thirty years,—probably more.

Q. Have you ever been a miner?

A. Yes.

Q. In the iron ore mines?

A. Iron ore.

Q. Minnesota?

A. Yes.

Q. Do you know when you started mining, what year?

A. I started in 1907.

Q. Now, tell us the names of some of the mines that you have worked in, or the towns, at least.

A. I have worked in the Spruce mine at Eveleth and in the Hobert at Gilbert, Minnesota.

Q. Where else?

A. I have worked in the Pettit at Gilbert.

Q. Have you ever worked for the Oliver Mining Company?

A. I worked for Oliver in Eveleth. I worked in Chisholm, Minnesota,—Leonard and Clark.

Q. Who do they belong to?

A. Most of them belong to the Oliver Iron Mining Company.

Q. These are all iron ore mines?

A. Yes.

Q. They are all in Minnesota?

A. Yes.

Mr. Bronaugh:

Did he say he worked at the Pioneer Mine?

Mr. Murtha:

No.

By Mr. Murtha:

Q. Now, after 1907, how long did you work in the iron ore mines?

A. I worked there until 1910,—from 1907 until 1910.

Q. And then what did you do?

A. I worked in town.

Q. Worked in town?

A. Yes.

Q. Did you go back to the mines, then?

A. In 1911 I went back to mining.

Q. How long did you stay this time?

A. Up to 1916.

Q. Well, now, during this period what time did you used to go down to the mine in the morning, if you were on the day shift?

A. In the early days, when we worked ten hours, we would go down ten minutes to seven and come up ten minutes to twelve, and then after they changed from ten hours to eight, we started to go down fifteen minutes to, and left the place or face at the hour.

Q. Were the hours eight to five or seven to four?

A. We worked from a quarter to eight until twelve o'clock, and then was dinner, and then fifteen to one we went down and come up after five o'clock.

Q. So there was eight hours at the face?

A. There was more.

Q. What?

A. There was more.

Q. A little more than that?

A. Yes.

Q. Because you got to the face a little early in the morning and a little early at noon. What did you do about tools?

A. Why, the tools we got over to the shed; on our way from the place we carried the tools down, and would leave them by the shaft.

Q. You picked up the tools on the surface and brought them down with you?

A. Not exactly. The tools, like the picks and shovels, —they send them down and we collect them and carry them to our places.

Q. Now, do you recall any movement among the miners at that time to get paid for all hours worked, instead of just the time at the face?

A. Well, I figured that we should have something done. We talked about it—

Q. What was the final result in 1916?

A. It finally resulted in a strike.

Q. Did you go to some of the meetings?

A. Yes, that is right.

Q. Did they discuss at the meetings what the strike was about?

Mr. Bronaugh:

We object to what they discussed at the meeting as incompetent and irrelevant.

A. They discussed several things, conditions like that —$3 a day.

Q. Yes, and how many hours.

A. Eight hours.

Q. What eight hours?

A. Eight hours—you left at eight o'clock and came up at five o'clock.

Q. That is collar-to-collar?

A. What you fellows claim collar-to-collar.

Q. That is, if you had an eight-hour day you would be up on top at eight o'clock and then you would go down and then be back again at five?

A. Correct.

Q. With an hour for lunch?

A. Yes.

Q. Now, did you leave the iron ore mines?

A. I did, yes.

Q. Do you know how long that strike lasted?

A. It lasted about three or four months,—it was settled in October or November. Different places settled up at different times, you know.

Q. It lasted several months?

A. Oh, yes.

Q. Did it?

A. Generally the strike lasted there four or five months.

Q. And you went away?

A. I was away when the strike was finished, yes.

Q. You couldn't make a living, so you went away?

A. I went away.

Q. And where did you go?

A. I went to Montana.

Q. Did you work in the mines in Montana?

A. I worked over there in coal mines.

Q. What kind of mines?

A. Coal mines.

Q. Do you recall how many hours a day you worked out there?

Mr. Bronauge:

We want to interpose an objection to this line of questioning, the same as we have done about the Minnesota mines, on the ground that it is incompetent and immaterial.

A. We worked eight hours over there.

By Mr. Murtha:

Q. And do you recall when the eight hours would stop and when they would start?

A. We left the tipple at eight o'clock, and came back on the tipple at five o'clock.

Q. Where is the tipple?

A. Well, the tipple is where they wait.

Q. It is on the surface at the shaft collar?

A. Yes.

Q. It is used for handling coal?

A. Yes.

Q. After it is mined?

A. Yes.

Q. Did you return to Minnesota?

A. Yes, I returned to Minnesota afterwards.

Q. And did you go back to mining?

A. I went back to mining.

Q. Do you remember what mine?

A. I started to work in the Chester mine.

Q. What mine?

A. The Chester Mine.

Q. And then what next?

A. The next mine was the Chandler—or the Leonard mine.

Q. The Leonard mine?

A. The Leonard mine.

Q. Of the Hanna Company?

A. The Hanna Company at Chisholm.

Q. And you mined for how long there?

A. I worked there around 1925.

Q. And then you were away from mining for a few years?

A. I have a correction there—I worked there up to 1921.

Q. And then what?

A. And then I worked in a grocery store for one year and then I come back.

Q. About '22 or '23?

A. Yes.

Q. And then you worked until 1925?

A. Until '25 at the Leonard mine.

Q. And then you were off for a while?

A. And then the property stopped operations there.

Q. About '32?

A. No, the Leonard mine stopped in 1925.

Q. Twenty what?

A. '25.

Q. And then you were off for a while?

A. And then off for a while, and then the same year, 1925, I started to work for Dunwoody.

Q. The Dunwoody mine?

A. Yes.

Q. Where at?

A. Chisholm.

Q. And then how long did you work for them?

A. I worked up until around 1929.

Q. Have you mined since then?

A. A little bit. I worked for the International Harvester Company, and one year for Republic Steel.

Q. When did you come back from Montana?

A. January, 1917.

Q. And what were the conditions after that?

A. The conditions were all the same then.

Q. All the same?

A. All the same.

Q. Was it true that these mines, during this period that you worked for, were on an eight hour day?

A. An eight-hour day, that was the condition.

Q. Did the miners work eight hours a day?

A. They worked even more.

Q. They worked more?

A. Eight hours was face-to-face. That is what they wanted, but—

Q. Did the miners work more than that?

A. Lots of times.

Q. Did you belong to any organization, union?

A. Yes, I did.

Q. What was their program?

Mr. Bronaugh:

We object to the program as incompetent and immaterial.

A. When I joined the union, the first thing was to abolish the contract and establish what you call the eight-hour day.

Q. Abolish the contract?

A. The contract, yes.

Q. And eight hours would start and stop when?

A. Well, we discussed it, that we worked not eight, but we really worked eight hours and a half, and sometimes more. We tried to improve the conditions.

Q. Were you an officer of this union?

A. Yes, I was president.

Q. You were president?

A. Yes.

Q. And about when was this organized?

A. That was 1919.

Q. 1919?

A. 1919.

Q. Later than that?

A. Well, I was president—

Q. Several years?

A. Yes.

Q. And you speak of an eight-hour day that the union wanted?

A. Yes.

Q. Now, where would the miner be when the eight hours started, at the beginning of the shift?

A. According to our figure, they should be at the top of the shaft, at the collar.

Q. And at the end of the eight hours?

A. Should be up on the surface again.

Q. Were you ever able to secure that from the mining company?

A. No, we didn't, because we wasn't organized enough.

Q. Now, were the miners satisfied or dissatisfied, with respect to the failure of the company to pay them eight hours collar-to-collar?

Mr. Bronaugh:

We object to the question on the grounds that it calls for incompetent and immaterial testimony.

By Mr. Murtha:

Q. Just answer—were they satisfied or dissatisfied?

A. They were not satisfied.

Mr. Murtha:

You may cross examine.

Cross Examination.

By Mr. Bronaugh:

Q. When was it you were in Montana?

A. 1916.

Q. For how long?

A. For four months.

Q. You just worked out there four months and then came back to Minnesota?

A. Yes.

Q. And what mining company did you work for out there?

A. Where do you mean?

Q. In Montana?

A. International.

Q. International?

A. International Coal Mining Company.

Q. What town were you in?

A. What?

Q. What city or town were you in?

A. Bear Creek, Montana.

Q. And that was a coal mine?

A. Coal mine.

Q. And did I understand you to say that you worked eight hours or ten hours out there?

A. We worked in Montana eight hours.

Q. Was that on a collar-to-collar?

A. Collar-to-collar.

Q. Collar-to-collar?

A. Yes.

Q. And you got paid then out there for all the time from the time you left the surface until you got back to the surface?

A. That is right.

Q. Now, in Minnesota, though, it never has been the practice to pay the miners for travel time, has it?

A. No.

Q. And you have known about it for 3[illegible] years, of your own knowledge?

A. Yes.

Q. And you know that the companies never did pay for the travel time up until May 1, 1941? That is correct, is it not?

A. Yes.

Q. Now, did they ever pay them for any part of the travel time? In other words, was there ever a system like men going in on their own time and coming out on company's time in these mines in Minnesota?

A. When the company hired me, I figured that when I got instructions or orders, from that time that I should be paid.

Q. I didn't ask you that. I said, has it ever been the practice in this place, in the Minnesota ore mines, to pay the men on the basis of paying them for the work at the face and travel time one way?

A. They paid us one way.

Q. One way. Has that been the case up here all along?

A. No,—pardon me?

Q. Well, now, let me ask you this. Maybe we can get at it another way. What time did the day shift start?

A. Fifteen minutes to eight o'clock.

Q. Fifteen minutes to eight. At fifteen minutes to eight you were supposed to be down in the mine at the working place?

A. We started to go down.

Q. You started to go down?

A. We started to go down.

Q. And where was that?

A. All over any mine.

Q. All over these mines here in Minnesota?

A. Yes.

Q. And what time did you get to your working place?

A. Well, I just worked—come down to the working place. At ten minutes to eight I was in my working place.

Q. What mine was that?

A. In the Leonard mine.

Q. The Leonard mine?

A. Leonard mine.

Q. Is that where you worked most?

A. Yes.

Q. Most of your mining life underground has been at the Leonard mine?

A. I worked there almost—you can say ten or eleven years.

Q. And you would leave the top of the ground, or the collar, or whatever you call it, and you would be at your working place in ten minutes?

A. Yes.

Q. Now, your shift started at eight o'clock, and you would leave the top at fifteen minutes to eight?

A. Right.

Q. So that was your time that you went in on. The company didn't start paying you until eight o'clock, did they?

A. We were supposed to go.

Q. I understand that. Then when you left, what time did you leave the face?

A. We leave the face at probably two minutes to the hour, but you couldn't catch the ladder until the whistle blew at the top.

Q. You left your working place before the whistle blew?

A. Most of the time we did that.

Q. And walked back to the loading station?

A. Yes,

Q. Down underground?

A. Yes.

Q. And then, when the whistle blew, that meant that the shift was over?

A. We started to go up, yes.

Q. And then you would go up?

A. Yes.

Q. So that the effect of that was that you went in on your time, and came from the face of your working place to the underground loading station on the company's time, and then when the whistle blew you were raised up to the top again on your time?

A. Yes.

Q. Because the shift was over. And you say that was the way it operated at the Leonard mine all the time you were there?

A. Yes.

Q. And has been, so far as you know, down to the present time until May 1, 1941?

A. Up until the time that I was working there.

Q. When did you leave there?

A. 1925.

Q. Was that same system followed in other mines?

A. The same system.

Q. Now, then, what are you doing now, Mr. Bovitz? What are you doing now? How are you making a living now?

A. Well, you mean from 1925?

Q. Yes.

A. Well, I worked for different mines.

Q. What mine are you working in now?

A. The Dunwoody.

Mr. Murtha:

Not now—

By Mr. Bronaugh:

Q. What are you doing at the present time?

A. Right now I have been working at WPA.

Q. WPA?

A. Yes.

Q. For how long?

A. For about probably 14 months.

Q. And what did you do before that?

A. Before I worked for the City of Chisholm?

Q. The City of Chisholm?

A. Yes.

Q. How long has it been since you worked underground in a mine?

A. From 1932.

Q. '32?

A. Yes.

Q. And where was that?

A. That was the Alexandria Mine.

Q. Alexandria Mine?

A. The Alexandria Mine.

Q. Where is that located?

A. At Chisholm, Minnesota.

Q. Who operates that mine?

A. It was operated jointly with the Cleveland Cliffs and the Republic Steel.

Q. The Cleveland Cliffs and Republic Steel?

A. Yes.

Q. They jointly operated it?

A. Yes.

Q. Now, all these mines that you mentioned are the shaft mines—vertical shafts?

A. Yes.

Q. They don't have any slope?

A. No.

Q. And the men are hoisted to and from the unloading station?

A. Yes.

Q. And walk from this point to where they are supposed to do the work?

A. Yes.

Q. And I suppose the time that it takes them to do that walking varies with the distances that they have to go?

A. They are not very far distances.

Q. The distances are not very far?

A. No.

Q. You don't have long distances to walk after you get to your unloading station. And wouldn't you say that it would be a fair statement to say that it would be probably 10 or 12 or maybe 15 minutes,—that is, as long as it takes a man to get to his working place in most of these mines up here?

A. It depends on where your place is.

Q. Would 15 minutes be about average?

A. We can say the average is about 15 minutes.

Q. One way?

A. Yes.

Q. Now, I don't suppose that you have been familiar with the actual mining practices of underground mining since 1932?

A. I haven't worked no more in the mines.

Q. Now, back yonder, when you said in 1916, when they had a strike, there were a number of questions that the union was interested in at that time. Higher pay and union recognition and all of those points, were they involved?

A. Yes.

Q. And when the union didn't get them, why they struck?

A. Yes.

Q. And that is when you left and went somewhere else to work?

A. Yes.

Q. What union was that?

A. That was the IWW.

Q. The IWW?

A. Yes.

Q. All of these mines that you mentioned here that you worked for, they have different levels that the production work goes on?

A. Yes.

Q. And is it usual for them to have the ore up here above the level, so that they can blast the ore down?

A. I don't get your—

Q. Well, as I understand it, in a good many of the mines when the company opens up a level, they so arrange it so the ore is at a point above the floor of that level, and then they undercut the ore and let it fall down into chutes, and it goes down to cars down below. Have you ever operated or worked in a mine like that?

A. I did, but it is not exactly like that.

Q. How is it?

A. When you come in you walk on your level—

Q. Well, we can say this, that the distances up to that ore varies from the bottom of the level, don't they? You have to climb up there to work at the face, don't you?

A. Yes.

Q. Do they have ladders that you can climb up and down on?

A. When you come to your level to the top of the mine surface, you got to climb down.

Q. You climb down?

A. You climb down, and up, too.

Q. How long did you work at the Dunwoody Mine?

A. I worked in the Dunwoody about six or seven years.

Q And that is operated by the Pickans & Mather Company?

A. Yes.

Q. Where is that located?

A. That is the Chisholm Mine.

Q. Were all these mines that you worked at around Chisholm?

A. I worked in those mines that I mentioned.

Q. I mean the ones that you mentioned, are they in and near Chisholm?

A. Yes.

Q. And what range is that?

A. Well, that is the Mesabi Range.

Q. You call that the Mesabi?

A. The Mesabi.

Q. And all of these mines that you referred to are underground mines?

A. Yes.

Mr. Bronaugh:

I think that is all.

Re-Direct Examination.

By Mr. Murtha:

Q. What was the Local that you were president of?

A. That was 1903.

Q. 1903?

A. Yes.

Q. What union?

A. That was the Miners and Smelters' Union.

Q. How old are you, Mr. Bovitz?

A. Well, almost 52,—I have a couple of months to go yet.

Q. Well, you haven't been working in the mines since 1932?

A. No.

Q. Have you attempted to get work in the mines?

Mr. Bronaugh:

We object to that, as being immaterial and incompetent.

By Mr. Murtha:

Q. Have you?

A. Yes.

Q. Have you been successful in getting a job?

A. No.

Q. You have not?

A. No.

Mr. Bronaugh:

We object to that as immaterial and incompetent.

By Mr. Murtha:

Q. Do you know why you can't get a job?

Mr. Bronaugh:

That is objected to as immaterial and incompetent.

A. Probably because I am too old, and far back when I was a little more active in the labor organization, that is what I think caused it.

Mr. Bronaugh:

I move to exclude his answer.

By Mr. Murtha:

Q. You are still able to mine?

A. Oh, yes.

Q. Now, tell me, Mr. Bovitz, do you waive examination of the deposition after it is written up?

A. Yes.

Q. You waive having it read to you or signing it?

A. Yes.

Q. Or reading it yourself?

A. Yes.

Mr. Murtha:
That is all.

(Witness excused.)

Mr. Murtha:
I offer in evidence Intervener's Exhibit 1, and I also offer in evidence Intervener's Exhibits A to Z, inclusive, and Z-1 to Z-31, inclusive.

Mr. Bronaugh:
All right, we want to object to the introduction of each of those exhibits separately and severally on the grounds that they are incompetent, immaterial and irrelevant, and do not tend to prove any material issue involved in this case, and on the ground that they are not properly identified or proven, and on the ground that it affirmatively appears that some of the minutes which constitute some of these exhibits are in the handwriting of other people than the persons who actually made the minutes and took the minutes at the meeting and purport to be copies of what took place at the time at the meeting; and on the further ground that they are matters that occurred between parties not involved in this litigation, not connected with the plaintiffs in this litigation and that the matters and things that appear therein are not binding upon these plaintiffs; and on the further ground that they are not properly authenticated.

(Whereupon, at 12:50 p. m. a recess was taken to 1:30 p. m.)

Afternoon Session.

(Resumed pursuant to recess.)

1:30 p. m.

4181 **ANDREW SOPKO** was called as a witness, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Murtha:

Q. What is your name?

A. Andrew Sopko.

Q. Where do you live?

A. Ironwood, Michigan.

Q. What do you do there?

A. What is that?

Q. What do you do up there?

A. I am working as a laborer on the surface now.

Q. For who?

A. For the Pickans & Mather Mining Company.

Q. Well, they are owned by—

A. Youngstown Sheet & Tube Company. Of course, that is where I get my pay. My pay check is the Youngstown Sheet & Tube Company,—Pickans-Mather.

Q. And is this in Ironwood, Michigan?

A. Ironwood, Michigan.

Q. Do they have a mine there?

A. Yes.

Q. What kind of a mine?

A. Iron ore mine.

Q. Have you ever been an iron ore miner?

A. Too long.

Q. How long?

A. I wouldn't say too long, because I have been working in the rocks too, you know. I have been doing what they call exploring work.

Q. How many years have you had anything to do with iron ore mining?

A. Well, not to tell any lies, just about 35 years right now.

Q. In this country?

A. No, not exactly; it is from 1910 in this country.

Q. Before that?

A. In the Old Country.

Q. Were you an iron ore miner?

A. Yes.

Q. In the Old Country?

A. Yes, sir.

Q. What country?

A. That was in Austria-Hungary then.

Q. I see. Now, you came over here in 1910?

A. Yes, sir.

Q. And you went to work for what company at that time?

A. Well, I started for the Oliver Mining Company.

Q. The Oliver Mining Company?

A. Yes, sir.

Q. What town?

A. The Norie Mine at Ironwood, Michigan.

Q. The Norie Mine at Ironwood?

A. Yes.

Q. And that is iron ore?

A. Iron ore.

Q. And did you work as a miner underground?

A. Not exactly at that time. I was a trammer.

Q. You were a trammer? How long did you continue in that capacity?

A. Not long, because I couldn't work there long. I worked there 21 days and I went to work as a miner.

Q. The same company?

A. For the same company, but different mines, because there was different captains, you see.

Q. Now, how long did you continue to work as an underground miner for the Oliver Mining Company?

A. Until 1915.

Q. And what happened?

A. Well, I went to Newport then.

Q. Then you went to the Newport mine?

A. Sinking shaft.

Q. And who owned the Newport Mine?

A. Schlesinger from Milwaukee.

Q. Is that the mine that you are working in now?

A. Yes, sir, it is the same mine. I wouldn't say exactly by the same shaft—it is the same property.

Q. The same mining property?

A. The same property.

Q. And when you start as an underground miner at Newport?

A. You see, I was working for a short time, three men in the gang, driving a drift in the ore. But then I was put up as a foreman, you see, by the captain at the Newport Mine, and I was there as a foreman until 1921, until they closed the mine.

Q. And did they close the mine?

A. They closed the mine down for nine months.

Q. Why?

A. I couldn't answer that question why.

Mr. Bronaugh:

We object to that.

By Mr. Murtha:

Q. Were there labor difficulties?

A. No labor difficulties, no.

Q. Then what happened next?

A. Well, I was living in Ironwood with my family, and it was a poor time to get jobs then, because that was slack times then.

Q. Did you go back to underground mining?

A. No, I hang around here and I was working off and on here and there in the plumbing shop as a helper to try to get by, make a few pennies to keep my family. In 1922 I went into Illinois.

Q. And did you work at mining in Illinois?

A. Yes, sir, I did.

Q. What kind of a mine?

A. A coal mine.

Q. Coal mine?

A. Yes, sir.

Q. Who owned that?

A. Well, the Standard Oil Company that I was working for there.

Q. Did you return then?

A. Returned to Ironwood.

Q. Returned what?

A. I returned to Ironwood.

Q. What year?

A. 1925, in December.

Q. Were you an underground miner?

A. What do you mean?

Q. After that time?

A. Right here when I returned back?

Q. After '25, yes.

A. Well, yes, I started to sink shafts again over in Wisconsin, what they call the Carry Mine in Hurley, Wisconsin.

Q. And did you work for the Oliver Mining Company at the Norie Mine, or the Newport Mine after that?

A. Yes, I did. You see, I was working at the Carry Mine, and I started to work right then when I come from Illinois, and I started to work in a shaft there. Then I was working there until about in the middle part of April, I think, at the Carry Mine. Then I quit there and I worked for the Montreal Mining Company.

Q. When was that?

A. That was in 1926.

Mr. Bronaugh:

Where was that?

The Witness:

The Montreal Mining Company.

By Mr. Murtha:

Q. Was that in Canada?

A. It is the Montreal—like a village.

Q. It is a mine?

A. Like a village or town, or whatever you are going to call it, you see.

Q. Not in Montreal—

A. It is the Montreal Village. At the same time they have a mine there.

Q. It is in Michigan?

A. No, Wisconsin.

Q. Wisconsin?

A. Wisconsin, you bet.

Q. You worked there as a miner?

A. As a miner, yes.

Q. Now, from 1926 to 1927—

A. That was in '26.

Q. Where were you in 1926?

A. From there again I went over to the Oliver Mining Company.

Q. And then what happened?

A. And I worked there until 1927, February 1st, and I started at Newport in February, 1927.

Q. And you stayed there how long?

A. I am staying there right now, never have been laid off, or never have been—.

Q. But you were doing underground mining, weren't you, from '27 to '35?

A. What is that?

Q. Were you doing underground mining?

A. Oh, yes, quite a bit.

Q. Were you a foreman?

A. Yes.

Q. You were a foreman?

A. On three different occasions.

Q. Well, part of the time you were a foreman and part of the time you were an underground miner?

A. Yes, sir.

Q. Were the hours always the same during this period up to 1935?

A. They were always the same—no, I couldn't say, because first we had ten hours and then we had eight hours. I don't know exactly when it was eight hours—I think it was in 1912 or '13.

Q. 1912 or '13 over here they reduced the hours from ten to eight?

A. Eight, yes.

Q. Eight hours. What did that mean?

A. Well, eight hours means from—I think it is eight hours from face-to-face, you see.

Q. You say—now, did you work any longer than that each day?

A. I wouldn't say that I had to do hard labor, but I was there.

Q. Yes, and doing what?

A. Well, of course, I changed my clothes. I went in there and I had to be there. They sent me down about half an hour before I start to work, you see.

Q. What did you do from the time you arrived on the mining property until you—

A. Well, the first thing I do is enter the dry and open my locker and take my clean clothes off and put the working clothes on.

Q. Yes.

A. Then when I was ready dressed, we had to get the carbide lamp, and I get my carbide lamp and everything ready, and then we go to the shaft, you see. And we have to be there on time like have an hour before our working time, you see.

Q. Do you know what time you descended?

A. What time we descended, you say?

A. (Q.) What time did you go down?

A. Well, I says a half hour before,—that was the limit set, you see.

Q. Do you remember what time you were—

A. Well, what time,—of course, we had different schedules before, and it is different schedules now. Before we was working for the Newport at seven o'clock, and at six-thirty we would go down.

Q. Now, how long would it take you from the time you left the surface until you got to the face?

A. When I left the surface, we entered the cage.

Q. Yes.

A. It depends on where you are working, because everybody is not working in one place, you see,—it depends on where you are working.

Q. What is the average?

A. The average—well, I wouldn't say the average, because somebody is working right in the end, you see—right at the boundary, and when you are working at the boundary, it takes you so much longer, you see. When you are right in the front here, it might take you probably only five minutes.

Q. What is the longest or shortest time?

A. It takes you sometimes 15 minutes.

Q. What is the average?

A. Fifteen minutes it takes you to get right down to the end there. They have tried to drive the drift there so you have in both east and west the same distance,—I think so, anyway.

Q. Now, how deep were the mines at these various places? What was the deepest mine?

A. Well, this is the deepest mine I am working.

Q. Newport?

A. Newport, yes.

Q. How deep is that?

A. Maybe a little better than 3,000 feet. I wouldn't say 31, but maybe a little better than 3,000 feet That is not where they are mining the ore. You see we are exploring now.

Q. What is the deepest level where they are working?

A. It is 2,700,—pretty close to 2,800.

Q. The levels are a hundred feet apart?

A. We don't have no levels at the new shaft now, you see. We just got two levels now.

Q. Do you know how long it takes the cage to go down to 2,700 feet and back?

A. What is that?

Q. How long does it take the cage to make a round trip?

A. Oh, yes, I do—I time it.

Q. Where the level is 2,700 feet?

A. Oh, I have timed that many times.

Q. How long is it?

A. You see, the shafts where I am now, it takes about six minutes one trip.

Q. A round trip?

A. That means up; the other one is coming down, you see.

Q. I wanted a round trip, from the time the cage leaves the surface and goes down 2,700 feet and then comes back 2,700 feet.

A. They figure ten minutes, but I say it is twelve minutes, because you have to have the men enter the cage, you see. But if you figure to just what you are lowering the men down, it is about ten minutes, I think. It takes a couple of minutes to enter the men into the cage and fill up the cage.

Q. Now, during this period, after the eight-hour day at the face, you say you are lowered about a half an hour before the time started running?

A. Yes, sir.

Q. Would you reach the face before the hour?

A. Oh, lots of times, sure.

Q. You would reach the face sometimes before the hour?

A. Oh, yes, I did, sure.

Q. Now, at the end of the day—where would you be at the end of the eight-hour period?

A. You see, just about five minutes after the quitting hour—

Q. Yes.

A. (Continuing.) --they send a man up, you see, so everybody goes by the shaft then.

Q. How about the lunch hour during this period?

A. Well, we had our own lunch hour underground, you see.

Q. Underground all the time?

A. All the time.

Q. How long a period?

A. Half an hour.

Q. And would it be near the face?

A. It was right there, where we had been working.

Q. You would stop and eat?

A. We had fixed a place up, where we had it more clean.

Q. Where would you be then at the end of the working day, at the station?

A. Yes.

Q. And on the level?

A. On the level, yes.

Q. Ready to be hoisted up?

A. Yes, waiting for the cage to get a change to go up.

Q. And what time would you arrive at the surface?

A. Well, that depends on what cage you took in the morning.

Q. The first cage?

A. I generally had this habit—if I went down on the first cage, I wanted to get the first cage up.

Q. Yes. Now, suppose you took the first cage, when would you arrive on the surface at the end of the shift?

A. I would say ten minutes after the hour.

Q. What would you do after you arrived on the surface?

A. Right to the dry and take my dirty clothes off, and go in and take a shower bath, and wash.

Q. What was the farthest in from the station, the level station, that you ever had to go?

A. I just imagine here not long ago.

Q. What is the furthest?

A. I think it is about 15 minutes in our mine.

Q. How many feet?

A. I couldn't say how many feet we had, but I think it is pretty close to over 3,000 feet.

Q. Yes. That is the greatest distance?

A. That is the longest distance, I think it is in the Newport, anyway.

Q. And how many men work in the Newport mine now?

A. I am not very much familiar with how many men, but if they hit the 300 mark, I think that means it includes everything, you know, the office and everything.

Q. About 300 men. Was that true in '27 to '35?

A. What is that?

Q. Is that how many men they had—

A. Oh, you mean, you asked me about that time?

Q. Yes.

A. Well, '25, you mean?

Q. No, 1927 to 1935.

A. Oh, they worked more than that, then.

Q. What was the most men they had during that period?

A. Oh, I suppose around pretty close to five hundred men. I think so, anyway, because they laid off quite a bunch of men after that, you see.

Q. Do they have an employee representative system?

A. Yes.

Q. At Newport?

A. Yes.

Q. Were you ever on the committee?

A. I was the first representative representing the miners.

Q. What year was that?

A. 1934 and '35, I finished *by* term in 1935.

Q. What were your duties?

A. Well, we met every month, you see.

Q. Who would meet?

A. The representatives from what they called the Newport group—not the Newport group but the Pickans-Mathers group.

Q. The Pickans-Mather group?

A. That is the Sunday Lake and Plymouth Mines, and the Anvil, and the Newport mine and the Carry mine. They met,—every second month, the company representatives met together, you see. That was a joint meeting.

Q. A joint meeting of who?

A. Well, with the miners' representatives. You see, the company's representatives and the miners' representatives called a joint meeting. That was every second month.

Q. Would the representatives of the Newport Mine meet each month with the officials?

A. With the officials, no.

Q. Who would they meet with each month?

A. Just with their representatives.

Q. Oh, the representatives would meet—

A. Together.

Q. The representatives of all the mines would meet, is that right?

A. Yes.

Q. And every two months—

A. The company would have their representatives and the miners would have their representatives.

Q. And they would meet together?

A. Yes.

Q. All right. Now, what was the purpose of this plan?

A. Well, I tell you the purpose why we have that system—I don't see no purpose.

Q. What did the committee do?

A. Well, it was just supposed to be what they call—if you had some grievance, you know, you were supposed to thresh it out with the officials. But when it came to threshing out something, or to improve some of your miners' conditions, or anything like that, you wouldn't be able to do anything, you see.

Q. Would this committee speak for these miners?

A. Well, the majority for the mining company—

Q. How would you know what the miners wanted?

A. Well, you see, that was the start, and the miners didn't know what—

Q. Just a minute. Now, did the miners come to you and tell you about their grievances, and then when you presented these grievances to the mining officials at these meetings, you would speak for the miners, is that correct?

A. Yes, it is.

Mr. Bronaugh:
We object to that.

By Mr. Murtha:
Q. Now, what were some of these grievances that were made?

Mr. Bronaugh:
We object to that as irrelevant and incompetent.

A. During my time there was not so very much brought up to me, only except about drinking cans of water cans, you see, in the mines. They were getting rusty, these tin cans, you see. When you keep your water there, underground, they get rusty. We asked if we could have glass jugs, and we got them, you see.

Q. And what else?

A. And there was nothing else brought up to me, only they wanted to have some kind of a benefit. They wanted eight hours from collar-to-collar. That is the least things we asked for, because we wouldn't hurt the company with that. You see, if you hurt the company, you are no good. So, not to try to hurt the company because the man is working just the same, you see—so, I thought, you see, eight hours, so we wouldn't have to be so many hours on the job.

Q. Now, did you present to this committee, during 1934 and '35,—did you present grievances to the mining company officials at these meetings, including the request for pay for all hours, collar-to-collar?

Mr. Bronaugh:
That is objected to as incompetent and immaterial.

A. Well, we didn't ask for pay. We tried to get the eight-hour collar-to-collar.

Q. Yes.

A. And we couldn't request to be paid, but I says, "We want to get this eight-hour from collar-to-collar."

Q. What do you mean by eight-hour collar-to-collar?

A. Well, I suppose it means when you start to get ready to go down.

Q. And that runs how long, until when?

A. What do you mean?

Q. What do you mean by eight-hour collar-to-collar?

A. Well, if I go down at eight o'clock, I want to be up at four o'clock. That is what I call eight hours from collar-to-collar. If I go down at eight o'clock, I want to be up at four o'clock.

Q. Now, how about lunch time?

A. Well, we had lunchtime all the time under ground, but that was our time, you see.

Q. Yes.

A. We never had any time on the company time.

Q. Eight hours collar-to-collar, except for the half hour for lunch?

A. Yes.

Q. All right. Now, who did you talk to—what representatives of the company were there? Do you remember the names of any of them?

A. Oh, yes, sure—you bet I remember. I wouldn't say every one of them, but most of them anyway.

Q. Can you name some of them?

A. Oh, sure—Albert Beisel and Gustavson.—I don't know his first name. He is the Sunday Lake Mine man. I know his first name—I knew it when I was there, but I have forgotten it.

Q. Are these company officials?

A. No, they were supposed to be representing labor.

Q. Well, then, I want you to name, if you can, any of the company officials.

A. Oh, yes, I can, sure. Henry Eplett.

Q. Who else?

A. Eddie Hill.

Q. Who else?

A. Joseph Gorilla.

Q. Now, did the company grant your requests?

A. Never,—well, small things, like I just mentioned about this glass jar.

Q. Did they ever give you the eight-hour collar-to-collar?

A. Never. The superintendent laughed at me when I asked for it.

Q. You discussed it more than once?

A. Well, with the superintendent only once, but at the meeting twice.

Q. Now, what did the miners do after the company turned down the request for an eight-hour collar-to-collar?

A. They couldn't do nothing.

Q. They couldn't do anything through this employee representative plan?

A. Not very well.

Q. Did they attempt any other means of presenting their claims?

A. Not very well, because—

Q. Did they form a union?

A. I suppose they took the example of my case, when I happened to make a little remark about going to Hurley.

Q. Yes.

A. Underground, you know, and coming around the shaft too early before going down, you see. So I was called to the office and I had to lose a shift, you see.

Q. Yes.

A. And when I was called into the office, the superintendent told me what I was called for.

Q. What was it that you did wrong?

A. They complained that I was stopping the men from going down early. You see, they had a complaint in the office, so that is what the superintendent called me in for, because, you see, some body went in that time and said that I am stopping the miners from going down too early underground.

Q. Now, did the miners form a union?

A. Yes, we had a union then already, you see.

Q. What union was that?

A. It was the American Federation of Labor. Of course, what they call the company representation plan —my fellow members, what they called representatives, was supposed to be representing labor, and they wanted to throw me out from there, you see. I am not supposed to be representing two organizations.

Q. Oh, the union didn't like your being a employee representative?

A. No, they didn't, you see.

Q. Do you know whether, since May 1, 1941, there are any changed conditions in the Newport Mine?

A. Well, personally, I couldn't say. Only I have a son working there and he says there is.

Q. What changes are there?

Mr. Bronaugh:

I object to that on the ground that it has been admitted that the witness doesn't know of his own knowledge.

By Mr. Murtha:

Q. You are working around the grounds, now?

A. I am not underground; my step-son is underground.

Q. You are on the surface?

A. I am on the surface, yes.

Q. Do you know what time the men go down?

A. Sure.

Q. What time do they go down?

A. I am by the shaft pretty near every day now.

Q. What time do the men go down now?

A. Never go down before 7:30.

Q. And what time does their time start running?

A. What is that?

Q. When does their time start running now?

A. Well, the time starts running, I guess, at 7:30, and about four o'clock the first cage is up, you see, and they have a half an hour for dinner.

Q. The first ones down are the first out?

A. Yes.

Q. They work eight hours collar-to-collar now?

A. Yes,—eight and a half with the dinner hour for their lunch time.

Q. Yes. Do you know whether there are any changes in what the men do before they go down, and after they come up on the surface?

A. The same system.

Q. Do you know what the situation is relative to bringing the tools to the men?

A. The tools?.

Q. The tools.

A. Well, you see, Newport—he had always—

Q. They had always had what system?

A. The Newport Mining Company has had the system all the time where they have the men taking care of bringing in timbers for the miners, and then the same thing with the lagging and with the tools. They don't carry the tools to the face, but they hoist them up pretty close to the working place.

Q. At Newport they have done that for several years?

A. For a long time.

Q. How many years back?

A. Oh, as long as I can remember.

Q. In this mine at Newport, and at the other mines in Michigan, where is the face of the mine, with relation to the level?

A. You mean where the man is working?

Q. Yes.

A. The face there is where he works.

Q. Yes. How does he get to it, though? Does he climb up from the level?

A. Yes.

Q. Well, now, you are under subpoena to be here? You have been served with a subpoena to come here today to testify?

A. Yes.

Q. Now, I want to ask you one other question. Do you waive the examination of your deposition after it has been transcribed, and will you waive the reading of it or having it read to you afterwards?

A. Yes.

Q. Will you waive that?

A. Yes, you bet.

Mr. Murtha:

You may cross examine.

Cross Examination.

By Mr. Bronaugh:

Q. You say you came to this country in 1910?

A. Yes.

Q. And you have been working in and about mines almost all the time since 1910?

A. Yes, for a long time.

Q. In and around the mines?

A. Yes.

Q. A great part of that time you have been in the actual production of iron ore? That is, getting out the ore itself?

A. Yes.

Q. A large part of that time you were doing what I could call development work; sinking shafts and making drifts,—is that what you call them?

A. Driving drifts.

Q. Drifts. That is what I am trying to say.

A. That is what you have to do before you get the iron ore away.

Q. As I understand it, you have been in mines and worked in mines in Michigan and Wisconsin and Minnesota?

A. Yes, sir.

Q. In this country?

A. Yes, sir.

Q. And it is true, is it not, that in all those places, all the mines you have ever worked in, it has never been the practice to pay the men for time spent in traveling to and from the face or place where they worked?

A. Never been.

Q. Until May 1, 1941?

A. Sure, that is how it was.

Q. Prior to May 1, 1941, in every mine that you have ever worked in,—

A. Well, you see—

Q. Wait a minute, now; let me finish the question. In every mine that you have ever worked in, you left the top before the shift began?

A. Yes, sure.

Q. And you left the bottom after the shift ended?

A. Yes.

Q. So that that meant that you were traveling both in and out on your own time?

A. Yes, sir.

Q. All right, didn't it get to be later in some of the mines that you worked—didn't you go in on your own time and come out on the company's time?

A. We never did.

Q. You came out before the whistle blew?

A. Not me, anyway.

Q. You didn't?

A. No.

Q. Did they, at any of the mines you worked in?

A. No.

Q. So in every mine you worked in, you worked eight hours at the face?

A. Ten hours before they reduced it to eight hours, and then eight hours.

Q. And the traveling time that it took to go to and from the place of work was on your time?

A. Yes.

Q. You didn't get paid for that?

A. No; sir.

Q. In every mine you have ever worked?

A. In every mine I have been working, I was on my own time.

Q. Now, since May 1, 1941,—Are you mining now?

A. No:

Q. You don't know?

A. No, I couldn't testify today how it was.

Q. All right. Now, all of the mines that you worked in were mines that had vertical shafts?

A. Not every one. The Norie Mine, the first mine I have been working in here in the United States, it was an inclined shaft.

Q. What mine?

A. The Norie Mine.

Q. And how long did you say you have worked there?

A. I have been working four or five years. I quit Norie and went to Aurora, but for the company, you see, the same company, only different captains.

Q. We are not interested in that. I want to know how many mines you worked in in this country that have not been vertical shaft mines?

A. How many?

Q. Yes.

A. Well, that is only two—three vertical shafts I have been working in in Michigan and Wisconsin.

Q. Three vertical shafts?

A. And the others were all incline.

Q. All incline?

A. Yes, sir.

Q. How did they run, on tracks?

A. Yes, on rails.

Q. Now, did they haul the men in and out of those mines?

A. No.

Q. Did the men have to walk?

A. They had to walk.

Q. And how far would they walk from the top? What is the longest distance you knew in any of the mines?

A. It is fifteen minutes, I said.

Q. And did they transport them in any of the mines?

A. Not in the iron ore mines; maybe they are now. I understand—I hear it so lately.

Q. I am just talking about your experience.

A. No.

Q. Now, in the Newport Mine—that is the one you have worked most in, isn't it?

A. Yes, that is the most I have worked in.

Q. And that is a vertical shaft mine?

A. Yes, but we had an inclined shaft when I started there.

Q. All right. Now, they load the ore in the stope?

A. I don't know what he means by a stope, you see, because we don't have stopes. We have got wings.

Q. I mean where your cars ran?

A. You mean, going down the mine, in a shaft.

Q. You use cars to haul your coal out. Do you have different levels in those mines?

A. Yes, we have.

Q. Just like you do in your vertical shaft mnies?

A. They are about 75 or 100 feet apart, I would say.

Q. And these mines where there wasn't a vertical shaft, they had different stopes and the men had to go through those different stopes and then go to their places and work on the stopes?

A. That is right.

Q. And then they had to climb up to get to the face of the ore where they were working on that level?

A. That is right.

Q. That is the same with vertical shaft mines?

A. It is the same with straight vertical shafts.

Q. Now, did I understand you to say that the first experience that you had with the Employees' Representation Plan or any other organization of that sort, was in 1934, or around that time?

A. Well, no. I belonged to the Organization United Mine Workers of America, you know.

Q. When was that?

A. In 1910.

Q. 1910?

A. Clinton, Indiana.

Q. You were in the coal mines, then?

A. Yes, but you see, I come in 1910 right here.

Q. You weren't in the coal mines long?

A. Well, no, not exactly long, but all together I put in about three years and four months.

Q. In Indiana?

A. No, in Illinois.

Q. Did you get paid for travel time then?

A. No, not at that time.

Q. In the mine—

A. No, you worked face-to-face.

Q. Just like in the ore mines?

A. Right just exactly, yes.

Q. And you belonged to that union in Indiana—were you an officer in that union?

A. No.

Q. You were just a member of the union?

A. I was a member of the union.

Q. And then the next one you belonged to was the one about 1934?

A. Yes.

Q. And it was during 1934 or '5, when you were a member of that second union?

A. Not the second union, not yet. You mean the—

Q. The Employees' Representation Plan?

A. I wouldn't say, because if I don't pay dues, that is not the union. You see, I was paid by the company. We had paid for our meeting, you see—we had been paid. I wouldn't call it a union, if I don't pay no dues. You see, the company paid us to attend the meetings.

Q. I think you and myself are in entire accord on that. Now, let me ask you this: The E. R. P. did make certain complaints, take up, as you say, grievances with the company from time to time, is that correct?

A. Very small things.

Q. Very small things?

A. Yes.

Q. They never did argue about collar-to-collar?

A. That is what I did. I was the first man to take that thing up at a meeting, and they told me to see the superintendent, and I says, "All right." So I went and seen the superintendent and his name was Dave Caven.

Q. Now, you went to the superintendent and talked to him about it, I presume?

A. That is right, you bet.

Q. And you said you didn't get what you went after?

A. Well, he laughed—he made a smile at me, you see, and he says, like this, "Andrews," he say, "if the other companies would give you, but who is going to start?"

Q. And after you talked to him that time, then that matter rested and you didn't hear anything more of it?

A. No, because I had a heck of a time about that.

Q. You did?

A. Oh, you bet.

Q. And was this at Newport?

A. Yes.

Q. And then after that time you had no further experience as a union man or union member in trying to get this, what you call the collar-to-collar plan into effect?

A. No.

Q. That is a fact, isn't it?

A. Well, listen, I didn't—go there, you see, because I was afraid of losing my job, because when the superintendent told me to keep my mouth shut or I might lose my job, then I simply was more careful.

Q. And the collar-to-collar plan never was put in effect?

A. No, sir; not until just lately.

Q. And I believe you said that in all of these mines that you worked in, they had arrangements made to bring in tools and timber—

A. In the mines.

Q. And put them up somewhere?

A. Not for the Oliver Mining Company. I said in Newport—in Newport, yes, but not in the Oliver Mining Company. In the Oliver Mining Company you had to be pretty sneaky to get your tools there. You see, sometimes you didn't get your own tools. You didn't have nothing to work with, you see, but I didn't work so many years for the Oliver Mining Company as I did for the Newport, anyway. Newport had a better system.

Q. The Newport men have the tools brought in and they are put in their working place?

A. They had a better system.

Q. In the Oliver Mine if you feel you have something and are being delayed in your work, you pick it up and take it yourself?

A. Not on the surface, but underground.

Q. Underground. You didn't carry anything in from the surface, except maybe your light?

A. Well, they used to carry the fuse, too, you know.

Mr. Bronaugh:
I think that is all.

Mr. Murtha:
That is all.

(Witness excused.)

4206 FLORINDO PILOTTO, called as a witness, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Murtha:
Q. What is your name?
A. Florindo Pilotto.
Q. How old are you, Mr. Pilotto?
A. 45.
Q. Where do you live, now?
A. Wakefield, Michigan.
Q. And what do you do for a living?
A. Mining.
Q. Mining?
A. Mining.
Q. Iron ore?
A. Iron ore.
Q. What mine?
A. Sunday Lake Mine, Sunday Lake Iron Company.
Q. What company?
A. Sunday Lake Iron Company.

Q. That is a Pickans & Mather?

A. Pickans & Mather.

Q. Yes. How long have you worked in the iron mines?

A. I make it over 21 years.

Q. Up in Michigan?

A. In Upper Michigan.

Q. That is the Upper Peninsula?

A. That is the Upper Peninsula.

Q. During this period, have you been a miner all of the time?

A. Not all the time. I have been on different jobs, but now—

Q. Tell us what your jobs were, just roughly.

A. I have been a motorman, trammer, miner, electrician.

Q. What are you now?

A. Mining.

Q. Were these other things before you became a miner?

A. Yes.

Q. How long have you been mining?

A. Well, I have been mining for about, oh, say, about, maybe five years—the rest would be different jobs, see. Electrician, motorman and trammer.

Q. Well, you remember the year that you started to mine?

A. Yes.

Q. What year?

A. It was right after I came back from the Army, I started to mine. In 1919, I think, or '21. I worked two years there. But I worked as a miner and trammer there, motorman and trammer there. Three jobs I had there.

Q. Where were you a trammer after 1919?

A. After 1919?

Q. Yes.

A. Well, I worked in 1921 at the Ironton Mine. That was two years I worked there.

Q. Over at Ironton Mine?

A. That is in Bessemer, Michigan.

Q. Before you went to war there in 1918, had you been a miner?

A. After I came back.

Q. Yes, but beforehand?

A. No, before—yes, down in Illinois, but that comes after.

Q. Before 1918 you had been a miner down in Illinois?

A. In Illinois.

Q. What kind of a mine?

A. Coal field—coal.

Q. And since 1919,—what years haven't you been a miner?

A. Well, after I got laid off, see. After I got laid off, and then I took a job in some other mine.

Q. But you are an underground miner now?

A. Yes..

Q. You were an underground miner after you came back in 1919?

A. Yes.

Q. Now, between those two dates, have you been mining most of the time?

A. No, sir. I have been an electrician most of the time.

Q. A what?

A. An electrician underground most of the time in the Sunday Lake Mine.

Q. What years were you an electrician?

A. 1929 until last October. At the Sunday Lake Mine —from last October I have been mining until today.

Q. Which is the best job?

A. Well, the best money is in mining, but the electrical work, well, it is—

Q. Nice work?

A. It is the best work.

Q. What mines have you worked in?

A. Well, I stayed at Ironton Mine where I am working. That is one. I worked at the Montreal Mine. That is on the Wisconsin side. And I have worked at the Carry Mine also, on the Wisconsin side, for a short period. Then I worked at the Charcoal Iron Company. That is in Bessemer also. That mine is not working today. And then I work at Newport Mine for four years. I was motorman there. And then, of course, I am working at Sunday Lake Mine.

Q. Since that?

A. Yes.

Q. When did you come to Sunday Lake Mine?

A. Electrician, and now mining.

Q. What year did you come there?

A. 1929, in August.

Q. O. K. As an electrician. And were you in and out of the mines?

A. No, sir.

Q. Work on the surface?

A. Never.

Q. Now, did you work on the surface as an electrician, or underground?

A. Underground as an electrician.

Q. Would you go down with the day shift?

A. Yes, all the time, day shift, all the time.

Q. What time did the day shift go down, prior to May 1, 1941?

A. Well, we had—way back we used to go down at 7:30 in the morning.

Q. Yes, but then?

A. But then, now, as I—after 1935, they give us ten minutes, so we go down at 6:40, you see. We used to go down at 6:30 before; now we go down at 6:40. Since 1935 we have been going down at 6:40.

Q. Now, do you know what time the miners arrived at the face when they went down at 6:30?

A. Well, they arrived there before seven o'clock. Sometimes they wait until the time is up and sometimes they start to work.

Q. Were they on an eight-hour basis?

A. Well—

Q. They were on an eight-hour day?

A. They were on an eight-hour day, but—

Q. Yes. Well, now, what did that mean—an eight-hour day in that mine, Sunday Lake Mine?

A. That means you got to work eight hours on the face.

Q. Yes, what did they do during the noon hour before 1935?

A. Of course, noon hour, ~~is for~~ taking our lunch.

Q. Yes, do they have it underground?

A. Underground.

Q. Underground. A half hour?

A. Half hour.

Q. At the face?

A. At the—well maybe a few feet back, or so.

Q. Where was the miner at the end of the eight and a half hours after seven o'clock in the morning, where would he be?

A. At the end of the shift of the day's work?

Q. Yes.

A. Well, at the end of the day's work, they will drop their tools and they will start out for the shaft.

Q. That would be five o'clock?

A. That would be just about—well, you see, different mines—I will say this—some mines go down at eight. Some mines go down at seven. Like the mine I am working in, they go down at seven now.

Q. When you go down at seven, you come out at 4:30?

A. 3:30 now. Before we used to go down twenty to and then come up about quarter to four. Sometimes ten minutes to four.

Q. Let's say before 1935. Now, what time did the men quit at the face?

A. Before 1935?

Q. Yes.

A. Well, they quit at 3:30. Go down at 6:40 and quit at 3:30.

Q. Yes. And then, when would the first cage go up?

A. Well, the first cage began to load at half past three, or sometimes even a little later, but more or less —a couple of minutes more or less.

Q. How many cage loads do they have at Sunday Lake Mine?

A. Two cages now—two cages.

Q. Two cages?

A. Two cages of men goes down.

Q. Well, is there—just one cage?

A. Well, that is what they call it anyway.

Q. How many men work in the mine?

A. Oh, about—do you mean down below?

Q. Yes.

A. Well, I make it about 140 or 160. I don't know. I can't say that exactly.

Q. How many men on a cage load?

A. About fifty or fifty-two. They put in about 13 or 12 each.

Q. And the cages—or the cage goes down and comes up and goes down and comes back?

A. Yes.

Q. Does that take everybody down, two trips?

A. Yes.

Q. It must be a double deck?

A. Double deck.

Q. How deep is the Sunday Lake Mine?

A. Well, the 26th level is 1,800 feet, but then they are opening another level down below, about 100 feet deeper.

Q. Most of the work has been done at the lower levels these last several years?

A. Most of the work at the 26th level. That is where they are mining the iron ore now.

Q. What is the furthest that the drift extends?

A. Well, that must be something over 1,500—2,000 feet. Something like that.

Q. Now, since 1935—let's see, you have been a miner since last October, 1940?

A. Yes.

Q. Well, now, before May 1, 1941, what time did you go down?

A. Before May 1st we go down at twenty minutes to—twenty minutes to seven. That means 6:40.

Q. Yes. Well, there was no change in that time during the past several years back to 1935?

A. No, sir.

Q. And what time would the first cage load start up from the 26th level, let us say?

A. I just stated before, sometimes a couple of minutes before.

Q. And that situation was true just before May 1st, this year?

A. Yes.

Q. Well, now, before twenty minutes to seven, let us say, in the morning, what would the miner do?

A. Well, he would come up and change—come in the dry and change.

Q. He would arrive on the mining property, go into the dry room?

A. Just about—well, some goes early and some later and I speak now for myself. I used to come into the dry room around twenty-five minutes after six and change and get ready to go down—to go down; at twenty minutes was the call to go down.

Q. It would take about fifteen minutes to get ready?

A. Just about 15 minutes.

Q. What would that include? You would change your clothes, pick up some carbide?

A. Well, we have lights today.

Q. You have electric lights now?

A. Yes.

Q. Where did they keep those lamps?

A. When they first come out they used to hand them to us. Now they have a little casing made and they get it ready on the door of your change locker.

Q. But that is since May 1, 1941?

A. Yes, that is since.

Q. Before that, where did you get your lamps?

A. We used to get it just as soon as we went to the dry. There was a man there for that purpose.

Q. He would distribute lamps to all of the miners?

A. When we would call the number.

Q. He would call the number?

A. We would call the number.

Q. And then what would happen?

A. Then he would hand the lamp over to us.

Q. And it took him some minutes to distribute the lamps to all of the miners, and you had to wait for that, is that correct?

A. Yes.

Q. Well, now, how long have you had electric lamps?

A. I make that about a year—about a year, I guess.

Q. Before that you had carbide?

A. We had carbide.

Q. And where would you get your carbide?

A. Well, they had a—kit or a bin there, made for that purpose. The men, after they would change, they go to this place in the dry where there would be carbide.

Q. It was in the dry house?

A. Yes.

Q. It was in the dry house. How long had it been in the dry house?

A. Ever since we get this electric lamp.

Q. Since you get which?

A. These electric lights, see. We had the carbide before the electric lights.

Q. Yes, but was the carbide carried in the dry house?

A. Also in the dry house.

Q. On your way out after you would change, you would pick up the carbide?

A. Yes.

Q. And fill your lamp?

A. Yes.

Q. Well, now, there was quite a few miners there getting ready to go to work. Would you have to stand in line and await your turn?

A. Well, sometimes—it depends. You see, sometimes the men change pretty near in a group, and then we had to stand and get our turn. If the men came in gradually and go out—more or less we had to wait to take carbide, and then the next one, and so on.

Q. All right. At the Sunday Lake Mine, since 1929, where do you get your tools? Where does the miner get his tools?

A. Well, I have a belt for my tools when I was an electrician and I had the tools right in my locker.

Q. That was when you were an electrician?

A. Yes.

Q. But how about the miners? Where do they get their tools?

A. They have a tool boy.

Q. How long have they had a tool boy?

A. Ever since I am there.

Q. How long?

A. Ever since I am there.

Q. All that period?

A. Yes.

Q. How about these other boys before 1929, did they have a tool boy?

A. Not all the mines has a tool boy, but they—the majority of them has.

Q. Where they didn't have a tool boy, how would the miners get their tools?

A. They would have to take their tools. They pick the tools by the shaft and carry them into the place, then.

Q. By the shaft, before they went down?

A. No, the tools would be down below.

Q. Up in Michigan, they always have the tools at the station level?

A. They have the tools at the station.

Q. Or they had a tool boy?

A. Or they had a tool boy.

Q. You never had a practice of going to a tool house up on the surface?

A. No; we did not have them on the surface.

Q. Would you talk to the foreman—would the miner talk to the foreman—I am talking about Sunday Lake Mine since 1929—talk to his foreman before he went to work?

A. Yes, we would. That is, after I am working there, see. Well, the foreman will give the orders. In fact, he will give me the orders on the surface, you see, what I have to do.

Q. Well, that was one of the things the miner had to do before he went down the shaft?

A. Now, you see, speaking about 1929—

Q. Is that correct? That is one of the things the miner had to do before he went down into the shaft?

A. You see, while I was an electrician, they gave me the orders on the surface, but now when I am a miner, the miners is waiting on the shaft and takes their orders.

Q. Before May 1st, 1941, where did they get the orders?

A. Oh, they—

Q. Did they get them on the surface?

A. No, underground.

Q. That was before May 1, 1941?

A. Yes.

Q. How long have they been doing it that way?

A. They have been doing it that way right along, up to this time.

Q. The foreman would give them the orders down on the level they worked at?

A. On the level, right.

Q. Now, since—did you pick up a check—do the miners have a check?

A. No, we don't. The Sunday Lake Mine doesn't give you a check. That is, the only time you show your check is when you go—you have to show your check on pay day. Outside of that you don't carry the check, but you call your number out when you go into the dry, and when you come out of the dry, and the timekeeper checks you out.

Q. Let me get this straight. Before May 1, 1941, when you went into the dry room, you would call your number?

A. Yes.

Q. And the timekeeper would take it down?

A. Take it down.

Q. You kept your check with you all the time?

A. Well, I kept the check home. The only day I bring it would be on pay day.

Q. There was a number on the check?

A. Yes.

Q. So that the timekeeper took the time at the dry house?

A. Yes.

Q. And would he check you off at the dry house after you came out at the end of the shift?

A. Yes.

Q. Well, now, since May 1, 1941, have there been any changes?

A. The changes we had is to also call your check number when we enter and when we come out of the dry, but the changes we made, today we are working eight hours and a half underground. Rather, I would say, we work eight hours in the face and half a hour for eating.

Q. What do you do now?

A. Mining.

Q. How is the eight hours now?

A. Now, the eight hours is—we go down when the whistle blows and we are up when the whistle blows.

Q. The whistle blows at what time, seven?

A. Seven o'clock.

Q. And the miners are on the surface?

A. The miners is out on the surface.

Q. And it blows again at 3:30?

A. 3:30—the first cage is out on surface.

Q. He is back up?

A. Yes.

Q. And have they changed their practices in regard to the tools or the lamps, or foremen, or anything since May 1, 1941?

A. Well, the—I don't get you quite, the meaning of that.

Q. Well, do they do anything different since May 1, 1941?

A. Well, there is no difference. The only thing is different, is that we are gaining a half hour.

Q. Yes?

A. Yes.

Q. You don't have to go down so early?

A. That is it.

Q. Over in Michigan in the mines that you have worked in, and in Wisconsin, iron mines, is there a regular schedule of activities performed by the miner each day? That is, does he drill and then blast and then scrape and then timber and then start that process all over again?

A. Yes.

Q. Now, is there any difference between the amount of work you can accomplish before May 1, 1941, and since May, 1941?

Mr. Bronaugh:

Object to that as incompetent and immaterial.

By Mr. Murtha:

Q. Go ahead, answer it.

A. If there is any changes, you mean?

Q. Yes. Can you accomplish the same amount of work?

A. It is about the same amount of work.

Q. Do you think the miners work a little harder?

A. Plenty hard.

Q. Do you think they get the same amount of work done now at the face as they did before May 1, 1941?

A. Well, there isn't much—that wouldn't affect it much, even though the half an hour is given to us.

Q. Do you know what is meant by collar-to-collar? Do you know what I mean when I say collar-to-collar?

A. Yes.

Q. Now, have you belonged to any organization or committee?

A. I do.

Q. That took up the matter of getting—

A. We did.

Q. Just a moment,—

A. 1935.

Q. What do you mean?

A. We took up an eight-hour collar-to-collar in 1935.

Q. Took it up, with who?

A. With the superintendent there.

Q. Were you on a committee?

A. Yes, sure, I was chairman of the striking committee.

Q. What?

A. I was chairman of the striking committee at that time.

Q. Striking committee?

A. Striking committee.

Q. Who was striking? What committee, or what group? Was there a union?

A. Yes, it was a union.

Q. What union was that?

A. International Mine & Smelter Workers.

Q. And were you an officer?

A. Yes, I was chairman of the Local.

Q. Local No.—

A. 131.

Q. Address?

A. Wakefield, Box 11.—Wakefield, Michigan, Box 11.

Q. Now, did you and other members of the committee meet with the superintendent?

A. Yes.

Q. Of what company?

A. The Sunday Lake Iron Company.

Q. The Sunday Lake Iron Company. Sunday Lake.

A. Sunday Lake Mine.

Q. When was this that you went with them?

A. This was in 1935.

Q. Yes. Did you make any demands on them?

A. We did.

Q. Now, did the committee talk with the miners before they went to the meeting?

A. Yes, we had meetings.

Q. You had meetings?

A. Yes.

Q. And did the miners, at these meetings, discuss their problems?

A. Yes.

Q. How long—when was this union organized?

A. The union was organized—they started organizing in November, 1934.

Q. 1934?

A. Yes.

Q. And these problems that they discussed at the union meetings, were those the problems that had been discussed by miners through the years?

A. Yes.

Q. During the time that you have been mining?

A. I was an electrician at that time.

Q. During the time you have been connected with mines?

A. Yes.

Q. You have talked with all sorts of employees of the mining companies?

A. Yes.

Q. And as a result of their wanting to accomplish certain purposes, they formed a union, is that right?

A. Yes

Q. What were some of these purposes?

A. To better our conditions.

Q. They wanted to what?

A. To better our conditions.

Q. To better conditions?

A. To better our conditions at the mines.

Q. What do you mean by that?

A. By having shorter hours, eight hours, collar-to-collar.

Q. Yes?

A. And elimination of the contract system. Two men all the time in one place.

Q. Yes.

A. And two men on a machine at all times.

Q. Yes.

A. And, there was another—let's see—seniority rights. And we had another one—we wanted to have, instead of blasting at all the time, to blast at noon hour and at the quitting time.

Q. I see. Now, this union meeting you speak of, before this committee met with the mining officials—what kind of a meeting was that?

Mr. Bronaugh:

We object to the query regarding the matters taken up before the union as incompetent and immaterial and this company is not bound by it.

A. We had meetings every week and discussed over things, and then we—

By Mr. Murtha:

Q. Who were meeting?

A. The miners at the Sunday Lake Mine.

Q. The local mine?

A. The local miners body, yes.

Q. And then, did they have unions at the other mines?

A. Yes.

Q. Before this committee met—went to meet with the officials of the company, was there a large meeting of the representatives of all the unions?

Mr. Bronaugh:

Object to that on the same grounds.

A. We had a committee picked out from each local on the range, and we had a—we were sent to Iron River, Michigan—we were sent there to discuss the problems over, and then we had threshed these problems out we had fixed these demands up and then we brought it back to the local union, to see if they were satisfied to present it to the meeting, and it was O. K.'d, and then we went ahead, and the 1st of May, 1935, we put out a mandate.

Q. The 1st of May, 1935, you did what?

A. On the 1st of May, 1935, we brought a mandate to the superintendent. Each local had a committee to bring this up to the superintendent of the mine.

Q. See if I understand this. On the 1st of May, 1935, representatives from each local met with the superintendent of the—

A. Of each mine. Each local had a committee—we used to call it a striking committee.

Q. You called it a striking committee?

A. Yes, we brought these demands into the meeting.

Q. All right. Now, this committee presented to the mining officials of these various mines in Michigan and Wisconsin—this program that had been worked out, is that correct?

A. Yes.

Q. This included a demand for certain improved working conditions?

A. Yes.

Q. Now, among other things, what did this include—the proposal you made to the company?

A. Well, I just stated before, the eight-hour collar-to-collar, seniority rights, elimination of the contract system.

Q. Yes?

A. Two men in each place at all times, and two men on the machines at all times, and I believe it was a dollar an hour we asked for.

Q. What happened after that, or at the meeting?

A. Well, when—the superintendent would take no action on that.

Q. How was that?

A. The superintendent at our mines wouldn't take no action on it. They wouldn't give us no satisfaction.

Q. Well, then, did you bring the report back to your union?

Mr. Bronaugh:

I object to that on the ground it is irrelevant and incompetent.

A. We did.

By Mr. Murtha:

Q. Did you report back to your union?

A. We did.

Q. And what action followed?

Mr. Bronaugh:

I object to that as incompetent and immaterial.

A. On the 5th of May, 1935, a petition came out—

Q. No, what did the miners then decide to do?

Mr. Bronaugh:

The same objection.

A. The miners did not agree to it, when they heard the reports, seeing that there was no—they wouldn't sit down and negotiate with us, and we didn't have no satisfaction at all.

By Mr. Murtha:

Q. What did they do?

A. We decided then to take a strike ballot, which went through. We took a strike ballot.

Q. Did the strike ballot go through?

Mr. Bronaugh:
I object to this.

A. The strike ballot was sent into Ironwood for the count, and we had a—but the company come out on the 5th of May with a petition asking the miners if they wanted to work or strike. Well, we were working only two days a week at that time, and naturally no man wants to strike. And when they come out with this petition, "Do you want to work or strike?" Well, the men says, "I want to work" "Well, sign this petition."

Well, the majority of the men signed the petition and that threw our union out. So they did not take action at all but on the 16th of May we were supposed to go out on a strike.

Q. You had voted to go out on a strike?

A. We had voted, and here the company had brought in cops with side arms—

Q. They brought in additional?

A. Yes, men from outside, and always it was a new employee—you know, they also raise some that they don't like to get better conditions, but when they come they are glad to take it.

Q. This strike was by the unions of all these mines?

A. By the unions of all these mines.

Q. In Michigan and Wisconsin—iron ore?

A. Iron ore.

Q. What happened next, relative to the efforts of the miners to improve their working conditions, including the gaining of the collar-to-collar?

Mr. Bronaugh:
We object on the ground that it is incompetent and immaterial.

By Mr. Murtha:

Q. (Continuing.) Including the gaining of the collar-to-collar basis?

A. Nothing was done. The union went busted and everything kept quiet, and we never could have no more meetings because the men, with that petition, they had that brought up to them, and they were afraid to show up to any more of our meetings, so everything went busted up.

Q. Until—

A. Until 1937, when the CIO come up, and we organized again.

Q. 1937. Did you have any personal experience relative to the stopping of the strike or interfering with activities of the union back in 1935?

Mr. Bronaugh:

Object to that as incompetent and immaterial.

A. I can't—I would like to have you repeat that. I can't understand that.

By Mr. Murtha:

Q. Did you yourself run into any physical trouble?

A. No, sir.

Mr. Bronaugh:

I object to that.

By Mr. Murtha:

Q. Now, in 1937, were you an officer of the new union that was formed?

A. Yes, in 1937, when the organizer from the Steel Workers Organizing Committee come into Wakefield, he looked me up as the chairman of the local before. Naturally, they look for the officers, and he asked me if I can't pick up enough men to get a charter in that the CIO is coming in and take place and begin to organize the range.

Q. Yes.

A. So, I thought it was possible, and I told him we will try. We went ahead and we got enough men to get a charter in and the Local is functioning today and under that charter—I am a charter member and also a vice-chairman of the Local.

Q. Now, have you continued to work for these improvements that the miners have always wanted?

Mr. Bronaugh:

Object to that as incompetent and immaterial.

A. Yes.

By Mr. Murtha:

Q. And among those are—what is included, now, among the changes they want—or that is, what was included up until May 1, 1941?

Mr. Bronaugh:

Object to that as immaterial and incompetent.

By Mr. Murtha:

Q. Name some of the things the miners wanted before May 1, 1941?

A. Oh, yes, now, I got you. Well, the things that the miners want is what I stated before. They want the eight hours from collar-to-collar. They want seniority rights. They want two men in each place all the time. They want two men on a machine all the time, and now there are a couple of things there that I left out, that don't come to me—they want to blast at noon time and quitting time and not blast at every hours of the day, which is not sanitary to the working man.

Q. Yes.

A. And there is one thing there that I left out. If it comes to my mind, I will—

Q. What is that?

A. It doesn't come to my mind.

Q. Contract?

A. Yes, elimination of our contract system, yes, that is the one.

Q. Do the men want eight hours collar-to-collar now, including the lunch time?

Mr. Bronaugh:

Object to that as incompetent and immaterial.

A. They will.

By Mr. Murtha:

Q. What?

A. They will.

Q. That is what they want?

A. Yes.

Q. As it is right now, they have eight and a half hours, and that is with the half hour for lunch?

A. They feel they should have the eight hours from collar-to-collar.

Q. Then, did you ever work on the night shift as a miner?

A. Yes, in the afternoon shift, from four to twelve.

Q. Since last October?

A. Yes.

Q. And what time does the night shift go on?

A. Now, they go out at half past twelve,—go on at four and come out at half past twelve.

Q. Go down at four in the afternoon, until half past twelve?

A. Yes.

Q. Can they go right into their work after the day shift?

A. That is half an hour between.

Q. They could go right in, is that right?

A. Well, they could.

Q. Yes. How much time is required after blasting before the miner can continue with his work?

A. Well, it depends where the place is situated, you see. Now, if we have a place right close to the chute where they dump the iron ore, well, the smoke will go out quickly. Farther than that it takes a little longer, and so forth, but we will average this way. If it takes 15 minutes or a half hour there and three-quarters—and the balance is about a half hour.

Q. I see. Has that always been true?

A. Always has been.

Q. Up there?

A. Yes.

Q. Do they have a ventilating system?

A. They have.

Q. Blowers and fans?

A. Yes.

Q. Have they always had them in those mines?

A. No. It is just a few years now. I don't recollect it.

Q. Before that, did it take longer for the smoke to clear?

A. It did take longer, yes.

Q. Now, you have been served with a subpoena to come here, have you not?

A. Yes.

Q. And do you waive the reading of the depositions after it has been transcribed?

A. I will.

Q. And examination of it and having it read to you?

A. I will.

Q. You waive that?

A. I will.

Q. Did anything happen to you about the time the strike was contemplated there in 1934 and 1935?

A. Yes.

Mr. Bronaugh:

I object to that, on the ground it calls for illegal, irrelevant, incompetent and immaterial testimony, and doesn't prove any material issues involved in this case. It relates to matters that are not concerned with plaintiffs in this case. The matters that happened are not binding on the plaintiffs, and also on the ground it is too remote in time.

By Mr. Murtha:

Q. Go ahead.

A. In 1935, after the strike was supposed to take place, I was approached at the home where I lived, in the evening, and the superintendent that used to be in the mine—which is in Vulcan, Michigan, today,—he came up with one of the foreman which is still working today. They came at the house and tried to seduce me to give up the union. I thought that it wasn't proper for them to come into the house and ask me to give up what belongs to me, and so we had discussed many things over, and finally they go so—the boss, the foreman, I will say, not the superintendent—he called me a radical.

I asked him, I says, "What did you call me?" He says, "You are nothing but a radical."

Well, I got kind of disgusted over that and I hit him for that. Well, then they got me between the two of them, one grabbed me by the collar behind and the other one in front and I got a dandy beating out of that.

Q. In your house?

A. In my home. I have a statement on that matter in my coat pocket.

Mr. Bronaugh:
The same objection.

A. The superintendent, who is now in Vulcan, Michigan—

Q. The superintendent of what?

A. Used to be at the Sunday Lake Mine, superintendent, but he was transferred to Vulcan, Michigan. He is still there today and one of the bosses of the steel works, at the Sunday Lake Mine.

Q. Are you a member of the American Legion?

Mr. Bronaugh:
I object to that as immaterial and incompetent.

A. I *believe* to the American Legion.

By Mr. Murtha:
You do?

A. Yes.

Mr. Murtha:
You may cross examine.

Cross Examination.

By Mr. Bronaugh:

Q. Have you worked in the mines in any states other than Michigan and Wisconsin?

A. Yes, I worked in the mines in Illinois.

Q. Coal mines?

A. Coal mines.

Q. But I mean, the only ore mines you have worked in, are in—

A. Is in Wisconsin and Michigan.

Q. And Michigan?

A. Yes.

Q. As I understand your testimony, you have never worked in any mine where they paid you for traveling time going to and from the working place?

A. No, they never did.

Q. Never have?

A. No.

Q. In other words, you travel on your own time?

A. On my own time.

Q. And you worked on what we call eight hours at the face?

A. Eight hours, yes.

Q. When you were producing coal—or as an electrician—your time didn't start until you got to the place where you worked?

A. As an electrician, the time was started at surface. When I put my tools on, my time was started.

Q. You started working on surface?

A. When I put my tools on, the time I started to work.

Q. The production man, the time never has started until they got to the place where they really are getting ore. In other words, it didn't include traveling?

A. Well, they travel into the face.

Q. They travel on their own time and out on the company's time?

A. They travel in on their own time and out—well, they got to be in the place eight hours.

Q. They have to be at the face?

A. Eight hours.

Q. Eight hours?

A. Yes.

Q. And that has always been the case?

A. That has always been the case.

Q. And you never heard of any other basis for the men being paid in the Michigan or Wisconsin fields?

A. No, sir.

Q. And you have been familiar with that practice, the way they pay the men, in those fields for twenty years or more?

A. Yes.

Q. How about the coal mines that you worked in in Illinois. Did they have the same basis of pay as in the ore—the same conditions?

A. No, sir. In the coal fields in Illinois they—there is a contract, so much per ton on coal. And the man goes down at seven o'clock—they used to go anyway at seven o'clock in the morning, and go down, and go to the face and there produce three or four or five ton of coal and then go home, if I want to, or sit down all day if I want to.

Q. In other words, they were paid just on the basis of how much they produced, and if they wanted to work twelve hours and produce, they could?

A. No, you couldn't work twelve hours.

Q. How long, ten hours?

A. At that time it was eight hours.

Q. You could stop any time you wanted to, up to eight hours?

A. At the end of eight hours everybody should be out.

Q. Now, the only time that you personally had any negotiations with any company officials about the collar-to-collar proposition, was on the one occasion that you said in 1935, I believe, you took it up?

A. Yes.

Q. And you weren't successful?

A. No.

Q. Inasfar as you personally have been concerned, you haven't had any further negotiations with any of the people representing the company that you worked for, for the collar-to-collar?

A. I don't understand

Q. Since 1935, you personally have not dealt with nor negotiated with any of the company officials for the collar-to-collar?

A. Well, I did,—we presented our demands—

Q. I am talking about in 1935.

A. 1935.

Q. But since that time you haven't?

A. No—now I got you.

Q. Now, you say you blast in those mines any time during the day that you happen to get ready?

A. Any time, yes.

Q. And it takes 15, 20 or 30 minutes for the smoke to clear out?

A. It averages half an hour. It depends on the place you are in.

Q. And you have to wait until that clears up before you can go back to work?

A. Yes.

Q. At the face?

A. Yes.

Q. Are those vertical shaft mines?

A. Inclined.

Q. An inclined. And they work on a different level?

A. They do.

Q. On a number of levels?

A. Yes.

Q. And they drive these *shifts*—or drifts, I believe you call them, and work off those drifts?

A. Yes.

Q. And how far would you say the travel time is from the—

A. Between 1,500 feet to 2,000 feet.

Q. How long does it take you to get there?

A. About, I make it in about ten minutes, because you have to go in and climb up.

Q. And how long does it take you to go down on the whatever you call it—do you ride down or walk down?

A. We ride down.

Q. Ride down?

A. Yes.

Q. On cars. I am talking about those mines you had—that were not vertical.

A. Not vertical, I worked in a vertical.

Q. You work in a vertical now?

A. I am working on an inclined now, but I did work on vertical shafts.

Q. And you said that ten minutes would be about the average time it would take a man to get to his working place after he gets to the bottom.

A. Yes.

Q. How long does it take to get from the bottom to the surface?

A. By the time that they load the cage, from the top, and lower it, and go down and unload, it took them —and they go out—I believe it is about 12 or 15 minutes. They load and unload and up and down.

Q. Since you have been at this mine that you are working at now, the Sunday Lake Iron Company, you say they furnish you with your tools on or near your working place?

A. Yes.

Q. That has always been the case since you have been there?

A. Yes.

Q. And the foreman, if there was any occasion to give you an order about something that would—that had to be noted, or done during the shift, or day's work, he would see you on the ground and tell you about that?

A. At the present time, yes.

Q. At the present time. And has that been going on now for sometime?

A. After the 1st of May.

Q. The 1st of May. Where was he before the 1st of May?

A. Before, they gave orders different places, on the surface or underground.

Q. And then it was the usual practice every day for him to give orders, or just when you were changing your working place, or you had something that he wanted you particularly to do, or notice, or it might have been some defect in the mine that he wanted you to know about?

A. Yes.

Q. That was not every day that you took orders, was it?

A. Just about every day.

Q. Every day?

A. If it isn't one copper or miner, it was the other. He just gives orders to somebody every day.

Q. He gives orders to somebody every day, but not the same crew?

A. Not the same crew, no.

Q. And you worked with one other man in the place you are working at? Your crew is two men?

A. Two men.

Q. Per shift?

A. Per shift.

Q. How many shifts do you work at your mine?

A. They have a short shift—not a short—I mean to say they have a shift there, 11:00 o'clock shift, with about eight or ten men.

Q. Is that a third shift?

A. A third shift, yes, 11:00 to 7:00.

Mr. Bronaugh:

I think that is all. This gentleman may want to ask you some more questions.

Mr. Murtha:

I think that is all. Just a minute.

Re-Direct Examination.

By Mr. Murtha:

Q. How about powder, fuses and caps before May 1, 1941? Where would you get those?

A. They would have the powder house and the fuse shanty, they call it, underground, and when the miners would come into the place, then they have to drill, well, one man would drill and the other one go for powder and fuses.

Q. But you never have done that on the way down?

A. No, sir, we never carry that.

Mr. Murtha:

That is all.

(Witness excused.)

4236 FRANK EAGLOSKI, called as a witness, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Murtha:

Q. What is your name, please?

A. Frank Eagloski.

Q. Where do you live?

A. Iron River, Michigan.

Q. What town?

A. Iron River, Michigan.

Q. In the Upper Peninsula?

A. In the Upper Peninsula.

Q. What business are you in?

A. I am employed as a miner at the Homer Mine, the Homer Coal Company.

Q. What company?

A. The Homer Coal Company, it is called.

Q. Is that an iron mine?

A. Yes.

Q. Situated in Iron River?

A. Yes.

Q. Are you a miner?

A. Yes.

Q. How long have you been—underground?

A. Yes.

Q. How long have you been a miner underground?

A. Around 11 or 12 years. I was tramming for a while when I just started.

Q. Before that?

A. When I started.

Q. How long have you been connected with the iron mine business, industry?

A. Around 11 or 12 years.

Q. That includes your experience as a trammer?

A. Yes.

Q. How long have you been mining?

A. Around eight to nine years.

Q. Have there been any changes during these eight or nine years in your daily activities?

A. Yes.

Q. Hours?

A. Yes, we work eight hours collar-to-collar, where before we used—

Q. Now?

A. Now.

Q. That is since May 1, 1941. Now, what was the situation just before May 1, 1941?

A. We worked approximately eight and a half hours a day; besides that we would get our tools.

Q. That was face-to-face before May 1, 1941?

A. No, we did not put in that much time—you mean from the place-to-place—face-to-face, yes, put in around seven hours or better.

Q. Well, at the present time, now, since May 1, 1941; you are on a collar-to-collar basis, are you?

A. Yes.

Q. You are working an eight-hour day now?

A. Yes.

Q. And how much time for lunch?

A. Now?

Q. Now.

A. We get a full hour for lunch.

Q. How much?

A. A full hour.

Q. For lunch. Underground?

A. No, on the surface.

Q. That includes the time required to come up and eat lunch and go back, you mean?

A. Yes, one hour—one full hour's time on surface, the way I figure it—lunch hour.

Q. What time do you leave to go up for lunch?

A. The first cage leaves at twenty minutes to twelve.

Q. All the miners are on the surface at twelve o'clock?

A. All the miners are on the surface at twelve o'clock.

Q. And they remain on the surface for a full hour?

A. Those that come up earlier—the first cage comes up around a quarter to twelve. Well, it goes down a quarter to one.

Q. But the miners are on the surface for one full hour?

A. One full hour.

Q. And what time are they on the surface at the end of the day?

A. On the surface, all the miners are up at five.

Q. And they go down at eight now?

A. They go down at eight now, yes, they go down at eight—no, a quarter to eight.

Q. That is, there are several groups—are there several groups or cages?

A. Yes, the first cage goes down at a quarter to eight.

Q. Yes. And then that first group comes up—is up at a quarter to twelve?

A. At a quarter to twelve they come up and then the first cage goes out at a quarter to one, when the whistle blows, and comes up at a quarter to five.

Q. But the men are underground then, eight hours even, from collar-to-collar?

A. Eight hours.

Q. Now, before May 1, 1941, what were their hours then?

A. The first cage would go underground a quarter to eight, and it would come at twelve—well, the first cage after the lunch period would go down a quarter to one and come up at five, so we had a 45 minute lunch hour.

Q. Before May 1, 1941, the first cage would arrive on the surface when?

A. The first cage would arrive on the surface between 19—

Q. Before?

A. Before May, the first cage would arrive on the surface around 12 o'clock.

Q. What time?

A. Around 12 o'clock.

Q. At the end of the shift?

A. At the end of the day shift?

Q. Yes.

A. The first cage would come up at five.

Q. So the men were underground from 7:45 until 5:00 o'clock, except for lunch, is that right?

A. Yes.

Q. Now, how long did that condition prevail?

A. Ever since I was working in a mine.

Q. What time would you—

A. Until the new set-up came in.

Q. What time did you arrive at the face when you were on the first cage?

A. Most of the time I took the third cage.

Q. Oh, well, let's take it your way. What time, before May 1, 1941, did you, in the third cage, start to go down?

A. Approximately eight o'clock, a little before time, and a little later sometimes.

Q. All right. Now, when did you next get up to the surface?

A. It was around a quarter after twelve.

Q. And then when did you go down?

A. Around one o'clock.

Q. And when would you be back at the face?

A. At the face? Well, it would take—get into the face, it would take around ten or fifteen minutes.

Q. And you, on the third cage, would arrive back up at surface at the end of the day shift at what time?

A. At around quarter after five.

Q. And that has been the schedule ever since you have been there, is that right?

A. Yes.

Q. Except these last two months?

A. Yes. Some of the mines—when I worked at the Bates Mine—that belongs to the same company, before 1936, we worked a little longer there. But it was prior to 1936.

Q. Yes. Well, now, what time did you used to go down over there?

A. The first cage would leave around twenty minutes, I think it was—

Q. Twenty minutes to the hour?

A. Yes. And then it would come up after twelve, see?

Q. Yes.

A. So at that time, at the Bates Mine, we worked more than—

Q. I see. At the end of the shift, would the first cage, —at what time would the first cage—

A. We never heard the whistle, the five o'clock whistle. The cage would leave underground at the bottom of the shaft at around twelve and around five. Naturally, by the time the cage hit surface, it would take it all of five minutes—five or six minutes. It was 1,400 feet deep.

Q. What is the name of that mine?

A. Bates.

Q. B-a-t-e-s?

A. B-a-t-e-s.

Q. You worked over there for a few years?

A. Yes, prior to 1936.

Q. How deep a mine was that?

A. Fourteen hundred feet.

Q. How far in from the station?

A. Well, it all depended where a person was working.

Q. What is the greatest distance?

A. The greatest distance at the Bates—at the Bates or at the mine I am working in now?

Q. The Bates.

A. It was around 5,000 feet.

Q. How long would it take to walk that far?

A. Five or six thousand feet?

Q. How long did it take to walk that far?

A. Around twenty minutes.

Q. Now, at the mine you are at now, what is the name of it, the Homer,—what is the furthest distance in from the station?

A. The first cage that goes down works in the Minkler property, and they have a car that transfers them right to the Minkler property, and after they leave that car, a lot of the men have to climb up in their places, but where I work, we are 3,000 feet inside, and it all depends on what line of work we are doing, because sometimes we are driving a 100 foot raise, and actually you may be 100 feet up. It takes some time to climb the 100 feet, and get into the place.

Q. Now, how deep is the mine you are in now, the Homer?

A. It is 900 feet, but one level is flooded; but the working level is 800 feet. That is the bottom level.

Q. Now, what is the greatest distance in from the station?

A. That goes clear to the Minkler shaft.

Q. Well, is it a thousand or three thousand or what?

A. Oh, about a half mile.

Q. A half mile. How long does it take to walk that?

A. They ride in there.

Q. They ride there?

A. Yes.

Q. That is, if you go over to the other property, Where you go, do you ride?

A. No, sometimes we ride, but the majority of times we walk.

Q. When you walk, how long does it take you usually, on the average?

A. Well, I suppose it takes all—12 or 15 minutes.

Q. And then you climb up a ladder, up to the face?

A. Yes, we are working in development work, we have to climb up the ladder, but if you are—if we are drifting, then we are right by the level.

Q. Did you belong to any union organization in the early part of 1930—1930 to '35?

A. Yes, we had a company union there—the Employees' Representation Plan.

Q. But you weren't on that group?

A. No, not exactly on the group, but the idea is that the company forced us to belong to it, because a lot of the men, they enforced them to vote.

Q. Yes. Then, did you join the union later on?

A. Yes.

Q. What union was it?

A. The United Mine and Smelter Workers.

Q. AFofL?

A. Yes.

Q. What year was that?

A. That was in the early part of '35.

Q. And you joined?

A. Yes, I joined.

Q. When it was organized?

A. It was already—the organization was already started when I joined.

Q. I see. Were you a member of the strike committee?

A. Yes, I was a member of the strike committee.

Q. Were you present when they made demands upon the company?

A. I was one of the parties that presented the demands.

Mr. Bronaugh:

Objected to on the grounds it is incompetent, irrelevant, immaterial, and not binding upon the plaintiffs in this case.

By Mr. Murtha:

Q. What were the demands?

A. On account of improper working conditions and the company pushing us around too much. We wanted representation of the union and wanted an eight hour working day from collar-to-collar.

Q. Yes.

A. Wanted higher wages and seniority rights. There were seven demands, if I am not mistaken.

Q. Had the miners wanted these things, including the collar-to-collar basis, for a long period before that, or a short period?

A. Yes.

Mr. Bronaugh:

I object to that as immaterial.

A. For a long time there was a discussion on an eight-hour collar-to-collar, but the company union could not do anything about it, and naturally the men were there that were representing it only for the pay they were to get. At each mine they were getting—in other words, they were getting the extra five dollars a month for being on it.

Q. On the Employees' Representation Plan?

A. Yes.

Q. Yes. Now, did they call—did the company grant the demand for an eight-hour collar-to-collar, and for these other things?

A. No.

Q. And did the union do anything about it afterwards?

A. Yes, we held meetings—there was meetings held and it was decided to strike.

Q. What?

A. It was decided to strike.

Q. Where was the meeting held that you are talking about?

A. Iron River.

Q. I mean the meeting with the company officials?

A. Iron River.

Q. Do you remember who it was that you talked to—that committee talked to?

A. We presented the demands to Mr. Cannon.

Q. I see. And what did he say?

A. He did not—he wouldn't even discuss the demands with us. In other words, he just dilly-dallied around and stalled.

Q. Did the miners go—they called the strike, you say—they voted a strike?

A. They voted a strike.

Q. And did they actually go out on strike?

A. No.

Q. Do you know why not?

Mr. Bronaugh:

I object to that as incompetent and immaterial and irrelevant.

A. Yes.

By Mr. Murtha:

Q. Do you know?

A. Yes.

Q. What is it?

A. They organized—well, they got the business men to call meetings and all employees at the mine to break the strike, and the Sheriff's office of the County brought a bunch of tear gas and deputized practically everybody that they could.

Q. Did they bring some men in from the outside?

Mr. Bronaugh:

I object to that as incompetent, irrelevant and immaterial.

A. Not that I know of.

By Mr. Murtha:

Q. To assist the Sheriff?

A. Not that I recollect.

Q. All right, now; there was no strike.

A. The strike was called off.

Q. Did the men continue their efforts to gain a collar-to-collar eight-hour day?

Mr. Bronaugh:

Object to that on the same ground.

A. There was—the men were always talking about collar-to-collar work and some of them figured that there was a state ~~law—you~~ know, that the company should have collar-to-collar, but naturally, the way the men felt that being the state law, that the state was not properly upholding it, and we never had an organization strong enough to put pressure on them, but I don't think there was a state law.

Q. Then did they continue their efforts to gain this demand?

Mr. Bronaugh:

The same objection on the same ground.

A. Well, yes, they did continue it.

By Mr. Murtha:

Q. Did they form another union later on?

A. They formed a CIO, on account of the conditions after the United Mine & Smelter Workers union broke up, which the company broke up—then conditions started to get a little worse. They started to push the men around, cut contracts and stuff like that. So the men saw the need of another organization, so we started this here.

Q. When did they form the CIO union?

A. In Iron River, they started in April, 1937.

Q. And what was the number of that union?

A. 1624—Local 1624.

Q. It is what?

A. SWOC—when I mention CIO—it is Steel Workers' Organizing Committee. We wrote in for them, they did not come in of their own accord.

Q. And there was a similar union formed at the mines in that locality, other locals, is that right?

A. The company's representation plan, after the Wagner Act was upheld by the United States Supreme Court, at the mine that I worked, after it was upheld by the Court, we held an election of the E. R. P., and they still elected officers and I was one of them elected. So they called a meeting of the committee men and naturally I was taken in at the meeting, and they wanted to change the iron ore—in other words, put it under another name, the union, and call it an independent union, and I objected—

Q. A company union?

A. Yes.

Q. Yes.

A. And they changed it to—called it the United Miners Union, or something like that. That made—we had quite a squabble over that. I withdrew. I would not having anything to do with it.

Q. The miners, through the CIO union, what is it, 16—

A. 1624.

Q. Have they continued to urge their demands, did they continue to urge their demands for an eight hour collar-to-collar day, up until May 1, 1941?

A. Yes.

Mr. Bronaugh:

Same objection as immaterial.

By Mr. Murtha:

Q. You are here under subpoena, are you?

A. Pardon.

Q. You are here under a subpoena?

A. Yes.

Q. And now, do you waive the read of—would you mind not smoking, please? Do you waive the reading of your deposition after it has been transcribed?

A. Yes.

Q. Or having it read to you or examining it—do you waive that?

A. Yes.

Mr. Murtha:

That is all. You may cross examine.

Cross Examination.

By Mr. Bronaugh:

Q. In all of the mines that you have worked in, or know anything about, until May 1, 1941, the miners were not paid for traveling time?

A. No, they weren't paid for the traveling. Neither were they paid for getting the tools on surface, and bringing in tools and equipment from surface, and bringing them to the shaft; see.

Q. In other words, in all of the mines that you have worked for, or know anything about, the eight-hour work day has been eight hours down there at the working place, at the face?

A. Yes.

Q. That is the way the company has been paying you up until May 1st, for eight hours working down in the mine at your usual working place; and traveling time and these other things I am talking about were not included in your pay?

A. I don't know what incidental things.

Q. I am talking about your tools.

A. About getting tools. It was necessary, because naturally we couldn't carry on our work.

Q. I understand. And it has been customary from the time that you knew anything about these mines not to get paid for those things?

A. No, we did not get paid prior to May 1st.

Q. And you didn't get paid for any of the traveling time?

A. None of the traveling time.

Q. None of it?

A. Oh, part of it—I will take that back.

Q. Where did you get that?

A. What?

Q. What mine?

A. You take hours face-to-face, if you had to travel, would be putting in as blasting—you see, they blast a little earlier in the mine as a safety first measure. You know what I mean?

Q. A little earlier before the end of the shift?

A. Before the end of the shift.

Q. And do you have only one time to blast in the shift?

A. No, two times.

Q. Just before the dinner hour and just before the end of the shift?

A. Correct.

Q. That is when you blast?

A. Yes.

Q. Then you come on out?

A. Yes.

Q. And that is a little bit before the end of the shift, so you do come part of the way on company time?

A. Yes.

Q. Or did?

A. Part of the way.

Q. Prior to May 1st?

A. Part of the way.

Q. But the rest of it was on your own time?

A. Yes, tools.

Q. Tools and equipment?

A. And equipment.

Q. Was all on your own time?

A. All on our time.

Q. On your time?

A. On our time.

Q. And that is universal—I mean, as far as the Nichigan Mines are concerned?

A. There are some of the mines like the Pickans-Mather up around that territory, the men work longer even at the Hanna.

Q At the what?

A. M. A. Hanna. I am talking about—I am talking about the M. A. Hanna Mine, which is the Homer and the Bates, the other property—

Q. Homer and Bates?

A. But at the other property that belongs to the Bethlehem Steel, Pickans & Mather, they work even longer.

Q. Now, who controls the Homer Mine?

A. Well, National Steel, but the Hannah is jobbing for National Steel.

Q. Well, it is affiliated with the National Steel Company?

A. Yes.

Q. The Bates Mine is too, is it not?

A. Yes.

Q. Are those vertical shafts that you go down?

A. Vertical shafts.

Q. And you go to different levels, or are there different levels in the mine?

A. Correct.

Q. And you take them in on your cage?

A. Yes.

Q. And drop them down and they get off at the levels they are working in and walk to that place?

A. Yes. They don't exactly walk to their place, see. They have to get powder.

Q. Have to get powder?

A. Yes.

Q. What I mean, they don't ride. They don't have a way to ride to the working place?

A. Oh, at the Homer. Now, when they rode in on a motor in the car because they had such a long distance to travel.

Q. Now?

A. Then they built a car for them, which was a safety first measure, and they transfer—

Q. In other words, they get off a vertical shaft and get onto a car now?

A. Yes.

Q. And how long has that been going on?

A. It was going on just under the new set-up.

Q. Since May 1st?

A. Yes.

Q. Prior to May 1st, though, they had been getting off the cage and walking to the working places?

A. No, they rode in also, but prior to this, you have to understand that sometimes they would have tools to take in and other stuff, and that came down on the last cage, and naturally, they wouldn't go in on account of they had to take this equipment in with them.

Q. Well, in other words, what you mean is, they didn't immediately leave the underground station. They had to wait there to get some tools?

A. To get the powder and whatever they needed.

Q. But whenever they left the cage, the unloading station, to go to their working places, there was some means of conveyance there to take them to it, prior to May 1st?

A. Prior to when they started to ride it was—the drift that they were driving—see, they were driving a drift to another property, and naturally, as it got further and further away, the men could not walk because it took too long so they started to ride in.

Q. Well, now, when was that?

A. Oh, they started to ride in about six months or more—maybe a year. In this place.

Q. How long does it take them to get from the top of the ground to the place where they work?

A. Let's talk about my working conditions.

Q. All right, your work.

A. Well, when I get underground, how long it takes me to get in my place?

Q. No. This is what I am asking you. You know, when you leave the top, how long does it take you to get from the top to the place where you dig ore—

Mr. Murtha:

Is that not Homer?

By Mr. Bronaugh:

Q. I am talking about right now.

A. Around 15 minutes or better.

Q. Fifteen minutes or better. And that has been true for several years, hasn't it?

A. Well, like I said, under different conditions there might be a little difference.

Q. Would it vary much?

A. No, it wouldn't vary very much.

Q. And are you about as far away from the unloading station as anybody that works in the particular mine that you work in?

A. Yes,—you mean if there are other gangs employed there?

Q. Yes.

A. Yes.

Q. So that probably nobody has to walk—has to travel in your mine from the unloading station to the working place more than, we will say, 15 minutes, or something like that?

A. Let's make it more in some of the places. Let's say between 15 minutes and 25.

Q. In other words, there might be a variance on account of the distance?

A. Ten minutes because of carrying powder and stuff like that. You know, you can't wheel it up a ladder over a long distance.

Q. And they never have gotten any pay for that time?

A. What do you mean?

Q. Up until May 1st?

A. That time it took to travel—

Q. That time that it took to travel in there?

A. No, they never got paid for all those things, that is correct.

Q. And that has always been the way it was up until May 1st?

A. I don't get you clear.

Q. All right. I will pass that by.

Now, the only,—as I understand your testimony, the only time that you ever actually took part in any negotiations with the company representatives with respect to this collar-to-collar—

A. With the company representatives?

Q. Yes.

A. Yes.

Q. (Continuing)—was one time, was it?

A. We negotiated with them one time, but I think that prior to that, I think the committee on a—

Q. I am talking about you now.

A. Yes, I negotiated one time.

Q. One time. And that was the time that you talked to a man named who?

A. Cannon.

Q. George Cannon?

A. Yes.

Q. And that was in the year 1935, wasn't it?

A. That was in—

Q. No, that was in '37.

A. '37 or '38.

Q. It was after you all formed the SWOC union?

A. We formed the SWOC union in 1937, but the demands were not presented—oh, pardon.

Q. Just let him tell it.

Mr. Murtha:

Well, get the dates straight.

A: I am crossed up. The SWOC and the United Mine & Smelter Workers, which was AFofL.

Q. Well, now, what I want you to tell me, is the one time—I am not trying to confuse you—but the one time that you negotiated with a company representative was in what year?

A. In 1935.

Q. '35?

A. Yes.

Q. And that was the AFofL union?

A. That was the AFofL union.

Q. The International Union of Mine, Mill & Smelter Workers?

A. Correct.

Q. You were on a committee?

A. I was on a committee.

Q. And that was the only committee you have been on that negotiated with a company representative, personally—you, personally?

A. No, there was a committee that went to see—

Q. I understand, but you were one of the committee?

A. Yes.

Q. And that is the only committee you have ever been on that negotiated with the superintendent or anybody representing the company?

A. Yes.

Q. And what you know about some other negotiations is what somebody told you, because you weren't there, yourself?

A. The negotiations were too secret when they were held with the management and the E. R. P., see. When the company union held their negotiations, everything was secret and the minutes were taken down by the superintendent of the mine.

Q. So you don't know anything—of your own knowledge, except the ones that you took part in yourself?

A. I know that the superintendent took the minutes down.

Q. Took the minutes down. And you didn't get your collar-to-collar as a result of your negotiations?

A. No.

Q. And you—the collar-to-collar basis of paying didn't come in until May 1, 1941, after the Wage and Hour Administrator handed down that ruling?

A. Yes.

Q. All right.

Mr. Bronaugh:

That is all I want to ask.

Mr. Murtha:

I don't think I cleared up the matter of tools—

Re-Direct Examination.

By Mr. Murtha:

Q. Where were the tools kept, prior to May 1, 1941, at the Homer?

A. Well you see where you work underground, you need equipment, such as bits, rods and drilling steel, and you need cables if you are running a tugger, and the cables are kept in the warehouse. We used to have to get an order and go and get the stuff and bring it to the shaft.

Q. That was before you descended.

A. And then timber, we had to get wedges, spikes, and the odd pieces of timber that we needed. If the occasion arose, and lagging and stuff like that, stage bolts for raising, part of the time they were taken underground and part of the time they were not there, and—

Q. Where would you pick up those latter things?

A. And ladders, we used to pick up.

Q. Where did you get that?

A. We used to get the ladders at the carpenter shop, ladders and wedges.

Q. On the surface?

A. And bring them to the shaft, and the cables spikes, wrenches—if we needed a wrench, or anything.

Q. After May 1st?

A. After May 1st the only thing we do is get an order from the captain, or the shift boss,—

Q. And then those tools are brought to you?

A. The tools are brought to us at the face, right in the working place.

Q. Does that save some time? Does that give more time—allow more time to you?

A. That gives me more time to work.

Q. Yes. How does your production compare?

A. In the place?

Q. How does your production compare now since May 1st, 1941, with your production before May 1st, 1941?

A. Production is just about the same, but you have to speed it up a little. In other words, you have got to pound her on the back, but previously to this, working a little longer, see. If you were working contract, and would have to finish the cut, you know, blast. In other words, work—pound on the back—you know, to practically work a little harder than we should.

Q. Now, tell me this: Do you do about as much in a day now as you did before May 1, 1941?

A. Just about as much work.

Q. After blasting, how long does it take for the smoke to clear? I mean, at the Homer Mine where you are now.

A. At the Homer—it all/varies.

Q. How long does it take the smoke to clear?

A. You see, the ventilation where the current is stronger, naturally, your smoke will—

Q. How is it at the Homer Mine?

A. In some of the working places it varies between—you can say like I just now mentioned, from five minutes to forty-five minutes.

Q. Are there three shifts in some places?

A. There was three shifts in the shaft when they sank the shaft.

Q. One follows the other at eight-hour intervals?

A. Yes.

Mr. Murtha:

That is all.

(Witness excused.)

(Whereupon at 4:20 the depositions were concluded.)

CERTIFICATE OF COURT REPORTER, omitted from the printed record, pursuant to Rule 23 of this Court.

* * * * * * * * *

INTERVENER'S EXHIBIT 1 TO DEPOSITION OF SAM E. SWANSON.

Hall of . . . . Lodge No. 1664 Located at Ely, State of Minn. Date May 23, 1937.

Regular

Lodge met in Special Session on above date, with the following officers in the chairs:

John Debeltz, Pres.
Geo. Burke, V-Pres.

Rudolph Krall, R. Sec'y.
Geo. Kochevar, Inside Guard.
Emil Maki, Fin. Sec'y.
Chas. Mynitti, Treas.
Howard Prouse, Guide.
Oscar Levander, Outside Guard.

Address'.

International Lodge,
A. A. of I. S. & T. W. of N. A.,
500 S. Main St., W. E.,
Pittsburg, (20) Pa.

David J. McDonald, Sec'y Treas.,
Steel Workers Organizing Committee,
3600 Grant Bldg., 1500 Commonwealth Bldg.,
Pittsburg, Pa.

Martin Maki,
Box 719,
Virginia, Minn.

Henry Burkhammer,
221 Fargusson Bldg., 410 or 411 Columbia Bldg.,
Duluth, Minn., 303 West Superior St.

A May 23, 1937.

The organization meeting of Lodge #1664 of the Amalgamated Association of Iron, Steel & Tin Workers of North America was called to order by temporary chairman, Martin Maki; at the Washington Auditorium, May 23, 1937, at 7:30 P. M.

Talks on C. I. O. were given by Joe Van Nordstrand, organizer of the Steel Workers Committee, and Lenard Olson, C. I. O. Organizer of Seamen.

Motion to nominate officers;

Opened; Carried;

Nominations for President:

George Burke,
John Debeltz,
John Gobitch.

Moved and supported that nominations be closed; Carried.

John Debeltz declared elected President.

Nominations for Vice-President:

Geo. Burke,
Albin Jerich.

Moved & supported that nominations be closed; Carried.

George Burke declared elected Vice-President.

Nominations for Rec. Secretary:

Rudolph Krall,
Tony Pechek.

Moved & supported that nominations be closed; Carried.

Rudolph Krall declared elected Recording Secretary.
Motion

Nominations for Financial Secretary:

Emil Maki,
Tony Pechek,

Ralph Nyman,
Frank Muhvich,
Welfred Brabin.

Moved & supported that nominations be closed; Carried;

Emil Maki declared elected Financial Secretary.

Nominations for Treasurer:

Joe Ferderber,
Tony Pechek,
Charles Myntti,
Albin Jerich.

Moved & supported that nominations be closed; Carried:

Charles Myntti declared elected Treasurer.

Nominations for Guide:

Matt Marolt,
Howard Prouse.

Moved & supported that nominations be closed; Carried:

Howard Prouse declared elected Guide.

Nominations for Inside Guards:

Matt Johnson,
George Kochevar,
Bob Nickich,
Leander Runn,
Oscar Levander.

Moved & supported that nominations be closed; Carried.

George Kochevar & Oscar Levander declared elected Inside Guards.

Moved & supported meeting adjourn; Motion carried unanimously.

B

May 30, 1937.

The meeting of the Local Lodge #1664 of the Amalgamated Association of Iron, Steel & Tin Workers, of North America was called to order by Chairman John Debeltz at 7:30 P. M.

Minutes of the previous meeting read.

Moved & supported that the minutes be approved as read; Carried;

Talks were given by C. I. O. Organizer Martin Maki & Industrial Organizer Carl Nykanen.

Financial Secretary, Emil Maki, reported on the finances at to date.

Moved & support that the report be accepted; Carried;

Following business took place:

Discussion of ways & Means to enlarge the membership of the Local Lodge:

Discussion to attend the C. I. O. rally at Virginia June 6 at 2:00 P. M.

Members unanimously voted to participate in a motorcade.

The following volunteered cars:

Blaz Zakrajsek,
Louis Davich,
Gust Watenen,
Frank Baltich,
Frank Ermas,
Ben Kaatil,
Herby Akins,
Steve Lavor,
Emil Maki,
Tony Popish,
Geo. Valchoff,
Bob Nickich,
Fr. Muhvich,
Tony Paun,
Chris Evenoff,
Chris Ivonen.

All participating in the motorcade were requested to meet at the Ely Workers Hall, June 6, at 10:00 A. M.

Moved & supported that we try to get the Washington Auditorium for the next Lodge meeting; Carried:

Moved & supported that the meeting be held Sunday, June 13, at 7:30 P. M; Carried:

Moved & supported that the meeting adjourn; Motion carried unanimously.

C June 13, 1937.

The regular monthly meeting of the Local Lodge #1664 of the Amalgamated Association of Iron, Steel & Tin Workers of North American was called to order by Chairman John Debeltz at 7:30 P. M., June 13, 1937, at the Washington Auditorium.

Minutes of the previous meeting read and approved.

Communications and correspondence read.

Moved & supported that the bill of $2.00 for letter heads be paid. Carried unanimously.

Moved & supported that collection be taken for flowers for our late Brothers John Kovach & Anton Kramar; Carried.

$24.40 was collected.

Moved & supported that the remaining $4.40 be put in the miscellaneous fund:

Carried:

Moved & supported that the Local Lodge draw up a contract for the employees of the Pioneer & Sibley mines of the Oliver Iron Mining Co. Carried:

Moved & supported that the following contract be adopted which consisted of the following demands:

(1) Recognition of the C. I. O. as the sole collective bargaining agent.

(2) Eight (8) hours from collar to collar.

(3) Seniority rights.

(4) Eight (8) ft. timber in all slices.

(5) No contract mining; Eight ($8) dollars per day minimum wage for miners.

(6) Minimum wages for dirt tramers $6 (six) dollars per day.

Carried;

Moved & supported the Lodge elect a negotiation committee; Carried.

The following men were elected unanimously:

Leander Runn,
Welfred Brabin,
Albin Jerich,
Oscar Anderson.

Moved & Supported the next monthly meeting be held on the second Sunday in July at 7:00 P. M.

Carried.

Moved & supported that the meeting adjourn. Motion carried unanimously.

D July 10, 1937.

The regular monthly meeting of the Local Lodge #1664 of the Amalgamated Association of the Iron, Steel and Tin Workers of North America was called to order by John Debeltz, Chairman, at 7:30 P. M., July 10, 1937, at the Washington Auditorium.

Minutes of the previous meeting read and approved.

Martin Maki, C. I. O. organizer of Virginia gave a talk on the interesting events and happenings that occurred at the mines on the range,

Jack Bartley also remarked about conditions on different projects at which he worked.

It was moved and supported that the Grievance Committee present a rate of their earnings for which they are to be paid and ordered paid. Motion carried. Next meeting date left open.

Moved and supported that the meeting be adjourned. Motion carried.

GEORGE BURCK,
Acting Secretary.

E 7 P. M. August 29, 1937.

The regular monthly meeting of the Local Lodge #1664 of the Amalgamated Association of the Iron, Steel and Tin Workers of North America was called to order by John Debeltz, Chairman, at 7 P. M. August 29, 1937, at the Memorial High School in Room 106.

Minutes of the previous meeting were read and approved.

Henry Burkhamer and Joe Angelo, C. I. O. organizers, both gave interesting speeches.

Meeting was well attended.

Election was discussed during the speech by Burkhamer and was decided to wait awhile.

Moved and supported that the meeting be adjourned. Motion carried.

GEORGE BURCK,
Acting Secretary.

F 7 P. M. Sept. 12, 1937.

The regular monthly meeting of the Local Lodge #1664 of the Amalgamated Association of the Iron, Steel, and Tin Workers of North America was called to order by John Debeltz, Chairman, at 7 P. M. Sept. 12, 1937, at the Memorial High School in Room 106.

Minutes of the previous meeting were read and approved.

It was brought to the attention of the Lodge that C. I. O. advertising matter was being destroyed.

H. W. Alderman, C. I. O. organizer, gave a speech and Deluca spoke on organization.

Motion made and carried to send three delegates to the A. F. of L. meeting at Hibbing Sunday, September 19, in the Odd Fellows Hall.

Moved and supported, Chairman appoint three men to attend meeting at Virginia Hibbing.

Meeting closed.

GEORGE BURCK,
Acting Secretary.

Z-31

The meeting was called to order by the vice-president George Burck, the president, John Debeltz, being in the Hibbing C. I. O. meeting.

The minutes of the previous meeting were read and approved.

A motion was made and seconded to pay $5.50 for transportation of the delegates to caucus A. F. L. at Hibbing.

A report was submitted by Emil Maki on the Hibbing Progressive A. F. L. caucus.

A motion was made and carried to accept the report submitted by Emil Maki.

A motion was made and carried to appoint 10 members to help collect dues.

1. John Jurizich—Pioneer.
2. Eino Passo—Zenith.
3. Eino Aspie—Sibley.
4. George Burck—Pioneer.
5. Howard Prouse—Pioneer.
6. George Kochevar—Zenith.
7. Steve Labor—Pioneer.
8. Charles Mahovich—Pioneer.
9. Antti Tuomikoski—Zenith.
10. John Muhvich—Sibley.

A motion was made and carried that a committee be appointed to plan a dance. The committee are: 1. Antti Tuomikoski; 2. Lee Brownell; 3. Anton Pechek.

A report was made on the Grievance Committee elected at the Fink Hall, Saturday, October 2, 1937.

John Debeltz is to get the members together.

A motion was made and carried that the meeting ~~be~~ adjourned. The meeting was well attended.

Acting Secretary,
ANTON PECHEK.

G Nov. 14, 1937.

The meeting was called to order by John Debeltz.

The minutes of the last meeting was read by the Secretary.

A motion was made and seconded that the minutes be adopted as read.

Sam Swanson made a report on the meeting held at Hibbing. The report was approved.

Bills were reported and ordered paid.

A motion was made and carried that Lodge No. 1664 indorse no candidate for office at coming city election.

A letter from Henry Burkhammer was read and ordered tabled for the present.

A motion was made and carried to apoint a Resolution Committee. Those appointed are John Jurisich, Sam Swanson, John Muhvich, Anti Toumikoski, Leander Runn, John Karj, Abel Anderson and Chas. Makovlich. Sam Swanson was appointed Chairman. The meeting for the Resolution Committee called for 6 o'clock Nov. 27, 1937.

The committee to attend the convention at Minneapolis in December are Emil J. Mackie, Leander Runn, and George Bruck.

A motion was made and carried that the meeting be adjourned. The next meeting to be held Dec. 12.

Secretary, G. BURCK.

H Dec. 19, 1937.

The regular monthly meeting of Local Lodge No. 1664 of the S. W. O. C. was called to order at 7 p. m. by John Debeltz.

The minutes of the previous meeting were read and approved.

Henry Burkheimer gave a talk on the C. I. O. convention held at Pittsburgh.

Joe Angelo gave a talk on organization.

Sam Swanson made a report on the Range Council meeting. Report approved.

Moved and supported that we join Range Council. Motion carried.

Moved and carried that all members wear their buttons. Motion carried.

Moved and supported that we put in our application for a meeting room in the new C. C. building. Motion carried.

Moved and supported that we suppor grievances of only those members who are in good standing. Motion carried.

Next meeting called for Jan. 16, 1938.

Motion made and carried that Meeting adjourn.

Secretary,
ANTON PECHEK.

I January 16, 1938.

The regular monthly meeting of Local Lodge No. 1664 of the S. W. O. C. was called to order at 7:00 P. M. by John Debeltz.

The minutes of the previous meeting were read and approved as read.

Communications were read and ordered filed.

Anton Pechek unanimously indorsed to be Recording Secretary to fill our the term of Rudolph Krall suspended.

The following bills were allowed and ordered paid.

$10.00	J. E. Maki. Services for 1937.
$ 3.50	Hall rent.
$ 2.00	Telegrams.
$ 6.00	Sam Swanson. Range Council Delegation.
$34.00	J. E. Maki. State Delegation.

Report on the State Delegation was made by E. Maki.

Motion made & carried that grievance committee meet with the management at least once each month.

Motion made & carried that we pay the Fin. Sec. $5.00 per mo. for his services.

Motion made & carried that we pay the Red. Secr. $1.00 per mo. for his services.

The following are members authorized to collect dues:

Steve Labor, Sam E. Swanson, Toivo Maki, J. Emil Maki, John Debeltz, Geo. Burck, Charles Myntti, Rudolph Kerntz, Anton Pechek, John Jurisich, John Muhvich, Howard Prouse.

The following are members of the Grievance Committee:

Leander Runn, Eino Aspie, John Koschak, Jr., Frank Novosel, Albin Jurich, Charles Starkman, John Debeltz.

Meeting called for Feb. 13, 1938.

Meeting adjourned.

Secretary,
ANTON PECHEK.

J Feb. 13, 1938.

The regular monthly meeting of the Local Lodge 1664 of the S. W. O. C. was brought to order at 7:30 P. M. by John Debeltz.

The minutes of the previous meeting were approved as read.

Communications were read and ordered filed.

Motion made and carried to support the action taken on the Hill Sheppard Bill H. R. 6704.

Motion made and carried to hold a class on community form, classes to be held once a week.

Brother Martin Mackie talked on the tie between Trade Unionism and politics.

Motion made and carried to adopt the rules of procedure drawn up in National Convention.

A bill of $3.00 was allowed and ordered paid to Frank Jasper for use of his car to Duluth.

Motion made & carried to adopt a membership committee. The following were appointed:

Sibley—John Muhvich, John Koschak, Jr.

Pioneer—Anton Boitz, John Loushin, Jr.

Following have been elected to act as auditing committee:

Sam Swanson, John Kari, Matt Johnson, William Maki, George Kochevar.

10 copies of the Spy Racket were bought at $.35 per copy.

Next meeting was called for March 13, 1938.

Meeting adjourned.

Secretary,
ANTON PECHEK.

K

Ely Minn, March 13, 1938.

The regular monthly meeting of the Local Lodge 1664 of the S. W. O. C. was held at the Memorial Bldg. In Room 106.

The minutes of the previous meeting were read and approved as read.

Communications were read and action taken as follows:

1. Motion made & carried to do our business with the Postal Telegraph in favor of the Western Union.

2. Motion made and carried to support motion taken on the Schwellenbach Allen Bill.

3. Motion made and carried to take action to support Bills H. R. 9102 and S. 3296 on Federal Art.

4. Motion made & carried to support the Austin Defense Committee to the extent of $5.00 from the Local treasury.

5. Motion made and carried to buy a spray for $10.00 for our Deceased brother John Tikka.

6. Motion made and carried to ask for information of Lodge 734 Musicians Union traveling band and refer same to following committee:

Antti Tuomokoski, Adolph Janeksela, John Kotzian, Toivo, Maki, William Mackie, Robert Nikich.

Report of Financial Secretary accepted. Balance on hand Dec. 31, 1937, $181.94.

Report of Auditing Committee checked as above also accepted.

The contract to be brought to Company was discussed and a few minor changes made,

Next meeting was called for March 27 at the Memorial Bldg., Room 106.

Meeting adjourned unanimously.

Secretary,

ANTON PECHEK.

L Ely, Minn., March 27, 1938.

A special meeting of the Local Lodge No. 1664 of the S. W. O. C. was held at the Memorial Bldg. in Room 106.

Minutes of the last meeting were read and approved as read.

Communication on the Fuel Oil Tax Bill was read and ordered filed.

Motion made and carried to buy a frame for our charter.

Motion made and carried that we send a written application to the City Council for a meeting room in the new C. C. Bldg.

Motion made and carried that be buy a $2.00 ad for the Range Council C. I. O. Year Book.

Motion made & carried to pay a bill of $5.50 to Bro. Sam Swanson for expenses on trip to Range Council meeting.

Mr. Jarvi, the business manager of the Midwest Labor talked on his newspaper.

The following members were appointed to act as subscription agents.

1. George Burck, 2. Eino Aaspi, 3. Oscar Maki, 4. Matt Marolt, 5. Oscar Levander.

Mr. Hartman and Coldiron, organizers from the Duluth office of the S. W. O. C. each had a few words on organization, its purposes and effect.

We held a small discussion on different section of our proposed contract.

Next meeting called for Apr. 10. 1938.

Meeting adjourned,

Secretary,
ANTON PECHEK.

M Ely, Minnesota, April 3rd, 1938.

A special meeting of the Zenith Miners of Local Lodge No. 1664 of the S. W. O. C. was held at the Ely Workers Hall.

Martin Mackie was elected chairman.

There were talks given on the results of meetings between grievance committee and mine officials.

Discussions on attempts to form rival A. F. of L. unions.

Warned against paying dues to collectors without proper credentials.

Eino Passo appointed grievance committee chairman.

The following are griavances raised ~~and carried~~.

1. That a powder house be made on the 14th level.

2. Bring to the attention of officials that abusive language was used to men by shift boss Ed Williams.

3. Intimidation practiced on known Union men by the Mine Captain.

4. Request an answer on grievances previously brought up such as:

A. Ventilation.

B. Safety.

C. Time of lowering and hoisting men.

4. Request Union be allowed to post notice of Union meetings in Dry House.

N. Ely, Minn., Apr. 10, 1938.

The regular monthly meeting of the Local Lodge No. 1664 of the S. W. O. C. was held in the Memorial Bldg. in Room 106.

All officers were present with exception of Charles Mynitti & Oscar Levander.

Minutes of the previous meeting were read and approved as read.

Motion made and carried to table.

Motion made & carried to write a letter to our Senators advising them that we are opposed to investigation of the Maritime Situation by the United States Senate.

Sam Swanson made a report on his work of soliciting ads for the Range Council C. I. O. Year Book.

Motion made and carried to let all candidates for public office, who ask to come to speak for not more than 15 minutes.

A committee was appointed to meet & confer with the community board for the purpose of getting a meeting room in the C. C. building and allowing us to hand up our charter.

1. Howard Prouse, 2. Sam Swanson, 3. Emil Maki, 4. John Krall, 5. George Burck, 6. Anton Pechek.

Next meeting called for May 15, 1938. Meeting adjourned.

Secretary,
ANTON PECHEK.

O.

Ely, Minn., May 15, 1938.

The regular monthly meeting of the Local Lodge No. 1664 of the S. W. O. C. was held in room 106 of the Memorial Bldg.

Motion made and carried to accept the minutes of the previous meeting as read.

Motion made & carried to develop sports activities within our Local.

The following are appointed on committee: John Krall, Steve Strutzel, Frank Jasper, John Loushin & Emil Maki (Pete Maki).

The communication on ties with the State Emblem of the C. I. O. was ordered tabled.

Bill for pamphlets was ordered paid	$ 2.50
Newspaper Guild strikers	5.00
Scrap Iron workers	5.00
Motion John Debeltz for running expenses	10.00
Frame for our Charter	4.00

Financial Secretary's report accepted.

Report of the Auditing committee thru March 31, 1938, accepted.

S. W. O. C. auditors report accepted.

P. M. Curran.

Motion made and carried to keep our entertainment fund separate from our expense fund.

A report was made on proceedings of the Dance Committee.

Organizer Tomasich had a few words to say.

11 Candicates for Political Offices made talks on different phases of politics.

Next meeting called for June 11, 1938, at the Community Bldg.

Meeting adjourned.

Secretary,
ANTON PECHEK.

P. Ely, Minnesota, Sat. June 11, 1938.

The regular monthly meeting of the S. W. O. C. Lodge No. 1664 was held at the Community Bldg. in the Auditorium.

The minutes of the previous meeting were read and approved as read.

Communications *take* care of as follows:

1. The bill providing federal fund for W. P. A. and other projects was ordered filed.

2. Action taken on the letting of government contracts was approved.

3. Motion made & carried that the members of our Union boycott products of the Pure Oil Company, Hickok Oil Company, Continental Oil Co. & American Oil Company.

4. The LaFollett Civil Liberties committee ordered filed.

5. Request of Miscellaneous Workers Union of Austin was ordered filed.

6. Motion made & carried to order 50 dress buttons to be sold at $.50 each.

7. The petition of the Commitee of a Million for Unity to be signed & sent to Kenosha Wisc.

8. Minnesota Leader Photographs of our late governor Floyd B. Olson ordered filed.

Martin Mackie talked about the labor situation on the range.

Plans for the Labor Day program to be carried on.

Next meeting called for June 26 at the Community Bldg.

Meeting adjourned.

Secretary,
ANTON PECHEK.

Q Ely, Minnesota, Sun. June 26, 1938.

A meeting of Lodge No. 1664 was held at the Community Bldg.

The minutes of the previous meeting were read and approved as read.

Motion made and communications ordered filed as follows:

Acknowledging receipt of resolutions sent to Pres. F. D. Roosevelt, Sen. Henrick Shipstead and Sen. Ernest Lundeen.

L. D. Pro Committees.

Communication from the City of Ely concerning The Community Band for Labor Day Program referred to committee Sam Swanson, Matt Marolt, Jack Pavlisick, Joe Kastelic Howard Prouse and Geo. Burke,

The following are members of the Sports committee: Frank Jasper, Steve Strutsel, John Krall, Matt Marolt, Standley Loushin, Emil J. Maki and Riston Ivonen.

The following are members of the entertainment committee: William Mackie, Toivo Maki, John Kotzian.

Report by William Mackie on the progress of the entertainment committee and accepted.

Proceeds from the First Annual Ball, $223.42. $50 was allotted to the Sports Committee for advancement of the Diamond Ball team.

Report on the meeting held at Hibbing and called by Bro. Burkhammer was made by J. E. Maki and Sam Swanson.

The following are members of a committee to draw up a resolution concerning the rerouting of HiWay No. 1. from 10th Ave. E. to the Cemetery Road. This resolution to be sent to Comm. Elsberg, Gov. Benson, Sen Lommen, Rep. Ray Anderson and Joseph Karker.

The present officers were all elected to the same offices unanimously.

Next meeting called for 4th Sun. July.

Meeting adjourned.

Secy.,

ANTON PECHEK.

R

Ely, Minnesota, Sunday, July 24, 1938.

The minutes of the previous meeting were read and approved as read.

Communications were read and ordered filed as follows:

1. Local 270 of Banning, Calif.

Local 478 Austin, Minn.

2. ~~Relocation of Highway 1 east~~ end of Ely.

Moved and supported to set aside $50 for Labor Day expenditures.

A committee of 3 was appointed to meet with the Equalization Board of the City of Ely. Sam Swanson, J. E. Maki and Anton Pechek.

Bro. Martin Mackie explained what labor is doing on the Range.

Moved and supported to accept the statement of our Financial Secretary.

Monies in the bank $473.76 .... $706.17

Moved and supported to accept the report of the Auditing Committee.

Discussion was held on the problem of the Labor Day Program.

Meeting adjourned.

Secretary,
ANTON PECHEK.

S Ely, Minnesota, Friday, Aug. 26, 1938.

The minutes of the previous meeting were read and approved as read.

The following officers were absent.

Anton Pechek, J. Emil Maki, Howard Prouse.

Letters from Congressman Bernard and Harold Atwood were read and ordered filed.

Letter to be sent to the President of Armour & Co. was ordered to be filled out.

Report of the Labor Day Committee was heard & ordered filed.

Letter on Regional Conference to be held in Duluth on Sept. 10. Delegates are John Krall, Eino Passo, Rueben Taylor, Sam Swanson, John Muhvich, John Debeltz.

Chairman Debeltz made a report on relocation of Road No. I.

Motion made & supported we write a letter of thanks & appreciation to Comm. Elsberg for his efforts in having the work on Highway No. I done this fall.

$76.00 in dues was collected at the meeting.

Secretary was instructed to make a list of the Zenith Miners.

Report of the Grievance Committee was made by Debeltz.

SAMUEL E. SWANSON,
Acting Secretary.

T

Ely, Minnesota, Sept. 23, 1938.

Community Bldg.

1. The minutes of the last meeting were read and approved.

2. Officers absent, Oscar Levander.

3. A bill for $5.93 for letterheads and paper was ordered paid.

4. Letter of appreciation from J. T. Bernard was ordered filed.

5. A bill for $10.00 for expenses to a Labor Conference in Duluth Sept. 13, was ordered paid.

6. A report on the Conference was made by Sam Swanson.

7. A report on the Labor Day Committee was made by Sam Swanson.

8. A letter of thanks was ordered sent to Jacob L. Pete for the use of his car to the Duluth Conference.

9. A report of the Zenith Grievances was made by Eino Passo.

10. A bill for $.71 for Soc. Sec. records and notarizing same.

11. Motion made and carried to donate $25.00 to the Local Farmer Labor Club for Campaign purpose.

12. Motion made and carried to donate $10.00 to J. T. Bernard for campaign expenses.

13. Motion made and carried to appoint three members to attend a Farmer Labor Club meeting. Leander Runn, George Burck and George Kochevar.

14. Motion made and carried that we take in new or suspended members upon payment of two month's dues. Initiation fee omitted.

15. Motion made and carried to get a 100 copies of the By-Laws and have them distributed to members.

16. Motion made and carried to have a good time party for members and

a. $50.00 to be taken from Entertainment fund.

2. Committee to form plans—1. Sam Swanson, 2. John Muhvich, 3. Stanley Lobe, 4. Louis Banks, 5. Howard Prouse.

Meeting adjourned.

ANTON PECHEK,
Secretary.

U. Ely, Minnesota, Fri. Oct. 21, 1938.

1. The minutes of the previous meeting were read and approved as read.

2. Motion made & carried that we have no political speakers at any regular meeting.

3. Motion made & carried to donate $5.00 toward Senator Lommens broadcast.

4. Letter of appreciation for $10.00 for campaign expenses received from J. T. Bernard.

5. The financial secretary's report for 1st quarter was accepted. $508.33 total monies in the bank.

6. A report was made by the C. I. O. bowling club.

7. $60 was spent for a good time party.

8. Report of the Grievance Committee was made by Chairman John Debeltz.

9. Emil J. Maki was unanimously elected as an addition to the grievance Committee.

10. Samuel Swanson made a report on the Range Council meeting in Sept.

11. Meeting adjourned.

ANTON PECHEK,
Secretary.

V. Ely, Minnesota, Friday, Nov. 11, 1938.

The minutes of the last meeting were read and approved as read.

Answer from H. E. Wenzel, Comm. of Conserv. was ordered filed. It regards resolutions of.—

Motion made & carried to send the family of any deceased member a copy of the Social Security Board notice.

A bill for $6.60 for delegation to Range Council was ordered filed.

Stamps & Social Sec. $12.00 O. K.'d.

A typewriter was bought from J. E. Maki for $37.50.

A $15.00 bill was approved spent out of the entertainment fund for an after meeting lunch.

A Range Council meeting report made by Sam Swanson accepted.

A report was made by Fin. Sec'y. Total balance in the bank, $713.30, accepted.

Adron Coldiron had a few words to say as also did Bro. Tomasich.

A motion made and support that the chairman appoint a Legislative & negotiating committee.

A few members of the Eveleth Local were also present. They were well impressed by the attendance & strength of our Lodge.

Meeting adjourned.

Secretary,
ANTON PECHEK.

W.

The regular monthly meeting of the Steel Workers Union was held in the Community Center Building on Friday, December 9th at 7:30 P. M.

The minutes of the last regular meeting was approved as read.

Communication from Henry Burkhammer regarding contract with Oliver Iron Mining Co. was ordered filed.

Chairman announced he had appointed Eino Passo and George Kochevar from the Zenith mine, Eino Aspie and John Muhvich from Sibley and Oscar Maki, Art Souja, Howard Prouse and Sam Swanson from the Pioneer on the legislative and negotiating committee.

Report was made by the legislative committee and a talk on legislation problems was given by representative elect William Hantala and organizer Andrew Tomasich on the same.

Moved and supported we attend the meeting of the legislative committee at Eveleth on December 10th. Carried. Eino Passo and Eino Aspie were appointed as delegates.

Moved and supported we donate $5.00 out of the entertainment fund for the Christmas basket fund. A collection of $6.35 was taken up among the members and a total of $11.35 was ordered turned over to the fund. Howard Prouse, Frank Jasper and Wm. J. Makie were appointed on this committee to meet with Ray Hoefler on Dec. 15th. Moved and supported to send Range Council $10.00 expense of delegate.

Moved and supported that we send Dr. O. W. Parker $5.00 for the purchase of Xmas seals. Carried.

Moved and supported we pay bill of Eino Passo for Range Council delegates for the amount of $9.25. Carried.

Moved and supported we donate $5.00 to the International Timber Workers Union #29 in their fight against wage cuts. Carried.

Moved and supported we have lunch at our next regular meeting on January 13th. Howard Prouse, Rudy Kerntz, and Sam Swanson were appointed on this commitee. Carried.

Report was made by Chairman Debeltz on meeting with Oliver officials. Meeting adjourned. Sam Swanson, Acting Secretary.

X.

The regular monthly meeting of the S. W. O. C. was held at the Community Building on Friday Jan. 13, 1939, at 7:30 P. M.

The minutes of the previous meeting were read and approved as read.

Instructions were given the Secretary to send for 50 S. W. O. C. buttons.

The cummunication from the Hearst Strike Committee Chicago was ordered filed.

Letter of appreciation from the Timber Workers Local #29 was ordered filed.

Motion made supported and carried to accept the Financial Secretary's report. 527.01.

The following bills were ordered paid.

For a check book $2.00.

Filing cabinet $2.50.

Levi Saari $4.00 for shaves & hair cuts Wester. Mala Maki.

Postage Soc. Security etc. $2.00.

To Eino Passo for two trips one to Eveleth ahd 1 to Virginia $8.50.

$10 was allowed from the General fund toward a radio program on Labor organization thru Station W. M. F. G.

A report on the progress of the bowling team was made by Matt Marolt.

Shoes were ordered bought for the bowling team.

Brother Adron Coldiron talked on the Labor organization problem. Accepted.

John Debeltz made a report on the grievance committee. Accepted.

Report of the Legislative Committee made by Sam Swanson. Accepted.

Report on the Nat'l S. W. O. C. convention held in Nov. 1938 was made by Delegate Fred Smith. Accepted.

The Secretary was instructed to send letters to Congressmen and Senators to continue W. P. A. as at present.

Karl Nikkanen is the instructor of the W. P. A. Community Forum.

Motion made and carried we sponsor this Forum and arrange to get a meeting place for same.

Bills for lunch to be held after this meeting were ordered to be met.

Meeting adjourned 10 P. M.

Secretary,
ANTON PECHEK.

Y.

A special meeting of the S. W. O. C. was held at the Community Center Auditorium on Saturday, Feb. 4, 1939, at 7 P. M.

Minutes of the previous meeting were read and approved as read.

Motion made supported and carried that we write resolution letters to William Pittinger, Congressman Woodrum and Speaker Bankhead on adequate appropriations to the N. L. R. B.

Motion made supported and carried to donate $5.00 to Local 1138 strike fund.

The reply of Henrik Shipstead to our letter on W. P. A. appropriation was ordered filed.

Bills for lunch to be served after this meeting were ordered met.

Brothers Henry Burkhammer and Adron Coldiron gave a little talk and received a big hand.

Meeting adjourned.

Secretary,
ANTON PECHEK.

Z.

The regular meeting of the S. W. C. C. was held in the C. Bldg. Auditorium on Feb. 25, 1939, at 7:00 P. M.

Received acknowledgment of recoluations pertaining the Wagner Labor Act. from the following:

1. Gov. Herald E. Stassen.
2. William A. Pittenger.
3. Ernest Lundeen.
4. Henrik Shipstead, and
5. Gerard Reilly Solicitor of Labor.

Resolution made supported and carried we buy a $2.00 ad. for the Anniversary issue of the Midwest Labor.

Bill for $5.50 to Levi Saari was ordered paid for hair-cuts & shaves for Bro. Wester Mckie.

Four tickets at 25c for the Annual Winter Sports Frolic were ordered bought.

The County Mine Inspector, Mr. Ed Smith, was here and discussed mine safety problems with the members.

Meeting adjourned.

ANTON PECHEK, Sec'y

Z-1.

1. The regular monthly meeting of the S. W. O. C. Lodge 1664 was held in the C. Bldg. Auditorium on Sat. Mar. 25, 1939. The meeting was opened by Vice Chairman George Burck at 7:30 P. M.

2. The minutes of the previous meeting were read and approved at read.

3. The communication from Henry Burkhammer on the Fansteel Case was read.

a. Motion made & carried to donate $5.00 toward support of the families of the members who are in jail.

4. The letter from Henry Burkhammer in regards to organizing the Soudan Miners was ordered filed.

5. The report of collections and expenses of the Radio program on Labor organization was ordered filed.

6. The exemption from payment of Initiation fee definitely ends on Mar. 31, 1939.

7. The communication from the Hearst Strike committee was ordered filed.

8. A letter of appreciation from the Ely Commercial Club for our participation in the Winter Sports Frolic was ordered filed.

9. Bro. Sam. Swanson & delegation to the Range Ind. Council was requested to attend the United May Day Committee meeting at the same time.

10. Sam Swanson read a few articles of the law pertaining to the duties of the County Mine Inspector.

a. Motion was made & carried to write letter to County Commissioners and to request the other locals to do the same to elect a mine inspector other than now in office.

11. Motion was made & carried that we buy 20 tickets for a dance from the Ely P. T. A. for the Eye glass fund.

12. The report from the Grievance Committee on the Hospitalization question was favorable.

13. The meeting was adjourned at 10:00 P. M.

ANTON PECHEK. Sec'y.

Z-2.

The regular monthly meeting of the S. W. O. C. was held in the Community Bldg. Cafeteria on Saturday Apr. 29, 1939, at 7:00 P. M.

The minutes of the previous meeting were read and approved.

Letter from Van A. Bittner acknowledging receipt of $5.00 for the Fansteel Workers was received and ordered filed.

Letter of thanks from Mrs. A. E. McMahon was ordered filed.

Communication from Hearst Strike Committee was ordered filed.

Communication from the Friends of the Abraham Lincoln Brigade was ordered filed.

A call for delegates to the 2nd Annual Convention of the Minn. C. I. O. was read.

a. Moved and supported and carried that we elect 4 delegates, 1 from Zenith, 1 from Sibley, and 2 from the Pioneer Mine. Eino Passo, Zenith, John Muhvich, Sibley, Samuel Swanson & Anton Pechek, Pioneer were elected. Delegates ordered to leave Friday morning to take in entire convention.

Communication from Bro. Tony Petroff was received and discussed.

Moved and supported we donate $10.00 and a committee of 3 investigate this case. Carried. Appointed were John Jurisich, Dan Chachich and Anton Pechek.

A sympathy card of thanks was received from the Sershen family. Ordered filed.

A delegation of ten visiting members from Eveleth C. I. O. Lodge 2078 was introduced.

Representatives Hartman & Coldiron gave talks on how negotiations were proceeding.

Range council president Fred Smith also visited our lodge.

Financial report showing a balance on hand.

Auditing Committee report was read and ordered filed.

A bill for $9.00 for barber services to Bro. Ignac Jerich was ordered paid.

It was decided to sponser a Diamond Ball Team to the extent of $50.00.

A bill for lunch was ordered paid.

Meeting adjourned.

ANTON PECHEK, Sec'y.

Z-3.

At a special meeting held in the Community building May 20, 1939.

A welfare committee of 5 was appointed: Anton Pechek, Dan Chachich, John Jurisich.

The Bond Issue was indorsed. To take up the outstanding warrants at 6% and borrow from the state at 3%.

Meeting adjourned.

ANTON PECHEK, Sec'y.

Z-4.

Lodge 1664.

The regular monthly meeting of the S. W. O. C. was held in Room 209 of the Community Bldg. at 7:00 P. M. on May 27, 1939.

The minutes of the previous meeting were read and approved as read.

Communications.

1. A letter from Joe Van Nordstand St. E. Council Pres. on the Wagner Act was ordered filed as it has been acted on previously.

2. A letter from the Ely City Council on keeping our alleys clean was ordered filed.

3. The Washington News letter on social legislation a bi-weekly paper was ordered filed.

4. A letter from the Midwest Labor was read. Sam Swanson was elected correspondent or reporter.

5. A letter from Chairman Philip Murray on displacement of labor by machines was ordered filed.

A. A bill of $4.00 for barber services for Ignac Jerich was ordered paid.

$51.30 was the cost of the delegation to the 2nd Annual Convention of the State C. I. O. council.

A report on the convention was made by Sam Swanson.

Meeting adjourned.

ANTON PECHEK, Sec'y.

Z-5.

Lodge 1664.

The regular monthly meeting of the S. W. O. C. was held in Room 209 of the Community Bldg. on June 24, 1939.

The meeting was called to order by Pres. John Debeltz at 7:00 P. M.

The minutes of the previous meeting were read and approved as read.

The communication O. W. Rogers of Stroud. Okla. Bx. 341. in behalf of the Mid-Continent Strike Committee, Tulsa, Okla. was ordered filed.

The Sec'y was instructed to write to our congressman and to the chairman Edward T. Taylor of the House appropriations committee, in support of the Casey Bill, H. R. 6470.

The answer of Ernest Lundeen on Amendments to the Wagner Act was filed.

The communication relating that Martin Mackie and Andrew Tomazich are no longer Representatives of the S. W. O. C. was ordered filed.

Governor Stassens letter on his Minn. Traffic Safety Contest was ordered filed.

Letter concerning leaflets on the Apex Verdict case was ordered filed.

A bill of $5.00 for barber services to Ignac Jerich was ordered paid.

Rep's Brown and Coldiron attended our meeting and also Bro's Westling and Sepanio from Virginia.

The Labor Day celebration committee was ordered to go ahead with their plans.

Report of the grievance committee was made by Geo. Burck.

The chairman to select the men he wants to serve on grievance committee, same to be voted on at the next meeting.

Meeting adjourned.

ANTON PECHEK, Sec'y.

The following are the officers elected unanimously to serve from July 1st, 1939, to July 1st, 1940:

Geo. Burck	Pres.
John Muhvich	Vice Pres.
Anton Pechek	Rec. Sec'y.
J. E. Maki	Fin. Sec'y.
Charles Mynittie	Treas.
Eino Passo	Guide
Wm. Shop	Guard

Grievance Committee for the Oliver Iron Mining Co.

Charles Starkman.
Leander Runn.
John Muhvich.
John Kari.

Oscar Maki.
Eino Aspi.
Frank Novesel.
George Burck.

Welfare Committee.

John Jurisich
Dan Chachich.
Eino Passo.
Rudolph Kerntz.
Antti Tuomokoski.
John Loushin.
Joseph Pechavar.

Membership Committee.

John Debeltz.
Anton Pechek.
John Muhvich.
Geo. Burck.
J. Emil Maki.
Eino Passo.
John Jurisich.
Eino Aspie.
Louis Banks.
Sam E. Swanson.
Charles Myntti.

Sports Committee.

Frank Jasper, Ch.
Risto Ivonen.
Mathew Marolt (Shorty).
Herbert Akins.
Bob Nikich.
John Krall.
Urho Hokkanen.

Dance Committee.

Wm. Mackie.
John Kotzian.
Howard Prouse.
Henry Hendrickson.
Dominic Finco.
Nat. Mondati.
Bob Nikich.

Auditing Committee.

John Kari.
Matt Johnson.
George Kochevar.

Z-6.

"The regular monthly meeting of the S. W. O. C. #1664 was held in the Community Bldg. Room 209 on Saturday July 29 1939.

The meeting was called to order by Pres. Geo. Burck at 7:30 P. M.

The minutes of the previous meeting were read and approved as read.

The communications were taken care of as follows:

Sam Swanson, John Muhvich and Geo. Burck were elected delegates to participate in the meetings of the Range Civic Association.

A sympathy card from the family of the late John Stubler was ordered filed.

Bill for $6.00 for barber services to Ignac Jerich was ordered paid.

Bill for $13.00 financing a trip to Duluth for information on the stamp system of dues collecting was ordered paid.

A report of the trip was made by J. Emil Maki.

The financial report leaving a balance of $526.77 was accepted as made.

A report on the progress of the Labor Day Program Committee was made by Sam Swanson.

A motion was made supported and carried to donate $10.00 to the Cass Lake Strike Fund.

A motion was made supported and carried to award each Eino Passe, Louis Banks and Geo. Kochevar $5.00 for the shift each lost when subpoenaed in the N. L. R. B. hearing of the Richards Mather Mining Co.

John Skerjanc was instructed to make a full report of his grievance and also to accompany the grievance committee on their next trip to the Oliver office.

The meeting was adjourned 9:15 P. M.

ANTON PECHEK. Sec'y.

Z-7.

The regular monthly meeting of the Steel W. O. C. was held in Room 209 in the Community Bldg. on Saturday Aug. 27, 1939.

The meeting was called to order by V. Pres. John Muhvich at 7:00 P. M.

The minutes of the previous meeting were read and approved as read.

The action of the Sec'y on the strike question between the P. W. O. C. and Armour & Co. Chicago was approved.

Fred Brown, Org. made a report on the progress of the S. W. O. C.

Sam Swanson made a report on the progress of the Labor Day Committee.

John Skerjanc's grievance was satisfactorily settled.

A bill for $5.00 for barber services to Ignac Jerich was ordered paid.

$10.00 was allowed the Diamond Ball team for a scheduled game at the Embarrass Community fair Sept. 3, 1939.

Meeting was adjourned.

ANTON PECHEK, Sec'y.

Z-8. Ely, Minnesota, Sept. 23, 1939.

The regular monthly meeting of the S. W. O. C. Lodge #1664 was held in Room 209 in the Community Bldg. at 7:00 P. M.

The meeting was called to order by Pres. Geo. Burke.

The minutes of the previous meeting were read and approved as read.

A receipt from the Cass Lake Strikers was ordered filed.

The Secretary was order to send a resolution to the Armour Packing Co. To negotiate a contract with it's workers.

The communication regarding insurance for our officers was ordered tabled until next meeting.

The Secretary was instructed to send for a hundred cards to be used to ask for a statement of earnings from the Social Security Board.

$28.00 was realized from the sale of show tickets by the Bowling Club. It was ordered turned over to the Fin. Sec'y.

$8.00 was allowed to bowling team for a return match with Keervantin.

A report on the Labor Day Program was made by Sam Swanson. A balance of $2.81 is left in the Labor Day Fund.

A report of the grievance committee was made by Geo. Burke.

a. A motion made & carried to ask for a duplicate accident report for every injury.

The Welfare Committee was instructed to call on the widows of our members.

A bill for barber services to Ignatz Jerich was ordered paid.

Meeting adjourned 8:30 P. M.

ANTON PECHEK, Sec'y.

Z-9. Ely, Minnesota, Oct. 14, 1939.

The regular monthly meeting of the S. W. O. C. Lodge #1664 was held in the Community Bldg. at 7:30 P. M.

The meeting was called to order by Pres. Geo. Burke.

The minutes of the previous meeting were read and approved as read.

The communication from the Hearst Strike Committee Chicago was ordered filed.

The communication from the V. F. W. in regards to moving picture was ordered filed.

The summary of the audition of our books from Apr. 11, 1938 to July 31, 1939 was ordered placed on file. Auditor F. D. Applebee.

The Sec'y was ordered to send resolutions regarding to rights of workers involved in the Farm Credit Administration and its subsidiaries to organize.

The Fin. Sec'y report leaving a bal. of $618.23 was accepted as made.

The Treasurers report accepted as made.

Organizer Adron Coldiron gave a report on the progress made on the Iron Ranges.

Fred Smith Range Council Pres. was present.

Sam Swanson made a report on the last Range Council meeting.

Motion was made and carried to advance $15.00 per capita to the Range Council.

Communication regarding Ins. for officers was ordered tabled.

Motion was made and carried to have lunch and invite members of other lodges on Range.

Motion made and carried to pay Barber Dan Bokin for barbers services to date to Joseph Pechavar.

Meeting adjourned at 9:00 P. M.

ANTON PECHEK,
Sec'y.

Z-10. Ely, Minnesota, Nov. 18, 1939.

The regular monthly meeting of the S. W. O. C. Lodge #1664 was held in the Community Bldg. Auditorium at 7:30 P. M.

The meeting was called to order by Pres. Geo. Burke.

The minutes of the previous meeting were read and approved as read.

The communication from the International Labor Defense N. W. City was ordered filed.

The communication from the Mid-Continent Petroleum Corp. Strike Comm. Tulsa, Okla. was ordered filed.

The communication from the Hearst Strike Comm. Chicago, Ill. was ordered filed.

The answer from Senator Henrik Shipstead in regards to Farm Credit Administration was ordered filed.

The Range Council report was made by Sam Swanson.

The following delegation made interesting talks on the progress on the S. W. O. C. on the rest on the Range.

Adron Coldiron, Organizer.
Bro. Baxter, Pres. Lodge #1028 Duluth.
Bro. Brown, Organizer.
Bro. Hartman, Organizer.

The grievance committee report was made by Pres. Geo. Burke.

The bill for lunch after this meeting was ordered paid Ely Co-op for groceries $13.13, Harry Horner for Refreshments $7.50, Laundry $1.17. Other bills are $8.70 Bowling Club for shoes, and stamp & miscellaneous $3.00.

A delegation of officers and grievance committee men was ordered to attend a meeting at Hibbing Nov. 26, 1939, to discuss ways and means of obtaining 100% Locals and settling grievances.

Meeting adjourned 9:30 P. M.

ANTON PECHEK, Sec'y.

Z-11. Ely, Minnesota, Dec. 16, 1939

The regular monthly meeting of the S. W. O. C. Lodge #1664 was held in the Community Bldg. in Room 218 at 7:30 P. M.

The meeting was called to order by Pres. Geo. Burke.

The minutes of the previous meeting were read and approved as read.

The communication from Senator of Minn. Ernest Lundeen on the Farm Credit Admin. was ordered filed.

A poster Calendar from the Amalgamated C. W. of A. was received and the Sec'y was ordered to keep same until we have a fit place to put it.

The Sec'y was commended on his action when he bought a $5.00 subscription certificate from the National Tuberculosis Association.

A Holiday greeting card from Regional Director Van A. Bittner was ordered filed.

A communication on the Amended Social Security Act was read. Secretary was instructed to write to Labor Information Division, Social Security Board, Wash. D. C. requesting a representative to come and explain the Amended Social Security Act and answer questions.

Communication from Mid West Labor was ordered filed.

The organizers present were Coldiron, Fred Brown & Alderman. Coldiron made a report of a meeting of officers held at Hibbing, Nov. 26, 1939.

The Sec'y was instructed to write a letter of commendation to F. D. Roosevelt & John L. Lewis for their stand on War question.

The Sec'y was instructed to write a letter to Leroy Salsich requesting a meeting for the purpose of negotiating a contract.

Motion made & carried to send Christmas baskets to widows of our members and laid up members. Baskets to be sent to Mrs. John Tikka, Mrs. Frank Bobins, Mrs. Anton Broja, Mrs. John Stubler, Mrs. Pete E. Olman, Mrs. Anton Kromar, Louis Glatch, Joe Pechavar Wester Maki & Ignac Jerich.

Motion made & carried we have lunch at the next meeting. This meeting to be called for the purpose of organizing an Organizing Comm. to work for a 100% Local. Also to invite members wives, mothers and sisters and daughters 16 yrs. of age or over for the purpose of organizing a Ladies Auxiliary.

Meeting was adjourned 10:00 P. M.

ANTON PECHEK, Sec'y.

Z-12. Ely, Minnesota, January 13, 1940.

1. The regular monthly meeting of the S. W. O. C. Lodge #1664 was held in the Cafeteria of the Community Bldg. at 7:30 P. M.

2. The meeting was called to order by President Geo. Burke.

3. The minutes of the previous meeting were read and approved as read.

4. The communication from Henry Burkhammer in regards to number of unemployed or on relief was taken care of by the Secretary.

a. Motion made supported and carried to commend Sec'y on his action.

5. The communication from the Mid-Continent Petroleum Corporation Strike Committee of West Tulsa, Okla. was ordered filed.

6. Fin. Sec'y made his report leaving a bal. of $618.60 in the First Nat'l Bank.

a. Report accepted at made.

7. Treas. report also accepted as made.

8. Bro. Alderman talked on the Aid a Womens Auxiliary Can Give to an organization.

Bro. Coldiron substantiated this talk.

9. Dr. Snyker was called on and he talked on the prevalence of diseases and how to prevent. He also answered questions by members.

10. Geo. Burke made a report of the grievance committee.

11. The bills for the lunch after the meeting were ordered paid.

12. Motion made accepted and passed to donate $10.00 toward Finnish Relief Fund.

13. Meeting adjourned at 9:15 P. M.

ANTON PECHEK, Sec'y.

Z-13. Ely, Minnesota, Feb. 10, 1940.

The regular monthly meeting of the S. W. O. C. Lodge #1664 was held in Room 209 of the Community Bldg. at 7:00 P. M.

The meeting was called to order by President Geo. Burke.

The minutes of the previous meeting were read and approved as read.

The communication from the Hearst Strike Committee, ~~Chi. Ill.~~ was ordered filed. for aid.

The communication from the U. E. R. & M. Workers of Minneapolis was ordered filed. for aid.

The communication from the State Minnesota Industrial Union Council was left to the discretion of the Secretary.

Bro. Henry Burkhammer talked on the benefits of the C. I. O. over the A. F. O. L. in our case.

Motion was made supported and passed that we buy a flag for $20.00.

Meeting adjourned at 9:00 P. M.

ANTON PECHEK,
Sec'y.

Z-14. Ely, Minnesota, Mar. 9, 1940.

The regular monthly meeting of the S. W. O. C. Lodge 1664 was held in Room 209 at the Community Bldg. at 7:30 P. M.

The meeting was called to order by Pres. Geo. Burke.

The minutes of our previous meeting were read and approved as read.

Motion made and carried to send $2.00 greeting Adv. to the Midwest Labor 3rd Anniversary Edition.

The communication from the Duluth Ind. U. Council was ordered filed.

The communication from the Head office Pitts. in regards to buttons for those members who are paid up for the year was ordered filed.

Motion made and carried that the Chair appoint a committee to investigate whether we can hang the Constitution of the United States in the Community Bldg.

Adron Coldiron talked about the Union situation throughout the Range.

All members are urged to attend our next meeting, Apr. 14, 1940.

Meeting adjourned at 9:00 P. M.

ANTON PECHEK, Sec'y.

Z-15.

The regular monthly meeting of S. W. O. C. Lodge =1664 was held in the Community Center Cefeteria on April 13th at 7:30 P. M.

Meeting called to order and the following officers were marked absent. Rec. Sec'y Anton Petchek, Treasurer, Chas. Myntti, and Guard William Shop. The minutes of our last meeting were read and approved as read.

Communications from the Hearst Strike Committee and the Mid-Continent Petroleum Strike Committee were read and ordered filed. It was noted that the D. X. Gasoline Strike has now been settled.

Motion was made and carried that our secretary write in to our congressmen and senators urging them to oppose any changes in the Wagner Labor Relations Act. Members were also urged to write in about this matter.

Motion was made and supported that we send in the three resolutions from Burkhammer to their proper places, properly signed and sealed by the resolutions committee. Carried.

Chairman Burck announced he would appoint a resolutions committee after the meeting.

Financial statement showing a balance of $796.14 on hand at the close of the quarter ending Mar. 31st 1940 was read and accepted.

Report made on Range council meeting held in Hibbing on Mar. 10th was made by Sam E. Swanson was accepted.

Motion made and supported that the Committee appointed on July 29th, 1939, attend all meetings in Ely of the Range Civic Association. Carried.

Representative Fred Brown gave a short talk about organization and urged us to send a delegate to the International Convention of the S. W. O. C.

Bills for $9.00 expenses of range council delegates and $5.60 for frame on the constitution ordered paid.

Motion made and supported that we send a delegate to the International Convention to be held in Chicago on May 14, 15, 16, 17, 1940. Standing vote was taken, 22 for—17 against. Carried.

Teivo Hill was elected to attend as delegate and to received his wages lost, transportation costs and 4.00 per day for six days as expenses.

Lunch was ready and meeting adjourned.

SAM E. SWANSON,
Acting Secretary.

Z-16. Ely, Minn. May 11, 1940.

The regular monthly meeting of the S. W. O. C. Lodge #1664 was held in Room 218 of the Community Bldg. at 7:00 P. M.

Meeting was called to order.

The minutes of the previous meeting were read and approved as read.

The communication in regards to the reports of auditing committee was ordered filed as they are doing as they are supposed to.

Our letter in regards to various legislative proposals was answered by Rep. W. Pittenger and ordered filed.

Organizer Browns report in regards to a contract were very favorable.

Motion was made and carried to accept the Evergreen Miners into our lodge without having to pay an initiation fee for one month May 11, 1940 to June 11, 1940.

Motion made and carried to get as many members as possible to attend our next meeting as we are to elect officers for the next year.

Meeting adjourned.

ANTON PECHEK, Sec'y.

Z-17. Ely, Minn. June .., 1940.

The regular monthly meeting of the S. W. O. C. Lcl 1664 was held in Room 209 of the Community Bldg.

The meeting was called to order by chairman Geo. Burke.

The minutes of the previous meeting were read and approved as read.

The communication from Musicians Union #734 was ordered filed.

The communication from the S. W. O. C. in regards to citizenship committee was ordered filed.

A letter from the S. W. O. C. asking any and all members to act as organizers was received. Anyone interested to get his card and button from the District Director.

A report of the Treas. leaving a balance of $771. was accepted.

Org. Fred Brown made a report of the situation on the range meeting held in Duluth on June 16th, on the contract issue, and also on the convention of the S. W. O. C. in Chicago.

Report of Delegate Toivo Hill on the convention was accepted. Incidentally the trip cost $64.00, which was ordered paid.

The chairman made a report on the work of grievance committee.

The following are officers elected to serve for the *they* July 1st, 1940, to June 30, 1941.

Pres. John Muhvich.
V. Pres. Geo. Kochevar.
Rec. Sec'y, Anton Pechek, Unanimous.
Fin. Sec'y, J. E. Maki, Unanimous.
Treas. Chas. Myntti, Unanimous.
Guide, Eino Passo.
Guards, Dan Chachich and Arthur Souja.

Grievance committee members as follows:

George Burke, Chairman, Leander Runn, John Kari, John Muhvich & Geo. Kochevar.

Tellers are Sam Swanson, Anton Sturna and Eino Pass.

Z-18. Ely, Minn., July 27, 1940.

The regualr monthly meeting of the S. W. O. C. Lcl. #1664 was held in the Community Bldg. in room 209 at 7:00 P. M.

Meeting was called to order by Chairman John Muhvich.

Minutes of the previous meeting were read and approved as read.

Communications were read.

Officers were ordered to attend a meeting at Hibbing on Sunday, July 28th.

Fin. report was accepted showing a balance of $767.36 June 24, 1940.

Auditing committee report also accepted.

Motion made and carried we help Joe Rusic to the extent of $10.00 and that the sick committee visit him more often.

Secretary was ordered to send letters to Stassen & Hoffman about paving Hiway #1 between Tower and Ely.

Motion made & carried to send the Midwest Labor $3.00 for an ad in the Labor Day edition.

Motion made & carried to have a Labor Day celebration and the chairman to appoint a committee to take charge.

Joe Pascoe organinzer who will be here for several weeks was introduced to the members.

Meeting adjourned.

Z-19. Aug. 10, 1940.

The regular monthly meeting of the S. W. O. C. was held in Room 209 of the Community Bldg. at 7:00 P. M.

The meeting was called to order by chairman John Muhvich.

The minutes of the last meeting were read and approved as read.

Communications were read and passed as follows:

1. On the automobile plate insignia tabled for next meeting.

2. Local 1664 goes on record opposing the passage of the Burke-Wadsworth compulsory training bill. Letters sent to Pres. of U. S., John L. Lewis, Sen. Shipstead, Senator Lundeen.

3. National Defense training program ordered filed.

4. Third State Convention to be held in August Aug. 30, 31 and Sept. 1 and 2. Taken care of later in the meeting.

.5. Minnesota State Industrial Union Council Convention Brochure called "Minnesota C. I. O. 1940" ordered tabled.

District Director Henry Burkhammer called on conditons adhering to unionizing the Iron Ranges and milestones to overcome in getting a contract.

Sam Swanson made a report on the Labor Day Program and also on Joe Rusick's case.

J. E. Maki made a report on the officers meeting and also on the Range Council meeting held in Hibbing July 28, 1940.

Motion made and carried we buy a $6.00 ad in Program Book of Amer. Slav. Club and also that we put a float in their parade on Aug. 25, 1941.

Geo. Burke was elected Delegate to the Third Annual State Convention.

Meeting adjourned.

ANTON PECHEK, Sec'y.

Z-20. Sept. 7, 1940, Ely, Minn.

The regular monthly meeting of Local Union #1664 of the S. W. O. C. was held in Room 209 of the Community Bldg. at 7.30 P. M.

The meeting was called to order by Chairman John Muhvich.

The minutes of the previous meeting were read and approved as read.

The communications were read and passed as follows:

1. On strike of Nat'l Maritime Union called on the Jones Laughlin Ore carriers was ordered filed. Already settled.

2. Secretary instructed to write to our congressmen requesting them to sign petition to release the Neely-Heler Mine Inspection bill from Committee on mines & Mining for action by Congress.

3. Motion made & carried to adopt the new charter from S. W. O. C.

Motion made & carried to buy a $6.00 ad in the Minnesota Brochure of the C. I. O. and also to buy 200 copies of the Minnesota Brochure.

Fin. Sec'y's. report made by International auditor on conditions of his books was favorable.

Treasurer verified the report.

Org. Joe Pascoe reported on his efforts at organizing and successes.

Sec'y was instructed to reimburse the Eveleth Local $2.00 expenses for sending Salmi here on Labor Day.

Sec'y instructed to write a letter of thanks to Bro. Burkhammer for bringing up some of the Nat'l officers on Labor Day. Also to write to Nick Fonteccio & Dr. Ahola for their participation.

Bro. Sam Swanson made a Fin. report on the Labor Day program.

Bro. Matt Johnson made an event report on the Labor Day Program.

Bro. Cved from Eveleth made an encouraging talk.

Past Pres. Geo. Burke was presented with a purse set in appreciation of his work.

Meeting adjourned.

ANTON PECHEK, Sec'y.

Z-21. Oct. 12, 1940, Ely, Minnesota.

The regular monthly meeting of S. W. O. C. Local #1664 was held in Room 209 of the Community Bldg. at 7:30 P. M.

The meeting was called to order by President John Muhvich.

The minutes of the previous meeting were read and approved as read.

Motion made & supported to file the audit from August 1, 1939, to Aug. 1, 1940, which leaves an actual bank balance of $770.83; made by International Auditor F. C. Appelbe; carried.

Motion made and supported to file the letter from the Zukas State County and Municipal Workers of America, San Francisco, Cal., asking for aid. Carried.

Motion made & supported to file the letter from the Farmer Labor State Campaign Committee asking for Fin. Ast. Carried.

Motion made & supported to buy 10 tickets at 20¢ ea. from United Elec. Radio & Machine Workers of America, Local 1145, Minneapolis—carried.

Dist. Director Henry Burkhammer spoke on the importance of voting, and also getting the laggards to vote.

John T. Bernard made an election talk as a candidate for U. S. Congress from the 8th Congressional Dist.

Other organizers present were Bros. Coldiron & Pascoe, also Bro. Bill Hyatt from the Hibbing Local.

Grievance committee report was made by Pres. John Muhvich and he also stressed the Importance of adjusting grievances as soon as they come up.

Bro. J. E. Maki enlarged on the topic made his report on John Kovach's case.

Motion made & supported to support the Bowling team to extent of $25.00 for shoes, shirts and other expenses—carried.

Motion made & supported to have lunch at our next meeting—carried.

Motion made & supported to induct Lyle Brennan, new member, at next meeting when more new members are present—carried.

Meeting adjourned 9:25 P. M.

ANTON PECHEK, Sec'y.

Z-22. Ely, Minn., Oct. 26, 1940.

A special meeting of the S. W. O. C. Local #1664 was held in the Cafeteria of the Community Bldg.

Meeting was called to order the Pres., John Muhvich.

The minutes of the previous meeting were read and approved as read.

The communication from Fred Brown urging us to attend the Range Council Meet at Hibbing Sunday Oct. 27. Sam Swanson with Joe Pascoe, Arne Kangas & Bob Perkovich were ordered to attend.

Motion made and supported to pay bill for lunch $22.55 carried.

Motion made & supported Secretary to sell tickets for a dance to be held in Eveleth on Nov. 9, sponsored by the S. W. O. C. Local #2078—carried.

Motion made and supported to donage $5.00 to the Farmer Labor Club. carried.

Motion made & supported to Indorse President Roosevelt for Reelection—carried.

Motion made & supported to accept Fin. Sec'y's report as made showing a Bal. of $810.22.—carried.

Meeting adjourned.

Z-23. Ely, Minn., Nov. 16, 1940.

The regular monthly meeting of the S. W. O. C. Local #1664 was held in Room 209 of the Community Bldg. at 7:00 P. M.

Meeting called to order by Pres. John Muhvich.

Minutes of the previous meeting were read and approved as read.

Communication in regard to Xmas baskets was read. Decided to make up baskets of our own and distribute to widows of our members and also other deserving members

Motion made & supported to buy 500 copies of C. I. O. News, Nov. 25th issue—convention notes.

Grievance committee report made by Geo. Burke on John Kovach's case—accepted as made

Report of the Range Council meeting made by Sam Swanson.

Organizer Joe Pascoe talked on J. L. Lewis.

Meeting adjourned.

ANTON PECHEK, Sec'y.

Z-24. Ely, Minnesota, Dec. 14, 1940.

The regular monthly meeting of the S. W. O. C. Local #1664 was held in Room 209 of the Community Bldg. at 7:30 P. M.

Meeting was called to order by Pres. John Muhvich.

Minutes of the previous meeting were read and approved as read.

The communication notifying us of the appointing of John Doherty as Assistant Director for the Western

Region replacing Director Fontecchio who is organizing at the Bethlehem Steel Corp. Works—filed.

Motion made and supported to send $10.00 toward a 3 mo. radio program with recommendation that Director Burkhammer do all the speaking—carried.

Motion made & supported to adopt resolution for a 100% Union drawn up by officers and representatives of the Iron Range C. I. O. Locals—carried.

Motion made & supported to buy $10.00 worth of Xmas seals to fight tuberculosis—carried.

Communication from the St. County and Municipal Workers of America, San Francisco, California, ordered filed.

Motion made & supported that the present be allowed up to $10.00 expenses organizing Soudan Miners—carried.

Motion made and supported that the grievance committee see Supt. Mr. Adkins in regards to teachers attempting to instill in pupils minds partiality with forces against Labor—carried.

Motion made & supported that the same committee with addition of Frank Bolka take care of distributing of Xmas baskets—carried.

Motion made & supported that we recommend A. J. Suomi for the position of County Mine Inspector—carried.

Meeting adjourned.

ANTON PECHEK, Sec'y.

Z-25. Ely, Minnesota, Jan. 11, 1940.

The regular monthly meeting of the S. W. O. C. Local #1664 was held in Room 209 of the Community Bldg.

The meeting was called to order by President John Muhvich at 7:30 P. M.

The minutes of the previous meeting were read and approved as read.

The communication in regards to the Application of the Pinkertons National Detective Agency for a private Detective License was ordered filed.

The Secretary made a Financial report leaving a balance of $786.57 Dec. 31, 1940, accepted as made.

Motion made and passed the Secretary write a letter of protest to Gov. Harold E. Stassen.

The communication in regards to the rights of workers to be reinstated if compelled to leave jobs for military service ordered filed.

Committee report on the success of the turkey Keno with a profit of $40.40 accepted as made.

Sam Swanson made a report on the organizing of Soudan which so far is very favorable.

Frank Bolka made a report on the Range Council meeting.

Adron Coldiron talked on the subject of the proposed Radio program.

Motion made and supported to rescind the action of the previous meeting in regards to sending $10.00 toward a radio program only if Henry Burkhammer do all the talking; Carried.

Motion made and supported to send this $10.00 for a radio program and that the committee appointed at Range Council meeting arrange for the Speakers. Carried.

Meeting adjourned.

ANTON PECHEK, Sec'y.

Z-26. ~~Ely~~, Minnesota, Feb. 8, 1940.

A regular meeting of the S. W. O. C. Local #1664 was held in Room 218 of the Community Bldg.

The meeting was called to order by Pres. John Muhvich at 7:30 P. M.

The minutes of the last meeting were read and approved as read.

The communication in regards to the Lic. for Burns Detective agency was ordered filed.

The communication from the Amer. Federation of Hosiery Workers ordered filed. new signed contract.

Motion made & supported we accept report of Auditing Committee as made carried.

Communication in regards to the Bill in Legislature leaving the enforcement of laws in hands of various County Attorneys ordered filed.

Motion made & supported to request by letter Senators Galvin and Blatnick & Verkelich that they do as much as possible toward having an open hearing on State Labor Relations Bill. Carried.

Motion made & supported institute the initiation fee of $3.00 for all new members or reinstatements after Mar. 1, 1941. Carried.

Motion made & supported to authorize the entertainment committee to buy a stamping machine. Carried.

Motion made & Supported to give Bro. Joe Pascoe a vote of thanks. Carried.

Motion made & supported to have lunch at next meeting. Carried.

Meeting adjourned 9:00 P. M.

ANTON PECHEK. Sec'y.

Z-27. Feb. 23, 1941, Ely, Minnesota.

A meeting of the S. W. O. C. Local #1664 was held in the Cafeteria of the Community Bldg.

The meeting was called to order by Pres. John Muhvich at 7:30 P. M.

The minutes of the previous meeting were read and approved as read.

Motion made and supported to adopt a resolution indorsing Philip Murray's C. I. O. Defense Plan, and send copies of the resolution to the Pres. of U. S., Senator and Congressman. Carried.

Motion made supported to file the note of thanks from Keith Morgan, National Chairman of the Committee For the Celebration of the President's Birthday. Carried.

Motion made & supported to write Joseph P. O'Hara Member House Judiciary Committee to vote against Bill H. R. 2266 legalizing wire tapping.

Motion made supported to act as advised in circular of 2 13 41 from Douglas Hall C. I. O. Legal Representative. Carried.

1. To Pattern Labor Law on the Wagner Act. Adopt. Res.

2. To adopt Resolution Demanding an open hearing on Labor Law.

3. To adopt Resolution demanding licenses should not be given to Anti-Union Agencies.

All these resolutions be sent to proper persons.

Speakers at the meeting were Henry Burkhammer, Leonard Lageman, Alderman & Adron Coldiron.

Bills for groceries for lunch after this meeting were ordered paid.

Meeting adjourned.

ANTON PECHEK, Sec'y.

Z-28 Mar. 8, 1941, Ely, Minnesota.

A meeting of the S. W. O. C. Local 1664 was held in Auditorium of the Community Bldg.

The Meeting was called to order by President John Muhvich at 7:30 P. M.

The minutes of the previous meeting were read and approved as read.

Motion was made and supported that the Secretary take all necesary action on the communications from Douglas Hall, State C. I. O. Legal representative—carried.

Motion made & supported to place a 2.00 greeting ad. in the 4th Annual edition of the Midwest Labor—carried.

Report on the Ham Keno to be held on April 5th was made by William Maki—approved.

Grievance Committee report was made by Sam Swanson.

Motion made & supported that we subscribe for 10 copies of the St. Louis County Independent and have them sent to members of the Local—carried.

Motion made & supported to appoint a committee to help out on one of the Sunday C. I. O. Radio programs over the Hibbing Station—carried.

Appointed on this committee are Bro. Larson, Soudan, Tony Graheek, Frank Bolka, Ed Pryatel, San Swanson.

Instructed to find out about the names of charter members as those on the new charter are not original charter members.

Meeting adjourned.

ANTON PECHEK, Sec'y.

Z-29. April 19, 1941, Ely, Minn.

A meeting of the S. W. O. C. Local 1664 was held in Community Bldg. Cafeteria at 7:30 P. M.

The meeting was called to order by Pres. John Muhvich.

John Muhvich gave an explanation of the contract with Big Steel and mills. Adron Coldiron, Earl Bester & Bill Hartman enlarged.

Motion made & supported to send a Resolution of thanks to the Sun Telegraph, Pittsburgh, for the fine publicity during negotiations with Big Steel. Carried.

Motion made & supported to thank the Negotiating Committee, Phillip Murray, Etc., carried.

Motion made & supported to send a bouquet and wishes for a speedy recovery to Henry Burkhammer.

Motion made & supported to request the Sinclair Refineries, Fort Worth, Texas, place labor on their goods. Carried.

Bro. Bolka made a report on the Chandler grievances. Accepted as made.

Motion made & supported to imburse the Fin. Sec'y $5.00 per every hundred members or fraction thereof carried.

Motion made & supported that officers have power to make decisions on problems arising between meetings—carried.

Sec'y. ANTON PECHEK.

Z-30. May 17, Ely, Minnesota.

A meeting of the S. W. O. C. Local 1664 was held in the Cafeteria of the Community Bldg. at 7:30 P. M.

The meeting was called to order by Pres. John Muhvich.

The minutes of the previous meeting were read and approved as read.

The communications were taken care of as follows:

Barbers Union Local #750 Informing of Union shop in Ely, Levi Saari & Marvin Standal—filed.

Letter of Thanks from Pittsburgh Sun Telegraph—filed.

Letter of Thanks from Philip Murray—filed.

The following members of Chisholm Local were guests at this meeting: Stanley Petrich, Dan Tolonen, & Henry Rukina.

Organizer Adron Coldiron was present.

Motion made and supported to try to get the First Charter members names on our new charter—carried.

Motion made & supported to send a bouquet and wishes for a speedy recovery to Henry Burkhammer—Carried.

Motion made & supported to pay bills for lunch after this meeting—carried.

Meeting adjourned.

ANTON PECHEK, Sec'y.

4327 INTERVENER'S EXHIBIT 2 TO DEPOSITION OF SAM E. SWANSON.

This Agreement, dated ....,
(in pencil: Ely, Pioneer & Sibley mines)
between the Oliver Iron Mining Company (hereinafter referred to as the "Company"), and the Steel Workers'
(in pencil: Lodge No. 1664)
Organizing Committee on behalf of the members of the Amalgamated Association of Iron, Steel and Tin Workers of North America, or its successor, (hereinafter referred to as the "Union"), employed by the Company.

Section 1. It is the intent and purpose of the parties hereto that this agreement will promote and improve industrial and economic relationships between those employees who are members of the Union and the Company, and to set forth herein the basic Agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties hereto.

The term "employee", as used in this Agreement, shall not include Foremen, Assistant Foremen, Captains or Superintendents in charge of any classes of labor, or watchmen, or any salaried Employees.

Section 2—Recognition. The Company recognizes the Union as the exclusive bargaining agency for all employees of the Company. The Company recognizes and will not interfere with the right of its employees to become members of the Union. There shall be no discrimination, interference, restraint or coercion by the Company, or any of its agents against any members because of membership in the Union. The Union agrees not to intimidate or coerce employees into membership, and also not to solicit membership on Company time. The obligation on the part of both such parties not to exercise any intimidation or coercion shall be deemed to prevent any application to another of such force, either physical or moral, as to induce or constrain him to do against his will something he would not have otherwise done, and not to commit any act of making any person timid or fearful or of deterring such person from some act by threats.

Section 3—Wages. The wage rates established March 16, 1937, when an increase of not less than ten (10) cents per hour was made, shall remain in effect during the life of this Agreement. All existing standard wage rates for each classification shall remain unchanged so long as this agreement remains in effect. Time and one-half shall be paid for overtime work and double time for Sundays and Holidays. (A pencil line is drawn through words "and double time for Sundays and Holidays" above.)

Section 4—Hours of Work. The schedule of hours made effective March 16, 1937, which provides an eight (8) hour day, and a forty (40) hour week with time and one-half for all overtime in excess of eight (8) hours in any one day for all overtime in excess of forty (40) hours in any one week, shall remain in effect during the life of this Agreement. It is further understood and agreed herein, that the eight (8) hour day for underground miners shall be from collar to collar, with one-half hour for a dinner period.

A day may be a calendar day or any twenty-four (24) hour period, and a week may be a calendar week or any five (5) 8-hour turns on consecutive days.

An employee, who is a member of the Union, shall not be paid both daily and weekly overtime for the same hours so worked.

Section 5—Vacations. Each employee, who is a member of the Union, and who, prior to July 1, 1937, was continuously in the service of the Company three (3) years or more, shall receive one week's vacation, to be taken in a single period. Those who are granted vacations will be paid on their average rate of earnings per hour for the two pay periods immediately preceding their vacation. The total hours of vacation pay will be the average hours they worked per week, during that period, not less than forty (40) hours, and not more than forty-eight (48) hours. (A pencil line is drawn through the words: "and not more than forty-eight (48) hours.)

Vacations will, so far as possible, be granted at times most desired by employees, but the final right to allotment of vacation period is exclusively reserved to the Company in order to insure the orderly operation of the plants.

Section 6—Seniority. It is understood and agreed, that in all cases of promotion and increase or decrease of forces the following factors shall be considered, and where factors (b), (c), (d), and (e) are relatively equal, length of continuous service shall govern.

(a) Length of Continuous service.

(b) Knowledge, training, ability, skill and efficiency.

(c) Physical fitness.

(d) Family status; number of dependents, etc.

(e) Place of residence.

Section 7—Adjustment of Grievances. Should differences arise between the Company and the Union or its members employed by the Company as to the meaning and application of the provisions of this Agreement, or should any local trouble of any kind arise in any plant, there shall be no suspension of work on account of such differences, but an earnest effort shall be made to settle such differences immediately in the following manner:

First, between the aggrieved employee, who is a member of the Union, and the Foreman of such employee;

Second, between a member or members of the Grievance Committee designated by the Union, and the Foreman, and Superintendent of the Department, if any, or such person as shall be designated by the Company for that Department;

Third, Between a member or members of the Grievance Committee, designated by the Union, and the Manager and General Superintendent of the Company;

Fourth, between the representatives of the National organization of the Union and Representatives of the Executives of the Company; and

Fifth, in the event the dispute shall not have been satisfactorily settled, the matter shall then be appealed to an impartial umpire to be appointed by mutual agreement of the parties hereto. The decision of the umpire shall be final. The expense and salary incident to the services of the umpire shall be paid equally by the Company and the Union.

Specified periods shall be agreed upon between the Grievance Committee and the Manager of each plant or

Department for the presentation of grievances hereunder Provided, however, that matters pertaining to discharges or other matters that cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provisions.

The Grievance Committee for each underground mine, dump and shall consist of not less than three employees of that underground mine, dump and shop, and not more than ten (10) such employees, designated by the Union, who will be afforded such time off, without pay, as may be required.

First, to attend regularly scheduled committee meetings, and

Second, to attend meetings pertaining to discharge or other matters which cannot reasonably be delayed until the time of the next regular meeting.

Third, any members of the Grievance Committee shall have the right to visit departments other than his own at all reasonable times for the purpose of transacting the legitimate business of the Grievance Committee, after notice to and permission from his department superintendent or his designated representative.

The actual number of members of the Grievance Committee at each underground mine, dump and shop, shall be mutually agreed upon between the General Superintendent or Manager of the operations and the Union, and in no case shall there be more than one member in any department.

Section 8—Management. The management of the works and the direction of the working forces, including the right to hire, suspend or discharge for proper cause, to transfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for purposes of discrimination against any member of the Union.

Section 9—Discharge Cases. In the event a member of
(in pencil: or laid off)
the Union shall be discharged from his employment from and after the date hereof, and he believes he has been un-
(in pencil; or lay off)
justly dealt with, such discharge shall constitute a case arising under the method of adjusting grievances herein provided, In the event it should be decided under the rules of this Agreement that an injustice has been dealt
(in pencil: or lay off)
with the employee with regard to the discharge, the Company shall reinstate such employee and pay full compensation at the employee's regular rate for the time lost. All such cases of discharge shall be taken up within three (3) days and diligent efforts made to dispose of within five (5) days from the date of discharge. (in pencil: "or lay off. Warning for small offense 1st. 2nd offense a 2-day lay off. 3rd")

Section 10—Safety and Health. The Company shall continue to make reasonable provisions for the safety and health of its employees of the underground mines, dumps and shops during the hours of their employment. Protective devices, wearing apparel and other equipment necessary to properly protect employees from injury shall be provided by the Company, in each underground mine, dump and shop. Proper heating and ventilating systems shall be installed where needed.

Section 11—Individual Wage Rates. Where inequalities are alleged to prevail in individual wage rates within the operations covered hereby, the matter may be taken up through the Grievance Committee for adjustment and settlement on a mutually satisfactory basis.

Section 12—Working Conditions. It is understood and agreed, that hereafter only eight (8) feet timber cap shall be used in all slices underground. It is also understood and agreed that two men shall work in a place at all times.

Section 13—Future Conferences. Joint conferences between Representatives of the Company and of the Union shall commence in Ely, Minnesota, on April 7, 1938, for the purpose of negotiating an agreement with regard to wages, hours, and working conditions to take effect upon the expiration of this agreement.

Section 14—Holidays. The following days shall be considered holidays, during which days there shall be no unnecessary production work, except in cases of maintenance operations, on:

New Year
July 4th
Labor Day
Christmas
Thanksgiving

Section 15—Termination Date. This Agreement shall remain in full force and effect until April 30th, 1938, inclusive.

OLIVER IRON MINING COMPANY,
By ....,
....................,
....................,

STEEL WORKERS' ORGANIZING COMMITTEE,
By ....,
....................,
....

Plaintiffs offered, and there was admitted in evidence, the deposition of GEORGE H. RUPP, taken at the instance of the Plaintiffs at Denver, Colorado, on July 2, 1941, on questions and answers, said deposition being in words and figures as follows:

Direct Examination.

By Mr. Bronaugh:

Q. State your name, please, sir, for the record.

A. George H. Rupp, R-u-p-p.

Q. Mr. Rupp, where do you reside?

A. Pueblo, Colorado.

Q. What business are you now engaged in?

A. I am Manager of the Mining Department of the Colorado Fuel & Iron Corporation.

Q. How long have you been connected with that company?

A. Twelve years.

Q. In the same capacity?

A. No, I came out here from Michigan in 1929 as General Superintendent of the iron mines and quarries. The next year, 1930, they consolidated all the mines into a mining department, and I have been Manager of that department since that time.

Q. I gather that you have also been connected with the mining industry back East?

A. That is all I have ever done.

Q. And where were you there?

A. Well, I was born at Bessemer, Michigan, which is a small town on the Gogebic Iron Range. When we were youngsters we worked in the mines during vacation. All the boys did it. We sort of lost caste if we did not.

Q. Well, now, Mr. Rupp, were you connected with any of the mining operations back in your home section?

A. Yes, I worked underground all my school vacation. That was in the iron mines. I graduated from Michigan College of Mines in 1911. Do you want all the degrees and so on?

Q. Well, I would like you to state that for the record.

A. Degree of Bachelor of Science and Engineer of Mines.

Q. What was your experience after you graduated from college?

A. I built state roads for a year, and then went to work for the Newport mine of the Newport Mining Company at Ironwood, Michigan, which was the largest iron mine on that range at that time. I was employed as an efficiency engineer until 1914. In 1914 I operated with Mr. L. C. Brewer as an exploration Company, as Brewer & Rupp. We operated on our own account. We explored the east end of the Gogebic Range, doing geological work and with diamond drills. Then in 1916 the Oliver Iron Mining Company abandoned the lease on the old Norrie mine, which was the original discovery on that range, and at one time was the largest iron mine in the world. Mr. Brewer moved to Duluth. I opened the mine. That is, I resumed operations at the mine. We changed the name, and called it the Townsite mine of the Townsite Mining Company. I operated that as Superintendent in direct charge of work until 1921 when we sold half the lease to the Republic Iron & Steel Company, now the Republic Steel Company. Then I worked for the Ford Motor Company who had just purchased a large acreage of land in the upper peninsula. We ran a geological survey and drilled the most favorable parts of it, and then we opened up two mines. I was Superintendent of Ford' Imperial mine at Michigamme, Michigan. I worked for Ford until 1927. In 1927 I went to Calumet, Michigan, in the employ of Calumet & Hecla Consolidated Copper Company as efficiency engineer and underground superintendent. I stayed there until 1929 when I came out here to work for the Colorado Fuel & Iron Corporation, as I have previously testified.

Q. Now, I will ask you whether or not in your capacity in which you are working for the Colorado Fuel & Iron Company you are familiar with the method of computing the time worked underground?

A. Yes.

Q. And have been since you have been here?

A. Yes, that is part of my job.

Q. Please state what that method of computation has been throughout your exprience in Colorado.

A. Well, we have eleven mines. Which one do you refer to particularly?

Q. Well, is there any difference?

A. Yes, we mine iron ore.

Q. Well, I mean iron ore mines.

A. Well, we are only operating one iron ore mine at the present time.

Q. Where is that?

A. That is the Sunrise mine at Sunrise, Wyoming. Sunrise is a town about 110 miles north of Cheyenne, Wyoming.

Q. Now, what is your method of computation, and what has been your method of computation in that mine?

A. That is, from 1929 until now?

Q. Yes. To May 1, 1941.

A. We worked on the eight hour shift with a half hour for lunch.

Q. Is that lunch on the men's time?

A. Lunch is on the men's time, but the eight hours is computed as time at the face. Now, that is not an exact statement for the reason that when the men blast at the end of the shift, the men leave their place, of course, a little earlier in order to get out of the smoke. We do not blast anywhere before three fifteen in the afternoon.

Q. Well, now, let's get at it this way. The shift begins at what time in the morning?

A. The first cage—we have a shaft mine at Sunrise. Most of the men except—may I correct that? The mining method at Sunrise—or let's put it this way if we may. Mining at Sunrise was formerly entirely by open pit, taking the ore out with steam shovels. When the pit became so deep that the locomotives could not get the cars out of the pit, we went to what is known as a milling pit operation. That is, a shaft is sunk near the boundaries of the ore body. Drifts are run underneath the ore body, and raises put up to the surface. The ore is then milled from the top of the raises down into the chutes, and is taken out by cars, transferred over to the shaft, and hoisted to the surface. When I came with the company we were still operating in the milling open pit which was producing about fifty per cent of the ore. The other fifty per cent was coming from underground operations. At the present time we are block caving all of our production, and there is no further milling pit operation since about January 1st.

Q. Well, now, you stated a moment ago that the method of computing the men's time, the underground workers' time, was on a face basis. Do I understand that to mean at the working place down in the mine?

A. Yes.

Q. Has that been the practice at the Sunrise mine?

A. Yes.

Q. Continuously?

A. Yes, except that prior to about 1912 we were on a ten hour basis instead of an eight hour basis.

Q. But the basis of computation was the same?

A. Yes. Let me explain it this way. The cage left the surface—the first cage left the surface at a quarter to seven in the morning. The men were all in their working places by seven o'clock, or collected at one spot in the various caving blocks, so the foremen could direct them to go to their work. That was your men around the shaft, your station men, your motor men, and so on. They were at work at seven o'clock. The men away back in the blocks—and understand we are caving blocks ~~that are~~ three or four hundred feet high that requires very careful supervision—they meet at one spot, usually at the powder house, and the supervisors direct them from there.

Q. Those meeting places were down under the ground at or near the working place?

A. That is yes for the men that are working in the caving blocks. All other men are supposed to be in their working place. Now, at the end of the shift the inside men blast first.

Q. By that do you mean the men that are farthest away from the shaft?

A. Yes, so that none of the rest of the men have to walk through any great amount of powder smoke. They blast first, and they cannot blast before three fifteen. As soon as they blast they start out, and then the foreman checks them out and sees that they are all there in his gang. Then we notify the next block that it is all right to blast, and then they blast all the way out to the edge of the caving blocks. The first cage leaves underground at three-thirty in the afternoon.

Q. How much time does the cage consume in going up and back down, taking the men up and down, per trip?

A. Well, the shaft is only 300 feet. It probably doesn't take over a minute after they get on the cage to hoist them to the surface. Possibly two minutes at the outside.

Q. Now, that operation, as you have explained it, is the operation at Sunrise. Now, have you other iron ore mines that have been in operation under your supervision since you have been out here?

A. Yes.

Q. Where are they?

A. A small iron mine called the Orient mine, which is over in Saguache County near Mineral Hot Springs, Colorado.

Q. Well, now, state whether or not the method of computing the men's time has been substantially the same in that mine as in the Sunrise mine.

A. The Orient mine is a tunnel mine. We have no shaft. The men get underground at appointed places so the bosses can tell them where to go to work at seven o'clock, and they came out approximately at three thirty. That is, they come back to a definite point to be checked in by their foreman so the foreman knew they were all present.

Q. Are those the only two iron ore mines that have been operated under you?

A. Yes.

Q. Since you came to Colorado?

A. Yes.

Q. What other metal mines has the Colorado Fuel & Iron Company operated that have been under your supervision and control?

A. It depends on your definition of metal mines. We operate a fluorspar mine over at Wagon Wheel Gap, Colorado.

Q. Well, as a mining man you tell me whether fluorspar is metal or not.

A. I don't know. It is not usually so considered.

Q. What is the method of computing the miners' pay in that mine?

A. It is the same. It is eight hours at the face. Actually I suppose at all mines we have been paying on a shift basis. That is, there is no hard and fast rule. If a man quits work five or ten minutes before his quitting time, if his timber was all up and his holes were drilled, he came out as soon as he blasted, and waited for the boss to check him in so the boss knew all his men were present and none of them were injured or had forgotten to come out.

Q. And those are three mines, then, that you have had?

A. No, we have limestone and dolomite quarries.

Q. Is that an underground operation?

A. No.

Q. Is that underground?

A. No, it is open pit. We have the Monarch limestone quarry near the top of Monarch pass.

Q. Are these both open pit operations?

A. And the Dolomite quarry at Canon City, Colorado.

Q. What size pits are those?

A. Monarch you mean?

Q. Well, depth and extent?

A. Monarch is on the side of a mountain. The elevation of the floor is approximately 10,000 feet above sea level. It is a long narrow quarry. The bottom of the quarry is only about 120 to 150 feet wide. The bank is approximately 190 feet on the uphill side above the quarry floor, and 140 feet high on the lower or down slope side. You understand that those dimensions are about an average dimension, because the mountainside varies from a level elevation.

Q. Do you have any appreciable amount of travel time in either of those quarries?

A. No, the men report for work on the job.

Q. At the place where they work?

A. At the place where they work.

Q. And are those quarries operated on an eight hour shift?

A. Yes.

Q. Have been since prior to May 1st?

A. Yes.

Q. All right. Now, what about the mines back in Michigan that you have knowledge of? How did they compute the basis of underground workers' pay?

A. When I worked as a laborer—when I worked as a boss we had a universal custom of considering a shift as eight hours at the face.

Q. Down in the mine at the working place?

A. At the working place. If a man were working at a shaft station, that was exactly true. He couldn't quit work. The boss could tell him what to do for any period, for any time during those eight hours. When we were mining, particularly if we were far inside and we were one of the first gangs to blast, we probably got out fifteen, maybe twenty, minutes early; usually not over fifteen minutes, because when you have a definite time for blasting to start, everybody is looking for it along about that time, and there is not much chance of the jar catching anyone out where any ground might fall on him. It is merely a safety measure.

Q. Could you give me the production of iron ore at your Sunrise mine?

A. Last year we mined 831,000 tons.

Q. How many men work in the mine?

A. At the present time about 370.

Q. And has that been true—

A. That has varied, of course. The number of men and production has varied with the demands of the steel mills at Pueblo. Incidentally we are mining at present at a rate well over 1,000,000 tons a year.

Q. As I understand it, after the men in your ore mines get to the underground loading station or unloading station they walk the rest of the way to the face or the working place?

A. In most cases at the working places near by. If it is any distance we pull them with a locomotive, an underground locomotive. At Calumet and Hecla we were mining native copper at a depth of 5800 feet vertically below the surface. Some of the slope shafts were 9,000 to 10,000 feet long. We were a mile, approximately a mile, below sea level. The first cage, as I recall it, left surface at about six thirty in the morning, and the last cage left surface at ten minutes to seven, so that all men were in their working places at seven o'clock. We started blasting about fifteen minutes before quitting time. The gangs on the lowest levels blasted first, then catching the first cages to the surface.

Q. They arrived at their working places at seven o'clock, and that was the hour the shift began; is that correct?

A. That is correct.

Cross Examination.

By Mr. Montgomery:

Q. Mr. Rupp, as I understand your testimony, since you have been with the C. F. & I. in 1929 there have been three types of operation at the Sunrise mine: The open pit mining—

A. No, the open pit where you took the ore out of the pit with railroad locomotives was gone long before my time. The pit was about 500 feet deep at that time when I came out here.

Q. There hasn't been any open pit mining since you have been there?

A. No, strictly open pit, although this milling system of mining has been known as milling open pit, because most of your miners are working out in the sunshine.

Q. Those miners who are working down in the pit now out in the sunshine, how long does it take them to reach their working place down in the pit from up on top?

A. Some of them came over the side of the bank. Not all of them went down the shaft. The men trimming banks just reported on the job at seven o'clock in the morning and went to work. At Sunrise we check the men a little closer than we do at the other operations because they punch a time clock.

Q. The men who went to work in the shaft had to go down in a cage?

A. Had to go down in a cage.

Q. They met at a place underground?

A. Depending on their job. That is, the company men went right to their working place. For example, a track man didn't report to anyone. He went to work wherever the boss had told him that the track needed repairing. The station men and locomotive men went to work as soon as they reached the underground. The miners in the caving blocks walked to their place of work.

Q. How were these men checked in?

A. Before they left surface they punched the time clock. When they returned they also punched the time clock. There are two reasons for that: both to get the man's time that he worked, ~~and also to check~~ the bosses' time books as to the number of men that are on the job that day, and the time card system has also an advantage at the end of the shift, for if there are any time cards left in the rack, some men are underground who have not been accounted for.

Q. The time card would, then, really show the elapsed time from the surface back to the surface?

A. Yes, or, rather, it would show the time when he punched in and when he punched out.

Q. That was at the surface?

A. That was at the surface, because you find miners congregate usually for a visit in the morning. They may punch the time clock and go over and sit around the shaft until the first cage leaves for underground. The time the first cage left is very definite. No cage started down before a quarter to seven in the morning. Also the bosses underground have time books, and they also check their men while they are underground in the mine, and also assign them contracts for places to work on. That is, you may transfer a man sometimes once or twice a shift to a different job that may call for a different rate.

Q. Where would the boss underground check the men?

A. When he made his rounds, except those bosses in the caving blocks. They do not check the men in at their regular meeting, but they make up this time book sometime during the shift.

Q. I am not quite sure I understand, Mr. Rupp, whether there is a distinction between these milling operations which were undertaken after the open pit was abandoned, and your present operation. Are you working entirely underground now?

A. We are working entirely underground now, and we have been working probably—we were working probably forty per cent underground when I came here in 1929. The percentage of underground ores has increased very rapidly, because at the end of the life of an open pit or a milling pit production is not large as a general rule. You are just trimming it up, in other words. What we intend to do, of course, is cave in that pit. We don't want that standing open.

Q. In your present operations is it your practice for miners to meet at a central place, or to go direct to their working place?

A. That depends entirely on the job, as I said, in general your company men going directly to your working place, that is, your station men, your locomotive men, your timber men, your general underground labor. The blocks are divided into areas about 100 by 150 feet, and numbered. There will probably be a boss for every block. Certainly no boss has over two blocks. The men under this particular boss then meet at a definite place. So we would probably have five or six meeting places for the men that are working in the caving blocks. There is no general meeting place. You would go to the working place, your powder magazine near the block you are working at, and you would wait there until your boss tells you what to do.

Q. How far is it usually, Mr. Rupp, from the loading station or meeting place to the working place?

A. Oh, it will be within a few hundred feet; probably within 200 feet; maybe more than that if the boss has two blocks. It may be twice that. That would be the outside.

Q. The men in the Sunrise mine have been given a half hour for lunch?

A. Yes.

Q. That is not counted in the working time?

A. No, that is on their own time. That has always been the custom. We have operated that mine for forty-one years.

Q. This discussion we have been having is with reference to operations before May 1st, or the recent ruling?

A. Yes.

Re-Direct Examination.

By Mr. Bronaugh:

Q. Mr. Rupp, since your personal knowledge of the affairs of the Colorado Fuel & Iron Company's metal mining operations and the operations of which you have spoken here began has there been a union or labor organization in existence at any of those mining operations?

A. Yes. When I came out here we had a so-called employees' representative plan, which, incidentally, is about the strongest union I have ever run up against

Q. Did the company have contracts with them?

A. Yes.

Q. Did those contracts contain any provisions with respect to hours of work, or what constituted an hour's work or a day's work?

A. Yes, that is quite specifically stated. The day's work was defined as eight hours at the usual working places.

Q. Have you got any of those contracts with you?

A. The last agreement was signed in 1938, on April 14, 1938, which is the only one I have with me, but I believe the language is somewhat similar in all the preceding ones. Article 5 states: "Eight hours shall constitute a day's work, with time and one-half for more than eight hours in any one day or more than forty hours in any one week, but no employee shall be paid both daily and weekly overtime for the same hours so worked. This shall mean eight hours' work in the usual working place for all classes of labor, exclusive of the noon hour and the time required to go to and from the place of employment."

Q. Now, that contract that you have just read from is the 1938 contract?

A. Yes.

Q. Was that contract or a similar one in force up to May 1, 1941?

A. No. Well, as far as we are concerned, it is still in effect.

Q. Still in effect?

A. Still in effect.

Mr. Bronaugh:

All right. Now, I want to introduce this document here, marked Plaintiffs' Exhibit 1, being a printed form of an agreement between the Colorado Fuel & Iron Corporation, Colorado & Wyoming Railroad Company, Northern Division, and Employees' Representatives, Sunrise mine.

Q. Now, did I understand you to say, Mr. Rupp, that that provision, or a provision substantially similar to that, has been in the other prior contracts that have been made between that employees' group and the company for several years past?

A. That employees' representation plan was put into effect about 1916, and, to the best of my knowledge, that eight hour provision, similar to that, has been in all of the agreements. There is another reason for it. We also operate six coal mines. We formerly operated twenty-three coal mines. We are now, as I stated, only operating six. Then the working time in the coal mines has also been specifically stated as, first, eight hours at the usual working face, and now seven hours at the usual working face. Under Section 1 of our contract with the United Mine Workers it states: "Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

Mr. Bronaugh:

We introduce an agreement between the Colorado Fuel & Iron Company and the United Mine Workers of America, covering the period beginning April 1, 1937, and ending April 1, 1939, and extended for the two year period ending April 1, 1941. I want to mark that as Plaintiffs' Exhibit 2.

The Witness:

We employ approximately 2500 men at the present time in the mining operation in both coal, metal mines, fluorspar and the quarries. The working time is always computed as the time at the face.

Q. Please state how many men you have in the ore mines.

A. Approximately 500.

Q. And in the coal mines?

A. About 2,000.

Q. Now, with respect to that United Mine Workers' contract, has a similar provision been in prior contracts for a number of years back?

A. Yes, in all of them, although prior to the seven hour day that was a provision for eight hours at the working face.

Q. Now, I will ask you, Mr. Rupp, to state, please, whether or not the employees' representative group made demands upon you or the Colorado Fuel & Iron Company in the past for a system of computing men's pay upon the collar-to-collar base.

A. No, we never heard of it until recently.

Q. And that statement that you made, is that true of all of the mines that have been under your direct supervision?

A. Yes, sir, and all that I have ever worked in.

Q. In and around?

A. Yes, sir.

Re-Cross Examination.

By Mr. Montgomery:

Q. Mr. Rupp, I would like to ask just two or three more questions. The employees' representation plan, do you still have a contract at the Sunrise mine with the group that represents?

A. As far as the company is concerned, yes. It is not now too active. The men have not had an election of representatives since 1938, or since the 1938 election sometime early in that year.

Q. Was that organization affiliated with the American Federation of Labor?

A. No, it was not.

Q. Was it affiliated with the Congress of Industrial Organizations?

A. No, it was not.

Q. Was it a company union?

A. It has been called a company union. I believe it was the original of the so-called company unions. It was the result of, I believe, a very forwardlooking plan set up after a particularly disastrous strike in the coal mines of Colorado in 1914. The plan became operative in the coal mines about 1916.

Q. Has its status been before the National Labor Relations Board?

A. Yes, it is at present.

Q. Has the Board found it to be a company union?

A. Yes, we have been ordered not to recognize this industrial representatives' plan, but the men, particularly in the steel mill, have insisted on it. They had one election, and the men voted overwhelmingly in favor of retaining the old representatives' plan.

Q. Do you have a contract with any other group?

A. At the Sunrise mine, yes, we have contracts with the railroad brotherhoods, as we operated our own railroad up there.

Q. With any other groups?

A. No, not outside of the railroad brotherhood. We have had those contracts for a great many years.

Q. The contract now with reference to your coal operations, what group has that contract been with?

A. United Mine Workers of America.

4349 PLAINTIFF'S EXHIBIT No. 1 TO DEPOSITION OF GEORGE RUPP.

Agreement

By and Between

The Colorado Fuel & Iron Corporation,

Colorado & Wyoming Railway Company,

Northern Division

and

Employees' Representatives,

Sunrise Mine.

Representation of Employees, Memorandum of Agreement, and Procedure in Industrial Relations.

For the purpose of maintaining and further developing harmony and proper industrial and economic relationships between the employees and The Colorado Fuel and Iron Corporation, Sunrise Division, the following representation of employees, memorandum of agreement respecting employment; wages, working and living conditions, and procedure for the purposes of collective bargaining has been adopted.

1. Representation of Employees.

For the purpose of fixing the basis of representation, the divisions and subdivisions are as follows:

Division.

First—Sunrise Mine.

One Representative.

Subdivision.

A—Tram Crews, Track Men, Pumphouse, Carshop, Skip Pit, Big Grizzly Men, Pincermen, and all labor not included elsewhere, who work about the mine.

One Representative.

B—Caving Blocks, Chute Tappers, Chute Pullers, Timbermen, Miners, and all other men working in Blocks.

One Representative.

C—Open Pit.

Second—Surface.

One Representative.

A—Picking Plant, Engine House and Tipple Men, Mine Blacksmith Shops, Wash Houses, Electricians, Truck Drivers, Carpenters, and other Surface Labor.

Third—The Colorado and Wyoming Railway Company.

One Representative.

A—Shops and Section Men.

Salaried employees, supervisors, and clerical workers are excluded from participation.

As additional properties are added to the operations, they shall be entitled to representation on the same basis.

2. Annual Election of Employees' Representatives.

Employees in each division or subdivision shall annually elect representatives to act on their behalf with respect to matters pertaining to wages, employment, living and working conditions, the adjustment of differences, and other matters of mutual concern and interest.

3. Wages and Working Conditions.

The wage rates now in force in the several subdivisions conform substantially with wage rates for like work under similar conditions in effect with companies whose products are sold in active competition with products of The Colorado Fuel and Iron Corporation, and that similarity of rates with those competing companies shall be maintained. The working conditions now in force shall continue, subject to adjustment and regulation in conformity with conditions in effect in similar operations conducted by the Company's competitors. For the purpose of making such change in wages or working conditions, a joint meeting of employees' representatives in the divisions affected and proper officers of the Company shall be called within thirty days after the change in wages or in working conditions in competitive operations is effective, to discuss and determine an equitable method for fixing the new schedule of wages or working conditions in the departments concerned.

4. Wages and Rules Open to Inspection.

The wage rates and the rules governing working conditions shall, where practicable, be posted in a conspicuous place in each subdivision. They shall at all times be kept on file by the department superintendent, and shall be open to inspection by any representative or other employee upon request.

5. Hours of Labor. Overtime.

Eight hours shall constitute a day's work, with time and one-half for more than eight hours in any one day or more than forty hours in any one week, but no employee shall be paid both daily and weekly overtime for the same hours so worked. This shall mean eight hours' work in the usual working place for all classes of labor, exclusive of the noon hour and the time required to go to and from the place of employment. It shall apply to all employees on an hourly basis except that number of men at each mine whose daily work includes the handling of mantrips or other machinery necessary for safety and efficiency and those who are required to remain on duty while men are entering or leaving the mine.

Any further changes made in hours of labor will be by agreement between representatives of the employees and management.

6. The Selection and Direction of Working Forces.

The management of the properties and the direction of the working forces, including the right to hire and discharge, shall be vested in the Company, and, except as expressly restricted, these rights shall not be abridged by anything contained herein. However, the fairness of any action under this paragraph shall be a proper subject to review, according to the general provisions expressed herein.

When it becomes necessary, through lack of work, to reduce the number of employees, length of service and ability to do the work being considered, men with dependents shall be given preference, and men with length of service shall be given preferred days off, when possible.

In making promotions, primary consideration shall be given to length of service and ability to do the work required.

7. Procedure for the Adjustment of Differences.

Any employee believing himself to be subjected to unfair conditions or treatment has the right of appeal to the higher officials of the Company, in their order, provided he shall first seek to have the differences or conditions complained about adjusted by conference, in person or through his regularly elected representative, with the foreman or superintendent.

In case the decision by the superintendent of the department concerned is unsatisfactory, the case may be appealed to the Manager of the mines or General Superintendent of The Colorado and Wyoming Railway Company, as the case may be.

If this appeal fails to produce a result satisfactory to the employee or employees, or the representative concerned, the case may then be appealed to a regular or special meeting of the Committee on Co-operation Conciliation and Wages.

When the Committee on Co-operation, Conciliation and Wages is called upon to act with reference to any differences, except by consent of all present, the Committee shall not proceed with any important part of its duties unless both sides are equally represented. Where agreeable, equal representation may be effected by the withdrawal of one or more members from the side of the Committee having the majority.

If the Committee on Co-operation, Conciliation and Wages, to which a difference has been referred, is unable to reach a decision by majority vote, the case may be appealed to the Vice-President and President, in the order named.

Should this appeal prove unsatisfactory, the matter shall, at the request of either party, be submitted for arbitration to a board consisting of three members, one appointed by the employees' representatives' members of the Committee on Co-operation, Conciliation and Wages, one appointed by the management, and the third to be selected by mutual agreement of these two. The decision of the majority of such a board shall be final and binding upon all parties concerned.

In order that there may be no injustice, due to the time required for the proper consideration or, if necessary, appeal of any question, it is agreed that any adjustment made under this procedure will be retroactive to the date on which formal complaint was first made to the department superintendent, provided that such appeal from the decision of the department superintendent is made within ten days.

Should any employee or employees be unfairly discharged or suspended by management, and it is so decided, the employee or employees concerned shall be reinstated with full pay for the time lost.

To protect against the possibility of unjust treatment because of any action taken or to be taken by him, any employees' representative, believing himself to be discriminated against, shall have the same right of appeal as is accorded every other employee.

8. Employees' Right to Caution or Suspension Before Discharge.

There shall be posted in each division and subdivision a list of offenses for commission of which by an employee dismissal may result without notice. For offenses other than those posted, the employee shall not be discharged without first having been notified in writing that a repetition of the offense will be cause for dismissal.

Copy of this notification shall at the time of its being given to an employee be given to the representative or representatives of the employee concerned.

9. Conferences.

Conferences shall be held quarterly each year between the employees' representatives and management. Such conferences shall be called at a time mutually agreeable to the employees' representatives and management.

The purpose of these conferences shall be to discuss freely matters of interest and concern, embracing a consideration of suggestions to promote increased efficiency and production, to improve living and working conditions, to enforce discipline, avoid friction, and to strengthen friendly and cordial relations between management and employees.

10. Special Conferences.

Special conferences may be called at any time by request of the chairman (or a majority) of the employees' representatives for the consideration of such matters of common interest as cannot be dealt with satisfactorily at a regular meeting.

11. Committees.

The following four committees shall be regarded as permanent committees, available for consultation at any time throughout the year. Each committee shall organize and arrange its own procedure.

Questions brought before a committee shall be fully and definitely presented in person, or in writing, by an employee or employees' representative, and the records of the committee shall show the action taken and final disposition of each question.

Condensed reports covering the activities of these committees shall be presented at the last quarterly conference during each year.

For convenience, the duties of two or more of these committees may be combined, as mutually agreeable.

12. The Committee on Co-operation, Conciliation and Wages.

The Committee on Co-operation, Conciliation and Wages shall have to do with any matters pertaining to the prevention and settlement of disputes, terms and conditions of employment, including wages, hours, and other working conditions, maintenance of order and discipline, company stores, and other similar matters.

13. The Committee on Safety and Accidents.

The Committee on Safety and Accidents shall have to do with any matters pertaining to the safeguarding of machinery and dangerous working places, the prevention of accidents, the investigation of fatal accidents, the use of explosives, fire protection, first-aid, and other similar matters.

14 The Committee on Sanitation, Health and Housing.

The Committee on Sanitation, Health and Housing shall have to do with any matters pertaining to health, hospitals, physicians, nurses, occupational diseases, sanitation, water supply, sewage system, garbage disposal, street cleaning, wash and locker rooms, and other similar maters.

15. The Committee on Recreation and Education.

The Committee on Recreation and Education shall have to do with any matters pertaining to social centers, club houses, playgrounds, entertainments, moving pictures, athletics, competitions, field days, schools, libraries, classes for those who speak only foreign languages, technical and vocational education, manual training, churches and Sunday schools, and other similar matters.

16. Employees' Right to Hold Meetings.

Meetings of employees in any division or subdivision, or conferences of employees' representatives, may be held at such times as will not interfere with operations, on Company property or elsewhere, as they may desire.

17. Observance of Laws, Rules and Regulations.

There shall be on the part of the management and of the employees, a strict observance of the Federal and State laws and of the Company's rules and regulations.

18. No Discrimination on Account of Membership or Non-Membership in Labor or Other Organizations.

There shall be no discrimination by the management or by any of the employees on account of membership or non-membership in any society, fraternity, or union.

19. Holidays.

Christmas, Fourth of July and Labor Day shall be considered holidays, during which time there shall be no regular production work, except in cases of continuous operations.

20. Rentals, Water, Garages, and Electric Service.

Houses without bath shall be charged for at not to exceed $2.00 per room per month.

The Company shall continue its practice of removing garbage free of charge.

Laundry equipment shall be charged for at a rate of not more than 75¢ per month.

The charge for domestic water shall be 50¢ per month.

Garages shall be charged for at a rate of not more than $1.75 per month.

The charge for electric current shall be at the rate of 8¢ per kwh for the first 30 kwh used, and 6¢ per kwh for the second 30 kwh used, and 4¢ per kwh for all used above that amount.

21. Domestic Coal.

Prices for domestic coal to be charged employees shall be substantially its cost to the Company, as far as is legally permissible.

22. Wash Houses.

As the need becomes manifest, the Company will, in accordance with its present policy, provide as rapidly as possible suitable wash houses for its employees at convenient places.

23. Semi-Monthly Payment of Wages.

All employees shall be paid semi-monthly. No deductions shall be made from earnings except where authorized by employees.

24. Employees' Right to Purchase Where They Please.

Employees shall not be obliged to trade at the Company stores, but shall be at liberty to purchase goods wherever they prefer.

25. Revision.

This agreement and procedure for collective bargaining shall continue hereafter, subject to revision (by thirty days' notice) by either party.

26. Termination.

The foregoing provisions may be terminated by a majority vote of the employees of the Sunrise Divisions, such vote to be by secret ballot.

Approved:

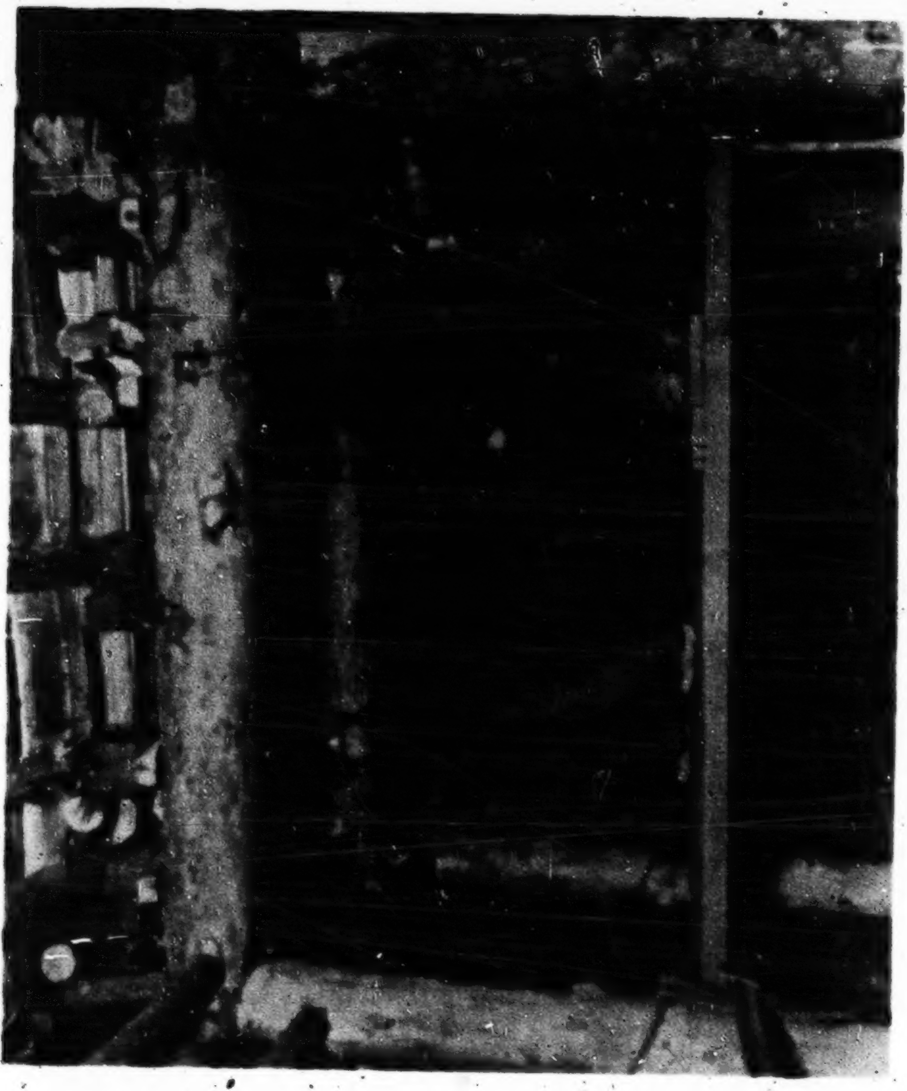
THE COLORADO FUEL &
IRON CORPORATION,
By G. H. RUPP,
Manager of Mining Department,
THE COLORADO AND WYOMING RAILWAY COMPANY:
By HARRY A. WRIGHT,
Superintendent, Northern Division.

Approved:

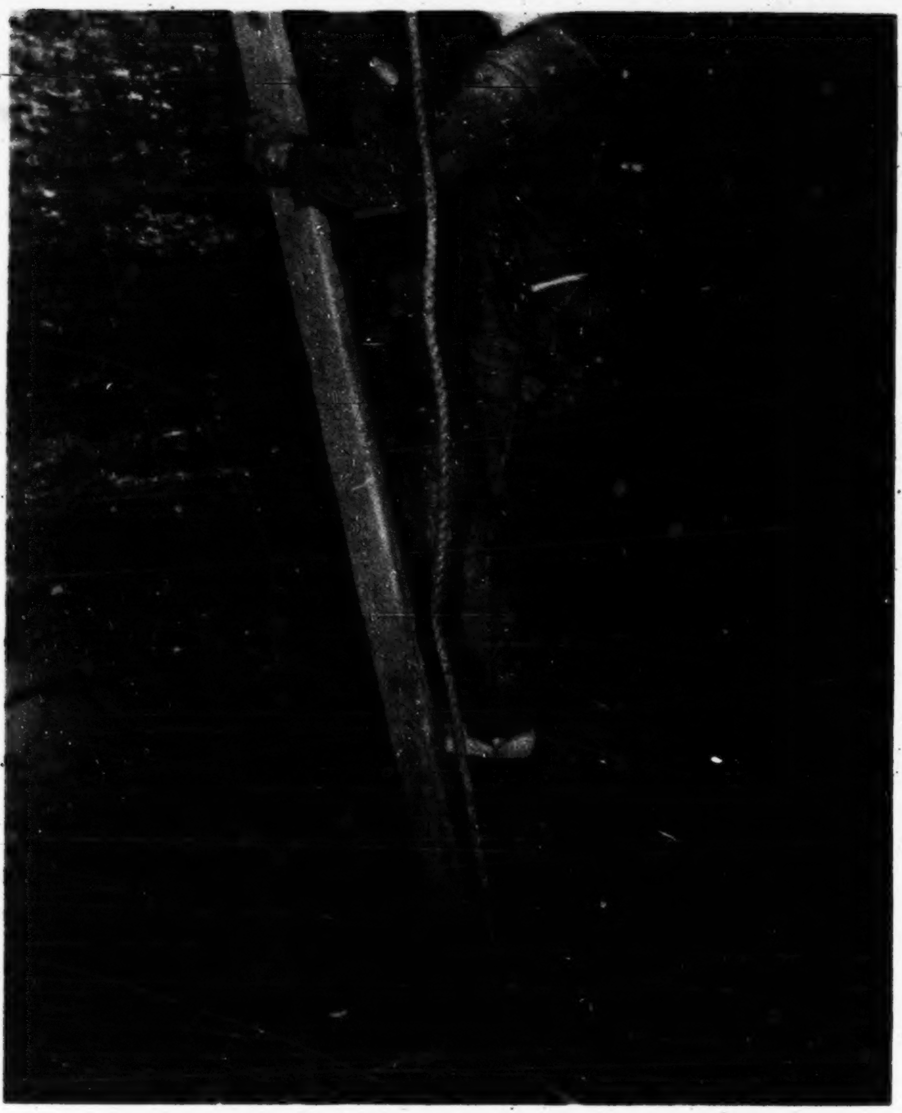
(Signed) C. H. DeFOND,
C. W. VANNELLI,
STANLEY L. PALMER,
LOUIS P. VANNELLI,
SIMON KATZMAN,
Employees' Representatives.

Dated: April 14, 1938.

PLAINTIFF'S EXHIBIT 37



PLAINTIFF'S EXHIBIT NO. 38



4361 PLAINTIFFS' EXHIBIT No. 44.

Plaintiffs' Exhibit No. 44 is a government publication in all respects identical with Plaintiffs' Exhibit No. 7, (Record p. 4023) and to avoid duplication it is omitted in the printed record.

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PLAINTIFF'S EXHIBIT NO. 8

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Mines

R. R. Sayers, Director

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STATISTICAL AND ECONOMIC SURVEYS
METAL ECONOMICS DIVISION

PRELIMINARY ANNUAL FIGURES - PLEASE FILE FOR REFERENCE UNTIL FINAL DATA ARE AVAILABLE

FOR RELEASE JANUARY 15, 1941.

MINERAL MARKET REPORTS
M. M. S. No. 885.

IRON ORE INDUSTRY IN 1940 - ADVANCE SUMMARY

The output of iron ore in the United States in 1940 is estimated by the Bureau of Mines, United States Department of the Interior, at 73,806,000 gross tons, an increase of 43 percent over the quantity mined in 1939. The output in 1940 was, except for 1916 and 1917, the largest of record. The ore shipped from mines in 1940 is estimated at 74,969,000 gross tons valued at $191,734,000, an increase of 37 percent in quantity and 21 percent in total value compared with 1939. The above figures do not include ore that contained 5 percent or more of manganese in the natural state.

The average value of the ore at the mines in 1940 is estimated at $2.56 per gross ton; in 1939 it was $2.89. The stocks of iron ore at the mines at the end of 1940, mainly in Michigan and Minnesota, were 3,502,000 gross tons, a decrease of 26 percent from 1939.

With the steel industry operating at 73 percent of capacity during each of the first quarters of 1940, advancing to 88 during the third quarter, and reaching 95 during the last quarter, thus establishing an all-time record output, operating schedules at iron-ore mines in the Lake Superior district were keyed to meet not only the 1940 requirements but to build up stocks at docks and furnaces sufficient to last until the 1941 navigation season opens. To accomplish this task, the entire ore fleet was engaged part of the season. Although severe storms on the Great Lakes in November resulted in the movement of about 2,000,000 tons less than expected, shipments down the Lakes for the season exceeded 63,000,000 tons and were the third largest of record.

Lake Superior District

About 84 percent of the iron ore shipped in 1940 came from the Lake Superior district where production was 61,808,000 tons and shipments were 62,921,000 tons, or increases of 48 and 41 percent, respectively, compared with quantities mined and shipped in 1939. Shipments in 1940 were valued at $165,907,000, an increase of 21 percent over 1939. The average value of the ore at the mines in the Lake Superior district was $2.64 per gross ton in 1940; it was $3.07 in 1939. These totals include the ore shipped by rail as well as by water from all mines, but exclude manganiferous ores amounting to approximately 1,204,000 gross tons in 1940 and 651,963 tons in 1939 that contained 5 percent or more manganese in the natural state. The stocks of iron ore in this district at the close of 1940 were 3,342,000 tons or 26 percent less than at the end of 1939. The quantity of Lake Superior ores in stock at furnaces and Lake Erie docks on December 1, 1940 was 41,711,704 tons compared with 40,732,096 tons in 1939, according to the Lake Superior Iron Ore Association.

Southeastern States

Output of iron ore in the Southeastern States, in which the Birmingham district is the largest iron-ore producing area, approximated 7,239,000 gross tons in 1940, an increase of 20 percent over 1939. The shipments of iron ore from the mines in these States in 1940 amounted to 7,232,000 tons valued at $12,545,000, or increases of 20 and 24 percent over 1939. The average value of the ore produced in these States in 1940 per gross ton was $1.73; in 1939 it was $1.67. The stocks of ore at the mines in this region were very low and at the end of 1940 totaled only 15,000 tons compared with 9,981 tons at the close of 1939.

Northeastern States

The Northeastern States, which include the Adirondack district (New York) and the Cornwall district (Pennsylvania), mined 3,547,000 gross tons of iron ore in 1940, an increase of 14 percent over 1939. Virtually all of the output in this area is magnetite and shipments from the mines totaled 3,610,000 tons valued at $11,353,000, or increases of 17 and 22 percent, respectively, in quantity and value compared with 1939. The average value of the ore in these States in 1940 per gross ton was $3.14; in 1939 it was $3.00. The stocks of iron ore at mines in this area decreased from 208,421 tons at the end of 1939 to 139,000 tons at the end of 1940.

Western States

In 1940 California, Missouri, South Dakota, Utah, Washington, and Wyoming produced 1,212,000 gross tons and shipped 1,206,000 gross tons of iron ore valued at $1,929,000. In 1939 production was 917,448 gross tons and shipments were 914,537 tons valued at $1,495,733.

Imports and Exports

The imports of iron ore reported for the eleven months ended November 30, 1940, were 2,308,338 gross tons valued at $5,875,925, compared with 2,412,515 tons valued at $5,865,510 for the entire year 1939. The reported exports of iron ore for the eleven months ended November 30, 1940, were 1,385,792 tons valued at $4,621,099, compared with 1,057,304 tons valued at $3,578,086 for the entire year 1939. Virtually all of the 1940 exports went to Canada while Chile supplied about two-thirds of the imports. The statistics of imports and exports were compiled from the records of the Bureau of Foreign and Domestic Commerce.

The following table shows the quantity and value of the iron ore mined and shipped in the United States by the principal producing States. The figures for 1939 are final, but those for 1940 are subject to revision.

Estimates of iron ore mined and shipped in the United States in 1940 and actual output in 1939

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Estimates of iron ore mined and shipped in the United States in 1940 and actual output in 1939

	Ore mined (Gross tons)		Ore shipped			
			1939		1940	
	1939	1940	Gross tons	Value	Gross tons	Value
Lake Superior:						
Michigan.......	9,159,222	12,671,000	11,238,605	$37,026,665	13,746,000	$40,769,000
Minnesota......	31,547,701	47,870,000	32,370,241	97,113,591	47,949,000	121,758,000
Wisconsin......	972,685	1,267,000	1,173,828	3,526,980	1,226,000	3,380,000
	41,679,608	61,808,000	44,782,674	137,667,236	62,921,000	165,907,000
Southeastern States:						
Alabama........	5,960,507	7,180,000	5,985,208	9,971,024	7,180,000	12,408,000
Georgia........	26,333		25,846	51,078		
Mississippi....	--		--	--		
Tennessee......						
Texas..........	1/ 34,941	59,000	1/ 31,301	1/ 88,385	52,000	137,000
Virginia.......						
West Virginia..	--		--	--		
	1/ 6,021,781	7,239,000	1/ 6,042,355	1/ 10,110,487	7,232,000	12,545,000
Northeastern States:						
New Jersey.....	399,289	657,000	394,709	1,865,037	692,000	3,321,000
New York.......						
Pennsylvania...	2,713,604	2,890,000	2,693,856	7,403,750	2,918,000	8,032,000
	3,112,893	3,547,000	3,088,565	9,268,787	3,610,000	11,353,000
Western States.....	917,448	1,212,000	914,537	1,495,733	1,206,000	1,929,000
Grand total......	1/ 51,731,730	73,806,000	1/ 54,828,131	1/ 158,542,243	74,969,000	191,734,000

1119

4363 PLAINTIFFS' EXHIBIT No. 49

State of Alabama,
Jefferson County.

Before the undersigned authority in and for said State and County personally appeared R. H. Kendricks, M. C. Crawford, and Hiram S. Peterson, who, being first duly sworn, depose as follows:

Affiant Kendricks deposes that he is at the present time working as a Drill Sharpener in the ore mines of the Republic Steel Corporation (hereinafterwards referred to as the "Republic Company") at Raimund, Alabama; that he has been in the employment of this Company and its predecessor in its ore mining operations at Raimund for twenty-six years.

Affiant M. C. Crawford deposes that he is at present a Surface Foreman for the Republic Company at its Raimund ore mining operations; that he has been in the employment of this Company and its predecessor for about forty years during which time he has served in various capacities inside and outside of the mine, having for sometime served as Assistant Superintendent and Acting Superintendent.

Affiant Hiram S. Peterson deposes that he formerly was an employee of the Republic Company and has only recently retired. Affiant Peterson further deposes that he first entered the employment of the Republic Company in 1907, and that with the exception of three years, when he was employed by the Tennessee Coal, Iron & Railroad Company as Carpenter Foreman, at one of its ore mining operations, and with the exception of service in the Army during the World War, he has been in the employment of the Republic Steel Corporation and its predecessor serving as Underground Foreman, as Repairman, as Timber Foremen and in other capacities.

All of affiants further depose that during all of the time of their employment by the Republic Company they have been acquainted with the custom and practice in the ore mine of the Company in reference to computing the hours of work for which men are paid, and know that the computation was made and the men were paid on the basis of time actually spent by them at the face or at their usual working places; that the men have always been paid and have always accepted their pay on the basis of time spent at the working place and without any consideration for the time spent in going to and from the portal of the mine to the face.

Affiants further depose that they have never heard, until recently, of any claim being made that there should be included in the time worked for which the men are to be paid the time spent in going to and from the working place of the usual place of work, and that so far as they know, no one has ever, until recently, when they heard of this present claim, made such a contention.

R. H. KENDRICKS,
M. C. CRAWFORD,
HIRAM S. PETERSON.

Subscribed and sworn to before me, on this the 2nd day of October, 1940.

MARGARETTE KENNEDY,
Notary Public.

(Seal)

4365 PLAINTIFF'S EXHIBIT #50—Showing for J. F. Vance, omitted from the printed record, being heretofore copied at page 2293.

* * * * * * * *

4370 PLAINTIFF'S EXHIBIT #50-A—Showing for G. B. Neal, omitted from the printed record, being heretofore copied at page 2298.

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4453

DEFENDANTS' EXHIBIT NO. 1

Rules and Regulations

Governing the Safety of
Employes of the

Tennessee Coal, Iron and Railroad Company

SAFETY
FIRST

ORE MINES AND QUARRIES

MARCH, 1937

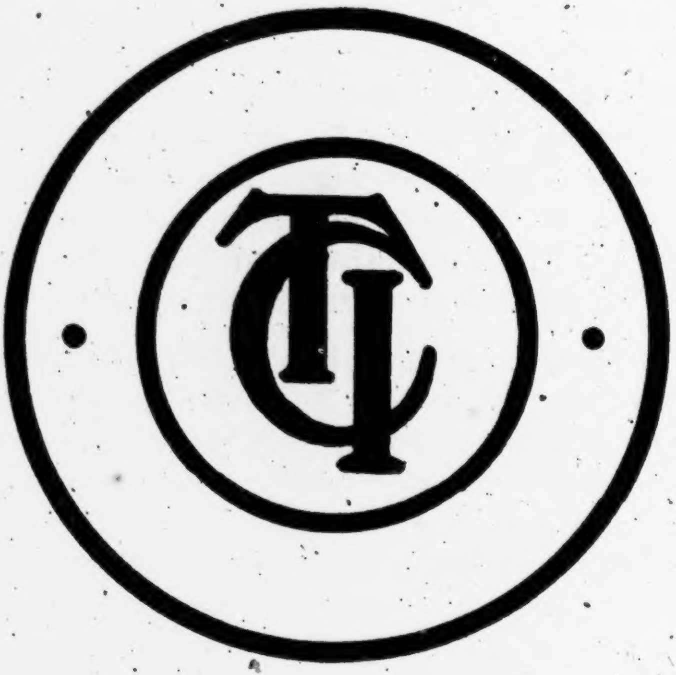
WORKMEN

Form 1013—4500—4-37 2512

Rules and Regulations

Governing the Safety of Employes of the

Tennessee Coal, Iron and Railroad Company



ORE MINES AND QUARRIES

MARCH, 1937

WORKMEN

PREFACE

"The Tennessee Coal, Iron & Railroad Company desires that its employees work under the safest possible conditions. In order that this much desired result be obtained, it has installed at its various works and mines the most modern and approved safety devices, and maintains the organization necessary to further improve and promote the work of accident prevention.

"Carelessness on the part of any employee is very apt to result in injury not only to himself but to other workmen as well; for this reason, the Company must insist that every employee observe the rules set forth herein. This is the responsibility of every workman and supervisor and is considered of such importance that violation of these rules will subject offenders to disciplinary action and, violation, if repeated, may result in discharge.

"In addition to the strict observance of these rules and the proper use of all safety devices, the cooperation of every employee in carrying out these rules is necessary. Therefore, it is expected that all employees will report promptly to the proper authority any dangerous condition or practice, continue to instruct new and inexperienced employees in safe practices, and to offer suggestions for better safety devices and safer methods.

"The equipment for safety has been in a large measure provided; the organization for further improvement of safety equipment exists; the opportunity for cooperation in improving safety conditions is offered. This is an appeal to every employee to join with the Company in the effort to

avoid accidents and the physical suffering, the mental anguish and the economic waste which are coincident with accidents.

"THE BEST SAFETY DEVICE KNOWN IS A SAFE WORKMEN.

"WHEN IN DOUBT TAKE THE SAFEST COURSE.

C. E. ABBOTT,
Vice-President."

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GENERAL RULES

1. Copies of these rules may be obtained from the Employment Office.

2. If in doubt as to the meaning of any rule, apply to your foreman for an explanation.

3. Every employe whose duties require him to work with an appliance of any kind must carefully examine same and report any defects to his foreman.

4. Every employe must report promptly to his foreman any defect affecting the safety of any employe.

5. Vigilance and watchfulness promote safety. To avoid danger, adopt the safe course. Employes must not trust to the care exercised by another when their own safety is involved.

6. Keep off all railway or crane tracks except at regular crossings provided for that purpose. Use great care. Before crossing any track—"Stop, Look and Listen."

7. Employes are forbidden to take short cuts over dangerous places. You must not leave your work to go to other parts of the plant except upon Company business.

8. Wrestling, throwing of material, or "fooling" of any kind, is positively prohibited. Fighting between employees while they are in the performance of their duties is strictly prohibited. Any fight occuring on Company property between two or more employees will be thoroughly investigated by the Superintendent, or General Superintendent, of the Department, or Works, at which the fight, or fights, occur. All employees found guilty of being aggressors in said fight, or fights, whether on one or both sides of same, will be discharged from the Company's service.

9. Any person coming to work under the influence of liquor will be discharged.

10. If you are injured, no matter how little, tell your foreman about it right away and go to the doctor. A slight injury may cause blood poisoning.

11. If you find anyone sick or injured on the property of the Company, whether an employe or not, take him to the doctor.

12. Know all the special rules covering your work, all of the general rules, and the rules of any of the departments in which you work and always report to your foreman anything you think may cause an accident.

13. Do not ride on any burden being carried by a crane.

14. Do not ride on engines, cars, cranes, or other moving bodies, except when required by your duties.

15. No one is allowed to go on an overhead crane runway, for any purpose, without permission from his foreman, and then not until the cranemen have been notified. Before a man goes on a crane runway, provision must be made by the Superintendent in charge—either by placing a man on each crane, or by placing a signal man on the floor—to stop all cranes before they reach the point where the man is, until he gets in a place of safety.

16. No one is allowed to operate any crane or other machinery, unless duly authorized by the proper authority.

17. NEVER WORK ON A CRANE, TABLE OR OTHER MACHINE UNTIL YOU HAVE NOTIFIED THE OPERATOR AND ATTACHED A DANGER SIGN BEARING YOUR NAME AT THE POINT WHERE THE POWER IS TURNED ON.

18. Do not turn on any electricity, gas, steam, air or water, or set in motion any machinery, or throw down any material without first seeing if any one is in position to be injured.

19. All persons not authorized by the Chief

Electrician are forbidden to work upon any electrical apparatus. YOU ARE WARNED AGAINST TOUCHING WIRES OF ANY KIND, AS IT MAY RESULT IN DEATH. Before doing any work where there is danger of coming in contact with electric wires, notify the Chief Electrician, who will send an experienced man to advise concerning the work. Do not try to fix electric lights, but call your foreman.

20. Be ever watchful of loads carried by cranes or suspended in the air, and keep out from under them, to avoid being injured.

21. Because of the danger incident to hoisting material by means of line shafting, it is forbidden that any hoisting be done in this manner. All hoisting must be done either with hand tackle and blocks or with regular hoisting machinery.

22. Great care must be taken by men working above other men not to drop any material without first giving warning to those below. When it is necessary for men to work above or below other men, these men should be notified.

Whenever men are working overhead they must place a sign: "Danger—Men Above."

23. When a workman removes the cover from any opening in the floor, ground, valve pit or sewer, he must take such steps as are necessary to guard that opening so that no one will fall into it.

24. In new construction or repairs, the surrounding premises must be kept as clean and orderly as possible. Boards with nails sticking up must not be left lying around.

25. There shall be placed a blue flag (and at night a blue light) at the ends of all cars on B. S. tracks when men are working on or around the cars. This applies to all B. S. tracks.

26. Care must be taken in loading material on cars, so that no portion will project over the sides or fall off in transit. See that the weight of the

load is properly distributed on car, and that large pieces are braced to prevent shifting.

27. Men working on high elevations, from which they are liable to slip, or when working on smokestacks or scaffolds supported by tackle, shall, when practicable, wear safety lines and belts.

28. Use care in placing ladders before using them. If there is danger of the ladder slipping have some one hold it.

29. Do not go up or down a ladder without the free use of both hands. If material has to be handled use a rope.

30. All scaffolds—whether swinging or otherwise—when higher than six feet from the ground shall be provided with a railing. On swinging scaffolds the railing may consist of rope or cable attached to the supporting ropes of the scaffold. The planking for the scaffolds shall be secure and cover the entire space between the supporting ropes. To prevent the planks slipping from the stringers there shall be a hole in the planking on the outside of the stringers, through which a bolt shall be placed.

31. Every employe before going upon any scaffold of any description MUST SEE FOR HIMSELF that the scaffold and its supports are properly built. Sufficient time at all times will be allowed to each employe to make this examination. He is forbidden to enter upon any scaffold until he has satisfied himself by such personal examination that it is safe.

32. TACKLE AND LASHING—Wire rope shall be used for lashing, except where it would be liable to slip, or in case of raising light weight material. In lifting heavy pieces double lashing must be provided, and, where possible, double tackle must be used. In all cases the man in charge of the work shall ascertain, if possible, the weight of the material to be hoisted, and before raising, the man in

charge must carefully inspect the tackle and lashing.

33. DO NOT FOOL WITH COMPRESSED AIR. Never blow the air on anyone. It may enter his body and injure or kill him.

34. A separate place must be provided for the dumping of boiler house ashes. They must be thoroughly drenched with water, and must not be dumped to a depth of more than two or three feet in a horizontal layer. All cars loaded with boiler house ashes must be tagged with a card showing the contents of the car.

35. In the piling of brick, the following rules must be observed:

(a) Except in brick sheds, brick must not be piled higher than seven feet.

(b) The pile must be tied at every course with alternate courses of headers and stretchers.

(c) When the pile is over four feet high it must taper back from a point four feet high, one inch to each foot.

(d) In unpiling, the taper must be maintained.

(e) Under no circumstances must brick be piled for storage purposes on scaffolds or runways.

(f) Tie strips of wood must be inserted whereever necessary.

(g) All foremen in charge of piling brick will be held individually responsible for safety of the piles.

36. In the piling of cement, the following rules must be observed:

(a) Cement must not be piled more than ten bags high, except in storage built for such purpose.

(b) The first four end bags must be cross-tied in two separate tiers up to the fifth bag, where a step-back of one bag in every five bags must be made. Beginning with the fifth bag, only one cross-tier will be necessary.

(c) The back tier, when not resting against a wall of sufficient strength to withstand the pressure, must be stepped back one bag to every five bags, the same as the end tiers.

(d) In storage, when piled between and against walls of sufficient strength to withstand the pressure, no cross-tiers nor step-backs will be necessary, but bags must be piled with a slight incline against the back wall—the height depending on the strength of the wall.

(e) Cement bags in outer tiers must in all cases be piled with the mouth facing the center of the pile.

(f) When cement is removed from pile, the length of the pile must be kept at an even height, and necessary step-backs, every five bags, shall be taken care of.

(g) All foremen in charge of piling cement will be held individually responsible for the safety of the piles.

37. Do not pile material so high that it will fall over, or allow it to lean against walls too weak to bear the pressure.

38. Never use a cutting tool on which you have to use a hammer or sledge if the head is burred or so hard that small pieces break off of it when hit.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

BOILER HOUSE RULES

1. There must be at each group of boilers one experienced man who will be held responsible for the safety and economical operation of the boilers;

also the cleanliness of the boiler house and surroundings. The duties of this man shall be such that he shall not be required to leave the vicinity of the boiler house.

2. The prevention of accidents is of first importance and no operating man or foreman should allow a condition dangerous to life or limb to exist without either remedying the defect or calling the attention of the Master Mechanic or Superintendent of the plant to the defective condition.

3. On the change of each turn all water columns must be blown down, noting the return of the water in the glass, and the gauge cocks must be tested to be absolutely sure of the water level.

4. Boiler doors must be opened at least once each day and a careful examination made for leaks at every possible point, noting tube ends, steams and blow-off pipes in every furnace. Fire sheets must be examined carefully for bulges, bags and blisters.

5. Safety valves are liable to stick on their seats. They should, therefore, be raised carefully once every 24 hours. Outlets of all safety valves must be the full size of the valve opening, and when boilers are washed, safety valves must be lubricated with cylinder oil.

6. When steam gauges indicate maximum pressure all safety valves should be blowing off freely. If they do not, ascertain the cause.

7. Steam gauges must be tested sufficiently often to insure correctness. They must be placed on syphones and attached so that they may be readily taken down for testing.

8. Gauge cocks must be kept in good order at all times and frequently used, as water glasses are very unreliable. Tees or crosses must be placed at the bend of both pipes from the boiler to the water column, and when boiler is washed, plug must be removed and pipes cleaned. Boilers must be equipped with three gauge cocks and a water glass.

9. In case of foaming, close the stop valves long enough to show the true water level in the boiler. If the level is sufficiently high, feeding and blowing down will usually correct the trouble. If the foaming becomes violent, check the draft and use blow-off freely.

10. In case of low water, cover the fire with wet ashes, or with green fuel if wet ashes are not available, and close the fire and ash-pit doors. Don't turn on the feed water under any circumstances. Let the steam outlets remain as they are until the boiler has been cooled off and examine to determine what damage has been done.

11. To get up steam, fill boilers with cold water and see that man-hole and all hand-hole gasket joints are tight. Vent the boiler to permit air to escape while the boiler is being filled. Be sure that the proper water level has been reached befor starting fires, and start them early enough to reach normal working pressure in about ten hours. Forced firing on cold boilers must not be resorted to as too rapid expansion on both the boiler and brickwork will be productive of damage. If gas or oil fuel is used the furnace must be thoroughly ventilated before starting the fire, and the fuel supply must never be turned on before first having placed a lighted torch or a piece of burning waste in the furnace. Failure to observe this rule might result in a gas explosion.

12. In turning a boiler into the main steam line after being out of service, the steam pressure of tne boiler should be brought to the same as the main line pressure, and the valve next to the boiler should be opened first to allow any water in the connecting pipe to flow back into the boiler, after which the valve next to the main should be opened slowly. Never connect boilers unless the steam pressures agree. When boilers are off for cleaning, the stop valves next to the main must be closed, no dependance is to be placed on an automatic valve

alone. These latter valves must be examined each time boiler is out of service so as to insure their working in emergencies, such as the bursting of a tube.

13. Do not close the damper entirely when there is fire on the grates, gas may collect and result in an explosion as destructive of property as a boiler explosion.

14. Provide "V" shaped brick piers or asbestos covering to protect the blow-off pipe from direct flame in the furnace. The water in boilers should be blown down two or three inches as often as necessary and not less than once every six hours. Open and close blow-off valves slowly to avoid water hammer.

15. Boiler must be kept dry on the outside as moisture will cause external corrosion.

16. Keep the brickwork tight so that the cold air does not enter, as it will cause fuel loss, fire lightly and frequently, and try by all means to save fuel. Carry a uniform water level when boiler is in service. Keep the feed pumps and injectors and all other appliances in good working order, and as neat as possible.

17. No wrench or hammer shall be used on a boiler valve or fitting while under pressure, except on hand and man-hole covers.

18. Combustion chambers and ash-pits must be kept free from clinkers, ashes and dust.

19. Each boiler plant should be equipped with a steam or air blower system consisting of a hose and blower pipe and steam or air connection together with adequate and safe platforms near each door, and the external or fire side of heating surface should be blown off thoroughly, often enough to prevent the accumulation of soot and dust. Experience will show how often this is necessary but usually about twice in 24 hours is sufficient.

20. Each boiler plant should be equipped with

the proper tools for firing, such as rakes, slice bars, steel poker, scraper and proper size of shovels (about No. 3 preferred). A proper place must be provided in which to keep all tools and they must not be allowed to lie around promiscuously.

21. Thermometers should be installed in feed lines of all plants and an effort made to attain the highest possible feed temperature. It might be stated here that each 10 degrees of heat added to the feed temperature means approximately 1% saving in coal, as well as increasing the capacity and reducing cost of cleaning and repairs of the boiler. Heaters of any type must be examined occasionally and kept clean enough to be efficient.

22. There must be no valves between water column and boiler. Care should be taken to see that water glass valves are set in correct alignment so that glass can expand freely. The following should be considered in installing and packing gauge glasses: glass should be inspected for flaws and for size to see that it does not bind the glands, 1-32 inch clearance being recommended. A rubber gasket of good quality should be used (and for high pressure steam a thin piece of asbestos packing on either side of the gasket should be added to protect it.) In packing glasses, glands should be screwed down tight enough to set packing and then loosen up a little until glass can be turned with fingers. With glasses left loose, there will be a slight leakage when steam is first turned on, but this will soon take up as glass and packing expand. The water valve should be opened slowly, first, until glass is filled, then the steam valve should be slowly opened, and after the water reaches the level both valves should be opened wide.

23. Wash out boiler at least once every month and more often if feed water is bad. Do not allow mud or scale to accumulate in boiler and do not allow oil or grease to enter boiler; these foreign substances cause over-heating and burning of plates

and result in a bag, rupture, or violent explosion. A solution of soda or a small quantity of kerosene fed continuously into boiler is often beneficial in preventing or softening scale; when either of these materials are used, great care must be exercised to see that it is entirely gotten rid of by allowing a draft to blow through the boiler before bringing a naked light to the boiler or allowing anyone to enter the boiler, as an explosion may ensue or the fumes may overcome the person entering.

24. When a boiler is to be cleaned, allow the fire to die out, and leave the dampers open with fire doors closed for at least twelve hours, when the steam gauge should indicate no pressure. Then admit air on top, open blow-off cock, and allow the water to run out. Remove the upper man-hole plate, and use vigorously a large hose with ample water pressure to dislodge loose scale, and wash out the boiler thoroughly. Now remove the lower manhole plate and all the hand-hole plates, and remove the lodged scale at the turn of the flanges and below and between the tubes. See that all parts of the boiler are entirely free of scale and clean internally and externally from head to head, and see that the furnace is cleaned out from end to end. Examine carefully all parts of the boiler for defects, particularly the parts that are subjected to the direct heat of the furnace.

25. No one should enter a boiler without first making sure that all valves, both steam and gas, are provided with signs "Do Not Open," or locked shut to prevent danger of their being opened while a man is inside boiler.

26. When more than one boiler is connected solidly into one blow-off main, the valve of the boiler being cleaned should be locked shut before anyone is allowed to go inside boiler.

27. In gas fired boilers, at least three men must work together when cleaning flue dirt, clinkers, etc., out of the boiler settings, one man being

stationed outside the boiler to watch any men inside, to prevent gas from being turned on, or to give assistance in case they are gassed by leaking gas valves or slides.

28. Gas slides should be well clayed to prevent gas leaking into the boiler house, or into boiler when out of service, the gas valves should be blocked to prevent their being opened by a sudden change in gas pressure.

29. The inspection of a steam boiler is a matter of vital importance. When notified to prepare a boiler for internal inspection, proceed to cool down and clean the boiler as per instructions given in Rule No. 24. Remove all scale, clean out the ashes and soot on the grates and in the combustion chambers, and sweep off the plates, heads and tubes, so that every part of the boiler may be examined and its exact condition determined. Have the boiler cold for the inspector when he arrives. Have the steam gauge ready for testing, water column connections open for inspection and everything in readiness to facilitate a thorough going inspection of the boiler and all its connections.

30. LAYING UP BOILERS: Empty the boiler and clean it. Dry it thoroughly, both internally and externally, and remove the accumulated scale. Paint surface exposed to the fire with linseed oil where practicable. Leave the boiler open to allow a circulation of air, and if it is located in a damp place put a pan of unslaked lime in the boiler to absorb moisture. All brass fittings should be removed and stored in a convenient place.

31. Never open a slide or valve when "Danger, Do Not Open" sign is attached and until you have seen that no one is in the boiler.

32. When opening a cold line the following precautions must be taken:

(a) Open all valve drips.

(b) Warm line by opening by-pass when possible; or by opening stop valve sufficiently to warm very slowly.

(c) An inexperienced man must not be allowed to turn steam into a cold line, unless accompanied by the foreman.

(d) Never open main valve until certain that the line is thoroughly heated.

33. All steam traps taking care of large lines must be kept clean and in working order, as this is the only safe way to remove water from the lines. Should a trap get out of order and it is impossible to repair it at once, the by-pass must be opened sufficiently to eliminate all water that might collect.

34. Leaks in pipes, flanges or gaskets must be repaired at the earliest possible time, as the same may be caused by defective material.

35. In cutting any boiler in or out the non-return valves must be used exclusively in order to insure the working of same. Should the non-return valve fail to work in any instance, notify the foreman immediately.

36. Great care must be used in the cooling and handling of flue dust, as it is liable to fly, slide and explode, causing bad burns.

37. To prevent water tenders being injured by a glass bursting, water glasses should be provided with a suitable guard or shield, so that the water level can be easily observed.

38. In washing stationary boilers all steam and water connections must be locked, and the key must be in the possession of the men entering the boiler. At the same time there should be a sign placed on the valves, such as "Man Inside, Do Not Open."

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

ENGINE ROOMS

1. The prevention of accidents to operators or employes is of first importance, and no engineer must allow a condition dangerous to life or limb to exist without remedying same, if possible. If machinery, engines, piping or valves are in any way dangerous and cannot be fixed at once, report this fact to the Master Mechanic, or Superintendent, or both, at the earliest opportunity. No hammer or wrench must be used on a bolt of a steam line while under pressure.

2. Employes are warned always to be careful of loads being carried by cranes or suspended in the air, and keep out from under them, to avoid being injured.

3. Men not employed in engine room must not be allowed to go into it unless under escort or sent on business, and anyone not regularly working in the engine room should not be allowed to handle or touch any machinery or valves without first notifying the engineer in charge. The engine room must not be used as a loafing place or dining hall for employes working in vicinity of the engine room.

4. Never enter the cylinder of an engine until the fly wheels have been securely blocked to prevent the possibility of an engine turning over.

5. Positively no one is allowed on hoisting engine platform or steps leading to platform except the assistant engineer and then only when signaled with eight ring signals.

6. Talking to hoist engineer while signal bell is ringing or hoisting engine is in motion is absolutely forbidden.

7. Do not start any engine nor electrically operated machinery, nor open any steam or water

valves, nor throw down any material without first making sure that no one is in a position to be injured by the action.

8. When automatic engine stops or quick closing valves are installed they must be tested at frequent intervals.

9. Signal bells or whistles must be kept in efficient working condition and a board posted in the engine room giving the usual signals used for the information of all concerned.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First Violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

HOISTING ENGINE SIGNALS

SIGNALS must be kept in efficient working condition and a board posted in the engine room giving the following signals and rules governing same:

1 Long Ring—Stop.

1 Short Ring—Warning signal when lowering.

2 Rings—Hoist.

3 Rings—Lower.

4 Rings—Hoist slowly.

5 Rings—Lower slowly.

1 Long and 2 Short Rings—Hoist sinking skip.

8 Rings—Man on skip. Get assistant engineer on platform. Do not move skip on this signal.

12 Rings—Skip derailed. Do not move skip on this signal.

RULES GOVERNING ABOVE SIGNALS

(1) On getting eight rings signal do not move skip until you get four rings ("Hoist slowly") or

five rings ("Lower Slowly") signal. Skip must not be hoisted in dump on this signal.

(2) When hoisting or lowering men drum must not make more than twenty (20) revolutions per minute.

(3) Skip must not be hoisted from tally house on two rings.

(4) Engineer must not move skip at any time unless he is positive of receiving correct bells. He must wait until he gets further signals.

(5) Engineer must not move skip when it happens to be lowered or hoisted past the tipple for loading, but must wait until he receives proper signal to move skip.

(6) One short ring is to be used only when lowering on three (3) rings signal and approaching a heading where the skip is to be loaded. This will notify engineer to reduce speed and be able to stop quickly on stop signal and at the proper place without jerking the hoisting rope.

(7) One (1) long ring and two (2) short rings signal is to be used only when hoisting sinking skip. Engineer must be very cautious in starting at bottom and entering tipple on surface.

(8) On getting twelve (12) rings signal do not move skip until you get four rings ("Hoist Slowly") or five rings ("Lower Slowly"). Move skip very slowly.

(9) All signals must be given the engineer by the man in charge of the skip. Any other person or persons caught ringing or tampering with signals will be discharged and prosecuted.

(10) No one shall give signal for moving skip up or down unless he knows why skip is stopped.

(11) At the beginning of each shift and after the hoisting engine has been idle for any length of time, the skip must be lowered five hundred feet (500′) or more into the slope and hoisted back into position before any attempt is made to lower men

into the mine. This test must be made so that all accumulated water is removed from the engine, brake and clutch cylinders.

(12) At the beginning of each shift the skip must be hoisted into the tipple to the dumping position in order to see that the indicator needle and dumping mark are correct. If they are not correct they must be set correctly by the hoisting engineer.

(13) No employe must get on the skip before the above tests have been made. In case the tests have not been made employes must refuse to ride on the skip.

(14) When lowering men into Mine, one man designated by Mine Foreman or Assistant Mine Foreman must ride on chair at rear of skip for purpose of giving Stop Signal in case of emergency, with Safety device provided for this purpose.

(15) When hoisting men out of Mine, one man designated by Mine Foreman or Assistant Mine Foreman must ride on bail of skip for purpose of giving Stop Signal in case of emergency, with Safety Device provided for this purpose.

(16) When Material crew is hauling material in or out of the Mine with larry attached to the skip, one man must be on the bail of the skip at all times for purpose of stopping the skip in case of emergency and material crew must ride inside of skip.

(17) THE ABOVE RULES AND SIGNALS MUST BE OBEYED.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

MECHANICAL AND SHOPS

1. Every workman must be conversant with the rules applying to the departments in which he works.

2. Never work on a crane, table or other machinery before you have notified the operator and attached a danger sign, bearing your name, at the point where the power is turned on.

3. When you complete a job, NEVER leave tools or material lying overhead. Tear down all temporary scaffolds as soon as you are through with them. Do not allow board with nails sticking up to lie around anywhere.

4. After repairing machinery, always replace safeguards before leaving the job.

5. Before going into an engine or a pump, block the fly wheel, to prevent a leak of steam starting the engine.

6. It is the duty of all oilers to know the condition of platforms and railings, and if the same are not in safe condition they must report the matter at once to their foreman.

7. Before doing any work where there is danger of coming into contact with electric wires, notify the Chief Electrician, who will send an experienced man to advise concerning the work.

8. Crane hookers must walk in front of load carried by crane, and see that men on floor get out of the way before the load passes over them.

9. Do not pile any material so high that it is liable to fall.

10. Men working on lathes, drill presses and machines of all kinds must inspect same every day before starting to work, and report any defect immediately to their foreman.

11. Do not ride on any burden being carried by crane.

12. Before doing any work where there is danger of material flying in your eyes provide yourself

with a pair of eye protectors, which can be secured from your foreman.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

RULES FOR ELECTRICAL WORK

1. The following rules and regulations are for your benefit as well as your employer's, and you are requested to comply with them.

2. Take pride in doing work that is safe, and in doing it safely without taking any unnecessary risks.

3. Do not handle currents promiscuously and do not get the idea that you are an expert at it. OVER-CONFIDENCE BREEDS CARELESSNESS, AND ACCIDENTS ARE THE RESULT. Competent men are cautious; only unskilled and inexperienced men take chances.

4. Men must not be allowed to work without having the proper tools and equipment.

5. No temporary work shall be done unless it is good and safe enough, mechanically and electrically, to be permanent.

6. It is the foreman's duty to see that only skilled and experienced workmen are put on hazardous jobs, and that such work is performed under his immediate directions at all times, in the manner he directs, and that no variations will be allowed except with his consent. Furthermore, such men must be in good physical condition.

7. One man should not be allowed alone on hazardous work, but always be accompanied or checked by an equally skilled and experienced man.

8. When there is any doubt as to the best and safest method of doing work, and when instructions are not complete or thoroughly understood, the foreman must be consulted and his direction followed.

9. If in doubt as to voltage of any circuit consult your foreman.

10. Never be off your guard, but cautious and alert at all times and under all conditions.

11. If you see any electrical equipment in unsafe condition or being improperly operated, correct the condition or report to the foreman.

12. In case of fire pull main switch of circuit causing it. Endeavor to smother fire by means of pyrene or powder extinguisher before resorting to sand or water.

13. When working above ground level provide against falling from crane, scaffold, etc., in case of shock. Linemen must always use safety belt when working overhead.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

VOLTAGE CLASSIFICATION

1. Voltages are to be classed as follows:

Less than 250—Low.

250 to 500—Medium.

500 and higher—High.

One reason for this classification is that alternating current voltmeters measure the "effective" and not the "peak" of the potential. The actual "peak" voltage of a 500 volt A. C. circuit would not be less than 710 volts and might be higher.

2. LOW VOLTAGE—Low voltage circuits can be worked on alive if conditions are dry or workmen are otherwise properly insulated from ground and not exposed to contact with both sides of circuit at once, and instructions are followed.

3. MEDIUM VOLTAGE—Medium voltage circuits can be worked on alive only by the most experienced men, under the most favorable conditions, using the special insulating devices provided for this purpose, and with permission of the Chief Electrician.

4. HIGH VOLTAGE—High voltage circuits MUST NOT BE WORKED ON ALIVE under any circumstances.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

LINE WORK

1. Examine carefully all poles, towers, brackets, scaffolds, platforms, steps, cross-arms, etc., to see that they are safe before mounting them.

2. Do not work on defective poles or towers unless they are properly guyed.

3. Make a thorough inspection of all guy wires, anchorages, pole towers and brackets before putting up wire and straining.

4. Inspect frequently all tackle, blocks, ropes, grips, belts and other accessories. Any piece of apparatus, tool strap or rope found defective must be discarded at once or repaired.

5. When handling wires over railroad crossings, walks or driveways or in the path of traveling machinery a guard must be stationed at such points until the wires are permanently fastened.

6. Use the same precaution in handling telephone and signal wires as other wires with which they may become crossed.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

WORKING ON LIVE CIRCUITS

1. Never work on a live circuit unless absolutely necessary.

2. Never depend upon the insulation of electric wires to protect you against shock.

3. Never touch electric wires when you are in contact with metal frame or structural work, or when you are on a wet place, without taking extra precaution to insulate yourself suitably from the metal or ground.

5. Use one hand at a time if possible, and keep the other behind the back. Shocks from hand to hand are the most dangerous.

5. Work only on one wire or bus at a time, and finish insulating or taping it before starting on the one next to it.

6. When working back of switchboard or where one wire or bus is near another see that the neighboring parts of opposite polarity are insulated within reach of the tools you are using on your body. This appiies particularly to switches, studs of switches and circuit breakers, busbar connections and clamps. Do not expose yourself to more than one polarity at a time, in order to prevent short circuit and shock.

7. Rubber gloves and insulated tools shall not be used under any circumstances. Slight defects in

these gloves or tools and too much dependence on them are dangerous.

8. Provide scaffolding whenever conditions warrant it.

9. When working above ground level provide against falling from crane, scaffold, etc., in case of shock. Linemen must always use safety belt when working overhead.

10. Do not feel over-confident or become careless when working on circuits of low voltage. They may be crossed with circuits of a higher and more dangerous voltage. Furthermore, it is apt to unqualify you for working on higher voltages.

11. Never work on any circuit or lightning arrester while there is any sign of lightning.

12. The safest course is not to depend upon tracing out a circuit, but rather testing it out with lamp, magneto, voltmeter or other means. This applies to putting in jumper wires, cleaning up trouble, connecting up switches to busses, and throwing in tie-in lines. If direct current, the polarity must be checked before completing connections or before throwing switch. If alternating, the phase rotation must be checked.

13. Bare ends of live circuits must be suitably taped, even if exposed temporarily.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.:

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

WORKING ON DEAD CIRCUITS

1. Dead circuits should be removed unless they will be used soon.

2. Dead circuits are never safe unless it is im-

possblie to make them alive; therefore, treat them as alive when there is any chance of their being crossed with live circuits or being made alive at any point.

3. To cut off circuits of medium or high voltage before working on them, the following rules must be complied with:

(a) Be absolutely sure that the circuit is opened at every point where it may be made alive. See to this personally if at all possible.

(b) Where circuits are controlled only from the power station the foreman must issue instructions (preferably in writing) to the switchboard operator to open all switches (or fuses) controlling the circuit concerned.

(c) Danger tag, giving name of foreman requesting circuit cut off, must be placed on switch (or fuse) and switchboard control panel by the person opening the same.

(d) When circuit is cut off at power station and danger tag is in place in such a manner that it cannot possibly come off except through human effort the switchboard operator must advise the foreman, and no work must be done in the circuit until such advice is received. Switchboard operators must notify their relief fully as to what has been done.

(e) When the work is finished and everything is clear of the circuit and everybody has been notified to keep clear the foreman must notify the switchboard operator (preferably in writing), giving his name, location and name of circuit on which the danger tag with foreman's name was attached. You cannot be too careful to have the switchboard operator understand clearly the circuit you refer to.

(f) Before working on a dead circuit that may become alive, first short-circuit the wires. Be sure to remove short circuit when through.

(g) When working on any circuit provided with switch locks, electrician must lock open the switch and take the key with him.

4. Bare high and medium voltage wires should be short-circuited only by a copper cross-bar mounted on top of an insulating pole, such as is designed and kept for this purpose.

5. Before working on or inspecting a remote control switch, it is important that control circuits be opened at the switch by removing fuse or otherwise, or that mechanically operated switches be blocked open, to prevent injury to workmen mechanically and possibly electrically. Be sure to replace everything in proper working condition before leaving the job as finished.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation; Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

ELECTRIC MINE MACHINES AND ELECTRIC HAULAGE

1. The frames and bed plates of generators, transformers and motors other than low voltage portable motors, installed underground shall be sufficiently grounded. All metallic coverings, armoring of cables, other than trailing cables, and the neutral wire of three wire D. C. systems shall also be grounded.

2. No higher voltage than medium voltage should be used underground except for transmission or for application to transformers or to other apparatus in which the wholes of the high voltage part is stationary.

3. All high voltage machines, apparatus and lines shall be marked by the use of word "DAN-

GER" at frequent intervals, and whenever possible high voltage cables should be painted red all over.

4. Carbon Dioxide fire extinguishers shall be kept in all underground stations and on all electric locomotives ready for immediate use in extinguishing fires. Motormen and station attendants shall be held responsible for these extinguishers.

5. Overhead transmission lines between station and mine entrance where such line is more than 500 feet long shall be provided with lightning arresters at station as well as at mouth of mine.

6. Where wires for electric lamps are connected to a trolley wire, the ear of the trolley hanger to which connection is made shall be provided with a drilled lug and set screw for attaching the lighting wire. Such lighting wire shall not be wrapped about the trolley hangers.

7. Trolley wires shall be installed as far to one side of the underground workings as practicable and shall be securely supported. Trolley wire must be pulled tight and be without sag.

8. All trolley wires must be properly shielded, except where same are at least six (6) feet, 6 inches (6′6″) above top of rail.

9. All lamp sockets and plugs must be non-metallic.

10. No lamp cord shall be used underground except for extension lights, and then reinforced lamp cord not less than No. 14 shall be used.

11. All cable lines to Mechanical Loaders and other electrical equipment must be hung on the lower rib.

12. When drivers, motormen or trip riders have occasion to leave their trips, or when their trips for any cause are stopped anywhere except at regular stations, they must see that it is left, when possible, in a safe place, secure from cars or other dangers or from endangering drivers or trips following or approaching, and if the trip is left in

Main Haulageway, he must go back and notify the approaching driver or trip, if any, of the obstruction, that they may be able to stop their trips and avoid collisions.

13. Great care must be taken in taking trips down grade to keep the cars under control at all times, thus preventing accidents.

14. Motormen must handle their motors in a proper manner, keep them clean, and use all necessary precautions to prevent damage to them.

15. The motorman shall not allow any one to ride on the Motors except such as are especially authorized to do so.

16. In case of any defect of the proper workings of the Motor, the Motorman shall promptly report same to the Mine Electrician or Mine Foreman, and in no case shall this be done later than the end of the day's work.

17. Motormen shall sound their gongs, or other signal devices, when approaching curves or places where workmen are on or near the track, or on entering doors. It shall be the duty of Motormen to see that all doors are kept closed.

18. No flying switches are to be made and coupling of cars while the trip is in motion is forbidden.

19. Motormen shall always ride on rear of double end controlled motors and Trip Riders shall either ride on the first or last cars of trip or on the rear end of double end controlled motors.

20. Motormen shall not pass a red signal light; also, if signal lights will not burn, he must send his trip rider ahead at least 100 feet and flag.

21. Motormen shall see that sand boxes are filled, and that sand pipes are clean. He shall, also, see that his Motor is oiled at all times.

22. No Motorman shall leave his trip standing in a Ventilation door.

23. When making a trip in a Heading, all Mo-

tormen and trip riders shall see that cars are properly chocked before leaving them.

24. No one shall attempt to do work on Motors until the current is cut off.

25. No one shall attempt to re-rail with any device other than that provided by the Company for that purpose.

26. Trip riders and trammers are forbidden to get in cars from the side while the cars are in motion.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

INSTRUCTIONS TO DRAG ENGINEERS ON MECHANICAL ORE LOADERS

1. In case of accident to electrical apparatus, pull main switch and call for electrician.

2. On taking charge of machine at beginning of each shift, grease all bearings except armature bearings, which are to be greased by electrician. Look over machine and see that all parts are in good working order.

3. See that clutches are out, that controller is in neutral, and then close switch on heading mains leading to machine, then close main switch on machine.

3-A. ELECTRICAL SIGNALS FOR DRAG OPERATORS

1 Short—Reverse direction of Scraper.

2 Shorts—Pull in.

3 Shorts—Back up.

12 Shorts—Stop and give slack on both ropes.

RULES GOVERNING ABOVE SIGNALS

(a) When the scraper is gathering its load in the face of the working place 1 short signal is to be used for reversing the direction of the scraper.

(b) When the scraper has been standing and it is desired to move it towards the chute, 2 short signals are to be used.

(c) When the scraper has been standing and it is desired to move it towards the face of the working place, 3 short signals are to be used.

(d) When it is desired to stop the scraper for an indefinite length of time 12 short signals are to be given. This signal is to be used when the scraper is to be stopped for mucking out in front of skidder block, crossing drag rope, cutting off rope, moving skidder block to a new hanger, or any other operations which require that the scraper be stopped.

4. If controller should happen to stick, throw out clutch if possible and then open main machine switch and call for electrician.

5. On leaving machine at end of shift, leave all clutches out, then open main machine switch and heading switch leading to machine.

6. To renew fuse on machine, always open your main switch first.

7. Any employe found using fuses other than those provided will be considered as violating these rules and will be subject to discharge.

8. Mechanical Loaders must not be put in operation until both jacks on the Mechanical Loader Frames, have been securely clamped to the rails.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

RULES FOR LOCOMOTIVE CRANEMEN

1. Locomotive cranes must not be moved, except upon a signal from an authorized signalman. This signalman, if not a regular switchman, shall be appointed by the Superintendent of the Department in which the crane is working. When a man is regularly employed with a crane as switchman, he should be the signalman.

2. Locomotive cranes must not be swung across a railroad track, or into such a position that cars moving on that track would strike it, until the craneman and the signalman have made sure that the cars are not being moved on that track.

3. No one except the switchman or the signalman must be allowed to make a coupling or a switch.

4. When hoisting see that all the rail clamps are on the rail properly.

5. See that all four outriggers are out and blocked up properly.

6. See that your boom is not too low.

7. When traveling around the yards see that your boom is low enough to clear all wires.

8. Do not carry excavating buckets on boom when traveling.

9. Use the best of judgment at all times, as you are responsible for the machine and the men working under you.

10. Examine your crane at every turn for defective apparatus or things liable to cause an accident, and make a written report on the blanks supplied. Mail same to foreman of the Locomotive Shop.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

RULES FOR HEAD MINERS

1. All Head Miners are under the direct supervision of the mine foreman.

2. The head miner has direct supervision over all drillmen and section helpers employed in his section.

3. The head miner will be held personally responsible for the safety of any other workmen who are employed in his section for any special purpose.

4. The head miner must, upon entering the working place of his section, personally examine and test with a hammer and bar, roof, ribs and face of the working place.

5. In case there is any dangerous ground in underhand stopes the first duty of the head miner is to order the men out of the stope where the ground is dangerous. After examining dangerous ground he must put competent men to take it down and instruct them how to take it down before proceeding to other working places in his section.

6. The head miner must, set with his own crew, all temporary timbers needed.

7. The head miner must immediately notify the timber foreman so that other timbers required can be placed immediately.

8. The head miner must personally see that timbers are replaced before he permits men to work under the ground to be supported by the timbers.

9. The head miner must inspect the working places in his section continually during each shift and shall direct the work and maintain proper discipline and safe working conditions.

10. The head miner is personally responsible for the safe working condition of all tools and equip-

ment used in his section, as follows: Proper location and condition of derailers, safe condition of tracks, tram car sprags, bumpers and brake sticks, quarrying bars, hammers, picks, shovels, shaking chutes and hangers for same, tripods, drills and wrenches for same, air hose, ladders, hoisting ropes, sinking skips and all fastenings for same, sinking tipples and hoist, switches, frogs, tipples and other tools and equipment used in his section. In case any of the above tools and equipment are not in a safe working condition he must immediately discontinue the use of same and notify and request the mine foreman for tools in proper condition.

11. The head miner must see that all tools or other equipment are removed to a safe place at the end of each shift and before blasting is done.

12. The head miner must see that all the rules of the mine are observed by the employes under his supervision and must report to the mine foreman any violation of these rules or instructions.

13. The head miner must immediately investigate and obtain all facts with reference to all accidents occurring in the section under his supervision in order that he may take all possible precaution to prevent similar accidents.

14. The head miner must see that all the working places of his section are driven to the engineer's lines and he will be held responsible for any variations from these lines or grades.

15. The head miner must immediately withdraw his men from any working place in his section which is dangerous and notify the mine foreman at once of his action.

16. The head miner must report to the mine foreman or assistant mine foreman during the shift or at the end of the shift, any unusual conditions.

17. Head miners and section helpers before drilling can be started, must clean all loose material from drilling face and examine drilling face for

failed holes and "old guns" which are liable to contain unexploded dynamite.

18. The head miner will be penalized or discharged for any violation of these rules.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

RULES FOR DRILLMEN

1. The drillman must act as assistant to head miner and must assume all the head miner's duties and have charge of each working place while the head miner is absent in other working places in his section.

2. The drillman must comply with all rules for head miner during the absence of the head miner.

3. The drillman must go into the mine on the first man-trip at the beginning of each shift and shall be the first employe to enter the working face.

4. The drillman must personally examine the roofs, ribs and working faces by means of a hammer and bar and with the assistance of the section helper, quarry down all dangerous ground.

5. The drillman must immediately report to the head miner any loose or fallen timbers or other unusual conditions.

6. The drillman must not allow anyone to start work until the working faces have been made absolutely safe.

7. The drillman must personally inspect all tools, equipment, tracks, derailers and timbers in working faces and must not permit anything un-

safe to be used or allow employes to work under unsafe conditions or surroundings.

8. The drillman has full authority to order all men out of a working face when the conditions are dangerous and must do so immediately when these dangerous conditions are found to exist.

9. Head miners and section helpers, drillmen and section helpers, before drilling can be started, must clean all loose material from drilling face and examine drilling face for failed holes and "old guns" which are liable to contain unexploded dynamite.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

RULES GOVERNING THE USE OF SAFETY LAMPS

1. Mine Foreman must see that approved type of Safety Lamp and Electric Flash Light are kept in a convenient place in each mine where development work is being done.

2. Head miner in charge of development work must be thoroughly instructed by the Chief Mine Inspector and Mine Foreman in the proper use of Safety Lamp for gas inspection.

3. Head miner in charge of development work must make certain that Safety Lamp is in proper working condition at all times, reporting to the Mine Foreman any repairs needed to Safety Lamp.

4. Head miner in charge of development work when making gas inspection must use electric Flash Light together with Safety Lamp.

5. Head miner in charge of development work

must personally examine working place for gas with Safety Lamp before anyone is allowed to enter working place.

6. Head miner after making examination for gas must mark date on blackboard furnished for that purpose and which is placed at the entrance of working place.

7. The designation, "Working Place" is to include all narrow work which has been driven beyond the last cross-cut or level connecting the right and left hand manways.

UNDERGROUND MINING AND TIMBERING

1. When timbermen are placing timber in a slope, heading or other openings, care must be taken to see that they have built firm staging or platforms, so that when the men are lifting timber in place, there will be no possibility of an accident from the platform or staging giving way.

2. At all times special care must be given to trimming down the back and sides of all openings and particularly so after each blast and at the beginning of each shift.

3. Where spikes or nails are driven into stage planking, as soon as stages are dismantled the spikes and nails must be removed from the planks or other material used.

4. When a stope heading or upset is about to be holed, men must be stationed at a safe place on the opposite side to warn off anyone approaching that point until blasting has been completed. This rule must be complied with whether the place on the opposite side is working or not.

5. At all points, when blasting, each opening leading to the place where the blasting is done must be guarded by miners, to prevent anyone from walking into a blast. The men guarding these open-

ings must remain at openings until all holes have been blasted, except in case of failed hole.

6. In case any miners have holes which misfire, they must notify the miners immediately above or below them; also, report same to Mine Foreman or Assistant Mine Foreman immediately, and in no case whatever must they attempt to blast such missed hole without acting under instructions of Mine Foreman, or Assistant Mine Foreman. They must, also, when changing shifts, notify their opposite shift partner of such failed hole. No one must attempt to fire a missed hole until the end of the shift.

7. No person must be allowed to carry powder and caps at the same time, except when taking supplies into the slope or heading where the material is to be used.

8. No one must blast even one hole unless he has a partner with him or very close to him, to assist him, should it become necessary.

9. No drilling must be done where drill steel will go in old "gun" unless operator can see bottom of same. Old "guns" must be cleaned out, as unexploded dynamite may be in bottom.

10. No man must go in a working place unless he is positive that no blasting is being done.

11. No blasting must be done until head miner is sure that mule driver, mules, men, drill and other tools are out of the way in a safe place.

12. Miners must not allow their men to go back into a working place after blasting until they have personally examined the roof and quarried all loose material.

13. When timbers have been blasted out no men will be allowed to work under ground to be supported by such timbers until they have been replaced.

14. Mine foremen are required to inspect all working places or where men travel up and down

slope once each day, and see that same are in a safe condition. They must also inspect hoisting rope and couplings of skip at the beginning of each day's work.

15. All men must use regular travelways provided, and not haulage slopes, when travelling through the mines.

16. No miner shall slab his place or drive his place wider than he has been instructed by the mine foreman or chief engineer. All engineer's lines and grades shall be carefully followed and preserved.

17. It will be the duty of the mine foreman to inspect all headings at least once each day, to see if working places are properly timbered and track is in good repair, and see that men are not working under any dangerous ground. It will also be the duty of the mine foreman to see that in case of a place not being safe, the men are removed until same has been put in a safe condition.

18. Under no conditions must anyone ride on loaded or partly loaded skips.

19. All mule drivers must lead mules when taking them to and from underground stables.

20. Section helpers and mine helpers must personally satisfy themselves that working place is in safe working condition at the beginning of each shift.

21. Miners must not drill holes into roof of heading or slope, as the blasting of such holes causes dangerous roof.

22. Under no condition must anyone ride on skip containing explosives.

23. When explosives are to be hauled on skip, hoisting engineer must be notified by telephone, and told at what headings skip is to be stopped. Skip tenders must also be notified by telephone when explosives are being hauled on skip.

24. Miners are forbidden to use a fuse shorter

than four (4) feet for blasting "pops," longer holes or any other blasting whatever.

25. Explosives must not be placed, hauled or stored in tram cars or near tracks.

26. Miners must not leave their work and go to other parts of the mine except on Company business.

27. Section Helpers must be careful and not undermine muck pile while loading ore or rock.

28. Mule drivers and all other employes are forbidden to "tail" mules.

29. All gob piles of slate and sandrock must be at least thirty (30") inches from tracks.

30. Boxes containing explosives must be opened with wooden wedges and mallets only.

31. The drillman must see that air has been cut off before disconnecting hose.

32. No one will be allowed to check in at Tally House without screen or glass goggles.

33. Fighting underground is positively prohibited.

34. The riding of drag dipper to help load same is absolutely prohibited.

35. Under no conditions will any employee be allowed to work in front of skidder blocks while drag dipper is in motion.

36. The building of fires of any kind underground is absolutely prohibited except in the regular underground blacksmith forges and this to be done only with the Mine Foreman's permission.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

TRAMMING

1. No tram car must be stopped, whether loaded or empty, without brakes being set up or chocks placed under wheels.

2. In tramming cars, all men will be required to keep derailers closed and mule stops up.

3. All headings must have two or more good brake sticks for taking cars to side track at slope. Miner tramming car must personally examine brake stick, and if it is not in proper condition for tramming car he should secure one in good condition from his foreman. The Mine Foreman must also see that all brake sticks are in good condition.

4. No obstructions of any kind must be permitted to remain in slopes and headings, and all such slopes and headings must be kept clear at all times from loose timber, rails, plank, etc.

5. Employes must see that only one tram car is allowed to leave the face at the same time. A car must not be allowed to leave the face until the preceding car has had sufficient time to reach the knuck.

6. No one must ride on empty tram car except the driver and no one must ride on loaded tram car except the man tramming the car. In case a new man is being broken in, he will be permitted to ride a loaded tram car with the man who is instructing him.

7. While tramming cars, muckers must always have cars under control.

8. The running of mules up to the face chute while pulling empties and then cutting them loose from cars while on the run is forbidden.

9. Employees when tramming must see that the brake stick is in the proper place on tram car before tram is allowed to start from loading place.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

SLOPES AND SHAFTS

1. All slopes must be cleaned at frequent intervals or as often as necessary to keep slopes in good condition and free from all obstructions, such as loose ore, rock or other materials. Before this work is undertaken the foreman commissioned to do it must personally see the engineer and advise him that the work is about to be done. If notified by 'phone the foreman must give his name to the engineer.

2. Properly separate all ladder compartments from hoisting compartments with suitable material, so that no one traveling ladders can sit on shaft dividers and get caught by the skip in motion.

3. The system of bell signals must be posted in a conspicuous place at all slopes and shafts and at all headings and levels underground.

4. Whenever practicable there must be no ladder in a compartment used for hoisting or lowering timber, and timber must not be hoisted or lowered through a ladder-way.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

EXPLOSIVES

1. The following instructions shall be printed in the different languages deemed advisable, and posted conspicuously in drys, change houses and any other places where it is considered necessary. They shall also be printed in pamphlet form and kept on hand for distribution to foremen and employes. The posted cards and pamphlets shall both be headed by some device that will convey to the most ignorant the idea that they concern the proper handling of explosives to avoid danger.

2. Don't forget the nature of explosives. By sensible treatment they can be very safely handled.

3. Don't smoke while you are handling powder or other explosives, and don't handle powder and explosives so near a light that there is danger from the flame or sparks.

4. Don't have a lighted lamp or open light in your hat or stuck in timber over the place where you are preparing powder and caps for blasting.

5. Don't throw or allow packages of explosives to fall violently.

6. Don't store blasting caps or electric fuses in the same box containing dynamite or powder.

7. Don't allow dynamite or powder, electric fuses or blasting caps to lie around in loose places where you are working.

8. Don't carry blasting caps or electric fuses in your pockets, and don't tap or otherwise investigate the same.

9. Don't attempt to withdraw a wire from an electric fuse.

10. Don't tighten a cap around a fuse by biting it with your teeth; use a cap crimper for that purpose, and don't attach the fuse to a blasting cap carelessly.

11. Don't attempt to remove blasting caps from

boxes by inserting wire nails or any sharp instruments.

12. Don't leave dynamite, fuse or caps in a wet place.

13. Don't use a short fuse to hasten explosion, or with the idea that it is economical to do so.

14. Don't fire a charge to shake a hole and then immediately reload it, as the hole will be hot.

15. Don't do tamping with iron or steel bars or with iron coupling on tamping stick. Use only a wooden tamping stick with no metal parts.

16. Don't force a stick of powder with a cap and fuse attached into a hole.

17. Don't fire a shot before everyone is out of danger and protected from flying debris. Protect your supply of explosives also from danger from this source.

18. Don't remove dynamite from original cartridge when loading holes.

19. In loading holes don't separate dynamite cartridges with clay dummies. This will leave unexploded powder in bottom of hole.

20. Don't put dynamite cartridge with exploder under other cartridges in hole. The fuse is liable to set fire to the powder.

21. Don't hurry in seeking an explanation for a misfire. Take plenty of time before you approach a misfire.

22. Don't use frozen or chilled dynamite.

23. Don't thaw dynamite on heated stoves, rocks, bricks or metal, or in an oven, and don't thaw dynamite in front of, near or over a steam boiler or fire of any kind.

24. Don't put dynamite on shelves or anything else directly over steam or hot water pipes or other heated metal surface.

25. Don't place a cap or electric fuse in dynamite in any room where powder is stored.

26. Don't put dynamite in hot water or allow it to come in contact with steam.

27. Don't put dynamite in the sun, as all nitroglycerine compounds decompose when exposed to the direct rays of the sun for any length of time, no matter what the temperature of the air may be, and hence lose their efficiency.

28. Don't keep any blasting caps or electric fuses in any room where powder is stored.

29. Don't store fuse in a hot place, as this may dry it out so that uncoiling will break it.

30. Do not fire a charge to chamber a hole and then immediately reload it. Wait until the hole is cool.

31. A series of sharp blasts must be given with whistles of either locomotive or steam shovel as a general warning that blasting is going to be done in that territory.

32. When bulldozing is to be done directly in front of a power shovel no one must remain on or under the shovel for protection.

33. All employees using Carbide Lamps to light fuse for blasting holes must personally make certain that the sparker on the lamp is in perfect working condition.

34. All men carrying caps and fuse into working places must carry same in piece of rubber hose provided by underground powderman.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

RULES COVERING THE HANDLING OF CARBIDE

1. All carbide is to be carried and kept in cans having screw tops, the same securely fastened at all times.

2. The storing of carbide and explosives or powder in the same box is prohibited.

3. Great care should be exercised in the emptying of partly used carbide.

4. Do not hold lighted lamp over carbide can, as there may be gas generated, which will explode and burn you.

5. All drums in which carbide is received must be washed out with water immediately after drum is emptied, as a small amount of carbide left in drum may generate sufficient gas to cause injury to some one in case light is held over drum.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

TEST PITS

1. All test pits must be blasted in and filled as soon as sampled. Any exception to this rule must be taken up with the General Superintendent.

2. All test pits, until completed and filled, must be securely covered at all times when men are not working in same.

3. Tools must be lowered in a bucket and securely fastened to same.

4. Spiral or pigtail hook must be used on buckets, with end sufficiently long to pass bail, or equally secure fastener.

5. After a man leaves a test pit he must not re-enter until it has been thoroughly tested for gas. This may be accomplished by lowering a lighted candle or lantern to the bottom of the pit.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

STEAM SHOVELS, LOCOMOTIVES AND CARS

1. Tracks that approach territory where blasting is about to be done must be protected with a red signal to prevent locomotives from coming within the danger zone.

2. In freezing weather all locomotives must carry a supply of salt, and engineers shall be instructed to salt footboards and side steps from time to time to keep the face free from ice and snow.

3. Engine must not be moved without first ringing bell, and whistles must be blown and bell rung when approaching crossings, curves, track crews working on track or when approaching shovel.

4. The eyesight of all locomotive engineers must be tested.

5. Locomotives and shovels under steam must not be left without a competent man in charge.

6. Riding on any but the trailing footboard is absolutely prohibited.

7. Brakemen are forbidden to ride on stripping cars.

8. Steam shovel runner must keep pitman on bank side of shovel only when absolutely necessary, and should report to foreman when men

working around shovel will not obey instructions from shovel runner.

9. Before dumping stripping cars on dumps, care must be taken to remove any rocks or chunks that may have lodged between the truss rod and car door.

10. Riding on locomotives is strictly prohibited except by special permission of the Superintendent or pit foreman.

11. No material of any kind must be carried on footboards.

12. No material must be carried on the front or rear of locomotives that will interfere with the use of grab-irons or handholes.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

MAIN SLOPE SKIPS AND CAGES

1. No one must get on man skip or cage while it is in motion or until eight bells signal has been given and permission to get on has been given by man in charge of skip. No one must get off of man skip or cage until it comes to a dead stop.

2. Riding on skips is strictly prohibited except on regular man trips and in emergency cases, and then only on authority of mine foreman.

3. When hoisting or lowering man trips, skip must be free of tools and material.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

UNDERGROUND STABLES

1. No smoking or open lights must be allowed in underground stables.

2. No lights other than incandescent electric lights shall be used in underground stables. Such lights must be placed so that same will not be broken or injured by stock or persons working in the stable.

3. All hay or straw taken into the mine must be in compact bales and not more than two days' supply shall be stored in the mine at any one time.

4. All refuse and waste from stables shall be removed from the mine promptly and not allowed to accumulate.

PENALTY: Violation of any of the above rules shall be subject to the following penalty:

First violation: Strong reprimand by Superintendent of the Department.

Second violation: Suspension for not less than three days and not more than ten days.

Third violation: Discharge.

GENERAL RULE ON PENALTIES: "There are certain vital safety rules such as handling of explosives, tramming, etc., the first violation of which will be subject to suspension or discharge, at option of Superintendent."

DEFENDANTS' EXHIBIT NO. 5

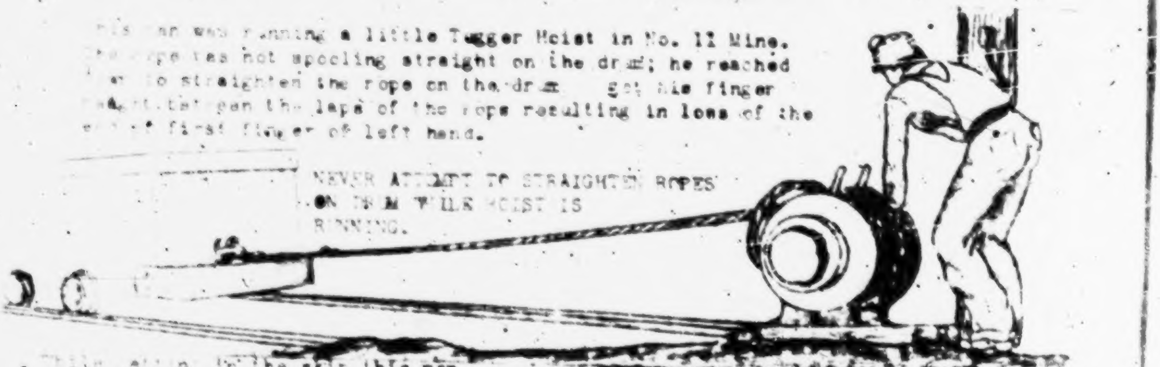
THE ORE MINER
--SAFETY--
Dec. 1938 Issue No. (8)
TENNESSEE COAL IRON & R. R. CO.
ORE MINES & QUARRIES

131

LOST TIME ACCIDENTS FOR MONTH OF NOVEMBER

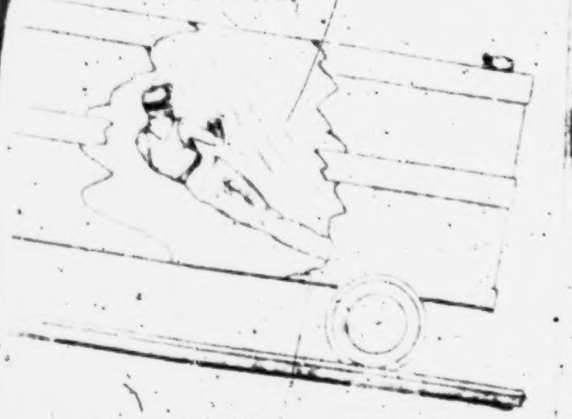
This man was running a little Tugger Hoist in No. 11 Mine. The rope was not spooling straight on the drum; he reached over to straighten the rope on the drum and got his finger caught between the laps of the rope resulting in loss of the end of first finger of left hand.

NEVER ATTEMPT TO STRAIGHTEN ROPES ON DRUM WHILE HOIST IS RUNNING.



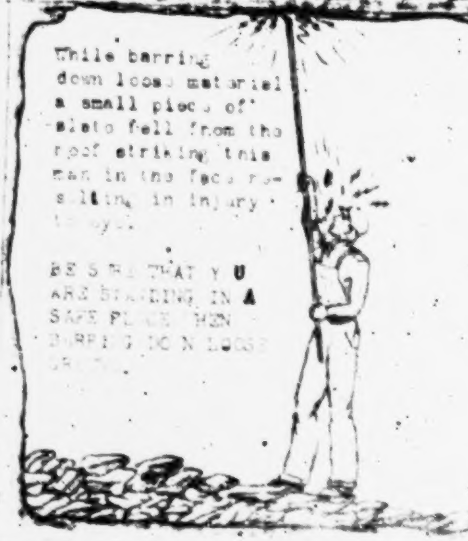
While getting in the skip this man fell to the floor of the skip resulting in fracture of pubic bone.

WATCH YOUR STEP WHEN GETTING IN AND OUT OF SKIPS.



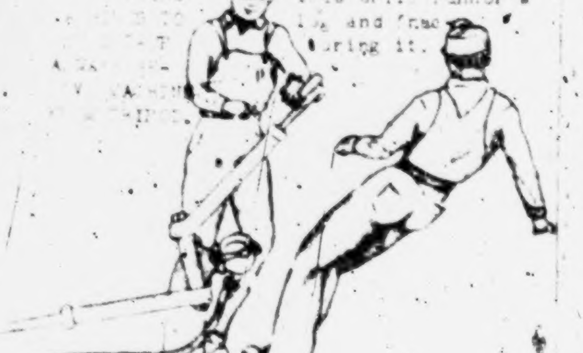
While barring down loose material a small piece of slate fell from the roof striking this man in the face resulting in injury to eye.

BE SURE THAT YOU ARE STANDING IN A SAFE PLACE WHEN BARRING DOWN LOOSE GROUND.



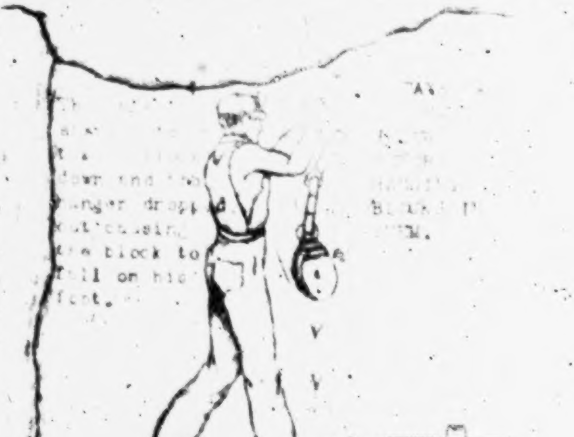
[illegible] drill machine without first [illegible] off the tripod resulted in the machine falling on this drill runner's leg and fracturing it.

[illegible] MACHINE [illegible] TRIPOD.



[illegible] down and the [illegible] hanger dropped [illegible] outcrossing the block to fall on his foot.

TAK[illegible] BLOCKS [illegible] THEM.



Skip Accidents. Each man who works Underground spends an average of 10 minutes each day riding in and out of the mine in a skip. With 2,000 men working underground on Red Mountain this total means a total exposure of 20,000 minutes each day to possible injury from skip accident. Figured in days this would be equal to 1 man riding the skip 8 hours per day for 41 days. That would mean he would have to spend that much time keeping his head below the top of the skip, getting in and out of the skip carefully, etc.

Skip accidents have helped mar some pretty good safety records in recent years. Yet, they are about the most unnecessary and inexcusable type of accident we have. What excuse is there for a man to deliberately stick his head above the top of a skip, knowing that it is only a matter of inches separating him from serious injury or death? There is not a slope on Red Mountain where the roof clears the top of the skip more than a few inches for most of the length of the slope. Though this is known to all who ride in skips, yet, every once in a while some one will "stick his neck out" and draw back a bloody head.

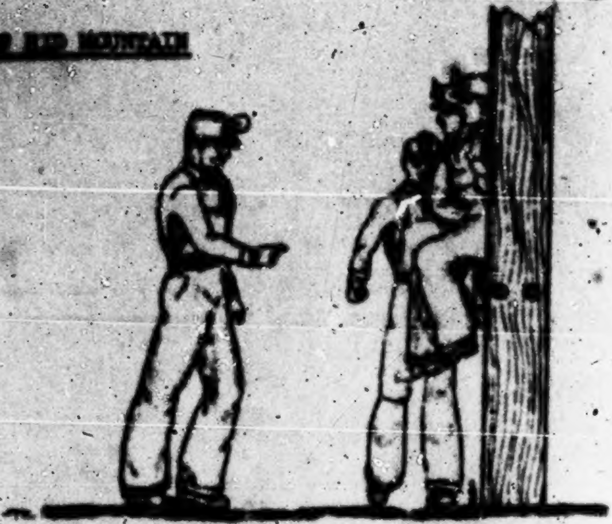
Then there is the matter of getting injured while getting in and out of the skip. Most of this type of accident, and there have been several in the past 2 years, are caused by falling while getting in the skip. A good many years ago, when every one tried to be the first one in the skip, there might have been some excuse for a man getting hurt while getting in. But now that the pushing and crowding have been stopped and we load up like humans there is small excuse for any one to get injured while getting in the skip.

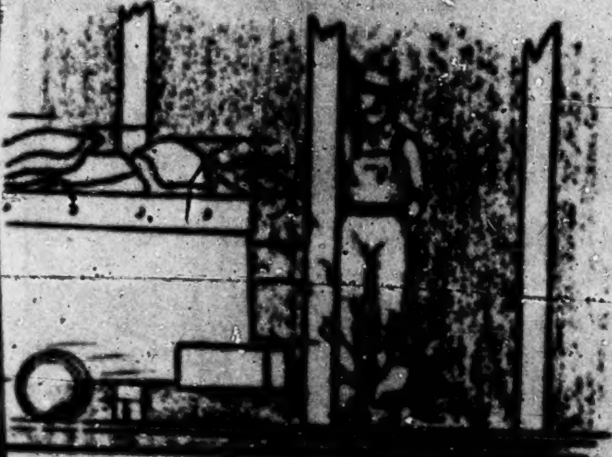
Horseplay while riding in the skip has also caused its share of accidents. Any one who would indulge in horseplay in a skip loaded with men certainly is not the type of man wanted on Red Mountain. The very fact that it is difficult for supervisors to put their fingers on those guilty of this practice makes the practice only more cowardly and disgusting. We don't believe there are many men on Red Mountain who would resort to horseplay inside a skip loaded with men.

THE OLD MAN OF RED MOUNTAIN

In the Ore Mines of Red Mountain
Deep beneath the rolling hills
Works an old man gnarled and rugged
Mining ore to feed the mills.
Many are the years he's labored
Working steady, safely too,
Un-complaining, asks no favors
Other than a task to do.

To Young miners, hasty, thoughtless,
Never seeing dangers lurk,
Words of caution and of wisdom
Speaks he to them as they work.
Speaks them to the rash and headstrong
To the ones who take a chance,
Tells them how to work in safety
Seeing dangers in advance.



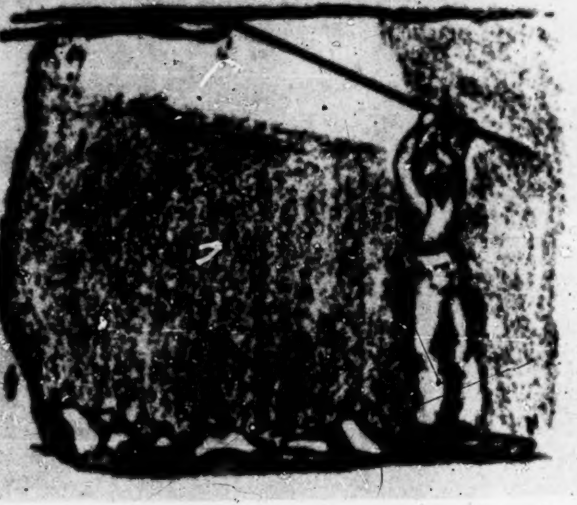


In this fashion speaks he to them;
"See you cars that pass us by?
When you meet 'em rib your rump lad
They may wreck as they draw nigh.
If it's loaded cars that's passin'
You can count on one thing 'shore
As th' cars go clickin' past you
Off will roll a chunk O' ore.

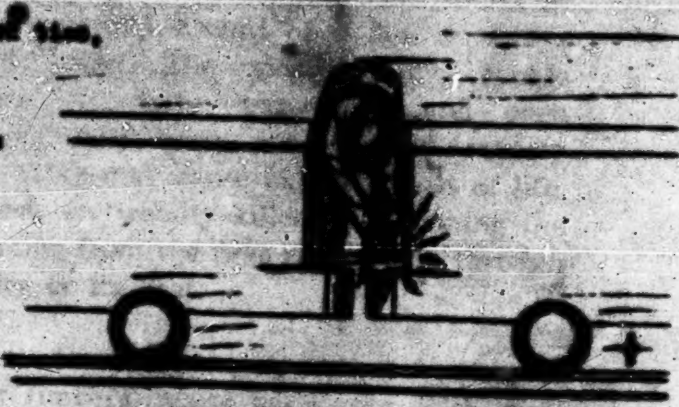
"See that trolley cable O'er you
Stretchin' endless down th' tracks?
Looks so harmless, but don't touch it
What a wallop that thing packs!
Runnin' down that wire so freely
Is 250 volts, you see,
"Tote no steel upon your shoulders
It wont mix with that D.C."

"Speakin' of th' dangers down here
There is one that tops 'em all
That's th' danger of loose pieces
From th' roof an' ribs that fall.
It is true that there ain't many
Caught by fallin' roof an' ore
Them that are, they're seldom ever
Fit to try to mine no more".

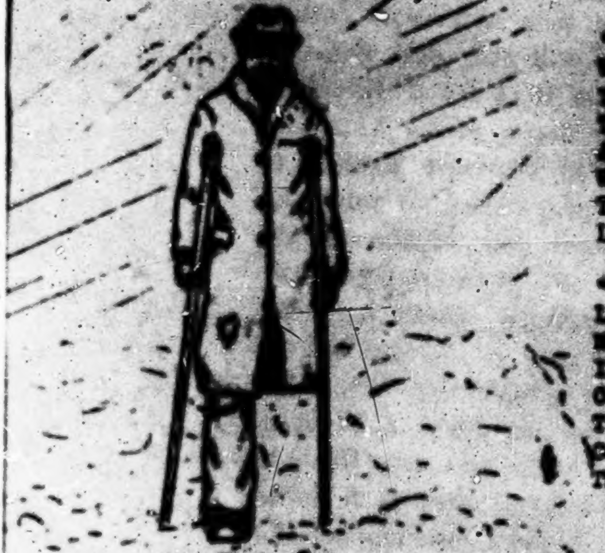
"So to guard against this danger
There is one thing you must do
Use your bar, pull down loose pieces
Get 'em before they get you.
Quarry 'til you're limber legged
S'long as there's a loose rock found
Better that you pull your guts out
Than be mashed by fallin' ground."



"When handlin' timbers, rails an' track ties,
Moves must be co-ordinated
For if a crew don't work together
Fingers may be amputated.
So, keep your hands from under timbers
Use a timber hook instead
If you do this then you won't ever
Have your fingers spewin' red.



"If you want to lose your fingers
There's a way that's shore as H--l
Try to couple cars that's movin.
But-fingers, they ain't made to sell.
Many lads have fingers missin'
Caused by jist one D--n fool motion
Of gettin trips pulled in a hurry
An' couplin' cars while they're in motion."



"Now take drag ropes, they're Dale tricky
When it comes to sockin' you,
They don't pick no certain feller
They have laid up quite a few.
A block hung up in a loose hanger
Will be pulled out bye and bye
Then like a whip you'll see th' drag rope
Lash 'way out to hit some guy."

"'Tis a pity that so many
Lives an' limbs are bein' lost
When it all could be prevented
If we'd think of what it costs.
Cost in worry, cost in sadness
To th' ones whom we admire
Cost in loss of actual earnins'
These are things we can't ignore."

So speaks the Old Man from Red Mountain
Speaks he words to those who hear,
Speaks to those who listless, hear not,
And to those who only jeer.
But this work of teaching safety
Is not one man's job, nor two,
It's a job for each and every-
Lasting one of us to do.

F. R. B.

Underground Fire Hazards: Because of the highly combustible nature of timbers and other materials found or used in mines the potential hazard of a fire is always present in every mine. The most prolific causes of mine fires are electricity, explosives, and open lights. Mine fires usually cause considerable property damage and many times may cause extensive loss of life. Victims of mine fires are usually killed by breathing the poisonous gases coming from the fires rather than through contact with the fire or its heat.

The chief causes of mine fires in our ore mines is through ignition of timbers, waste paper, etc. with open lights or by smoking. Lighted lamps coming in contact with timbers can easily ignite the timbers. In a great many instances it is not known that timbers have been ignited until the fire has gained such headway that it is difficult to get to it due to the smoke and fumes. Collections of waste paper may easily be ignited by throwing a lighted cigarette in their midst.. A fire like this may smolder for hours only to break out at a time when there is no one in the mine. In such instances timbers are usually ignited by the burning waste and a real mine fire is then under headway.

When we consider that the burning of one timber the size of a track tie can cause enough smoke, and fumes to kill any one who is caught in them, we can realize that it is very important to keep waste cleaned up and to be careful where we throw lighted cigarettes.

There are certain precautions which we should also take to prevent fires of electrical origin. Some of these precautions are listed below:

1. Dis-connect all trolley, feeder, and other mine circuits not actually in use.

2. Keep all electrical circuits, including trolley wires, from touching wood, canvas, and other combustible materials.

3. Keep rails of trolley return circuits well bonded.

4. Make splices in cables, strong, well insulated, and water-tight.

5. Keep locomotives and machines free from accumulations of grease and oily rags.

6. Keep clothing and other combustibles away from heaters, rheostats, and electrical equipment that might become over-heated.

7. Protect electrical equipment and circuits against falls.

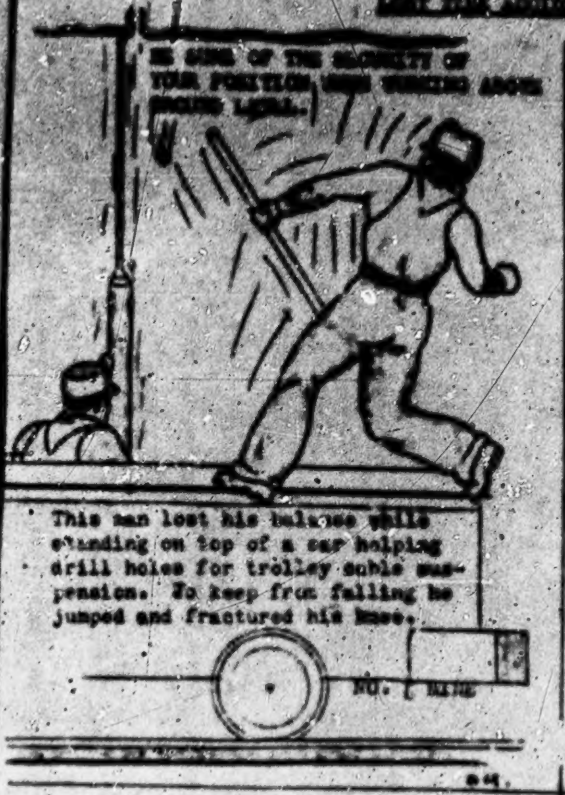
DEFENDANTS' EXHIBIT NO. 6

THE ORE MINER
--SAFETY--

February 1940 Issue No. 19
TENNESSEE COAL, IRON & RAILROAD CO.
ORE MINES & QUARRIES

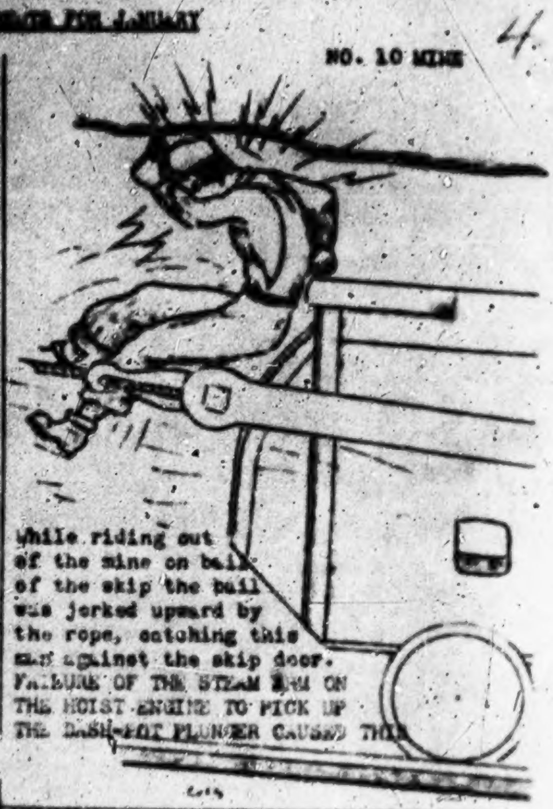
LOST TIME ACCIDENTS FOR JANUARY

4


BE SURE OF THE SECURITY OF YOUR POSITION WHEN WORKING ABOVE GROUND LEVEL.

This man lost his balance while standing on top of a car helping drill holes for trolley cable suspension. To keep from falling he jumped and fractured his knee.

NO. [illegible] MINE



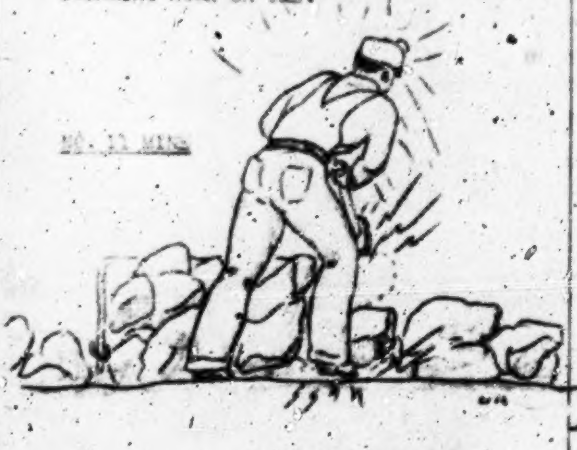
NO. 10 MINE

While riding out of the mine on bail of the skip the bail was jerked upward by the rope, catching this man against the skip door. FAILURE OF THE STEAM ARM ON THE HOIST ENGINE TO PICK UP THE DASH-POT PLUNGER CAUSED THIS

While breaking a piece of ore a section of the ore rolled onto this man's foot, fracturing a bone.

Carelessness caused this accident

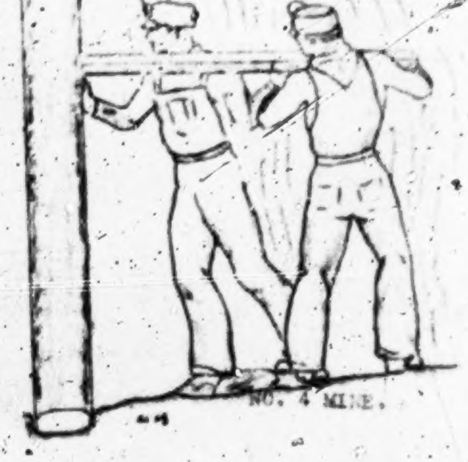
BE SURE YOUR FEET ARE IN THE CLEAR WHEN BREAKING ROCK OR ORE.



NO. 11 MINE

While tightening a timber against the roof with a section of 70 Lb. rail this man allowed his finger to be caught between the end of the rail and the timber.

CARELESSNESS CAUSED THIS



NO. 4 MINE.

This Month's Safety Talk.

We had thought that the intensive work of training men to take down loose material would surely show fruits for the year 1939. Instead of this, however, we showed a big increase in this type of accident. For the year 1939 accidents from falling material accounted for 30.8 per cent of our total lost-time accidents for the year as against 7.3 per cent for the year 1938. In 1939 there were 13 lost-time accidents from falling material as against 3 from the same source during 1938.

We cannot, for one minute, relax in our efforts to prevent accidents from falls. The first duty of every heading crew, upon entering their working places at the beginning of the shift, is to thoroughly quarry out the working face before doing other work. Not only must the larger pieces be barred down but the smaller pieces which look harmless enough when sticking in the roof, ribs or the face, must also be taken down. Such small pieces accounted for ten out of the thirteen lost-time accidents from falling material during the year 1939.

When we consider that a piece of ore 1'x1'x1' weighs about 225 lbs., we can see how necessary it is to give special attention to the smaller pieces. To be struck by such a falling piece of ore would, in all probablity, result fatally. There would be very little difference, in so far as the injuries were concerned, in being hit with a piece this size falling from a height of ten feet and in being hit with a weight of one ton falling from a height of one foot. A piece of slate measuring 20"x10"x2" would be called a "scale" by the average man underground. Yet a piece of slate that size weighs approximately 40 lbs. There aren't any of us who would like to be hit with a piece of slate this size, whether it fell from a height of one foot or ten feet. It would be bad enough to be hit with the flat side of such a piece but to be hit with a sharp edge, which would likely happen, would result in serious injury.

The average miner is too prone to overlook the small pieces and even when found, those acting in a supervisory capacity will fail, at times, to caution their men about the importance of taking down such small pieces. Too many times the average foreman will go into Bill's place and seeing small pieces sticking to the roof, face or ribs will say to him: "Knock that scale down, Bill." Whereupon Bill will take his bar and touching the small piece referred to, down the piece will come. But, is Bill, right then and there, cautioned about the importance of taking down such small material? Far too often there is nothing further said and Bill is left with the impression that it was not important after all. After this has been done time and time again and supervisors fail to caution Bill, let alone discipline him, is it any wonder that he grows careless in the matter of barring down the small material? And when a man gets careless in barring down the smaller material it isn't long until he will be neglecting to take down the larger pieces.

Another important reason why the man at the working face should be impressed with the importance of taking down small pieces is that very often small pieces in the roof will, when barred down, uncover much larger pieces and reveal dangerous roof conditions. Many times, as we all know, small loose pieces in the roof are caused by the roof gradually taking weight and breaking. In such cases great care must be used in taking down the smaller pieces as the roof above may be ready to drop out over a much wider area than is indicated by the so called "small scales".

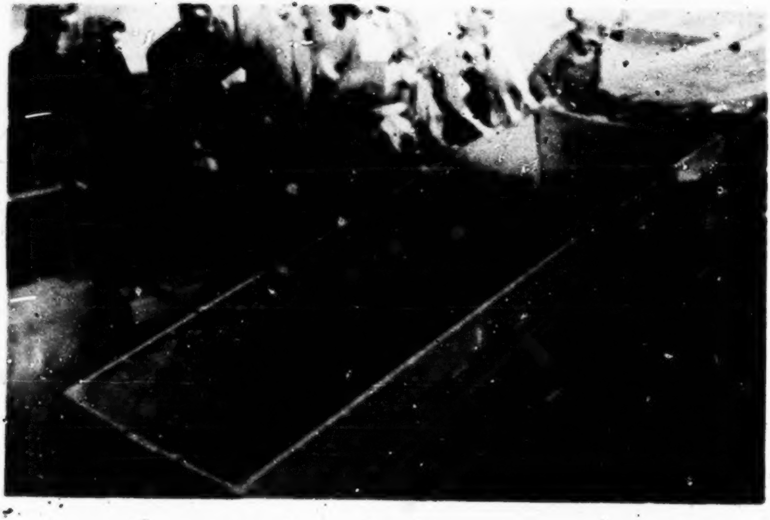
With the depth at which we are now mining we are bound to have much more hazardous roof conditions than when we were working under less cover. This is a fact which we all should keep constantly in mind if we are to reduce accidents from falling material. It is necessary that timbers be kept right up to working faces, regardless of how good we may judge the roof to be. Frequent testing of the roof is absolutely necessary during the shift. Roof which seemed reasonably safe at the beginning of the shift may, in some instances, be in dangerous condition a short time later. With drill machine running, loaders operating, fans running and other operating noises it is impossible to hear roof breaking should it start to do so. For this reason all equipment should be stopped at regular intervals during the shift while roof is tested.

The actual working faces in our mines are quarried more thoroughly than the areas between the chutes and the faces. This area between chutes and faces seems to be regarded as "No Man's Land" by a great many of our men. As a result these areas are sometimes left to take care of themselves. At least four of our lost-time accidents for the year 1939 were caused from falling material in these areas, not to mention the loose material left by crews in these areas which mght have resulted in injuries but for acts of providence; for every loose piece of material left where men have to pass or travel constitutes a potential serious injury to someone.

Another area which some of our miners are prone to neglect is the space in the roof between cross collars. The fact that a heading is timbered with cross collars does not mean that no further danger exists in such places and that it can be forgotten. Such an attitude creates a false sense of security. It has been proven, time and time again, that more accidents occur in places where the roof is considered safe then in places that are known to be dangerous. This is due to the fact that we relax our vigilance and become careless in places where we consider the roof safe and requiring no attention. On the other hand a place that is known to have dangerous roof conditions is usually watched closely with the result that accidents do not occur so frequently in such places.

If each man could realize how much his safety depends upon, not only taking down the large loose pieces but also the small pieces, the problem of getting working places quarried properly would be solved. If a man is ever struck by a falling piece of material the chances are that he will never forget it and as a result, he will in the future, be careful to take down all loose material in his working place. The next time you overlook a small piece of loose material and the Boss comes around and has you take it down, just pick it up and judge for yourself what it would have been like had you been hit with the piece.

To Thoroughly Quarry Out Your Working Place Is an Indication of Good "Horse Sense". To Fail to Do So Is an Indication of Foolhardiness



TENNESSEE COAL IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

5728

RECEIVED PAYMENT IN FULL

AMOUNT
1

SIGN HERE

TENNESSEE COAL IRON AND RAILROAD COMPANY
PAY STATEMENT

5728

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT
HOURS		½	422
RATE ADJUSTMENT		10	
INCENTIVE			723
INCENTIVE EXPLOSIVE			
TOTAL EARNINGS			[illegible]
TOTAL DEDUCTIONS			11 82
BALANCE DUE			5 05

DETAIL OF DEDUCTIONS

SUPPLIES	23
ACCIDENT & HEALTH INSURANCE	
ALA. UNEMPLOYMENT INSURANCE	22
FED. OLD AGE BEN. TAX	12
GARNISHMENTS	
CASH ADVANCES	
U. S. STEEL GROUP INSURANCE	
MEDICAL FEE	175
TENNESSEE LAND CO	
RENT, ELECTRICITY AND WATER	450
RENT DEFERRED	
COAL AND COKE	
APPRENTICE AND SCHOLARSHIPS	
LOST BADGES	
HOSPITAL ACCOUNTS	
MERC. STORE	500
MERC. STORE	
MERC. STORE	
BACK INDEBTEDNESS	
WORKS ACCOUNTS RECEIVABLE	
FUNERAL EXPENSE, ETC.	
CREDIT UNION	

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 2ND PERIOD AND RECEIPT FOR ALL DEDUCTIONS

Form 535-B

TENNESSEE COAL IRON AND RAILROAD COMPANY
PAY STATEMENT
GIVE THIS PART TO PAYMASTER

5728

RECEIVED PAYMENT IN FULL

AMOUNT	

41

SIGN HERE

TENNESSEE COAL IRON AND RAILROAD COMPANY
PAY STATEMENT

5728

UNIT OF PAY	TOTAL UNITS	RATE	AMOUNT
HOURS			
RATE ADJUSTMENT			
INCENTIVE			[illegible]
INCENTIVE EXPLOSIVE			
TOTAL EARNINGS			[illegible]
TOTAL DEDUCTIONS			[illegible]
BALANCE DUE			[illegible]

DETAIL OF DEDUCTIONS

SUPPLIES	
ACCIDENT & HEALTH INSURANCE	
ALA. UNEMPLOYMENT INSURANCE	12
FED. OLD AGE BEN. TAX	12
GARNISHMENTS	
CASH ADVANCES	
U. S. STEEL GROUP INSURANCE	
MEDICAL FEE	175
TENNESSEE LAND CO	
RENT, ELECTRICITY AND WATER	
RENT DEFERRED	
COAL AND COKE	
APPRENTICE AND SCHOLARSHIPS	
LOST BADGES	
HOSPITAL ACCOUNTS	
Special Dr	700
MERC. STORE	
MERC. STORE	1850
MERC. STORE	
BACK INDEBTEDNESS	
WORKS ACCOUNTS RECEIVABLE	
FUNERAL EXPENSE, ETC.	
CREDIT UNION	

EMPLOYEE TO KEEP THIS PART

THIS IS A STATEMENT OF YOUR EARNINGS FOR 2ND PERIOD AND RECEIPT FOR ALL DEDUCTIONS

Form 535-B—8-41

4392

T. C. I. EXHIBIT 30.

Tennessee Coal, Iron & Railroad Company.
Iron Mines & Quarries,
Ishkooda Division.

Minutes of Meeting Held at Ishkooda Office at 3;40 P. M., September 21st, 1937.

The following were present:

Mr. C. B. Cameron, Superintendent, Ishkooda Division, and the following committee from Ishkooda Local No. 153 of the International Union of Mine, Mill & Smelter Workers:

Mr. E. T. Patterson, President,
Mr. E. A. Sisemore, Committeeman,
Mr. W. L. Hogge, Committeeman,
Will George, Col., Committeeman,
Mr. Jack Warren.

The meeting was called to order by Mr. C. B. Cameron, Superintendent, at 3:40 P. M.

Mr. Cameron:

Mr. Patterson, you asked me yesterday afternoon for a meeting with this committee for 3:30 this afternoon. The meeting is now open.

Mr. Patterson:

We want to take up the case of Jack Warren, who is present with this Committee, and who formerly worked at Ishkooda for Head Miner T. J. Sizemore. We would like to know if he will be re-employed.

Mr. Cameron:

No, he will not. He was one of the 25 or 30 other men who were laid off when we had to reduce our working force when our operating schedule was changed from 6 days per week to 5 days per week, this becoming effective the week of July 5th. The last day Warren worked was July 10th. For your information Warren was a careless workman, having been injured three times, and as Jack knows, I had him in the office during the latter part of June and told him he was very careless and if operations were reduced he would be very apt to be one of those to be laid off, this due to carelessness in his work.

Mr. Patterson:

I did not know of his other accident.

E. A. Sisemore:

How about James Hodges being injured 3 or 4 times?

Mr. Cameron:

The James Hodges case has nothing to do with the case we are discussing, but for your information Hodges' injuries were of a minor nature. Have you anything else to bring up at this meeting?

Mr. Patterson:

I guess that is all.

The meeting was adjourned at 4:00 P. M.

E. T. PATTERSON,
Committeeman.

C. B. CAMERON,
Superintendent—Ishkooda.

J. I. WILLIAMS,
Secretary.

Vol. VII

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 409

TENNESSEE COAL, IRON & RAILROAD COMPANY, SLOSS-SHEFFIELD STEEL & IRON COMPANY AND REPUBLIC STEEL CORPORATION, PETITIONERS,

vs.

MUSCODA LOCAL No. 123, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 4, 1943.

CERTIORARI GRANTED NOVEMBER 15, 1943.

VOLUME VII.

—

TRANSCRIPT OF RECORD

UNITED STATES

CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Appellant,

versus

MUSCODA LOCAL No. 123, ETC., ET AL.,
Appellees.

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
Appellant,

versus

SLOSS RED ORE LOCAL No. 109, ETC., ET AL.,
Appellees.

REPUBLIC STEEL CORPORATION,
Appellant,

versus

RAIMUND LOCAL No. 121, ETC., ET AL.,
Appellees.

Appeals from the District Court of the United States for
the Northern District of Alabama

(ORIGINAL RECORD RECEIVED APR. 1 12.)

T. C. I. EXHIBIT No. 30-A.

Tennessee Coal, Iron & Railroad Company,
Iron Mines and Quarries,
Ishkooda Division.

Minutes of Meeting Held at Ishkooda Office at 9:00 A. M.,
Friday, November 11th, 1938.

The following were present:

Mr. C. B. Cameron, Superintendent, Ishkooda Division, and the following committee from Ishkooda Local No. 153 of the International Union of Mine, Mill & Smelter Workers:

Mr. E. T. Patterson, President,
Mr. L. H. McBrayer, Committeeman,
Elmore Mitchell, Col., Committeeman,
Dennis Hart, Col., Committeeman.

The meeting was called to order by Mr. C. B. Cameron, Superintendent at 9:00 A. M.

Mr. Cameron:
The meeting is now open. Is this your regular committee?

Mr. Patterson:
This is the Committee as appointed by the Organization.

Mr. Cameron:
What do you wish to bring up before me today?

Mr. Patterson:

Well, first we would like to have an understanding about our meetings with you in the future.

Mr. Cameron:

What procedure would you like to follow?

Mr. Patterson:

Any procedure that suits you.

Mr. Cameron:

Do you wish to have a set date for a regular meeting or just have it arranged for a call meeting when needed?

Mr. Patterson:

Suppose we follow the same procedure that we have in the past, that is, not have any set date for the meeting but a meeting can be called by you or by the Chairman of the committee.

Mr. Cameron:

That is all right with me.

Mr. Patterson:

We will furnish you with a typewritten list of this committee and would like to have it posted on the Bulletin Board.

Mr. Cameron:

All right.

Mr. Patterson:

The only thing we have today is the case of Mr. Pete Dulaney. As you know we had his case up with Mr. E. M. Ball and Mr. J. F. Vance and they referred us back. Dulaney thinks he should have a Head Miner's job.

Mr. Cameron:

It is a function of the Management to appoint all Head Miners and we don't feel that Dulaney is able to do the work of a Head Miner. If you will recall Mr. E. M. Ball stated—quote, "I do not think that Dulaney's physical condition at this time is such that he could handle the work of a Head Miner. We placed him on a job that we thought he could handle."

Mr. Patterson:

We feel that he has not been given a fair chance.

Mr. Cameron:

He was placed on a job that we thought he could do but he is not showing the proper co-operation in that heading that he should.

Mr. Patterson:

In what manner do you mean?

Mr. Cameron:

He was off from work two shifts without notifying his Mine Foreman.

Mr. Patterson:

Did Dulaney give any reason for being off, when he came back?

Mr. Cameron:

When he came back he told Mr. C. E. Brown, Mine Foreman, that the first day he had over-slept himself and the second shift he was sick. He said that he did not know that he was supposed to notify the Mine Foreman when he was off but that he would do so in the future.

Mr. Patterson:

Well, I will just wait and see Mr. Dulaney about this case and if there is anything further to take up we will follow the regular procedure.

Mr. Cameron:

Dulaney is not co-operating with his Head Miner in the heading and that place is not making the bonus that it has made. It made an average of a little over 9% bonus for three estimates prior to the shut down in June and it should be making it again. Dulaney wanted to quit work on one shift at 2:40 o'clock and the Head Miner told him that 3:15 was quitting time. This is not co-operation.

Mr. Patterson:

We are not upholding that and will not bring the case of a man in here that would do anything like that.

Mr. McBrayer:

Mr. Cameron, how are the other places holding up their production relative to before the shut-down?

Mr. Cameron:

They are not all coming up to expectations.

Mr. McBrayer:

Relative to Dulaney's case, do you hold the reason for not making bonus in his place against him and don't hold it against the men in the other headings where they are not making what they should?

Mr. Cameron:

We are talking about a specific case and I do when a man wants to quit work at 2:40 o'clock instead of 3:15 which is quitting time. That is not co-operation and bonus can not be made.

This does not mean that Dulaney will not have a chance for promotion. When I find that his work warrants a promotion, his health is such that he can do the work and there is an opening Dulaney will be considered.

Mr. Patterson:

That is all we have.

Mr. Cameron:

The next meeting will be held either at your request or mine.

Mr. Patterson:

We would like to have three copies of the minutes of the meetings.

Mr. Cameron:

All right, you may have them.

The meeting adjourned at 9:48 A. M.

E. T. PATTERSON,
Committeeman.

C. B. CAMERON,
Superintendent—Ishkooda,

J. I. WILLIAMS,
Secretary.

T. C. I. EXHIBIT No. 30-B.

Tennessee Coal, Iron & Railroad Company,
Ishkooda Division.
Minutes of Meeting.

Held in Superintendent C. B. Cameron's Office, January 11, 1939.

Those present were:

Mr. C. B. Cameron, Superintendent,
Mr. J. I. Williams, Supt's Clerk,

and the following Committee representing the members of Ishkooda Local No. 153 of the International Union of Mine, Mill & Smelter Workers:

Mr. E. T. Patterson, President,
Mr. L. H. McBrayer, Committeeman.

The meeting was called to order at 9:00 A. M., by Mr. C. B. Cameron, Superintendent.

Mr. Cameron:

This is the regular monthly meeting and the meeting is now open. I would like to state that the meetings in the future will be held at 9:00 A. M., on the first idle shift in the second week of each month.

Mr. Patterson:

That is all right with the Committee.

Mr. Cameron:

Do you have anything to bring up for discussion today?

Mr. Patterson:

Yes, sir, the first thing is a complaint against George Holloway, Colored, Bath House Attendant, at No. 11 bath house. He comes into the white section of the bath house about 6:10 or 6:20 o'clock and starts sweeping before the men get away from the bath house. I have asked him three times to quit doing that as the dust is too bad for the men.

Mr. Cameron:

You should have taken this up with the Foreman instead of telling Holloway. I have already taken that matter up and I supposed that it had been corrected but if it has not been I will see that it will be.

Mr. Patterson:

We want to bring up the case of Lon Randle, Colored. He has asked the Committee to see if he can not be allowed to go back in the mine to work. I had him to go to see the Doctor and the Doctor told him that his eye was as well as it would ever be and we think that he should be allowed to go back into the mine to work. There are other men in the mine with one eye.

Mr. Cameron:

I don't agree with you. There are several men in the mine who only have one eye but they have been working in the mine for a long time. I don't think that we should allow Randle to go back into the mine at this time. Just because we have other men in the mine that have one eye is no reason for putting someone else in there. Randle has only been injured since March, 1938, about a year, and he is not accustomed to the loss of his eye yet.

Mr. Patterson:

Since others are in the mine with only one eye Randall feels that he could work all right in the mine.

Mr. Cameron:

Randall has talked to me several times about his going back into the mine, but I don't feel that it is a good practice to allow him to go back now.

Mr. Patterson:

Then you will not allow him to go back to work in the mine?

Mr. Cameron:

No, not at this time.

Mr. Patterson:

Well, I will take that report to him and if he wants us to take it up any further we will arrange to do so.

Mr. Cameron:

All right.

Mr. Patterson:

I would like to take up the case of Willie McCray, colored, Section Helper for Mr. Elza B. Jones in No. 60-R Heading, No. 11 Mine, who wants to change jobs with Irvin Nathan, Colored, Mine Helper for Mr. N. O. Ousley, on the Extra Timber Crew. McCray has asked Mr. Carson, Mine Foreman, to let him make the change and Mr. Carson told him to come to see the Superintendent.

Mr. Cameron:

Willie McCray has not been to see me but if he wants to change jobs he can come to the office and sign a transfer requesting it and I will put another man in his place after I have talked with the Foreman.

Mr. Patterson:

Freeman Wood spoke to Mr. Carson, Mine Foreman, about his catching extras on Skip Tender's job. They have been using Edward Brown on the job and Freeman is an older man and thinks that he deserves the extra work as a Skip Tender. Wood said that Mr. Carson told him that he would have to see you before he could make any change.

Mr. Cameron:
Freeman has been offered a better job that he has, that of Drill Runner, and he declined to take it. If he does not want a better job when it is offered, I don't see why we should go to any effort to get him to take one that he wants.

Mr. Patterson:
This Skip Tender job was open when Freeman was asked to take the drill job and he said that he told you that he could not handle a drill. He was not asked to take the the Skip Tender job.

Mr. Cameron:
Freeman has never been a Skip Tender and Edward Brown has.

Mr. Patterson:
You know what you told me about Freeman taking a job as a Drill Runner. (That he had never drilled and would have to be taught).

Mr. Cameron:
Yes, and I told Mr. Carson to tell Freeman to come to see me and he did not come for four or five days.

Mr. Patterson:
Freeman told me that he would take a drill and try it.

Mr. Cameron:

That is what I thought but he told me he did not want it.

Mr. Patterson:

I asked Freeman why he did not take the drill, after he had talked to you, and he said he had changed his mind. We would like for Freeman to be trained to be a Skip Tender.

Mr. Cameron:

We have no Skip Tender's job open now but when there is the man that is entitled to the job will get it. I don't know whether Freeman would be the next man entitled to a Skip Tender's job or not.

Mr. Patterson:

Freeman feels that he is an older man than the man on the job now and that he is entitled to the extra shifts.

Mr. Cameron:

Freeman is not a Skip Tender and never has been and Edward is a Skip Tender and is only working extra.

Mr. Patterson:

We feel that Freeman is entitled to a better job and that is the job.

Mr. Cameron:

I don't say Freeman is not entitled to a better job. I offered him one and he didn't want it. When there is a better job open I will consider him but I can't say that I will give him any better job.

Mr. Patterson:

We will take this report back to Freeman and if he is not satisfied he will take it up further.

Mr. Cameron:
That is all right.

Mr. Patterson:
That is all we have today.

Meeting adjourned at 10:40 A. M.

E. T. PATTERSON.

C. B. CAMERON,
Superintendent—Ishkooda,
J. I. WILLIAMS,
Secretary.

4401 T. C. I. EXHIBIT 30-C.

Tennessee Coal, Iron & Railroad Company,
Ishkooda Division.
Minutes of Meeting.

Held in Superintendent C. B. Cameron's Office, February 8, 1939.

Those present were:

Mr. T. S. Bridges, Division Engineer,
Mr. J. I. Williams, Supt's Clerk,

and the following committee representing the members of Ishkooda Local No. 153 of the International Union of Mine, Mill & Smelter Workers:

Mr. E. T. Patterson, President,
Mr. L. H. McBrayer, Committeeman.

The meeting was called to order at 9:25 A. M., by Mr. T. S. Bridges, Division Engineer, as Chairman.

Mr. Bridges:
This is the regular monthly meeting. Do you have anything to discuss at this meeting today?

Mr. Patterson:
Yes, sir. There is a correction we would like to get made in the minutes of the last meeting. Where I said to Mr. Cameron "you know what you told me about Freeman Wood drilling". Mr. Cameron said that he had changed his mind and that was not in the mniutes. I would like for Mr. Cameron's statement to be shown in these minutes.

Mr. Patterson:
. Continuing the case of Freeman Wood: Mr. Cameron stated at the last meeting that the skip tender job was not open and that Edward Brown was catching extras on that job and that Wood would have to be trained. Mr. Cameron also stated that when the skip tender's job is available the man that is entitled to the job will get it. Mr. Darden is back at work and Brown is still on the skip tender's, job and we contend that Wood is entitled to the skip tender job now.

Mr. Bridges:
Where has Darden been?

Mr. Patterson:
Darden was off sick but is back at work now. I spoke to Mr. Darden and asked him if he ever expected to go back on the skip tender job and he said "no". I asked him if he changed jobs wth Brown and he said "no". That indicates to us that the skip tender job is open.

Mr. Bridges:
Why do you think that Freeman Wood is entitled to the job?

Mr. Patterson:

Because he is an older man with the Company than Brown.

Mr. Bridges:

Has Wood ever been a skip tender?

Mr. Patterson:

He has never been a regular skip tender but has worked as skip tender at Wenonah.

Mr. Bridges:

I don't see where we can do anything about it. I would not make any changes now. The way the matter stands now is the way it will stay as far as I am concerned.

Mr. Patterson:

The reason I brought this case back is because Mr. Cameron stated that the men entitled to the skip tender job, when it was available, would get it, and after Mr. Darden has returned to work we feel that Wood is entitled to the skip tender job and I would like to have Mr. Cameron's decision on the case before we pass it on to Mr. Ball.

Mr. Patterson:

Next we want to continue the Lon Randall case. Mr. Cameron stated that he did not think that Randall had become accustomed to his one eye enough to go inside. Randall lost his eye last March and the Doctor states his eye is as well as it will ever be and the Committee decided at the last meeting to continue this case until this meeting and to try and get a definite time set by the Superintendent that Randall would go back on his regular job.

Mr. Bridges:

Has Randall been promised a job back in the mines?

Mr. Patterson:

Yes, sir, he was promised his job as soon as he was able to go back in the mine.

Mr. Bridges:

I would not promise you that we could put Randall back now. I would rather case not be taken any further until we see Mr. Cameron:

Mr. Patterson:

Our intentions are to try to co-operate with the Superintendent as much as possible and I would like to give some evidence in these minutes relative to the Randall case in order that you might take the matter up and get a decision within the next few days. The evidence is: Randall knows of a man at Wenonah that lost his eye within three weeks after he lost his and that man is already back in the mine. I believe the man's name is Booker Black at Wenonah. We feel that Randall will never become accustomed to the use of his eye in the mine until he is put back and given a chance and that is our contention that he should be put underground now and on his regular job.

Mr. Bridges:

I will see Mr. Ball within the next few days, if possible, and if there is anything we can do about either case I will let you know when you come in the office. I would rather, if possible, you would put off a meeting with Mr. Ball until you have seen Mr. Cameron.

Mr. Patterson:

We will take this up with the General Committee and if possible we will hold these two cases up until Mr.

Cameron gets back and take them up with him again before we see Mr. Ball.

Mr. Bridges:
All right.

Mr. Patterson:
That is all that we have to discuss today.

The meeting adjourned at 10:12 A. M.

E. T. PATTERSON,
For the Committee.

C. B. CAMERON,
Superintendent—Ishkooda.

4404 T. C. I. EXHIBIT 30-D.

Tennessee Coal, Iron & Railroad Company,
Ishkooda Division.
Minutes of Meeting.

Held in Superintendent C. B. Cameron's Office, March 8th, 1939.

Those present were:

Mr. T. S. Bridges, Division Engineer,
Mr. J. I. Williams, Supt's Clerk,

and the following committee representing the members of Ishkooda Local No. 153 of the International Union of Mine, Mill & Smelter Workers.

Mr. E. T. Patterson, President,
Mr. L. H. McBrayer, Committeeman,
Elmore Hitchell, (C), Committeeman,
Dennis Hart, (C), Committeeman.

The meeting was called to order at 9:00 a. m., by Mr. T. S. Bridges, Division Engineer, as Chairman.

Mr. Bridges:

This is the regular monthly meeting. The meeting is now open. Does the committee have anything to discuss with me today?

Mr. Patterson:

Mr. Bridges, I guess we will have to pass the cases of Mr. Freeman Wood and Lon Randall which are pending. I spoke to Mr. E. M. Ball about these cases, while at a meeting in his office, and he wanted us to let them wait until Mr. Cameron came back to work and take them up with Mr. Cameron again. Mr. Cameron is not back to work yet and we don't know when he will be and the committee feels that something should be done about these two cases. The men themselves feel that way too. Woods feels that he should be skip tender now and Randall feels that he should be working in the mine.

Mr. Patterson:

About the case of Freeman Wood. I came in here and spoke to Mr. Cameron about Wood and Mr. A. W. Killian. Mr. J. M. Lemley was asking for a change off of a drill runner job and I asked Mr. Cameron to let either Wood or Killian take Lemley's place as drill runner. He said that he had put Killian on a drag operator job. I then spoke to him about Wood being put on the drill that Lemley was giving up and he said that it would not be fair to T. J. Sizemore as Wood had never drilled and he asked me if I would take Wood as a drill runner. I told him that I would and he said that he did not think it would be fair to either me or Mr. Sizemore. Then the skip tender's job was open and we brought up a complaint, part of which is in the minutes of a meeting, for

Wood to take the skip tender job. Just before Edward Brown was put on the skip tender job Wood was offered a drill runner job by Mr. Cameron and he refused or said that he did not feel that he could handle the drill or did not want it at that time and we feel that Wood should have the skip tender job because he is an older man than Brown. We feel that Wood was offered the drill at that time to offset the putting of Brown on the skip tender job because the skip tender job was open at the time. Wood said that is the reason that he changed his mind on the drill runner job.

Mr. Bridges:
I don't feel like Wood is entitled to the skip tender job.

Mr. Patterson:
Why not?

Mr. Bridges:
Because he was offered a better job and refused it.

Mr. Patterson:
He was offered the better job to offset the putting of Brown on the skip tender job.

Mr. Bridges:
I don't think so. Wood just feels that way.

Mr. Patterson:
I feel that way too.

Mr. Bridges:
I feel that Wood had a fair deal.

Mr. Patterson:
We don't. If he was entitled to a drill runner job when the drill job of Mr. Lemley was open he would

have been given it but he was not offered the job and then they threw the drill in his face when the skip tender job was open.

Mr. Bridges:
I can't do anything about it.

Mr. Patterson:
We feel that there should be something done about it. We will take it to Mr. Ball. It has gone to be done some way.

Mr. Bridges:
I am not going to do anything about it. I feel he has been treated fair.

Mr. Patterson:
We don't.

Mr. Patterson:
About the case of Lon Randall. Mr. Bridges, we feel like you could do something about that. He is a man that has been out of the mine and the doctor says that he is as well as he will ever be. He will have to go into the mine before he can become accustomed to the use of his eye in the mine. He wants to get back in the mine where he will be out of the weather.

Mr. Bridges:
I will see what I can do about that.

Mr. Patterson:
Mr. Bridges, we have a complaint from Mr. Walter McDowell about the drag operator's job in the Southwest Haulage with Mr. Burl Seritt. He feels that he is entitled to a drag because he is an old drag operator and

when he came to No. 11 Mine he took a drill because it was all that was open. Mr. Cameron said it would not be permanent, that he would try to find something else for him. Then when this drag operator job in the Southwest Haulage was given to someone else Mr. McDowell complained about it and since then there have been several drag operator jobs open. McDowell is an older man than Rufus Jones, Colored, who was placed on the drag in the Southwest Haulage and McDowell is a drag operator and also a drill runner.

Mr. Bridges:

Did McDowell ask for a drag operator job when he first came up here?

Mr. Patterson:

When he came up here to go to work Mr. Cameron told him he was going to put him on a drill but he would try to get something else for him.

Mr. Bridges:

McDowell has never been in here to ask for a drag operator job.

Mr. Patterson:

He don't have to come in here. He asked the Mine Foreman.

Mr. Bridges:

As far as the Southwest Haulage job is concerned I did not know that McDowell wanted to change jobs until the afternoon before the job was to be put on.

Mr. Patterson:

The Mine Foreman knew it because McDowell had asked him for this drag operator job. McDowell had been running as extra Drag Operator in 60-R.

Mr. Bridges:
I can't do anything about it now.

Mr. Patterson:
You knew about it before Burl McDaniel came over and took this other job.

Mr. Bridges:
That is only a temporary job.

Mr. Patterson:
He could have taken the job temporarily too. We will take his case up with Mr. Ball.

Mr. Patterson:
Roy Patterson, on Mr. C. E. Brown's shift, has a complaint about a drag operator job because there have been two or three drag operator jobs open on that shift and he has been running as extra drag operator. Some new men have been placed on the drags, J. H. Syphurs and others.

Mr. Bridges:
When did Patterson ask for a drag operator job?

Mr. Patterson:
He asked for a drag operator job when he was running as extra drag operator in Pete Dulaney's place during the latter part of last year when vacations were being given.

Mr. Bridges:
Why does he want to change jobs? He can make more money on a drill runner job than on a drag operator job.

Mr. Patterson:
He had rather run a drag than a drill on account of the water and the quarrying, they are against his arms.

Mr. Bridges:

I can't do anything about it.

Mr. Patterson:

We feel this way about it. All of the men who were placed on jobs were Brotherhood men except Burl McDaniel and it looks like discrimination.

Mr. Bridges:

You know that the Head Miners choose their men with the approval of the Superintendent.

Mr. Patterson:

No, sir, I don't.

Mr. Bridges:

Mr. Rhodes asked for Brady Franklin as a drag operator in his place and we let him work him. The men on those jobs are placed with the approval of the Superintendent.

Mr. Patterson:

Mr. Bridges, we feel that we should go according to the contract.

Mr. Bridges:

We are trying to do that.

Mr. Patterson:

We feel that the man with the most age with the Company should have the job whether he be a Brotherhood member of a Smelter member, and if they are placed on jobs that way we will have no complaint.

Mr. Bridges:

Just because a man has the most age with the Company is no reason he would have preference. He should have the ability to handle the job.

Mr. Patterson:
He should be given a chance.

Mr. Bridges:
These men, McDowell and Patterson, I feel, have been given all they deserve. They are drill runners and that job pays as much money as the drag operator job.

Mr. Patterson:
We understand that but there are hardships on some jobs that are not present on others. Mr. J. H. Syphurs was put on one of these drag operator jobs.

Mr. Bridges:
Syphurs has been a Head Miner.

Mr. Patterson:
McDowell and Patterson are older men than he and they can drill and operate a drag too.

Mr. Bridges:
There is nothing we can do about that. We feel that what we did is right.

Mr. Patterson:
We don't feel like it is right and we will carry their cases to Mr. Ball as soon as we get these minutes.

Mr. McBrayer:
Mr. Bridges, if you had fifteen years service with the Company and I only had five years service, with the same ability, and there was a job open do you think I should have the job?

Mr. Bridges:
No, I think I should have it. The way I feel is that we can not continuously be swapping men around in the

mine just for the convenience of the men because it would tear up the operation of our organization.

Mr. Patterson:

That is just the way we feel about it. If these men will be put on the jobs they should have we feel that they would be satisfied and the organization would not be torn up. McDowell is an old drag operator and these men came back to work and took the jobs offered and now these other jobs are open, which they are entitled to, and younger men with the Company are being put on them. We feel that the younger men should take the hard jobs and let the older men have the easier jobs to which they are entitled.

Mr. Bridges:

I still feel that they have been given fair treatment.

Mr. Patterson:

Well, that is as far as we can go here. We will have to take it up with Mr. Ball. That is all we have.

The meeting adjourned at 10:05 A. M.

E. T. PATTERSON,
For the Committee.

C. B. CAMERON,
Superintendent—Ishkooda.

4411 **T. C. I. EXHIBIT 30-E.**

Tennessee Coal, Iron & Railroad Company,
Ishkooda Division.

Minutes of Meeting.

Held in Superintendent C. B. Cameron's Office March 2rd, 1939.

Those present were:

Mr. C. B. Cameron, Superintendent,
Mr. T. S. Bridges, Division Engineer,
Mr. J. I. Williams, Supt's Clerk,

and the following committee representing the members of Ishkooda Local No. 153 of the International Union of Mine, Mill & Smelter Workers:

Mr. E. T. Patterson, President,
Mr. L. H. McBrayer, Committeeman,
Mr. W. F. Wood, Jr., Committeeman,
Elmore Mitchell (C), Committeeman.

The meeting was called to order at 9:10 A. M., by Mr. C. B. Cameron, Superintendent, as Chairman.

Mr. Cameron:
This is a special meeting that was requested by Mr. E. T. Patterson to take up a matter that he said could not wait until the next regular scheduled meeting. The meeting is now open.

Mr. Patterson:
Mr. Cameron, the complaint that we have is from Mr. Lem Scruggs, White, for the Assistant Mine Foreman job

in Mr. W. C. Burgess' place at No. 11 Mine, which has been pending for several days. Mr. Scruggs feels that he is entitled to that job as he is an older man than Boyd B. Tipper and should have had the job instead of Tipper.

Mr. Cameron:

There has been no Assistant Mine Foreman appointed at No. 11 Mine. Mr. Tipper is Ore Inspector.

Mr. Patterson:

Tipper is acting as Assistant Mine Foreman. He is carrying the maps and is measuring the places.

Mr. Cameron:

There has been no Assistant Mine Foreman appoint. Mr. Burgess is very sick in the hospital and Mr. C. E. Brown, Mine Foreman, and Mr. Tipper are trying to carry Mr. Burgess' work on between them as best they can.

Mr. Wood:

Mr. Cameron, don't you think that the man that is the most capable of handling the job should have been put on as Assistant. Mr. Scruggs feels that he should have had the promotion.

Mr. Cameron:

I told you that there has been no promotion made.

Mr. Woods:

Mr. Scruggs is more capable of handling the Assistant Mine Foreman Job than Tipper.

Mr. Cameron:

That would be for the Management to decide.

Mr. Patterson:
It seems to us Mr. Cameron that you are absolutely ignoring the contract.

Mr. Cameron:
I am not ignoring the contract.

Mr. Patterson:
You just stated that Tipper was doing the work of Assistant Mine Foreman.

Mr. Cameron:
I did not say that. I said that Mr. Brown and Mr. Tipper were doing Mr. Burgess' work between them.

Mr. Patterson:
We feel that there was a promotion for the man that was put on the job. Tipper is working nine (9) hours and is getting time and one-half for overtime. Mr. Scruggs feels that he is entitled to that extra time and to the job.

Mr. Cameron:
I don't think that he is entitled to it.

Mr. Patterson:
That is where we feel that you are ignoring the contract and we would like to know if you intend to make any changes.

Mr. Cameron:
No, I do not.

Mr. Patterson:
That is all that we have unless you have something to say to us regarding the other cases that we took up.

Mr. Cameron:
No, I have nothing to say regarding them. Those cases have gone to Mr. E. M. Ball.

Mr. Patterson:
That is all.

The meeting adjourned at 9:25 a. m.

E. T. PATTERSON,
For the Committee.

C. B. CAMERON,
Superintendent—Ishkooda.

4414 T. C. I. EXHIBIT 30-F.

Tennessee Coal, Iron & Railroad Company,
Ishkooda Division.

Minutes of Meeting.

Held in Superintendent C. B. Cameron's Office, April 12th, 1939.

Those present were:

Mr. C. B. Cameron, Superintendent,
Mr. T. S. Bridges, Division Engineer,
Mr. J. I. Williams, Supt's Clerk,

and the following committee representing the members of Ishkooda Local No. 153 of the International Union of Mine, Mill & Smelter Workers:

Mr. E. T. Patterson, President,
Mr. L. H. McBrayer, Committeeman,
Elmore Mitchell (C), Committeeman.
Dennis Hart (C), Committeeman.

The meeting was called to order at 9:00 a. m. by Mr. C. B. Cameron, Superintendent, as Chairman.

Mr. Cameron:

This is the regular monthly meeting. The meeting is open.

Mr. Cameron:

I have been instructed to advise this committee that relative to the request for putting Lon Randall, Colored, back to work in the mine, Dr. Noland advises that he does not approve permitting this employee to return to work in the mine.

Mr. Patterson:

Now about Freeman Wood's case. Freeman says that he will accept the section helper job offered him provided he be promoted when a job such as skip tender or drag operator, which would be a promotion for him, is open and to which he is entitled.

Mr. Cameron:

We will give him a job as section helper but as to promising him a further promotion we can not do that. When there is an opening for promotion he will be considered.

Mr. Patterson:

Mr. E. J. Nichols, who is drilling for Mr. E. B. Jones, on the hill, said that he asked you for a job in the development work and you told him there was no job open. Since then he has heard of two jobs being open and he was not given either of them.

Mr. Cameron:

Nichols came to see me sometime ago and requested he be given a chance as a Timberman. Last week he came in and told me that he had done a great deal of narrow work and that he would like to be given a chance in the development work. There has been no job open in the development work that would be a promotion for Nichols.

Mr. Patterson:

He wanted to be put on as a drag operator or drill runner in the development.

Mr. Cameron:

We can not change a man from a drill runner in a stoping heading to a drill runner in development as the basic rate is the same. Going from a drill runner job to a drag operator job is essentially a demotion although the base rate is the same.

Mr. Patterson:

What he is asking for in the development is the bonus. He figures that is a promotion. The two men that were put on in the development are younger men and he feels he should be given a chance when these jobs were open.

Mr. Cameron:

Incentive earnings are up to the efforts of the man himself and I am not changing one man from one occupation to a like occupation in another place.

Mr. Patterson:

That is all we have this morning.

The meeting adjourned at 9:30 a. m.

E. T. PATTERSON,
For the Committee.

C. B. CAMERON,
Superintendent—Ishkooda.

4416 T. C. I. EXHIBIT 30-G.

Tennessee Coal, Iron & Railroad Company,
Ishkooda Division.

Minutes of Meeting.

Held in Superintendent C. B. Cameron's Office May 10th, 1939.

Those present were:

Mr. C. B. Cameron, Superintendent,
Mr. J. I. Williams, Supt's Clerk,

and the following committee representing the members of Ishkooda Local No. 153 of the International Union of Mine, Mill & Smelter Workers:

Mr. E. T. Patterson, President,
Mr. L. H. McBrayer, Committeeman,
Dennis Hart, Col., Committeeman.

The meeting was called to order at 9:00 a. m., by Mr. C. B. Cameron, Superintendent, as Chairman.

Mr. Cameron:
This is the regular monthly meeting. The meeting is open.

As per my conversation with Mr. Patterson the other day, I want to quote:

"The future policy of the Company as it has to do with the employment of employees who through an accident or for any other cause loses the sight of one eye will not permit such employee to work under any consideration underground in any of the Company's mines. The Company will continue as in the past, wherever possible to do so when a vacancy occurs or an opening is available, to give preferential consideration to employees who have become partially incapacitated for such work on the surface as their ability permits.

"It is hoped that our employees will appreciate that such a policy has in mind their protection, as it is readily understood that employees so handicapped are subjected to a much greater degree of hazard than other more fortunate employees not having such impaired vision."

Are there any comments?

Mr. Patterson:
No, sir.

Mr. Cameron:
Do you have anything to bring before the meeting today?

Mr. Patterson:
We have the case of John D. Richardson, Colored, Badge No. 6033. On April 10th, 1939, the drag operator in Julius Hick's place in No. 11 mine was on vacation and Richardson had previously made extras in the drag operator's place. On this occasion one drill runner was off and they used Richardson as drill runner on the 10th and 11th of April and Richardson spoke to me about this and as one of the committeeman I spoke to the Mine Foreman about it. The Mine Foreman said that he was using Richardson as a drill runner on account of shortage of men. On April 12th we had a meeting here. On the 13th we went back to the mine to work and the regular drill runner had returned to work and Richardson was put back as section helper. I asked the Mine Foreman

about Richardson going on the drag operator job and he said he had orders to leave the drag operator as he was. On the afternoon of the 13th I came in and spoke to you about it and you stated you would not make any change for just two or three days. I asked for a meeting and you refused, saying these things could be taken up at the regular monthly meeting. This committee feels that Richardson has been discriminated against on account of his joining the union because before he joined the union he caught one extra, the only available extra since he has been in the heading, as drag operator. For these three days that he was deprived of the privilege of working on drag operator rate we are asking that some provision be made and we would like an answer from you as to what you intend doing about it.

Mr. Cameron:
The replacing of men who are on vacation or off for some other reason is strictly a function of the Management.

Mr. Patterson:
Not considering seniority rights, ability or anything stated in the contract?

Mr. Cameron:
The best men available for these temporary vacancies are the men that will be used.

Mr. Patterson:
The committee feels just as I stated before and we would like some answer from you.

Mr. Cameron:
As I recall this case James Knox, Colored, drag operator in this heading was on vacation; Sam Jackson, Col-

ored, drill runner in this place reported off the same morning due to a death in his family, Richardson was placed on the drill and Willie Lee Johnson, Colored, was placed on the drag. When Jackson returned to work on Thursday morning he took his regular job on the drill and Richardson went back on his regular job as section helper and there was no reason for further changes.

Mr. Patterson:
Richardson had the age on this other man, he had the ability and according to the contract he was supposed to have had this job as drag operator and owing to his belonging to the union he did not get the job. Then you are not going to do anything about it?

Mr. Cameron:
There is nothing to do about it.

Mr. Patterson:
I would like for you to explain how the extra time is being distributed.

Mr. Cameron:
There will be no division of time. The work on idle days will be done by the crews that would do the same type of work if it was done on a regular operating day. When there is timber, track or chute work to be done the timber, track or carpenter crew will do the work. When the slope needs quarrying drill runners will do the quarrying and when the slope is to be scrapped section helpers will do that work.

Mr. Patterson:
We have a complaint about Troyt Arthur, White, at No. 13 Mine, as to his catching extras continuously every week and the pipemen and other men have not been catching extras every week.

Mr. Cameron:

As I stated before there is no division of time or catching extras. Due to men being on vacation and due to the fact a good many men are laying off from work it has been necessary to supplement these track crews and timber crews, by men who were best suited to do this work.

Mr. Patterson:

Then Troyt Arthur is the best man to do the work?

Mr. Cameron:

Troyt Arthur has been a Mine Helper working on track prior to the time he was placed on the sinking hoist engine and is the logical man to use on the track crew.

Mr. Patterson:

You don't think the other men could do the work?

Mr. Cameron:

If we need them we will use them but we will not divide time.

Mr. Patterson:

Well, that is all that we have today.

The meeting adjourned at 10:05 a. m.

E. T. PATTERSON,
For the Committee.

C. B. CAMERON,
Superintendent—Ishkooda.

T. C. I. EXHIBIT NO. 31

[illegible] PAY STATEMENT [illegible]

TCI Exhibit
Comp #232 ah

5948

LEE [illegible] W
417-03-3229

[illegible] PAYMENT IN FULL

47 79

[illegible]

PAY STATEMENT

5948

LEE [illegible] W
417-03-3229

[illegible]	[illegible]	[illegible]	[illegible]
[illegible]			
TOTAL DEDUCTIONS			2 50
BALANCE DUE			47 79

[illegible]

T. C. I. EXHIBIT 31(a)

[illegible] PAY STATEMENT [illegible]

TCI 31(a)

5948

LEE [illegible] W
417-03-3229

[illegible] PAYMENT IN FULL

23 71

[illegible]

T. C. I. EXHIBIT 31(b)

[illegible] PAY STATEMENT

31(b)

5948

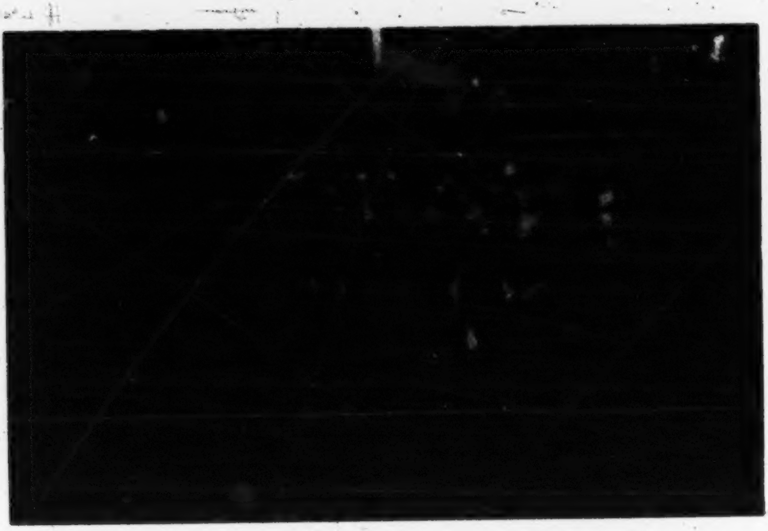
LEE [illegible] W

[illegible]

DEFENDANT'S EXHIBIT NO. 19

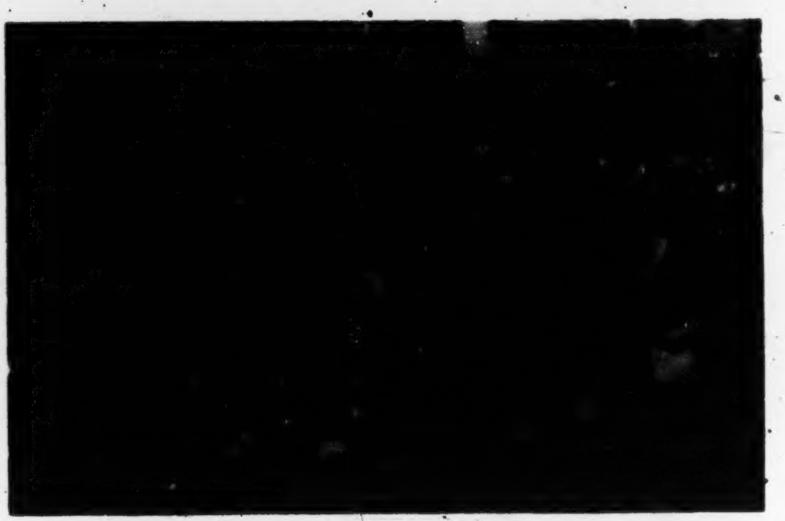
INTERVENER'S EXHIBIT NO. 1

INTERVENER'S EXHIBIT NO. 2



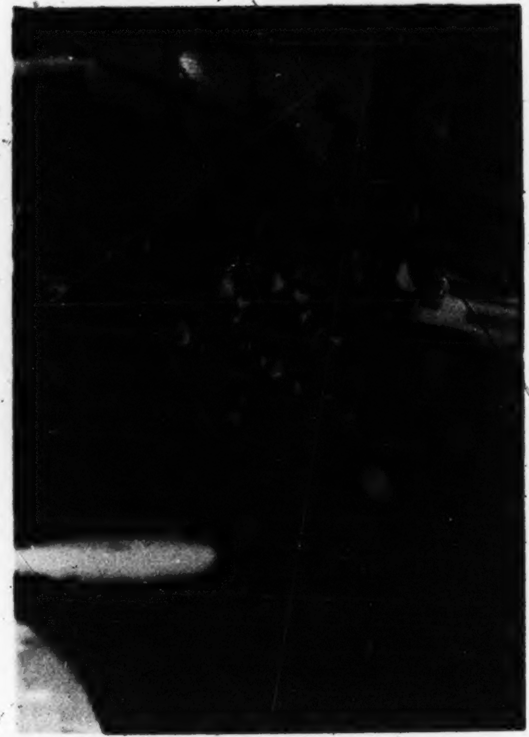
INTERVENER'S EXHIBIT NO. 3

INTERVENER'S EXHIBIT NO. 4



INTERVENER'S EXHIBIT NO. 5

INTERVENER'S EXHIBIT NO. 6



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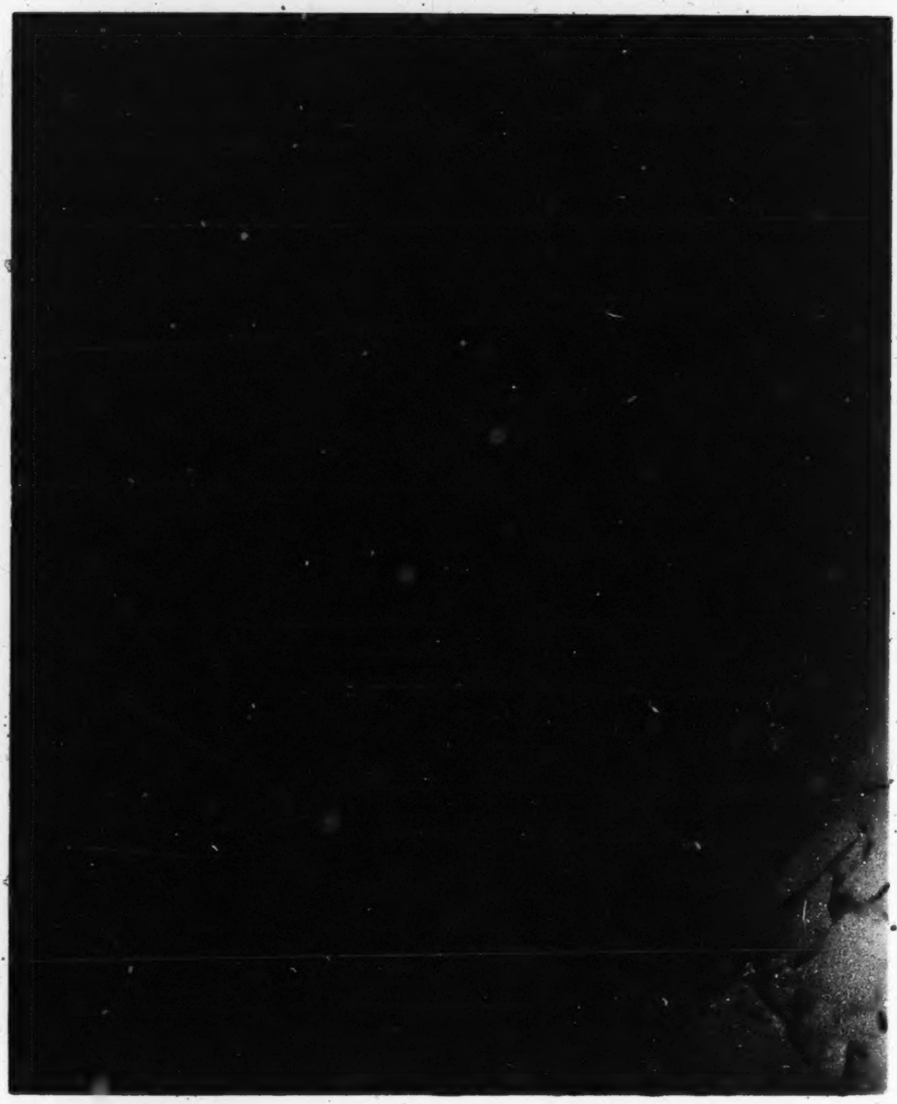

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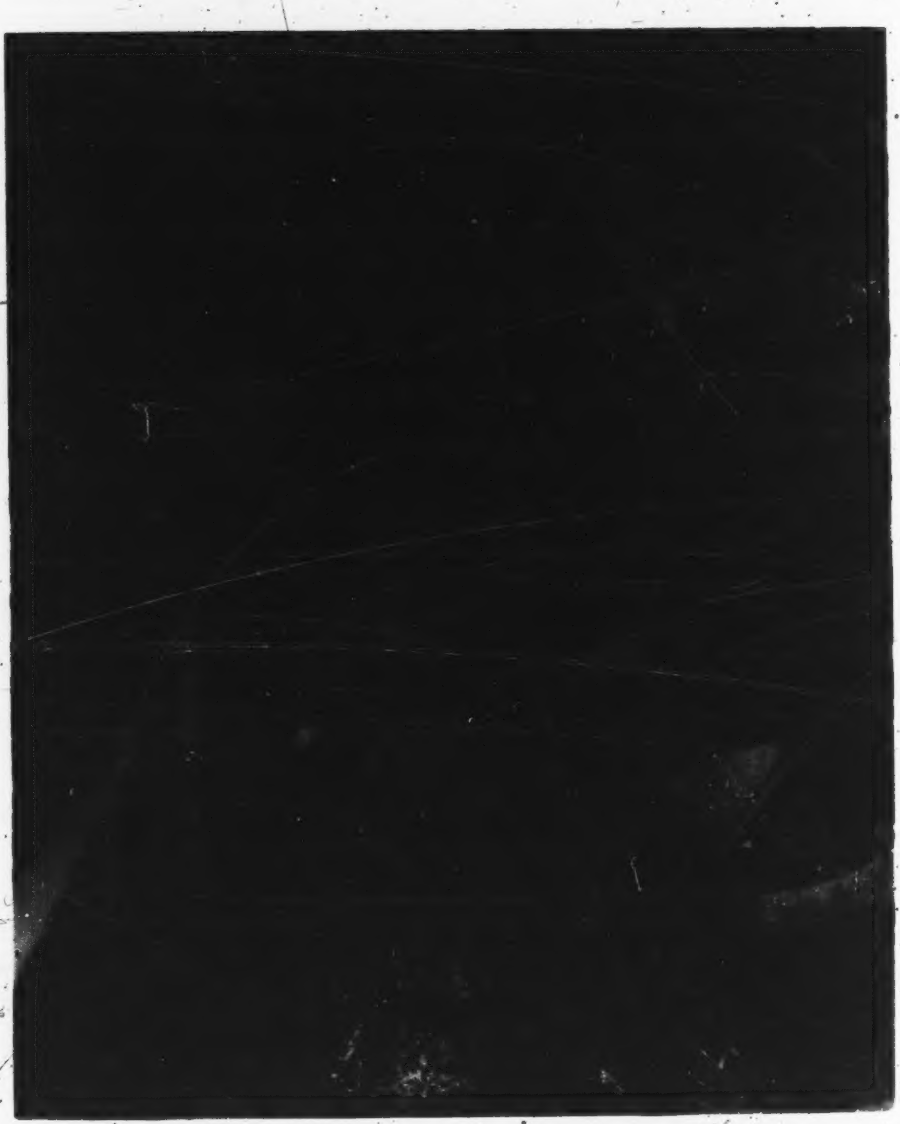

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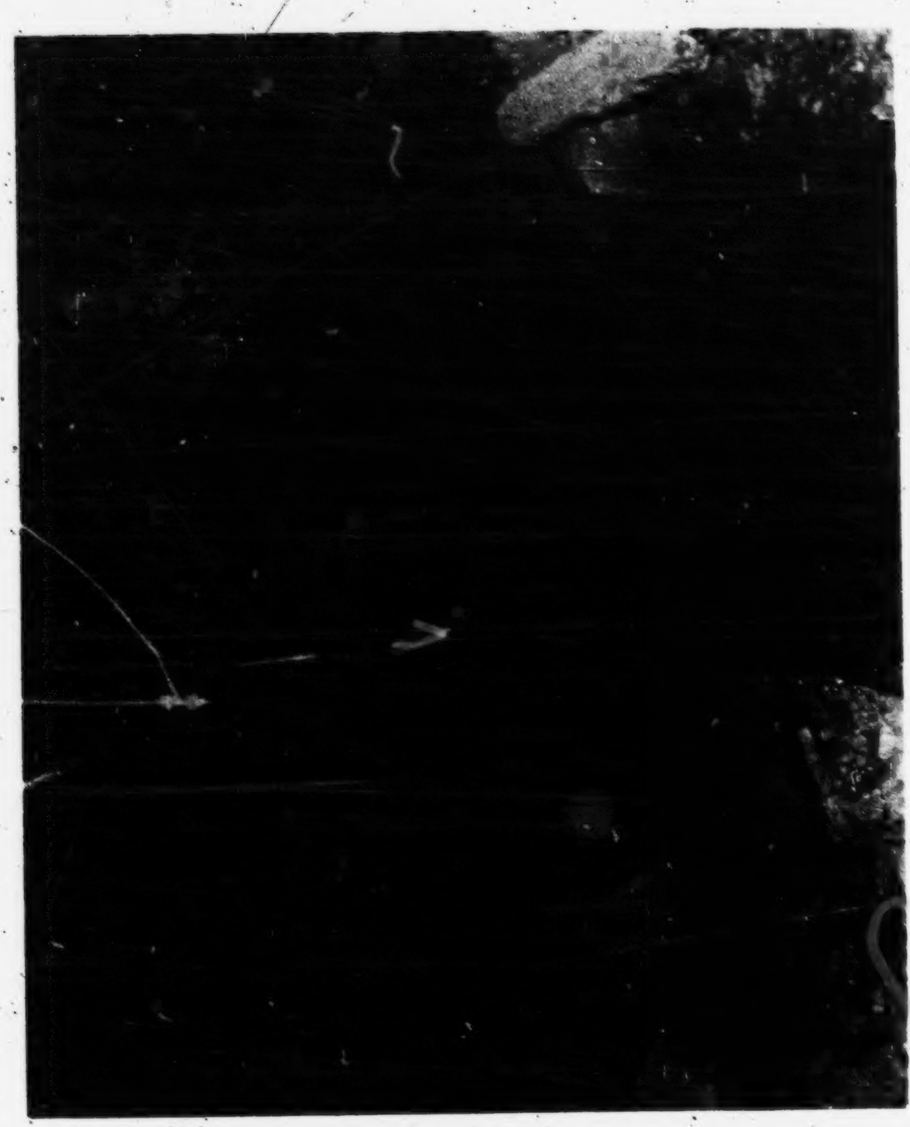

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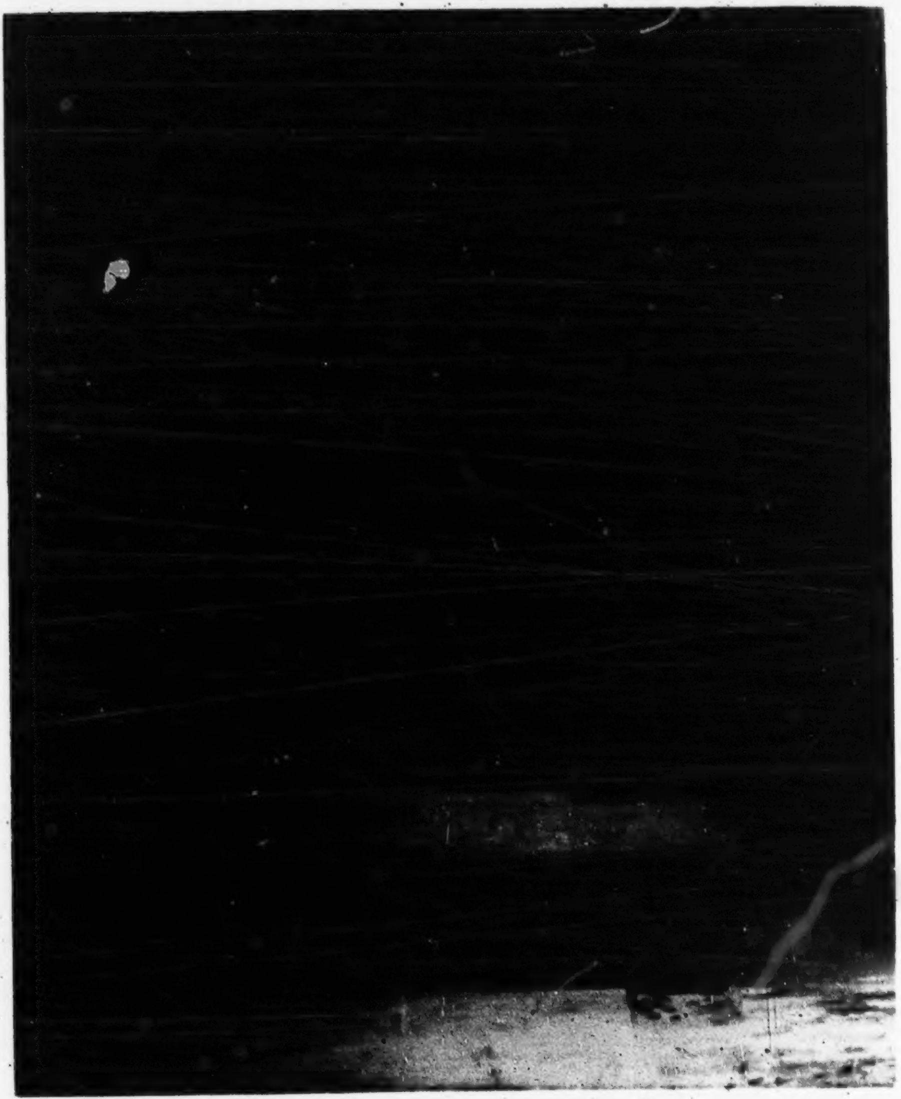

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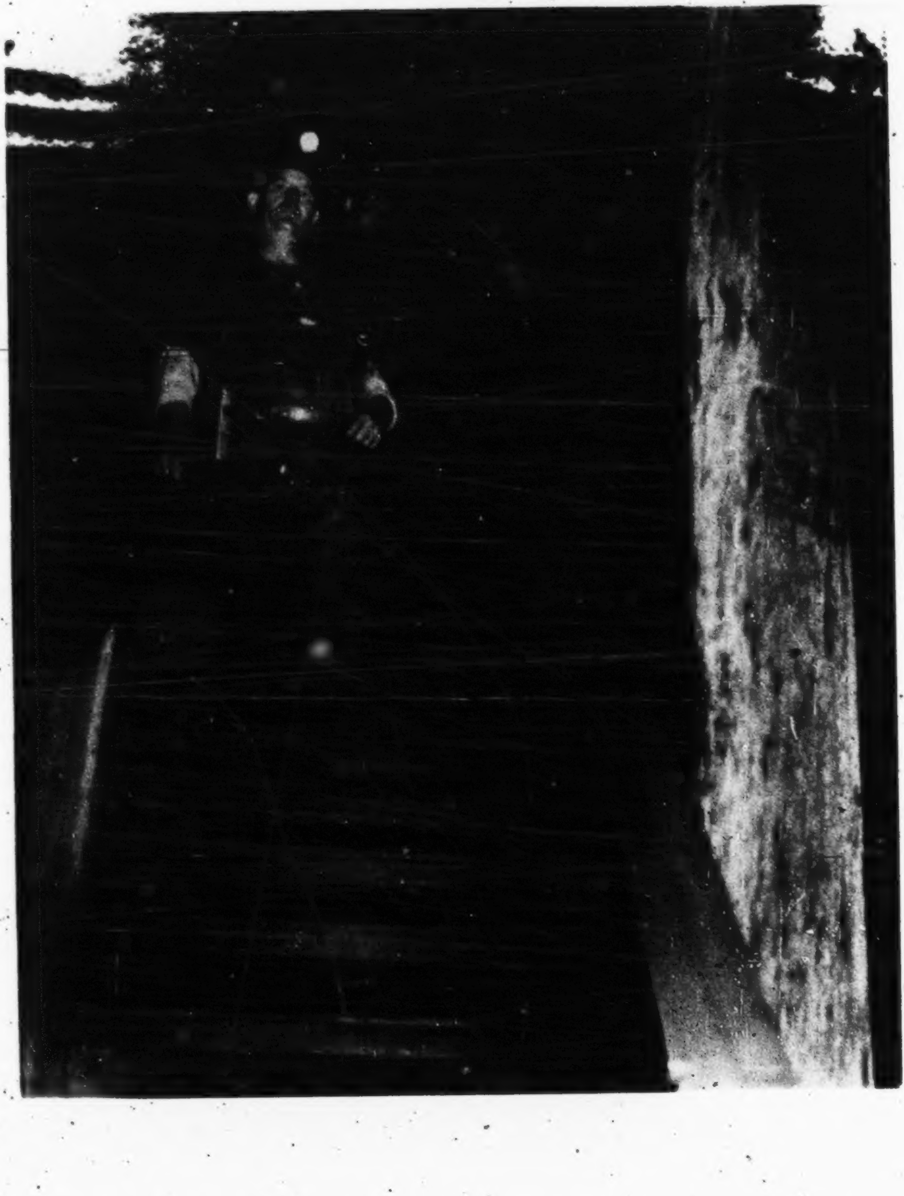

1950
Sloss-Sheffield
Steel & Iron Company

SAFETY SPIRIT SPREADS AND INSURES COOPERATION

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RULES
and
REGULATIONS

Governing the Safety of Employees
of the
Sloss-Sheffield Steel and Iron Co.

SLOSS ORE MINES

MAY, 1937

PREFACE

The management of the Sloss-Sheffield Steel and Iron Company, desirous of having its plants operated safely, finds it necessary to gather together in book form the existing and implied rules for the better protection of employees and better understanding of the Company's policy.

The safe working of our plants is everybody's job and the Company expects each and every employee to observe and obey the rules and asks further that employees coöperate by reporting promptly any violation of rule, any dangerous condition that may exist, make suggestions for new safety devices or practices and help warn new and inexperienced men, for, though experienced miners, they are not experienced in our workings.

The violation of rules will not pass unnoticed, and if proven unsafe no workman will be retained. We intend to be fair and promise that no one will be treated unjustly, but everyone must obey rules, avoid accidents, and coöperate in every way with the safety policy of the Company.

"There are no non-preventable accidents."

Sloss-Sheffield Steel & Iron Co.

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SAFETY ORGANIZATION

1. All safety work shall meet the approval of the Plant Superintendent.

2. General safety meetings shall be held once a month. At these meetings unsafe practices shall be discussed, accident statistics reviewed, changes or additions to rules announced, suggestions invited and plans for future work laid out. The meeting shall be conducted by or under direction of the Superintendent.

3. Foremen's meetings shall be held twice a month and attended by Superintendent, Mine Foreman, Master Mechanic, Plant Accountant, Doctor, Mining Engineer, Safety Engineer and such sub-foremen as can be spared from their work. The Superintendent shall be permanent chairman of this meeting.

The object of these meetings is to discuss current safety work, accident data and prevention, discussion and report of progress on recommendations of Plant Investigation Committee, safety and safe practice.

4. A Plant Investigation Committee shall report in detail and in writing to Superintendent and Safety Engineer on all accidents. This committee shall be composed of three white workmen (other than Mine Foremen) and two colored workmen. Each white man shall serve three months and each colored man shall serve two months, so that one new white man and one new colored man shall be on the committee each month.

GENERAL RULES

1. A copy of these rules must be supplied to each new workman by the Employment Clerk.

2. If in doubt as to the meaning of any rule, apply to the Superintendent or your foreman for an explanation.

3. Know all the special rules covering your work, make sure your working appliances are safe, and, if not, report to your Foreman this or any other matter that you think may cause an accident.

4. Vigilance and watchfulness promote safety. To avoid danger adopt the safe course. Employees must not trust to the care of others when their own safety is involved.

5. Employees are forbidden to take short cuts through dangerous places. Keep to the appointed traveling ways. This applies also to the surface. Do not cross railroad tracks, tipple tracks, or even wagon roads, before looking both ways.

6. Wrestling, throwing of material and general "horse play" is prohibited. Fighting while in the performance of duties is prohibited and will probably result in discharge of offending parties.

7. Any person coming to work under the influence of liquor will be discharged.

8. If you are injured, no matter how slightly, report to Foreman and to Doctor. A slight injury neglected often results seriously.

9. Do not fool with compressed air. Never blow the air on anyone. It may enter his body and injure or kill him.

10. All persons not authorized by the Electrician are forbidden to work on electrical apparatus. Never touch wires of any kind, as it may result in death. Before doing any work where there is danger of coming in contact with electric wires, notify the Electrician, who will see that conditions are made safe.

11. Do not leave your work to go to other parts of the plant unless on Company business.

12. In all new work or repairs the surrounding premises must be kept as clean and orderly

as possible. Boards with nails sticking up must not be left laying around.

13. No job must be started and no job is finished unless everything is made as safe as possible. On any job, when in doubt, take the safe course.

14. Use judgment in lifting to avoid strain or hernia.

15. In piling brick, cement, lumber, timbers, etc., care must be taken that the stability of the piling be well within safety limits. Many accidents have been caused by falling of material improperly stacked.

16. Keep your tools in safe working condition. Do not use hammer, sledge, chisel or bar on which the head is burred or so hard that small pieces will flake off.

RULES FOR MINE FOREMAN AND HIS ASSISTANTS

1. The Mine Foreman has direct supervision over all inside employees.

2. The Mine Foreman and his assistants direct the working forces of the mines, maintain proper discipline, inspect and see that all workmen and working places conform to the safety policy of the Company.

3. The Mine Foreman and his assistants must be continually alert to detect unsafe workmen, unsafe conditions and unsafe practices.

4. The Mine Foreman and his assistants must personally investigate immediately every case of personal injury and make a report to the Superintendent. He must take steps to prevent a recurrence of such accidents.

5. The Mine Foreman and his assistants must treat all employees with courtesy, be open to

safety and other suggestions, investigate complaints and reports of conditions and take proper action as necessary.

6. The Mine Foreman and his assistants shall walk the slopes once a week to inspect track, loose rock in ribs and roof, and see that slope is kept clean.

7. The Mine Foreman and his assistants must see that all new men are properly instructed in their duties and must be properly impressed that they are safe men.

8. The Mine Foreman and his assistants must see the workmen are supplied with proper and safe tools and appliances.

9. In case the Mine Foreman suspects that any workman is the victim of any disease affecting the physical welfare of the workmen or whereby such disease would render the workman liable to particular hazard from even slight injuries, such workman must be sent to the Company Doctor and not allowed to return to work until the Doctor so releases him.

10. Foremen are required, upon visiting a working place, to stop crew from working and have a thorough examination of the roof and face made in his presence.

RULES FOR MEN ON ORE

(A) Head Miners—Drag and Hand Loading

1. Every head miner is responsible for the safety of the men working under him and must see that they observe the rules of the mine. In case of double shift operations of the working place, the drillman or drag engineer shall assume responsibility of the head miner working on opposite shift, regarding application of safety rules.

2. No head miner, except in case of sickness, must lay off without permission of the Mine

Foreman, and no working place shall be allowed to operate without a competent and experienced miner in charge.

3. Head miner or an experienced miner designated by the Foreman, must personally examine and test, with hammer and bar, roof, ribs and face of working place and see that all loose and dangerous material is quarried down. If the place cannot be made safe, stop work and call for the Mine Foreman or assistant. Any unusual condition must be reported to the Mine Foreman or assistant at once.

4. When timbers have been blasted out or fallen from under dangerous ground, men must not return to work until the timbers have been set or the place otherwise made safe.

5. All head miners must work in accordance with instructions of the Mine Foreman or assistant.

6. No head miner shall interfere with the chainer about his turn. Any irregularity must be handled with the Mine Foreman or assistant.

7. The head miners are required to furnish tools and must see that all tools and working appliances are in safe operating condition and see that the Company tools and equipment are not abused.

8. Head miners must pay particular attention to the instruction and care of new men.

9. Head miners must see that all tools and appliances are removed to a safe place at the end of each shift and before blasting is done.

10. Head miners must immediately investigate and obtain all facts in reference to any accident occurring in his heading or slope and take proper steps to prevent a recurrence of such accidents.

11. Head miners must watch out for old "guns" and failed holes. They must see that drill men are properly instructed and competent to avoid hazards inherent in their work.

12. Head miners must keep their places clean. Do not allow ordinary heading debris to be scattered around in aimless fashion; cleanliness promotes safety.

13. Head miners must drive their places according to specifications and to engineer's lines and grades.

14. Head miners or opposite shift drillman or drag engineer shall designate one of his crew to act as chainer or trammer, subject to approval of foreman. This man is to be permitted to ride cars only while tramming and he shall be governed by rules covering chainers.

15. Head miners must examine working place at least once each hour during the shift and more often when necessary.

16. Head miner shall see that any brows of roof ore or slate, which overhangs beyond the natural rib line, are taken down or supported by timbers until same can be drilled and shot down.

(B) Drill Men.

1. The drill men work under the instructions of the head miners or drag foremen or experienced miner properly approved by the Mine Foreman or assistant.

2. The drill men must personally examine the roof, ribs and face of his working place by means of hammer or quarrying bar and keep all loose ground quarried down. The place must be continually inspected during the shift and kept safe at all times.

3. Drill men, before setting up, must examine the face for old "guns" which may contain unexploded dynamite and for failed holes.

4. The drill men must see that all their tools and equipment are in safe working condition.

5. The drill men must see that all tools and equipment are moved to a safe place at the end of each shift and before any blasting is done.

6. The drill men must immediately report to head miner, drag foreman or assistant any unusual or unsafe condition.

7. Drill man must keep drill out of roof to prevent from "gunning" it, as this creates a dangerous roof condition.

8. The drill man must assume responsibilities applying to head miner when he is in charge of the working place, and is governed by all rules applying to the head miner.

(C) Drag Engineers

1. At the beginning of the shift the drag engineer must see that the equipment is in safe working condition, must oil all bearings and make possible slight repairs and adjustments before throwng in main switch.

2. In case of accident or trouble to electrical or mechanical apparatus, call for the electrician or mechanic.

3. The motor must be safely anchored down after each move.

4. The drag engineer must not move engine without a clearly understood signal and then only when chute men are in the clear.

5. On leaving machine at end of shift, leave switch out, controller in neutral, ropes in clear of track, and open main switch.

6. To renew fuses, always open main switch. No fuse other than those provided for the purpose shall be used.

7. Engines must be kept clean.

8. Drag engineers, working opposite shifts from the head miner, shall assume the duties and responsibilities of the head miner and shall be governed by all rules applying to head miner.

(D) Miners and Muckers

1. Miners and muckers shall work under direct supervision of head miner.

2. Miners and muckers must use due diligence in their work and be careful at all times for their own safety and that of their fellow workmen.

3. While the head miners must see that places are in safe working condition, this relieves the miner of no responsibility in this connection. He must know for himself that conditions are safe and must help make the place safe.

4. Care must be taken in handling of ore. Do not attempt to load too big a piece of ore by hand, as such may cause strain or rupture. Do not attempt to load rocks of "two men" size but sledge the rocks to "one man size." Miners must be careful and not undermine ore or rock pile while loading. The muck pile must be kept trimmed down to prevent rocks rolling on hands or feet.

5. While sledging rock notify your companions that they may turn their backs or get to safe distance from flying "sprawls."

6. Special care must be used in holding cars to the face while loading. It is strictly against the rules to chock cars with rocks. Use the safety sprags.

7. On drag work the face man must keep the face surroundings well quarried at all times.

8. The face man must keep in the clear of the dipper, ropes, skidder block and hangers at all times.

9. In drilling hanger holes drill them only in secure ground.

10. Never attempt to tighten hanger wedges or "change over" without first having a clearly understood signal from the drag engineer that the engine will not move.

11. In turning dipper over do not hold rope with hand or foot but fasten rope properly and get in the clear.

12. The "chute men" on drag work must use care in the handling and trimming of cars and have due regards for the safety of companions. Use safety sprags and safety chocks provided for holding cars.

13. Chute men must not go between engine and cars, cars and ramp, or engine and ramp while engine is in motion.

(E) Scrappers

1. Scrappers must be familiar with hoisting signals and handling of slope trips.

2. Scrappers must provide themselves with proper quarrying bars and bar down any loose rocks under which they would have to work.

3. Scrappers must report any unusual or unsafe condition to the miner, foreman or assistant with promptness called for by situation.

4. While scrapping the slope, scrappers must work under the eight-bell rule of hoisting signals.

5. The scrapper must load at points designated by the Mine Foreman or assistant.

6. While working in headings, scrappers must not tamper with drag or contractor's tools or equipment and must leave place in safe condition.

7. Scrappers must observe in general rules applying to chainers and to tramming.

RULES FOR HANDLING AND USE OF EXPLOSIVES

1. Explosives will be issued from the underground magazine at designated time only. Explosives will be removed from boxes at magazine by miner and placed in sacks provided for carrying same to working place.

2. Not more than one day's supply of explosives will be issued at one time.

3. Don't forget the nature of explosives. Only by sensible treatment can they be safely handled.

4. Don't smoke while handling explosives and don't handle explosives so near a light that there is danger from the flame or sparks.

5. Don't have a lighted lamp on your hat or stuck in a timber over the place where you are preparing charges.

6. Don't throw or allow packages of explosives to fall violently.

7. Dynamite must be stored in a locked box provided for the purpose. This box must be placed on the upper rib at least 150 feet from the face.

8. Caps shall be carried and kept only in the safety cap boxes provided for the purpose.

9. A locked cap and primer box provided for the purpose must be so used. The cap and exploder box must be kept on the upper rib at least 200 feet from the face and at least 50 feet from the powder box.

10. Don't crimp a cap with your teeth. Use a cap crimper. Be sure that fuse is cut squarely across with a sharp knife and push gently against the fulminate and crimp securely. In wet places smear soap on joint of fuse and cap.

11. Don't leave dynamite fuse or caps in a wet place.

12. Do not use fuse less than seven (7) feet in length. However, for blockholeing or popping rocks, fuse four feet in length may be used with permission of Mine Foreman.

13. Don't force a stick of powder with cap and fuse attached into a hole.

14. Use only wooden tamping poles.

15. Don't fire a charge to shake a hole and then immediately reload it, as the hole will be hot.

16. Do not shoot except at times designated as "shooting time." If you have rocks to "pop" obtain permission of Mine Foreman or assistant to shoot between "shooting times."

17. Don't fire a shot until everyone is out of danger. In special cases such as rock falls, shooting down dangerous rock, etc., men must be placed at all approaches to guard against anyone being endangered by the necessary blasting.

18. Don't remove dynamite from original cartridge when loading holes.

19. In loading holes, don't separate dynamite cartridge by dummies. This would leave unexploded powder in the bottom of the holes.

20. Don't use frozen or chilled dynamite.

21. Don't attempt to thaw dynamite. It will be thawed by underground temperature and issued only when thawed.

22. The following is the proper method for making up primers: Punch a hole about the size of a lead pencil either in end or side of cartridge, this hole to be a little deeper than the length of the blasting cap. Aim to keep the blasting cap in the center of the cartridge. Insert the blasting

cap and fasten the fuse securely to the dynamite cartridge with a string to prevent the cap and fuse being pulled out of the cartridge. Do not loop the fuse around the cartridge, as this may break the fuse and cause a misfire.

23. Not more than seven holes must be lit by one man, and two men should always be present while lighting a round. It is advisable for men lighting holes to have two carbide lights in case one should go out. The "sparkler" on both lamps should be in perfect working condition.

24. Any surplus powder must be returned to powder magazine or to locked box provided for the purpose.

25. Use wooden wedges and wooden mallets in opening powder boxes.

26. All holes must be "blowed" out with appliance provided for the purpose before charging holes.

27. All failed holes, misfires or holes containing unexploded powder must be reported immediately to the Mine Foreman, and no work prosecuted in the working place until the Mine Foreman has ruled on procedure of handling.

28. It is strictly forbidden to drill into or through old "guns."

GENERAL MINING RULES

1. At all times special care must be given to quarrying, particularly so after blasting. Every place must be provided with a quarrying bar and a slate bar and kept in good condition.

2. When a heading, slope or upset is about to hole through, men must be stationed at a safe place to warn anyone approaching that point until blasting has been completed. This rule must be complied with whether place is holing through to active workings or not.

3. In case of misfires, these must be reported to the Mine Foreman or assistant, to the opposite shift leader if in double shift places, and to men working in nearby places.

4. All gob piles must be kept three feet from track.

5. Drillmen or others using air must see that air is turned off before disconnecting hose.

6. Old timbers and ties must not be permitted to accumulate, but should be hauled to surface.

7. Loafing or loitering is forbidden. Travel manways where possible. If necessary to cross slope, exercise proper care to ascertain where the trip is and avoid the rope.

8. Trash and inflammable material must not be allowed to accumulate.

9. Workmen should give particular attention to the condition of their clothing. Loose, ill-fitting and ragged clothing must not be worn. The wearing of safety clothing is encouraged.

10. Riding of trips by unauthorized persons is forbidden and will result in immediate discharge.

11. Open lights must not be carried into feed room at stable.

12. Due care must be exercised in taking mules to and from stable and only authorized persons are allowed to drive mules.

13. Persons authorized to operate gathering hoists shall be governed by same rules as for hoisting engineers.

RULES FOR MEN ON HAULAGE

(A) Chainers

1. The position of a chainer being one of peculiar hazard, he must use special care and precaution to avoid danger incident thereto.

2. After signalling the hoisting engineer do not leave signal wires until the trip has moved in the desired direction.

3. Signals must not be given by any person other than those duly authorized.

4. "Fancy" or "trick" riding will not be allowed. Men must not ride on brake shoes.

5. If a trip has been stopped, a signal must not be given to move trip until is is ascertained why the trip has stopped.

6. Chainers must see that all trips have couplings properly made. Do not leave "knuck" with twisted couplings. Keep an eye out for defective couplings and defective ropes. In case of a defective rope stop the trip and notify Mine Foreman and Master Mechanic immediately.

7. Chainers must not allow anyone to ride loaded trips. Should anyone attempt to "steal" a ride, stop the chain and notify the Mine Foreman or assistant immediately.

8. Chainers must give signals according to Standard Hoisting Signals. No special or doubtful signal will be honored by the engineer. Should such signal be given while trip is in motion the hoist engineer will stop trip and be governed by the eight-bell rule.

9. Chainers must not ride loaded trips to surface except in line of duties and then only on "shake back" signal.

10. Chainers must not ride empty trips back into mine except on "shake back" signal.

11. Empty trips must never be hoisted except at man trip speed.

12. Chainers must inspect the trimming of loads before sending trip to the surface. Any loose or high rocks must be removed or placed in proper condition.

13. Chainers must wear their jumpers inside the bibb of their overalls. They must not wear loose or ragged clothes or worn out shoes.

(B) Trammers

1. All places must be provided with sufficient bed sprags to properly control the cars.

2. No one shall ride on cars except trammer, who shall ride on rear bumper of last car.

3. While tramming, the cars must be kept under control.

4. Under no circumstances must cars be "chocked" with rock. Use safety sprags or, where authorized, safety wooden chocks.

5. Not more than the duly authorized number of cars shall be trammed at one time.

6. Care should be taken in knucking cars properly and seeing that all couplings are properly made.

(C) Inside Hoist Engineers

1. The same rules applying to surface hoist engineers shall apply underground.

2. The Standard Hoisting Signals shall govern.

3. Examine condition of roof and ribs at beginning of each shift and report any unsafe condition to the Mine Foreman or assistant. Do not work until condition is corrected.

(D) Rules for Motormen, Trip-riders or Couplers

1. All locomotives shall be inspected daily, and they must not be removed from the motorbarn unless they are marked "O.K." with the appropriate date.

2. Motormen shall be responsible for the care of the locomotives in their charge and see

that they are well-lubricated and in good condition at all times.

3. All mechanical or electrical defects shall be reported to the mine electrician or master mechanic; any indications of low voltage on the line should be reported promptly to the mine electrician.

4. Each motorman shall make careful note of the condition of the haulageways over which he operates and report to the mine foreman any dangerous or unsafe place or condition, such as defective timbering, wiring or bonding.

5. Motormen shall stop their trips to throw switches, unless trolley-line switches are automatically controlled by trolley clips or otherwise.

6. Motormen shall not run at excessive speeds and shall have trip under control at all times. Man-trips shall not be pulled at a speed faster than six miles per hour.

7. It will be the duty of the motorman to give warning when approaching persons, animals, doors, sidetracks, or curves on haulageways.

8. Motormen will see that the sand boxes are filled and the sand pipes clear.

9. Motormen and couplers are positively prohibited from alighting while the locomotive is in motion to throw switches, to open doors, or for any reason except to protect themselves or others from injury in case of obstruction or derailment.

10. Motormen will not allow anyone to ride in the locomotive or on trips except those specially authorized to do so.

11. Making flying switches is prohibited.

12. The locomotive and all cars on a trip shall come to a full stop when attempting to couple or uncouple.

13. All motormen and couplers are forbidden to make a coupling while standing on or between the bumpers of cars or locomotives.

14. Back-poling by motormen will not be permitted except in places where pole cannot be turned.

15. When two or more locomotives are going into or out of the mine, they shall be kept at least 300 feet apart and under complete control within the authorized space limit.

16. No person, other than the motorman, will be permitted to ride the front end of a locomotive.

17. Motormen must not attempt to oil locomotives, open sand pipes, adjust headlights, or do any other repair work on locomotives in motion.

18. No employees are permitted to couple or uncouple cars except designated motormen and couplers, unless instructed to do so by the foreman.

19. No coupler shall ride between cars. When motor is pulling empties he must ride rear car, and, when pushing empties, he must ride inside second car from front end of trip, provided there is sufficient roof height for him to enter and leave empty cars.

20. Cars must be safely secured when standing on a grade.

21. One or more empty cars must be placed between the locomotive and a car hauling rails, pipes, or similar material.

22. A motorman shall not get off his motor without closing the control and shall not move the locomotive without being seated in the cab.

23. No one is permitted to ride between cars on any trips whatsoever. Motormen and coup-

lers must not wear loose clothing; trouser legs must be worn inside of high shoes, leggings, or sock legs and jumpers inside of overalls. Rubber shoes and short wrist gloves should be worn.

24. Motormen shall not move trips until given the proper signal by coupler.

25. Motormen shall not place the trolley pole on the wire while standing by the side of the locomotive; they shall see that the controller is on the "off" position and the brake set before placing the trolley pole on wire.

26. The motorman shall not leave the locomotive unless the light is burning brightly on at least one end, the reverse lever in neutral position, and brakes set securely and some approved device is used to prevent the brakes from unwinding.

27. Motormen and couplers must give special attention to materials ordered and must deliver them promptly.

28. Trip-riders will be held responsible for replacing all derailers and safety blocks when the trip or locomotive has passed through them.

29. Trip-riders shall not run along the tops of empty or loaded cars.

30. Motormen shall not pass a red signal light; if signal lights will not burn, a motorman should send his brakeman ahead at least 100 feet to act as flagman.

31. Motormen must not run past places where regular flagmen are employed and where block signals are used without first getting the clear signal. No other signal shall be the same as the stop signal.

32. Locomotive crews are especially warned of the danger of touching the trolley wires or electric cables in the mine.

33. After delivering empties into an entry motormen shall see that the track is clear before starting out and shall proceed with their trips under full control at all times.

34. All locomotives shall be equipped with rerailers, and the motormen shall be held responsible for them.

35. Switch points shall never be held in position with the hands while a car or cars pass over the switch; if the switch is out of order, the points should be spiked over.

36. No one shall be allowed to ride on top of locomotive or cars.

37. All switches shall be left lined for the straight track.

(E) Roller Men and Scrapers

1. Roller men must have due regards for the hazards their work creates. Be careful not to turn rollers loose on slope or to turn loose rocks while clearing out roller pits or while walking along slope. In taking out old rollers carry them to level place on old roadbed at knuck and do not lay them on the slope.

2. Scrapers must be careful not to roll loose rocks down the slope.

3. Scrapers must inspect roof conditions in their section and report unsafe conditions to the Mine Foreman.

4. Scrapers and roller men must keep safely in the clear of moving trips.

RULES FOR TIMBER AND ROCK MEN

1. When placing timbers workmen must clearly understand what they propose to do. The handling of heavy timbers requires that all men engaged must act in unison, as the failure of one man to do his part may result in several getting hurt.

2. The timberman must see that men in his charge shall be always working under safe conditions. His quarrying bar and other tools must be in safe working condition. While quarrying, other than those engaged in the actual quarrying shall retire to a safe distance. While sledging rock others than those so engaged shall retire to a safe distance or turn their eyes and face from flying "sprawls."

3. When planks or staging have been used care must be taken to turn down or remove all projecting nails or spikes.

4. After timbering up a place, do not leave until removing timber butts or quarried rock, placing them neatly at least three feet in the clear of tracks.

5. Do not reset timbers that are badly damaged by blasting. Always use good sound timbers.

RULES FOR TRACKMEN

1. All track work must be done to conform to Standard specifications.

2. Angle bars must be used on all joints and four-bolted.

3. The trackman is responsible for the safety of the men in his charge and he must see at all times that they are working under safe conditions.

4. The trackman must see that his tools are adequate and in safe condition. Cleavers and spike mauls with burred heads will not be allowed. Spike bars must be sent to the shops regularly for repairs.

5. The trackman must see that his men are properly instructed and that they are careful workmen. New men shall receive particular attention until they become sufficiently experi-

enced. All men on track shall have due regard for their own safety and that of their companions. Care must be taken in handling rails and ties as many accidents have been caused by their careless handling.

6. In all track work due regard must be given to the movement of cars, and other mining operations.

RULES FOR PUMPERS

1. Pumpers shall be governed by general "Electrical" and "Mechanical Shops" rules.

2. Pumpers shall carefully oil and inspect their equipment before starting the pumps. Report any irregularity to the Electrician or Master Mechanic.

3. Pumpers shall examine roof, ribs, and face around pump station and their traveling ways, and report any unsafe condition to the Mine Foreman or Assistant.

4. Pumpers must not go anywhere not called for in their regular line of duty.

RULES FOR MECHANICAL SHOPS

1. The Master Mechanic has charge of shops and all mechanical equipment. He is responsible for the safe working condition of everything under his charge.

2. The Master Mechanic must regularly inspect all mechanical equipment.

3. Hoisting Ropes must be inspected by Master Mechanic or duly authorized Machinist once per day.

4. Machinery must not be worked on before operator has been notified. Disconnect and oil switches, or throttle valves must be tagged "Out."

5. Before going into an engine or compressor cylinder, block the flywheel as an extra precaution.

6. After repairing machinery always replace shields, handrailings, or other safeguards, before leaving the job.

7. Never attempt even slight repairs while machinery is in motion.

8. It is the duty of all operators of machinery to note condition of platforms, hand railings, shields, or other safeguards. If same are not in safe condition, the matter must be reported immediately to the master mechanic.

9. Before doing work where there is danger of coming in contact with electric wires, notify Electrician who will correct any hazard.

10. While on construction or repair work, care must be taken not to pile material so high that it is liable to fall or allow it to lean against walls too weak to bear the pressure. Do not scatter material, tools, or machinery parts around so as to create a hazard causing men to stumble or fall. Leave a clear walkway. Be careful when working above or below other men. Wear safety belt or line while working on high places.

11. Men working around lathes, drill presses, and machines of all kinds must inspect same every day and report any defect immediately to the Master Mcehanic. Do not remove safeguards while machinery is in motion, and do not allow safeguards to be off while machinery is in motion.

12. Men working around lathes, drill presses, engines, crushers, conveyor belts, or any moving machinery, must not wear ragged clothing. They must keep sleeves buttoned up and must keep jumper tucked inside bibb of overalls.

13. Do not ride or stand under any load being carried by crane, chain hoist, ropes, or block and tackle.

14. Before doing any work with emery wheel, lathe, acetylene torch, or anywhere where there is danger of flying material, wear goggles provided for the purpose.

15. No new job is complete unless provided with proper shield, guards, handrails, or other necessary safety devices.

16. Blacksmiths must not allow pieces of hot iron to lie around. Douse in water or place safely out of the way.

17. Keep shops and premises clean. Do not allow trash and inflammable material to accumulate.

(A) Compressor Room

1. Compressor men will be governed by the general "Electrical" and "Mechanical Shops" rules, and other rules herewith pertinent to their work.

(B) Crusher

1. Crusher man must check oil and equipment before starting up.

2. Crusher must not be oiled or started by other than authorized workmen.

3. Repair work on crushers is attended by certain hazards, which must be carefully considered. Use only safe slings, keep workmen in the clear, use care in placing tools, material, or parts so that they will not create a hazard by men stumbling or falling over them, or their falling on men working below.

4. Crusher feeder shall use safety belt provided for the purpose while sledging ore when crusher is in operation.

(C) Hoist Engine Room

1. Hoist House men are governed in particular by the general "Electrical" and "Mechanical Shops" rules, and in general by all other rules embodied herewith pertaining to their work.

2. The hoist engineer must always consider that the safety and lives of other workmen are endangered by the unsafe operation of the hoist. Slope haulage is attended by inherent hazards which can be eliminated by close observance of all safety precautions and close coöperation between hoist engineer and chainers. Do not operate hoist unless it is in safe operating condition but notify Master Mechanic or Electrician as case may be. Examine engine and appurtenances carefully at the beginning of each shift.

3. No one must be allowed in the engine room without authority.

4. No one must handle hoist but those duly authorized.

5. Talking to engineer while hoist is in motion or signals being given is prohibited.

6. Signal horns and bells must be kept in perfect working condition.

7. Hoist engineers must not drink intoxicating liquors. The mere smell of liquor on his breath during work hours will be sufficient grounds for immediate discharge.

(D) Hoisting Signals

1 Bell—Stop if engine is in motion or hoist slowly if engine is not in motion at time signal is given.
2 Bells—Hoist full speed.
3 Bells—Lower full speed.
4 Bells—Hoist slowly.
5 Bells—Lower slowly.
3-3 Bells—"Shake Back" signal.
8 Bells—Emergency or man trip signal. DO NOT MOVE TRIP ON THIS SIGNAL.

1. Signals must be given distinctly. In case of doubt engine must not be moved.

2. On getting "8 Bells" trip must not be moved. The signal is used to stop the trip while loading or unloading man trips, doing work on slope tracks or slope overhead rollers in emergencies, or any other emergency requiring that trip must be kept absolutely still.

3. "8 Bells" followed by "4 Bells" or "5 Bells," indicates man trip and must not be pulled closer than 100 feet to mouth of mine or below the "Hoodlum" Station.

4. To release the trip from an "8 Bell" stop, the "8 Bell" signal must be given followed by proper signal for the desired movement of the trip.

5. In case of any unknown stoppage of trip along slope, chainers must investigate and clear up doubt by the "8 Bells" signal followed by the proper signal for the desired movement of the trip. The engineer must not move trip until the chainers have made the necessary investigations.

6. "3-3" Bell signal is the "Shake Back" signal for speeds midway between man trip speeds and full lowering speeds. It is used for lowering some materials but never explosives. In pulling loads "1 Bell" signal will carry trips at "Shake Back" speed. Chainers must always use "Shake Back" speed while riding trips. They must never ride trips at full speed.

7. "3-3 Bells" shake back signal is given when trip approaches heading from which it is to pick up loads. The engineer will decelerate properly in running into headings.

8. The "2 Bell" and "3 Bell" signals are the regular ore service signals. It is forbidden for anyone to ride trips on these signals.

9. At the beginning of each shift the indicator needle must be checked.

RULES FOR HANDLING MAN TRIPS

1. At the beginning of each shift the trip must be lowered 500 or more feet into the slope and hoisted back before lowering men into the mines. This test is made to remove accumulated water from the engine, brake, and clutch cylinders, and to insure engineer that brakes are in proper working order.

2. No one must get on or off man trips until "8 Bell" signal has been given and permission has been given by man in charge of trip.

3. Man in charge of man trip must inspect cars, couplings, and safety connections before running the man trip. Coupling pins must be equipped with cotter keys.

4. No tools, boxes, or other material must be allowed on man trips, except transit and surveying tools of the mining engineer.

5. After hoisting man trip to the top, the trip must not be lowered until all men are out of the pit mouth.

6. A chainer must ride the front end of all man trips.

7. Hoisting engine drum shall not make over 18 revolutions per minute at No. 1 Mine, or over 20 revolutions per minute at No. 2 Mine.

8. Man trips must never be run on loose drums.

9. Trash, timbers, boxes, or any material must not be carried into or allowed to accumulate around the "Hoodlum Station."

10. No man trip shall run except at designated times without the permission and the authority of the Mine Foreman.

11. Not more than the designated number of men will be allowed on the man cars. Men must be accurately counted onto man trips.

12. Utmost care must be used by all men in getting on and off man trips. No running or pushing will be allowed.

RULES FOR STORAGE AND HANDLING OF EXPLOSIVES IN THE MINES

1. No matches, open lights, inflammable material, carbide, oil, waste, or other than dynamite alone will be allowed in the magazine. The floor of the magazine must be kept clean of loose sawdust, pieces of boxes, paper, or other refuse. This must be kept outside of the magazine and disposed of daily. Do not open dynamite boxes in the magazine. Only the electric battery lamp provided must be carried into the magazine for light.

2. The magazine must be kept locked except when actually issuing explosives.

3. Explosives must be carried into the mines only in the cars provided for the purpose. No one must ride the trip except the chainer and man in charge of trip.

4. Not over 48 hours supply of explosives must be carried into the mine at one time.

5. No powder must be left off at the knucks, but all powder shall be issued from the magazine only.

6. Explosives shall be lowered only at man-trip speed.

RULES FOR HANDLING MATERIAL TRIPS

1. Timbers shall be properly chained and spiked to dummy before coupling onto trip.

2. Rails and pipe shall be lowered on cars and chained to slack couplings. Not more than six 60-pound rails, ten 30-pound rails, six 4-inch pipes, twelve 2-inch pipes, and twenty 1-inch or smaller pipes, shall be carried at one time.

3. Timbers may be carried in at shake back speed but rails and pipe must never be carried faster than man trip speed.

4. A chainer must accompany timber, rail, and pipe trips.

5. Care should be taken that ties, steel, or other material do not project higher than safe clearing distance above the cars.

6. The engineer must be notified by phone when handling material trips.

7. It is occasionally necessary to handle 6-inch, 8-inch, 10-inch, or 12-inch pipe. These shall be chained to trip with all possible care as this is probably the hardest material that is handled. Chainers shall accompany these trips and trip shall move at man-trip speed.

8. Drag engines, small hoists, pumps, motors, and other machinery is occasionally handled. These must be moved under the direction of Master Mechanic or Electrician who will see that all precautions are observed.

RULES FOR UNDERGROUND STABLES

1. All open lights must be kept out of feed-rooms. No smoking is to be allowed.

2, None but authorized persons must be allowed in the stables.

3. The stable must be cleaned daily.

RULES FOR TOPHOUSE AND GENERAL SURFACE WORKMEN

1. Tophouse men, other than cut-off chainer, must not ride on the cars.

2. Tophouse men must be careful at all times for themselves and for their fellow workmen. The tophouse must be kept clean. No boxes, wood, or material must be allowed to lie around on the tophouse.

3. The truck driver must not allow anyone to ride on the running board. None but authorized persons must be allowed on the truck. The truck driver must see that the truck is kept in safe operating condition at all times.

4. Carpenters must be careful to do their work in a safe manner and not create hazards for themselves or for their fellow workmen. Keep all nails turned down or withdrawn. Build scaffolds and even temporary handrailings securely. Do not use unsafe ladders and use care in placing ladders. Use hand lines in passing materials, tools, etc., to and from high places. Be careful while using air-driven tools. Keep air turned off while not in use and do not disconnect hose until you assure yourself that air has been turned off. Do not lay tools around carelessly. Keep tools in safe operating condition.

ELECTRICAL RULES

1. Never clean, inspect, or work on motors until all oil and disconnect switches are opened and tagged "Out" and then such work is to be done only by electrician or persons duly authorized by him.

2. Power house and substation men must handle clearances only for men getting orders for clearances.

3. Serious burns may result from intense arcs. These arcs may cause painful injuries to delicate eye nerves, and burns caused by molten metals are apt to be serious. If exposed to arcs report to Doctor for treatment immediately. In case of burns give First Aid with picric acid gauze or machine oil or greases. Cover with clean cloth; report to Doctor immediately.

4. Never ease a switch in or out but open or close firmly and quickly.

5. Never open disconnect switches under load or open them without first pulling oil switch.

6. When working on electric circuits, motors, etc., always tag oil and disconnect switches "out."

7. Do not handle currents promiscuously and do not get the idea that you are an expert at it. Overconfidence breeds carelessness and accidents are the result.

8. One man alone shall not be allowed on hazardous work but always accompanied by a skilled experienced man.

9. Examine poles, brackets, cross arms, guy wires, anchorages, etc., before doing any pole or line work.

10. When handling wires across traveling ways a guard must be stationed until wires are permanently fastened.

11. Telephone and signal wires must be strung so as to minimize the danger of their coming in contact with wires carrying dangerous voltages.

12. Never depend on insulation of electric wires to protect you against shock.

13. Use one hand at a time if possible when working on electric circuits and keep other hand

behind your back. Shocks from hand to hand are most dangerous.

14. Work only on one wire or bus at a time and finish insulating before starting on the next one. When working back of a switchboard or where one wire or bus is near another see that neighboring parts of opposite polarity are insulated within reach of the tools you are using, or of your body.

15. Never work on any circuit or lightning arrester while there is sign of lightning.

16. The safest course is not to depend upon tracing out a circuit, but rather to test it out with lamp, magneto, voltmeter, or other means.

17. Bare ends of live circuits must be taped even if exposed temporarily.

18. Treat all circuits as if they were alive.

19. To cut off circuits of medium or high voltage before working on them be absolutely sure that circuit is open at every point. Where circuits are controlled from power house or substation the electrician must issue instructions and tag switches out with danger tags. When work is finished and everything is clear the electrician must so notify operator to release clearance. When working on any circuit provided with switch lock the electrician must lock open switch and carry key with him.

20. Bed frames of generators, transformers, motors, and armored cables shall be sufficiently grounded.

21. Pyrene or Foamite fire extinguishers shall be kept at all points designated by the electrician

22. Only non-metallic lamp sockets and plugs shall be used underground. No lamp cord shall be used underground.

TREATMENT FOR ELECTRIC SHOCKS

Hope of restoring the victim of accidental electric shock lies in prompt and continued use of artificial respiration. The reasons for this statement are:

(a) The body continuously depends on an exchange of air as shown by the fact that we must breathe in and out about fifteen times a minute.

(b) If the body is not thus repeatedly supplied with air suffocation occurs.

(c) Persons whose breathing has been stopped by electric shocks have been reported restored after artificial respiration has been continued for approximately two hours. The Schaefer or "Prone Pressure" method of artificial respiration is illustrated and described in the following resuscitation rules. The advantages of this method are:

(a) Easy performance; little muscular exertion is required.

(b) Larger ventilation of the lungs than by the supine method.

(c) Simplicity; the operator makes no complex motions and readily learns the method on first trial.

(d) No trouble from the tongue falling back into the air passage.

(e) No list of injuries to the liver or ribs if the method is executed with proper care.

Aid can be rendered best by one who has studied the rules and has learned them by practice on a volunteer subject.

INSTRUCTIONS FOR RESUSCITATION

(Follow these instructions even if victim appears dead.)

I. BREAK THE CIRCUIT IMMEDIATELY.

1. With a single quick motion separate the victim from the live conductor. In so doing avoid receiving a shock yourself. Many have by their carelessness received injuries in trying to disconnect victim of shock from live conductors.

OBSERVE THE FOLLOWING PRECAUTIONS:

(a) Use a dry coat, a dry rope, a dry stick or board, or any other dry nonconductor to move either the victim or the wire, so as to break the electrical contact. Beware of using metal or any moist material. The victim's loose clothing, if dry, may be used to pull him away; do not touch the soles or heels of his shoes while he remains in contact—the nails are dangerous.

(b) If the body must be touched by your hands, be sure to cover them with rubber gloves, rubber sheeting, or dry cloth; or stand on a dry board or on some other dry insulating surface. If possible, use only one hand.

If the victim is conducting the current to ground, and is convulsively clutching the live conductor, it may be easier to shut off the current by lifting him than by leaving him on the ground and trying to break his grasp.

2. Open the nearest switch, if that is the quickest way to break the circuit.

3. If necessary to cut a live wire, use an ax or hatchet with a dry wooden handle, or properly insulated pliers.

II. SEND FOR THE NEAREST DOCTOR.

1. This should be done without a moment's delay, as soon as the accident occurs, and while the victim is being moved from the conductor.

III. ATTEND INSTANTLY TO VICTIM'S BREATHING.

1. As soon as the victim is clear of the live conductor, quickly feel with your finger in his mouth and throat and remove any foreign body (tobacco, false teeth, etc.). Then begin artificial respiration at once. Do not stop to loosen the patient's clothing; every moment of delay is serious.

2. Lay the subject on his belly, with arms extended as straight forward as possible, and with face to one side, so that nose and mouth are free for breathing. Let an assistant draw forward the subject's tongue. If possible, avoid so laying the subject that any burned places are pressed upon. Do not permit bystanders to crowd about and shut off fresh air.

3. Kneel straddling the subject's thighs and facing his head; put palms of your hands on the muscles of the small of the back, with thumbs nearly touching each other, and with fingers spread over the lowest ribs.

4. With arms held straight, swing forward slowly, so that the weight of your body is gradually brought to bear upon the subject. This operation, which should take from two to three seconds, must not be violent—internal organs may be injured. The lower part of the chest and also the abdomen are thus compressed, and air is forced out of the lungs.

5. Now immediately swing backward, so as to remove the pressure, but leave your hands in place, thus returning to the position first assumed. Through their elasticity, the chest walls expand and the lungs are thus supplied with fresh air.

6. After two seconds swing forward again. Thus repeat deliberately twelve to fifteen times

a minute the double movement of compression and release—a complete respiration in four or five seconds. If a watch or clock is not visible, follow the natural rate of your own deep breathing—swing forward with each expiration, and backward with each inspiration. While this is being done, an assistant should loosen any tight clothing about the subject's neck, chest or waist.

7. Continue artificial respiration (if necessary, two hours or longer), without interruption, until natural breathing is restored or until a physician arrives. Even after natural breathing begins carefully watch that it continues. If it stops, start artificial respiration again. During the period of operation, keep the subject warm by applying a proper covering and by laying beside his body bottles or rubber bags filled with warm (not hot) water. The attention to keeping the subject warm should be by an assistant or assistants.

8. Do not give any liquids whatever by mouth until the subject is fully conscious.

RULES FOR MINING ENGINEERS

1. The Mining Engineer must see the workings conform with specifications.

2. The Mining Engineer must notify Mine Foreman when workings approach property line barrier pillar and when adjacent workings closely approach each other so that proper precautions may be observed.

3. The Mining Engineer must not go into abandoned or idle workings unless accompanied by Mine Foreman, Assistant or competent miner authorized by Mine Foreman or Assistant.

4. The work of the Mining Engineer carries him to all parts of the mines and he must always assure himself that conditions are safe before

prosecuting his work. Any unsafe condition should be reported immediately to the Mine Foreman or Assistant for correction.

RULES GOVERNING ACCIDENTS

1. All accidents, no matter how slight, must be reported. The injured must in all cases report to the company doctor for treatment. First aid treatment must not be considered sufficient until so ruled by the company doctor.

2. Stretchers and blankets and first aid equipment must be kept at designated places. Anyone caught tampering with this equipment will be immediately discharged.

3. Every accident shall be investigated by the Accident Investigating Committee.

4. Injury caused by violation of rules will be severely penalized. Violation of rules causing injury to others will probably result in discharge of persons violating rules.

PENALTIES

The penalty for violation of any rule shall fit the case.

When in doubt as to the meaning of a rule, or the sufficiency of a proposed protection, consult Superintendent or Foreman.

The Superintendent and Foremen invite suggestions and will consider the reporting of rule violations as the index of a safe man.

No.........................

I have received a copy of "Safety Rules" covering Operations of Ore Mines bearing number as above.

I will read these rules and agree to follow them as long as I am employed in or about the Ore Mines of the Sloss-Sheffield Steel & Iron Co.

(Signed)..

(Witness)..

(Date)..19........

DEFENDANTS' EXHIBIT No. 21.

Republic Steel Corporation.

Report of Earnings for Income Tax Purpose and Receipt for F. O. A. B. Tax Deductions.

Employee's Name	Social Security No.	Period Covered
503 John Butler	....	
418-01-8101	....	1940

	Earnings to be Reported for Income Tax	F. O. A. B. Tax
The first $3000 of earnings is taxable for Federal Old Age Benefits.	$2,979.63	$18.40

The amount shown above represents your earnings from this corporation for the period shown. This is also your receipt for the Federal Old Age Benefits Tax, which has been paid by you.

4467 DEFENDANTS' EXHIBIT No. 22.

Republic Steel Corporation.

Report of Earnings and Receipt for F. O. A. B. Deductions.

Employee's Name	Social Security No.	Period Covered
418-01-8101	....	
503 John Butler	....	1939

Earnings to be Reported for Income Tax	F. O. A. B. Tax
$2873.17	$16.54

Report of Earnings for Income Tax Purpose and Receipt for F. O. A. B. Tax Deductions.

The amount shown above represents your earnings from this corporation for the period shown. This is also your receipt for the Federal Old Age Benefits Tax, which has been paid by you.

4553
RULES
for
The Prevention of Accidents

ORE MINES
and
QUARRIES DIVISION
BIRMINGHAM DISTRICT

REPUBLIC STEEL
CORPORATION

Foreword

The Republic Steel Corporation has established Rules and Regulations to be read, understood, and enforced in order that its employees shall work under the safest possible conditions.

Safety Rules, Safety Inspectors and Safety Appliances are worthless without the co-operation of the employees.

A man's efficiency will, in some measure, be judged by his knowledge of the rules and the discipline he maintains.

The carelessness of an employee is very apt to result in danger not only to himself, but to other employees, and on this account the Company desires a careful observance of these rules by every employee. This is a direct order to Superintendents and Foremen, and an earnest appeal to each and every workman, and is of such importance that they will hereafter be known as a part of the duty of each employee, and a violation of them will subject the offender to discipline, while persistent violation will lead to his discharge. The method of discipline at the various works will be determined by the local management, and while it is not expected that severe measures will be adopted for minor infractions of the rules, EVERY VIOLATION, no matter how slight should be noted and steps taken to prevent a repetition. It is only by constant effort that a high standard of safety can be maintained.

If you see men breaking the rules and endangering their lives and the lives of other men, you should report them to the proper authority. This is necessary for the protection of yourself and others. If you know of machinery that is out of order, or a dangerous place that is not protected, you will assist your employer, and possibly save injury to yourself or to a fellow-employee, by reporting the same immediately.

In order that the efforts of the Company may be effective, it must have the co-operation of its employees, and realizing that this can be more fully secured through some systematic method, this book of Safety Rules and Regulations has been published.

Always act in a manner which will insure the greatest safety to yourself and those working around you.

REPUBLIC STEEL CORPORATION

November 1, 1935.

GS-42—3M-11-35

GENERAL CONDUCT *of* EMPLOYEES

1. Fighting, wrestling, scuffling or "fooling" of any sort is absolutely prohibited and anyone so engaged is subject to discharge.

2. Loitering, either underground or on surface, and visiting places where other men are employed will not be permitted, except by order of the Foreman to perform an errand, carry a message or some such purpose.

3. The use of intoxicating liquors during working hours is absolutely prohibited. Drunkenness while on duty will result in immediate discharge. Habitual drunkenness when off duty lessens a man's usefulness and will be sufficient ground for his discharge.

4. Employees should not crowd into skips either on the surface or underground, and should not run, push or crowd while getting into the skip at any time. (NOT MORE THAN THIRTY MEN WILL BE ALLOWED AT ONE TIME IN A SKIP). Do not attempt to leave or enter the skip until it comes to a full stop.

5. No material or tools shall be carried in skip while hoisting or lowering men.

6. Do not indulge in any un-safe practice or permit your fellow workman to do un-safe acts.

7. Attend all Safety Meetings and report all unsafe conditions as soon as you discover them.

8. Learn how to administer Artifical Respiration as shown in this Rule Book and prac-

tice it on your fellow workman. Don't wait for an accident — learn how to revive your partner by practicing on him and let him practice on you.

9. All general and local safety orders must be complied with. These orders are issued in writing, printed and posted, covering special hazards. Your Foreman has copies of these orders.

10. A Safety Inspector is provided for reporting un-safe conditions and your co-operation with him is solicited.

SURFACE

1. All roadways about the mine must at all times be kept safe for travel of employees and others.

2. The sides of stairs, trestles, tipples, platforms and other hazardous walkways in and around the mines and buildings shall be provided with hand and guard rails. Toe boards shall be placed where roads or other passageways are crossed, etc., and the floors close-boarded.

3. In all mine buildings, provisions must be made for the safety of men from accidents due to floor openings, stairways, etc.

4. Loose boards covering ditches, holes, or openings in floors, or walks, or overhead in buildings, or trestles, staging, or on tipple shall be repaired at once.

5. All material, when possible, shall be piled and maintained at least eight feet from the rail of standard gauge tracks.

6. When a workman removes the cover from any opening in the floor, ground, valve pit or sewer, he must take such steps as are necessary to guard that opening so that no one will fall into it.

7. In new construction or repairs, the premises shall be kept as clean and orderly as possible. Boards with nails sticking up must not be left lying around.

8. Care must be taken in loading material on cars so that no portion will project over the sides or fall off in transit. See that the weight of the load is properly distributed on car, and that large pieces are braced to prevent shifting.

9. Do not pile material so high that it will fall over, or allow it to lean against walls too weak to bear the pressure.

10. Never use a cutting tool on which you have to use a hammer or sledge if the head is burred or so hard that small pieces break off of it when hit.

11. Every employees whose duties require him to work with an appliance of any kind must carefully examine before use and make sure that it is in good condition. Report any defects to the foreman.

12. Failure on the part of an employee to observe any of the rules contained in the safety regulations, or to use safety devices when furnished, will occasion a reprimand from the Foreman and a second offense will be sufficient ground for discharge.

BOILER HOUSES

1. When cleaning or repairing boilers, see that all valves are tightly closed, and danger signal placed, also see that boiler is properly cooled before entering.

2. Never go into a boiler before you have closed all valves and attached a "Danger—Do Not Move" sign.

3. Never open a valve when such a sign is attached until you have seen that no one is in the boiler.

4. An inexperienced man must not be allowed to turn steam into a cold line, unless accompanied by the Foreman.

5. Emergency feed water appliances must be tried each day to determine that they are in good working order.

6. No employee or other person shall be allowed in the boiler house, except those having work there.

7. On coming on shift it shall be the duty of the fireman to blow down the water colmun, noting the return of water in the glass and test gauge cocks, until absolutely sure of water level. This must be done at the beginning and close of each shift.

8. When steam gauges vary more than five pounds they must be tested and corrected.

9. Boilers must be examined daily for leaks, at every possible point.

10. Dampers must not be closed entirely when there is fire on the grates, as gas may collect and result in an explosion.

11. Injectors, feed pumps and all other appliances must be kept in good working order.

ENGINE HOUSES

The prevention of accidents to operators or employees is of first importance, and no engineer must allow a condition dangerous to life or limb to exist without remedying same, if possible. If machinery, engines, piping or valves are in any way dangerous and cannot be fixed at once, report this fact to the Master Mechanic or Superintendent, or both, at the earliest opportunity.

Signal Code

1. Signals must be kept in efficient working condition and boards posted in the engine room and at all signal stations, giving the following signals:

1 Ring .... Stop

2 Rings .... Hoist

3 Rings .... Lower

4 Rings .... Hoist Slowly

On a signal of 4 Rings stop skip at mouth of slope until re-signalled.

5 Rings .... Lower Slowly

8 Rings .... Working Signal

For scrapping slope, carrying rails, timber, etc. When this signal is given move skip only on 4 or 5 ring signals, until 8 Rings are repeated showing work to be completed.

2. At the beginning of every shift the empty skip must be lowered and hoisted to be sure slope track is clear. The running of this "safety drag" must be rigidly adhered to.

3. At the beginning of every shift, engineers should examine all machinery and hoisting cables in the engine house, and should report any defect to the Master Mechanic.

4. Movable parts of engines or other machinery should not be oiled when in motion, except where necessary, and then great care should be used.

5. The hoisting engineer shall see that all guards are properly placed and engine in proper working condition on going on his shift.

6. The hoisting engineer shall familiarize himself with the use of the signal code for hoisting and lowering, and a copy of this code must be placed in the engine house.

7. If bells are not in satisfactory working order, proper persons must be notified immediately.

8. If at any time the engineer is not sure of the signal, he must wait until the same is repeated before moving the machinery.

9. The engineer shall not allow any persons in the engine house whose duties do not require their presence therein, unless they are visitors authorized by the superintendent.

10. There must always be a second man on hoist platform, competent to operate hoist, when men are being hoisted or lowered.

11. The engineer must not hold conversations with any one while his engine is in motion or while signals are being given.

SHOPS

1. Safety devices for protection shall be used in every place possible. Foreman and workmen in charge of work should use every effort to train their workmen to guard against dangers connected with their work.

2. Men working on lathes, emery wheels, drill presses, and machinery of all kinds must inspect same every day before starting work, and report any defects immediately to the Master Mechanic.

3. All tools such as cold chisels, cold sets, fullers, hammers, sledges, drills, etc., must be kept dressed. No tools with mushroomed heads shall be used.

4. When operating emery wheels or grind stones or doing work dangerous to the eyes, mask shields or proper eye protection must be used.

5. Men working about engines, motors, shafting, or other machine must wear close fitting clothing. Loose fitting clothing such as sleeves, gloves, overalls, jackets or handkerchiefs must be prohibited. Clothes must never be changed or stored near moving machinery.

6. Scuffling and wrestling or other like carelessness near machinery or at any location is prohibited and those guilty are subject to dismissal.

7. Workmen must never walk between belts, shafts or in narrow places between moving machinery. If repairs necessitate a man going into such places the machinery must be stopped and greatest precaution possible taken to guard against starting machinery before work is completed.

8. No person should ever try to oil, clean, polish or repair machinery except when it is his particular work, and then he should stop machinery. Power must be shut off and safety lock attached on switch or control where power is turned on. It is the duty of an oiler to know the condition of his ladders, stairways, walks, platforms, and railings, and if they are not in proper condition to report the same to his foreman.

9. After machinery is repaired all tools or loose materials must be removed and safety guards replaced before leaving the job.

10. Cog-wheels, gears, and frictions of all kinds should be kept properly covered, unless otherwise protected, so that a man cannot possibly get caught in them.

11. Material left in shops should be piled in such a manner that it cannot fall or be knocked over. Tools, machine parts or other material should not be placed where they may be knocked or jarred into moving machinery.

12. No person shall be allowed to handle tools or operate machinery with which he is not familiar.

13. There must be one person designated by the shop foreman to oil and have charge of shop engine.

14. The use of a wabbly circular saw is prohibited.

15. No person must attempt to plane a piece shorter than two feet on the jointer.

16. Every precaution must be used to prevent condensation in steam hammer.

17. No person must be allowed to place his hands between the dies of a steam hammer. Small pieces of material must be handled with tongs.

18. In cutting material with power shears, a workman must never be allowed to handle a piece shorter than twelve inches, except with tongs.

19. When you complete a job, NEVER leave tools or material lying overhead. Tear down all temporary scaffolds as soon as you are through with them. Do not allow boards with nails sticking up to lie around anywhere.

20. After repairing machinery, always replace safeguards before leaving the job.

21. Before doing any work where there is danger of coming into contact with electric wires, notify the Electrician, who will advise concerning the work.

22. Shops must be cleared daily of shavings and rubbish.

23. No employee or other persons should be allowed in the shops except on business.

24. Wherever possible, machinery with belt drive must be equipped with belt shifters, which must be used at all times by machine operators.

ELECTRICAL EQUIPMENT

1. No person except the Electrician or workman duly authorized by him must attempt to repair or adjust electrical machinery or equipment.

2. The Electrician or duly authorized person shall order a circuit cut out, and this circuit shall only be closed and put in service again by the same Electrician.

3. When men are working on a line and power has been cut off, a sign so stating must be placed on the switch and the switch locked

out, and power must not again be turned on nor sign removed except by the same person.

4. Do not close a switch unless you know why it was opened.

5. Live wires must not be allowed any place where anyone is liable to come in contact with them.

6. No one but those properly authorized shall be allowed to open or close an electric switch.

7. Electricians shall not handle electric wires while standing or sitting in a wet place without extra precaution to obtain insulation from the ground.

8. In handling any circuit power should be cut off and safety locks used to prevent the power being turned on while someone is working on the line.

9: So far as possible all circuits should be treated as though they were live, even though they are believed to be dead.

10. Electricians should not depend on insulated or taped handles of their tools, and motormen and electricians are advised to wear electrician's safety shoes and gloves.

11. Linemen and other workers must wear safety belts when working overhead.

12. Do not handle circuits promiscuously and do not get the idea that you are expert at it. OVER-CONFIDENCE BREEDS CARELESSNESS, AND ACCIDENTS ARE THE RESULT. Competent men are cautious; only unskilled and inexperienced men take chances.

18. No temporary work shall be done unless it is good and safe enough, mechanically and electrically, to be permanent.

14. It is possible for telephone or signal wires in crossing high tension wires to become charged to such an extent that they are dangerous. Such crossing points must be carefully insulated against contact.

15. Persons working with electricity must be careful, cautious and on the alert at all times. DO NOT TAKE CHANCES. Comply with all general and local safety orders issued.

FIRE PROTECTION

1. Fire signals shall consist of a continuous blast from the siren at compressor house.

2. Fire hydrants, fire pumps and valves must be tried at least once a month, and kept in working order at all times.

3. Fire valves, hydrants, and exposed piping for fire fighting purposes must be painted red. Fire extinguishers and fire pails must be in place ready for immediate use.

4. Signs—"No Smoking" must be placed wherever there is danger of fire.

5. Smoking must be absolutely prohibited in barns, oil storage houses, magazines and carpenter shops.

6. Every employee is a member of the fire department and should consider himself a committee of one to guard against fire.

7. All iron smoke stacks in passing through roof or side of building must have eighteen (18) inches of clearance all around.

8. Steam or hot water pipes is passing through walls, ceilings, roofs, partitions and floors of wood must have at least three-quarters (¾) inch clearance all around.

9. Where electrical equipment is installed, carbon tetrachloride extinguishers must be provided. Do not use soda-acid extinguishers on electrical fires.

10. Matches must be stored in tin boxes.

11. Inflammable or explosive materials must not be allowed to accumulate in or around any buildings.

12. All sheaves and turn sheaves must be guarded in an approved manner, and suitable ladders, stairways and guarded platforms provided to make same accessable for oiling and repairs.

13. The Fire Prevention Inspector's recommendations should be carried out and housekeeping items cleaned up promptly.

RULES FOR MINE FOREMAN

1. The Mine Foreman must report to the Superintendent and take orders from him.

2. The Mine Foreman has direct supervision over all regular inside employees.

3. The Mine Foreman and his assistants direct the working forces of the mines, maintain proper discipline, inspect and see that all workmen and working places conform to the safety policy of the Company.

4. The Mine Foreman must be continually alert to detect unsafe workmen, unsafe conditions and unsafe practices.

5. The Mine Foreman must personally investigate immediately every case of personal injury and make a report to the Superintendent. He must take steps to prevent a recurrence of such accidents.

6. The Mine Foreman must treat all em-

ployees with courtesy, be open to safety and other suggestions, investigate complaints and reports of conditions and take proper action as necessary.

7. The Mine Foreman shall travel the slopes once a week to inspect track, loose rock in ribs and roof, and see that slope is kept clean.

8. The Mine Foreman must see that all new men are thoroughly instructed in their duties and must properly instruct them regarding safety.

9. The Mine Foreman must see the workmen are supplied with proper and safe tools and appliances.

10. In case the Mine Foreman suspects that any workman is the victim of any disease affecting the physical welfare of the workmen or whereby such disease would render the workman liable to particular hazard from even slight injuries, such workman must be sent to the Company Doctor and not allowed to return to work until the Doctor so releases him.

11. Foremen should review all existing general and local safety orders periodically with the workmen, and see that all new safety orders are posted on bulletin boards where all workmen can see them.

RULES FOR MEN ON ORE

(A) CONTRACTORS AND DRAG FOREMEN

1. Every contractor and drag foreman is responsible for the safety of the men working under him and must see that they observe the rules of the mine.

2. No contractor or drag foreman, except in case of sickness, must lay off without per-

mission of the Mine Foreman, and no working place shall be allowed to operate without a competent and experienced miner in charge.

3. Contractors and drag foreman or experienced miner approved by Mine Foreman, must personally examine and test, with hammer and bar, roof, ribs and face of working place and see that all loose and dangerous material be quarried down. If the place cannot be made safe, stop work and call for the Mine Foreman or assistant. Any unusual condition must be reported to the Mine Foreman or assistant.

4. When timbers have been blasted out or fallen from under dangerous roof, men must not return to work until the timbers have been set or the place otherwise made safe.

5. All contractors and drag foremen must work in accordance with instructions of the Mine Foreman or assistant.

6. No contractor or drag foreman shall interfere with the chainer about his turn. Any irregularity must be handled with the Mine Foreman or assistant.

7. The contractor and drag foreman must see that all tools and working appliances are in safe operating condition and see that the Company tools and equipment are not abused.

8. Contractor and drag foreman must pay particular attention to the instruction and care of new men.

9. Contractors and drag foremen must see that all tools and appliances are removed to a safe place at the end of each shift and before blasting is done.

10. Contractors and drag foremen must immediately investigate and obtain all facts in

reference to any accident occurring in his heading or slope and take proper steps to prevent a recurrence of such accidents.

11. Contractors and drag foremen must watch out for old "guns" and failed holes. They must see that drill men are properly instructed and competent to avoid hazards inherent in their work. Failed holes must be reported to Mine Foreman or assistants for instructions.

12. Contractors and drag foremen must keep their places clean. Do not allow ordinary heading debris to be scattered around in aimless fashion; cleanliness promotes safety.

13. Contractors and drag foremen must drive their places according to specifications and to engineer's lines and grades.

14. Goggles must be worn when "collaring" hole or breaking rock.

(B) DRILL MEN

1. The drill men work under the instructions of the contractors or drag foremen or experienced miner properly approved by the Mine Foreman or assistant.

2. The drill men must personally examine the roof, ribs, and face of his working place by means of hammer or quarrying bar and keep all loose roof quarried down. The place must be continually inspected during the shift and kept safe at all times.

3. Drill men, before setting up, must examine the face for old "guns" which may contain unexploded dynamite and for failed holes.

4. The drill men must see that all his tools and equipment are in safe working condition.

5. The drill men must see that all tools and equipment are moved to a safe place at the end of each shift and before any blasting is done.

6. The drill men must immediately report to contractor, drag foremen or assistant any unusual or unsafe conditions, such as failed holes.

7. Goggles must be worn when collaring hole, or breaking rock.

(C) DRAG ENGINEERS

1. The drag engineer works directly under the supervision of the drag foremen and indirectly under the Electrician and Master Mechanic

2. At the beginning of the shift the drag engineer must see that the equipment is in safe working condition, must oil all bearings and make possible slight repairs and adjustments before throwing in main switch.

3. In case of accident or trouble to electrical apparatus call for the electrician.

4. In case of accident or trouble to mechanical apparatus call for the machinist.

5. The motor must be safely anchored down after each move.

6. The drag engineer must not move engine without a clearly understood signal and then only when chute men are in the clear.

7. On leaving machine at end of shift, leave switch out, controller in neutral, ropes in clear of track, and open main switch.

8. To renew fuses, always open main switch. No fuse other than those provided for the purpose shall be used.

9. Engines must be kept clean.

(D) MINERS AND MUCKERS

1. Miners and muckers shall work under direct supervision of contractors and drag foremen.

2. Miners and muckers must use due diligence in their work and be careful at all times for their own safety and that of their fellow workmen.

3. While the contractor and drag foremen must see that places are in safe working condition, this relieves the miner of no responsibility in this connection. He must know for himself that conditions are safe.

4. Care must be taken in handling of ore. Do not attempt to load too big a piece of ore by hand, as such may cause strain or rupture. Do not attempt to load rocks of "two men" size but sledge the rocks to "one man size." Miners must be careful and not undermine ore or rock pile while loading. The muck pile must be kept trimmed down to prevent rocks rolling on hands or feet.

5. While sledging rock notify your companions that they may turn their backs or get to safe distance from flying 'spawls." Goggles must be worn by the person breaking such rock.

6. Special care must be used in holding cars to the face while loading. It is strictly against

the rules to chock cars with rocks. Use the safety sprags. A "dead man" shall be kept on down grade side of car at all times.

7. On drag work the face man must keep the face surroundings well quarried at all times.

8. The face man must keep in the clear of the dipper, ropes, skidder block and hangers at all times.

9. In drilling hanger holes drill them only in secure ground.

10. Never attempt to tighten hanger wedges or "change over" without first having a clearly understood signal from the drag engineer that the engine will not move.

11. In turning dipper over do not hold rope with hand or foot but fasten rope properly and get in the clear.

12. The "chute men" on drag work must use care in the handling and trimming of cars and have due regards for the safety of companions. Use safety sprags and safety chocks provided for holding cars.

13. Chute men must not go between engine and cars, cars and ramp, or engine and ramp while engine is in motion.

RULES FOR HANDLING AND USE OF EXPLOSIVES

1. Explosives will be issued from the underground magazine at designated time only.

2. Not more than one day's supply of explosives will be issued at one time.

3. Don't forget the nature of explosives. Only by sensible treatment can they be handled safely.

4. Don't smoke while handling explosives and don't handle explosives so near a light that there is danger from the flame or sparks.

5. Don't have a lighted lamp on your hat or stuck in a timber over the place where you are preparing charges.

6. Don't throw or allow packages of explosives to fall violently.

7. Caps shall be carried and kept only in the containers provided for the purpose.

8. Don't crimp a cap with your teeth. Use a cap crimper. Be sure that fuse is cut squarely across with a sharp knife and push gently against the fulminate and crimp securely. In wet places smear soap between joint of fuse with cap.

9. Don't leave dynamite fuse or caps in a wet place.

10. Do not use fuse less than seven (7) feet in length. However, for blockholding or popping rocks, fuse four feet in length may be used with permission of Mine Foreman.

11. Don't force a stick of powder with cap and fuse attached into a hole.

12. Use only wooden tamping poles.

13. Don't fire a charge to shake a hole and then immediately reload it, as the hole will be hot.

14. Do not shoot except at times designated as "shooting time." If you have rocks to "pop" obtain permission of Mine Foreman or assistant to shoot between "shooting times."

15. Don't fire a shot until everyone is out of danger. In special cases such as rock falls, shooting down dangerous rocks, etc., men must be placed at all approaches to guard against anyone being endangered by the necessary blasting.

16. Don't remove dynamite from original cartridge when loading holes.

17. In loading holes, don't separate dynamite cartridge by dummies. This would leave unexploded power in the bottom of the holes.

18. Don't use frozen or chilled dynamite.

19. Don't attempt to thaw dynamite. It will be thawed by underground temperature and issued only when thawed.

20. The following is the proper method for making up primers: Punch a hole about the size of a lead pencil in side of cartridges, this hole to be a little deeper than the length of the blasting cap. Aim to keep the blasting cap in the center of the cartridge. Insert the blasting cap and fasten the fuse securely to the dynamite cartridge with a string to prevent the cap and fuse being pulled out of the cartridge. Do not loop the fuse around the cartridge, as this may break the fuse and cause a misfire.

21. Not more than seven holes must be lit by one man, and two men should always be present while lighting a round. It is advisable for men lighting holes to have two car-

bide lights in case one should go out. The "sparkler" on both lamps should be in perfect working condition.

22. Any surplus powder must be returned to powder magazine.

23. Use wooden wedges and wooden mallets in opening powder boxes.

24. All holes must be "blown" out with appliance provided for the purpose before changing holes.

25. All failed holes, misfires or holes containing unexploded powder must be reported immediately to the Mine Foreman, and no work prosecuted in the working place until the Mine Foreman has ruled on procedure for handling.

26. It is strictly forbidden to drill into or through old "guns."

GENERAL MINING RULES

1. At all times special care must be given to quarrying, particularly so after blasting. Every place must be provided with a quarrying bar and a slate bar and kept in good condition.

2. When a heading, slope or upset is about to hole through, men must be stationed at a safe place to warn anyone approaching that point until blasting has been completed. This rule must be complied with whether place is holing through to active workings or not.

3. In case of misfires, these must be reported to the Mine Foreman or assistant, to the opposite shift leader if in double shift places, and to men working in contiguous places.

4. No one should enter any working place unless men are at work in the place. If no one is working he must be positive that no blasting is being done. No one should enter an idle or an abandoned place alone.

5. Miners must not drill holes into the roof, as blasting such holes causes the roof to become dangerous.

6. All gob piles must be kept three feet from track.

7. Drillmen or others using air must see that air is turned off before disconnecting hose.

8. Old timbers and ties must not accumulate in piles. Scatter the pieces out singly until such time that they can be hauled to the surface.

9. Anyone caught sleeping on the job will be subject to discharge.

10. No one must cross over hoist rope while it is in motion. All men are required to travel manways where possible.

11. Building of fires underground is absolutely forbidden, except in forges or furnaces provided for that purpose.

12. Derailers must be kept in position to wreck cars at all times except when cars are passing.

13. Loafing or loitering on slopes is forbidden. Keep to the manways. If necessary to cross slope to "hoodlum" station, exercise proper care in ascertaining where the trip is.

14. Trash and inflammable material must not be allowed to accumulate.

15. Workmen should give particular attention to the condition of their clothing. Loose, ill-fitting and ragged clothing must not be worn. The use of safety shoes and hard-boiled hats is encouraged.

16. Riding of loaded or fast empty trips is forbidden and will result in immediate discharge.

17. Riding of empty trips is forbidden unless duly authorized by Mine Foreman or assistant and then only on man trip signal.

18. No miner, except in case of sickness, must lay off without permission of his Foreman, and no working place shall be allowed to operate without a competent and experienced miner in charge.

RULES FOR MEN ON HAULAGE

(A) CHAINERS

1. The position of a chainer being one of peculiar hazard, he must use special care and precaution to avoid danger incident thereto.

2. After signalling the hoisting engineer do not leave signal wires until the trip has moved in the desired direction.

3. Signals must not be given by any person other than those duly authorized.

4. "Fancy" or "trick" riding will not be allowed. Men must not ride on brake shoes.

5. If a trip has been stopped, a signal must not be given to move trip until it is ascertained why the trip has stopped.

6. Chainers must see that all trips have couplings properly made. Do not leave

"knuck" with twisted couplings. Keep an eye out for defective couplings and defective ropes. Defective couplings should be collected and sent to the surface. In case of a defective rope stop the trip and notify Mine Foreman and Master Mechanic immediately.

7. Chainers must not allow anyone to ride loaded trips. Should anyone attempt to "steal" a ride, stop the chain and notify the Mine Foreman or assistant immediately.

8. Chainers must not set a "kick" rail while trip is in motion.

9. Chainers must give signals according to Standard Hoisting Signals. No special or doubtful signal will be honored by the engineer. Should such signal be given while trip is in motion the hoist engineer will stop trip and be governed by the eight bell rule.

10. Chainers must wear their jumpers inside the bib of their overalls. They must not wear loose or ragged clothes or worn out shoes.

11. Hooks provided for that purpose must be used in uncoupling cars.

(B) RULES FOR MOTORMEN

1. Due to the hazards of this occupation especial care must be taken at all times. Motormen must not back up on trolley poles unless absolutely necessary. Locomotives must not be left standing without brakes set up, brake wheel spragged, controller in neutral position and trolley pole and reel hook free from trolley wire. Locomotives must always be left in a safe, dry place. In no case must locomotives be worked on while trolley pole or reel hook is in contact with trolley wire. Motormen must be sure that loaded or empty cars are not left standing unless properly

chocked. Not more than two men must be allowed to ride on a locomotive at any time except in case of emergency and then only with permission of Mine Foreman or his assistants. "Running switches" are absolutely prohibited. Trolley poles must not be turned while locomotives are in motion. Motors must not be reversed while locomotives are in motion. In no case must anyone move locomotive unless he is in his proper place on the locomotive.

(C) TRIP RIDERS

1. Trip riders must wait until cars and locomotives have come to a dead stop before coupling. Cars must not be left standing without being chocked with wooden chocks. "Dead men" must be placed where necessary. Derails must be closed at all times except when trips are passing. Trip riders must ride end of locomotives opposite to motormen. Hooks provided for that purpose must be used in uncoupling cars.

(D) TRAMMERS

1. All places must be provided with sufficient and safe brake sticks. Before loading cars, the miner must assure himself that brake sticks and brakes are in good condition and if not the car or cars must not be trammed. Brake sticks should be swapped out when worn or defective.

2. A car must not be allowed to leave face until preceeding car or cars have had sufficient time to reach knuck.

3. No one must ride on empty car except trammer.

4. No one must ride on loaded car except trammer. In case a new man is being broken in he will be permitted to ride while learning to tram.

5. Except in case of emergency the cars must be kept under control and stopped with brake stick, and not by using safety sprag.

6. While tramming the cars must be kept under control.

7. Under no circumstance must cars be "chocked" with rock. Use safety sprags or, where authorized, safety wooden chocks.

8. Not more than one car shall be trammed at one time.

9. Care should be taken in knucking cars properly and seeing that all couplings are properly made.

(E) INSIDE HOIST ENGINEERS

1. The same rules applying to surface hoist engineers shall apply underground.

2. The Standard Hoisting Signals shall govern. Do not accept signals by lamp or whistling, as chainers must be governed by the Standard Hoisting Signals. Because your engine may be in an out of the way place is no reason why there should be any laxity in the observance of rules.

3. Examine condition of roof and ribs at beginning of each shift and report any unsafe condition to the Mine Foreman or assistant. Do not work until condition is corrected.

RULES FOR TIMBER AND ROCK MEN

1. When placing timbers workmen must clearly understand what they propose to do. The handling of heavy timbers requires that all men engaged must act in unison, as the failure of one man to do his part may result in several getting hurt.

2. The timberman must see that men in his charge shall be always working under safe conditions. His quarrying bar and other tools must be in safe working condition. While quarrying, other than those engaged in the actual quarrying shall retire to a safe distance. While sledging rock others than those so engaged shall retire to a safe distance or turn their eyes and face from flying "spawls." Goggles must be worn by sledger.

3. When planks or staging have been used care must be taken to turn down or remove all projecting nails or spikes.

4. Blasting shall be done only under direction of Mine Foreman or assistant.

5. After timbering up a place, do not leave until removing timber butts or quarried rock, placing neatly at least three feet in the clear of tracks.

6. When the roof rock in a place is working or the top is particularly bad the Mine Foreman or assistant must be present to direct timbering or the blasting down of unsafe roof.

7. Do not reset timbers that are badly damaged by blasting. Always use good sound timbers. The timbers are "culled" on the surface, but occasionally one may get by, in which case it is not to be used.

RULES FOR TRACKMEN

1. All track work must be done according to the Mining Engineer's specifications, and using only standard track equipment provided. If ribs or grades are not to proper line consult with Mine Foreman or assistant who will handle for correction.

2. On all new work the rails shall not be closer than three (3) feet to ribs. Clearance between tracks shall also be not less than three (3) feet.

3. Angle bars must be used on all joints (except where connection be made to manganese steel frogs). Bad joints and sharp curves are conducive to wrecks and accidents and the trackman is responsible for these conditions. Knuck curves are not thought of in this connection, as they are clearly a necessary condition and at a point where cars are brought to rest.

4. The trackman is responsible for the safety of the men in his charge and he must see at all times that they are working under safe conditions.

5. The trackman must see that his tools are adequate and in safe condition. Cleavers and spike mauls with burred heads will not be allowed. Spike bars must be sent to the shops regularly for repairs.

6. The trackman must see that his men are properly instructed and that they are careful workmen. New men shall receive particular attention until they become sufficiently experienced. All men on track shall have due regard for their own safety and that of their companions. Care must be taken in handling rails and ties as many accidents have been caused by their careless handling.

7. Rails, ties and spikes shall be recovered from worked out headings as soon as practicable, as a newly worked out heading will be in reasonably safe condition. By waiting too long it may become very unsafe and result in loss of valuable material.

8. In all track work due regard must be given to the movement of cars, and other mining operations. No track work shall be prosecuted on the Slope tracks while the trips are running except in emergency and under direction of the Mine Foreman or assistant.

RULES FOR PUMPERS

1. Pumpers shall be governed by general "Electrical" and "Mechanical Shops" rules.

2. Pumpers shall carefully oil and inspect their equipment before starting the pumps. Report any irregularity to the Electrician or Master Mechanic.

3. Pumpers shall examine roof, ribs, and face around pump station and their traveling ways, and report any unsafe condition to the Mine Foreman or assistant.

4. Pumpers must not go anywhere not called for in their regular line of duty.

RULES FOR COMPRESSOR ROOM

1. Compressor men will be governed by the general "Electrical" and "Mechanical Shops" rules, and other rules herewith pertinent to their work.

RULES FOR CRUSHER

1. Crusher man must check oil and equipment before starting up.

2. Crusher must not be oiled or started by other than authorized workmen.

3. Repair work on crushers is attended by certain hazards, which must be carefully considered. Use only safe slings, keep workmen in the clear, use care in placing tools, material, or parts so that they will not create a hazard by men stumbling or falling over them, or their falling on men working below. Especial care should be used in selecting men for this work.

CARBIDE

1. Under no condition must anyone carry more than one day's supply of carbide while riding in the skip. A day's supply should be carried in a closed can provided for that purpose. Large cans containing carbide must be hauled with tools and must have tight-fitting covers.

2. Do not hold lighted lamp over carbide can, as there may be gas generated, which will explode and burn you.

3. Dump all refuse from carbide lamp in tram cars.

TOOLS

1. Axes, saws and other tools must be placed where there will be no danger to a passerby.

2. All tools such as cold chisels, cold sets, fullers, hammers, sledges, drills, etc., must be kept dressed. No tools with mushroomed heads shall be used.

3. Clean up after completing each job and remove all tools and other material and leave the place in as clean or better condition than you found it.

ACCIDENTS AND FIRST AID

1. In case of accident move patient as little as possible until "first aid" is rendered.

2. Foreman must be located and notified of accident as soon as possible.

3. Never leave an injured person alone.

4. Never take patient to the first aid material but the first aid material to the patient.

5. Keep cool in case of accident. Excitement may cause more damage.

6. In case of a serious accident, notify or send for Doctor immediately.

7. All accidents must be reported to the Superintendent on the date of the accident by the Foreman.

8. All injuries no matter how trivial must receive attention. Infection frequently causes blood poison which is serious and may be fatal.

(A) TREATMENT FOR ELECTRIC SHOCKS

1. Hope of restoring the victim of accident electric shock lies in prompt and continued use of artificial respiration. The reasons for this statement are:

(a) The body continuously depends on an exchange of air as shown by the fact that we must breathe in and out about fifteen times a minute.

(b) If the body is not thus repeatedly supplied with air suffocation occurs.

(c) Persons whose breathing has been stopped by electric shocks have been reported restored after artificial respiration has been continued for approximately two hours. The Schaefer or "Prone Pressure" method of artificial respiration is illustrated and described in the following resuscitation rules. The advantages of this method are:

(1) Easy performance; little muscular exertion is required.

(2) Larger ventilation of the lungs than by the supine method.

(3) Simplicity; the operator makes no complex motions and readily learns the method on first trial.

(4) No trouble from the tongue falling back into the air passage.

(5) No list of injuries to the liver or ribs if the method is executed with proper care.

Aid can be rendered best by one who has studied the rules and has learned them by practice on a volunteer subject.

INSTRUCTIONS FOR RESUSCITATION

(Follow these instructions even if victim appears dead.)

1. Break The Circuit Immediately:

(a) With a single quick motion separate the victim from the live conductor. In so doing avoid receiving a shock yourself. Many have by their carelessness received injuries in trying to disconnect victim of shock from live conductors. OBSERVE THE FOLLOWING PRECAUTIONS:

1. Use a dry coat, a dry rope, a dry stick or board, or any other dry nonconductor to move either the victim or the wire, so as to break the electrical contact. Beware of using metal or any moist material. The victim's loose clothing, if dry, may be used to pull him away; do not touch the soles or heels of his shoes while he remains in contact—the nails are dangerous.

2. If the body must be touched by your hands, be sure to cover them with rubber gloves, rubber sheeting, or dry cloth, or stand on a dry board or on some other dry insulating surface. If possible, use only one hand.

3. If the victim is conducting the current to ground, and is convulsively clutching the live conductor, it may be easier to shut off the current by lifting him than by leaving him on the ground and trying to break his grasp.

4. Open the nearest switch, if that is the quickest way to break the circuit.

5. If necessary to cut a live wire, use an ax or hatchet with a dry wooden handle, or properly insulated pliers.

2. Send For The Nearest Doctor:

(a) This should be done without a moment's delay, as soon as the accident occurs, and while the victim is being moved from the conductor.

3. Attend Instantly To Victim's Breathing:

(a) As soon as the victim is clear of the live conductor, quickly feel with your finger in his mouth and throat and remove any foreign body (tobacco, false teeth, etc.). Then begin artificial respiration at once. Do not stop to loosen the patient's clothing; every moment of delay is serious.

(b) Lay the subject on his belly, with arms extended as straight forward as possible, and with face to one side, so that nose and mouth are free for breathing. Let an assistant draw forward the subject's tongue. If possible, avoid so laying the subject that any burned places are pressed upon. Do not permit bystanders to crowd about and shut off fresh air.

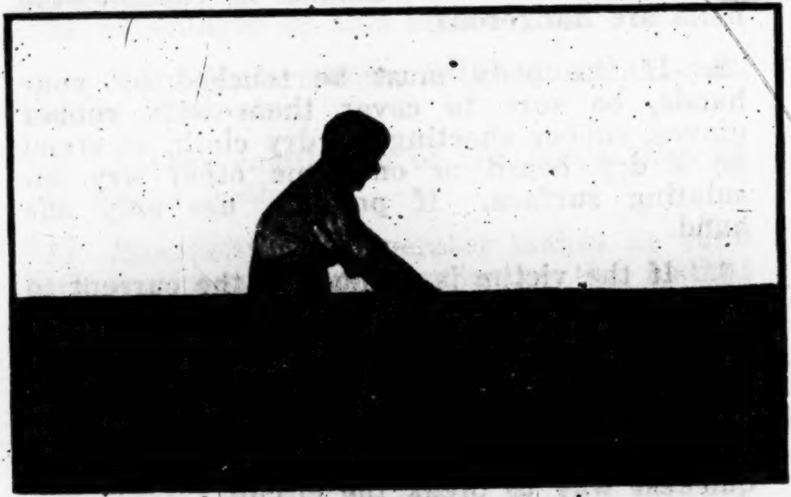

Figure 1.

(c) Kneel straddling the subject's thighs and facing his head; put palms of your hands on the muscles of the small of the back, with thumbs nearly touching each other, and with fingers spread over the lowest ribs.

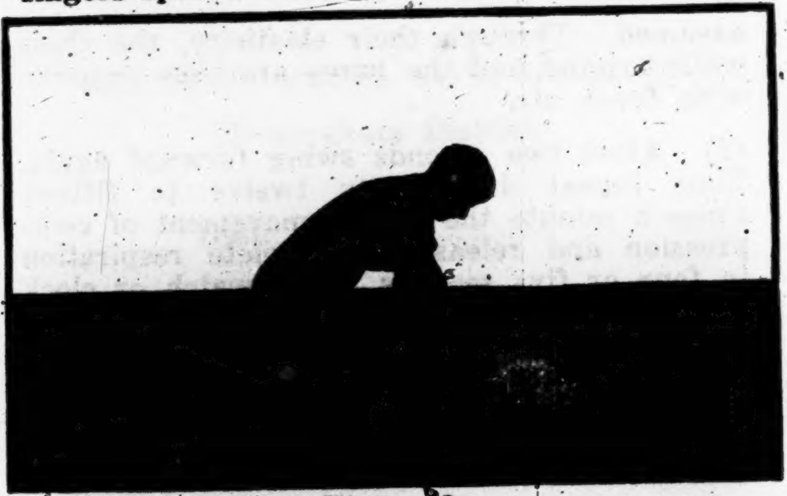

Figure 2.

(d) With arms held straight, swing forward slowly so that the weight of your body is gradually brought to bear upon the subject. This operation, which should take from two to three seconds, must not be violent—internal organs may be injured. The lower part of the chest and also the abdomen are thus compressed, and air is forced out of the lungs.

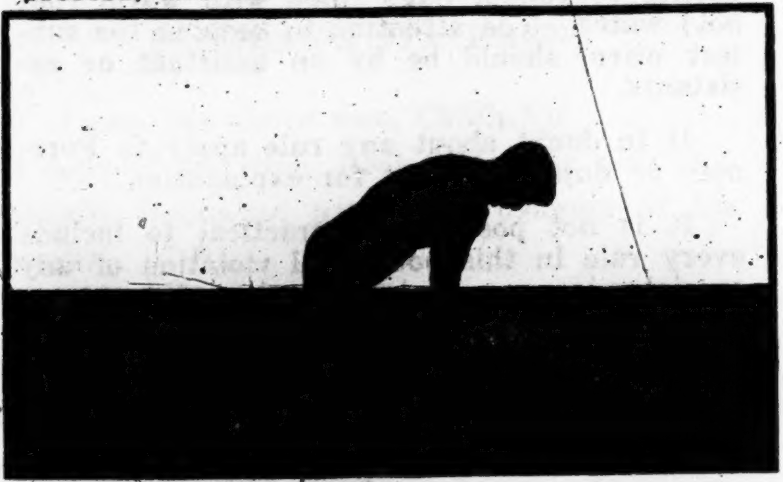

Figure 3

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(e) Now immediately swing backward, so a to remove the pressure, but leave your hand in place, thus returning to the position firs assumed. Through their elasticity, the ches walls expand and the lungs are thus supplie with fresh air.

(f) After two seconds swing forward again Thus repeat deliberately twelve to fiftee times a minute the double movement of compression and release—a complete respiratio in four or five seconds. If a watch or clock is not visible, following the natural rate o your own deep breathing—swing forward with each expiration, and backward with each inspiration. While this is being done, and assistant should loosen any tight clothing about the subject's neck, chest or waist.

(g) Continue artificial respiration (if necessary, two hours or longer), without interruption, until natural breathing is restored or until a physician arrives. Even after natural breathing begins carefully watch that it continues. If it stops, start artificial respiration again. During the period of operation, keep the subject warm by laying beside his body bottles or rubber bags filled with warm (not hot) water. The attention to keeping the subject warm should be by an assistant or assistants.

If in doubt about any rule apply to Foreman or Superintendent for explanation.

It is not possible or practical to include every rule in this book, and violation of any special rules or accepted practices will not excuse employee from discipline.

REPUBLIC STEEL CORPORATION

Birmingham District

Date ....

I hereby acknowledge receipt of a Book of Rules for the Ore Mines and Quarries.

I pledge myself to read them carefully, obey them, and do all I can to avoid accidents to myself and fellow workmen.

Signed ....

Check No. .... Dept. ....

FOREMAN'S STATEMENT

I gave the above man, Check No. .... a copy of the Rule Book. He was also personally instructed as to the dangers of his work.

Signed ....

This sheet must be filed in the office of your Department Head.

4469 DEFENDANTS' EXHIBIT No. 24.

Defendants' Exhibit 24 is an envelope, on the back of which appears the following:

Statement Period Ending July 15, 1941.

213

419-05-5901

213 Louis Tarrant.

TT Hours	@		$ 21.06
"	@		....
Tons	@ 26		114.60
"	@ 31		19.28
Yards	@		7.20
Total Wages			$162.14
F. O. A. B. Tax		1.09	
Ala. Unemployment Tax		.98	
Cash Advance		....	
Check Store		3.84	
Rent		....	
Coal		....	
Physician		1.75	
Commissary A C		34.35	
Change House		....	
Brass Checks		....	
Miners' Supplies		52.59	
Hospital		....	
Lights		....	
Safety Lamp		.60	
Insurance		....	
Total Deductions			95.20
Cash Pay Day			66.94

Republic Steel Corporation.
Birmingham District.
Raimund Mine.

Received Payment ....

4470 DEFENDANTS' EXHIBIT No. 25.

Tennessee Coal, Iron & Railroad Company,
Muscoda Division.

Minutes of Meeting.

Held in Superintendent Ewing Carter's Office, February 18, 1936.

Those present were:

Mr. Ewing Carter, Superintendent,
Mr. W. C. McKenzie, Div. Engineer,
Mr. M. E. Baird, Gen. Sup'ts. Clerk,

and the following Committee from the Muscoda Local No. 123, International Union of Mine, Mill & Smelter Workers:

Mr. B. H. Barksdale (w)
Mr. Pete Dulaney (w)
Walter Ward (c)
Derry Wilson (c)
Louis McCreary (c)

The meeting was called to order at 4:30 P. M., by Mr. Ewing Carter, Superintendent.

Mr. Carter:

What have you to discuss today?

Mr. Barksdale:

We have the names of four men that we think are making too much time—Hershall Luther, Spurgin Sumlin, W. W. Batson and Grady Elam.

Mr. Carter:

The time is being divided as equally as possible, taking into consideration the fact that quite frequently it is impossible to work the next man because it will interfere with his regular shifts. Some of these men have been working on specialized jobs and we will continue to work the best trained men on these jobs.

Mr. Barksdale:

We have a nice loading station in No. 6 now and I would like to get a ruling about the men staying in line when they go out to catch the skip.

Mr. Carter:

Any man that is caught pushing will be disciplined, as men are liable to get hurt.

Mr. Barksdale:

I have been getting complaints that Wilson Goodwin (w), U. G. Carpenter is getting too much time.

Mr. Carter:

Wilson Goodwin will not get any more time than any of the other U. G. Carpenters.

Mr. Barksdale:

Some time ago I asked you about seeing if you could give Will Smith (c) some light work. He has heart trouble and the doctors say he can not do any heavy work.

Mr. Carter:

We have no light work to give him. I would not put him on any kind of a job without the advice of the doctors. I would not use a man that is physically unfit as if something happened to him we would be responsible.

Meeting adjourned at 5:00 P. M.

B. H. BARKSDALE,
For the Committee.

EWING CARTER,
Superintendent.

4472 DEFENDANTS' EXHIBIT No. 26.

Tennessee Coal, Iron & Railroad Company,
Muscoda Division.

Minutes of Meeting.

Held in Superintendent Ewing Carter's Office, December 31, 1934.

Those present were:

Mr. Ewing Carter, Superintendent,

and the following Committee from the Muscoda Local No. 123, International Union of Mine, Mill & Smelter Workers:

Byrd Barksdale (w)
R. B. Autrey (w)
J. A. Mason (w)
M. E. Adams (w)
Bill Baylor (c)

The meeting was called to order at 9:15 A. M., by Mr. Ewing Carter, Superintendent.

Mr. Carter:
What can I do for you?

Mr Barksdale:
We have learned that when the mine resumes operation, tomorrow, that you do not propose to rotate the Section Foreman, that is, you intend to let the Section Foreman work six days per week. We do not think that is fair to the other Section Foremen. It will also mean that

Drag Operators and Drill Runners will be demoted to take care of these Section Foremen. We have always made a good safety record by allowing the Section Foremen to split time and we think that practice should be continued.

Mr. Carter:

The placing of Section Foremen is strictly a function of the Management. We have been following this practice at Wenonah and Ishkooda for some time and we are satisfied with the results.

Mr. Barksdale:

Could we talk to Mr. Ball about this matter?

Mr. Carter:

Yes.

At this point Mr. Ball came in the meeting and Mr. Barksdale made the same statement as above.

Mr. Ball:

It is unfortunate that we do not have sufficient work at this time for all Section Foremen. We will not change the Section Foremen. This is a function of the Management as we are responsible for results. From our experience at Wenonah, where we have been operating for the past year, and at Ishkooda where we have been operating since December 13th, we find that we get more efficiency and better safety by keeping the same Section Foremen. This same practice will be followed at Muscoda. Is there any other matter you wish to take up?

Mr. Barksdale:

Yes. We understand you have discontinued the Tallyman.

Mr. Ball:

The Tallyman has been abolished and the Timetaker will stay at the tallyhouse. We find that we get better results by keeping the Timetaker outside. Each Section

Foreman, Timber Foreman, Track Forman, etc., will make a distribution of the men in his charge which will be a check against the Timetaker. This practice has been followed on surface here for a number of years and at a great many of the large mines in the country. We feel that this is an advance step in timekeeping. It has been in use at Wenonah and Ishkooda for the past 15 days and has proved very successful.

There was no further business and the meeting adjourned at 9:50 A. M.

....................,
For the Committee.

EWING CARTER,
Superintendent.

Note: Committee was asked if they wanted a copy of these minutes and they replied that they did not.

4474 DEFENDANTS' EXHIBIT No. 27.

Tennessee Coal, Iron & Railroad Company,
Muscoda Division.

Minutes of Meeting.

Held in General Superintendent E. M. Ball's Office,
January 18, 1935.

Those present were:

Mr. E. M. Ball, General Superintendent,
Mr. A. W. Beck, Chief Engineer,
Mr. M. E. Baird, General Supt. Clerk

and the following Committee from the Muscoda, Wenonah and Ishkooda locals of the International Union of Mine, Mill & Smelter Workers:

Byrd Barksdale (w), Muscoda Local No. 123,
Charlie McDaniel (w), Wenonah Local No. 157,

M. C. Anderson (w), Ishkooda Local No. 153,
Bill Baylor (c), Muscoda Local No. 123,
Will Mahan (c), Wenonah Local No. 157.

The meeting was called to order at 9:30 A. M., by Mr. E. M. Ball, General Superintendent.

Mr. Ball:
At the meeting held in this office on January 11th this Committee brought up several complaints. They were—Adjustment in rates of pay for certain Sanitary Department Employees; division of time between Section Foremen of No. 4 and No. 6 Mines; request that Joe McCord, Sam Lige, and Julius Byrd be reimbursed for time lost as a result of being suspended for thirty days for Public Unlawful Conduct, and that the position of Tallyman be re-established. In order to expedite this meeting I have prepared written memorandums in answer to your complaints which will be incorporated in the minutes of this meeting, and which I will now read to you.

Requesting an Adjustment in rate of pay for Certain Sanitary Department Employees:
With regard to this question you have raised three points:

The *first* is that you are complaining against the division of time between these employees. My answer as given to you in a meeting held January 11th, 1935, with respect to this particular question remains unchanged, to wit, "that the additional men put on during the strike period will continue to serve in the Sanitary Department until such time as we can find work for them in the Operating Department."

The *second* point has reference to the increased pay for the Sanitary Wagon Drivers. These men were given a ½ cent per house raise, effective August 1st, 1934, which put them on a parity with the highest rate paid for like service in any other operation of the Company and we cannot go beyond that figure.

The *third* point relates to rates of pay for Sanitary Labor. The rate of pay for Sanitary Labor on the mountain was increased from 29-½ cents to 33-½ cents per hour and made effective August 1st, 1934. This rate like that of the Drivers compares with the highest rate paid for Sanitary Labor in any other operation of the Company, and no further increase can be made in the case of these laborers. There is, however, a question of fairness involved and that question is the date that the rate was made effective. In giving this question further study, we have reached the conclusion that, in fairness to these men, these rates should have been made effective June 25th, 1934, both in the case of the Sanitary Laborers and the Drivers, and it is our intention as a matter of fairness to these employees, to make the rates effective June 25th, 1934, rather than August 1st, 1934.

Request that Joe McCord, Sam Lige and Julius Byrd be reimbursed for time lost as result of being suspended for thirty days for Public Unlawful Conduct:

Our reply to this request is as follows: Our action in disciplining these men was based on a claim made by one Lawrence Harris. He picked these two men out, Joe McCord and Sam Lige, as being those who assaulted him; the third man in the case, Julius Byrd, being the driver of the car that took these men from the scene of the assault. Harris, in addition to charging these men with being those responsible for assaulting him, later swore out warrants for their arrest. Later, when the trial came up, he declined to testify against them, evidently having changed his mind for reasons best known to himself.

The Management in taking the action they did acted in the best of faith and I think you men agree that the Company cannot be held responsible in such cases where some employee decides to change his mind.

At this point, it might be well to make clear to you men that the application of discipline by the Management of this Company does not depend on the conviction of the party or parties charged with assault. Discipline is applied in all cases where we are in possession of correct and reliable information and this is true in this case.

Having acted in the best of faith and on information we consider reliable and which is still available, we must decline to pay these men for the time lost as a result of this suspension.

Request that the Position of Tallyman be Re-Established:

This step was taken in the interest of economy efficiency and the elimination of the duplication of work and not with any idea of instituting or instigating what you men refer to as "the stretch out system". As explained to you in our meeting held January 11th, 1936, in placing the timekeeper at the Tallyhouse instead of underground as heretofore, his duties were not increased, on the contrary, they were decreased to the extent of requiring the underground foremen to make out certain reports which had heretofore been made out by the timekeeper. The claim that your committeemen make to the effect that under the understanding reached in June, 1934, all men would be put back to work on their former occupation is true, and we fulfilled that promise. That understanding did not mean, however, that we would not be permitted to discontinue such occupations as in the opinion of the Management were unnecessary.

The duties and responsibilities of keeping the time of employees, I think you men will have to admit, is the responsibility of the Management; this being true, I cannot agree with your claim that it is a question that should have been taken up or discussed with your committeemen before any action was taken, and as far as the Management is concerned, the change as made will stand.

Requesting a Division of Time between Section Foremen of Nos. 4 & 6 Mine:

With regard to this request in which you ask that the question involved be submitted to arbitration, we must confess that we are at a loss to understand why you would request arbitration on a question involving division of work as there is nothing of record, either oral or otherwise, that permits this question to be brought up or discussed. As you men know, and particularly so far as the Section Foremen are concerned, it has been our practice for years, or to be more specific, since the inauguration of the division of such work as was available, to confine the division of work among those below the rank of Section Foremen, and as a matter of fact the division of work was a voluntary act on the part of the Management and for the purpose of giving as much work as possible to all of our employees, and at this point I want to make it clear that the Management of this Company is under no obligation to continue that policy.

Aside from all this, the question of the selection and placing of our supervisory forces is purely a duty of the Management. Such matters have always been handled by the Management and will continue to be handled by them. All of which necessarily means that so far as the question of arbitration goes on this matter, we must decline to enter into it.

As outlined in letter under date of June 25, 1934, addressed to Miss Frances Perkins, Secretary of Labor, copy of which you have in your possession: "It is understood that the Management of the mines is vested exclusively in the Company."

Mr. Ball:

For your information, we are now going over our records from June 25th to August 1st to determine the Sanitary Department employees that are entitled to this difference in rate and the number of days they worked during that period. Just as soon as this information is obtained we will call those employees to the office on some day other than a regular pay day and pay them in *case* for the difference in rate for every day worked between June 25th and August 1st.

As there was nothing further to come before this meeting it was adjourned at 9:50 A. M.

Mr. Byrd Barksdale was appointed by the Committee to sign these minutes.

B. H. BARKSDALE,
For the Committee.

E. M. BALL,
Gen. Supt. Iron Mines & Quarries.

4479 DEFENDANTS' EXHIBIT No. 28.

Tennessee Coal, Iron & Railroad Company.
Muscoda Division.

Minutes of Meeting.

Held in General Superintendent E. M. Ball's Office on June 24th, 1935.

Those present were:

Mr. E. M. Ball, General Superintendent,
Mr. Ewing Carter, Supt., Muscoda,
Mr. G. B. Neal, Jr., Supt., Wenonah,
Mr. C. B. Cameron, Supt., Ishkooda,
Mr. A. W. Beck, Chief Engineer,
Mr. M. E. Baird, Gen. Supt. Clerk,

and the following Committee from the Red Mountain locals of the International Union of Mine, Mill and Smelter Workers:

Mr. A. E. Horn, President District 5,
Mr. Van Jones, International Representative,
Mr. Byrd Barksdale, President, Muscoda Local,
Mr. Charlie McDaniel, President, Wenonah Local,
Mr. M. C. Anderson, President, Ishkooda Local,
Mr. M. E. Adams, Muscoda Local,
Mr. Ed Sizemore, Ishkooda Local,
Mr. Arthur Cox, Wenonah Local,
Bill Baylor, Muscoda Local,
Will Mahan, Wenonah Local,
Morris Smith, Wenonah Local,
Orange Wilson, Ishkooda Local.

The meeting was called to order at 3:05 P. M., by Mr. E. M. Ball, General Superintendent.

Mr. Ball:

Mr. Horn, would you mind making the statement you made in Mr. Perry's office this morning for the benefit of my Superintendents?

Mr. Horn:

I told Mr. Perry that if we could come to an understanding about the division of time that I would go with these men to their meetings and try to sell them the settlement contained in Mr. Perry's letter.

Mr. Ball:

I believe that we talked about the Section Foremen, Timbermen and Trackmen. We should also divide the time of the Underground Carpenter who is the chute builder. We talked this matter over, Mr. Perry, Mr. Abbott and myself, after you left, as we told you we would do. They left this matter up to me, that if we could get the same results as to efficiency and safety as we are now doing, we will be willing to try it. Our record of lost-time accidents is bad and I do not want to do anything that will make that record worse. We will divide the time, only if our accident and efficiency record is as good, or better, than it is now. I believe that it is the opinion of Mr. Barksdale, Mr. McDaniel and Mr. Anderson that it will be just as good, or better, than now. Is that true?

Mr. McDaniel:

I believe it will be better.

Mr. Anderson:

I think it will be better.

Mr. Barksdale:
I feel sure it will be better.

Morris Smith:
I believe it will be better.

Will Mahan:
I think it will be better.

Mr. Ball:
Mr. Van Jones, you have been a Section Foreman here, what is your opinion?

Mr. Jones:
Mr. Ball, I think I can speak from experience. When I was a Section Foreman here I was often moved from heading to heading and I did not have any trouble. A good Section Foreman must be very particular about safety in going into a new working place. If he knows his men he can caution them about unsafe practices.

Mr. Barksdale:
Mr. Ball, when we got that Safety Certificate, the Section Foremen were changing with their crews. If a Section Foreman knows his men and has the same crew he can give them closer attention.

Mr. Ball:
You believe if the Section Foreman changes with his crew he will know his men better?

Mr. Barksdale:
Yes, sir; it is like playing baseball, if you change the team every day you will not get results. Each man will learn the other's movements if they work together all the time.

Mr. Ball:

We want to run these mines as safe as possible. As I said, we have had an increase in lost-time accidents recently, but we are willing to try anything that will get better results. Several years ago we used to change all men when on part time operation, including the Section Foremen, Timbermen, Trackmen and U. G. Carpenters.

Mr. Barksdale:

Some of these lost-time accidents occurred when the men were not under a Section Foreman. Some were hurt getting in or out of the skip.

Mr. Ball:

That is true. The only way we can stop that is by discipline. We will have to discipline some of these men and I believe you men will go along with us along that line. Some men are hurt even if they are with a Section Foreman. We had an accident recently in No. 6 Mine when W. I. Sellers was hurt and the Section Foreman was there.

Mr. Anderson:

Most of the Ishkooda accidents have been mule accidents.

Mr. McDaniel:

Mr. Ball, could you tell us the number of accidents where men have been hurt in the headings for this year and last?

Mr. Ball:

We will be glad to go into a discussion of accidents with your Committee at frequent intervals but I do not think we can go into that today.

Mr. McDaniel:

We just want you to know that we are willing to cooperate with you in every way. I believe that we will have a better record than ever before.

Mr. Ball:

We are willing to try a division of the time for Section Foremen, Timbermen, Trackmen and U. G. Carpenters. If it works to the advantage of the Company in safety and efficiency it will stand, otherwise, we will have to make a change. Is that statement clear and fair? We are not establishing a precedent and if we do not get results we will go back to the old method, or try some other method of supervision for these occupations.

Mr. Horn:

That is fair.

Mr. Ball:

While I think of it, Mr. Horn, Mr. Abbott asked me to find out if you were going to make any statement to the press relative to this settlement. If so he would like to discuss it with you and if the Company makes any statement it will do the same by you.

Mr. Horn:

I have no idea of making any statement to the press about this settlement. I am not much of a believer in too much publicity as it only creates hard feelings. I will be glad to cooperate in any way with Mr. Abbott.

Mr. Ball:

I am authorized to tell you that No. 8 Mine at Wenonah will go into operation on fine crushed ore as soon as we can get ready. You men understand that we have several Mine Foremen and Assistant Mine Foremen that will have to be demoted to Section Foremen and this will mean that some of our present Section Foremen will have to be reduced. The Mine Foremen and Assistant Mine Foremen that are reduced to Section Foremen will split time just the same as the other Section Foremen. I know you men will understand that.

Mr. Horn:

As a suggestion, when I was President of the Woodward Local, Mr. Berg gave us information on accidents that occurred and we discussed these accidents and cautioned our men not to get hurt. I think if we could do something like that here we would be able to help you and eliminate some of these accidents.

Mr. Ball:

Mr. Horn, we will be glad to give that suggestion due consideration.

Mr. Horn:

I feel that it will help you and help the men.

Mr. Ball:

We are going to try to so arrange our men that the Section Foremen and other men will get the same amount of time. This will probably take at least a week or ten days to make the schedules and I ask that you men be patient. Do not expect every man to get the same amount of time as the other man every week as we will probably have to divide the time over a period of a month. With our irregular schedule of operations it is very hard to divide the time equally each week but I assure you men that my Superintendents and myself will make every effort to divide the time as equally as possible.

Mr. Barksdale:

That applies to the shop and surface men the same as the underground men? I know I will be asked that question.

Mr. Ball:

Yes, it will apply to all men below the rank of Assistant Mine Foreman. We are already dividing the time at the shop. We will do everything we can to divide the time equally and fairly.

Mr. Barksdale:

We would also like to help along the lines of reducing costs, such as materials used.

Mr. Ball:

We are at all times glad to have the cooperation of our employees. We want every man to get all the material he needs for his working place but we want to stop the waste of material.

Mr. Barksdale:

Would you tell us, say once each month, what we saved over the previous month?

Mr. Ball:

We are always glad to tell our employees that they have done good work, when it had been proved by results.

Mr. Anderson:

Do I understand that the Mine Foremen and Assistant Mine Foremen will remain as they are?

Mr. Ball:

Yes

Mr. Anderson:

We have Ore Inspectors at Ishkooda that carry a Section Foreman's rate. Will they be changed so as to divide time?

Mr. Ball:

Yes, they will be put on part time basis like other Section Foremen.

Bill Baylor:

Mr. Ball, as a member of this Committee, we thank you for your cooperation and your hospitality. We will do our best to cooperate with you and with the Company.

Mr. Ball:

As a representative of the Company, I thank you very much.

Has anyone else anything to say?

Mr. Jones:

How are we going to sell this proposition to the men? Have you any ideas?

Mr. Ball:

You will have to go to the men and be sincere; explain to them the situation as set out by Mr. Perry, but at this time conditions do not warrant what you have asked for and for that reason the Company can not grant their request. You will have to put your cards on the table, just as we have done here. You can explain that our present working agreement has been satisfactory and I believe that they will see that. We hope that our Sales Department will be able to get orders so that we can increase our mining operations.

Mr. Jones:

I was in a conference last week and the Company made us a proposition and the President asked me if I would recommend it to the men. I told him that if I did it would be over the phone because if I went to the hall they would throw me out the window. Our hall here is only one story and I would not have so far to fall.

Mr. Ball:

I think the recommendations of this Committee will be sufficient. The men in your locals have put their affairs in your hands and they know that you have done the best you can for them. I believe that is a fair statement and will do the trick.

Mr. Horn:

I think that with the proper understanding between the Company and the men that now exists, I do not feel that there should be any difficulty. We are having meetings tomorrow and we shall be glad to advise you as to the outcome of these meetings Wednesday morning.

Mr. Horn (Continuing): It was agreed that this Committee would meet in Mr. Ball's office again at 9:00 A. M., Wednesday morning to advise Mr. Ball as to the outcome of the meetings.

Mr. Barksdale and Mr. McDaniel were authorized to sign the minutes of this meeting.

Meeting adjourned 3:50 P. M.

B. H. BARKSDALE,
C. J. McDANIEL,
For the Committee.

E. M. BALL,
Gen. Supt., Iron Mines and Quarries.

4486 DEFENDANTS EXHIBIT No. 18.

The Ore Miner.

—Safety—

May, 1939 Issue No. 11

Tennessee Coal, Iron & R. R. Co.,
Ore Mines & Quarries.

Page 12.

Underground Fire Safety: * * * *

6. No smoking is allowed while riding in and out of the mine.

* * * * *

4487 DEFENDANTS' EXHIBIT 17.

The Ore Miner.

—Safety—

Nov. 1938 Issue No. 5

Tennessee Coal, Iron & R. R. Co.,

Ore Mines & Quarries.

Page 7.

Do You Know That

The burning of one piece of timber underground the size of a track tie may result in the death of anyone who may happen to be caught in the resulting smoke and gasses; and that a fire this size may necessitate shutting down the section of the mine through which the smoke and gasses pass?

In several instances in the past, methane gas has been found in old workings of our mines, and that going into old workings with an open light is dangerous?

4488 DEFENDANTS EXHIBIT No. 16.

The Ore Miner.

Safety.

July 1939 Issue No. 13

Tennessee Coal, Iron & R. R. Co.,
Ore Mines & Quarries.

Page 8.

The Back Cover.

"Unseen Dangers" account for many of our accidents in mining. They are termed "Unseen Dangers" because, unless a miner is constantly on the alert he may receive an injury from some one of those dangers. Actually, there are very few hazards in mining which cannot be seen and guarded against.

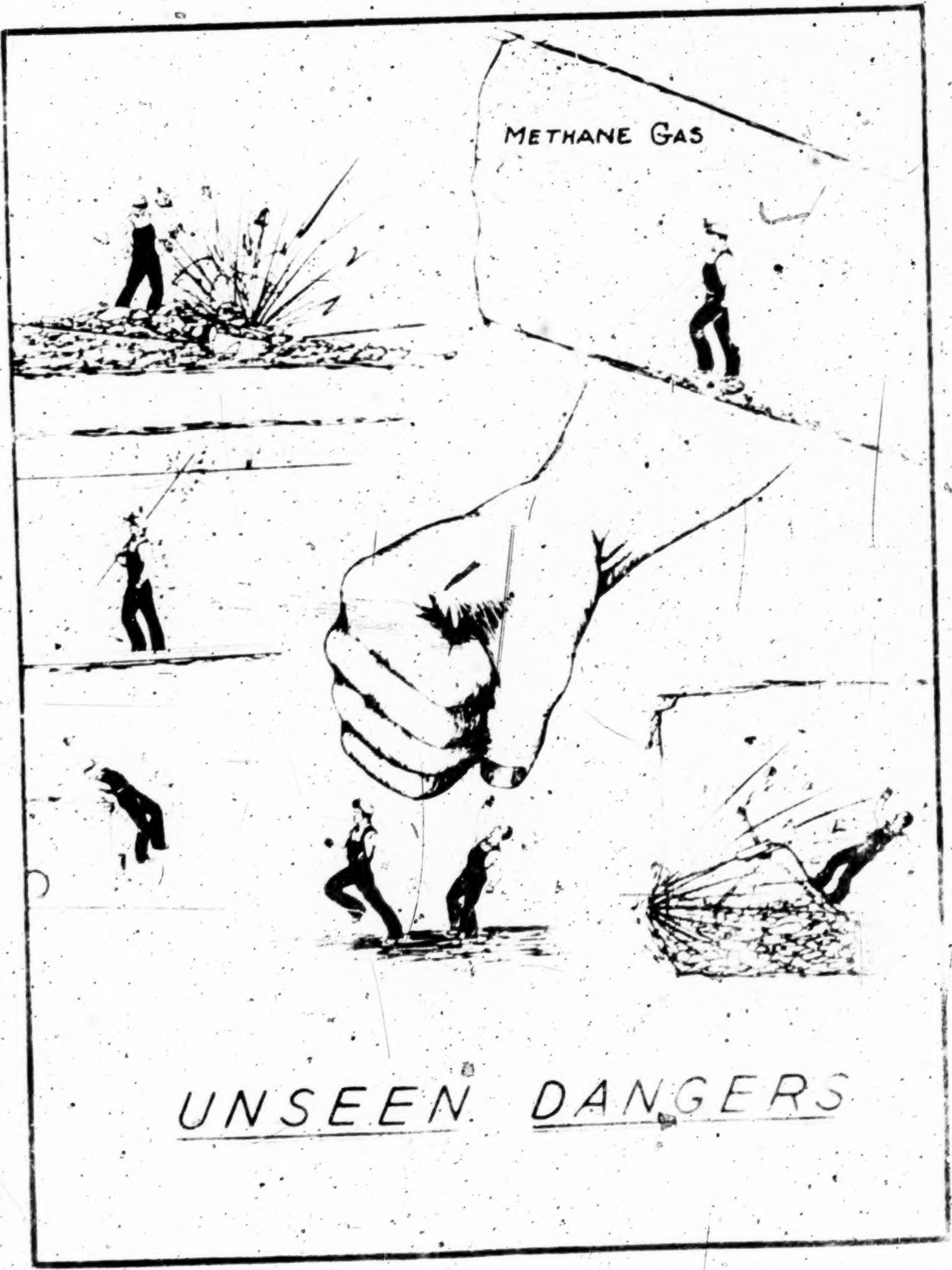
A man, not seeing a failed hole, may drill into it and be killed. Yet, if he had looked carefully for failed holes before starting to drill he would have discovered the failed hole and consequently he could have eliminated the danger.

A man, walking along a haulage road with a piece of steel on his shoulder does not see the electricity in the trolley cable which may kill him if the steel comes in contact with it. He knows, however, that the cable is there for the purpose of carrying electricity and he has been taught never to carry steel on his shoulders. This "Unseen Danger" can therefore be eliminated through making it a practice never to carry any steel, or any material on the shoulders which may cause you to come in contact with the electricity in the trolley cable.

An "Unseen Danger" in the truest sense of the word exists in all old workings. In such places there is always the hazard of an accumulation of methane gas. Anyone going into such a place with an open light is exposing himself to a danger which has taken at least one life in our Ore Mines. Never go into an old working with an open light.

Another "Unseen Danger" exists in loose dynamite which may be in muck piles. This condition is usually caused from robbed holes and there has been at least one accident in our Ore Mines resulting from dynamite in the muck pile being exploded by scraper. The best guard against this danger is to eliminate, as much as possible, robbed holes. This can be done best by proper timing of shots.

(Back cover)


METHANE GAS
UNSEEN DANGERS

DEFENDANTS' EXHIBIT NO. 14

THE ORE MINER
SAFETY

ISSUE NO. 17.

DEC. 1938

TENNESSEE COAL, IRON & RAILROAD CO.
ORE MINES & QUARRIES

Page 4.

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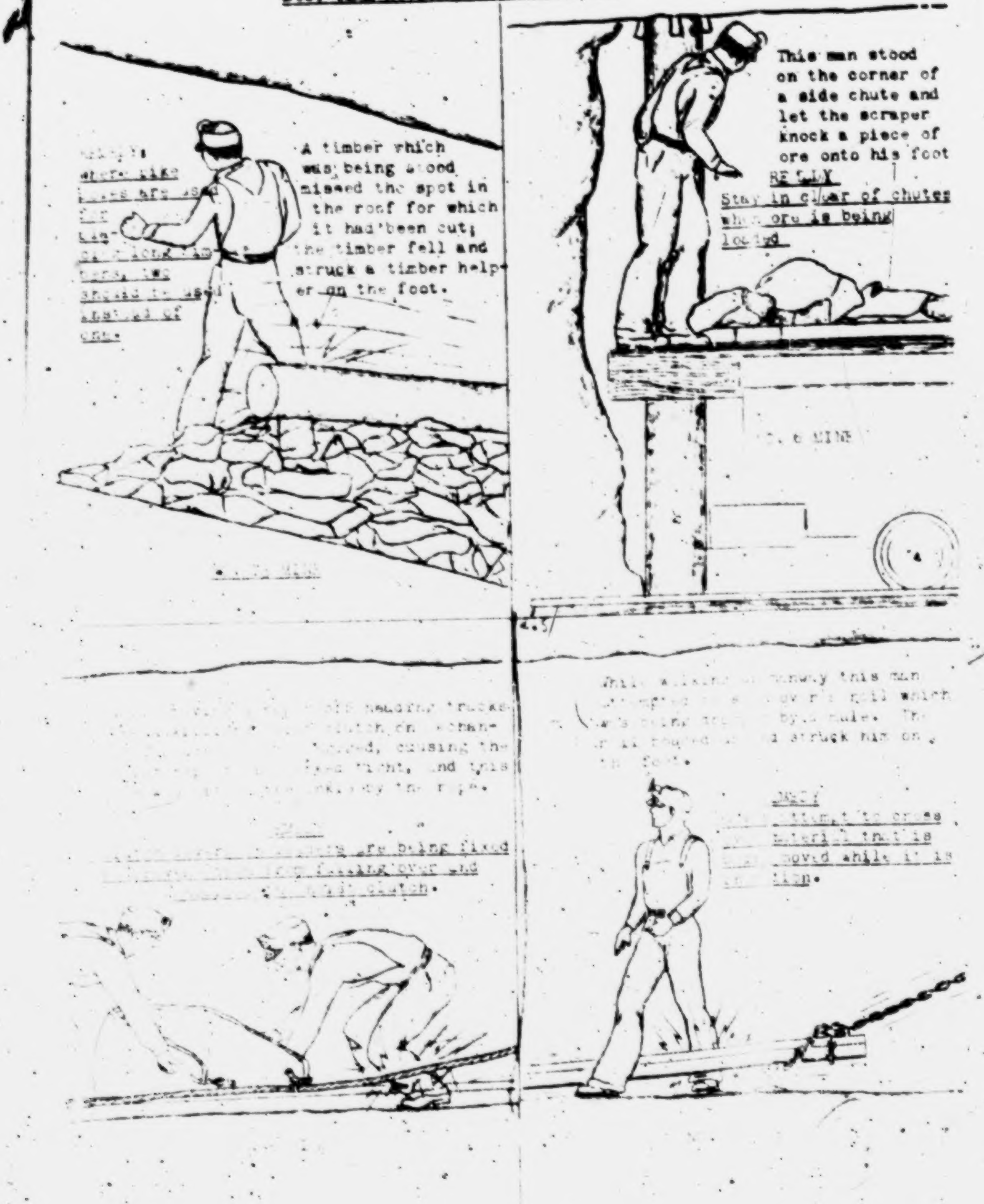
LOST TIME ACCIDENTS FOR NOVEMBER



A timber which was being stood missed the spot in the roof for which it had been cut; the timber fell and struck a timber helper on the foot.

SAFETY: Where [illegible] are used for handling long timbers, two should be used instead of one.

[illegible] MINE

This man stood on the corner of a side chute and let the scraper knock a piece of ore onto his foot.

SAFETY: Stay in clear of chutes when ore is being loaded.

[illegible] MINE

[illegible] rerailing trucks [illegible] clutch on [illegible] changed, causing the [illegible] fixed tight, and this [illegible] by the rope.

SAFETY: [illegible] are being fixed [illegible] falling over and [illegible] clutch.

While walking [illegible] this man [illegible] which was being [illegible] by a mule. The [illegible] struck him on the foot.

SAFETY: [illegible] attempt to cross [illegible] material that is [illegible] moved while it is [illegible] tion.

Stolen Rides: When the shift is over and you are hoodlum bound from your working place don't let that overwhelming desire for a ride tempt you into hopping on a trip of cars which might be going your way. In addition to being strictly against the rules of the Company, which fact subjects you to the possibility of immediate discharge if you are caught, this practice is very likely to result in serious injury. There are many ways in which such injuries may happen. You may miss your footing and fall under the wheels of the cars; trips may wreck; ore on loaded cars can roll back on your hands causing serious injury.

Any Motor Runner who allows anyone to steal rides on his train will be considered just as guilty as the ones stealing the rides.

4493 DEFENDANTS' EXHIBIT No. 13.

The Ore Miner.

Safety.

Jan. 1939. Issue No. 7.

Tennessee Coal Iron & R. R. Co.

Ore Mines & Quarries.

Page 7.

Duties of Drillmen: The Drillmen must go into the mine on the first man-trip at the beginning of each shift and shall be the first employee to enter the working face. He must personally examine the roof, ribs and working faces by means of a hammer and bar and with the assistance of the Section Helper quarry down all loose and dangerous ground. He must immediately report to the Head Miner all loose or fallen timbers or other unusual conditions. The drillman must not allow anyone to start work until the working faces have been made safe. He must personally inspect all tools, equipment and timbers in working faces and must not permit anything unsafe to be used or allow employees to work under unsafe conditions or surroundings. The Drillman has full authority to order all men out of a working face when conditions are unsafe and must do so immediately when these conditions are found to exist. Drillmen and section helpers, before drilling can be started, must clean all loose material from drilling face and examine drilling face for failed holes and "old guns" which are liable to contain unexploded dynamite. While drilling, when it becomes necessary to move the drill machine to a new round of holes, the machine should be taken off the tripod instead of attempting to drag back the tripod with machine attached. To attempt to move the equipment without first cutting the air off and removing the machine from the tripod is dangerous due to the ease with which the machine can become overbalanced and fall.

DEFENDANTS' EXHIBIT No. 9.

Filed with Board 12 21 33.

In Re:

Raimund Red Ore Local No. 121, I. U. M. M. & S. W., Affiliated with the American Federation of Labor, Complainant,

vs.

Republic Steel Corporation, Raimund Red Ore Mines Division at Bessemer, Alabama, Defendant.

To the Regional Labor Board, Operating under the National Labor Board by Authority of the United States under the National Recovery Act, which became effective the 15th day of June, 1933.

Comes the Complainant and respectfully shows unto this Honorable Board the following facts and conditions:

First: That this Union is composed of 600 employees of the Company working at what is known as the Raimund Mines Division, and their employment consists of general red ore mining, maintenance men and those in a supervisory capacity without the right to hire and fire, and represent more than 80% of the men so employed in and around Raimund Mines of the Company, said Mines being situated in or near the City of Bessemer, Jefferson County, Alabama.

Second: History of Complaint. This Union further states that while its members were working at the Company's Raimund Mines and during the months of July and August, 1933, they did perfect a bona fide Labor Organization, which Organization has continuously functioned up until this time and is now functioning with 97% membership of the entire employees of the Company at this Mines.

That immediately prior to their organization the Company, through its agents and Attorney did require this Union's membership to attend what is called a Mutuality or Company Union meeting and attempted to declare that they were organized into what is known as a Company Union; and the Company designated certain men who should be their representatives, etc.

This Union's membership repudiated, disowned and never actively recognized in any way the Company Union, but immediately proceeded to organize under Section 7 of the National Recovery Act a bona fide Labor Union and one of its own choosing. And in the formation of this Organization the Company immediately through its foremen and superintendents at Raimund, began to antagonize, intimidate, discharge, and otherwise punish and oppress the Union members. The Company also invoked a number of oral rules, of which they would discriminate, discharge and lay off or penalize for a number of days, members of this Union. At this time Government Conciliator, from the Department of Labor, namely: Mr. C. L. Richardson, who was located in the Birmingham District, was called upon and he took part in some of the controversies above referred to and attempted to smooth out and reconcile the situation.

The Union, through its duly authorized representatives, called upon the officials of the Company for the purpose of adjusting these troubles and make complaint of the discriminations above referred to; and Mr. Oldham, its President, while refusing to recognize the Union some of the representatives of the Union did discuss conditions with him and he promised to look into the matter and straighten same out. There were several meetings had between the officials of the Company and representatives of the Union along these lines but the 'bone of contention' in these meetings was that Mr. Oldham wanted to

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recognize these men as representatives of the Company Union and not representatives of the Regular Union, and with the exception of about two weeks the Union membership has received no relief from the policies and treatment imposed upon its membership by the Company. And further, these various representatives being employees of the Company would immediately become targets for the foremen of the Mines and they would abuse, threaten, and curse them and attempt to find fault with their work, and in many instances discharged them. The Company's superintendents and foremen have continuously up until the time of the declaring of a 'work holiday' by the men have continued to discharge the officers of the Union, members of its Committees; and also from time to time abused, threatened to discharge and discharged members of the Union, the total of which men discharged by the Company would amount to not less than fifty. And the last two or three weeks before the 'work holiday' was declared by the Union, to-wit: December 18th, 1933, this practice was considerably increased to the extent that it was almost impossible to keep representatives of the Union working on the job; and by way of illustration the present President of the Union found it impossible to work under the oppressive and discriminatory tactics employed by the Company, in fact, this is the third president inside of four months that has been compelled to cease working for the Company on account of the above mentioned reasons, besides other officers and committeemen of the Union.

In their further efforts to break down the Union and destroy it; in one instance where a number of grievances in writing, a copy of which is hereto attached, were presented to the company by representatives of the Union, which grievances attempted to clear up and create a more harmonious relation between the Company and the Union, the officials of the Company immediately caused to be circulated in the Mines a petition for the purpose of repudiating the Committee's request and further for the purpose of disrupting the established Union. The foremen in presenting this petition to the men threatened to discharge them or punish them if they did not sign same and in many instances refused to let them see what they were signing, and in many instances names of men appeared on the petition who did not sign same, or authorize any one else to do so.

Complaints: The Union charges:

1. That the Company at the time of the creation of this Union threatened to discharge and did discharge men for joining this Union.

2. That the Company has threatened to discharge and has discharged duly elected officers and duly elected representatives of this Union on account of their affiliation with same.

3. That the Company through its various foremen has intimidated, threatened, cursed and discharged members of the Union on account of a demand for improved conditions, which demand was made by the duly authorized representatives of this Union.

4. That the Company has refused to deal with or recognize the duly authorized representatives of the Union, which Union represented more than 80% of the Company's employees at Raimund Mines at that time.

5. That the Company has discriminated against the Union in that they have increased the amount of work placed on Union members because of their affiliation with the Union, and has not placed same on non Union members.

6. That the Company has falsely accused members of the Union of violating some Company rule and penalized them by making them lay off from 3 to 15 days on account of same.

7. That the Company has taken jobs away from members of the Union and placed them in other jobs more disagreeable or with cheaper scales on account of their membership with the Union and replace them with green or inexperienced men.

8. That the Company has threatened or refused to reinstate or employ members of the Union on account of their membership in the Union, and thereby discriminated against the Union men.

9. That the Company has accused members of the Union of making non members to join the Union, and discharged them or laid them off for such accusation.

10. That the Company has discharged members of the Union on account of them asking non members to join same, and told the discharged members that they were doing it for that reason.

11. That the Company has refused to bargain collectively with the members of this Union.

The Union in submitting the above charges also attaches hereto affidavits of its members in support of same, and also prays permission to introduce other and further affidavits if necessary.

And notwithstanding the Union's efforts heretofore made to bring about a friendly feeling of co-operation and adjustment of the above mentioned charges and grievances the Union now takes the position that it is still willing and ready through its chosen representatives to meet and discuss with the officials of the Company; these grievances and requests, and we are now appealing to this Honorable Board to assist us in establishing a friendly and fair working condition, and to that end we hereby make the following requests:

1. That the Company recognize our Union as is required by Section 7A of the National Recovery Act in both letter and spirit.

2. That wage discrimination be discontinued.

3. That Union employees heretofore discharged and victimized be reinstated with full seniority rights and pay.

4. That all men who ceased work and participated in the "work holiday" be placed back to work and without discrimination.

5. That the "write-up system" be abolished. This system being generally known as requiring fellow employees to write up and report any evasions, shortcomings or unavoidable accidents or unintentional mistakes of fellow employees.

6. That the men be not required to enter and leave their place of work on their own time.

7. That the 8 hour work day and the 40 hour week be universally established, and that at least time and one-half time be paid for overtime, and that they be paid the same weekly wage for shorter weeks as has been heretofore paid for the longer week.

8. That the Union be given the right to designate the weighman or scale men, and that the Union Committee

have at reasonable times access to check over the weights or tally sheets.

9. That the Company doctor be on duty and subject to employees call at all times without any extra fee for same from employee.

10. That a 3 mile radius jurisdiction for doctors service be established.

11. That contract and tonnage work be abolished.

12. That the drill runner or drill man be not responsible for the muckers.

13. That no employee shall be required to live in a Company house.

14. That no employee shall be required to trade in the Company store.

And In Conclusion, we pray this Honorable Board to take jurisdiction of our Complaints and requests. And we submit ourselves to the jurisdiction of this Board to that end and urge immediate action, and agree to respond to all requests and demands made upon us by this Board.

In Witness Whereof, we hereunto attach our names, as duly authorized representatives of Raimund Red Ore Local #121, I. U. M. M. & S. W.

BYRD H. BARKSDALE,
1822½ Second Ave.,
Bessemer, Ala.
J. A. LIPSCOMB,
P. O. Box 210,
Bessemer, Ala.

This is to certify that I have this the 21st day of December, 1933, placed in the mails a true and exact copy of our complaint and request and Exhibit A to Mr. Wade H. Oldham, as Vice President in charge of Southern Properties of the Republic Steel Corporation, Empire Building, Birmingham, Alabama.

J. A. LIPSCOMB,
P. O. Box 210,
Bessemer, Ala.

A true and exact copy of grievances presented to the Company by the duly authorized representatives of the Union, same being presented on or about the 30th day of September, 1933, and marked Exhibit A—

"At a call meeting of Raimund Red Ore Local #121 Sunday afternoon a committee was selected to represent the employees to present to the management of Raimund Mines Division a grievance as to the unfair conditions and practices which are now in use at this Raimund Division. On this Committee were appointed: J. H. Bufford, President Smelters Council, L. V. Winstead, Vice-chairman of Bessemer Organizing Committee; J. C. Knowles, Recording Secretary of Raimund Red Ore #121, Grady Edwards. This committee believes that it would be to the best interest of the Company and employees that: (1) The Company recognize this Raimund Red Ore #121, I. U. M. M. & S. W. a bona fide Organization affiliated with the A. F. of L. and that (2) Mr. Will Barrett, Mr. A. J. Rector, Mr. Matt Wesson be removed from their positions as supervisors and that (3) wage discrimination among the men be discontinued, and that (4) Employees discharged by these said supervisors be reinstated with full seniority rights and that (5) the "write up" system be abolished and that (6) the men enter the mine on their own time and come out of the mine on the Company time, and that (7) the eight hour working day and the forty hour week be instituted and that (8) the rates of pay be increased accordingly, and that (9) a man be chosen by the employees to be weighman, and that (10) (a) That the Company doctor be on the job full time. That (b) he be subject to call at any time without any extra fees from the employee that calls him. That (c) a three mile radius be set as his jurisdiction limits. That (d) a fee of $1.00 per month be charged within this limit and a fee of $.50 per month be charged outside of this limit and that (11) the reporting off system be abolished, and that (12) the tonnage and contract system be abolished, and that (13) the drill runner or drill man will not be responsible for the muckers. (14) No employees shall be required to live in a Company house, and that (15) No employee shall be discharged for not trading at the Commissary.

RAIMUND RED ORE LOCAL
No. 121, I. U. M. M. & S. W.

Committee:
J. H. BUFFORD,
Pres. of R. R. O. #121.
C. L. PEGUES,
Sec. of Bess. District Smelters' Council.
L. V. WINSTEAD,
Vice-Chairman of Bessemer Organizing Committee.
J. C. KNOWLES,
Recording Secretary, of R. R. O. #121,
GRADY EDWARDS,
ROBERT ATKINSON,
L. L. POWELL,
GUS GATEWOOD.

4501 DEFENDANTS' EXHIBIT No. 10.

State of Alabama,
Jefferson County.

Before me, the undersigned authority in and for said State and County, personally appeared Norman E. Thompson, who, being first duly sworn, deposes and says:

I am at the present time Superintendent of the Republic Steel Corporation (hereinafterwards referred to as the "Republic Company") in charge of all of its ore mining operations in the Birmingham, Alabama District. I have had supervisory charge of mining operations for about eleven years. I entered the employment of the Republic Company on October 1, 1919, and served as Engineer until I became Superintendent of the ore mining operations. I was graduated and received a degree of B. S. and Engineer of Mines from the Michigan College of Mines, and served for a few months, before coming to Alabama with the Republic Company, as Engineer of the Mesaba Syndicate Company in Minnesota.

As Superintendent of all ore mines for the Republic Company, I have had supervision over all of the ore mines of the Republic Company in the Birmingham, Alabama, District. The Company had no negotiations or contracts with any labor organizations prior to 1933. The first employee representation of any kind that it had with its employees in this District was a plan known as the "Employee Representation Plan", which was in force for a while during the administration under the National Recovery Act.

In 1933 the Raimund Red Ore Local No. 121 of the International Union of Mine, Mill & Smelter Workers, hereinafterwards referred to as the "Union" was organized at Raimund where one of the Republic Company's mining operations is located. This organization has remained in existence down to and including the present time.

Later on another independent labor organization was formed at Raimund which was known as the "Brotherhood of Captive Ore Miners", and this organization has continued and is in existence at the present time.

The Company has never entered into a written contract with either of these organizations. A summary of the Company's relationships with these organizations may be stated as follows:

(a) On September 30, 1933, the Union, through a Committee, filed a written complaint, with the Company in which it stated, among other things, as follows:

"This Committee believes that it will be to the best interest of the Company and its employees that * * * the men enter the mine on their own time and come out of the mine on the Company time."

The Company refused to grant this and certain other requests made at the same time, and on December 17, 1933, the Union began a strike at the Raimund Mine, and on December 21, 1933, filed its complaint with the Regional Labor Board demanding, among other things, that "the men be not required to enter and leave their place of work on their own time". This complaint was heard before the Regional Labor Board at Atlanta, Georgia, and following this hearing an agreement was made under the terms of a letter directed to Mr. Marion Smith, Chairman, Regional Labor Board, which provided for the reopening of the mines under the terms therein stated, and which left in full effect the custom which had always existed of the days work of the miners being based on their work at their usual working places on a face to face basis and without taking into consideration the time consumed in going from the portal to the working place and from the working place to the portal.

(b) In May, 1934, the Union called and conducted another strike at Raimund which strike was settled on July 14, 1934, and the men returned to work under the terms of a letter of understanding which was written by the Company to Mr. C. L. Richardson, Commissioner of Conciliation, representing the Secretary of Labor, and which was approved by the Union. No contention was made during this strike or at this time in reference to the men entering and leaving the mines on Company time, and they returned to work under the custom and usage above referred to.

(c) On July 13, 1935, the Union, acting through Mr. A. E. Horn, International Representative of District 5, R. H. Kendricks and other members of a Committee presented a number of demands in relation to employee relationships. These demands did not include any demand in reference to the men entering and leaving the mines on Company time. After a conference on these demands, the Committee was informed by the Company that the Company would continue to operate under the terms of the letter of understanding directed to Mr. C. L. Richardson, dated July 14, 1934, and referred to above.

(d) On May 21, 1936, the Union, acting through Mr. A. E. Horn, President, presented to the Company a letter requesting that a new contract be entered into upon the expiration of the time noted in the letter of understanding referred to above. In response to this request, after giving it consideration, the Company on July 30, 1936, advised the Union, sending copies of the advice to the United States

Department of Labor, that they would continue its present policy as to wages, hours and working conditions at the Raimund ore mines, and that no changes in the agreement could be made on account of existing conditions.

(e) On July 19, 1937, a new agreement was requested by the Union and on July 19, 1937, it was again informed that the Company would have to continue its present policy as to wages, hours and working conditions at the Raimund mines.

(f) Subsequent to this in the Fall of 1939, the Union filed charges before the National Labor Relations Board charging failure to bargain collectively and acts of discrimination in reference to discharge or refusal to re-employ certain employees and the domination of an alleged "Company Union". While these charges were pending, the Union presented to the Company in the early part of 1940 a proposed written contract, a copy of which is attached hereto, marked Exhibit "A", and made fully a part hereof. This contract did not request that the men enter and leave the mines on Company time. The contract as proposed was declined by the Republic Company. The proceedings before the National Labor Relations Board were settled between the Union and the Republic Company, the agreement providing, among other things, that the charges should be dismissed, certain men should be re-employed, and the Republic Company and the Union should continue their employee relationship for not less than one year under the same terms and conditions then existing. Among the terms and conditions then existing was that the men should be paid for the time that they actually worked at their working places, and should receive no pay for the time spent in going to and from their working places.

The above constitutes a summary of the situation that has existed between the Union and the Company, and which exists at the present time.

Beginning on June 7, 1935, the Committee representing the Brotherhood of Mine Workers of Captive Mines began to present from time to time their requests for new contracts and for some other changes in working conditions. At no time did this Union ever present the claim that going to and from their working places should be on company time. The same letters of understanding and of continuing the existing policy which was sent to the Union were also sent to the Brotherhood.

Affiant further deposes that during all of the time above covered, that is to say, from the time of the organization of each of these two unions, the Company has at all times met with and bargained collectively with each of these unions acting through their regularly appointed and constituted committees. The meetings with the committees have been regularly had and grievances have been submitted, considered and determined. There has not been at any time, with the exception of the instances noted above, any claim ever made on the part of any employee of the Company or of any organization or Committee representing them that going to and from the place of work should be on Company time.

Affiant further deposes that during all of the time that he has been connected with the Republic Company, he has been personally familiar and acquainted with the conditions existing at the ore mines of the Republic Company, and that he knows that during all of this time in paying men who work at the ore mines, in settling their claims for wages, in responding to garnishments and other Court actions, and in all other particulars it has been the custom and practice to consider and handle hours of work as referring to the actual hours worked by the miners at the face and by other employees at their usual working places, and to compute the hours worked for which the men are paid as the time actually spent by them at the face or at the usual working place of the men. The time spent by the men in going to and from the portal of the mine to their face or usual working place has never at any time or under any circumstances been counted or considered as a part of the working time.

Affiant further deposes that, with the exception of the instances noted above, the first time that he ever heard of any contention being made by anyone that the time taken in transportation to and from the working place was a part of the working hours of the miners was when he learned recently that a complaint had been filed with the United States Department of Labor, Wage and Hour Division, which is now under investigation and in reference to which this affidavit is being made.

Affiant further deposes that such contention, with the exceptions noted above, was never made or suggested or brought up for discussion by any of the miners, or any of their bargaining representatives in any of the bargaining conferences and negotiations which the Company has held, or at any other time or under any other circumstances. On the contrary, affiant deposes that it has been generally and definitely understood between the Republic Company and its miners that their working hours for which they should receive compensation should be on a face to face proposition.

The facts herein deposed to in reference to the operations of the Republic Company are based on my own personal knowledge. In addition to this, from information from reliable sources which I have received from time to time, and which I believe to be true, I know that the same customs and practices set out above in connection with the Republic Company's operations have also prevailed throughout the Birmingham, Alabama, District at the operations of the other ore and coal mining companies.

(Signed) NORMAN E. THOMPSON.

Sworn to and subscribed before me, on this the 3 day of October, 1940.

(Signed) MARGARETTE KENNEDY,
Notary Public.

Attached to this affidavit, Defendants' Exhibit No. 10, is a form of proposed contract in all respects identical with Republic Exhibit No. 9, heretofore set out.

4507 DEFENDANTS' EXHIBIT No. 29.

Tennessee Coal, Iron & Railroad Company,
Muscoda Division.

Minutes of Meeting
Held in General Superintendent E. M. Ball's Office
January 17, 1936.

Those present were:

Mr. E. M. Ball, General Superintendent,
Mr. Ewing Cater, Superintendent,
Mr. W. C. McKenzie, Acting Superintendent,
Mr. M. E. Baird, General Supt. Clerk,

and the following Committee from Muscoda Local No. 123, International Union of Mine, Mill & Smelter Workers:

Mr. B. H. Barksdale	(w)
Mr. Tom Brantley	(w)
Mr. Pete Dulaney	(w)
Derry Wilson	(c)
Louis McCreary	(c)
Walter Ward	(c)

The meeting was called to order by Mr. E. M. Ball, General Superintendent, at 4:30 P. M.

Mr. Ball:
What do you wish to see me about today?

Mr. Barksdale:
The Clyde Martin case.

Mr. Ball:
That is the case you took up with me before and I asked you to talk to Mr. Carter about it.

Mr. Barksdale:
Yes, sir, but it has not been settled.

Mr. Ball:
What is Martin doing now, Mr. Carter?

Mr. Carter:
He is a Haulage Engineer and has been getting some time as a Drag Operator when any of the regular Drag Operators on that shift are off. We expect to put on a new place next week and Martin will be given the job of Drag Operator.

Mr. Barksdale:
The men on the material handling crew are asking for a little more time. I have suggested to them that some of them ask for a transfer underground. Four of them have agreed to do this if you can use them.

Mr. Carter:
We will be able to use two of these men next week in the new place we are putting on.

Mr. Barksdale:

The men on the round timber crews claim they should get more extra time than they are getting.

Mr. Carter:

We are dividing the time as equally as possible. They are getting their part of the extra time in their regular turn.

Mr. Ball:

It has come to my attention that certain employees, whose names I will not mention at this time, have been talking about the coal being sold by the Company and the manner of delivering it. During the time of slack operations, when the employees were unable to buy coal from outside dealers, the Company made arrangements to sell coal to the employees, allowing them to pay for it through the pay roll. We made arrangements for the Bruns Transfer Company to haul this coal and they have given complete satisfaction. I think it is a very bad thing for any employee to criticize what we have done by advising other employees not to buy this coal. I want to make this clear—we don't care whether the employees buy this coal or not; we have the coal here for their benefit but if they don't want the coal they don't have to buy it.

Mr. Dulaney:

Mr. Ball, I think I can clear this up. I believe this was started by private Truck owners to get more business for themselves. I don't believe the employees are trying to get others not to buy Company coal.

Derry Wilson:

I believe the complaint is against the Truck Drivers who work for Bruns Transfer Company. Pressure has been put on the Drivers.

Mr. Barksdale:

Neither the Company or the Bruns Transfer Company is connected with this case but pressure has been put on the Drivers. I am sure this case will be settled within the next two weeks.

Mr. Ball:

There is another matter I want to mention to this Committee. For several days a number of men have been late reporting to the mines. We pay a days wage for a days work and we expect the days work. Whenever a man comes to the mine late, dragging along and encourages others to be late, he is setting a bad example. I want this understood throughly—men must be on time; we don't care whether they work here or not, but if they want to work here they will have to be on time or else they will be disciplined, even to discharge.

Mr. Barksdale:

Mr. Ball, we do not believe in the men being late for work and we will be glad to help you in this matter. Why not blow the whistle at night the same as in the morning?

Mr. Ball:

Beginning Sunday night the whistle will blow at 6:00, 6:20 and 6:30. The morning whistles will be blown at 6:00, 6:20 and 6:30.

The meeting adjourned at 5:30 P. M.

B. H. BARKSDALE,
For the Committee.

E. M. BALL,
General Superintendent.

4510

T. C. I. EXHIBIT No. 32.

Bessemer, Alabama, August 9, 1933.

Tennessee Coal, Iron & Railroad Company, Birmingham, Alabama,

Woodward Iron Company, Woodward, Alabama,

Republic Steel Corporation, Birmingham, Alabama,

Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama.

Gentlemen:

In order to support our President in his efforts to restore the Nation's prosperity and reduce unemployment, we believe the hours of labor in industry should be reduced to a maximum of 35 hours per week, and that the minimum weekly pay should be $14.50 for common labor as provided by the Blanket Code approved by President Roosevelt.

The Bessemer District Smelters Council of the International Union of Mine, Mill and Smelter Workers, affiliated to the American Federation of Labor, and composed of a representative number of your employees in mines and plants, pledge our patriotic support and cooperation in carrying out in every way possible the spirit, purpose and intent of the National Recovery Act. Therefore, through our chosen representatives, we are available to meet with you for the purpose of discussing wages, hours and other conditions promulgated under the President's Blanket Code in order that more men may be put to work as early as possible.

We hope this will receive your immediate attention and careful consideration.

THE BESSEMER DISTRICT
SMELTERS COUNCIL,
(Signed) C. L. PEGUES,
Secretary.

Copies to—

Franklin D. Roosevelt, President of the United States.

Hugh S. Johnson, Administrator, Industrial Recovery Act.

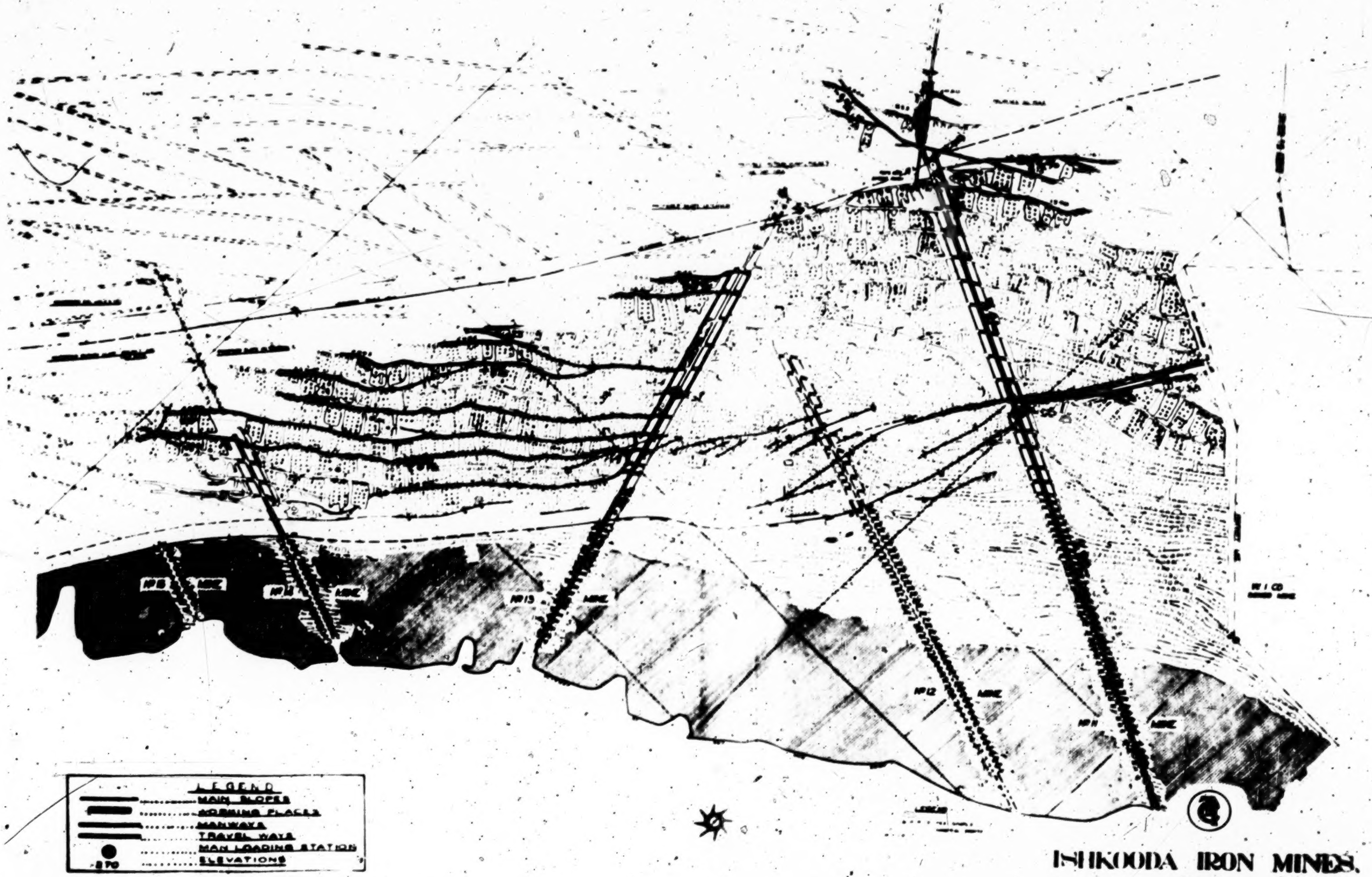
William Green, President, American Federation of Labor.

Plant & Mine Superintendents of respective Companies.

International Union of Mine, Mill & Smelters Workers.

DEFENDANT'S EXHIBIT NO. 30

Deft. Ex. 30


No 15 MINE
No 14 MINE
No 13 MINE
No 12 MINE
No 11 MINE
W I CO MINE
LEGEND
MAIN SLOPES
WORKING PLACES
MANWAYS
TRAVEL WAYS
MAN LOADING STATION
-270 ELEVATIONS

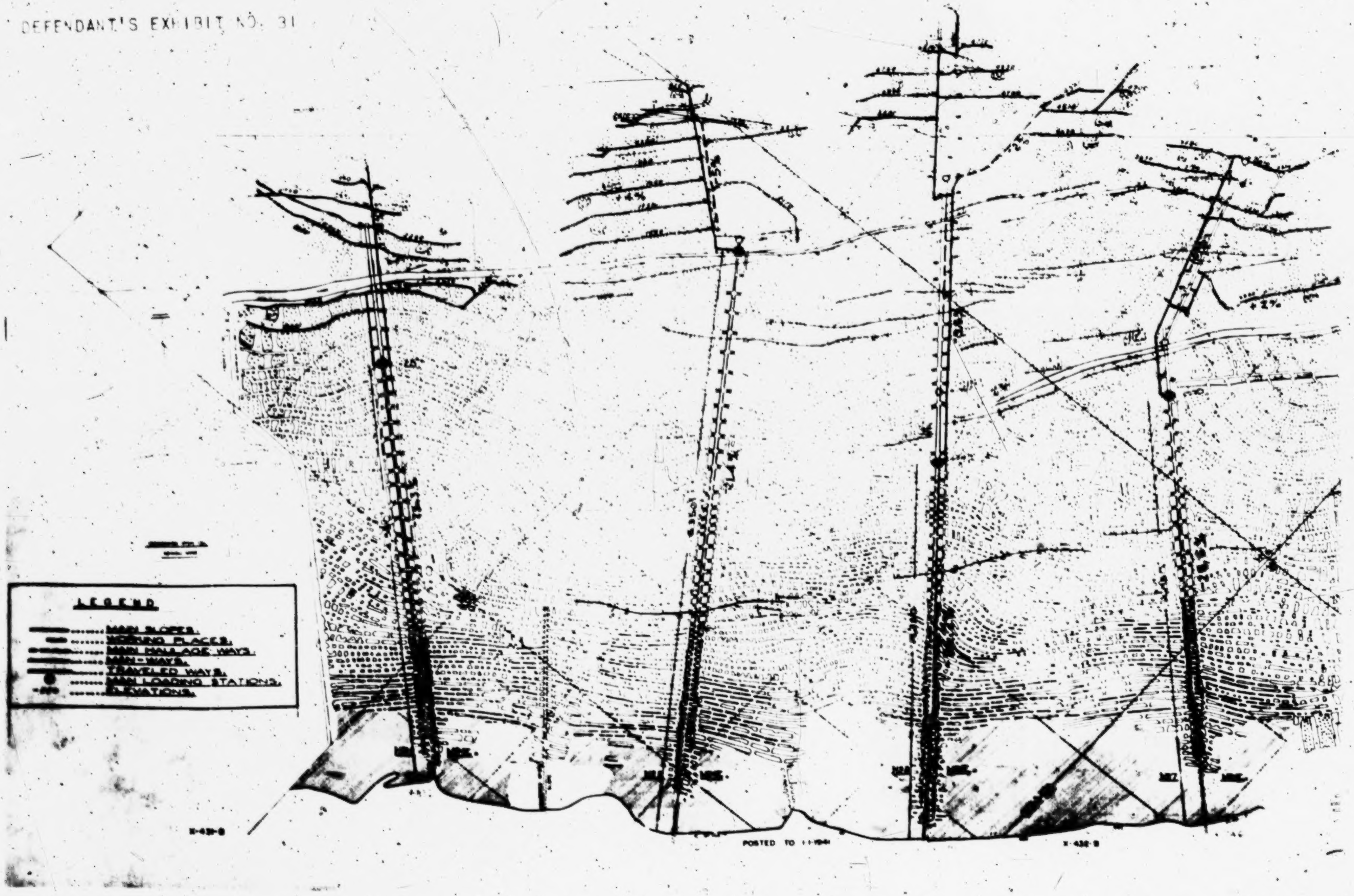
E-630-B

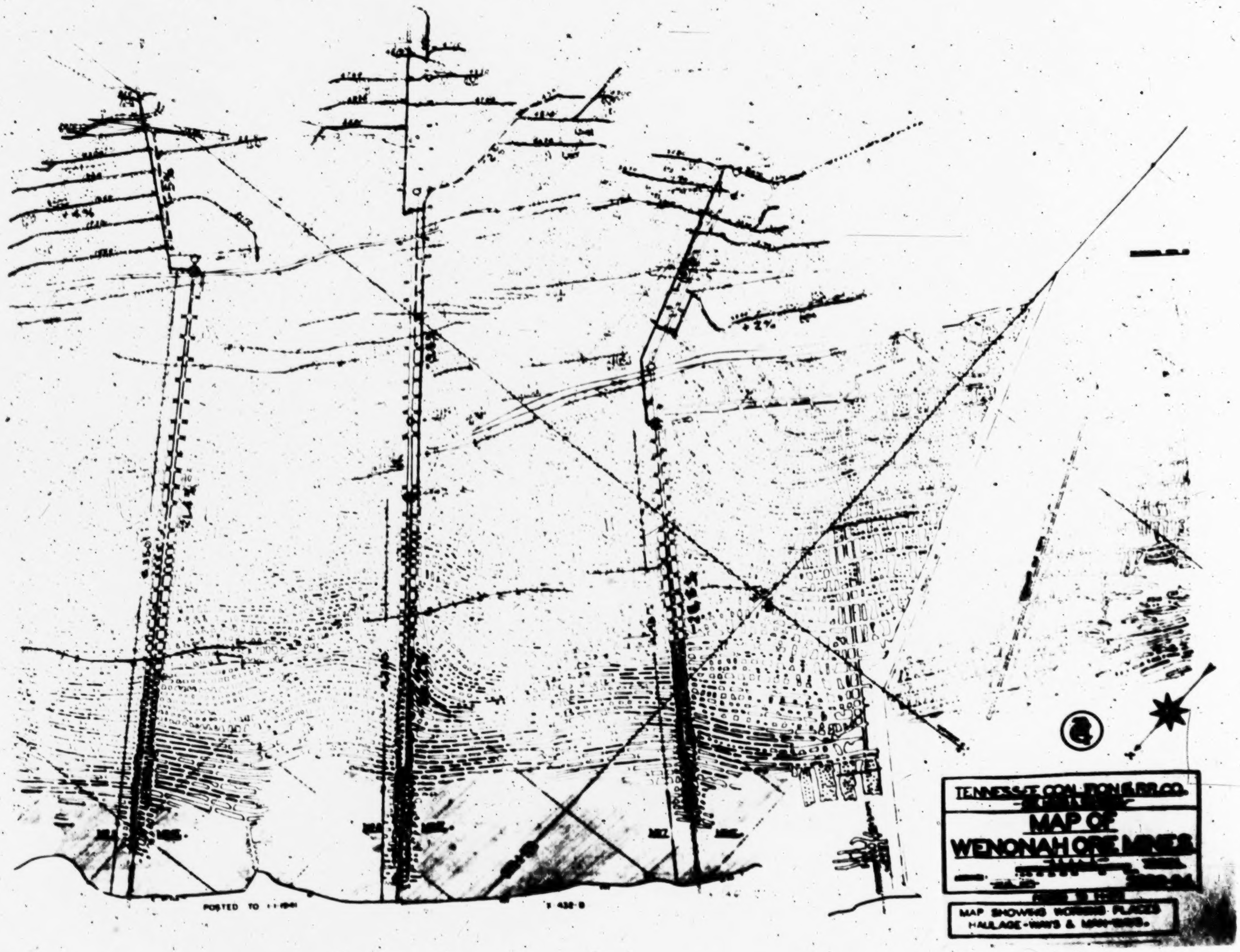
ISHKOODA IRON MINES.

POSTED TO 1-1-1941

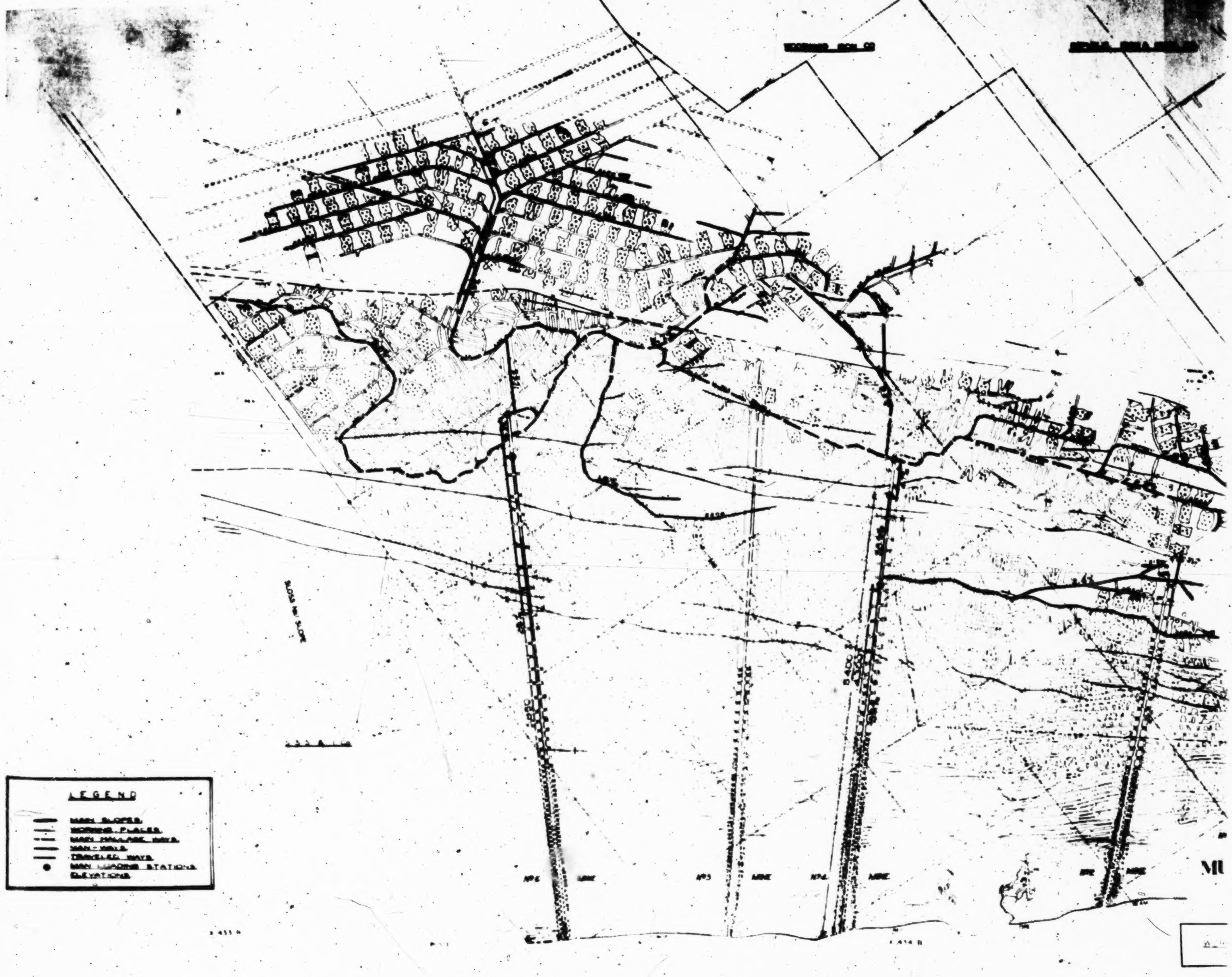
PLAN SHOWING WORKING PLACES HAULAGE —
[illegible] WAYS & MANWAYS

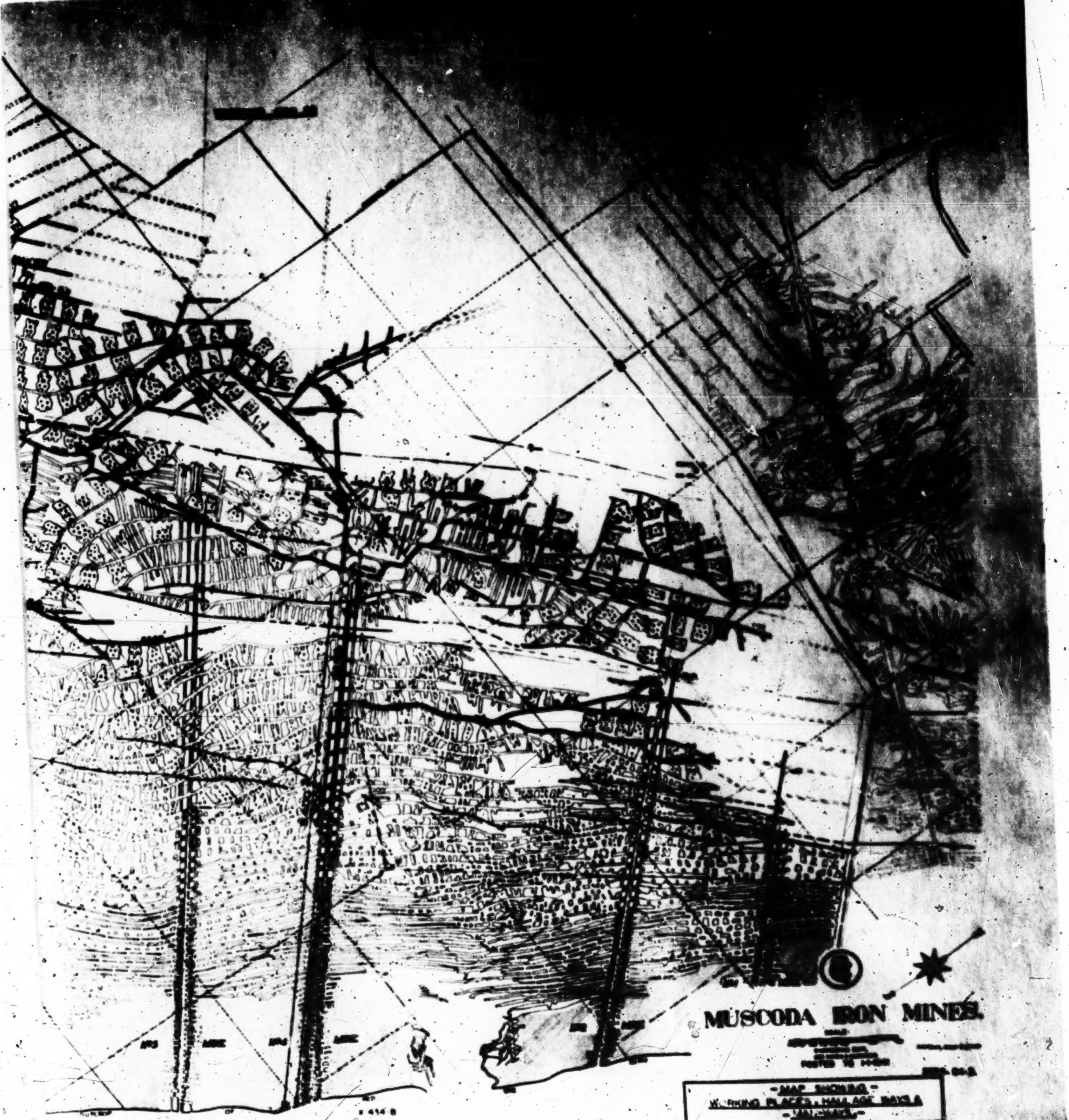
DEFENDANT'S EXHIBIT NO. 31


LEGEND
MAIN SLOPES.
WORKING PLACES.
MAIN HAULAGE WAYS.
MAN-WAYS.
TRAVELED WAYS.
MAIN LOADING STATIONS.
ELEVATIONS.
+4%
+2%
POSTED TO 1-1-1941
X-432-B


TENNESSEE COAL IRON & RR CO.
MAP OF
WENONAH ORE MINES
MAP SHOWING WORKING PLACES
HAULAGE-WAYS & MAN-WAYS.
POSTED TO 1-1-1941
X 432-B
+2%

DEFENDANT'S EXHIBIT NO. 32

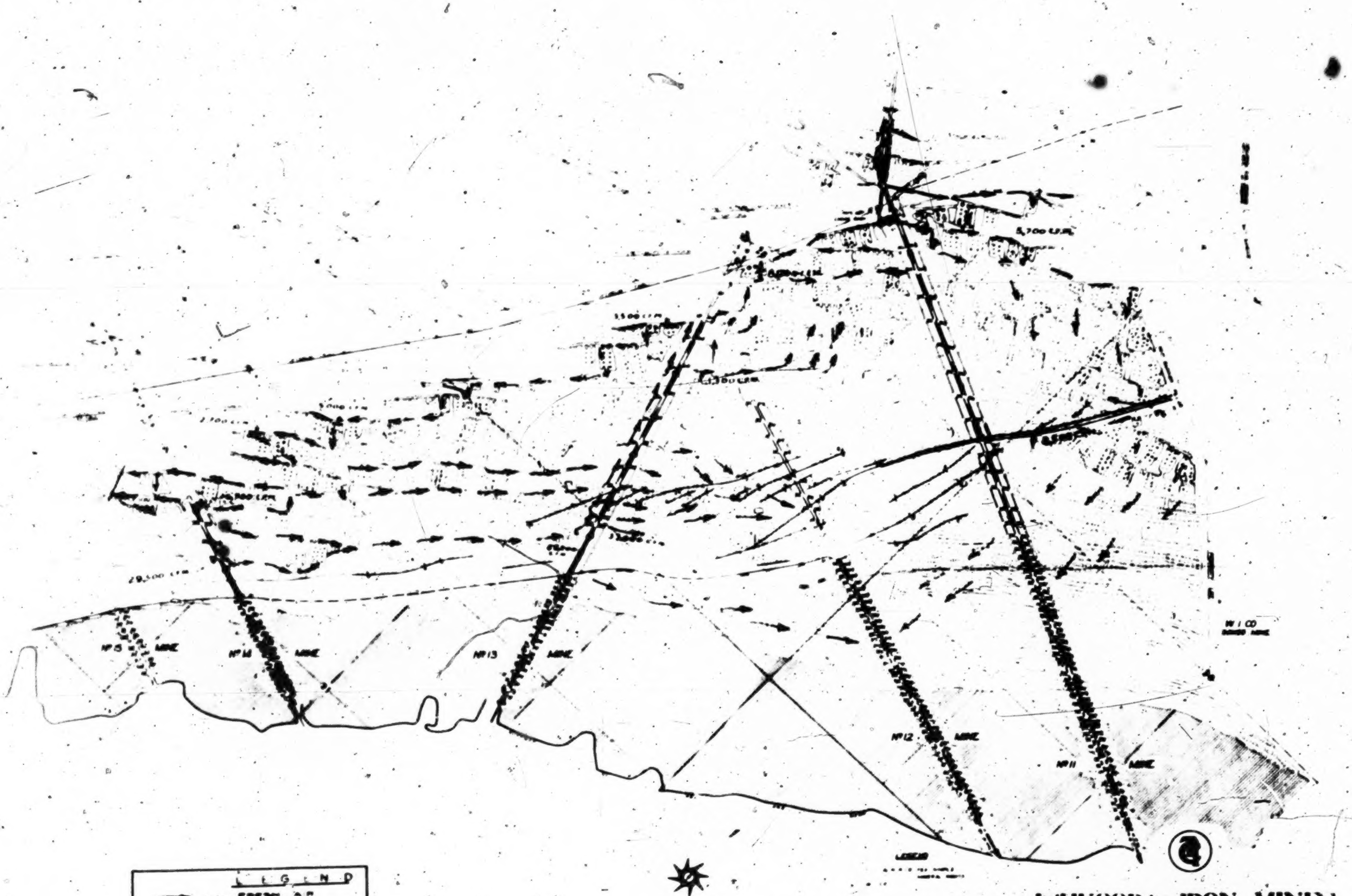

LEGEND
MAIN SLOPES.
WORKING PLACES.
MAIN HAULAGE WAYS.
MAN-WAYS.
TRAVELED WAYS.
MAIN LOADING STATIONS
ELEVATIONS.
No 6 MINE
No 5 MINE
No 4 MINE
No 2 MINE
MU



MUSCODA IRON MINES.

- MAP SHOWING -
WORKING PLACES, HAULAGE WAYS &
- AIRWAYS -

DEFENDANT'S EXHIBIT NO. 33


5,700 C.F.M.
3,500 C.F.M.
29,500 C.F.M.
No 15 MINE
No 14 MINE
No 13 MINE
No 12 MINE
No 11 MINE
W I CO

LEGEND
FRESH AIR
EXHAUST AIR

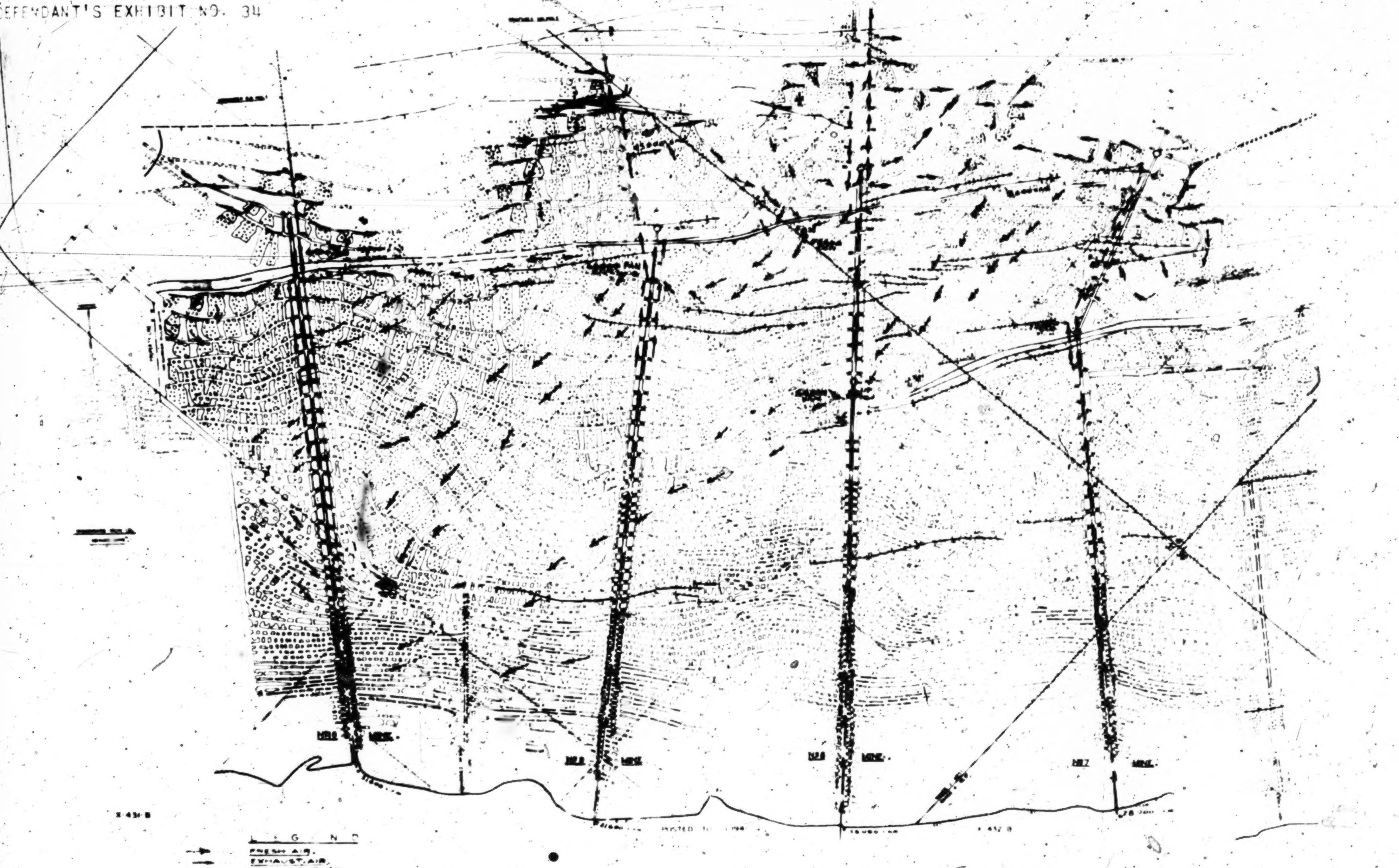
ISHKOODA IRON MINES.

POSTED TO 1-1-1941

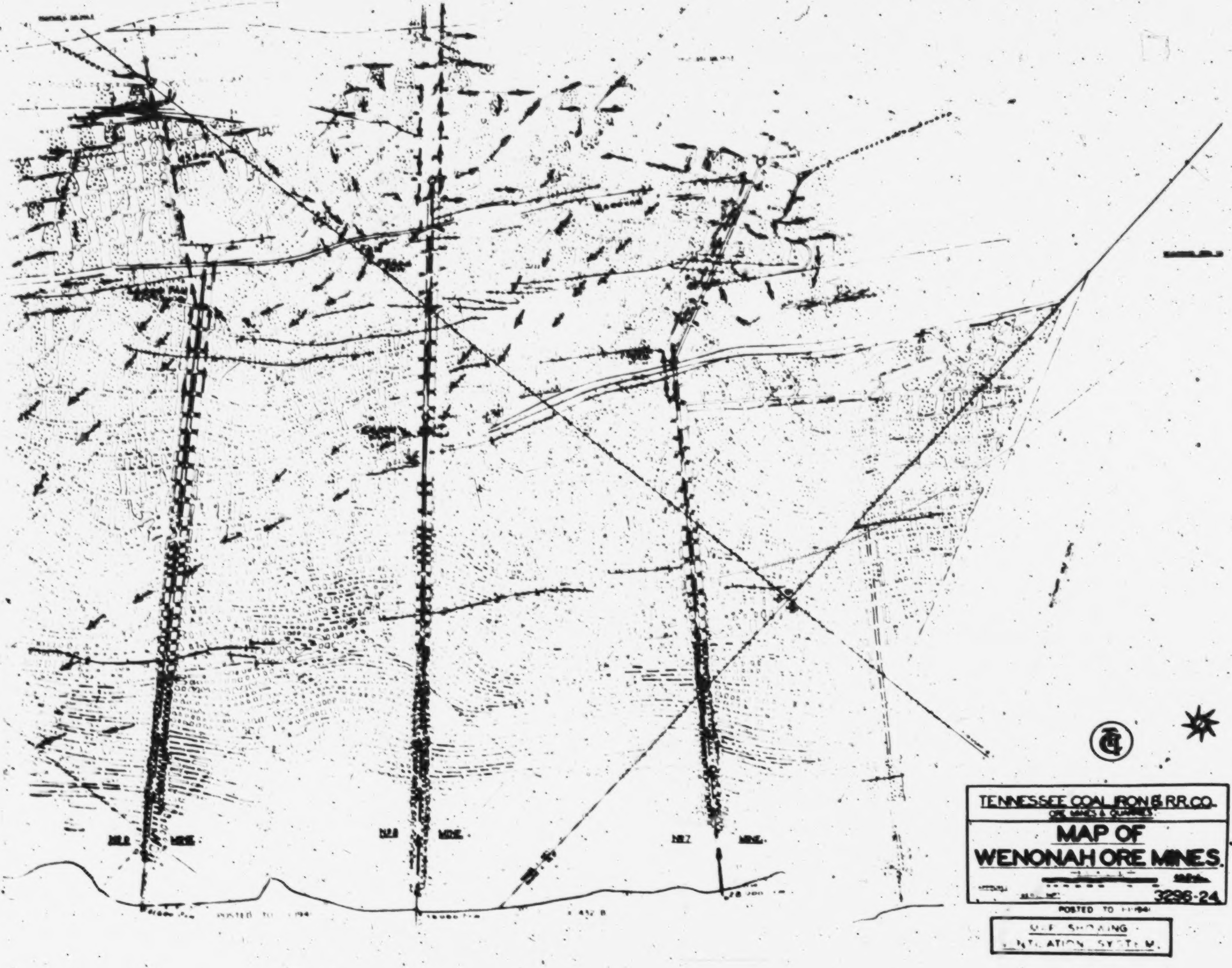
3297-24

MAP SHOWING
VENTILATION SYSTEM.

DEFENDANT'S EXHIBIT NO. 34



NO. 10 MINE.
NO. 9 MINE.
NO. 8 MINE.
NO. 7 MINE.
X 431 B
POSTED TO 194
X 432 B
LEGEND
FRESH AIR.
EXHAUST AIR.
EXHAUST FANS.


No 9 MINE.
No 8 MINE.
No 7 MINE.
POSTED TO 1-1-194

TENNESSEE COAL, IRON & R.R. CO.
ORE MINES & QUARRIES

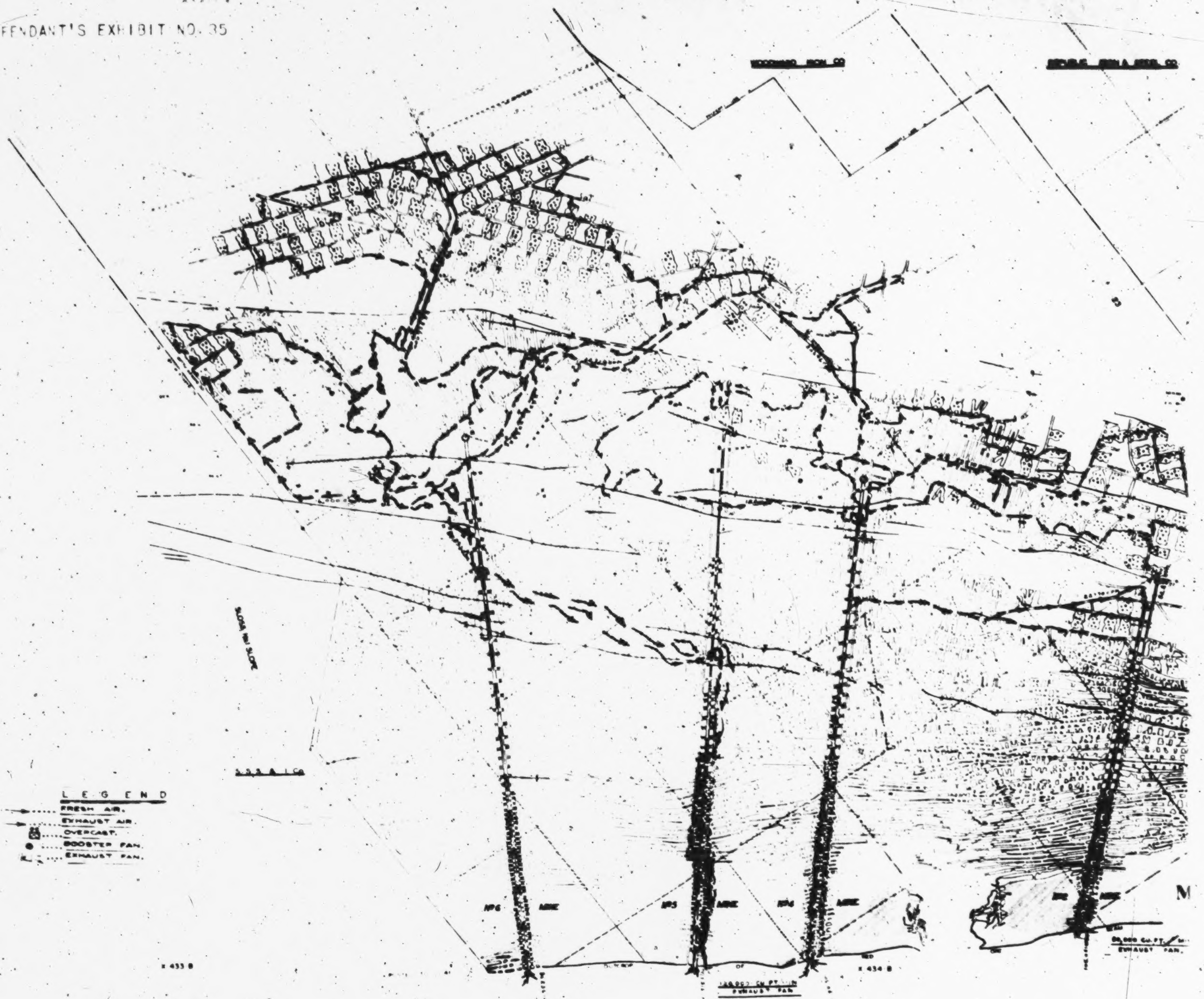
MAP OF WENONAH ORE MINES.

3296-24

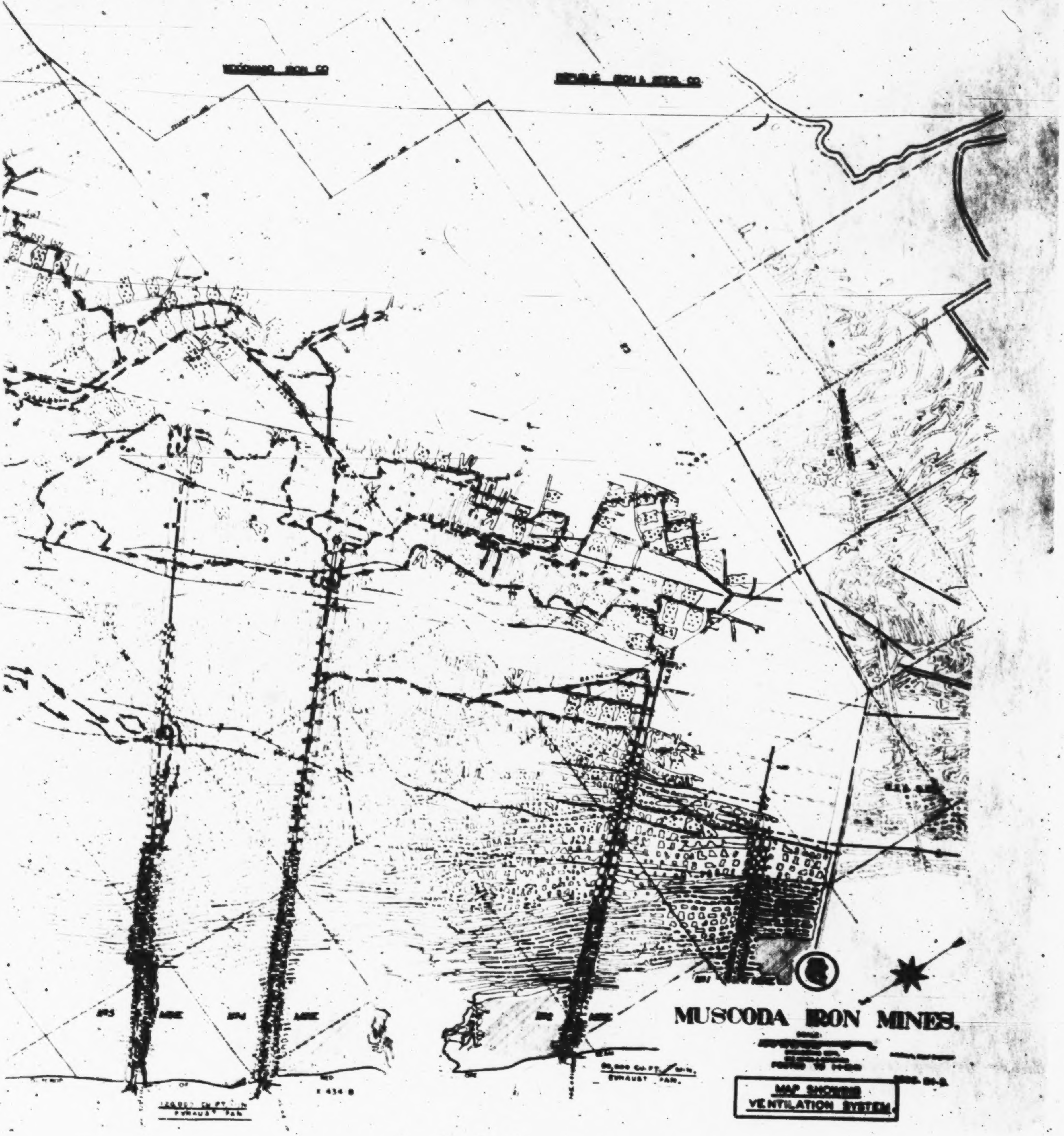
POSTED TO 1-1-1941

MAP SHOWING
VENTILATION SYSTEM.

DEFENDANT'S EXHIBIT NO. 35


WOODWARD IRON CO
REPUBLIC IRON & STEEL CO
S.S.S. & I. Co.
LEGEND
FRESH AIR.
EXHAUST AIR.
OVERCAST.
BOOSTER FAN.
EXHAUST FAN.
MINE
MINE
MINE
MINE
x 433 B
x 434 B
120,000 CU. FT. / MIN
EXHAUST FAN
80,000 CU. FT. / MIN
EXHAUST FAN.
M

Deft. Ex. #35
Case #5232, cd

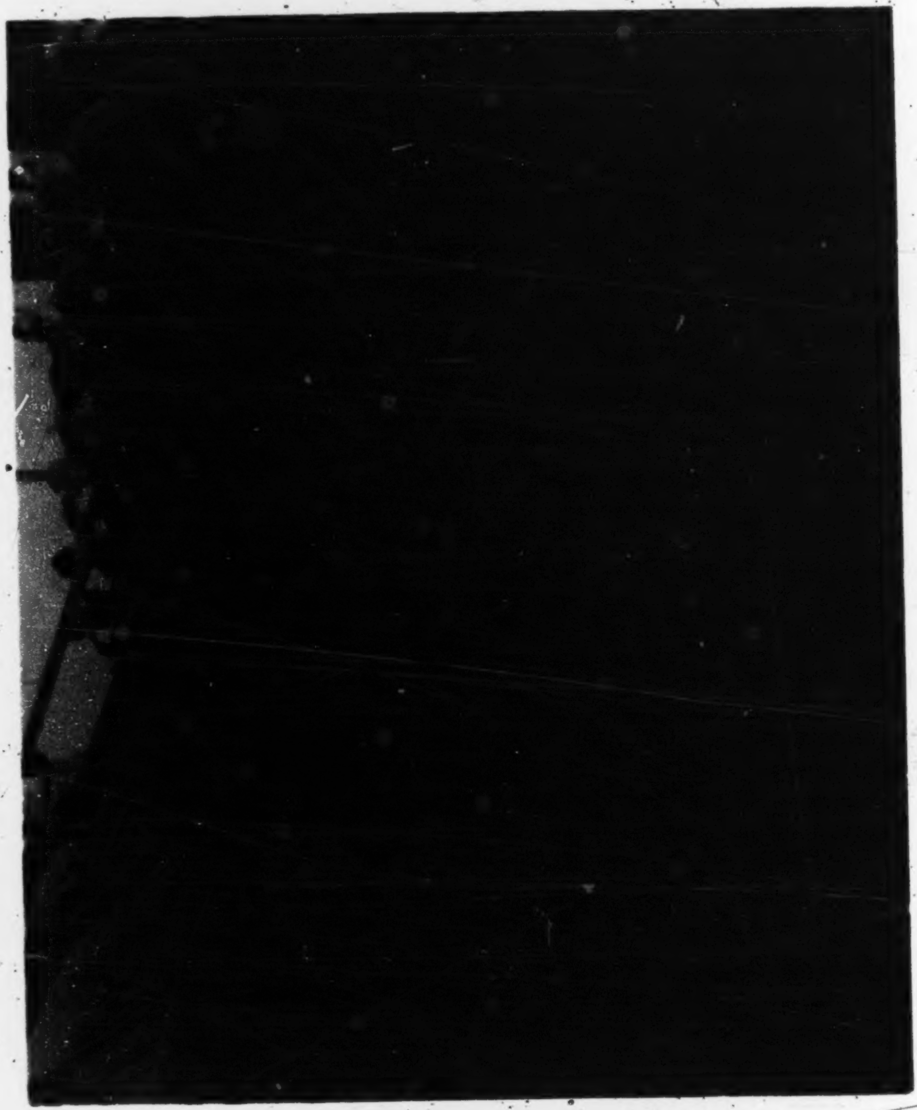


WOODWARD IRON CO
REPUBLIC IRON & STEEL CO
No 5 MINE
No 4 MINE
No 2 MINE
120,000 CU. FT. EXHAUST FAN
X 434 B
CU. FT. / MIN. EXHAUST FAN

MUSCODA IRON MINES.

MAP SHOWING VENTILATION SYSTEM.

T. C. I. EXHIBIT NO. 33



T. C. I. EXHIBIT NO. 34

T. C. I. EXHIBIT NO. 35

T. C. I. EXHIBIT NO. 36

T. C. I. EXHIBIT NO. 37

T. C. I. EXHIBIT NO. 38

T. C. I. EXHIBIT NO. 39

SLOSS EXHIBIT NO. 43

8

SLOSS EXHIBIT NO. 44

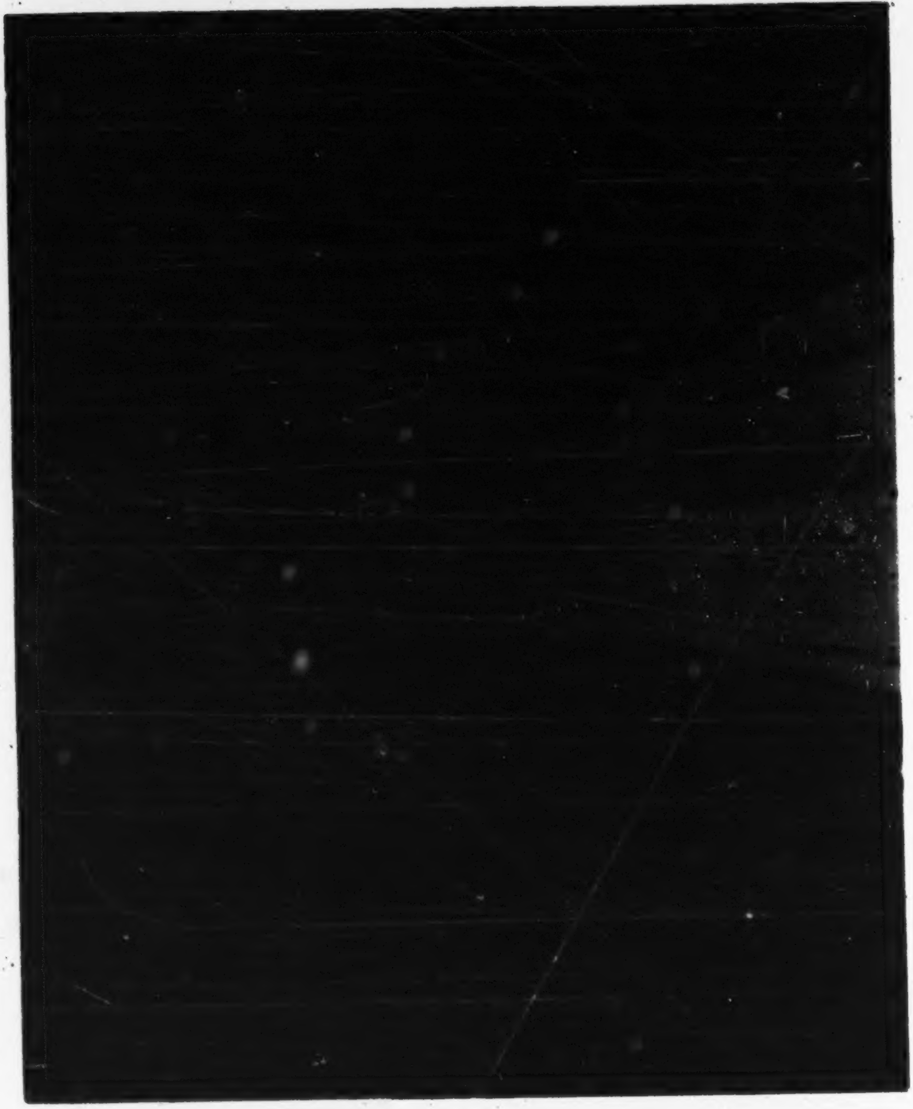
7

SLOSS EXHIBIT NO. 45

SLOSS EXHIBIT NO. 46

SLOSS EXHIBIT NO. 47

SLOSS EXHIBIT NO. 48



SLOSS EXHIBIT NO. 49

SLOSS EXHIBIT NO. 50

4532 SLOSS EXHIBIT No. 51.

Sloss Exhibit No. 51 is in all respects identical with Exhibit "C" to the Petitioner of Petitioner-Plaintiff Sloss-Sheffield Steel & Iron Company, heretofore set out. (Record, p. 146.)

4533 REPUBLIC EXHIBIT #20.

Republic Steel Corporation.

List of Underground Occupations.

(May 1st, 1941, and Prior Thereto.)

Raimund

Drill Sharpener
Drill Sharpener Helper
Welder and Burner
Electrical Foreman
Electrician
Electrician Helper, 1st Class
Electrician Helper, 2nd Class
Mine Foreman
Section Foreman
Powderman
Weighman
Material & Slope Track Man
Slope Track Labor
Material Helper
Car Repairman, 1st Class
Car Repairman, 2nd Class
Car Repairman Helper
Pipeman
Skip Loader

Spaulding

Electrician
Electrician Helper, 1st Class
Electrician Helper, 2nd Class
Welder & Burner
Mine Foreman
Pipeman
Skip Loader
Motorman
Car Coupler
Chainer
Track Foreman
Track Labor
Pumpman
Hoist Operator (large)
Hoist Operator (small)
Ore Storage Pocketman
Diamond Drillman
Diamond Drill Helper
Underground Helper

Raimund	Spaulding
Motorman	Rampman
Car Coupler	Ramp Helper
Chainer, 1st Class	Drag Contractor
Chainer, 2nd Class	Drag Hoistman
Track & Timber Foreman	Drag Driller
Track & Timber Laborer	Drag Drill Helper
Bratticeman	Drag Labor
Bratticeman Helper	Shovel Contractor
Salvageman	Shovel Operator
Salvage Labor	Shovel Driller
Slate Picker	Shovel Drill Helper
Pumpman	Shovel Labor
Hoist Operator (Large)	Buggy Operator
Hoist Operator (Small)	
Driller (Company Work)	
Contractor (Company Work)	
Underground Helper	
Drill Repairman	
Drill Repairman Helper	
Slate Man	
Slate Man Helper	
Roller Repairman & Greaser	
Drag Operator	
Contractor	
Mucker	
Mucker, 45° Slope	
Stope Neck Contractor	
Drag Contractor	
Drag Hoistman	
Drag Driller	
Drag Drill Helper	
Drag Mucker	

This Agreement, dated May 5, 1941, (hereinafter referred to as the "1941 Agreement") is between Tennessee Coal, Iron and Railroad Company (hereinafter referred to as the "Company") and the International Union of Mine, Mill & Smelter Workers, (hereinafter referred to as the "Union") on behalf of its members employed by the Company in its ore and limestone mines located at Muscoda, Wenonah, and Ishkooda, and in its Sintering Plant at Wenonah, Jefferson County, Alabama.

Section 1. It is the intent and purpose of the parties hereto to set forth herein the basic Agreement covering rates of pay, hours of work and conditions of employment to be observed between the parties hereto.

It is understood and agreed that this Agreement pertains only to members of the Union employed in the ore and limestone mines of the Company located at Muscoda, Wenonah, and Ishkooda, and in its Sintering Plant at Wenonah, Jefferson County, Alabama.

The term "employee," as used in this Agreement, applies only to members of the Union and shall not include Foremen, Assistant Foremen or Supervisors in charge of any classes of labor, or Watchmen, Guards, Clerical or Salaried employees. A list of the positions excluded by this section will be provided the Union at each mining division of the Company within sixty (60) days of the effective date of this Agreement. Any dispute in regard to such list may be subject to adjustment in accordance with provisions of Section 8.

Section 2—Recognition. The Company recognizes the Union as the collective bargaining agency for those employees of the Company who are members of the Union. The Company recognizes and will not interfere with the right of its employees to become members of the Union. There shall be no discrimination, interference, restraint or coercion by the Company or any of its agents against any members because of membership in the Union. The Union agrees not to intimidate or coerce employees into membership and also not to solicit membership on Company time or plant property.

Section 3—Wages. Effective April 1, 1941, there shall be an increase in wages of ten (10c) cents an hour on all rates which are at present Three Dollars and Sixty cents ($3.60) a day, or a minimum for this classification of Four Dollars and Forty Cents ($4.40) a day of eight (8) hours. Such classifications now receiving less than Three Dollars and Sixty Cents ($3.60) a day or less than forty-five cents per hour, shall be increased ten (10c) cents per hour. There shall be an increase of ten (10c) cents per hour in all other hourly rates, and an equivalent increase in all tonnage and piece-work rates which will result in an increase of eighty (80c) cents per day of eight (8) hours. Occupational hourly rates now in effect and as increased as above provided shall remain in effect for the duration of this Agreement, except as changed in accordance with the provisions of Section 12 hereof; but the incentive rate shall be adjusted in connection with the March 23, 1941, opinion rendered by the Administrator of the Wage and Hour Division of the Department of Labor concerning "hours worked" in underground metal mining to be effective May 1, 1941. The adjusted incentive rate shall remain in effect, except as changed in accordance with the provisions of Section 12 hereof, until the Company shall determine (whether on the basis of judicial determination, amendment of the law, or otherwise) to return to a working day computed upon hours of work in and about the mines at the usual working places, in which event the incentive rate in effect on April 30, 1941, shall again become effective. It is expressly understood that the union does not hereby waive any rights which its members may have to proceed against the Company under the Fair Labor Standards Act in such event.

Section 4—Hours Of Work.

a. This section is intended only to provide a basis for calculating overtime and shall not be construed as a guarantee of hours of work per day or per week.

b. The normal hours of work shall be eight (8) per day and forty (40) per week. The daily hours of work shall be consecutive except for such rest periods as may be provided in accordance with practices heretofore prevailing in the ore and limestone mines of the Company.

c. The eight (8) hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch or rest periods as provided for in (b) above, whether they be paid for the day or be paid on the tonnage basis, less such traveling time as is reasonably necessary for the employees to go to and from their usual working place, such traveling time starting when the employee is required to report for transportation at the entrance of the mine and ending when he returns to that point.

It is understood that the above inclusion as a part of the day's work of the traveling time reasonably necessary for the employee to go to and from his usual working place has been herein agreed to by the Company in compliance with the opinion rendered by the Administrator of the Wage and Hour Division of the Department of Labor, whcih becomes effective on May 1, 1941. The Company denies the correctness of said opinion. Suits are now pending for the judicial determination of this question. It is, therefore, agreed that if and when there is a final judicial interpretation (this agreement then being in existence) overlying or modifying the opinion of the administrator or in the event the Administrator changes his opinion or the law is amended, the question of whether or not the definition of the workday herein agreed to shall thereupon be changed so as to comply with the court's decision or the law as interpreted or amended shall immediately become a question for negotiation, and, if not settled between the parties by such negotiation within thirty (30) days after such final judicial interpretation or change or amendment has occurred, neither of the parties hereto shall be further bound or obligated by the definition of the day's work as herein contained, and the parties shall proceed as hereinafter provided for in Section 15 hereof.

d. Hours worked in excess of eight (8) consecutive working hours or in excess of a total of forty (40) in a work week, or days worked in excess of five (5) work days within the work week shall be paid for at one and one-half times the normal rate of pay. The work week shall be any seven (7) consecutive days. It is the intention of management wherever and whenever practicable, consistent with blast furnace raw material requirements and other operating conditions, to schedule employees so as to permit as many employees as is practicable to have a forty-eight (48) hour continuous rest period within any work week based upon these conditions. Overtime payment shall be made on the basis of either daily or weekly overtime hours worked, but an employee shall not be paid both daily and weekly overtime for the same overtime hours worked. By mutual agreement between the mine grievance committee and local mine management, employees who fail to complete the average hours worked in the mine in which they are employed up to forty hours in the five work days within the work week, may be permitted, if work is available in the mine in which they are regularly employed to make up time lost on the sixth or seventh day within the work week up to a maximum of forty hours at their regular rates of pay without the payment of overtime.

e. Employees who are regularly scheduled or who are notified to report and who do report for work shall be paid, in the event no work for which they were scheduled is available, for two hours work at the occupational rate of the occupation at which they were scheduled or for which they were notified to report. At management's discretion the employees scheduled or notified to report may be assigned to other substantially similar work for which they may be qualified in lieu of their being released. If employees refuse such assignment, they shall not receive the two hours reporting pay. Employees who are scheduled and report and actually begin work at the start of a turn and work less than four hours shall be paid for a minimum of four hours. At Management's discretion they may be offered other work beyond the four-hour period. If employees refuse such other work, they shall not receive more than the minimum four hours' pay or minimum four hours' work. The foregoing payments shall be either at the regular or overtime rates depending upon whichever pertains in accordance with the provisions of this section. In the event the job for which the employees have reported for work or on which they have worked is regularly paid on an incentive basis the regular pay shall be based on average hourly earnings for the turn or pay period or the guaranteed occupational rate whichever is the greater. Employees assigned to other work and who accept same shall be paid for the actual hours worked at the rate of pay for the job to which they have been assigned. In the event of strikes, stoppages in connection with labor disputes, breakdowns of equipment or acts of God shall interfere with work being provided, the provisions of this paragraph (e) do not apply.

Section 5—Irregular Work. When an employee absents himself from his work for a period of two days without the consent of the Company, other than because of proven sickness or a satisfactory explanation, he may be suspended or discharged. When any employee makes a habit of laying off for single days other than because of proven sickness and continues to do so after having been warned by the Company he shall be subject to suspension or discharge in accordance with the provisions of Section 10 hereof.

Section 6—Vacations. Each employee who, prior to July 1, 1941, and each subsequent calendar year during the continuance of this Agreement, has been continuously in the employ of the Company for three or more years shall receive one (1) week's vacation with pay, and each employee who has been continuously in the employ of the Company for fifteen (15) or more years shall receive two (2) weeks' vacation with pay.

A one (1) week's vacation shall consist of seven (7) consecutive days and a two (2) weeks' vacation of fourteen (14) consecutive days.

Continuous service shall be determined by the employee's first employment in any mine or plant of the Company and in accordance with the provisions for determination of continuous service as set forth under Section 7 hereof.

Vacations will, so far as possible, be granted at times most desired by employees, but the final right to allotment of vacation period is exclusively reserved to the Company in order to insure the orderly operation of the mines.

Employees granted vacations will be paid on their average rate of earnings per hour for the two (2) pay periods closed and calculated immediately peceding their vacation period. If the employee did not work in the two (2) pay periods immediately preceding his vacation period, he shall be paid on the basis of the last two (2) pay periods worked which were closed and calculated preceding the vacation date. Total hours of vacation pay will be the average hours worked by the employees granted the vacation during the two (2) closed and calculated pay periods but not less than forty (40) hours per week nor more than forty-eight (48) hours per week.

It is agreed that the intent of this section is to provide vacations to eligible employees who have been consistently employed. Consistent employment shall be construed to mean the receipt of earnings in at least 60% of the pay periods within the period intervening between July 1 of each calendar year.

Notwithstanding the employee's accumulation of three or more years' continuous service and his eligibility therefor for vacation, the above requirement of earnings in at least 60% of the pay periods shall be required in addition to such service eligibility.

If, in the opinion of Management, this vacation program would interfere with the attainment of maximum production and the expedition of the National Defense Program, at the option of the Company any eligible employee may be required to continue work and receive a vacation pay as above provided in lieu of actual vacation from work. However, it is the intent that to the greatest degree possible in Management's judgment, eligible employees shall receive the benefit of vacation from work.

Section 7—Seniority. It is understood and agreed that in all cases of:

1. Promotion—the following factors shall be considered, and where factors "b", "c", and "d" are relatively equal, length of continuous service shall govern:

a. Continuous service;

b. Ability to perform the work;

c. Physical fitness;

d. Place of Employment;

2. Increase or decrease of forces—the following factors shall be considered and where factors "b", "c", "d" and "e" are relatively equal, length of continuous service shall govern:

a. Continuous service;

b. Ability to perform the work;

c. Physical fitness;

d. Family status; number of dependents;

e. Place of Employment.

It is agreed that the computation of length of continuous service shall be based on the United States Steel and Carnegie Pension Fund Rules for service continuity for all service up to and including March 31, 1941, which service shall be the total accumulated service as of that date and as provided under the Pension Fund Rules referred to above. Effective April 1, 1941, length of continuous service shall be calculated from that date or from subsequent date of hiring in accordance with the following provisions:

(1) There shall be no deduction for any time lost which does not constitute a break in continuity of service. Continuous service is broken by (a) voluntarily quitting the service, (b) absence due to discharge, termination, suspension or leave of absence, any of which continues for more than six (6) months or (c) absence due either to layoff or to disability or both which continues for more than two years; provided, however, that employees injured while on duty shall accumulate credit for continuous service until the termination of the period for which statutory compensation is payable. New employees and those hired after a break in continuity of service will be regarded as probationary employees for the first six (6) months of their employment and will receive no continuous service credit during such period. During this period of probationary employment, probationary employees may be laid off or discharged as exclusively determined by Management provided that this provision will not be used for purposes of discrimination because of membership in the Union. Probationary employees continued in the service of the Company subsequent to six (6) months from date of original hiring shall receive full continuous service credit from date of original hiring.

Section 8—Adjustment of Grievances. Should differences arise between the Company and the Union as to the meaning and application of the provisions of this Agreement, or should any local trouble of any kind arise in any mining division, there shall be no suspension of work on account of such differences but an earnest effort shall be made to settle such differences immediately in the following manner.

It is understood and agreed that the procedural steps 1, 2 and 3 for the settlement of grievances represent a general standard which may be modified where mine management functions would make more appropriate, meetings with other supervisors than those indicated herein and such modifications as may be jointly agreed upon between the Management of the Mining Division and the Union and with respect to any mine or mines of the Company shall be set forth in writing and constitute, so far as the mine or mines involved, a supplement to this Agreement. Any such modifications shall represent a procedure best suited to the mine or mines involved for the purpose of orderly and expeditious settlement of grievances.

1. The employee who believes he has suffered a grievance shall discuss the alleged grievance with his foreman in an attempt to settle same. The foreman shall, if requested by the aggrieved employee, arrange for the presence of the Union grievance committeeman and his participation in the discussion.

2. Grievances not adjusted by the foreman shall be reduced to writing on forms provided by the Company, dated and signed by the employee involved and two copies given to the foreman. The foreman will have inserted in the appropriate place on the form his disposition of the matter and will sign and date same, returning one copy to the employee. Such grievances shall then be discussed in an attempt of settlement between the member of the grievance committee designated by the Union for the mining division involved and the foreman and or superintendent of the mining division, and such discussion and disposition thereof shall occur not more than nine (9) work days subsequent to the date of the written grievance presentation. Notation of disposition in this step shall be recorded on the employees' and the superintendents' copies of the grievance form.

3. Grievances not settled in Step 2 above shall be discussed promptly at a mutually satisfactory time but not later than the first succeeding regular meeting which shall

be held not less than once each month (unless by agreement between the Grievance Committee and mine management no monthly meeting is required) between the general superintendent of the mines and the Grievance Committee for the Mining Division.

Grievances to be discussed at such regular monthly meetings shall be entered on agenda forms by the Grievance Committee and the Management, and copies of such forms shall be exchanged between the Management and Committee and the Committee and the Management three days before such meeting. No grievances not entered on such agenda shall be discussed at such meetings except by mutual agreement. Grievances on the agenda not previously discussed in Steps 1 and 2 hereof shall be referred back for such discussion unless the grievances relate to matters general in character which cannot be settled by individual foremen or mine superintendents.

Union grievances to be discussed at regular monthly meetings may be fully investigated by a member of the Grievance Committee who shall be afforded such time off without pay as may be necessary for purposes of such complete investigation, which time off shall occur between the date of filing of the grievance in Step 2 hereof and its discussion at the meeting herein referred to.

Grievances discussed in such meetings under this section and not settled at such meetings shall be answered in writing by mine management not later than one week prior to the date of the next regular monthly meeting unless by mutual agreement, recorded in the minutes of the meeting, a different date for disposition is agreed upon.

Grievances not appealed from the decision rendered in writing in any of the three steps specified hereinabove, within ten (10) working days from the date of such decision, shall be considered settled on the basis of the decision last made and shall not be eligible for further appeal.

Minutes of all Step 3 grievance meetings shall be prepared by the General Superintendent of the Mines, jointly signed by the Chairman or Secretary of the grievance committee and the General Superintendent, and two copies of such minutes shall be handed the committee not later than ten (10) working days following the day on which the meeting was held. Minutes shall be typed and shall conform essentially to the following outline:

a. Date and place of meeting;

b. Names and positions of those present and those absent;

c. Identifying number and description of each grievance discussed;

d. Brief statement of Union position;

e. Brief statement of Company position;

f. Abstract of important aspects of the discussion;

g. Decision reached;

h. Statement of concurrence in or exceptions taken to decisions;

i. Statement as to whether decision accepted or rejected.

4. Grievances not settled in Steps 1, 2, or 3 hereof shall be dscussed in an attempt to reach a mutually satisfactory settlement between a representative of the national

union, certified to the Management in writing as the representative selected by the Union for such purpose, and a representative of the Company similarly certified by the Company to the Union in writing as its accredited representative for such purpose.

Notice of appeal to Step 4 shall be served by either party on the other in writing prior to the expiration of ten (10) work days following disposition of the grievance in Step 3 hereof. Such notice shall state subject matter of grievance, identifying number and statement of objections taken by either party to previous disposition. Either party may request a further statement of facts to be made available not later than three (3) days preceding the date set for the Step 4 meeting.

Either party may produce persons who, being familiar with the facts involved, may aid in a solution of the problem.

The number of meetings required in Step 4 to reach a satisfactory conclusion shall be determined jointly between the representative of the Company and the representative of the Union.

Minutes in form essentially similar to those specified in Step 3 hereof shall be prepared of Step 4 proceedings and made available by the Company to the Union in duplicate within ten (10) working days following the final Step 4 meeting.

5. Grievances not satisfactorily settled in Step 4 shall, in the absence of mutual agreement in writing to the contrary, be appealed to an impartial umpire to be appointed by mutual agreement of the parties hereto. The decision of the umpire shall be final. The expense and salary inci-

dent to the services of the umpire shall be shared equally by the Company and the Union.

The Grievance Committee for each mining division shall consist of not less than three employees of that mining division, and not more than six (6) such employees, designated by the Union, who will be afforded such time off, without pay, as may be required:

1. To attend regularly scheduled committee meetings,

2. To attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting, and

3. To visit departments other than his own at all reasonable times for the purpose of transacting the legitimate business of the Grievance Committee after notice to the head of the department to be visited and permission from his own mine Superintendent or the Superintendent's designated representative.

The actual number of members of the Grievance Committee at each mining division shall be mutually agreed upon between the General Superintendent or Manager of the mining Division and the Union.

Suitable identifying and numbering systems for grievances shall be adopted by mutual agreement in each Mining Division.

Awards or settlement of grievances shall, in no case, be made retroactive beyond the date on which the grievance was first presented in writing form, in Step 2 of the procedure, except as provided in Section 10 (Discharge Cases) of this Agreement.

It is agreed by the parties hereto that the procedure provided in this section is adequate if followed in good faith by both parties for fair and expeditious settlement of any grievances arising locally in any mining division of the Company. It is further agreed that if this procedure is not followed and as a result of such failure a work stoppage or strike occurs, that after 48 hours from the commencement of such stoppage or strike, if same still continues, the offending party or parties persisting in refusal to resume work and follow the orderly procedures of this section may be suspended and later discharged from the employ of the Company in accordance with the procedure of Section 10 of this Agreement.

The Company agrees that prior to such discharge it will provide a list of names, check numbers and addresses of employees considered by it to be involved to the representatives of the Union for the district in which the mines are located.

It is the purpose of this section to provide procedure for prompt, equitable adjustment of alleged grievances. Failure to file alleged grievance complaints promptly on occurrence of the grievance is construed to be not consistent with the intent of this section or of this Agreement.

Section 9—Management. The Management of the Mines and the direction of the working forces, including the right to hire, suspend or discharge for proper cause, or tranfer, and the right to relieve employees from duty because of lack of work, or for other legitimate reasons, is vested exclusively in the Company, provided that this will not be used for purposes of discrimination against any member of the Union.

Section 10—Discharge Cases. In the exercise of its rights as set forth in Section 9, Management agrees that a member of the Union shall not be peremptorily discharged from and after the date hereof, but that in all instances in which Management may conclude that an employee's conduct may justify suspension or discharge, he shall be first suspended. Such suspension shall be for not more than five (5) calendar days. During this period of initial suspension the employee may, if he believes that he has been unjustly dealt with, request a hearing and a statement of the offense before the superintendent of the mining division with or without the member or members of the Grievance Committee present as he may choose. At such hearing the facts concerning the case shall be made available to both parties. After such hearing Management may conclude whether the suspension shall be converted into discharge or, dependent upon the facts of the case, that such suspension may be extended or revoked. If the suspension is revoked the employee shall be returned to employment and receive full compensation at his regular rate of pay for the time lost, but in the event a disposition shall result in either the affirmation or extension of the suspension of discharge of the employee, the employee may allege a grievance which shall be handled in accordance with the procedure of Section 8—"Adjustment of Grievances." Final decision on all suspension or discharge cases shall be made by the Company within five (5) days from the date of filing of the grievance, if any. Should it be determined by the Company or by an umpire in accordance with Step 5 of the Grievance Procedure that the employee has been discharged or suspended unjustly, the Company shall reinstate the employee and pay full compensation at the employee's regular rate of pay for the time lost.

Section 11—Safety And Health. The Company shall continue to make reasonable provisions for the safety and health of its employees at the mines during the hours of their employment. Protective devices, wearing apparel and other equipment necessary to properly protect employees from injury shall be provided by the Company in accordance with the practices now prevailing in each separate mine. Proper heating and ventilating systems shall be installed where needed.

Section 12—Rate Establishment And Adjustment. It is recognized that changing conditions and circumstances may from time to time require adjustment of wage rates or modification of wage rate plans because of alleged inequalities, development of new mining processes, changes in the content of jobs, or mechanical improvements brought about by the Company in the interest of improved methods and product. Under such circumstances the following procedure shall apply:

1. When a bona fide new job or position is to be established:

a. Management will develop an appropriate rate by the regular procedure in effect in the Company for its industrial engineering and industrial relations activities, including the employment of job evaluation, and in the case of incentive rates the application of accepted industrial engineering methods.

b. Such procedure having been conformed to, the rate may be established by Management to cover the job or position in question. The Union grievance committeeman or committeemen representing the employee or employees to be affected shall be informed by Management in advance concerning such rates.

The rate having been established may subsequently be subject to adjustment as provided in paragrpah "c" below.

c. If, after a reasonable trial period following the establishment by Management of the rate or rates for new jobs or positions, grievances are alleged by either employees or Management concerning such rates—which grievances cannot be satisfactorily arjusted by mutual agreement, the question as to the equity of such rates in relation to the mine rate structure and the requirements of the job or position as established by sound industrial engineering procedures may be appealed to an impartial umpire in accordance with the provisions of Section 8 (Adjustment of Grievances), but no formal grievances may be presented under Section 8 until a reasonable period has elapsed since the installation of the rates and the operation of the equipment to which the new rates apply, which period will permit of study and adjustment, if necessary, of the rates to the varying conditions of operation attendant upon the establishment of the new operation to which the new jobs or positions apply. It is recognized that the term "reasonable period" may vary with the type of operation or equipment to which the new rates apply, but shall not, unless by mutual agreement, be construed to apply to a period in excess of twelve months.

2. When a rate, either straight hourly, tonnage or incentive, is alleged by either party to be improperly fixed in relation to the rate structure for the mine unit involved, and in relation also to units engaged in similar work in other ore and limestone mines of the Company in the operating district in which the mine is located, and when it is desired by either party to adjust such rate in the interest of equitable differentials in earnings and proper cost of production (no changes in methods, equipment or production standards being involved):

a. The procedure outlined in 1-a, above is to be followed. In addition, the rate proposals so developed will be fully explained to the Union representatives with the objective of obtaining their agreement to the proposals on the basis of equity.

Negotiations may be instituted by the grievance committeemen representing affected employees or by Management. If subsequent rate studies are necessary, Management will acquaint the Union grievance committeeman or committee regarding such study and seek their cooperation. When the study has been completed and the proposed new rates computed, Management representatives will again confer with the committeeman or committee and fully explain the results of the study. The procedure involved in explanation and negotiations will be that procedure outlined in Section 8 of the Agreement under which the first contacts will be with the foreman, with negotiations continuing through the successive steps of such procedure if necessary including but not going beyond Step 4 thereof. In the absence of mutual agreement no changes shall be made in the rates.

b. Should the Management and Union representatives fail to reach an agreement as to rates, they shall then endeavor to arrive at an agreement for the installation of the proposed rates for three-months' or otherwise agreed upon period which will serve as a trial or experimental period. At the conclusion of the trial or experimental period the results of the study and the related facts and the experience accumulated will (if formally requested in writing by Management or the Union representatives within 30 days thereafter) be further reviewed jointly by Management representatives and the Union for the purpose of making such further adjustment as the facts and experience accumulated warrant. Any adjustment of rates agreed to during the trial or experimental period shall be effective as of the date immediately following the completion of such trial or experimental period.

3. When changes are made in equipment, method of processing, material processed, or quality or production standards which would result in a substantial change in job duties or requirements; or where over a period of time an accumulation of minor changes of this type have occurred which, in total, have resulted in a substantial change in job duties or requirements, adjustments of hourly, incentive, and tonnage rates may be required.

In such cases Management will follow the procedure outlined in paragraph 2-a and-b except that in the absence of agreement in any step of the grievance procedure, Management may establish the new rates and the Union may carry the grievance through all steps of the contract procedure established for the settlement of grievances for determination as to whether the earnings received by the employees from the new rates have resulted in a lowering of the rates applicable to him under Section 3 of this Agreement or a failure to provide proper compensation for such increased effort, if any, brought about by the changes in the job duties or requirements.

Section 13—Holidays. The following days shall be considered holidays:

July 4th,
Labor Day, and
Christmas

On these holidays there shall be no regular production work except in cases of continuous operations. The term "continuous operations" shall be interpreted in accordance with prevailing practices in each mining division.

Employees not engaged in continuous operations, if required to work on the holidays herein enumerated, shall be paid at the rate of one and one-half times their regular rate of pay for the hours worked.

Section 14—Prior Agreements. This 1941 Agreement terminates the October 6, 1938, Agreement between the parties. To grievances which arose prior to the date of this 1941 Agreement shall be taken up for adjustment except that grievances which as of the date of this Agreement have been appealed in writing from a decision in the prior steps of the grievance procedure defined in the prior agreements or are in the process of being adjusted may be considered under the procedures of Section 8 of the 1941 Agreement and be determined in accordance with the applicable provisions of the 1941 Agreement.

Section 15—Termination Date. The terms and conditions of this Agreement shall continue in effect until changed or terminated, as follows:

a. Either party may at any time and from time to time give ten (10) days' written notice to the other party of the time for the commencement of a conference of the parties for the purpose of negotiating the terms and conditions of a change of the 1941 Agreement, which conference shall be at the office of the Company in Birmingham, Alabama; unless otherwise mutually agreed, and

b. If, because of failure to agree the 1941 Agreement is not changed by a written Agreement entered into by the Company and the Union within twenty (20) days from the giving of said notice, then the 1941 Agreement and all of the provisions thereof, shall terminate upon the expiration of twenty (20) days from the giving of said notice.

Notice hereunder shall be given by registered mail, be completed by and at the time of mailing, and if by the Company, be addressed to the International Union of Mine, Mill & Smelter Workers, Van D. Jones, 233 Fairfax Avenue, Bessemer, Alabama, and if by the Union, be addressed to the Company at Brown-Marx Building, Birmingham, Alabama.

Either party may, by like written notice, change the address to which registered mail notice to it shall be given.

TENNESSEE COAL, IRON AND RAILROAD COMPANY,
By E. M. BALL,
General Superintendent, Ore Mine.
By W. J. KELLY,
Acting Manager of Industrial Relations.

INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS,
ALLEN D. McNEIL,
VAN D. JONES,
FRANK ALLEN,
W. C. GUNNIN,
E. A. SISEMORE.

4553 PLAINTIFFS' EXHIBIT 16.

26 Opinions of Attorneys General 64.

Eight-Hour Law—Reclamation Service.

There is no conflict between the declaration in section 4 of the reclamation act of June 17, 1902 (32 Stat., 388), that eight hours shall constitute a day's work upon the public works therein specified, and the saving clause in section 1 of the act of August 1, 1892 (27 Stat., 340), which allows more than eight hours work in one calendar day "in case of extraordinary emergency."

Irrigation works for the reclamation of arid and semiarid lands, act of June 17, 1902 (32 Stat., 388), perfectly and comprehensively fill the idea of "public works of the United States."

The eight-hour law contemplated by the act of August 1, 1892 (27 Stat., 340), means eight hours of effective labor.

The blasting, cleaning of tracks, repair of machinery, and all other similar matters incident to the reclamation work, essential to prompt and continuous service in the regular day, may legally be done before and after regular hours. The law does not prescribe in what hours of the day the labor shall be done.

Blacksmiths and their helpers, firemen, and pumpmen are either mechanics or laborers within the meaning of the eight-hour law.

The status of teamsters, cooks, and flunkies not determined. (See 20 Op., 459.)

It is the duty of the engineers of the Reclamation Service to see that the eight-hour law is observed by the contractors and to report violations of that law.

Department of Justice, October 11, 1906.

Sir: Your letter of September 21 raises the question of the application of the eight-hour law to the Reclamation Service of the Geological Survey, and requests my opinion upon the following points:

"(1) Is the proviso to section 4 of the act of June 17, 1902, *supra*, which declares in part, 'That in all construction work eight hours shall constitute a day's work,' to be regarded as in anywise repealing or modifying that provision of the act of August 1, 1892, which makes it unlawful to employ or permit laborers to work more than eight hours in any one calendar day on any public works of the United States 'except in case of extraordinary emergency.' Differently stated, is the declaration in the act of June 17, 1902, that eight hours shall constitute a day's work upon the public works therein specified, in conflict with the saving clause in the act of August 1, 1892, which allows more than eight hours' work in one calendar day 'in case of extraordinary emergency?'

"(2) Are blacksmiths and their helpers, teamsters, hauling camp supplies, etc., firemen, pumpmen, cooks, and flunkies to be classed as 'laborers and mechanics' within the meaning of these terms as employed in the act of August 1, 1892?

"(3) Are the engineers of the Reclamation Service responsible under the statutes in case the contractors on the works under their supervision shall require more than eight hours' labor from laborers and mechanics upon these works?"

The letter of the Director of the Geological Survey states that it is dangerous both to life and property to do blasting during the regular hours of labor when the men and the steam shovel are at work; and that it is very necessary to keep the powder men at their posts after the regular working hours in order to make their final preparations for shooting the blasts. The letter also states that it is necessary to clean up to shale thrown down by the blasts upon the tracks before the regular working hours the following morning, in order that the force on the cuts and steam shovel shall not then be standing around idle until the tracks can be cleaned. The same reason for work before or after the regular hours applies to the necessary shifting of track, shoeing of horses, repair and cleaning machinery, and to other labor essential to the promptness and efficiency of the regular day service of men and machinery. It is also suggested that if water for domestic use of the camp may not be hauled after regular working hours by some of the teams on the work, it would be necessary to keep an extra team for this purpose only, at much greater cost than "by putting in a little time by extra work;" and that teamsters hauling supplies, cooks, and "flunkies" (by which I understand scullions or assistants to cooks are meant) must put in more than eight hours per day.

The eight-hour law of 1892 (act of August 1, 1892, 27 Stat., 340) provides (sec. 1):

"That the service and employment of all laborers and mechanics who are now or may hereafter be employed by the Government of the United States, by the District of Columbia, or by any contractor or sub-contractor upon any of the public works of the United States or of the said District of Columbia, is hereby limited and restricted to eight hours in any one calendar day, and it shall be unlawful for any officer of the United States Government or of the District of Columbia or any such contractor or sub-contractor whose duty it shall be to employ, direct, or control the services of such laborers or mechanics to require or permit any such laborer or mechanics to work more than eight hours in any calendar day except in case of extraordinary emergency."

The reclamation act provides (act of June 17, 1902, sec. 4, 32 Stat., 388):

"In all construction work eight hours shall constitute a day's work."

There can be no doubt that under the terms of these laws and in the light of the discussions and opinions relative to the eight-hour law (20 Op., 454, 459; 23 Op., 174; 26 Op., 30, 36) "irrigation works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands" (sec. 1, Reclamation act) perfectly and comprehensively fill the idea of "public works of the United States." This conception is not weakened by the fact that ultimately the management and operation of such irrigation works is to pass to the owners of the lands irrigated (sec. 6), for not only when constructed are all these irrigation works public works of the United States upon lands of the United States to be acquired by condemnation if necessary (sec. 7), but section 6 also provides "that the title to the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress."

But I think that the eight-hour day means eight hours of effective labor, and therefore so far as your questions present the case of laborers and mechanics who, from the exigencies of the situation, must wait until after the completion of the regular day to finish their work, I am of the opinion that the blasting, cleaning of tracks, repair of machinery, and all other similar work essential to prompt and continuous service in the regular day may be legally done before and after the regular hours. To be more specific, laborers and mechanics who are called upon to do two hours' work, for example, before or after the regular day begins or ends have no just cause for complaint that the law is violated if they are only called upon to work six more hours during the regular hours. The law gives no countenance to the conception that the interval between the beginning and end of the regular day is a controlling convention which excludes labor at any other time and entitles workmen to stand around idle if their services can not be fully availed of during that interval. The law limits the working day to eight hours, but it does not prescribe in what hours of the day the work shall be done. Practically, no doubt, there should be a real necessity, as is obviously the case here, for work during other hours than the regular day; and there should be scrutiny and care lest abuses arise which, however, the right of contract, subject to the law, between laborer and employer ought to prevent.

I do not wish to enter upon the *minima* of the case unnecessarily, and yet, noticing the claim that it would cost more to provide water for the camp unless it can be hauled on "extra time," I take occasion to observe that the element of cost makes no difference. The legality of the proceeding depends upon the consideration whether the men employed on this service are laborers or mechanics, or whether they give, excluding this service, eight hours' effective labor.

Your inquiry whether the engineers of the Reclamation Service are responsible for the action of contractors in requiring more than eight hours' labor for laborers and mechanics is susceptible of two constructions. It is certainly my opinion that it is their duty to be vigilant in their scrutiny and to report violations of law which may come under their observation. This is not altogether a question of law for my determination, but rather, perhaps, a question of administration for you to settle in the light of the general executive policy. But as the question has been touched upon by my predecessor, Mr. Miller, I may properly express my view. The case of *United States v. Driscoll* (96 U. S., 421) has also been brought to my attention. That decision merely held that a workman for a contractor could not maintain a claim against the United States for compensation for labor over eight hours a day; that there was no privity between him and the United States. There was no occasion there for any intimation from the Court regarding the administrative duty of the United States in respect to violations of the law by contractors, and, accordingly, no intimation whatever was given. There is a current misconception as to the scope of Attorney-General Miller's opinion (20 Op., 501). Mr. Miller was requested by the Secretary of the Treasury, at the instance of a contractor, to determine whether laborers and mechanics engaged by the contractor to carry out a contract by the Government came within the application of the eight hour law. Mr. Miller declined to answer the inquiry, on the ground that it was not a question of law arising in the administration of the Treasury Department. The inquiry was in reality the inquiry of the contractor, and with that fact in mind, doubtless, Mr. Miller observed that—

"The duty to employ, direct, or control such laborers or mechanics, and the penalty of their wrongful employment is with the contractor and not with the Government or any of its officers or agents."

But Mr. Miller does not by this remark undertake to determine what the deliberate executive policy on the subject might or should be. My own view of the matter, as now squarely presented, is that it is the duty of the engineers of the Reclamation Service under your direction to see to it that the law is observed by the contractors and to report any violation of it which comes under their observation. I understand this to be the sense in which you ask whether they are responsible—not in the sense of legal liability to the workmen.

Recurring, then, to your questions, as to the first my answer is that there is no conflict between the act of August 1, 1892, and the proviso to section 4 of the act of June 17, 1902. The "extraordinary emergency" of the former act would apply to the latter. The acts are to be construed together, and I do not think it was the intention of Congress, by the proviso in the Reclamation act and the use of the term "construction work," either to displace the provisions of the act of August 1, 1892, as to laborers and mechanics not strictly engaged in "construction work," or to exclude the exception of an "extraordinary emergency." It is not necessary for me to define generally what an extraordinary emergency is, and it is clear to me that the facts in this case do not present an extraordinary emergency as intended by the law. But, with the qualifications which I have stated, I wish to make it clear that the eight hour law applies fully to contractors on the irrigation works constructed by the United States.

Yours second question I have answered, as far as the facts before me permit; but I may add that it seems clear to me that blacksmiths and their helpers, firemen and pumpmen are either mechanics or laborers. As to teamsters, cooks, and "flunkies," I leave the inquiry as to their status where Mr. Miller left a similar query in 20 Op., 459, and add the remark that the obvious necessity of eight hours' effective labor in any case seems to dispose of that point as now raised. The answer to the third question, as already indicated, is that engineers of the Reclamation Service responsible to the extent of requiring the law to be observed and reporting violations of it.

Very respectfully,
W. H. MOODY.

The Secretary of the Interior.

PLAINTIFFS' EXHIBIT 17.

26 Opinions of the Attorneys General 605.

Eight-Hour Law—Hours Of Service Of Lock Tenders, Etc.

Persons employed as lock tenders, lock helpers, lockmen, and in similar employments at the locks of the various canals owned and operated by the Government may be called upon to perform service at any hour of the day, and such requirement is legal and proper under the eight-hour law (act of August 1, 1892; 27 Stat., 340) so long as the total service rendered does not exceed eight hours per day.

The eight-hour law includes skilled as well as unskilled workmen; and the employment of persons for a longer period than eight hours in any one day "when a dam is being raised or lowered" and the service is one "requiring skill and training" which "cannot safely be entrusted to inexperienced men," is not an employment in case of an "extraordinary emergency," and is a violation of that statute.

It is a familiar rule of construction that where a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided, if another and more reasonable interpretation is present in the statute.

Department of Justice, May 11, 1908.

Sir: I have the honor to acknowledge the receipt of your letter of April 29, ultimo, directing my attention to a request of December 23, 1907, for my opinion "as to whether certain classes of employees variously designated as lock masters, lock keepers, lock helpers, lockmen, watchmen, firemen, enginemen, stokers, teamsters, etc., referred to in a memorandum of the Judge Advocate-General, inclosed with Department's letter, could be legally excepted from the requirements of the eight-hour law (act of August 1, 1892; 27 Stat., 340) on the ground that they were neither laborers not mechanics within the meaning of the act."

It seems from the inclosed memorandum that, at certain locks and dams, persons are employed whose duties are performed at irregular hours and do not require their attention for eight hours in the calendar day. These employees are liable to be called upon at any hour in the day for a service lasting but a few minutes; but as a fact, the whole sum of the time in which they are engaged is but a fraction of eight hours. The rest of the day is entirely their own. The question is whether the service and employment of such persons, under such circumstances, is legal and proper within the limit and restriction of the statute.

As to laborers employed in a similar manner, I refer you to what was said by my predecessor, Attorney-General Moody (26 Op., 67):

"But I think that the eight-hour day means eight hours of effective labor, and therefore so far as your questions present the case of laborers and mechanics who, from the exigencies of the situation, must wait until after the completion of the regular day to finish their work, I am of the opinion that the blasting, cleaning of trucks, repair of machinery, and all other similar work essential to prompt and continuous service in the regular day may be legally done before and after the regular hours. To be more specific, laborers and mechanics who are called upon to do two hours' work, for example, before or after the regular day begins or ends have no just cause for complaint that the law is violated if they are only called upon to work six more hours during the regular hours. The law gives no countenance to the conception that the interval between the beginning and end of the regular day is a controlling convention which excludes labor at any other time and entitles workmen to stand around idle if their services cannot be fully availed of during that interval. The law limits the working day to eight hours, but it does not prescribe in what hours of the day the work shall be done. Practically, no doubt, there should be a real necessity, as is obviously the case here, for work during other hours than the regular day; and there should be scrutiny and care lest abuses arise which, however, the right of contract, subject to the law, between laborer and employer ought to prevent."

The cases mentioned in the memorandum of the Judge-Advocate-General come fully within these principles. Under the Cincinnati office are included locks on the Muskingum, Kentucky, and Big Sandy rivers. The employees live at the locks, in Government houses, and none is required to work an aggregate time in excess of eight hours though they are subject to call.

At Milwaukee are included 21 locks at canals of Fox River; the number of lockages averaging less than 2 per day and rarely exceeding 8 for the twenty-four hours.

At Louisville office are included locks of the Louisville and Portland Canal, and of the Green, Barren, Rough, and Wabash rivers. It is only occasionally that workmen are kept busy through eight hours of service. When traffic is light, actual service amounts to little more than being on hand.

At Nashville office are included locks where the lockmen are furnished quarters and none works more than three hours a day.

At Rock Island office are included locks where men do less than eight hours' work, the lockages averaging four a day. The men live in Government quarters and are required to be subject to duty from sixteen to twenty-four hours.

At Montgomery office are included locks where men have less than one hour effective work in a day and live on Government premises.

At Mobile office are included locks in Black Warrior River where lockages average less than 2 a day and the hours of work muck less than eight.

At Little Rock office, lock where lockages average less than one a day.

In these cases to require that a sufficient number of men should be employed to prevent any of them from being liable to duty except within a determined and arbitrary period of eight continuous hours would be to put an unreasonable construction upon the statute. It would recognize a favored condition of employment not intended by the law.

A familiar rule is, that where a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided, if another and more reasonable interpretation is present in the statute.

Other instances mentioned in the memorandum are upon different footing. At places under the control of the *Pittsburg office* men are sometimes required to work more than eight hours "when dam is being raised or lowered;" and the service is one "requiring skill and training and could not safely be entrusted to inexperienced men." This does not make a case of extraordinary emergency. The act includes skilled as well as unskilled workmen. The need is for more men; not for the employment during more hours.

At other places, employees are classed as watchmen, dam tenders, custodians, etc. With respect to the legal status of such employees under the eight-hour law, it is impossible to speak with certainty without very full information as to the nature of their employment. I respectfully refer you on this subject to what is said in my letter of the 7th instant.

In this view I have expressed my opinion upon the construction of the act to meet what I deem to be the object of your inquiry.

Respectfully,
CHARLES J. BONAPARTE.

The Secretary of War.

4565 PLAINTIFFS' EXHIBIT 18.

27 Comptroller of the Treasury 1060.

Traveling Expenses—Railway Postal Clerks.

In the act of February 28, 1919, 40 Stat. 1195, and prior acts, authorizing payment of traveling expenses to railway postal clerks while on duty after a certain number of hours from the time of beginning their initial run, the phrase, "time of beginning their initial run" is intended to mean the time of taking up their duties on the railway post office car at the terminal station rather than the time of starting from their home.

Decision by Comptroller Warwick, June 14, 1921:

Henry C. Moore applied April 27 for a revision of the action of the Auditor for the Post Office Department in disallowing by certificate No. 8025, dated March 19, 1921, his claim for alleged arrears of travel allowances as a railway postal clerk from July 1, 1910, when such allowances first becamse payable, until August 21, 1920, the date of his retirement.

From March 10, 1892, to the date of his retirement Mr. Moore was employed on the Burlington-Carrollton railway post office with residence at Bloomfield, Iowa, which is located on the line of the run between Burlington and Carrollton.

The act of May 12, 1910, 36 Stat., 363, effective from July 1, 1910, provides:

"That in addition to the salaries hereinbefore provided the Postmaster-General is hereby authorized to make travel allowances, not exceeding in the aggregate the sum hereby appropriated, to railway postal clerks assigned to duty in railway post-office cars for expenses incurred by them while on duty, after twelve hours from the time of beginning their initial run, under such regulations as he may prescribe, and in no case shall such an allowance exceed seventy-five cents per day."

This provision has been amended several times but in all cases the allowances are payable for the period while on duty after a fixed number of hours "from the time of beginning their initial run." As amended by the act of February 28, 1919, 40 Stat., 1195, the provision reads:

"That hereafter, in addition to the salaries provided by law, the Postmaster General is hereby authorized to make travel allowances in lieu of actual expenses, at fixed rates per annum, not exceeding in the aggregate the sum annually appropriated, to railway postal clerks, acting railway postal clerks, and substitute railway postal clerks, including substitute railway postal clerks for railway postal clerks granted leave with pay on account sickness, assigned to duty in railway post-office cars, while on duty, after ten hours from the time of beginning their initial run, under such regulations as he may prescribe, and in no case shall such an allowance exceed $2 per day."

Claimant's initial run started from Burlington and he has been allowed travel allowances after the prescribed number of hours from time of leaving said place. But he contends that travel allowances should begin to run after the prescribed number of hours from time of starting from his home, which was 84 miles from Burlington. In support of his contention he refers to the provision in the act of February 28, 1895, 28 Stat., 692, which reads:

"That all clerks hereafter appointed to the Railway Mail Service and to perform duty in railway post offices shall reside at some point on the route to which they are assigned; but railway mail clerks heretofore appointed and now performing such duty shall not be required to change their residence."

It seems that claimant has assumed that this law requires railway postal clerks to reside at the terminus of their run unless assigned prior to February 28, 1895, but such is not the case. It merely requires that they reside at some point on the route. Since claimant did reside at a point on the route to which he was assigned the provision did not affect him in any way.

That the phrase "time of beginning their initial run" means, and was intended to mean, the time of taking up their duties on the railway post-office car at the terminal station, rather than the time of starting from their home; I think there is no room for reasonable doubt. Therefore, the action of the auditor in disallowing the claim is affirmed.

4568 PLAINTIFFS' EXHIBIT 19.

9 Decisions of the Comptroller General 200.

(A-29317)

Compensation—Extra Pay For Night Work—Railway Postal Clerks.

A railway postal clerk who is ordered to deadhead back over his run on official business is not entitled while so traveling to the 10 per cent extra pay for night work authorized by the act of May 24, 1928, 45 Stat. 725.

Comptroller General McCarl to the Postmaster General, November 11, 1929:

I have your letter of October 25, 1929, requesting decision whether a railway postal clerk who is ordered to deadhead from his home at Charlotte, N. C., to Washington, D. C., and return, in connection with official business, is entitled to be paid the 10 per cent extra pay for night work authorized by the act of May 24, 1928, 45 Stat. 725, which provides as follows:

> After July 1, 1928 * * * railway postal clerks * * * who are required to perform night work, shall be paid extra for such work at the rate of 10 per centum of their hourly pay per hour: *Provided*, That night work is de-

fined as any work done between the hours of six o'clock postmeridian and six o'clock antemeridian.

It should be noted that the 10 per cent extra is paid for night work and that night work is defined as any work done between 6 p. m. and 6 a. m. In the case presented the employee was ordered to proceed from his home to Washington and return, but he did not perform any work on either journey. He was in a travel status and received credit for full time while deadheading under orders as authorized in the act of April 24, 1920, 41 Stat. 580, and was also paid the cost of a berth in a Pullman for each journey. Such a case does not come within the meaning of the act of May 24, 1928, *supra*, which was intended to provide an additional allowance for actual work at night.

You are advised that payment of the 10 per cent extra for night work is not authorized under the conditions shown in the case presented.

4570 PLAINTIFFS' EXHIBIT 20.

14 Comptroller General 907:

(A-61311)

Compensation—Overtime—40-Hour Week.

No per diem in lieu of subsistence or other travel expenses accrue to an employee during the period of a stopover for personal reasons while otherwise in a travel status.

The overtime for which compensation at the rate of time and one-half time is authorized by section 23, of the act of March 28, 1934, 48 Stat. 522, establishing the 40-hour week, has reference to time in excess of 40 hours a week during which the employee is engaged in labor. No labor is performed during periods of travel between duty stations and headquarters and accordingly during official travel time and the employee is limited to pay the basic rate per hour for not to exceed 8 hours per day.

Comptroller General McCarl to the Secretary of Commerce, June 18, 1935:

There has been considered the letter dated January 28, 1935, from the Acting Assistant Secretary of Commerce, forwarding for direct settlement the claim of Frederick W. Morong for $5.25 per diem in lieu of subsistence at the rate of $3.50 a day for 1 1/2 days on October 7 and 8, 1934, and also forwarding for consideration the request of the Commissioner of Lighthouses for decision of questions as follows:

(A) Can an employee who regularly works but forty hours per week (eight hours each day from Monday to Friday, inclusive) and is paid on an hourly basis be required to travel on Saturdays and Sundays without payment of salary on an overtime basis for such time?

(B) If not, should his per diem be allowed to continue during the time he interrupts his travel over week ends?

(C) If not, should time lost in the succeeding week because of interruption of his travel be charged to leave? Using facts stated in the attached voucher for example: If Mr. Morong cannot be required to travel on Saturdays and Sundays without compensation for time in travel status, should the period from 7:30 a. m. (at which time he regularly reports for duty on week days) until 10:45 a. m. on October 8, 1934, be charged to leave?

Pursuant to travel order dated September 25, 1934, Federick W. Morong, a machinist in the Lighthouse Service working on a 40-hour week basis, Monday to Friday, inclusive (sec. 23 of the act of March 28, 1934, 48 Stat. 522, 14 Comp. Gen. 215), left his official station at Portland, Maine, Monday, October 1, 1934, and arrived at Manana Island for repair of fog signal, leaving at 1:00 p. m., Saturday October 6, by motor boat for Thomaston, Maine, arriving at 3:30 p. m. He could have left Thomaston, at 5:35 and arrived in Portland, his duty station, at 8:20 the same day, but he states that the motor boat in which he traveled was small, with little or no shelter, and that on account of a bad rainstorm he was drenched and very cold upon arrival at Thomaston, necessitating a lay-over at that place until 7:45 a. m. Monday, October 8, 1934, at which time he left for Portland, Maine, arriving at 10:45 a. m. Claim for additional per diem for Sunday, October 7, and Monday, October 8, 1 1/2 days, amounting to $5.25, was disallowed by the administrative office.

An employee necessarily engaged in traveling on official business under competent orders away from official duty station is to be regarded as in a travel, as well as duty status, but any interruption for personal reasons suspends such duty and travel status. Thus this employee continued in a travel and duty status until 3:30 p. m. Saturday, October 6, which status was then interrupted for personal reasons and was not resumed until Monday at 7:45 a. m., October 8, by reason of departure from Thomaston, Maine.

Section 51 of the Standardized Government Travel Regulations issued January 30, 1934, provides as follows:

> *Day defined.*—In computing the per diem in lieu of subsistence for continuous travel of more than 24 hours the calendar day (midnight to midnight) will be the unit, and for fractional parts of a day at the commencement or

ending of such continuous travel, constituting a travel period, one-fourth of the rate for a calendar day will be allowed for each period of six hours or fraction thereof. For continuous travel of less than 24 hours, constituting a travel period, such period will be regarded as commencing with the beginning of the travel, and ending with the completion thereof, and for each six-hour portion of the period or fraction thereof one-fourth of the rate for a calendar day will be allowed: *Provided*, that no per diem will be allowed when the departure is after 8 a. m., and the return on the same day is prior to 6 p. m., or for any absence not exceeding three hours.

As the stop-over from 3:30 p. m., Saturday, to 7:45 a. m., Monday, was for personal reasons the claimant is not entitled to any per diem in lieu of subsistence between those hours. As he was in a travel status 15 hours and 30 minutes Saturday he would be entitled to only three-fourths of a per diem for that day, and from 7:45 a. m., to 10:45 a. m., Monday, entitles him to an additional one-fourth per diem. As he was paid a full per diem for Saturday nothing additional is due him.

Section 23 of the act of March 28, 1934, 48 Stat. 522, establishing the 40-hour week contains the following proviso:

> * * * *Provided*, That the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one-half. *

The over-time for which the statute authorizes time and one-half has reference to time in excess of 40 hours per week during which the employee is engaged in "labor". During the time this employee was traveling between his temporary duty station and headquarters he was not engaged in labor, even though in a duty as distinguished from a nonpay status, and accordingly time spent on such trips should be eliminated when computing hours of labor for over-time pay purposes, the employee being entitled for such official travel time to pay at the basic rate per hour for not to exceed 8 hours in any one day, together with per diem in lieu of subsistence, as stated above, even though the time actually spent on official travel may exceed 8 hours. Morong would not be entitled to any compensation or per diem for the time between 3:30 p. m., Saturday, and 7:45 a. m., Monday. The questions presented are answered accordingly.

4574

PLAINTIFFS' EXHIBIT 21.

Opinion of the Attorney General of the United States.

Application of the Eight-Hour Law to Employees of the Civilian Conservation Corps.

The underlying purpose of the eight-hour law (U. S. C., title 40, secs. 321-326) is to confer upon workmen the benefits, physical and moral, supposed to flow from a reduction of their labor to 8 hours a day.

While to the extent necessary to guarantee such benefits the statute should be construed liberally, it is not to be extended to cases not clearly within its terms or to those exceptional to its spirit and purpose, but is to be fairly construed according to the legislative intent.

Voluntary instruction offered by certain employees of the Civilian Conservation Corps to enrollees does not come within the purview of the Statute.

August 8, 1939.

The President.

My Dear Mr. President: I have the honor to refer to your memorandum of July 28, 1939, with which you transmit a letter of the Federal Security Administrator, dated July 26, 1939, requesting my opinion whether voluntary instruction, as outlined in the Administrator's letter, offered by certain employees of the Civilian Conservation Corps to enrollees comes "within the purview of what is generally termed the eight-hour law, as set forth in United States Code, title 40, sections 321-326."

The Administrator's letter reads in part:

"The act of June 28, 1937, establishing the Civilian Conservation Corps (50 Stat. 319; 16 U. S. C. 584-584q), provides in section 1 'that at least 10 hours each week may be devoted to general educational and vocational training.' This is regarded as a very important function in the C. C. C. and this training is carried on very largely in the evenings when enrollees who are assigned to work projects have returned to camps. * * *

"All of the enrollees are urged, though not compelled, to attend evening classes in order to fit them more effectively for the business of making a living after they leave the C. C. C. The various employees at the camp * * * teach enrollees in classes after working hours have finished. These teachers, with the exception of one paid educational adviser, all volunteer their services and are not compelled to offer instruction as a part of, or a prerequisite to, their employment. It is our belief that the voluntary instruction offered by these men * * * does not come within the purview of what is generally termed the eight-hour law, as set forth in United States Code, title 40, sections 321-326.

"* * * The question with reference to the applicability of the eight-hour law in the circumstances heretofore stated has been submitted to the counsel of the Civilian Conservation Corps, and he has expressed the opinion that, under the circumstances and for the purposes hereinbefore indicated, the eight-hour law is inapplicable."

I agree with the conclusion reached by the Administrator and the counsel for the Civilian Conservation Corps. As stated by Attorney General Wickersham (29 Op. 488, 492), "the underlying purpose of all this legislation is to confer upon workmen the benefits, physical and moral, supposed to flow from a reduction of their labor to 8 hours a day;" and to the extent necessary to guarantee such benefits it should be liberally construed. The statute, however, "is not to be extended to cases not clearly within its terms or to those exceptional to its spirit and purpose," *United States v. Chemical Foundation*, 272 U. S. 1, 18, but is "to be fairly construed according to the legislative intent," *United States v. Bowman*, 260 U. S. 94, 102. I cannot believe that the Congress intended to deprive an employee of the United States of the privilege—attended probably with a feeling of moral satisfaction—of voluntarily giving to his fellow workmen needed instruction calculated to greatly improve their condition and station in life, and I am unwilling so to construe the statute.

Accordingly, the Administrator's question is answered in the negative.

Respectfully,
FRANK MURPHY.

4577 PLAINTIFFS' EXHIBIT No. 45.

Comptroller General of the United States
Washington.

July 16, 1941.

Mr. Ernest L. All,
c/o Bradley, Baldwin, All and White,
2100-28 Comer Building,
Birmingham, Alabama.

Dear Sir:

In response to your letter dated July 2, 1941, received July 8, 1941, requesting copies of certain communications respecting the hours of duty of employees of the Immigration and Naturalization Service at the Angel Island Station, California, there are transmitted herewith copies of the following letters:

Acting Comptroller General, October 28, 1937.

Department of Labor, November 22, 1937.

Comptroller General, October 9, 1939.

Department of Labor, November 2, 1939.

Acting Comptroller General, August 20, 1940.

Department of Justice, October 3, 1940.

Very truly yours,
LINDSAY C. WARREN,
Comptroller General of the
United States.

Comptroller General of the United States
Washington.

A-44009

October 28, 1937.

The Honorable
The Secretary of Labor.

Madam:

Examination by representatives of this office of the accounts and records of Edward L. Haff, District Director of Immigration and Naturalization, San Francisco, Calif., brings out matters to which it is throught advisable to invite your attention, and which are reported substantially as follows:

1. At the time of inspection, August 11, 1937, there were on hand collections amounting to $593.92 which had not been taken into the records, as follows:

(a) Hospitalization .... $ 38.50

The sum of $50 was received to guarantee to the Government the charges for hospitalization for Ernesto Garcia who entered the hospital at Angel Island July 30, 1937. He was released at the end of four days, during which time a charge of $11 had accrued, and on his departure he was refunded in cash the sum of $39 for which his receipt was taken, leaving for deposit a balance of .... $ 11.00

Also, check of the Standard Oil Company of California, in the sum of $27.50, had been received to cover hospital care of two members of the crew of the M. S. Ferncastle, for the period July 7, to 11, 1937, there being for deposit the amount of .... $ 27.50

(b) Unofficial Use of Telephone Facilities .... $ 5.00

The sum of $5.00 in currency, received in connection with the case of G. C. Cay (No. 37458/2-1) as a guarantee deposit to cover cost of telephone messages.

(c) Deposits to Guarantee Performance of Contracts $170.00

Two certified checks payable to the order of the Treasurer of the United States, in the amounts of $110 and $60, and dated May 21, 1937, were submitted as representing 10 percent of bids for repair work.

(d) Funds Belonging to Aliens (in Deportation and Detention Division) $380.42

Ali Mabaric, a Hindoo, deported April 1, 1932; 1932 notation that "This amount $32.00, was inadvertently overlooked at the time of deportation"	$ 32.00
Mate Zyombic, received May 27, 1937, $25—refunded $9—balance	$ 16.00
George Gogo, received, July 27, 1937, $250,—refunded $5.—balance	245.00
Yick Pung Chang, received, August 5, 1937,—....	13.00
Wazir Singh, received, July 20, 1937, $81—refunded $10—balance	71.00
John June (effects of), received March 1, 1931, from A. M. McQuade, nurse in charge, Philadelphia General Hospital, Department of Public Health	.06
Louie Sam, arrived by S. S. President Hoover July 14, 1937, Deposit made by a friend in San Francisco for benefit of alien	2.00

Unidentified—

The sum of $1 in envelope marked "$2.00 found in yard about June 1930. $1.00 given to John Lind 11/5/31", balance	$ 1.00
The sum of 36 cents in bottom of cash box,—source unknown	.36

It was noted that collections received are not deposited currently as received, but are allowed to accumulate until about the middle and near the end of each month. The last deposit is usually made two or three days before the end of the month and items received thereafter are not recorded, deposited, nor accounted for until the ensuing month.

During the period August 1 to 11, 1937, United States bonds in the sum of $500 were received by the immigration officer and transmitted to the Federal Reserve Bank for safekeeping. No current entries of such items are made in the accounting records until the end of the month at which time a list of the bonds received by the said bank is furnished to the immigration officer for inclusion in his accounts. The total of such bonds on deposit with the Federal Reserve Bank, San Francisco, at the close of business August 11, 1937, was reported as being $36,800.

Section 3642, Revised Statutes, requires that—

"All persons charged by law with the safe-keeping, transfer, and disbursement of the public moneys, other than those connected with the Post-Office Department, are required to keep an accurate entry of each sum received and of each payment or transfer."

Pursuant thereto all collections including trust funds and quasi-public moneys received by officers and employees of the United States in their official capacities for or on behalf of the Government should be currently entered in the records provided and a complete accounting for all such moneys received within the period whether deposited, disbursed, on hand, or in transit, rendered to this office. There is no authority for the practice of withholding from the records, even temporarily entries for collections received by an accountable officer of the Government in his official capacity.

All collections received by the accountable officer of the Immigration and Naturalization Service at San Francisco should be promptly deposited through the Federal Reserve Bank, to his official checking account with the Treasurer of the United States, and accounted for as "special deposits". See sections 3615 and 3621, Revised Statutes, also section 5492, Revised Statutes, as amended (section 177, Title 18, U. S. Code), General Accounting Office General Regulations Nos. 80, 87, Supplement No. 1 of General Regulations No. 40, and Treasury Department Circular No. 176 dated September 2, 1930.

In the event the collections hereinabove enumerated have not been taken into the accountable officer's accounts, the items pertaining to (a) Hospitalization should be deposited on certificate of deposit Treasury Form 1-Revised (through the Federal Reserve Bank of San Francisco), for credit to the appropriation for expenses of regulating immigration for the fiscal year in which the expenses were incurred (U. S. C. 18:176); the items pertaining to (b) Unofficial Use of Telephone Facilities, (c) Deposits to Guarantee Performance of Contracts, and (d) Funds Belonging to Aliens, etc., to whom refund can be made should be deposited on certificate of deposit Treasury Form 6599 and accounted for as special deposits. Moneys belonging to those aliens, etc., to whom refund cannot be made, as for example, Ali Mabaric $32, and the proceeds from the effects of John June should be deposited on Treasury Form

1-Revised for credit to the account "168881-Deposits of Unclaimed Moneys of Individuals whose Whereabouts are Unknown (name of individual)"; while the unidentified items amunting to $1.36 should be deposited for credit to the account "164880-Moneys Received from Persons Unknown".

2. Disbursing officer's checks numbered 1414 to 1420 were on hand signed in blank by Edward L. Haff. It was explained that Mr. Haff, who has no deputy or assistant disbursing officer, was on vacation and had signed the checks so that payment could be made for telegraph messages sent for immigrants and depositors' balances promptly refunded. Mr. Haff apparently did not feel inclined to require another employee to be bonded.

A check on the Treasurer of the United States, uncompleted as to payee and amount, when signed by the recognized disbursing officer and delivered into the custody of another, creates a needless hazard of public funds, which may be for a sum far in excess of the officer's bond. There is no lawful authority for such practice, and a procedure less hazardous should be adopted without delay. In this connection attention is called to Treasury Department Circular No. 423, dated June 2, 1930, which provides for the designation of an employee as an assistant to the specified disbursing officer, with authority to sign official checks drawn on the Treasurer of the United States in the name of such disbursing officer, followed by his own signature. There is also for consideration the desirability of securing authority pursuant to section 3620, Revised Statutes, to carry cash for disbursing purposes. The enforcement of the procedures prescribed for safeguarding the public moneys should not be left to personal preferences of individual employees.

3. Two series of deposit numbers are used concurrently by the depositor (the accountable officer) in preparing certificate of deposit, Treasury Form 1-Revised—one series for repayments to appropriations and the other for miscellaneous receipts.

Treasury instructions printed on the pads of certificates of deposit forms provide that "the 'deposit Numbers' * * * are to be inserted by the *depositor* and should be in numerical sequence, beginning with number 1 on July 1 of each year". The purpose of so numbering is to enable the administrative office, the depositary, the Treasury, and the General Accounting Office, to definitely identify a particular deposit with reference to which a question may have arisen. The numbering of all certificates of deposit (both Treasury Form 1-Revised and Treasury Form 6599) in one consecutive series also permits of readily detecting certificates of deposit not accounted for. The accountable officer should be directed to comply with the aforesaid instructions.

4. Charges for overtime compensation of inspectors, billed on Form No. 571, are collected at the station. The checks therefor, drawn usually on San Francisco banks and made payable to the Commissioner of Immigration and Naturalization, are attached to the original and collection voucher and sent to the Bureau in Washington for deposit, and are not taken into the accounts of the special disbursing agent.

The act of March 2, 1931, 46 Stat. 1467, providing for extra compensation for overtime service directs that it be paid by the master, owner, agent, or consignee of such vessel, etc., arriving in the United States from a foreign port, to the Secretary of Labor who shall pay the same to the several immigration officers and employees entitled thereto. Section 5 of the Permanent Appropriation Repeal Act of 1934, 48 Stat. 1228, amended the act of March 2, 1931, supra, to the extent of directing that payment for overtime services would be borne by the annual appropriations. Collections received for such overtime services are therefore for deposit into the Treasury as miscellaneous receipts, account "5315-Immigration Overtime Service".

It is believed that the requirements of law have been satisfactorily complied with if such collections are taken into the accounts of the local accountable officer (special disbursing agent or regional disbursing officer) and deposited in the Federal Reserve Bank or branch bank of the district in which the collection is made, for deposit to the credit of the Treasurer of the United States under the receipt account prescribed. A copy of the schedule of collections on which each collection is listed would then be transmitted to the Immigration and Naturalization Service in Washington (see General Regulations 87). Such procedure not only permits of covering the collections into the Treasury at an earlier date, eliminating the possibility of loss in transit, but insures compliance with section 3615, Revised Statutes, which provides that all collectors and receivers of public money of every description shall pay over to the Treasurer of the United States all public moneys collected by them or in their hands.

5. The station at Angel Island is not provided with telephone pay stations, as the result of which attorneys, aliens, and others use the official telephones to make calls to San Francisco and other points. The charge for each zone message is 3 ½ cents but for personal calls to San Francisco a deposit of 7 cents is required to be made with the telephone operator—the excess, it was stated, being credited to the depositor for a subsequent call. Interzone and long distance tolls are collected in the amounts charged, plus Federal tax. The funds received are turned over about the 20th of each month to the clerk in charge of the

accounts, who takes them into the accounts of the district director as "special deposits". When the monthly telephone voucher is passed for payment the amount on deposit is transmitted by official check to the Commissioner of Immigration and Naturalization in Washington, for payment to the telephone company.

The procedure of collecting for the unofficial use of office telephones and the accounting for the money as "special deposits" follow in a measure that prescribed by this office in General Regulations No. 40, supplements 2 and 3. However, there are several features here disclosed which indicate the need for administrative correction.

First, the regulations, supra, did not contemplate that the telephone facilities subscribed for by the Government would be made available to the general public to the extent here indicated.

Second, there is no authority for collecting excess amounts in anticipation of subsequent calls.

Third, the amounts collected should be taken into the accountable officer's accounts as of the day collected and not held out until the 20th of the month. It may be inferred that collections received during the period from the 21st to the end of the month are not included in the officer's accounts for the month in which collected. See sections 3643 and 3615, Revised Statutes.

Fourth, transmitting to the Washington office with the monthly telephone bill the amount deposited for payment to the telephone company in San Francisco and to the Collector of Internal Revenue (for the Federal taxes) invokes a complicated accounting transaction involving not only the accounts of the special disbursing agent but also those of the Chief Disbursing Officer, Division of Disbursement, in whose accounts the voucher for the telephone bills is included.

The objectionable telephone procedure can probably be eliminated by authorizing the telephone company to install at the Angel Island Station a public pay station through which all unofficial calls can be transmitted. It is further suggested that in the event the telephone comany installs a public pay station in a Government building in Angel Island Station that arrangements be made with the said company whereby the Government may receive a percentage of the receipts from the said pay station. Such amounts as are collected are for deposit into the Treasury as miscellaneous receipts, account "3230-Commissions on Telephone Pay Stations in Federal Buildings Outside of Washington, D. C."

6. The fresh water requirements of the immigration station at Angel Island are furnished by the War Department whose boat transports the water from Fort Mason, San Francisco, to tanks at Fort McDowell, also located on Angel Island, from which point a pipe line with meter installed has been constructed to deliver water, approximately 14,000 gallons per day, to the immigration station. It is estimated that in order to supply the additional water for the station it requires on extra trip of the boat per week, entailing additional expense of approximately $150 per month. Instead of reimbursing the War Department by check an arrangement was agreed upon whereby the Immigration Service will purchase annually under contract $1800 worth of fuel oil to be delivered to the War Department when needed either in one lot or in two or more installments.

From the foregoing it appears that the cost of the said water to the Immigration and Naturalization station at

Angel Island is approximately 36 cents per 1000 gallons which, it is understood, is not unreasonable under the circumstances. However, the arrangement under which payment for transporting fresh water is made to the Fort McDowell authorities in fuel oil purchased by the Immigration and Naturalization Service involves a principle of purchase and exchange of Government property which obviously is in contravention of the spirit and intent of the statutes regulating the accounting of appropriated moneys.

It is readily apparent that such practice would permit the purchasing and property officers of the Government to procure supplies authorized under their available appropriations and exchange them for other commodities, thereby accomplishing indirectly that which may not be authorized in the appropriation acts.

While in the instant case it now develops that the fuel oil was purchased for use in connection with the transporting of fresh water to the Immigration Station at Angel Island, the official accounting documents with reference thereto on file in this office indicate that the Immigration and Naturalization Service purchased under the Navy fuel oil contracts and paid for from its appropriations certain quantities of fuel oil ostensibly for consumption in vessels of the said service. To that extent the accounting as rendered is fictiticus and misleading.

It has long been held that any agency of the Federal Government may furnish supplies, services, etc., to another such agency, if it be in the interest of the Government so to do, and the appropriations are available therefor; the appropriations originally bearing the expense of the said supplies, services, etc., to be reimbursed in the amount of the cost thereof, which shall be payable from the applicable appropriations of the agency for which such supplies, services, etc., were furnished. See U. S. Code, Title 31, Section 686.

Steps should be taken to discontinue the aforesaid practice and instructions issued to reimburse the War Department for the cost of transporting the fresh water required by the Immigration and Naturalization station at Angel Island in the manner prescribed by this office in General Regulations No. 78-Revised.

7. Employees assigned to duties at the Angel Island Station are provided with transportation from San Francisco (pier No. 5) to Angel Island on the Government steamer *Angel Island* which operates on the following schedule:

Trip No.	1	2	3	4	5
	A. M.	A. M.	A. M.	P. M.	P. M.
Lv. San Francisco......	7:30	*8:45*	10:30	1:00	3.45
Lv. Angel Island......	8:05	9:45	12:10	2:30	*4:30*

Practically all of the said employees leave San Francisco on the 8:45 a. m. trip (which requires about ½-hour) and about 9:30 a. m. are at their desks. The closing bell rings at 4:20 p. m. to allow the employees time to put up their work and reach the boat which departs at 4:30 p. m. On Saturdays the closing bell rings at 12 noon making the actual time on duty (from 9:30 a. m. to noon) 2½ hours.

The hours of duty of Government employees in San Francisco are generally from 9 a. m. to 4:30 p. m. with one-half hour for lunch and on Saturdays from 9 a. m. to 1 p. m., and it appears that regulations issued by your Department to the field service under date of June 13, 1936, contemplate that duty of 39 hours per week is required of this class of employees. It will be seen from the foregoing that the loss of time to the Government per employee of the Angel Island Station amounts to about 5 hours a week.

While section 5 of the act of March 3, 1893, as amended by section 7 of the act of March 15, 1898, 30 Stat. 316, requiring "not less than seven hours of labor each day, except Sundays and days declared public holidays by law or Executive order" has been held (15 Comp. Gen. 1056) not to be applicable to employees in the field service, there is for consideration the act of March 3, 1931, which provides that with certain exceptions not here involved "on and after the effective date of this Act [March 3, 1931] four hours, exclusive of time for luncheon, shall constitute a day's work on Saturdays * * * for all civil employees of the Federal Government".

In this connection attention is also called to the provisions of the "vacation" and sick leave" acts of March 14, 1936, 49 Stat. 1161 and 1162, respectively, and to Executive Order No. 7409 dated July 9, 1936, prescribing regulations thereunder which specifically provide that employees shall be charged with minimum annual leave of 15 minutes when absent from their work.

As the shortening of the work day at the Angel Island Station is due to the boat schedules, supra, it is suggested that consideration be given to a revision thereof so that the employees may be at their designated posts for the required number of hours each day. Also, in view of the fact that the amount of annual leave for field employees is now definitely fixed and limited by the act of March 14, 1936, 49 Stat. 1161, and the regulations thereunder which make the granting of leave mandatory, it is essential that the same care be exercised in maintaining accurate detailed records of all leave taken, as is required for other objects of expenditure.

Advice as to the action taken will be appreciated.

Respectfully,
(Signed) R. N. ELLIOTT,
Acting Comptroller General of
the United States.

Department of Labor
Office of the Secretary
Washington

55685/667-A
November 22, 1937.

Honorable R. N. Elliott,
Acting Comptroller General of the United States,
Washington, D. C.

Sir:

I have before me your letter of the 28th ultimo, A-44009, addressed to the Secretary of Labor, with reference to the method by which accounts and other matters relating to the operation of the Immigration and Naturalization Service at the port of San Francisco, California, at the time of inspection, August 11, 1937, were kept.

The several topics have been brought to the attention of the Commissioner of Immigration and Naturalization and the following is the substance of his reply as to each: Collections not taken into the records at time of inspection, August 11, 1937:

The District Commissioner at San Francisco, California, has been instructed to follow the procedure outlined on page 3 of your letter with respect to depositing currently funds collected for hospitalization of aliens, deposits to guarantee performance of contracts, funds belonging to aliens in deportation cases, and other collections, including trust funds and quasi-public moneys received by him. It appears from his Account Current for October 1937 that he is following the procedure prescribed by your office.

Disbursing officer's checks signed in blank:

'We are pleased that you have brought this matter to our attention as we were not aware that the District Director had adopted such an arrangement, although it appears to have been his intention to facilitate the payment of funds to aliens while he was absent on annual leave. Instructions have been issued to discontinue the practice immediately.

The District Director also has been instructed to designate an employee as assistant to him, in accordance with Treasury Department Circular No. 423, dated June 2, 1930.

Cash balance for disbursing purposes:

The desirability of securing authority pursuant to section 3620, Revised Statutes, to carry cash for disbursing purposes, has been submitted to the District Commissioner for recommendation and your office will be further advised in this regard.

Use of two series of deposit numbers:

Instructions have been issued to the District Commissioner to discontinue this practice.

Collections on account of overtime services:

The present procedure for the handling of collections for overtime services of inspectors was established after discussion with your office, and the Commissioner of Immigration and Naturalization feels that the method now followed should not be changed as it has been in effect since 1931 and is working satisfactorily. However, the matter will be given further study and a supplemental report will be submitted to you in due course.

Extension of telephone facilities to the general public visiting Angel Island:

The District Commissioner at San Francisco has been instructed to contact the telephone company with a view to the installation of pay stations on Angel Island under arrangements whereby the Government may receive a percentage of the receipts therefrom.

Arrangement with War Department for the transportation of fresh water to Angel Island:

The existing arrangement for the transportation of fresh water was entered into on September 30, 1924, in the interests of economy, with the approval of the former Chief Coordinator H. C. Smither, former Second Assistant Secretary of Labor Robe Carl White and former Secretary of War John W. Weeks. However, in accordance with your recommendation, instructions have been issued to the District Commissioner whereby the War Department will be reimbursed for the cost of transporting the fresh water required at Angel Island, in accordance with the manner prescribed by you in General Regulations No. 78-Revised.

Schedules of ferryboat "Angel Island":

The District Commissioner has been instructed to readjust sailing schedules so that employees may be at their designated posts of duty for the required number of hours each day or be charged with the necessary annual leave to cover absences during the work period, in accordance with the provisions of the vacation and sick leave acts of March 14, 1936, and Executive Order of July 9, 1936.

I desire to assure you that this office appreciates your action in bringing the foregoing matters to its attention and and that it will be pleased to cooperate in every possible way in maintaining proper accounting records.

Respectfully,
(Signed) RICHARDSON SAUNDERS,
(Richardson Saunders)
Assistant to the Secretary.

Comptroller General of the United States
Washington

A-44009 October 9, 1939.

The Honorable
The Secretary of Labor.

Madam:

Investigation by representatives of this office of the accounts and records of the Angel Island Station Immigration and Naturalization Service, San Francisco, Calif., brings out matters to which it is considered advisable to invite your attention and which are reported substantially as follows:

1. Approximately every seven weeks a group of aliens subject to deportation is brought to San Francisco from New York (Ellis Island) and way stations by a deportation officer connected with the Washington office. As aliens are turned over to the deportation officer by authorities along the route of travel, it becomes necessary for the deportation officer to take physical possession of funds and valuables for safe-keeping until such time as the aliens are delivered in San Francisco. The money and effects are placed in personal-property envelopes and these containers along with deportation and transfer documents are carried in one large manila envelope. The transcontinental train arrives in San Francisco about 10 p. m. and is met by Mr. J. X. Strand, inspector-in-charge of the Deportation and Detention Division at Angel Island. Mr. Strand accepts from the officer in charge of the group the large envelope containing the official papers and 'aliens' funds and as no provision has been made for safeguarding such funds Mr. Strand is obliged to take the money to his home on the mainland where it is kept overnight and carried on his person to Angel Island the following morning. The aliens

are kept in the guarded railroad cars at the San Francisco terminal of the Southern Pacific Railroad the night of arrival and are not turned over to the local immigration authorities until the following morning, being transferred to Angel Island by Government boat. Neither Mr. Strand nor the deportation officer in charge of transporting the aliens is bonded for safeguarding funds entrusted in their care.

A similar condition exists in connection with transfer of aliens from Seattle, Wash., and Portland, Oreg. Such deportation parties from the north arrive at Oakland in the evening and, as there is no special car in which they can be detained overnight, they are met at a pier on the Oakland-Berkeley side of the bay and transferred to Angel Island by launch. The money and valuables in possession of the guards with arriving aliens are delivered to the Angel Island guard who issues a receipt for the property. The guards from Seattle or Portland apparently proceed to San Francisco, to begin their 24-hour rest period that night. The local guard, however, is entrusted with the funds until his shift is ended at midnight when it becomes necessary to turn the property over to his successor on the 12:01 to 8 a. m. shift. Then at 8 o'clock the third guard receives the money and effects for safe-keeping until such time as they can be turned over to the agent-cashier, the bonded officer.

The reported situation warrants prompt administrative action to terminate a procedure under which employees are permitted to retain possession of funds, for which the United States is responsible, on their person or in their homes. Due to the arrival of the aliens and their funds at San Francisco and Oakland, Calif., after the usual business hours, there is recognized the administrative problem of effecting the transfer of the funds from the guards to the agent-cashier at Angel Island, who is a responsible bonded offcer, but no reason is apparent why such funds cannot be forwarded to the agent cashier through the use of the post-office facilities. There is suggested for your consideration the issuance of instructions which will require that the funds of aliens transferred from Ellis Island, N. Y., Seattle, Wash., Portland, Oreg., and intermediate points to Angel Island be mailed directly to the responsible officer at the point of destination.

2. In the previous report of inspection it was stated that telephone pay stations are not provided for the public, as the result of which attorneys, aliens, and others use the official telephones to make calls to San Francisco and other points. The charge to the Government for each zone message is 3½ cents but for personal calls to San Francisco a deposit of 7 cents is required, the excess being credited to the depositor for a subsequent call. Subsequent thereto the Government installed a public pay station and now charges the public 5 cents for each zone call to San Francisco. The flat charge of 5 cents should result in revenue to the Government but the Angel Island Station takes advantage of the 1½ cent profit by paying to the telephone company all funds received and thus reducing the station's monthly telephone bill accordingly.

Collections from the Government-owned public pay station are transmitted to the San Francisco regional disbursing office as special deposits where they remain to the official credit of G. F. Allen, symbol 891-820, "0337.13 Miscellaneous Items" until the monthly voucher for telephone service is submitted to Washington for payment. When preparing the voucher the clerk at Angel Island debits "Special Deposits" with the nearest multiple of 3½ cents that will expend the amount on deposit with the regional disbursing office, and charges the balance of the statement to the appropriation. As the voucher thus prepared becomes payable in part from special deposits held by the regional disbursing officer, and in part by appropriated moneys advanced to the Chief Disbursing Officer in Washington, it is necessary for the Washington office to request by radio a transfer of funds to symbol 891-804 from the regional disbursing office (symbol 891-820) before payment can be accomplished.

It would thus appear that the practice of applying the total amount of special deposits, representing the flat charge to the public of 5 cents per call over the Government-installed public pay station has the effect of reducing the station's monthly telephone bill for official calls, which practice augments the regular appropriation to the extent of the 1½ cents representing commissions received. Periodic bills for telephone service are payable from appropriated funds for official calls and from special deposits for services over the public pay station only to the extent of the cost of operation, but amounts in excess of such operating costs representing commissions of 1½ cents per call at Angel Island are for deposit into the Treasury as miscellaneous receipts, account "3230—Commissions on Telephone Pay Stations in Federal Buildings Outside of Washington, D. C."

3. The 39-hour-weekly employees are working approximately 6 hours 55 minutes from Monday to Friday and 2 hours 55 minutes on Saturday, a total of 37½ hours to conform to a transportation schedule as follows:

"Trip No.	1	2	3	4*	5
Leave	A. M.	A. M.	A. M.	P. M.	P. M.
San Francisco	7:30	8:45	10:30	1:00	3:30
Leave			P. M.		
Angel Island	8:05	9:45	12:10	2:30	4:35

* Except Saturdays."

The matter of permitting employees at Angel Island Station to be at their post of duty for less than the required number of hours was brought to your attention in letter of this office, dated October 28, 1937, in which it was suggested that consideration be given to a revision of existing steamer schedule so that employees could be at their post for the required number of hours. In reply thereto it was stated that—

> "The District Commissioner has been instructed to readjust sailing schedules so that employees may be at their designated posts of duty for the required number of hours each day or be charged with the necessary annual leave to cover absences during the work period, in accordance with the provisions of the vacation and sick leave acts of March 14, 1936, and Executive Order of July 9, 1936."

Since the official duty hours of Government employees may not be administratively reduced without a compensating adjustment in their available annual leave or compensation, it is again suggested that action be taken to adjust the operating schedule of the Government steamer.

Advice as to the action taken will be appreciated.

Respectfully,
(Signed) FRED H. BROWN,
Comptroller General of the
United States.

U. S. Department of Labor
Immigration and Naturalization Service
Washington

55685/667-A

November 2, 1939.

Honorable Fred H. Brown,
Comptroller General of the United States,
Washington D. C.

Sir:

Under date of October 9, 1939 (A-44009), you advised this Department that an investigation of the accounts and records of the Angel Island Station, Immigration and Naturalization Service, San Francisco, California, brought out certain matters which required adjustment and requested advice as to the action taken in the premises.

The action taken with respect to the several matters referred to by you is as follows:

(1) *Personal property and funds of alien deports.* The District Director of Immigration and Naturalization at San Francisco has been instructed to discontinue the practice of having an officer take these funds to his home for safekeeping and to arrange for the agent cashier or his alternate, both bonded officers, to meet the trains upon arrival, take over the custody of these funds and valuables, place them in a locked-bag, and transport them via the night boat to Angel Island for safekeeping.

(2) *Telephone collections.* Collections from the Government-owned pay station in excess of the contract rate of 3½c will be deposited into the Treasury as "Miscellaneous Receipts", account "3230—Commissions on Telephone Pay Stations in Federal Buildings Outside Washington, D. C."

(3) *Hours of duty of employees.* The morning boat schedule will be advanced from 8:45 a. m. to 8:40 a. m., and the afternoon boat will leave the Island at 4:35 p. m. Moreover, in accordance with a ballot vote of the majority of the employees at that station, the lunch period will be fifteen minutes instead of thirty minutes. This will provide a total of twenty-five minutes additional working time, except Saturday. On Saturday departure of the boat will be deferred until 1:15 p. m., in order to provide for a four-hour minimum working period on that day.

Incidentally, attention is called to the fact that it is exceedingly difficult to make adjustments in the ferry boat schedule because the Service marine force, who are eight-hour employees, is sufficient to properly man but one vessel on a daily schedule basis. The SS Angel Island is berthed at Pier 5, San Francisco, and maintains ferry service starting the first trip at 7:30 a. m. and finishing the last trip at Pier 5 at about 5:00 p. m. Preliminary preparations demand the reporting of the fireman at 6:00 a. m. and others of the crew at 7:00 a. m. and 7:15 a. m., and closing arrangements require same to report off duty at 5:15 p. m. or later. While duty periods are staggered insofar as possible, all marine employees are compelled to work overtime under the present schedule.

Respectfully,
(Signed) JAMES L. HOUGHTELING,
(James L. Houghteling)
Commissioner.

Comptroller General of the United States
Washington

A-44009 August 20, 1940.

The Honorable,
The Attorney General.

Sir:

By office letter of October 28, 1937, and again by office letter dated October 9, 1939, there was called to the attention of the Secretary of Labor the fact that the weekly hours of duty of the employees of the Angel Island Station, Immigation Service, were less than 39, and the usual number of hours worked per week by other Federal employees in the same locality, apparently with the approval or acquiescence of the administrative authority. It was administratively reported that the shorter weekly hours were necessary in order (1) that the employees may be transported to and from their post of duty by the only means of transportation available—a ferryboat or steamer operated by the Government, and (2) that the employees be excused on Saturday at noon because of the California State half holiday beginning at noon on Saturday.

It is understood that, at the suggestion of this office, a change was made in the ferryboat schedule, resulting in an increase of the hours of work of the employees, but that it now is deemed essential for administrative reasons to return to the old ferryboat schedule and hours of work.

The fixing of the number of hours of work per week for field employees, as well as the determination of whether a particular class of such employees should be at their desks during the tour of duty administratively fixed, are matters primarily for administrative consideration, as is, also, the duty of carrying out the provisions of the act of March 3, 1931, 46 Stat. 1482, which prescribes four hours as the maximum number of hours' work on Saturday. Therefore, whatever action has been or may be taken to bring about uniformity in the hours of duty with respect to field employees of the Immigration Service in the San Francisco area must be the action of the administrative office, that is, by or under your direction. It may be said, however, that if the shortening of the work week of these particular employees on duty at Angel Island is deemed by your Department to be essential, due to the unusual existing conditions, this office will interpose no further objection thereto.

Respectfully,

(Signed) R. N. ELLIOTT,

Acting Comptroller General of
the United States.

Department of Justice
Washington

October 3, 1940.

The Honorable,
The Comptroller General of the United States,
Washington, D. C.

Sir:

Reference is made to your letter dated August 20, 1940 (A-44009), wherein you call attention to previous correspondence with the Secretary of Labor to the effect that the employees of the Angel Island Station of the Immigration and Naturalization Service have devoted fewer hours of duty than that of other Federal employees in the same locality.

You are advised that steps are being taken by this Department to establish standard offices hours at the Angel Island Station.

Sincerely yours,
(Signed) T. D. QUINN,
Administrative Assistant To
the Attorney General.

(This volume, pages 4693 to 4903 was designated as Exhibit B to the designation of the Record by Appellants.)

Exhibits Identified and Offered in Evidence by Plaintiffs, Objections Made to Their Introduction by Defendants Sustained and Admission in Evidence Refused.

4606 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 32.

Plaintiffs' Exhibit No. 32 for Identification is a printed booklet consisted of 12 numbered pages and cover, entitled, "United States Fuel Administration Agreement and

Award of Arbitration Committee for Mines in Southeastern Kentucky and East Tennessee, Knoxville, Tennessee, November 10, 1917."

The Agreement and the Award is dated September 29, 1917, and is directed "To the Representatives of the Operators and the Mine Workers of Southeastern Kentucky and Eastern Tennessee," and purports to be signed by Rembrandt Peale, Umpire, and E. C. Mahan, L. C. Gunter, Van A. Bittner and William Feeney, Special Arbitration Committee, and bears the following: "Approved: H. A. Garfield, Fuel Administrator, Washington, D. C., November 6, 1917."

The Agreement and Award relates to wages, hours of labor and working conditions and other matters relating to employer and employee relationships. Included is the following provision:

"Hours of Labor and Working Conditions: The number of hours constituting a day's work shall be reduced from ten (10) hours to eight (8) hours. The wages scale as above outlined is based on eight hours' work.

"It is agreed that blacksmiths, blacksmiths' helpers, power house, power station employees, pumpman and teamsters will, when desired by the operators, work as much as ten hours per day, they to be paid for the extra time at the same proportionate rate per hour. In event of emergencies all classes of labor are to work extra time when called upon at the same proportionate rate per hour.

An eight (8) hour day means eight hours work at the usual working place of all classes of employees. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night.

"To insurance eight (8) hours' work the labor necessary to transport men to and from working places are to follow practices heretofore in use for that purpose.

"Drivers shall take their mules to and from the stable at the time required, and the time in so doing shall not include any part of the day's labor."

4608 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 31.

Plaintiffs' Exhibit No. 31 for Identification is a printed booklet consisting of 7 numbered pages and cover, entitled, "Recommendations of United States Fuel Administrator, December 14, 1917," and containing an acceptance dated Birmingham, Alabama, January 28, 1918, by the Alabama Coal Operators of the Suggestions made by Rembrandt Peale, representing the United States Fuel Administrator, in his letter dated Washington, D. C., December 14, 1917, and also containing the recommendations of the United States Fuel Administration as set forth in said letter dated Washington, D. C., December 14, 1917, said recommendations relating to a number of matters in dispute between the coal operators and coal mine workers of Alabama, one of such recommendations being in words and figures as follows:

"12th. The United States Fuel Administrator urges upon the Operators and Mine Workers of Alabama that the question of the hours of labor that constitute the day's work be settled and agreed upon in the terms set forth in the Operators' public statement of December 6th, 1917, published December 10th, 1917, as follows:

'the operators are willing to put in effect in Alabama, for the duration of the war, if you desire it done, the working hours now in force in the Tennessee-Kentucky field; that is, employees shall be at their working places at 7:30 a. m., and shooting time in the mines shall be 4:00 p. m., with not more than thirty minutes to be consumed by employees in lunch or dinner hour. Day labor necessary for the transporting and dumping of coal that may be in transit at quitting time shall continue working until such coal is loaded on railroad cars, it being understood that no more than one-half hour may be required for this work, which will be performed by the necessary day labor involved without additional compensation.'"

4609 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 46.

Copy.

The White House.

Washington, 19 March, 1920.

Gentlemen:

I am transmitting to you herewith a copy of the report and award of the Bituminous Coal Commission appointed to adjust matters in controversy between the bituminous coal miners and operators of the country.

In accordance with instructions in my letter of appointment to the Commission and memoranda attached thereto and the agreements by mine workers and operators to abide by the report and award of the Commission, this report and award is the basis upon which the wage schedule agreements between the mine workers and operators shall be made.

Operators and miners should, therefore, make arrangements for convening the necessary joint conferences as soon as possible to make such changes in the terms, provisions and conditions, mining rates and wage schedules as are set forth in this report and award.

It is essential to the public welfare that the agreements be concluded at the earliest date practicable so that the uncertainty as to fuel supply may be ended and that consumers may be able to make contracts for their coal supply and also that the recommendations contained in the report as to the storage of coal by consumers may be of service this year.

I also inclose as information copy of minority report by one member of the Commission. This minority report concurs with the report of the Commission as to wage for miners, though dissenting as to wage for day workers, and in part concurs and in part dissents on other points. I regret that the members of the Commission were not unanimous on all points as I had expressed the hope they would be, but the report of the majority is none the less the report of the Commission and binding as such.

I take it that neither party will raise any question, and I am sure that no question can properly be raised, as to the binding character of the award, notwithstanding the fact that it is not unanimous. On December 10th, 1919, the miners, without qualification, agreed to submit all questions to a decision of a commission of three persons to be appointed by me, the report of such commission to be made the basis of a new wage agreement. This definite and unqualified acceptance did not in any way limit the power which any such commission is always understood to have, in the absence of agreement to the controversy, that it may reach a decision by majority vote. The acceptance of the operators was equally unqualified on this point. This condition was in no wise changed by my subsequent action on December 19th, in expressing a belief as to the desirability of importance of unanimous action.

My appointment of the Commission indicated that the power to fix the price of coal would not be conferred upon the Commission except for its unanimous action and therefore it is clear that such power to fix coal prices should not be conferred on the Commission.

I have carefully considered the question whether the war power of the Lever Act should be temporarily invoked by me, despite the absence of any action of the Commission so recommending, to continue temporarily the control of prices, and have concluded that it is not expedient for me to exercise any such price fixing control so that, on and after April 1st, 1920, no Government maximum prices will be enforced.

There is at present no provision of law for fixing new coal prices for peace time purposes, and unless and until some grave emergency shall arise, which in my judgment has a relation to the emergency purposes of the Lever Act, I would not feel justified in fixing coal prices with reference to future conditions of production.

I am aware that at present, as a result of the shortage created by the coal strike, and of the consequent interference with transportation and as a result, also of the exceptionally unfavorable winter, the demand for coal continues active. I desire to impress upon the coal operators the extreme importance of not only of their complying to the fullest extent with the laws against combinations in restraint of trade and against profiteering, but also of their exerting themselves affirmatively to prevent exacting of unreasonable prices for coal. I am sure the public fully appreciates the desirability, where practicable, of leaving commercial transactions untrammeled but at the same time I am satisfied the public will find ways to protect itself if such liberal policy shall appear to result in unreasonably high prices.

Sincerely yours,
(Signed) WOODROW WILSON.

G. B. McCormack, Esq.,
President Alabama Coal Operators, Asso.,
1303-5 American Trust & Savings Bank Bldg.,
Birmingham, Alabama.

John Kennamer, Esq.,
President, District #20,
913-14 Farley Building,
Birmingham, Alabama.

4612 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 33.

Plaintiffs' Exhibit No. 33 for Identification is form of the agreement executed between United Mine Workers of America, District 20, and coal operators of Alabama (Tr., Vol. 10, P. 1458), known as the Beltona Contract, being an agreement covering hours of labor, conditions of employment, etc., consisting of four typewritten pages, and containing, among other provisions, the following:

"Hours of Labor: An eight-hour day will be in effect, which means eight hours actual work at the usual working places. The time required in going to and from the usual working places shall not be considered a part of the eight-hour day. Starting time will be not later than seven A. M. with not more than thirty minutes for lunch.

"Employment of Miners: All miners will be directly employed by the company and all coal mining will be paid for at tonnage rates provided for in this agreement."

4613 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 14.

Plaintiffs' Exhibit No. 14 for Identification is a printed pamphlet consisting of sixteen printed pages and cover, the title page being as follows: "Approved Code No. 24—Reprint; Registry No. 702-45. National Recovery Administration—Code of Fair Competition for the Bituminous Coal Industry as Approved on September 18, 1933, by President Roosevelt. Includes Amendments 1-3 Incl."

The pertinent portions thereof are as follows:

Approved Code No. 24.

Code of Fair Competition for the Bituminous Coal Industry

As Approved on September 18, 1933 by President Roosevelt.

Executive Order.

"An application having been duly made, pursuant to and in full compliance with the provisions of Title I, of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Bituminous Coal Industry, and hearings having been held thereon and the Administrator having rendered his report containing an analysis of the said Code of Fair Competition together with his recommendations and findings with respect thereto, and the Administrator having found that the said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act and that the requirements of clauses (1) and (2) of subsection (a) of Section 3 of the said Act have been met:

Now, Therefore, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do adopt and approve the report, recommendations, and findings of the Administrator and do order that the said Code of Fair Competition be and is hereby approved, subject to the following conditions:

* * * * * * * *

FRANKLIN D. ROOSEVELT.

Approval recommended:
HUGH S. JOHNSON,
Administrator.

The White House,
September 18, 1933.

"September 17, 1933.

General Hugh S. Johnson,
Administrator, National Recovery Administration,
Washington, D. C.

"Dear Sir:

I presenet herewith for your consideration and recommendation to the President the Code of Fair Competition for the Bituminous Coal Industry.

"Efforts were under way to secure the cooperation of the Bituminous Coal operators prior to and in anticipation of the passage of the National Industrial Recovery Act.

"The state of utter disorganization in the industry involving the prevalence of unfair competitive practices, particularly in the payment of low wages in order to permit of unreasonably low coal prices, furnished a good example of the effects of unrestrained competition in an industry capable of great over-production in relation to existing consumer demands. In numerous ways the Bituminous Coal Industry has furnished more convincing evidence of the need for the integrating force of the National Industrial Recovery Act than any other industry in the nation.

"The initial and immediate activity of the Administrator and the present writer after your appointment was an effort to bring about a greater coordination and cooperation between the operators in the different sections of the country in this industry and largely in response to this effort there came into being the Northern Coal Control Association and the Smokeless Appalachian Coal Association, representing almost all producers in the Appalachian coal area which produces approximately 70% of the national Bituminous Coal Tonnage. These associations join in presenting a Code of Fair Competition, this being a remarkable exhibition of cooperation among coal produces who have been engaged for a generation in bitter competitive operations. Other associations in various regions presented separate Codes as did certain groups of individual producers thus offered to the Administration the problem of harmonizing in some manner the divergent views represented in some twenty-eight different Codes.

"This industry also presented the unique problem of one in which there was far-reaching organization of labor on an industrial basis. The United Mine Workers of

America having contracts with many operators in many fields and claiming organization of workers in many other fields where no contractual relations existed.

"The difficulty of reconciling all the conflicting elements in this situation can hardly be overemphasized. During the progress of discussion following the public hearings representatives of the Appalachian Associations requested the aid of the Administration in facilitating the negotiation of a contract between these associations and the United Mine Workers of America, and it was evident to the Administration that this step having been taken a successful conclusion to these negotiations was of the utmost importance in bringing about the submission of a code for the industry as a whole.

* * * * * *

"The Code as recommended complies in all respects with the pertinent provisions of Title I of the Act. The groups submitting the code impose no inequitable restrictions on admission to membership therein and were truly representative of the Bituminous Industry.

"The Code as recommended is not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of Title I of the National Industrial Recovery Act.

"From evidence adduced during the hearing and all available information, it is believed that this code as now proposed and revised represents an effective, practical, equitable solution for this industry, and its approval as herewith submitted is recommended.

"Respectfully submitted,
K. M. SIMPSON,
Deputy Administrator.

Approved:
HUGH S. JOHNSON,
Administrator.

Code of Fair Competition
for the
Bituminous Coal Industry.

Article I—Purposes.

To effectuate the policies of Title I of the National Industrial Recovery Act, the following provisions are submitted as a Code of Fair Competition for the bituminous coal industry and upon approval by the President shall be the standards of fair competition for this Industry.

Article II—Definitions.

As used in this Code the term "Industry" as applied to the Bituminous Coal Industry means the production and original sale of all kinds of coal (except anthracite), lignite, and the production and original sale of coke other than by-product coke.

The term "employer" includes any person employing labor in any phase of the industry.

The term "employee' includes all persons employed in the industry.

The term "Administrator" means the official designated by the President to administer the National Industrial Recovery Act.

Article III—Maximum Hours of Labor.

No employee, except members of the executive, supervisory, clerical, technical and confidential personnel, shall be employed in excess of seven hours per day and five days per week, subject to the exceptions hereinafter stated.

Seven hours of labor shall constitute a day's work and this means seven hours work at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid on the day or the tonnage or other piecework basis; except in cases of accident which temporarily necessitate longer hours for those required on account thereof; and also excepting that number of workers in each mine whose daily work includes the handling of man-trips and those required to remain on duty while men are entering and leaving the mine.

* * * * * * *

Article IV—Minimum Rates of Pay.

From April 1, 1934 to April 1, 1935 the basic minimum rate for inside skilled labor and the basic minimum rate for outside common labor shall be the rate hereinafter set forth in Schedule "A" for each district therein described for each such classification of labor, with the understanding that other classifications of employees will maintain their customary differentials above or below said basic minimum rates.

To secure the parity between minimum rates for day labor and minimum pay for work performed on a tonnage or other piece work basis, the latter shall be determined by the following increases over existing rates in all of the Districts of Schedule "A" except as hereinafter expressly provided:

On the basis of the 2,000 pound ton, an increase of 10 cents per ton for pick mining; 8 cents per ton for machine mining; an increase of 1 cent per ton for cutting, and for all yardage and dead-work rates an increase of 9 percent.

In addition to the increase above provided the minimum rates for tonnage and other piece work in Districts B, G, H, J and J-1, shall be further increased by an amount sufficient to maintain the parity between pay for such tonnage and piece work and the basic minimum rates for day labor as prescribed for such Districts in Schedule "A"[2].

* * * * * * * *

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[2] Amendment No. 1.—Approved Mar. 31, 1934.

SCHEDULE A.

Basic Minimum Rates.

	Basic Minimum Rates			
	Minimum Inside Skilled Labor		Minimum Outside Common Labor	
	Per Day	Per Hour	Per Day	Per Hour
District A:				
Pennsylvania	$5.00	$0.714	$4.00	$0.571
Ohio	5.00	.714	4.00	.571
Lower Peninsula of Michigan	5.00	.714	4.00	.571
Panhandle District of West Virginia	5.00	.714	4.00	.571
District B:				
Northern West Virginia	5.00	.714	4.00	.571
District C:				
Southern West Virginia	4.60	.657	3.60	.514
Eastern Kentucky	4.60	.657	3.60	.514
Upper Potomac District of West Virginia	4.60	.657	3.60	.514
Maryland	4.60	.657	3.60	.514
Virginia	4.60	.657	3.60	.514
Northern Tennessee	4.60	.657	3.60	.514

	Basic Minimum Rates			
	Minimum Inside Skilled Labor		Minimum Outside Common Labor	
	Per Day	Per Hour	Per Day	Per Hour
District D: Indiana	4.57	.655	4.20	.600
District E: Illinois	5.00	.714	4.00	.571
District F:				
Iowa	4.70	.671	4.00	.571
Wayne and Appanoose Counties, Iowa	4.56	.651	4.00	.571
District G:				
Missouri, Kansas, Arkansas and Oklahoma, except shaft, drift, or slope mines in those states	4.35	.621	3.75	.536
Shaft, drift and slope mines in Missouri, Kansas, Arkansas and Oklahoma	4.00	.571	3.53	.504
District H: Western Kentucky	4.60	.657	3.75	.536
District J:				
Alabama	3.80	.542	2.80	.400
Georgia	3.80	.542	2.80	.400
Southern Tennessee, Hamilton and Rhea Counties	3.80	.542	2.80	.400

District J-1: Marion, Grundy, Sequatchie, White, Van Buren, Warren and Bledsoe Counties in the State of Tennessee	4.24	.604	3.24	.462
District K:				
New Mexico	5.10	.728	4.10	.586
Southern Colorado	5.10	.728	4.10	.586
District L: Northern Colorado	5.25	.750	4.25	.607
District M: Utah	5.44	.777	4.48	.640
District N:				
Southern Wyoming	5.42	.775	4.44	.635
Northern Wyoming	5.42	.775	4.54	.649
District O: Montana	5.63	.805	4.82	.689
District P: Washington	5.40	.771	4.00	.571
District Q:				
North Dakota	4.50	.643	3.70	.529
South Dakota	4.50	.643	3.70	.529

4620 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 25.

1617 Pennsylvania Boulevard,
Philadelphia, Pa., July 9, 1940.

Col. Philip B. Fleming, Administrator,
Wage & Hour Division,
Department of Labor,
Washington, D. C.

Dear Mr. Administrator:

As a result of certain investigations which have been conducted by the Wage & Hour Division at bituminous coal mines in Pennsylvania, particularly at the Revloc shaft of the Monroe Coal Mining Company, and a conference that has been held by your Supervising Inspector, Mr. Caffey, at Pittsburgh, Pa., with a committee of the Western Pennsylvania Coal Operators' Association concerning the application of the Fair Labor Standards Act of the bituminous coal mining industry, certain questions have arisen that are disturbing to both employers and employees within the industry. These uncertainties have been continuing for some time and are causing much concern to the mine workers and the mine operators, especially with reference to "travel time".

Today, the Negotiating Committee of the Appalachian Wage Conference, namely: Messrs. J. D. A. Morrow, President of Pittsburgh Coal Company; L. T. Putnam of the Raleigh Wyoming Mining Company, Beckley, W. Va.; L. C. Gunter of the Southern Appalachian Coal Operators' Association, Knoxville, Tenn.; Charles O'Neill, President of United Eastern Coal Sales Corporation, New York City; C. E. Cowan, Vice President of Monroe Coal Mining Company; Frederick H. Knight, Counsel for Monroe Coal Mining Company; W. L. Robinson, President of the Youghiogheny & Ohio Coal Company and Chairman of the Appalachian Wage Conference on the one hand, and Mr. Earl E. Houck, Director of the Legal Department of the United Mine Workers of America, met with Mr. Dorsey, Regional Director, Philadelphia, Pa., and Mr. Gallagher, Regional Counsel, Philadelphia, Pa., at which time these questions were discussed at length, particularly the application of the Act as to the questions of hours of work in the bituminous coal industry.

The mine workers and the mine operators present presented their views to representatives of the Wage and Hour Division, as to the provisions of the Appalachian Wage Agreement covering maximum hours and working time. We have filed with the Division copy of the Appalachian Wage Agreement, and the entire provision as to maximum hours and working time is included therein. The pertinent language, however, is "Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis * * *." The Appalachian Wage Agreement is the basic agreement for the bituminous mines in the States of Pennsylvania, Ohio, West Virginia, Virginia, Eastern Kentucky, Southeastern Tennessee and Maryland. In this territory there are several thousand rail shipping mines employing from 300,000 to 325,000 men, and some twenty-three operating districts. Each of the districts work out a local wage agreement covering its own territory, subject, however to the provision that it must include within it all of the provisions of the Appalachian Agreement.

The mines in the Appalachian region produce 70% of the total bituminous coal produced in the United States annually. Also, the Appalachian Agreement is used by the United Mine Workers of America as a basic agreement upon which the district agreements of the remaining 30% of the country is predicated.

The United Mine Workers of America and coal operators of the United States have been negotiating wage agreements for a period of fifty years. The Appalachian Agreement, covering as it does a great number of men and mines, has been worked out over that period of time and covers within its general provisions myriad wage rates, conditions of work, and hours of employment. This agreement, with its twenty-three supplemental agreements, constitutes a whole document. In these conferences, ~~of course, hours~~ of work has been one of the principal matters of consideration during this period of time. Hours of work with wage rates constitute the heart of any such agreement. In this basic industry we have provided for seven-hour days, five-day weeks, thirty-five hours per week, with high rates of pay. The basic inside a day rate in the North is $.857 per hour, and in the South it is $.80 per hour. The underground workers are paid on this basis; with maximum rates for mobile loading machine operators, approximately $1.09 per hour. In addition, the agreement provides, "work by mine workers paid by hour or day in excess of seven hours in one day, or thirty-five hours in any one week, shall be paid for at the rate of time and one-half * * *." It is our opinion that these substantive provisions of the agreement are among the highest standards of labor provided in any industry in the United States, both as to hours of working time and as to wages paid. There is full and complete understanding in the industry between employer and employees as to the application of these provisions. This method of measuring the working time at the places of work has been the standard provision in the basic wage agreements for almost fifty years and is the result of collective bargaining in its complete sense.

There are many reasons why the provision as to working time has been set out as provided by this agreement. The impracticability of measuring time by any other method is inherent in the very nature of mining coal. Coal mines are sometimes very extensive. When they are first opened up, the working places are, of course, closer by and near to the opening of the mine. In such cases there is no problem of either transportation of the men to the working places or time consumed in reaching them; but as mines grow older, the working places move farther and farther away from the portal or opening of the mine, and as such conditions develop, it becomes necessary for provision to be made for transportation of the men over long distances to their working places. This is usually provided by what is known in the industry as "man trips". These trips are scheduled to leave the outside or opening of the mine at a certain hour, so that all the employees will reach their working places by the hour at which work regularly begins at the working places throughout the mine, and these trips are also scheduled to leave the inside of the mine when the day's work is done, at the conclusion of the seven-hour period of work at the working places.

Among other provisions of the agreement, there is provided a time for starting the day's work and a lunch period, as well as a time for expiration of the work day. There is some variation in this, depending upon local conditions as to the starting and quitting time at the various collieries. The agreement provides for cetrain tolerance. In any event, the starting and quitting time are no more than seven hours apart, exclusive of the lunch period.

In the many conferences that have been held over this period of fifty years, naturally all manner of suggestions and proposals for amplification or amendment of the agreement has been made both by the mine workers and the operators.

The uniform high rates of pay that have always been included in the wage agreement of the mining industry contemplate the employee's working day beginning when he arrives at his usual working place. Hence, travel time was never considered as a part of the agreement or obligation of the employer to pay for in this industry, nor as hours worked by the employees, and this has been the case since the eight-hour day was established in the industry—April 1, 1898.

It is urged that any ruling requiring such a change in the custom, tradition and contract provision so as to change the work day from "seven hours' work in the mines at the usual working places" to any new standard for the measurement of time worked, and to the adjustment of wage rates made necessary thereby, would create so much confusion in the bituminous industry as to result in complete chaos, and would probably result in a complete stoppage of work at practically all of the coal mines in the United States. Such a ruling, moreover, would establish such diversity of time actually spent at productive work as between different bituminous coal mines and within each mine that there would be no basis on which any general wage scales could be predicated, collective bargaining would therefore be rendered impossible throughout this industry, and the very purpose of the Fair Labor Standards Act would be defeated. In such an event, it would make necessary the reassembling of the Appalachian Joint Wage Conference and it would be faced with an issue that would be almost impossible of solution by agreement, resulting in an industrial conflict that could paralyze the nation. This would be a most unhappy result to flow from an act that was passed by the Congress to aid workers in industries that had unreasonably long hours and unreasonably low rates of pay, as contrasted with the short hours and the high rates of pay in the bituminous coal mines. The great amount of money involved in the case of extra payment by the operators or the great changes that would be required in the rates of pay to the miners, should any change in the present contract be necessary by reason of a new standard for the measurement of time worked, is so serious that a negotiated adjustment would seem to be impossible.

For the foregoing reasons, we believe that your Division should accept the standards of wages and hours of work, and the definition of working time, as set forth in the Appalachian Agreement (which embodies the customs and traditions of the bituminous mining industry), as complying both with the provisions of the Fair Labor Standards Act and of Interpretative Bulletin No. 13, to the effect that "reasonable standards agreed upon between the employer and the employee will be accepted for the purposes of the Act".

We therefore respectfully request that your Division issue a supplement to Interpretative Bulletin No. 13, stating that the standards of wages and hours of work, and definition of working time, set forth in the Appalachian Agreement, entered into on May 12, 1939, between twenty-three district associations of bituminous coal operators comprising the Appalachian coal producing area and the International Union, United Mine Workers of America, and the several district agreements based thereon, conform to and satisfy the requirements of the Wage and Hour Act.

Respectfully submitted,

For the United Mine Workers of America:
(S.) EARL E. HOUCK,
Director of the Legal Department.

For the Operators:

(S.) W. L. ROBISON,
Chairman,
(S.) CHARLES O'NEILL,
(S.) L. T. PUTMAN,
(S.) L. C. GUNTER,
(S.) J. D. A. MORROW,
Appalachian Joint Conference
Negotiating Committee.

4626 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 4 (B).

Plaintiffs' Exhibit 4 (B) for Identification is a mimeographed manuscript, consisting of 3 mimeographed sheets, the first of such sheets bearing the title, "United States Department of Labor, Wage and Hour Division, Washington—Two Mining Determinations Announced," and the notation, "For Release Morning Papers, Saturday, July 27, 1940."

The pertinent portion of the same is as follows:

"The second administrative determination announced by Colonel Fleming today involved the question of determining the number of hours worked by miners in the bituminous coal mining industry.

"Colonel Fleming announced that on the basis of an inquiry submitted by the bituminous coal mining industry, the Wage and Hour Division in carrying out its enforcement duties in that industry will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the particular industry and are supported by a long history of *bona fide* collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, Colonel Fleming announced that practice of computing working time on a 'face to face' basis in the bituminous coal mining industry would not be unreasonable. Colonel Fleming explained the term 'face to face' to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work and the time spent in returning from the working place to the portal in the evening. The Administrator added that the determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in the bituminous coal mining industry."

4627 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 4-C.

Plaintiffs' Exhibit 4-C for Identification is a mimeographed manuscript, consisting of 21 mimeographed sheets, with a cover page, the cover page reading, "U. S. Department of Labor, Wage and Hour Division, Washington—Address Scheduled for Delivery by Colonel Philip B. Fleming, Administrator Wage and Hour Division, U. S. Department of Labor, Before The American Mining Congress, Colorado Springs, Colorado, Wednesday, September 18, 1940," and bearing the notation, "For Release Wednesday, September 18, 1940."

The pertinent portions of the same are as follows:

"I should hesitate to attempt to furnish an offhand solution to every problem that has been presented to us, but I want to list some of the principal ones as a basis, at least, for further discussion.

"1. Must the time spent by the underground worker in traveling from the portal to the face be counted as time worked?

"2. Must time spent at lunch underground be considered as time worked?"

** ** ** ** **

"We cannot predict in advance just what the Courts are going to say in respect to every problem that arises. The best we can do is to tell you what, in our opinion, the law means, and what, as to any particular problem, the Courts have held in the past in analogous, or somewhat similar circumstances. The case of the Cornucopia Gold Mine Corporation, however, may be worth citing, because it involved many of the questions which have been raised by other mine operators.

"The Cornucopia corporation owns and operates a mining property near Cornucopia, Oregon. There is no railroad nearer than 27 miles, and the largest 'big town' is Baker, Oregon, which has a population of around 8,000 and is 75 miles away. This certainly may be considered an isolated mining property. The company was organized in 1930 and it is operating mines which previously had been worked but abandoned. The company did not commence operations until 1936. It lost money that year and also in 1937, but made a profit of about $122,000 in 1938, and, at the time of our investigation, it was estimated that about the same amount of profit would be made in 1939. Our inspector commented that 'the officers and directors appear to be responsible individuals engaged in a legitimate enterprise.'

"The violations of the law which were reported upon inspection were all related either to overtime or the record-keeping requirements.

"About October 24, 1938, when the Wage and Hour Law became effective, the company placed all of its employees on an hourly basis, although before that they had been on an eight-hour shift arrangement. The employees worked 48 hours one week and 56 the next, alternately. However, the new hourly rate was so arranged as to provide approximately the same income as before, and if the exact amount was not arrived at by these calculations, then an arbitrary adjustment was made in some instances to bring the wage up to a sum equivalent to the income as it would have been if figured at the regular daily wage. The question here was, What was the regular rate of pay and did the company pay one and a half the regular rate for overtime since the law became effective? We reached the conclusion that the regular rate of pay was not changed and that, hence, nothing extra was paid for the overtime as required by law.

"This pay plan was in effect for 91 surface workers until September 19, 1939, but for the 97 underground workers a new system was devised November 15, 1938. This new system provided that the underground miners would continue to work the same shifts as before the Act became effective. There were two shifts a day and the miners went underground either at 7 P. M. and came out at 3:30 P. M., or in at 7 P. M. and out at 3:30 the following morning. This shift arrangement constituted a total of eight and a half hours spent underground, of which 30 minutes was deducted as a lunch period, leaving a net of eight hours worked per shift. For this the men were paid a set shift wage of $3.50, $4, or $4.50 a day. But the new system provided that the employees show only six hours per shift on their time cards, which they kept themselves and turned in each day. The company then re-established the old shift rates. There could be no overtime because the most that could be worked, even for seven shifts a week, was 42 hours. The company's theory was that this was a proper keeping of time because it was maintained that two hours were consumed in traveling through the tunnel of the mine to the place where the miner actually worked. In other words, time spent in traveling from portal to face and from face to portal was not considered by the company to be time worked. It is interesting to note that while the company recorded that each man spent exactly two hours a day traveling underground, our own investigation showed that no miner spent more than 90 minutes daily in underground travel, and that some spent no more than 20 minutes. But, in any event, the question here was whether the time consumed from portal to portal, or only the time actually spent at the face, was to be considered time worked. Our own contention was that time consumed from portal to portal was hours worked, and that for these men the company had failed to pay extra for overtime and had failed to enter on its records the time actually worked."

** ** ** ** ** **

"The portal-to-portal matter also has been presented to us by the bituminous coal mining industry. In response to inquiry I said that the Wage and Hour Division, in carrying out its enforcement duties in that industry, will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the industry and are supported by a long history of *bona fide* collective bargaining agreement. In view of the circumstances described by the industry in submitting its inquiry, I announced that the practice of computing working time on a 'face-to-face' basis in bituminous coal mining would not be unreasonable. The term "face-to-face' was explained to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work, and the time spent in returning from the working place to the portal at the end of the shift. This determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in bituminous coal mining. In the Cornucopia case, for example, custom and tradition had long recognized the portal-to-portal basis of reckoning time worked.

"We are not yet disposed to take any particular position as to whether the half hour spent eating lunch underground may be deducted from hours worked. The problem is a very difficult one because the employee is required to eat under very unfavorable conditions and is subject to many of the hazards of his job while eating. On the other hand, we recognize that the employee does have time off in order to have lunch and an argument can be made that such time need not be considered as hours worked. But as I say, the Division is not prepared at the present time to make any definitive determination on this question."

For Release Friday Afternoon, November 1, 1940

R-1133

U. S. Department of Labor,

Wage and Hour Division,

Washington.

Informal Hearings on Metal Mining Coming.

Economic studies were begun today at the Wage and Hour Division for two informal fact-finding hearings on the metal mining industry which will be held in the near future. The studies were ordered by Colonel Philip B. Fleming, Administrator of the Division, after conferring with executives of the International Union of Mine, Mill and Smelter Workers (C. I. O.).

One of the hearings will be in Birmingham, Alabama; the other will be in a western city convenient to the metal mining industry of the mountain states. Details of the hearings will be announced soon, Colonel Fleming said.

Facts found at the hearing will be used in arriving at administrative determinations on whether the work day begins and ends when the worker enters and leaves the mine or when he arrives at and leaves his work place in the mine.

Colonel Fleming in July announced that in carrying out its enforcement duties in the bituminous coal industry, the Division will accord great weight to any reasonable standards for determining work time which represent the prevailing custom and practices and are supported by a long history of bona fide collective bargaining agreements. In line with this policy, Colonel Fleming announced at that time that the computing of working time on a "face to face" basis in a bituminous coal mining industry would not be held unreasonable. "Face to face" means at the exposed vein of coal where the work is done.

A consent decree entered in the United States District Court for the Western District of Washington, Northern Division, on May 3, enjoining the Cornucopia Gold Mines contained a stipulation that time spent by employees in traveling from the "portal" or entrance of the mine to the "face" or place where they work and back is to be deemed time worked.

Officers of the Union who conferred with Colonel Fleming ask that he apply the stipulation regarding hours worked in the Cornucopia case to all subsurface metal mining. Colonel Fleming's conferees included Reid Robinson, President of the International Union, and Benjamin Riskin, Research Director, both of Denver, Colo.; Van D. Jones, member of the Union's International Board, and W. B. Lemley, W. C. Gunnin, John Hill, J. L. Robinson, James Lipscomb, Louis Tarrant, Asbury Hower, Jessie Gaines, all of Bessemer, Alabama; and E. A. Sisemore of Powderly, Alabama. The last named all are officers or representatives of locals operating in the mines of Tennessee Coal, Iron and Railroad Company, the Sloss Sheffield Company, Woodward-Iron Company, and Republic Steel Company.

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FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 6.

Engineering and Mining Journal.

H. C. Parmlee, Editor.

New York: A. H. Hubbell, H. C. Chellson, Associate Editors; H. H. Wanders, Market Editor; J. H. Edwards, Electric Editor; W. N. P. Reed, Assistant Editor; Washington, D. C., Paul Wooton, San Francisco: J. B. Huttl, Assistant Editor; G. J Young, Consultant; Walter M. Drake, Managing Editor.

Volume 142 April, 1941 Number 4

Collar-to-Collar vs. Face-to-Face.

Because his final interpretation of "hours worked" in metal mines was diametrically opposite to what was expected we invited Colonel Fleming to reconcile his various statements on the subject. His reply appears on page 88. It is a frank admission of the gradual education of a sincere public official, and of the confusion growing out of his early unfamiliarity with an industry. Fundamentally, however, the difficulty is beyond Colonel Fleming's responsibility. It lies in the passion of the New Deal to regulate the habits and customs of all industry in an attempt to remedy recognized abuses in a small segment. Since NRA days it has been abundantly demonstrated that the United States is too large, its industry is too complex, and its business customs are too diverse to be regimented successfully by zealous reformers, however well intentioned. The wage-hour law is merely one example of such an effort. It has been unsatisfactory to operators and miners alike, as well as a headache to the Administrator.

Collar-to-Collar.

Contrary to the expectation of the mining industry, Wage-Hour Administrator Fleming confirmed on March 31 his tentative finding on hours of work in metal mines. He ruled that the work day should be figured on a collar-to-collar or portal-to-portal basis, and denied the operators' request for reconsideration of his earlier opinion. This arbitrary rule caused surprise and consternation because the Administrator had previously announced a policy of not interfering with long-established custom, or changing practice under existing bargaining contracts. Just what caused the abrupt shift in policy was not announced, but it was clear that a fundamental and new issue was established by the ruling. Certainly it goes contrary to the preponderance of the evidence submitted at field conferences in Salt Lake City and Birmingham. Unless appeal is carried to the Courts, the collar-to-collar ruling will stand, with the effective date postponed from April 1 to May 1. (See page 88.)

Collar-to-Collar vs. Face-to-Face.

Wage-Hour Administration defends interpretation of "hours worked" in underground metal mines.

Col. Philip B. Fleming,

Administrator, Wage and Hour Division,

Department of Labor.

The Editor of *Engineering and Mining Journal* has asked me to reconcile, if I can, the statements I made in my speech before the American Mining Congress on Sept. 18, 1940, with my recent approval of an examiner's report announcing our opinion that in effect hours worked in underground metal mining include all hours spent portal to portal minus the lunch period. The portal-to-portal opinion is summarized as follows:

"The workday in underground metal mining starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the end of the shift.

"The workday also includes the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out.

"The workday does not include any fixed lunch period of one-half hour or more during which the miner is relieved of all duties, even though the lunch period is spent underground."

I cannot fully reconcile the two but I can at least explain how my name is attached to the irreconcilable. One of the first public statements I made on any matter affecting the metal-mining industry was issued in the form of a press release on July 27, 1940, with the title, "Two Mining Determinations Announced." One of these administrative determinations dealt with the subject of lessees, a subject which we are still investigating and on which further announcements may be expected in the future. The other so-called administrative determination was made in answer to an inquiry from the bituminous coal mining industry. Since this is the ancestor of all subsequent confusion it is worth quoting in full. Our press release states: "On the basis of an inquiry submitted by the bituminous coal mining industry, the Wage and Hour Division in carrying out its enforcement duties in that industry will accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the particular industry and are supported by a long history of *bona fide* collective bargaining agreements. In view of the circumstances described by the industry in submitting its inquiry, I announced that practice of computing working time on a 'face-to-face' basis in the bituminous coal mining industry would not be unreasonable. . . . I added that the determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in the bituminous coal mining industry." When I made my speech in Colorado Springs six weeks later I quoted that statement and I added to it the following sentence: "In the Cornucopia case, for example, custom and tradition had long recognized the portal-to-portal basis of reckoning time worked." It is the implication of that last statement which has led many mining operators to believe that the Wage and Hour Division would accept the face-to-face practice or some modification of face-to-face or portal-to-portal in any mine where the practice had been carried on for a long time. Because of that assumption many mine operators were surprised at my affirmance of the examiner's report on hours worked in underground metal mining in which I accepted for the Division the position that hours worked in metal mines should be counted as portal-to-portal minus the lunch period.

I am afraid that I must take the blame for making a misleading statement.

The decision we made last July to accept the face-to-face computation of hours worked in bituminous coal mining was reached with considerable difficulty. However, right or wrong, my bituminous coal opinion was based on a unique situation. Here is a large industry with about half a million employees in which the method of computing hours worked is virtually uniform throughout the industry and has been for many years. Furthermore, it is an industry in which this uniformity in agreement on hours worked has been achieved by national collective bargaining, and arrived at by the employers and the employees year after year in joint meetings which go back for half a century. So far as my knowledge goes the determination of working hours has not been established in this way and with such uniformity in any other industry in the United States.

In underground metal mining the practice with regard to hours worked is entirely different. Only part of the industry operates under collective bargaining agreements, and the agreements are characteristically made on an individual mine basis. Different contracts contain different hours provisions. This diversity in practice under union contract is reflected in a diversity of practice in unorganized mines. In practically every state of the Union except the states of Utah and Arizona, where the collar-to-collar system is required by law, and possibly the states of Alabama and Tennessee, the practice in the immediate past has reflected all the different bases for computing hours worked. In a general way I was familiar with this condition when I made my address at Colorado Springs. I suppose that in citing the Cornucopia case, which involved a consent decree agreed to by a mining company for its mine in the State of Oregon, I merely felt that I was giving a single practical example of the type of thing I had in mind. Actually as many mining operators have since reminded me, I gave the impression that the Wage and Hour Division would accept the *status quo* in each individual mine in the United States as of Oct. 24, 1938, the day the act went into effect, as determinative of hours worked in that particular mine under the Fair Labor Standards Act. Since the date of the speech, we have learned far more about the metal mining industry than we then knew. We have received reports from our regional offices, made surveys, held public conferences. We know now, and we probably should have realized then, that acceptance by the Division of the individual custom of each individual mine would tend to continue a chaotic condition. It would make permanent a lack of standards instead of establishing the standard contemplated in the law. So, to repeat, if I had realized on Sept. 18, 1940, what I know today, I would not have made the kind of loose statement that appears in the speech.

The general opinion of the Wage and Hour Division on determination of hours for which employees are entitled to compensation (straight time and overtime) under the Fair Labor Standards Act was originally explained in the Division's Interpretative Bulletin No. 13. This was first issued in May, 1939, and while it has been revised at various times the basic principles that our attorneys drafted then are still the basic principles to which we adhere. The bulletin says: "As a general rule, hours worked will include (1) all times during which an employee is required to be on duty or to be on the employer's premises or to be at a prescribed workplace, and (2) all time during which an employee is suffered or permitted to work whether or not he is required to do so. In the large majority of cases, the determination of an employee's working hours will be easily calculable under this formula and will include, in the ordinary case, all hours from the beginning of the workday to the end with the exception of periods when the employee is relieved of all duties for the purpose of eating meals".[1]

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[1] "No opinion can be expressed at this time as to certain cases—e. g., employees engaged in mining or in working under high pressure—where by custom or agreement time spent eating meals is paid for as hours worked."

I believe that a fair reading of that paragraph would lead most persons to conclude that the portal-to-portal method of computing hours worked in underground metal mining is the correct one. In the examiner's report the position is taken, and I think correctly, that any meal period of half an hour or more even though underground is not hours worked. On that one point, we have finally expressed an opinion where no opinion was expressed before. As for the rest, I believe that the report which I have adopted is an application to the underground metal mining industry of the principles which we made known earlier in the administration of the act. But even that general statement in the bulletin, sound though it is, has been the source of some confusion. The word "workplace" is used in the bulletin to indicate any place to which an employee may be sent away from his employer's regular place of business; in metal mining it is customarily used to indicate the spot within a mine to which the miner is assigned. This was clearly not the sense used in the bulletin, but the bulletin has occasionally been thus misconstrued.

This is the history of the Wage and Hour Division position on the collar-to-collar question. What will the Division do about it? First, when the collar-to-collar opinion was approved on March 17, 1941, we stated that for administrative purposes we would consider its effective date to be April 1. Since that time we have realized that it would be fairer to allow a little more leeway to employers to adjust their practices. We have therefore postponed the effective date from the administrative standpoint to May 1, 1941. Second, we have announced that if any employer complies with the wage and hour provisions we will take no action with regard to non-compliance prior to May 1, 1941. Thus any employer whose compliance begins by May 1, 1941, will know that the

Wage and Hour Division will not concern itself with the previous method of computing hours worked for his underground employees.

4639 PLAINTIFFS' EXHIBIT No. 48.

For Release Afternoon Papers,
Wednesday, June 11, 1941

U. S. Department of Labor,

Wage and Hour Division,

Washington.

Working Time Does Not Necessarily Begin at Plant Gates Administrator Says.

In accordance with the plant protection policy of the War Department announced on June 4, General Philip B. Fleming, Administrator of the Wage and Hour Division, U. S. Department of Labor, said today that in his opinion time spent traveling from fences, walls, or other anti-sabotage barriers to working places will not be considered to be working time under the Wage and Hour Law.

General Fleming warned that where a state law specifically requires that such traveling is working time, the position of the Wage and Hour Division cannot set aside the state statutory requirement.

Furthermore, where by an agreement reached between the employer and the employees provision is made for treating such time as hours worked, this interpretation will not excuse failure to comply with such agreement.

Guards who arrive at the entrance to such barriers and immediately change uniform and start performing duties would be considered to be working from the time they passed the barrier, General Fleming said.

4640 FOR IDENTIFICATION SLOSS EXHIBIT No. 38.

Sloss Exhibit No. 38 for Identification is a printed booklet consisting of, in the first instance, 35 printed pages and cover, the cover page reading, "Wage Agreement between Alabama Coal Mine Operators and District 20, United Mine Workers of America, April 1, 1937 to April 1, 1939." the first twenty-one pages of which set out form of contract between Alabama Coal Operators and District 20, United Mine Workers of America, which form of contract provides:

"This Agreement shall become effective on September 22, 1935, and shall continue in effect until the 1st day of April, 1937, subject to termination on part of either party on notice in writing, for breach in any substantial respect by the other party or by those whom they may represent," and containing provisions with reference to working conditions, hours of work, rates of pay, etc., including the following:

"IV. Maximum Hours and Working Time:

"(a) A seven-hour day, and five-day week (35 hours per week) shall prevail, exclusive of a thirty (30) minute lunch period, with option to run through without suspension, if agreed to between the Operator and the Mine Committee. The seven-hour day means seven hours' work in or about the minutes at the usual working places for all classes of labor (other than those excepted from this contract, exclusive of the lunch period, whether they be paid by the day or be paid by the tonnage or piece work basis, except in cases of accidents which temporarily necessitate longer hours for those employees required on account thereof; and also excepting that number of mine workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

* * * * * * *

"(g) When railroad cars or barges are promised and are on the way to the mines at starting time in the morning, the men shall wait up to forty-five (45) minutes, with the understanding that this waiting time of forty-five (45) minutes may be exceeded by mutual local agreement, provided, however, that where satisfactory local arrangements exist for waiting for cars, the same shall remain in force. Under such conditions the seven-hour day shall begin at the starting time of the men affected, with a full seven hour shift being worked.

(h) Drivers shall take their mules to and from stables and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named. The method at present existing covering the harnessing and unharnessing of mules shall be continued throughout the life of this Agreement.

(i) Motormen and trip riders shall be at the point inside or outside the mine where they receive the cars at starting time. The time required to take motors to the pass-way before starting time and departing from the same at quitting time shall not be regarded as part of the day's labor, their time beginning when they reach the change or parting at which they receive the cars, but in no case shall their time be docked while waiting for cars at the point named."

By successive agreements appearing on pages 22 to 35 of said booklet, and by a separate agreement seven of printed pages attached to said booklet, the foregoing agreement was continued in force, with increases in rates of pay, and other modifications (none of which, however, changed the above quoted Section IV):

(a) To April 1, 1941.

4642 FOR IDENTIFICATION SLOSS EXHIBITS Nos. 39, 40, 41 and 42.

Sloss Exhibit 39 is a contract executed between Sloss-Sheffield Steel & Iron Company and United Mine Workers of America, District 20, covering the operations of mines at Lewisburg and Flat Top, by their named officers to the extent that they represent any employees of the Company at the coal mines.

This Agreement, in Section Six, "Maximum Hours and Working Time," contains provisions in all respects identical with the provisions quoted in connection with Sloss Exhibit No. 38, with the exception that the work day is set at eight hours instead of seven hours as in the case of Sloss Exhibit No. 38 for Identification, and that the waiting time for railroad cars or barges is specified to be 30 minutes rather than 45 minutes.

The wage scale incorporated in said Agreement carries "Minimum Wage Scale" rates at a designated amount for each occupation on the basis of "per hour—eight hours pay". For illustration: "Machine runner—per hour $0 5025—8-hour day $4.02," and so on covering a total of 45 inside occupations; there is also attached to the contract "Wage Scale—District J—Alabama—minimum wage scale effective April 1, 1934, under Executive Order issued April 22, 1934," covering the same number of inside occupations and being made up in the same way with the exception that the amounts are set forth in accordance with the Executive Order (Plaintiffs' Exhibit 14 for Identification). For illustration, "Machine Runner—per hour $0.6325—8-hour day $4.42."

The Exhibit recites: "This agreement shall become effective on execution and delivery hereof and shall continue in effect until the first day of April, 1935."

Sloss Exhibit No. 40 for Identification is executed between the parties, covering the period of time September 22, 1935, to April 1, 1937, containing substantially the same provisions in reference to wages and wage scale, with the exception of amounts (which are higher), as does Sloss Exhibit No. 39 for Identification, and with the exception of specifying a seven-hour day, contains, in Section IV, identically the same provisions as are quoted in connection with Sloss Exhibit No. 38 for Identification.

Sloss Exhibit No. 42 for Identification is executed between the same parties, covering the period of time May 3, 1937, to April 1, 1939, and extends the agreement set forth in Sloss Exhibit No. 40 for Identification to April 1, 1939, carrying forward the same provisions referred to above in connection with Sloss Exhibit No. 40.

for Identification, and providing for increases in wages and daily rates.

Sloss Exhibit No. 41 for Identification is executed between the same parties (except the United Mine Workers of America is recognized as the exclusive bargaining agent representing the employees of the Sloss Company), entered into on June 10, 1939, and extending Sloss Exhibit 42 for Identification to April 1, 1941, and carrying forward the same information as set forth above of hours of work, and other provisions not pertinent to the issues here involved.

All the above exhibits were signed by the President of the Sloss-Sheffield Steel & Iron Company and by Wm. Mitch, President, District 20, United Mine Workers of America, John L. Lewis, International President, United Mine Workers of America, Phillip Murray, International Vice-President, Thomas Kennedy, International Secretary-Treasurer, and other International and District representatives of the United Mine Workers of America.

4644 FOR IDENTIFICATION REPUBLIC EXHIBIT No. 19.

Republic Exhibit No. 19 for Identification consists of six contracts executed between Republic Steel Corporation and United Mine Workers of America, District 20, covering the coal mining operations only of the Republic Steel Corporation in Alabama for the following periods of time:

(a) April 1, 1934 to April 1, 1935;

(b) January 11, 1935 to September 22, 1935;

(c) September 22, 1935 to April 1, 1937;

(d) April 1, 1937 to April 1, 1939;

(e) April 1, 1939 to April 1, 1941;

(f) May 10, 1941—Temporary Agreement—Expires March 31, 1943.

All these contracts are substantially the same as the contracts with the Sloss Sheffield Steel & Iron Company, Sloss Exhibits Nos. 39 to 42 for Identification, and all contain the provisions quoted in connection with Sloss Exhibit No. 38 for Identification, except that in the agreement covering the period September 22, 1935 to April 1, 1937, and subsequent contracts the workday was specified as being seven hours.

The provisions of these contracts are similar to those of the Sloss Company with reference to the classification of inside occupations, the minimum wage scale, scale per ton, per hour—eight hour day (7 hours by the Executive Order effective April 22, 1934) and the minimum rate of pay for each classified job.

4645 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 47.

Plaintiffs' Exhibit No. 47 for Identification consists of four contracts executed between Alabama (commercial) Coal Operators and United Mine Workers of America, District 20, covering operations of commercial coal mine operations in Alabama for the following periods of time:

(a) September 22, 1935 to April 1, 1937;

(b) April 1, 1937 to April 1, 1939;

(c) May 18, 1939 to April 1, 1941;

(d) May 4, 1941,—Temporary Agreement,—to April 1, 1943.

All these contracts provide for a seven hour day, and with that exception, contain the same provisions with reference to "Maximum hours and working time" as are quoted in connection with Sloss Exhibit No. 38.

The provisions of these contracts are similar to those of the Sloss Company (Sloss Exhibits 39 to 42 for Identification) with reference to the occupation classifications, the minimum wage scale, scale per ton, per hour—seven hour day, and the minimum rate of pay for each classified job.

4646 FOR IDENTIFICATION T. C. I. EXHIBIT No. 47.

T. C. I. Exhibit No. 47 for Identification consists of contracts executed between Tennessee Coal, Iron & Railroad Company and United Mine Workers of America, District 20, covering the operation of the mines of the Tennessee Company, as follows:

(a) Contract dated May 2, 1934, to expire April 1, 1935;

(b) Contract dated January 17, 1936, and effective from September 23, 1935 to April 1, 1937;

(c) Contract dated May 7, 1937, and effective from April 1, 1937 to April 1, 1939;

(d) Contract dated May 19, 1939, extending Contract described in (c) above to April 1, 1941;

(e) Contract dated May 13, 1941, extending contract described in (c) above to such time as a contract shall have been negotiated effective from April 1, 1941 to April 1, 1943;

And the following contracts with the Brotherhood of Mines of Captive Mines:

(f) Contract dated June 7, 1937, and effective to April 1, 1939.

Later the Brotherhood of Miners of Captive Mines became affiliated with the American Federation of Labor under the name of Captive Coal Miners Union, and contracts were executed with that entity as follows:

(g) Contract dated June 28, 1939 and effective to April 1, 1941;

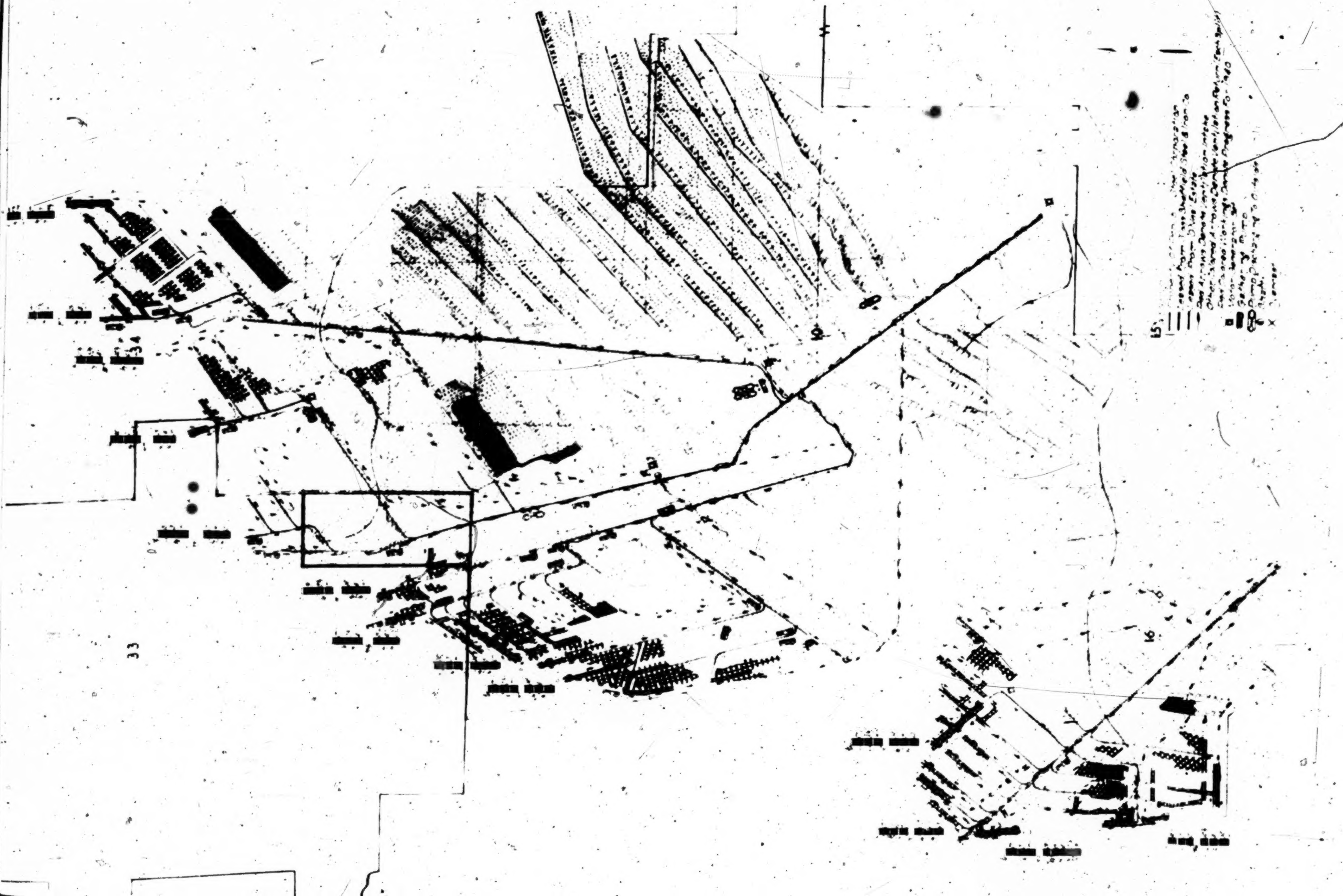
(h) Contracts dated May 13, 1941, extending contract described in (g) above to such time as a contract shall have been negotiated effective from April 1, 1941, to April 1, 1943.

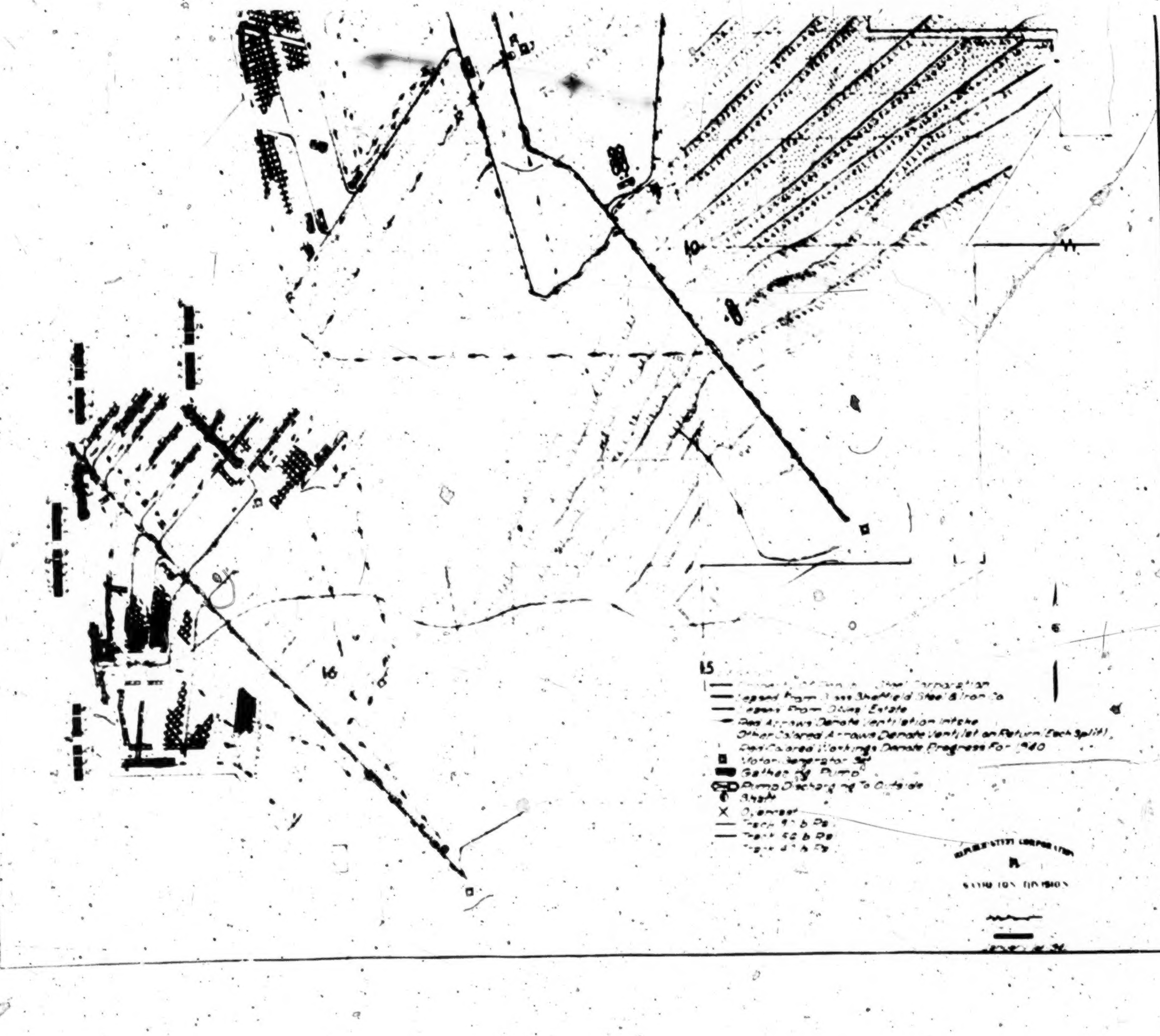
On June 30, 1941, an election was held by the Tennessee National Labor Relations Board at the coal mines of the Tennessee Coal, Iron & Railroad Company, and the United Mine Workers of America was certified as the exclusive bargaining agent for the employees at said coal mines, and the Tennessee Company, by letter dated July 24, 1941, terminated the contract described in (h) above.

All these contracts provide for a seven hour day (except (a) which provided for an eight hour day), and with that exception, contain the same provisions with reference to "Maximum hours and working time" as are quoted in connection with Sloss Exhibit No. 38 for Identification.

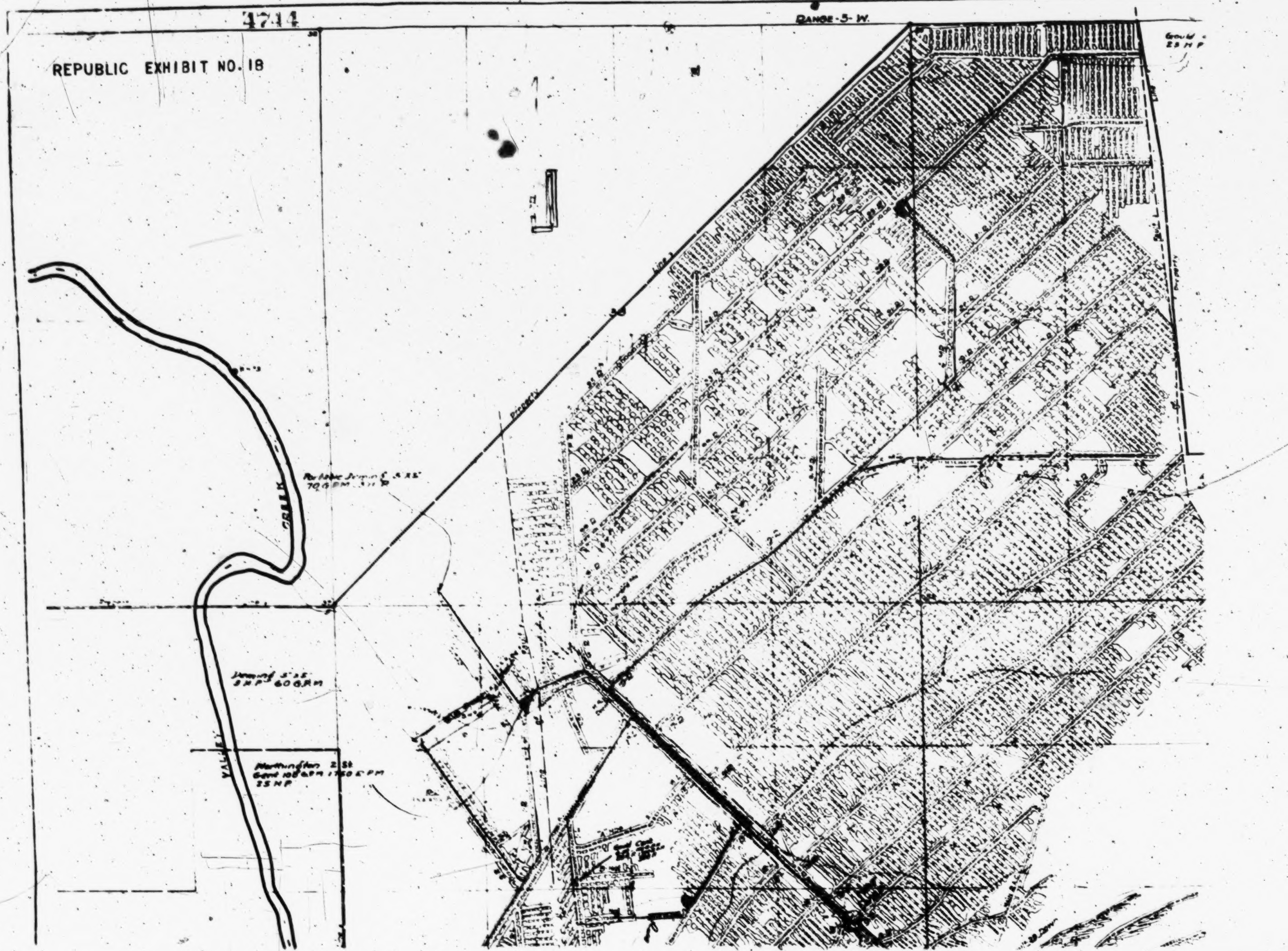
The provisions of these contracts are similar to those of the Sloss Company (Sloss Exhibits 39 to 42 for Identification) with reference to the occupation classifications, the minimum wage scale, scale per ton, per hour—seven hour day, and the minimum rate of pay for each classified job.

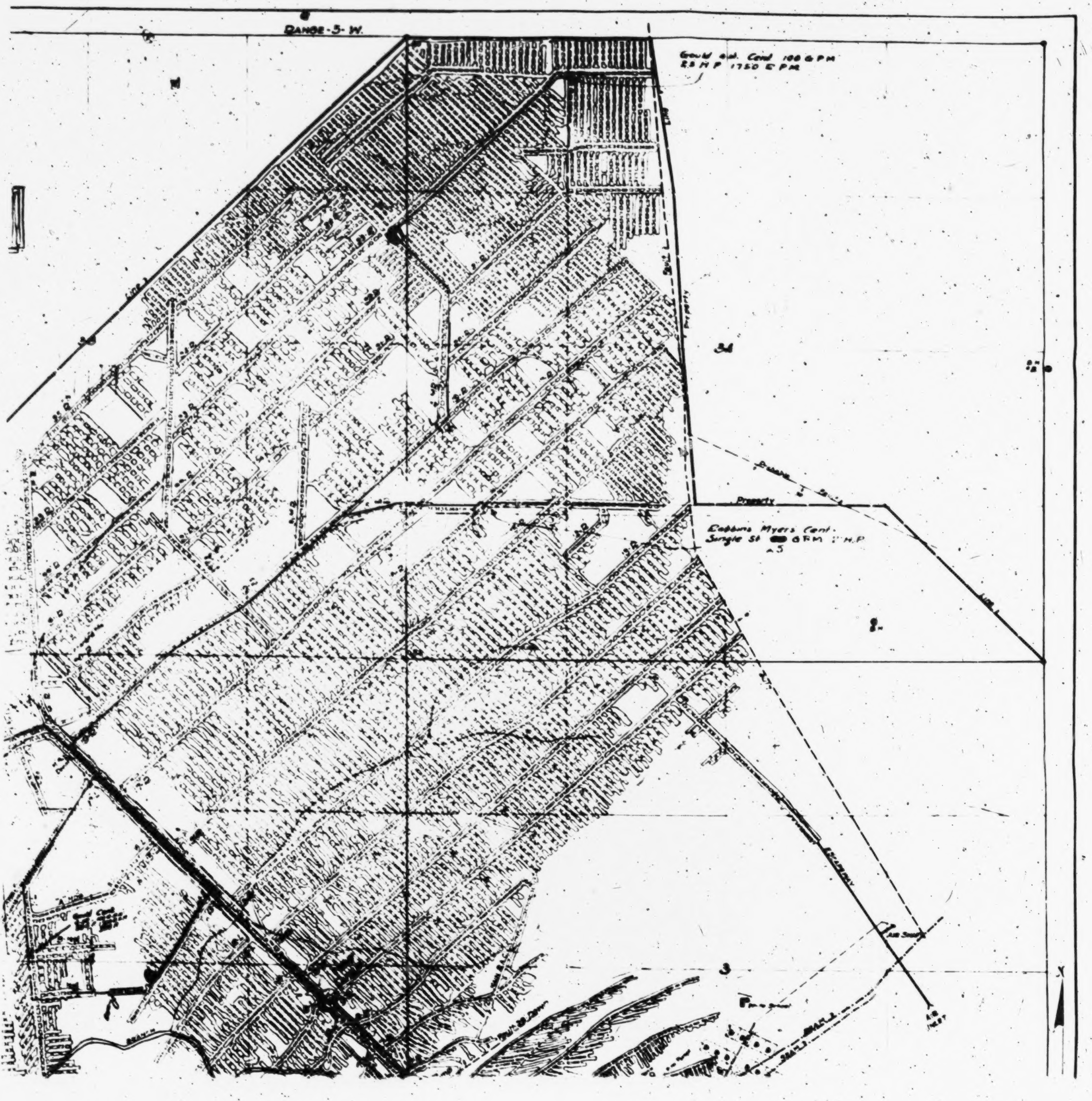
REPUBLIC EXHIBIT NO. 17.

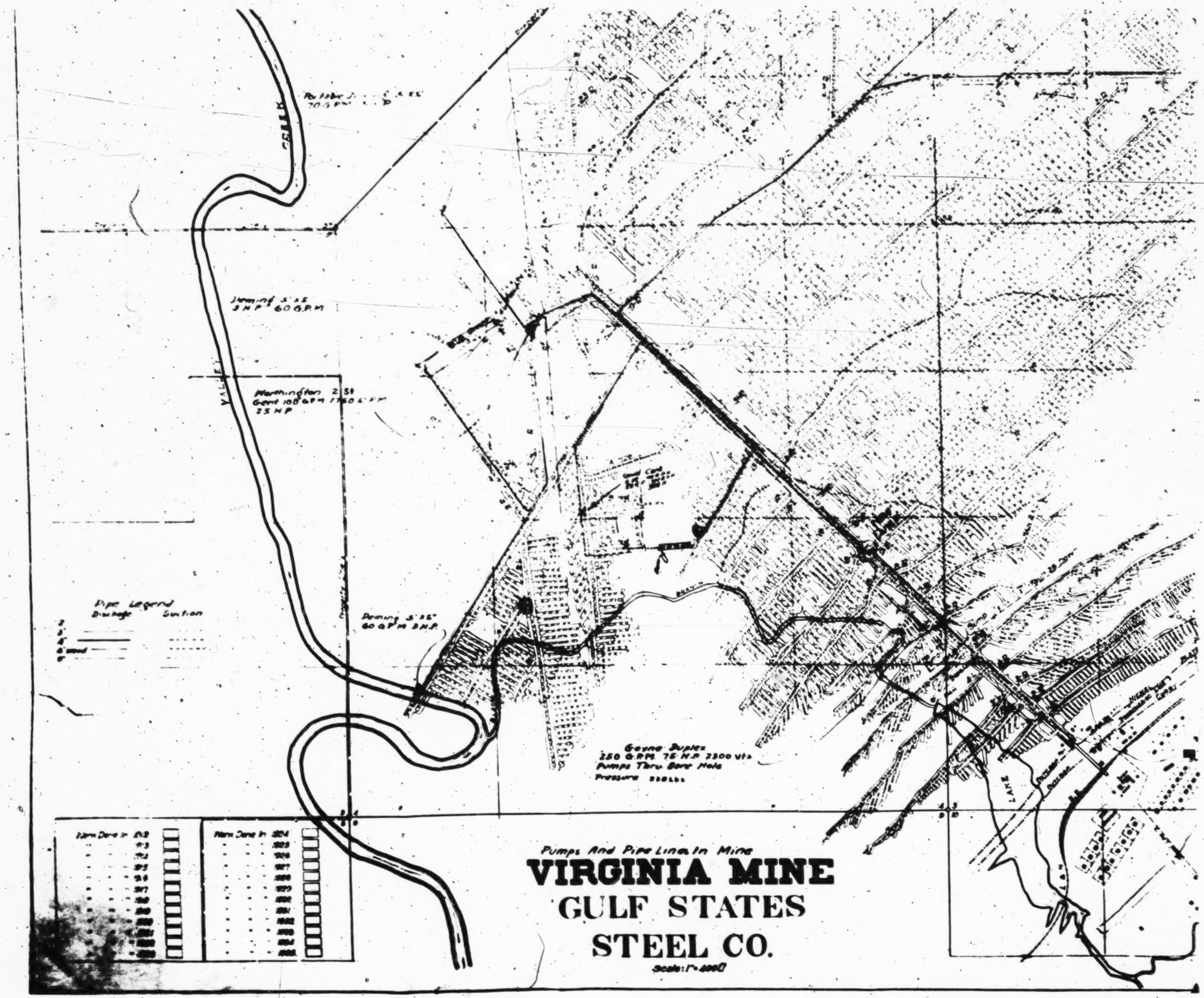

34
33
10
16
15


10
15
16
9
Leased From Sloss Sheffield Steel & Iron Co
Leased From Olive Estate
Red Arrows Denote Ventilation Intake
Other Colored Arrows Denote Ventilation Return (Each Split)
Red Colored Workings Denote Progress For 1940
Motor Generator Set
Gathering Pump
Pump Discharging To Outside
Shaft
Overcast
Track 56 lb Rail
DIVISION

REPUBLIC EXHIBIT NO. 18


RANGE-5-W.
Gould
25 HP
Property Line
CREEK
VALLEY
Portable Pump 5" x 25"
70 GPM
Pump 5" x 25"
3 HP 60 GPM
Worthington 2 St
Cent 100 GPM 1750 RPM
35 HP


RANGE-5-W.
Gould ... Cent 100 GPM
2.5 HP 1750 RPM
34
Property
Robbins Myers Cent.
Single St GPM HP
3
2

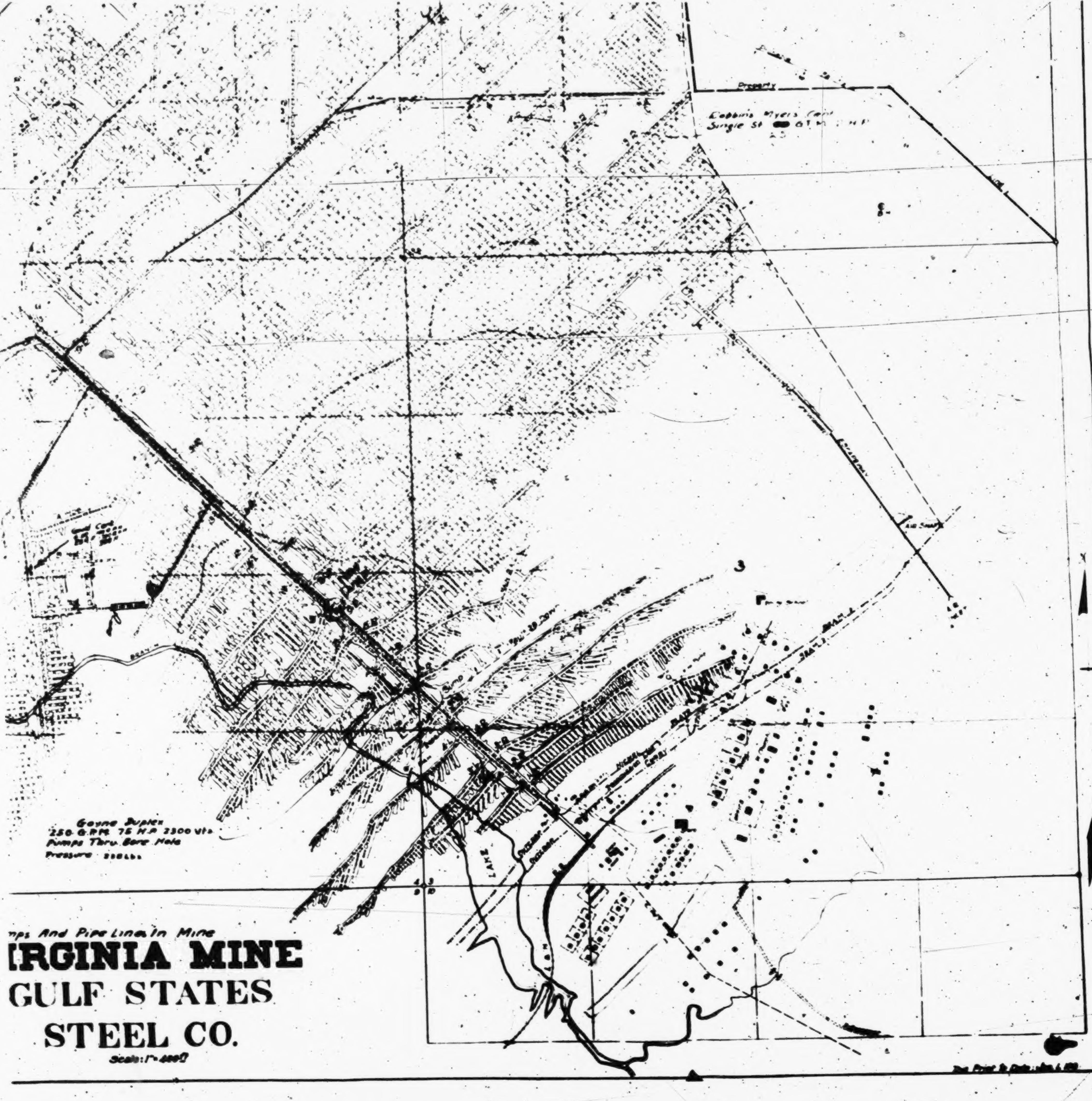

CREEK
VALLEY
Pa 1 Bbe ...
70 G.P.M. ... D
Deming 5" x 5
3 H.P. 60 G.P.M.
Worthington 2 St
Gent 100 G.P.M. 1750 L.P.M.
25 H.P.
Deming 5" x 5"
60 G.P.M. 3 H.P.
Pipe Legend
Discharge
Suction
2"
3"
4"
6" wood
8"
Goyne Duplex
250 G.P.M. 75 H.P. 2300 Vts
Pumps Thru Bore Hole
Pressure
LAKE
Work Done In 1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
Work Done In 1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935

Pumps And Pipe Lines In Mine

VIRGINIA MINE

GULF STATES
STEEL CO.

Scale: 1" = 400'


Property
Cobbins Myers Cent
Single St
Goyne Duplex
250 G.P.M. 75 H.P. 2300 Vts
Pumps Thru Bore Hole
Pressure 230 Lbs
LAKE
3
8
4 3
9 10

nps And Pipe Lines In Mine

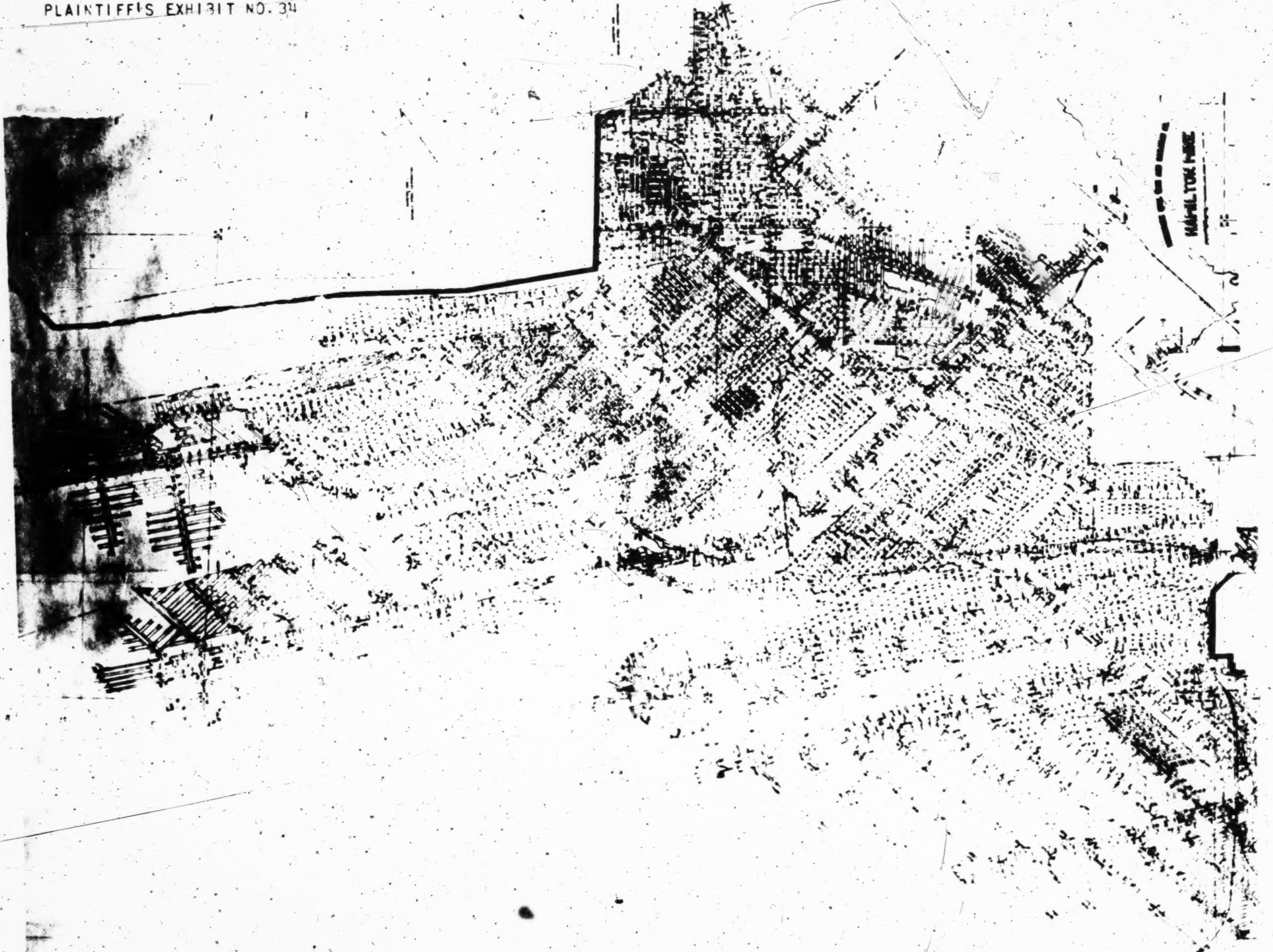
IRGINIA MINE

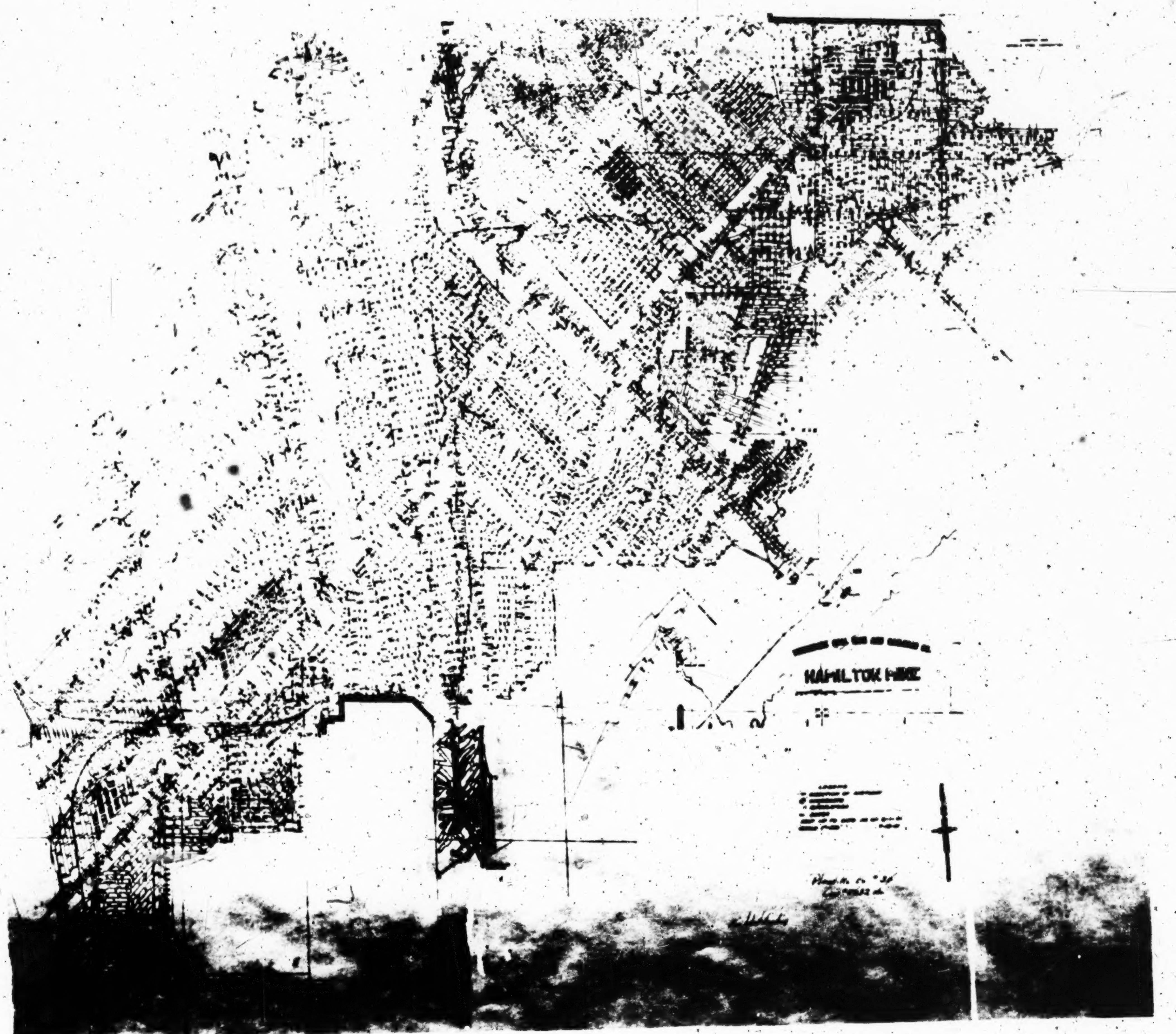
GULF STATES
STEEL CO.

Scale: 1" = 400 ft

[illegible]

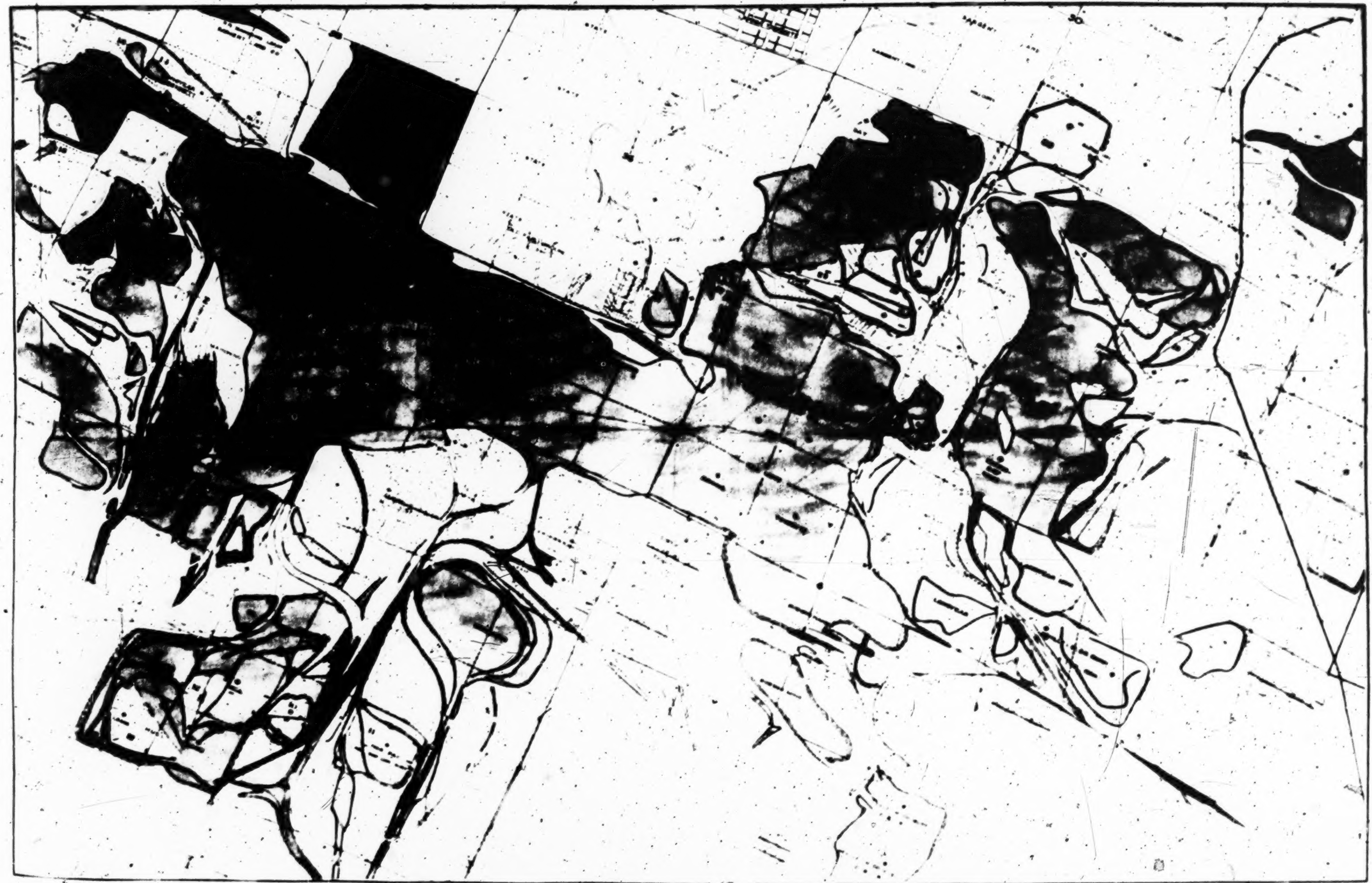
PLAINTIFF'S EXHIBIT NO. 34


HAMILTON PIKE



HAMILTON

PLAINTIFF'S EXHIBIT NO. 40



PLAINTIFF'S EXHIBIT NO. 41

PLAINTIFF'S EXHIBIT NO. 42

4654 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30.

Plaintiffs' Exhibit No. 30 for Identification consists of approximately 200 contracts between The United Mine Workers of America, The American Federation of Labor, and other national unions or branches thereof, representing coal mining employees, and various coal operators and their associations in various parts of the United States:

The first of these contracts was executed March 10, 1898, and is in words and figures as follows:

4655 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-A.

Columbus Day Wage Scale of 1898.

Inside Day Wage Scale for an Eight-Hour Day.

Columbus, Ohio, March 10, 1898.

The following resolution was adopted at a meeting of the Scale Committee of the Interstate Convention, January 28, 1898:

Resolved, That two operators and two miners from each state meet at Columbus, Ohio, on the second Tuesday in March (or March 8), 1898, at the Chittenden Hotel, to formulate a uniform day work scale, based upon the districts upon which the mining prices are based.

In accordance therewith, the representatives of the various competitive districts met at the Chittenden Hotel, Columbus, Ohio, March 8 and agreed upon the following scale of wages and conditions to govern all inside day labor for the year beginning April 1 next and ending April 1, 1899:

Inside Day Wage Scale.

Tracklayers	$1.90
Tracklayers' helpers	1.75
Trappers	.75
Bottom cagers	1.75
Drivers	1.75
Trip riders	1.75
Water haulers	1.75
Timbermen, where such are employed	1.90
Pipemen, for compressed air plants	1.85
Company men in long-wall mines of third-vein district, Northern Illinois	1.75
All other inside day labor	1.75

The above scale was arrived at by taking the average of the wages paid in all of the competitive districts and reducing said average to an eight-hour day, then adding the advance to said average to correspond with the advance in price of mining to be paid April 1, next.

Resolution I.

The above schedule of day wages applies only to men employed in the performance of their labor, and does not apply to boys, unless they can do, and are employed to do a man's work.

Resolution II.

Whereas, We have failed to agree upon a uniform rate of wages for the different classes of outside labor for the entire competitive field, owing to the variations of conditions over which we have no control;

Resolved, That the employing of outside day laborers around the mine, and wages to be paid the same, shall be left entirely to the employers, and such employes in all the competitive district, and the question of uniform wages for outside labor be referred to our next Interstate Joint Convention.

Resolved, That where any members of the present force of outside labor in the competitive field prefer to work in the mine in preference to accepting the wages offered for their services as outside day laborers, they shall be given places in the mine to mine coal.

Resolution III.

Resolved, That an eight-hour day means eight hours' work in the mine at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night.

Regarding drivers, they shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named.

Resolution IV.

Resolved, That when the men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours. But after the first two hours, the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof. If for any reason the regular routine work cannot be furnished the inside labor for a portion of the first two hours, the operators may furnish other than regular labor for the unexpired time.

The above was agreed to after the most careful discussion of each item, and we believe it to be the best and most equitable solution of the questions involved, taking into consideration the various interests to be harmonized in order to reach a uniform scale.

It is expected that all the prices and conditions shall be strictly adhered to by both operators and miners.

S. M. DALZELL,
Chairman Committee.
T. L. LEWIS,
Secretary.

Committee on behalf of miners:

JOHN M. HUNTER,
W. D RYAN,
Illinois,
J. H. KENNEDY,
W. G. KNIGHT,
Indiana,
BARNEY NAVIN,
Indiana Block,
W. E. FARMS,
T. L. LEWIS,
Ohio,
P. DOLAN,
WM. WARNER,
Pennsylvania.

On behalf of the U. M. W. of A.:
M. D. RATCHFORD,
President,
W. C. PEARCE,
Secretary.

Committee on behalf of Operators:
S. M. DALZELL,
A. J. MOORSHEAD,
Illinois,
J. M. McCLELLAND,
P. H. PENNA,
Indiana,
W. W. RISHER,
Indiana Block,
J. S. MORTON,
W. J. MULLINS,
Ohio,
G. W. SCHLUDERBERG,
JNO: A. O'NEAL,
Pennsylvania.

Following the execution of the above contract and thereafter down to and including the last contract which was executed on the 19 day of July, 1941, all the other contracts in this exhibit were executed.

As typical of such contracts the pertinent and relevant portions of the following are set forth in extenso:

4659 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-H.

Toledo Interstate Agreement of 1908.

Toledo, Ohio, April 17, 1908.

It is hereby agreed between the operators' and miners' representatives of Western Pennsylvania, Ohio and Indiana:

* * *

Sixth: That an eight-hour day means eight hours' work in the mine at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from same at night.

Regarding drivers, they shall take their mules to and from the stables and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named;

* * *

Signed at Toledo, Ohio, April 17th, 1908.

On behalf of Miners:

FRANCIS FREEHAN,
S. A. WHETZEL,
Pennsylvania,

WM. GREEN,
G. W. SAVAGE,
Ohio,
W. D. VAN HORN,
D. N. CURRY,
Indiana Bituminous District,
PATRICK GOLDEN,
JOHN FOGG,
T. L. LEWIS,
President U. M. W. of A.,
Indiana Block Coal District,
J. B. ZERBE,
Chairman,
W. D. RYAN,
F. S. BROOKS,
Secretaries.

On behalf of Operators:
G. W. SCHLUDERBERG,
JOHN H. JONES,
Pennsylvania,
H. L. CHAPMAN,
F. M. OSBORNE,
Ohio,
INDIANA BITUMINOUS COAL
OPERATORS'
ASSOCIATION,
By P. H. PENNA,
J. K. SIEFERT,
Indiana Bituminous District,
J. H. McCLELLAND,
W. J. SNYDER,
Indiana Block Coal District.

4660 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-V.

Official Mining Scale.

Interstate Agreement.

New York, N. Y., March 9, 1916.

The following agreement made and entered into this 9th day of March, 1916, covering prices and conditions of mining in Western Pennsylvania, Ohio, Indiana and Illinois for the two years beginning April 1, 1916, and ending March 31, 1918, to-wit:

* * *

Fifth—An eight-hour day means eight hours' work in the mine at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night.

* * *

For United Mine Workers Western Pennsylvania—Van Buttner, F. P. Hanaway.

Ohio—John Moore, G. W. Savage.

Indiana—Bituminous: John P. White, Frank J. Hayes, William Green. Block: Lawrence Bramlett, Ed Haverkamp.

Illinois—Frank Farrington, Frank Hefferty.

United Mine Workers of America—John P. White, President; Frank J. Hayes, Vice President, William Green, Secretary.

For Operators—Western Pennsylvania: J. A. Donaldson, George W. Schelederberg.

Ohio—S. H. Robbins, C. E. Maurer.

Indiana—Bituminous Coal Operators' Association—P. H. Penna, M. L. Gould. Block: Wm. M. Zeller.

Illinois—Illinois Coal Operators' Association: C. M. Moderwell, H. C. Perry.

J. C. Goldsem, Chairman; William Green, Secretary of Joint Conference.

4661 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-RR.

Scale Agreement Central Competitive Field.

October 6, 1917.

Washington, D. C., October 6, 1917.

The following agreement, supplemental to the existing Interstate and District Agreements, is entered into with the hope and belief that the advance in wages will result in an increased production of coal and the abolition of local strikes.

It is agreed—

First. That the mining prices for mining mine run coal, pick and machine, in the present contract be advanced 10 cents per ton.

In the block coal field of Indiana the screen coal price to be advanced 12½ cents.

Second. That all day labor and monthly men except trappers and other boys be advanced $1.40 per day. Trappers to be advanced 75 cents per day. Boys now being paid more than $1.90 per day and less than men's wages shall be advanced $1.00 per day.

Third. That all yardage, dead work and room turning be advanced 15 per cent.

Fourth. Subject to approval by the next biennial convention of the United Mine Workers of America, the Mine Workers' representatives agree that the present contract be extended during the continuation of the war, and not to exceed two years from April 1, 1918.

Whereas, Stoppage of work in violation of the agreement has become so serious as to menace the success and perpetuity of the U. M. W. of A. and our joint relations, this conference instructs the respective district executive boards to meet the operators of their various districts for the purpose of agreeing on a penalty clause where none now exists, and if necessary meet to amend and strengthen existing clauses so as to make the penalty more effective in preventing strikes and violations of agreements.

All fines provided for in all agreements shall be automatically collected, and any operator failing to collect and forward to proper parties such fines shall pay a penalty of $2.00 for each employee subject to be fined, the same to be collected and retained in the miners' district organization. And in no case shall any fine be refunded except by mutual agreement of the accredited representatives of the miners and operators.

It is further agreed that where an employee enters suit in the Civil Courts to recover any fine collected in accordance herewith the district organization shall reimburse the operators for expense incurred on account of such suit.

This agreement is subject to and will become effective only on the condition that the selling price of coal shall be advanced by the United States Government sufficient to cover the increased cost in the different districts affected and will take effect on the first day of the pay period following the order advancing such increased prices.

4663 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-13.

New York Interstate Agreement.

New York, N. Y., March 31, 1920.

Pursuant to the instruction of the President of the United States, as communicated to Thos. T. Brewster, Chairman of the Coal Operators' Scale Committee of the Central Competitive Field, and John L. Lewis, President of the United Mine Workers of America, in a letter dated March 19th, 1920, and which in part reads as follows:

"The White House,

Washington, 19 March, 1920.

"Gentlemen:

"I am transmitting to you herewith a copy of the report and award of the Bituminous Coal Commission appointed to adjust matters in controversy between the Bituminous coal miners and operators of the country.

"In accordance with instructions in my letter of appointment to the Commission and memoranda attached thereto and the agreements by mine workers and operators to abide by the report and award of the Commission, this report and award is the basis upon which the wage schedule agreements between the mine workers and operators shall be made.

"Operators and miners should therefore make arrangements for convening the necessary Joint Conference as soon as possible to make such changes in the terms, provisions and conditions, mining rates and wage schedules as are set forth in this report and award" * * *

We hereby agree:

* * *

Sixth—That the eight-hour day in effect on October 31, 1919, shall continue. An eight-hour day means eight hours' work in the mines at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night.

Drivers shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named.

* * *

For the Operators:

J. A. DONALDSON,
W. M. HENDERSON,
C. E. MAURER,
GEORGE M. JONES,
P. H. PENNA,
M. L. GOULD,
H. L. PERRY,
E. C. SEARLS.
THOMAS T. BREWSTER,
Chairman of the Joint Conference.

For the United Mine Workers:

ROBERT R. GIBBONS,
WILLIAM HARGEST,
JOHN MOORE,
G. W. SAVAGE,
ED. STEWART,
WM. MITCH,
F. FARRINGTON,
HARRY FISHWICK,
JOHN L. LEWIS,
PHILIP MURRAY.
WILLIAM GREEN,
Secretary of the Joint Conference.

4665 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-24.

Contract for Shaft Mines and Strip Mines, District No. 14, Between U. M. W. of A. and S. I. C. O. A.

Adopted at Kansas City, Mo., for Period Beginning April 1, 1920, and Ending March 31, 1922.

* * *

Eight-Hour Day.

Section 2.

1. For all classes of labor eight hours shall constitute a day's work. The going to and coming from the respective working places is to be done on the employee's own time. All company men shall perform whatever labor the foreman may direct. An eight-hour day means

eight hours' work at the usual working places; exclusive of noon time, which shall be one-half hour for all classes of labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night. The operator may refuse to allow any day man to work on any day on which he fails to be at his working place at the starting time.

* * *

Section 21.

1. This contract shall continue in full force and effect beginning April 1, 1920, and expire March 31, 1922.

* * *

In behalf of the Southwestern Interstate Coal Operators' Association.

F. W. LUKINS,
President,
W. P. HAWKINS,
Vice President-at-Large,
C. N. FISH,
Secretary,
Per G. M.

In behalf of the United Mine Workers of America:

ALEXANDER HOWAT,
President District 14,
By AUG. DORCHY,
JOHN WILKINSON,
President District 21,
Per J. D. WINTERS,
D. A. FRAMPTON,
President District 25,
JOHN L. LEWIS,
International President U. M. W. of A.

4666 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT
No. 30-NN.

Agreement.

Cheyenne, Wyo., October 31, 1917.

It is hereby agreed between the Southern Wyoming Coal Operators and the representatives of the United Mine Workers of America of District 22, that the following scale of prices, and Rules and Regulations, and Provisions, shall be in effect November 1, 1917, during the continuation of the war, expiring not later than September 1, 1920.

Hours of Labor.

Section 1. It is definitely understood and agreed that this agreement be based on an eight-hour day. That eight hours shall constitute a day's work in and around the mines and it is definitely understood that an eight-hour day means eight hours' work, at the usual working place, exclusive of one-half hour for mid-shift lunch, six days a week when required by the operators. Sundays, Christmas Day, New Year's Day, Thanksgiving, April first, Decoration Day, Thanksgiving, April first, Decoration Day, Fourth of July and Labor Day excepted. It is understood that the above rules regarding holidays and Sundays shall not apply to monthly men or the making of necessary repairs.

Sec. 2. Drivers shall work full eight hours in their respective places and take their mules to and from the stables, and the time for so doing shall not be included as part of the day's labor, provided that not more than ten minutes' time is required in going to or returning from his working place and stable.

* * *

SOUTHERN WYOMING COAL
OPERATORS,
THE KEMMERER COAL CO.,
By P. J. QUEALY,
Gen. Mgr.,
J. A. QUEALY CO.,
By P. J. QUEALY,
Gen Mgr.,
DIAMOND COAL & COAL CO.,
By THOS. SNEDDON,
Supt.,
LION COAL CO.,
By P. H. BURNELL,
WYOMING COAL CO.,
By P. H. BURNELL,
CENTRAL COAL & COKE CO.,
By ARTHUR VAIL,
Supt.,
THE UNION PACIFIC COAL
CO.,
By FRANK A. MANLEY,
Vice-Pres. and Gen. Mgr.,
GUNN-QUEALY COAL CO.,
By P. J. QUEALY,
Pres.,
BEAR RIVER COAL CO.,
By W. D. BRENNAN,
WYOPA COAL CO.,
By W. D. BRENNAN,
UNITED MINE WORKERS OF
AMERICA, DISTRICT No. 22,
W. W. GILDROY,
President,

GEORGE YOUNG,
Vice-Pres.,
JAMES MORGAN,
Secy.-Treasurer,
E. E. FORD,
MARTIN MARCHIANO,
JOHN McTEE.

4668 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-43.

Agreement, Made and entered into this 19th day of January, 1923, between Carbon Fuel Co., a corporation, party of the first part, and the undersigned persons, parties of the second part, governing the operations of the coal mines of the said party of the first part for the period beginning January 1, 1923, and ending January 1, 1925.

* * *

Eight Hour Day.

1. An eight hour day means eight hours work in the mine at the usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night.

Regarding drivers, they shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's work, their work beginning when they reach the change at which they receive empty cars, but in no case shall the drivers' time be docked while he is waiting for such cars at the point named. The prevailing custom for drivers relative to harnessing and unharnessing their mules shall continue.

* * *

4669 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-36.

Agreement.

This Agreement, made during the months of May and June, 1920, between the Various Coal Companies operating coal mines and coke ovens in the State of Colorado, party of the first part, hereinafter known as the Company, and the United Mine Workers of America, with National Headquarters at Indianapolis, Indiana, and District No. 15, United Mine Workers of America, with headquarters at Pueblo, Colorado, and the Local Unions, United Mine Workers of America, existing at the mining camps of the Various Coal Companies and those Employees of the Various Coal Companies who are members of the United Mine Workers of America, parties of the second part, hereinafter referred to as the National Organization, District Organization, Local Organization, Union or the Employees, as the case may be, Witnesseth:

* * *

Hours of Labor.

This contract is based on an eight-hour work day in all mines, as set forth in the Colorado eight-hour law. This means eight hours at the working places. The working hours of all classes of labor not covered in the Colorado eight-hour law are to continue as they now exist.

* * *

On Behalf of the Operators:

THE VICTOR-AMERICAN
FUEL CO.,
By W. H. HUFF,
President,
S. I. HEYN,
Secretary,
CANON RELIANCE COAL CO.,
By J. S. CHENEY,
Vice-Pres.,
MOZART LEWIS,
Supt., Wolf Park,
D. I. DICK,
Supt., Reliance,
THE GIBSON LUMBER &
FUEL CO.,
By HERMAN LOEHR,
Vice-Pres.,
STANLEY PAVALSKY,
Supt., Royal Gorge,
THE COLORADO & UTAH
COAL CO.,
By G. W. HARRIS,
President,
B. A. HARRIS,
Gen'l. Mgr.,
THE CHAMPION FUEL CO.,
THE EVANS FUEL CO.,
THE INTERNATIONAL FUEL
CO.,
By G. ZARLENGO,
President,

R. S. HUSBAND,
Supt., Matchless,
JOHN E. DALEY,
Gen'l. Supt., Evans,
THOMAS ALLEN,
Supt., Wolf Creek,
THE BEAR RIVER COAL CO.,
By W. MAYFIELD,
Secy.-Treas.,
ROBT. W. HENDRICKS,
Supt., Bear River,
AMALGAMATED DEVELOPMENT CORPORATION,
By BELMONT B. MAGEE,
President,
ALBERT J. MAGEE,
Secy. Treas.,
THE UNITED COLLIERIES COMPANY,
By ANDREW WALKER,
President,
THE BOULDER BLACK DIAMOND COAL CO.,
By HELEN A. GOLDEN,
Gen. Mgr.,
GEO. WILLIAMS,
Supt., Black Diamond,
THE PALISADES COAL & SUPPLY CO.,
By H. C. HUBER,
Secretary,
J. H. CUMMINGS,
Director,
DAVID I. LLOYD,
Supt., (Palisades)

THE COLORADO SPRINGS CO.,
By GEO. A. KRAUSE,
President,
THOS. J. FISHER,
Secretary,
McNALLY & THOMPSON,
By S. M. THOMPSON,
THE BLACK CANON COAL & FUEL CO.,
By TALTON F. CRANE,
Secy.-Treas.,
STAR COAL CO.,
By W. H. OWENS,
W. T. BRYAN,
THE JEWEL COAL CO.,
ARCH BEAN,
Pres.,
JOE SMITH,
Supt.

On Behalf of the United Mine Workers of America:

For the International Union:

J. L. LEWIS,
President,
WM. GREEN,
Secy.-Treas.,
PHILIP MURRAY,
Vice-Pres.,
W. D. VAN HORN,
A. R. WATKINS,
JOHN ZIMMERMAN,
Policy Committee,
ROBERT FOSTER,
NICK FONTECCHIO.

On Behalf of District Union:

LUKE BRENNAN,
International Board Member,
JOHN McLENNAN,
President,
MIKE LIVODA,
Vice-Pres.,
FELIX POGLIANO,
Secy. Treas.,
O. F. NIGRO,
Board Member, Sub-Dist. No. 5,
FRANK SCHUSTER,
Board Member, Sub-Dist. No. 3.

Scale Committee from Locals:

CHAS. LEVEQUE,
Delagua, 1878,
ALFONSO TRUJILLO,
Hastings, 1884,
BLAIR PADAVICH,
Gray Creek, 1929,
B. PASTORS,
Ravenwood, 3105,
JAMES GALLEDGE,
Radiant, 2189,
JAMES WALKER,
Chandler, 2546,
WM. BAINTON,
Wadge, 3051,
JAMES DURHAM,
Pinnacle, 1894,
AUGUST DEVIVIER,
Wolf Park, 2850,
FRANK ROSICK,
Wolk Park, 2850,

ALBERT NEWCOMB,
Wolk Park, 2850,
HARRY E. TURNER,
Reliance, 3018,
ED. McCARGISH,
Reliance, 3018,
R. E. CHAPMAN,
Royal Gorge, 2850,
S. E. SETTERFIELD,
Royal Gorge, 2850,
W. O. TAYLOR,
Mt. Harris, 3030,
W. H. BOYD,
Mt. Harris, 3030,
WM. FAIRHURST,
Mt. Harris, 3030,
JOHN F. NATION,
Mt. Harris, 3030,
ANDY ZURICH,
Matchless, 1668,
JAMES JAMES,
Matchless, 1668,
PETER BAMMER,
Matchless, 1668,
C. BROWN,
Wolf Creek, 3125,
JAMES BENNETT,
Wolf Creek, 3135,
THOS. G. ALLEN,
Wolf Creek, 3125,
ALBERT DI PILLA,
Evans, 2753,
JAKE POPINEAU,
Evans, 2753,
JOHN SPONSKE,
Evans, 2753,

C. LORENZO,
Bear River, 3045,
JOE RANNER,
Bear River, 3045,
CHAS. WESTMAN,
Bear River, 3045,
JOHN H. HUGHES,
Elk Creek, 4415,
NOAH H. HURST,
Elk Creek, 4415,
THOS. HARVEY,
Elk Creek, 4415,
JAMES NAUGHTON,
Monroe, 4423,
LEW F. EDER,
Monroe, 4423,
EMMETT WADE,
Monroe, 4423,
GEO. PHILLIPS,
Black Diamond, 2483,
J. G. WILLIAMS,
Black Diamond, 2483,
CHAS. HUMPHREY,
Black Diamond, 2483,
N. F. HORAHAN,
Palisades, 1772,
CHAS. RUDEEN,
Palisades, 1772,
BURT BENEDICT,
Palisades, 1772,
FRANK CHANNELL,
Curtis, 1662,
F. E. CAMPBELL,
Curtis, 1662,
THOS. DURFEE,
Curtis, 1662,

THOMAS SHERRATT,
Maitland, 3001,
CHAS. S. BURNS,
Toltec, 423,
JOHN McSTRAVAK,
Toltec, 423,
H. C. STEWART,
Sopris, 3048,
ABRAN TRUJILLO,
Sppris, 3048,
SAM FALSETTO,
L. U. 4575,
HARRY SMITH,
L. U. 4575.

4672 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-45.

Agreement By and Between the Operators of the Kanawha District of West Virginia and the United Mine Workers of America, District No. 17. Effective April 1st, 1923. Expiring March 31st, 1924.

Acting upon the request of the United States Coal Commission in the interest of common welfare as set forth in a message dated January 4, 1923 and addressed by the commission "To the Operators and Miners Committee on Reorganization," then meeting in Chicago, Illinois, reading as follows:

"To the Operators and Miners' Committee on Re-Organization:

"The Congress of the United States, charged with the duty of legislation for the general welfare of the American people, has created the United States Coal Commission to investigate the coal industry and to report the facts which it may find and to make recommendations to assist the legislative branch of our government in its efforts to guarantee justice to all concerned, to stabilize the industry, and to keep the mines in uninterrupted operation.

"This commission has not yet had time to ascertain the facts nor to reach any conclusions as to the merits of your controversies, but it is satisfied that delay in reaching an agreement is bad for the whole country and that every interested party would suffer a greater economic loss by the closing of your mines even for a comparatively short period than would be sustained by a continuance of your present agreement until April 1, 1924.

"If, therefore, all efforts to reach an agreement fail the commission urges you in the interest of the common welfare to continue your present arrangement until April 1, 1924, by which time this commission expects to have found and reported fully the facts over which your disagreements have arisen with recommendations to the Congress and by which time the Congress will have had opportunity to consider and take such action in the premises as it may deem wise.

(Signed) "JOHN HAYS HAMMONDS,
"Chairman, U. S. Coal Commission."

Washington, January 4, 1923.

Memorandum of Agreement.

This joint conference of Miners and Operators of the Kanawha District in West Virginia as now constituted hereby reaffirms the wage scale contract now existing between District 17, United Mine Workers of America and the Coal Operators of Kanawha District, whose interests are represented in this conference and hereby extends same for period of one year from April 1st, 1923, to March 31st, inclusive, 1924, in all of their terms, provisions and conditions, except as hereafter specifically provided. The exceptions to the present agreement, which will become a basic part of this agreement from April 1, 1923, to March 31, inclusive, 1924, are as follows:

Award of Bituminous Coal Commission.

Following is the award contained in the majority report of the United States Bituminous Coal Commission to the President:

"We hereby award that all the terms, conditions, and provisions, mining rates, and wage schedules in effect on October 31, 1919, is what is known as the Washington agreement, dated October 6, 1917, and the agreements preceding the Washington agreement, to which the Washington agreement is supplemental and upon which it is predicated, applying to the central competitive field and the outlying districts, shall be written into the agreement for which these findings constitute a basis, except as the same may be modified by the awards and recommendations hereinafter set forth.

"As a modification of the terms of the agreements above recited, we award:

* * *

"h. That the decisions which hereinbefore appear in the body of this report and which are hereinafter summarized, are to be incorporated, according to the letter and spirit of the said decisions, in the agreements to be drawn between the miners and operators; and that the said decisions shall constitute the basis upon which the wage agreements in all districts shall be predicated. They are not subject to negotiations, but shall be written into all agreements and schedules of wages. However, the several joint-scale committees may, by mutual agreement, make such proper adjustment of local conditions as may come within the terms and scope of this award, and of the Washington agreement, dated October 6, 1917, and of the agreements preceding the Washington agreement, to which the Washington agreement is supplemental, as more fully set forth in clause 6 of the joint agreement of the central competitive field, dated March 9, 1916. These decisions are summarized as follows:

* * *

"2. That the eight-hour day in effect on October 31, 1919, in what is known as the Washington agreement, dated October 6, 1917, and the agreements preceding the Washington agreement, to which the Washington agreement is supplemental, applying in the central competitive field and outlying districts, shall be written into the agreements for which these findings constitute a basis.

* * *

Section 1. That an eight-hour day means eight hours work in the mine at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night.

Regarding drivers they shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named. The prevailing custom for drivers relative to harnessing and unharnessing their mules shall continue.

On behalf of the Operators:

E. O. DANA,
A. W. FLUEGEL,
JOHN S. McKEEVER,
FRANK O. HARRIS,
E. L. MICHIE,
W. C. MITCHELL,
A. W. POLLOCK.

On behalf of the United Mine Workers of America:

PERCY TETLOW,
C. F. KEENEY,
FRED MOONEY,
WM. PETRY,
J. O. SMITH,
PAT REID,
E. G. KAY,
W. E. PHALEN.

4675 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-49.

Terre Haute Agreement Between Indiana Coal Operators Association and United Mine Workers of America, District No. 11, Effective from April 1, 1930.

This Agreement adopted by and between District 11, United Mine Workers of America, and the Indiana Coal

Operators Association, effective November 1, 1928 to March 31, 1930 inclusive. Witnesseth:

* * *

Terre Haute Agreement.

This agreement effective April 1, 1930 and expiring March 31, 1931.

Article I.

Sec. 1. This contract is based upon an eight-hour workday. It is definitely understood that this shall mean eight hours' work at the face, exclusive of the noon time, six days in the week, and that no local ruling shall in any way deviate from this agreement, or impose conditions affecting the same, but any class of day labor may be paid at the option of the operator for the number of hours and fraction thereof actually worked at the hour rate, based on one-eighth of the scale rate per day; provided, that when men go into the mine in the morning they shall be entitled to two hours' pay whether the mine works or not, excepting in event of a mine being closed down by action of any member or members of the U. M. W. of A., the two hours' pay shall be forfeited.

* * *

Witnesseth:

INDIANA COAL OPERATORS'
ASSOCIATION,
HOMER B. TALLEY,
JOHN A. TEMPLETON,
HUGH SHIRKEY,
H. M. FERGUSON,

W. J. FREEMAN,
CHAS. HALL,
CHAS. GOTTSCHALK,
P. L. DONIE,
HARVEY CARTWRIGHT.

DISTRICT No. 11, UNITED MINE WORKERS OF AMERICA,
MICHAEL FERGUSON,
ABE VALE,
WM. MITCH,
W. H. RANEY,
STELL HOBBS,
FRANK BARNHART,
PETE MOSELE,
NEIL BEAM,
THOS. BRENTLINGER,
THOS. GAMBLE,
MICHAEL CONVEY,
GEORGE DUDLEY,
LON CRAWFORD,
ERNEST TAYLOR,
HENRY SHAFER.

4676

PLAINTIFFS' EXHIBIT No. 30-51.

Wage Agreement and Working Conditions Between the Illinois Coal Operators Association, and the International Union, United Mine Workers of America, and District No. 12, United Mine Workers of America.

This Contract, made and entered into on this 10th day of August, 1932, by and between The Illinois Coal Operators Association, party of the first part, and The International Union, United Mine Workers of America, and District No. 12, United Mine Workers of America, parties of the second part,

* * * *

Definition of Eight-Hour Day for Miners.

Eleventh (a) The above scale of mining prices is based upon an eight-hour working day and it is definitely understood that this shall mean eight hours' work at the face, exclusive of noontime, six days a week, or forty-eight hours in the week, provided the operator desires the mine to work and no local ruling shall in any way affect this agreement, or impose conditions affecting the same.

Overtime for Day Labor.

(b) Any class of day labor may be paid, at the option of the operator, for the number of hours and fractions thereof actually worked at an hour rate based on one-eighth of the scale rate per day. Provided, however, that when the men go into the mine in the morning they shall be entitled to two hours' pay whether the mine hoists coal two hours or not, except in the event that they voluntarily leave their work during this time without the consent of the operator, they shall forfeit such two hours' pay. Provided, further, that overtime by day laborers, when necessary to supply railroad chutes with coal by night or Sunday, where no regular men therefor are exclusively employed, or when necessary in order not to impede the operation of the mine the day following, and for work which cannot be performed or completed by the regular shift during the regular hours without impeding the operation of the mine, shall be performed and paid for at the same rate per hour.

* * *

This contract becomes effective August 10, 1932, and will remain in effect to and including March 31, 1933.

For the Illinois Coal Operators Association:

W. J. JENKINS,
President,
FRED S. WILKEY,
Secretary.

For the United Mine Workers of America, District 12:

J. H. WALKER,
President,
FOX HUGHES,
Vice-Pres.,
WALTER NESBIT,
Secretary,
JOHN MOULIN,
Chairman, Scale Committee,
JOHN L. LEWIS,
President, United Mine Workers of America, International Union,
WM. J. SNEED,
Representing the International Union, United Mine Workers of America.

Extension of Contract.

Whereas, At the time the wage contract of August 10th, 1932 was adopted, it was an open question whether the duration thereof should be to and including March 31, 1933, or until a later date;

And Whereas, Since August 10th, 1932, the operators and mine workers of the adjacent State of Indiana signed a wage contract effective to and including March 31, 1935;

Now, Therefore, In view of similarity in working conditions in Illinois and Indiana, it is hereby agreed between the undersigned that the wage contract of August 10th, 1932, be and it is hereby extended in full force and effect to and including March 31, 1935.

Dated this 22nd day of December, A. D. 1932.

For the Illinois Coal Operators Association:

W. J. JENKINS,
President,
FRED S. WILKEY,
Secretary.

For the United Mine Workers of America, District 12:

J. H. WALKER,
President,
FOX HUGHES,
Vice-Pres.,
WALTER NESBIT,
Secretary,
JOHN MOULIN,
Chairman, Scale Committee,
JOHN L. LEWIS,
President, United Mine Workers of America, International Union,
WM. J. SNEED,
Representing the International Union, United Mine Workers of America.

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT
No. 30-53.

4678 Des Moines Agreement:

This contract, made and entered into by and between District No. 13, of the U. M. W. of A. and each member thereof, party of the first part, and the Iowa Coal Operators Association and each member thereof, party of the second part.

Witnesseth: That it is understood and agreed that all of the terms and provisions herein contained are for the exclusive joint use and benefit of District No. 13 of the U. M. W. of A. and each member thereof, and each and every member of the Iowa Coal Operators Association, and this agreement is entered into with the hope and belief that the good relations existing between the members of the two Associations will continue without the interruption of local strikes called in violation of the Agreement which is not countenanced by either Association.

It is agreed that said contract shall take effect April 1st, 1933, and remain in effect until March 31st, 1935, except that either party to this contract may, by giving thirty (30) days notice, convene a joint meeting for the purpose of hearing arguments for readjustment of contract, because of changes in competitive basic districts, or to make changes to comply with Federal legislation requiring reorganization of the coal industry.

Agreement made by the Iowa Coal Operators Association of Iowa and the United Mine Workers of District No. 13, effective April 1st, 1933, until March 31st, 1935, both inclusive.

* * * * *

General Resolutions Applying to District 13.

Resolution No. One.

Definition of Eight Hour Work Day.

(a) The above is based upon an eight hour work day and it is definitely understood and agreed that an eight hour day means eight hours' work in the mine at the usual working places for each individual employee, six days a week when required by the operator (Sundays and the following holidays excepted: New Year's Day, Washington's Birthday, April First, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, second Tuesday in December, 1934, and Christmas Day. The above named holidays shall be the only holidays under this agreement except as hereinafter provided regarding pay days.) This shall be exclusive of the time required in reaching said working places in the morning and returning from same at night.

Note: Should any of the above mentioned holidays fall on Sunday the following Monday shall be observed as same, except Washington's Birthday.

* * * * *

Rules Governing Drivers.

(c) Drivers shall take their mules to and from the stables and the time required in so doing shall not include any part of the day's labor, their work beginning at the place where they receive empty cars; but in no case shall a driver's time be docked while he is waiting for cars at the point named. And in no case shall the drivers be required to put in more than ten minutes extra time on the road each way with their mules from the stables to the place where they receive their empty cars, without compensation for the entire time, and the custom of harnessing and unharnessing the mules shall remain the same at each mine as heretofore. Where it is the practice to haul men in the trip, the latter shall leave the bottom at such time as the company may determine to be necessary for employees to reach their working places in time to begin work at the hour fixed. It is further agreed when the day men go down into the mine in the morning they shall

shall have at least two hours' work. This not to apply in case of accidents occurring where the men would have to be called out of the mine through a violation of the state mining law.

Resolution No. Two.

Starting Time.

The eight hour work day shall commence at 7 a. m. from April 1 to October 1, and 8 a. m. from October 1 to April 1, except when otherwise agreed locally, with one-half hour for noon where firing but once a day occurs, and one hour for noon where it is necessary to fire twice a day. In neither case shall such nooning be counted a part of the eight hour day.

Signed on behalf of the operators:
SAM BALLANTYNE,
President,
L. P. LOVE,
Secretary.

Signed on behalf of the Miners:
FRANK WILSON,
President,
ALF HJORT,
Secretary.

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT
No. 30-55

4681 Appalachian Agreement.

Between Northern Coal Control Association and the Smokeless and Appalachian Coal Association; and the United Mine Workers of America. Signed Sept. 21, 1933.

When the President approved this agreement he added to it the following provision:

"In approving this agreement, it is with the understanding that the hours and wages and conditions of employment recited herein may also be applied to the employees who are not parties hereto; and that the requirements of Sec. 7-a of the N. I. R. A. will be complied with in carrying out this agreement."

FRANKLIN D. ROOSEVELT.

Appalachian Agreement.

This Agreement is made and entered into pursuant to the provisions of Section 7 (b) of the National Industrial Recovery Act, and shall become effective upon approval by the President of the United States as provided therein.

This Agreement, made the 21st day of September, 1933, between the Northern Coal Control Association, a voluntary association on behalf of each member thereof, and the Smokeless and Appalachian Coal Association, a voluntary association on behalf of each member thereof, hereinafter referred to as the Operators, parties of the first part; and the International Union United Mine Workers of America and Districts 2, 3, 4, 5, 6, 17, 19, 30, and 31, hereinafter referred to as Mine Workers, and on behalf of each member thereof, party of the second part. (New Districts of the United Mine Workers of America may be established in this territory."

* * * * *

Maximum Hours and Working Time.

Eight hours of labor shall constitute a day's work. The eight-hour day means eight hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis; except in cases of accident which temporarily necessitates longer hours for those Mine Workers required on account thereof; and also excepting that number of Mine Workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

This Agreement shall become effective after approval by the President and on the same day that the bituminous coal code applicable to the territory embraced herein shall become effective, following its approval by the President; and it shall continue in effect until the first day of April, 1934.

In witness whereof each of the parties hereto, pursuant to proper authority, has caused this Agreement to be signed by its proper officers.

UNITED MINE WORKERS OF
AMERICA,
By JOHN L. LEWIS,
President,
PHILIP MURRAY,
Vice President
THOMAS KENNEDY,
Secretary.

NORTHERN COAL CONTROL ASSOCIATION,
By J. D. A. MORROW,
President,
WALTER A. JONES,
Secretary.
SMOKELESS AND APPALACHIAN COAL ASSOCIATION,
By E. C. MAHAN,
President,
H. R. HAWTHORNE,
Secretary.

For the Mine Workers:

VAN A BITTNER,
P. T. FAGAN,
SAM CADDY,
PERCY TETLOW,
JAMES MARK,
FRANK MILEY,
WM. TURNBLAZER,
FRANK HUGHES and
WILLIAM FEENEY.

For the Operators:

J. D. A. MORROW,
R. E. JAMISON,
W. L. ROBISON,
R. L. IRELAND, JR.,
WM. EMERY, JR.,
E. C. MAHAN,
D. C. KENNEDY,
H. C. FAUST,
W. A. RICHARDS,
D. A. REED,

CHARLES O'NEILL,
HEATH S. CLARK,
W. A. BISHOP,
J. D. FRANCIS,
S. C. HIGGINS,
R. E. TAGGART and
S. D. BRADY, JR.

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT 30-58.

Appalachian and Kanawha District Agreements by and between the Kanawha Coal Operators' Association and the United Mine Workers of America, District 17, and the International Union effective April 1, 1934 to March 31, 1935, Inclusive.

4683

Appalachian Agreement.

This Agreement is made and entered into pursuant to the provisions of Section 7 (b) of the National Industrial Recovery Act.

This Agreement made the 29th day of March, 1934, between the Eastern Bituminous Coal Association, Georges Creek and Upper Potomac Coal Association, Somerset County Coal Operators' Association, Western Pennsylvania Coal Control Association, Ohio Coal Control Association, Operators' Association of the Williamson Field, Big Sandy-Elkhorn Coal Operators' Association, Hazard Coal Operators' Exchange, Kanawha Coal Operators' Association, Logan Coal Operators' Association, voluntary associations on behalf of each member thereof, and Harlan County coal operators signatory hereto, and Virginia Coal operators signatory hereto, hereinafter referred to as the Operators, party of the first part, and the International Union United Mine Workers of America and Districts 2, 3, 4, 5, 6, 16, 17, 19, 28, 30, and 31, hereinafter referred to as the Mine workers and on behalf of each member thereof, party of the second part. (New Districts of the United Mine Workers of America may be established in this territory.)

* * * * *

Maximum Hours and Working Time.

Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis; except in cases of accident which temporarily necessitates longer hours for those Mine Workers required on account thereof; and also excepting that number of Mine Workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

* * * * *

This Agreement shall be submitted to the President for his approval under the terms of the Bituminous Coal Code applicable to the territories embraced herein.

This agreement shall become effective April 1, 1934, and shall continue in effect until March 31, 1935.

In witness whereof each of the parties hereto, pursuant to proper authority, has caused this Agreement to be signed by its proper officers.

UNITED MINE WORKERS OF
AMERICA,
JOHN L. LEWIS,
President,
PHILIP MURRAY,
Vice-President,

THOMAS KENNEDY,
Secretary-Treasurer,
JAMES MARK,
President Dist. 2,
FRANK HUGHES,
President Dist. 3,
WILLIAM HYNES,
President Dist. 4,
P. T. FAGAN,
President Dist. 5,
PERCY TETLOW,
President Dist. 6,
JAMES E. JONES,
President Dist. 16,
VAN A. BITTNER,
President Dist. 17,
WILLIAM TURNBLAZER,
President Dist. 19,
DALE STAPLETON,
President Dist. 28,
SAM CADDY,
President Dist. 30,
FRANK MILEY,
President Dist. 31,
CHARLES O'NEILL
WALTER A. JONES,
Eastern Bituminous Coal Association,
ANDREW B. CRICHTON,
WM. W. HILL,
Georges Creek & Upper Potomac Coal Assn.,
TELFORD LEWIS,
Somerset County Coal Operator's Assn.

J. D. A. MORROW,
E. R. GLASS,
Western Pennsylvania Coal Control Assn.,
R. L. IRELAND, JR.,
D. P. HURD,
Ohio Coal Control Association,
J. M. VEST,
J. J. ARDIGO,
Opers. Assn. of Williamson Field,
E. R. PRICE,
THOS. S. HAYMOND,
Big Sandy-Elkhorn Coal Opers. Assn.,
WM. W. MILLER,
Hazard Coal Operators' Exchange,
D. C. KENNEDY,
Kanawha Coal Operators' Association,
HERBERT E. JONES,
H. A. McALLISTER,
Logan Coal Operators' Association.
HARLAN COAL OPERATORS,
N. B. PERKINS,
(Signatory for all companies parties to this Agreement.)
VIRGINIA COAL OPERATORS,
J. D. ROGERS,
Vice President, Stonega Coal & Coke Co.

(Other signatures to be affixed.)

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT
No. 30-60.

Appalachian and Kanawha District Agreements, by and between the Kanawha Coal Operators' Association and the United Mine Workers of America, District 17, and the International Union, effective October 1, 1935, until March 31, 1937, Inclusive.

This Agreement made the 26th day of September, 1935, between the Eastern Bituminous Coal Association, Georges Creek and Upper Potomac Coal Association, Somerset County Coal Operators' Association, Western Pennsylvania Coal Control Association, Ohio Coal Control Association, Michigan Coal Operators' Association, Northern Panhandle of West Virginia Coal Operators Association, Northern West Virginia Subdivisional Coal Association, Operators' Association of the Williamson Field, Big Sandy-Elkhorn Coal Operators' Association, Hazard Coal Operators' Association, Kanawha Operators' Association, Logan Coal Operators' Association, Southern Appalachian Coal Operators' Association, New River Coal Operators' Association, Pocahontas Operators' Association, Winding Gulf Operators' Association, Greenbrier Coal Operators' Association, voluntary associations on behalf of each member thereof, and Harlan County, Kentucky, coal operators signatory hereto, and Virginia coal operators signatory hereto, hereinafter referred to as the Operators, party of the first part, and the International Union, United Mine Workers of America and Districts 2, 3, 4, 5, 6, 16, 17, 19, 24, 28, 30 and 31, hereinafter referred to as the Mine Workers and on behalf of each member thereof party of the second part. (New Districts of the United Mine Workers of America may be established in this territory.)

Maximum Hours and Working Time.

Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis; except in cases of accident which temporarily necessitates longer hours for those Mine Workers required on account thereof; and also excepting that number of Mine Workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

* * * * *

This Agreement shall become effective October 1, 1935, and shall continue in effect to April 1, 1937.

In Witness Whereof each of the parties hereto, pursuant to proper authority, has caused this agreement to be signed by its proper officers.

Note.

Signed by representatives of all districts except Harlan, Hazard, Virginia, and Southern Appalachian.

1:30 A. M., September 27, 1935.

UNITED MINE WORKERS OF
AMERICA,
JOHN L. LEWIS,
President,
PHILIP MURRAY,
Vice President,
THOS. KENNEDY,
Secretary-Treasurer,

JAS. MARK,
District 2,
FRANK HUGHES,
District 3,
WM. HYNES,
District 4,
P. T. FAGAN,
District 5,
O. J. OWENS,
District 6,
JOHN T. JONES,
District 16,
VAN A. BITTNER,
District 17,
WM. TURNBLAZER,
District 19,
ERNEST STEVENSON,
District 24,
JOHN SAXTON,
District 28,
SAM CADDY,
District 30,
FRANK MILEY,
District 31.

Operators:
CHARLES O'NEILL,
President,
WALTER A. JONES,
Secretary-Treasurer,
Eastern Bituminous Coal Association,
CHARLES O'NEILL,
President,
WALTER A. JONES,
Secretary-Treasurer,
Central Pennsylvania Coal
Producers' Assn.

CHAS. E. H. BROWN,
President, Georges Creek & Upper Pot. Coal Assn.
TELFORD LEWIS,
President, Somerset Co. Coal Operators' Assn.,
J. D. A. MORROW,
President,
BRYON H. CANNON,
Secretary,
Western Pennsylvania Coal Control Assn.,
WM. EMERY, JR.,
Vice President,
D. F. HURD,
Secretary,
Ohio Coal Control Assn.,
WARRAN PIPPEN,
Michigan Coal Operators' Assn.,
WM. TAYLOR,
Nothern Panhandle of W. Va. Coal Operators' Assn.,
S. N. BRADY, JR.,
A. C. BEESON,
Northern W. Va. Subdivisional Coal Assn.,
L. E. WOODS,
President,
JOSEPH J. ARDIGO,
Secretary,
Operators' Assn. of Williamson Field,
THOS. S. HAYMOND,
President,
H. S. HOMAN
Big Sandy-Elkhorn Coal Operators' Assn.

HAZARD COAL OPERATORS' ASSN.,
D. H. MORTON,
D. C. KENNEDY,
KANAWHA COAL OPERATORS' ASSN.,
H. E. JONES, President,
H. A. McALLISTER,
LOGAN COAL OPERATORS' ASSN.,
SOUTHERN APPALACHIAN COAL OPERATORS' ASSN.,
EDW. GRAFF, President,
S. C. HIGGINS, Secretary,
NEW RIVER COAL OPERATORS' ASSN.,
N. L. GARVEY,
Chairman, Labor Committee,
W. E. E. KOEPLER, Secretary,
POCAHONTAS OPERATORS' ASSN.,
L. T. PUTNAM, Vice President,
P. O. GRANEY, Secretary,
WINDING GULF OPERATORS' ASSN.,
J. WADE BELL, President,
WALTER CRICHTON,
Secretary,
GREENBRIER COAL OPERATORS' ASSN.,
HARLAN COUNTY, KY., COAL OPERATORS,
VIRGINIA COAL OPERATORS.

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-81.

Wage Agreement between Southern Appalachian Coal Operators' Association and District 19 United Mine Workers of America, effective October 1, 1935, expires April 1, 1937.

Southern Appalachian District Agreement.

Agreement made and entered into between Southern Appalachian Coal Operators' Association, a voluntary association, in behalf of its members signatory hereto, operating coal properties within the territory embraced in District No. 19, United Mine Workers of America, party of the first part, and District No. 19, United Mine Workers of America, on behalf of itself and each of its members, party of the second part.

Witnesseth:

That the Appalachian Agreement, dated September 26th, 1935, is hereby made a part of this Agreement, except as herein modified.

* * * * *

In Witness Whereof, each of the parties hereto, pursuant to proper authority, has caused this Agreement to be signed by its proper officers.

UNITED MINE WORKERS OF AMERICA, DISTRICT No. 19,
WM, TURNBLAZER.
ROBT. L. CHILDERS.
ROBT. OWENS.
O. E. GASAWAY, Int. Union,
SOUTHERN APPALACHIAN COAL OPERATORS' ASSOCIATION,
By L. C. GUNTER,
Executive Vice-President.

for its members signatory hereto:

SUN COAL COMPANY,
By I. E. BURTIS, President,
NEW JELLICO COAL COMPANY,
By R. L. WILHELM,
DEAN BRANCH COAL COMPANY,
By J. T. BRADLEY,
PRUDEN COAL & COKE COMPANY,
By V. N. HACKER,
VIRGINIA JELLICO COAL COMPANY,
By T. R. MITCHELL,
CLEAR FORD COAL COMPANY,
By S. M. REAMS,
MOORE COAL COMPANY,
By C. M. MOORE,
WILLIAMS COAL MINING COMPANY,
By J. W. WILLIAMS,
TENNESSEE JELLICO COAL COMPANY,
By JOHN W. HOWE, Genl. Supt.,
BLOCK COAL & COKE COMPANY,
By JOHN W. HOWE, Genl. Supt.,
DIAMOND COAL MINING COMPANY,
By H. K. COOK, President,
WIND ROCK COAL & COKE COMPANY,
By W. C. HUTCHESON, Genl. Mgr.
CLINCHMORE COAL MINING COMPANY,

By C. M. MOORE,
FORK MOUNTAIN COAL COMPANY,
By B. E. CHEELY,
SOUTHERN COLLIERIES, INC.,
By B. E. CHEELY,
CAMBRIA COAL COMPANY,
By C. W. HENDERSON, President,
STRAIGHT FORK COAL COMPANY,
By C. W. HENDERSON, Treasurer,
HIGH POINT COAL COMPANY,
By C. W. HENDERSON, Treasurer,
SOUTHERN MINING COMPANY,
By E. C. MAHAN,
HIGNITE COAL COMPANY,
By E. S. HELBURN, President,
CAIRNES COAL MINING COMPANY,
By E. S. HELBURN, President,
BON JELLICO COAL COMPANY,
By J. E. TAYLOR,
BLUE DIAMOND COAL COMPANY,
By FRANK GARLAND,
Vice-President.

The performance of the obligations of the United Mine Workers of America, District No. 19 under the above agreement with the coal companies herein named, members of Southern Appalachian Coal Operators' Association, is guaranteed by the International Union, United Mine Workers of America, and its officers, pursuant to authority empowering them to do so.

Witness the seal of the International Union thereto affixed and the signatures of its proper officers, this ..... day of ...., 1935.

INTERNATIONAL UNION,
UNITED MINE WORKERS
OF AMERICA,
JOHN L. LEWIS,
President,
PHILIP MURRAY,
Vice-President,
THOMAS KENNEDY,
Sec'y-Treas.

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT 30-86.

Agreement between the United Mine Workers of America and the Southern Wyoming Coal Operators' Association.

Cheyenne, Wyoming, March 6, 1937.

It is hereby agreed between the Southern Wyoming Coal Operators' Association and the representatives of District 22, United Mine Workers of America, that the following scale of Wages, Rules, Regulations, and Working Conditions shall be in effect from and including April 1, 1937, to and including March 31 1939. This Agreement succeeds and takes the place of the agreement dated Cheyenne, Wyoming, December 19, 1935.

* * * * *

Maximum Hours and Working Time.

Sec. 7. No employee, except members of the executive, supervisory, clerical, technical and confidential personnel, shall be employed in excess of seven hours per day and five days per week, subject to the execptions hereinafter stated.

(a) Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis; except in cases of accident which temporarily necessitates longer hours for those Mine Workers required on account thereof; and also excepting that number of Mine Workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

(b) Overtime: Work by Mine Workers paid by hour or day in excess of seven (7) hours in one day or thirty-five (35) hours in anyone week shall be paid for at the rate of time and one-half with the following exceptions:

(c) Employes engaged at power houses, substations, and pumps operating continuously for twenty-four (24) hours daily and especially exempted from the seven (7) hour day and the time and one-half provisions. Special exemptions for individual employes other than those named above when twenty-four (24) hours continuous operation daily is required are subject to arrangement between mine management and district officers without time and one-half for overtime. Employes so especially exempted are limited to eight (8) hours per day and forty (40) hours per week and time and one-half for time worked in excess thereof.

(d) The seven (7) hour day, five (5) day week (35 hours per week) as provided in this Agreement, shall prevail.

Sec. 8. The following classes of Mine Workers are excepted from the foregoing provisions as to the maximum hours of work:

(a) All Mine Workers engaged in the transportation of men and coal shall work the additional time necessary to handle man trips and/or haulage animals and all coal in transit and shall be paid the regular hourly rate for the first seven (7) hours and time and one-half for all overtime.

(b) Outside employes engaged in the dumping, handling and preparation of coal, and the manufacture of coke, shall work the additional time necessary, not to exceed thirty (30) minutes, to dump and prepare the coal delivered to the tipple each shift, and shall be paid the regular hourly rates for the first seven (7) hours and time and one-half for overtime not to exceed the thirty (30) minutes hereinbefore stated.

(c) When day men go into the mine in the morning, they shall be entitled to two hours' pay whether or not the mine works the full two hours, but, after the first two hours, the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof. If for any reason the regular routine work cannot be furnished inside day men, the employer may furnish other than the regular work.

(d) The following holidays will be recognized: Sundays, Christmas Day, New Year's Day, Thanksgiving, April 1st, Declaration Day, Fourth of July, Armistice Day, and Labor Day. It is understood and agreed that the suspension of production on Sundays and other holidays above enumerated shall not extend to monthly men or to those engaged in the making of necessary repairs or emergency work.

Sec. 9. The operation shall lay all permanent tracks in entries, the miners and loaders laying entry and room rails as heretofore. The operator agrees to maintain and repair all track in room and entries, when tracklaying by the miners has been done in a workmanlike manner. Where track is broken to bring back pillars, or where track must be laid to end of pillar to bring back same, the Operator shall lay track to face of coal.

* * * * *

SOUTHERN WYOMING COAL
OPERATORS' ASSOCIATION,
By T. J. O'BRIEN, President,
L. W. MITCHELL,
Executive Secretary,
UNITED MINE WORKERS OF
AMERICA, DISTRICT 22,
By J. M. ROSS, President,
ALBERT ROBERTS,
Vice-President,
VIRGIL WRIGHT,
Secretary-Treasurer.

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT 30-95.

Interstate and District Contract for Shaft Mines Holding Membership in the Southwestern Interstate Coal Operators' Association District No. 14, between the United Mine Workers of America and the Southwestern Interstate Coal Operators' Association.

For a period Beginning April 1st, 1937, and Ending March 31st, 1939.

* * * * *

Seven-Hour Day.

Section II.

Article 1. For all classes of labor, except as otherwise provided, seven hours shall constitute a day's work and thirty-five hours a week. Time and one-half to be paid for all over seven hours worked in any one day or thirty-five hours in any one week.

The going to and coming from the respective working places is to be done on the employee's own time. All day men shall perform whatever labor the foreman may direct. A seven-hour day means seven hours' work at the usual working places, exclusive of noon-time, which shall be one-half hour for all classes of day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night. The operator may refuse to allow any day man to work on any day on which he fails to be at his working place at the starting time.

In behalf of the Southwestern Interstate Coal Operators' Association:

K. A. SPENCER,
President
BERNARD HARRIGAN,
Commissioner.

In behalf of the United Mine Workers of America:

HENRY ALLAI,
President, District 14,
JOSEPH E. HROMEK,
Secretary-Treasury, District 14,
JOHN L. LEWIS,
International President of
U. M. W. of A.
By HENRY ALLAI.

Adopted at Pittsburg, Kansas, May 13th, 1937.

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT 30-97.

Agreement.

This Agreement, made and entered into this first day of April, 1937, by and between Coal Producers of Colorado and New Mexico, signatory hereto, parties of the first part, each for itself and not for the other, said parties of the first part being hereinafter, for convenience, referred to as the Producers, and the United Mine Workers of America, District No. 15, hereinafter referred to as the Mine Workers, and on behalf of each member thereof, party of the second part:

* * * * *

Maximum Hours and Working Time.

Section 1. Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis; except in cases of accident which temporarily necessitates longer hours for those Mine Workers required on account thereof; and also excepting that number of Mine Workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

Overtime.

* * * * *

Drivers shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named. The method at present existing covering the harnessing and unharnessing of mules shall be continued throughout the life of this Agreement.

* * * * *

This Agreement shall become effective April 1, 1937, and shall terminate April 1 1939.

In witness whereof, each of the parties hereto, pursuant to proper authority, has caused this Agreement to be signed by its proper officers.

Producers:
CALIENTE COAL COMPANY,
By S. M. THOMPSON, President,
HUERFANO COAL COMPANY,
By N. C. ANDERSON,
General Manager,
MOFFAT COAL COMPANY,
By B. W. SNODGRASS,
JUANITA COAL & COKE COMPANY,
By J. S. BOWIE,
THE CALUMET FUEL COMPANY,
By A. C. WATTS,
Assistant Manager,
AMERICAN INDEPENDENT COAL MINES,
By D. L. HANSEN,
MINNEQUA FUEL COMPANY,
By ROBERT TURNER, President,
PRYOR COAL MINING COMPANY,
By W. H. DONOVAN,
Vice President,

THE GORDON COAL COMPANY,
By GEORGE B. DICK,
General Manager,
THE JEWELL COLLIERIES CORPORATION,
By GEORGE B. DICK,
General Manager,
THE DICK COAL COMPANY,
By GEORGE B. DICK,
General Manager,
AZTEC COAL MINING COMPANY,
By GEORGE B. DICK,
NUSHAFT CANON COAL COMPANY,
By J. H. GOODMAN, Secretary,
BEAR CANON COAL COMPANY,
By WM. G. PLESTED, Manager,
KEYSTONE COAL COMPANY,
By JOHN CONNELL, President,
BEAR RIVER COAL COMPANY,
By JOHN CONNELL, Secretary,
THE VICTOR-AMERICAN FUEL COMPANY,
By C. C. DEITER, Vice-President,
COLORADO & UTAH COAL COMPANY.
By MERRITT HUTTON, Manager,
KERR COAL COMPANY,
By W. M. KERR,
HAYDEN COAL COMPANY,
By HOMER H. HARRIS, President,
THE TEMPLE FUEL COMPANY,

By F. R. WOOD, President,
THE VICKERS COAL COMPANY,
By F. R. WOOD, President,
THE ROCKY MOUNTAIN FUEL COMPANY,
By J. P. PEABODY,
President and General Manager.
By JOHN R. LAWSON,
Vice-President,
ST. LOUIS ROCKY MOUNTAIN & PACIFIC COMPANY,
By J. VAN HOUTEN, President,
SHAMROCK COAL COMPANY,
By J. E. HATCHER,
REDWOOD MINING COMPANY,
By T. J. SWEET,
TORRID COAL COMPANY,
By STONE & McPHAIL,
NUGGET MINE,
By JOE MALONEY,
RED ASH COAL COMPANY,
By M. J. JUDISCEK,
FORBES MINE,
By W. H. OWEN,
DELDOSSO COAL COMPANY,
By JOHN D. DELDOSSO,
ROUSE COAL COMPANY,
By BERES & BOSCIA,
SPRING CANON COAL COMPANY
By JAMES A. McCUNE,
MAJOR COAL COMPANY,
By THOMAS UGOLINI,
THE THOR FUEL COMPANY,
By J. R. BICKERTON,

STRAWBERRY MINE,
By JOHN FODERARO,
W. A. REAM COAL COMPANY,
By W. A. REAM,
BLACK HILLS COAL COMPANY,
By ALBERT AMIDAY,
BLACK HAWK COAL COMPANY,
By E. H. JENKINS,
GIORDANA COAL COMPANY,
By JOE GIORDANO,
CADDELL COAL COMPANY,
By ED CADDELL,
OLIVER COAL COMPANY,
By J. HORGARD,
RIVERVIEW COAL MINE,
By LOUIS SUPANCIC,
GARFIELD COAL COMPANY,
By WALTER SCOTT
CLARKE COAL COMPANY,
By R. M. CLARKE;
MIDWEST MINE,
By WM. HUGHES,
MARTIN COAL COMPANY,
By RICHARD MARTIN,
BLAR COAL & COKE COMPANY,
By TONY BEAR,
EDWARDS COAL MINE,
By GEORGE W. EDWARDS,
PALISADE CLEAN HEAT COAL COMPANY,
By W. R. SOMERVILLE,
MOUNTAIN VIEW COAL COMPANY,

By NICKIE ROCCHIO,
MANLEY COAL COMPANY,
By WM. MANLEY,
CANON BLACK DIAMOND COAL CO.,
By JOE YELLICO,
CANON ZENITH COAL COMPANY,
By JOE ZENO DUCA,
CANON IMPERIAL COAL COMPANY,
By FRANK SANTARELLI,
ROYAL GORGE COAL COMPANY,
By JOHN P. THOMAS, JR.,
Secretary-Treasurer,
BLUE RIBBON COAL COMPANY,
By ROBT. DONALDSON,
CANON RELIANCE FUEL COMPANY,
By H. H. PINKNEY,
BROOKSIDE COAL MINING COMPANY,
By FRANK ORECCHIO, President,
CANON IDEAL COAL COMPANY,
By LOUIS DALSANDRO,
GIULIANO-CARPINE COAL COMPANY,
By JOHN G. GIULIANO, President,
FAWN HALLOW COAL COMPANY,
By FLORIJAN ADAMIC,
COAL CREEK CANON COAL CO.,

By JAKE CARASTIA,
EVANS COAL CO.,
By RICHARD EVANS,
CUCKOO COAL CO.,
By H. B. DUNN,
GRAND PRIZE COAL CO.,
By H. B. DUNN,
DOUBLE DICK COAL MINE,
By TONY SANTARELLI,
RIVERSIDE FARMERS MINE,
By JOHN McDOWELL
THE BALD COAL COMPANY,
By JOHN B. BALD,
AMERICAN INDEPENDENT MINE,
PRICE AND NEWELL,
By OWEN PRICE,
CANON MONARCH COAL COMPANY,
By W. J. BEER,
PINE GULCH COAL COMPANY,
By HERMAN WEST,
CANON PEACOCK COAL COMPANY,
By FOSTER W. RANSON,
CANON RED ARROW COAL COMPANY, INC.,
By ADOLPH FIORINA,
LITTLE JOHNNY COAL COMPANY,
By JOHN LIPPIS,
CANON BLACK HAWK COAL COMPANY,
By ALEX BELTRAMO,
MOSCHETTI COAL COMPANY,
By DOM MOSCHETTI,

CALDIROLA COAL CO.,
By C. J. CALDIROLA,
GRIFFITHS COAL MINING CO.,
By W. R. GRIFFITHS,
CANON OLD SLOPE,
By CHARLES BUFMACK,
PERINO COAL CO.,
By JAMES PERINO,
CANYON TIGER COAL COMPANY,
By HOLT AND CORDRAY,
UNITED MINE WORKERS OF AMERICA,
By JOHN L. LEWIS, President,
Per FRANK HEFFERLY,
Representative,
DISTRICT 15, UNITED MINE WORKERS OF AMERICA,
By FRANK HEFFERLY,
President, District 15,
U. M. W. of A.,
By O. F. NIGRO,
International Board Member and Secretary-Treasurer, District 15, U. M. W. of A.,
MEMBERS SCALE COMMITTEE, DISTRICT 15, U. M. W. OF A.,

Sub-District 2:
By C. I. DAVIES,
By J. P. FRERE
By TONY KATTNIG.

Sub-District 3:
By ED MUNDEN,
By MIKE FERDERBER,
By CON LUCERO.

Sub-District 4:
By ED MUNDEN,
By JAMES D. BARCLAY,
By FRANK A. SEVESTRE.

Sub-District 5:
By PAUL FICKLE,
By PETER MOERTH,
By JOE PONCHUR.

Sub-District 6:
By JOHN W. HARMON,
By ELWOOD HORTON,
By JOHN DAUGHERTY.

Sub-District 7:
By EBEN JONES,
By JOHN VIECELLI,
By ANTONIO S. TRUJILLO.

4700 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-102.

Wage Agreement Between Southern Appalachian Coal Operators' Association and District 19 United Mine Workers of America, Effective April 1, 1937, Expires March 31, 1939.

Southern Appalachian District Agreement.

Agreement made and entered into between Southern Appalachian Coal Operators' Association, a voluntary association, in behalf of its members signatory hereto, operating coal properties within the territory embraced in District No. 19, United Mine Workers of America, party of the first part, and District No. 19, United Mine Workers of America, on behalf of itself and each of its members, party of the second part.

Witnesseth:

* * * * *

Maximum Hours and Working Time.

Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis, except in cases of accident which temporarily necessitates longer hours for those mine workers required on account thereof; and also excepting that number of mine workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

* * * * *

In Witness Whereof, each of the parties hereto, pursuant to proper authority, has caused this agreement to be signed by its proper officer.

UNITED MINE WORKERS OF AMERICA, DISTRICT No. 19,
WM. TURNBLAZER,
President,
L. T. ARNETT,
Vice-President,
ROBT. L. CHILDERS,
Sec'y-Treas.,
SAM BOOTH,
Committeeman,
FRANK DOBBIN,
Int'l Rep.

SOUTHERN APPALACHIAN COAL OPERATORS' ASSOCIATION,
By L. C. GUNTER,
Executive Vice-President.

For its members signatory hereto:

CLINCHMORE COAL MINING COMPANY,
By C. M. MOORE.
MOORE COAL COMPANY,
By C. M. MOORE.
SOUTHERN COLLIERS, INC.,
By E. M. MAHAN.
SOUTHERN MINING COMPANY,
By E. C. MAHAN.
FORK MOUNTAIN COAL COMPANY,
By E. C. MAHAN.
PRUDEN COAL COMPANY,
By V. N. HACKER, President.
CAMBRIA COAL COMPANY,
By C. W. HENDERSON.
SUN COAL COMPANY,
By C. W. HENDERSON.
HIGH POINT COAL COMPANY,
By C. W. HENDERSON.
STRAIGHT FORK COAL COMPANY,
By C. W. HENDERSON.
CLEAR FORK COAL & COKE COMPANY,
By S. M. REAMS, President.

PREMIER COAL COMPANY,
By W. E. CABELL, President.
WIND ROCK COAL & COKE COMPANY,
By W. C. HUTCHESON,
NEW JELLICO COAL COMPANY,
By R. L. WILHELM.
HIGNITE COAL COMPANY,
By E. S. HELBURN,
CAIRNES COAL MINING COMPANY,
By E. S. HELBURN,
BLACK DIAMOND COAL MINING COMPANY,
By C. S. BLAIR.
BLUE DIAMOND COAL COMPANY,
By FRANK GARLAND.
BLOCK COAL & COKE COMPANY,
By JOHN W. HOWE, General Supt.
TENNESSEE JELLICO COAL COMPANY,
By JOHN W. HOWE, General Supt.
WILLIAMS COAL MINING COMPANY,
By J. W. WILLIAMS, President.

The performance of the obligations of the United Mine Workers of America, District No. 19, under the above agreement with the coal companies herein named, members of the Southern Appalachian Coal Operators' Association, is guaranteed by the International Union, United Mine Workers of America, and its officers, pursuant to authority empowering them to do so.

Witness the seal of the International Union hereto affixed and the signature of its proper officers, this 2nd day of April, 1937.

INTERNATIONAL UNION
UNITED MINE WORKERS OF AMERICA,
JOHN L. LEWIS, President,
PHILIP MURRAY,
Vice-President.
THOMAS KENNEDY,
Sec'y-Treas.

4703 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-104.

Southern Appalachian District Agreement.

Agreement made and entered into between Southern Appalachian Coal-Operators' Association, a voluntary Association, in behalf of its members signatory hereto, operating coal properties within the territory embraced in District No. 19, United Mine Workers of America, party of the first part, and District No. 19, United Workers of America, on behalf of itself and each of its members, party of the second part.

Witnesseth:

That the Appalachian Agreement, dated April 2, 1937, is hereby made a part of this Agreement, except as herein modified.

The parties hereto further covenant and agree as follows:

* * * * *

Maximum Hours and Working Time.

Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis, except in cases of accident which temporarily necessitate longer hours for those mine workers required on account thereof; and also excepting that number of mine-workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

* * * * *

When day men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours, but after the first two hours, the men shall be paid for every hour thereafter, by the hour, for each hour's work or fractional part thereof. If, for any reason, the regular routine work cannot be furnished inside day men, the employer may furnish other than the regular work.

Drivers shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named. The method at present existing, covering the harnessing and unharnessing of mules, shall be continued throughout the life of this agreement.

Motormen and trip riders shall be at the passway where they receive the cars, at starting time. The time required to take motors to the passway at starting time and departing from the same at quitting time shall not be regarded as part of the day's labor, their time beginning when they reach the change or parting at which they receive cars, but in no case shall their time be docked while waiting for cars at the point named.

* * * * *

This agreement shall become effective on April 2, 1937, and shall continue in effect until the first day of April, 1939, except as modified as follows:

* * * * *

In Witness Whereof, each of the parties hereto, pursuant to proper authority, has caused this agreement to be signed by its proper officers.

UNITED MINE WORKERS OF AMERICA, DISTRICT No. 19,
WM. TURNBLAZER,
President,
L. T. ARNETT,
Vice-President,
ROBT. L. CHILDERS,
Sec'y-Treas.,
SAM BOOTH,
Committeeman,
FRANK DOBBIN,
Int'l Rep.
SOUTHERN APPALACHIAN COAL OPERATORS' ASSOCIATION,
By L. C. GUNTER,
Executive Vice-President.

For its members signatory hereto:

CLINCHMORE COAL MINING COMPANY,
By C. M. MOORE.
MOORE COAL COMPANY,

By C. M. MOORE.
SOUTHERN COLLIERIES, INC.,
By E. C. MAHAN.
SOUTHERN MINING COMPANY,
By E. C. MAHAN.
FORK MOUNTAIN COAL COMPANY,
By E. C. MAHAN.
PRUDEN COAL COMPANY,
By V. N. HACKER, President.
CAMBRIA COAL COMPANY
By C. W. HENDERSON.
SUN COAL COMPANY,
By C. W. HENDERSON.
HIGH POINT COAL COMPANY,
By C. W. HENDERSON.
STRAIGHT FORK COAL COM-
By C. W. HENDERSON.
CLEAR FORK COAL & COKE COMPANY,
By S. M. REAMS, President.
PREMIER COAL COMPANY,
By W. E. CABELL, President.
WIND ROCK COAL & COKE COMPANY,
By W. C. HUTCHESON.
NEW JELLICO COAL COMPANY,
By R. L. WILHELM.
HIGNITE COAL COMPANY.
By E. S. HELBURN.
CAIRNES COAL MINING COMPANY,

By E. S. HELBURN.
BLACK DIAMOND COAL MINING CO.,
By C. S. BLAIR.
BLUE DIAMOND COAL COMPANY,
By FRANK GARLAND.
BLOCK COAL & COKE CO.,
By JOHN W. HOWE, General Supt.
TENNESSEE JELLICO COAL CO.,
By JOHN W. HOWE, General Supt.
WILLIAMS COAL MINING CO.,
By J. W. WILLIAMS, President.

The performance of the obligations of the United Mine Workers of America, District No. 19, under the above agreement with the coal companies herein named, members of the Southern Appalachian Coal Operators' Association, is guaranteed by the International Union, United Mine Workers of America, and its officers, pursuant to authority empowering them to do so.

Witness the seal of the International Union hereto affixed and the signature of its proper officers, this 2nd day of April, 1937.

INTERNATIONAL UNION UNITED MINE WORKERS OF AMERICA,
JOHN L. LEWIS, President,
PHILIP MURRAY,
Vice-President.
THOMAS KENNEDY,
Sec'y-Treas.

4706 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-105.

Appalachian Agreement and Agreement Entered Into Between the Coal Operators Association of the Thick Vein Freeport Seam of Penna. Including Thin Vein Freeport Seam and District No. 5—United Mine Workers of America, Effective April First, 1937.

Appalachian Agreement.

1. This Agreement, made the 2nd day of April, 1937, between the Central Pennsylvania Coal Producers Association, Georges Creek and Upper Potomac Coal Association, Somerset County Coal Producers Association, Ohio Coal Control Association Michigan Coal Operators' Association, Northern Panhandle of West Virginia Coal Operators' Association, Northern West Virginia Subdivisional Coal Association, Operators' Association of Williamson Field, Big Sandy-Elkhorn Coal Operators' Association, Hazard Coal Operators' Association, Kanawha Coal Operators' Association, Logan Coal Operators' Association, Southern Appalachian Coal Operators' Association, New River Coal Operators' Association, Pocahontas Operators' Association, Winding Gulf Operators' Association, Greenbrier Coal Operators Association, Upper Buchanan Smokeless Coal Operators Association, Voluntary associations on behalf of each member thereof, and Harlan County, Ky., coal operators, signatory hereto, and Virginia coal operators, signatory hereto, hereinafter referred to as the Operators, party of the first part, and the International Union, United Mine Workers of America, and Districts 2, 3, 4, 5, 6, 16, 17, 19, 24, 28, 30 and 31, hereinafter referred to as the Mine Workers and on behalf of each member thereof, party of the second part. (New Districts of the United Mine Workers of America may be established in this territory.)

* * * * *

Maximum Hours and Working Time.

5. Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis; except in cases of accident which temporarily necessitates longer hours for those Mine Workers required on account thereof; and also excepting that number of Mine Workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

* * * * *

59. This Agreement shall become effective April 2. 1937, and shall continue in effect to March 31, 1939.

60. In Witness Whereof, each of the parties hereto, pursuant to proper authority, has caused this Agreement to be signed by its proper officers.

OPERATORS:
CHARLES O'NEILL,
President,
WALTER A. JONES,
Secretary-Treasurer,
Central Pennsylvania Coal Producers' Association.
ARTHUR B. STEWART,
B. H. McCRACKEN,
Georges Creek & Upper Potomac Coal Association.
W. E. MILLER,
President,

MARTIN L. MARKEL,
Secretary,
Somerset County Coal Operators' Association.
J. D. A. MORROW,
President,
BYRON H. CANON,
Secretary,
Western Pennsylvania Coal Producers' Association.
R. L. IRELAND, JR.,
President,
FRED HURD,
Secretary,
Ohio Coal Control Association.

MICHIGAN COAL OPERATORS' ASSOCIATION:
WILLIAM TAYLOR,
For the Valley Camp Coal Co. and its subsidiary companies in the Northern Panhandle of West Virginia.
GEO. S. BRACKETT,
Chairman, Scale Committee.
A. C. BEESON,
Northern West Virginia Subdivisional Coal Association.
L. E. WOODS,
President,
JOSEPH J. ARDIGO,
Secretary,
Operators' Association of Williamson Field.
THOS. S. HAYMOND,
President,

HARRY S. HOMAN,
Secretary,
Big Sandy-Elkhorn Coal Operators' Association.

HAZARD COAL OPERATORS' ASSOCIATION:
D. H. MORTON,
WM. W. MILLER,
Kenawha Coal Operators' Association.
ARTHUR DOWNING, President.
H. A. McALLISTER,
Logan Coal Operators' Association.
WM. G CAPERTON,
President,
S. C. HIGGINS,
Secretary,
New River Coal Operators' Association.
M. L. GARVEY,
J. J. LINCOLN,
W. E. E. KOEPLER,
Pocahontas Operators' Association.
L. T. PUTMAN, President,
P. C. GRANEY, Secretary,
Winding Gulf Operators' Association.
J. W. RAINE, President.
WM. CRICHTON, JR., Secretary,
Greenbrier Coal Operators' Association.
C. A. HAMMILL, President,

W. W. WOOD, Secretary,
Upper Buchanan Smokeless
Coal Operators' Association.

UNITED MINE WORKERS OF AMERICA:
JOHN L. LEWIS,
President,
PHILIP MURRAY,
Vice-President,
THOMAS KENNEDY,
Secretary-Treasurer,
JAMES MARK,
President, Dist. 2.
FRANK HUGHES,
President, Dist. 3.
WILLIAM HYNES,
President, Dist. 4.
P. T. FAGAN,
President, Dist. 5.
JOHN OWENS,
President, Dist. 6.
JOHN T. JONES,
President, Dist. 16.
VAN A. BITTNER,
President, Dist. 17.
WM. TURNBLAZER,
President, Dist. 19.
JOHN HATTON,
President, Dist. 24.
JOHN SAXTON,
President, Dist. 28.
SAM CADDY,
President, Dist. 30.
FRANK MILEY,
President, Dist. 31.

Attest:

D. C. KENNEDY,
Chairman, Appalachian Conference.
THOMAS KENNEDY,
Secretary.
S. C. HIGGINS,
Assistant Secretary.
DAVID J. McDONALD,
Assistant Secretary.
HARRY G. KENNEDY.
Assistant Secretary.

4709 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT 30-116.

Agreement Between United Mine Workers of America, District No. 10, and Coal Producers of Washington, to be in Force From April 23, 1937, to March 31, 1939.

* * * * *

It is hereby agreed by and between the Coal Producers of Washington, Parties of the first part, and the United Mine Workers of America and their District No. 10, parties of the second part, the following General provisions, daily wage rates, tonnage rates, and rates covering yardage, dead work, and special conditions are in full force and effect. It is further agreed that this contract is for the exclusive joint use and benefit of the contracting parties, as heretofore defined and set forth in this agreement; and it shall be construed as binding upon and effective in determining only the relations with each other of those represented by the parties signatory hereto.

* * * * *

Maximum Hours and Working Time.

Sec. 2. No employe, except members of the executive, supervisory, clerical, technical and confidential personnel, shall be employed in excess of seven hours per day and five days per week, subject to the exceptions hereinafter stated.

Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis; except in cases of accident which temporarily necessitates longer hours for those Mine Workers required on account thereof; and also excepting that number of Mine Workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

* * * * *

Signed on Behalf of United Mine Workers of America, District No. 10:

SAM NICHOLLS, President.
RICHARD FRANCIS, Secretary.

Scale Committee:

S. J. BROZOVICH,
WM. J. MERRIMAN,
WILLIAM CLARK,
SAM DOWNEY,
J. P. BOOS,
NICK HUBBER.

Signed on Behalf of Coal Producers of Washington:

D. R. SWEM,
JAMES BAGLEY,
R. W. SMITH,
E. G. RICHARDS,
JNO. E. MORGAN.

4711 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-121.

Agreement Between the United Mine Workers of America and Utah Coal Operators.

Section 1. This agreement, made the 24th day of May, 1937, between the Utah Coal Operators signatories hereto, hereinafter referred to as the Operators, parties of the first part; and the International Union, United Mine Workers of America, and on behalf of each member thereof, party of the second part. * * *

* * * * *

Maximum Hours and Working Time.

Sec. 3. Seven hours of labor shall constitute a day's work. The seven hour day means seven hours work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis, except in cases of accident which temporarily necessitates longer hours for those mine workers required on account thereof; and also excepting that number of mine workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

* * * * *

Sec. 105. This Agreement shall become effective April 1, 1937, and shall continue in effect until the 1st day of April, 1939.

In Witness Whereof: Each of the parties hereto, pursuant to proper authority, has caused this Agreement to be signed by its proper officers.

INTERNATNONAL UNION, UNITED
MINE WORKERS OF AMERICA:
JOHN L. LEWIS,
President, United Mine
Workers of America.

For United Mine Workers of America:
JOHN M. ROSS,
President, District No. 22,
U. M. W. of A.
ALBERT ROBERTS,
Vice Pres., Dist. No. 22,
U. M. W. of A.
VIRGIL WRIGHT,
Sec.-Treas., Dist. No. 22,
U. M. W. of A.

FOR UTAH COAL OPERATORS:
A. C. WATTS,
President, Scale Committee.
B. P. MANLEY,
Secretary, Scale Committee.

UTAH COAL OPERATORS:
BLUE BLAZE COAL CO.,
By W. C. STARK, Vice President.
CHESTERFIELD COAL CO.
By E. L. CROPPER,
Sec-Treas. & Mgr.

INDEPENDENT COAL & COKE CO.,
By PAUL KEYSER, President.
LIBERTY FUEL CO.,
By L. R. WEBER, President.
LION COAL CORPORATION,
By ROBERT Y. GIBSON, President.
MUTUAL COAL COMPANY,
By JOHN R. DOOLIN, Vice President.
MacLEAN COAL COMPANY,
By L. C. McFARLANE, Vice President.
NATIONAL COAL COMPANY,
By F. A. SWEET, JR., Vice President.
PEERLESS SALES COMPANY,
By EZRA THOMPSON, President.
ROYAL COAL COMPANY,
By L. E. ADAMS, Vice President.
SPRING CANYON COAL COMPANY,
By L. E. ADAMS, Vice President.
STANDARD COAL COMPANY,
By C. N. SWEET, President.
SWEET COAL COMPANY,
By V. W. SWEET, General Manager.
UNITED STATES FUEL CO.,
By OTTO HERRES, Vice-President.
UTAH FUEL CO.,
By MORONI HEINER, President.
GEORGE A. SCHULTZ,
By GEORGE A. SCHULTZ.

4714 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT 30-122.

Interstate and District Contract for Strip Mines Holding Membership in the Southwestern Interstate Coal Operators' Association, District No. 14, Between the United Mine Workers of America and the Southwestern Interstate Coal Operators' Association.

Adopted at Pittsburg, Kansas, August 9th, 1937, for a Period Beginning April 1st, 1937, and Ending March 31st, 1939.

* * * * *

Seven-Hour Day.

Section II.

Article I. For all classes of labor, except as otherwise provided, seven hours shall constitute a day's work and thirty-five hours a week. Time and one-half to be paid for all over seven hours worked in any one day or thirty-five hours in any one week.

The going to and coming from the respective working places is to be done on the employee's own time. All day men shall perform whatever labor the foreman may direct. A seven-hour day means seven hours' work at the usual working places, exclusive of noon-time, which shall be one-half hour for all classes of day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night. The operator may refuse to allow any day man to work on any day on which he fails to be at his working place at the starting time.

* * * * *

In behalf of the Southwestern Interstate Coal Operators' Association:

GEO. K. MACKIE, JR.,
President,
BERHARD HARRIGAN,
Commissioner.

In behalf of the United Mine Workers of America:

HENRY ALLAI,,
President District 14.
JOSEPH E. HROMEK,
Secretary-Treasurer District 14.
LOUIS BOURLARD, JR.,
H. T. MULLIS,
Scale Committee.
JOHN L. LEWIS,
International President U. M. W. of A.
By HENRY ALLAI.

4716 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-131.

Appalachian Agreement.

This Agreement, made the 12th day of May, 1939, between the Central Pennsylvania Coal Producers' Association, Georges Creek and Upper Potomac Coal Association, Somerset County Coal Operators' Association, Western Pennsylvania Coal Operators' Association, Ohio Coal Association, Michigan Coal Operators' Association, Northern Panhandle of West Virginia Coal Operators' Association, Northern West Virginia Coal Association, Operators' Association of Williamson Field, Big Sandy-Elkhorn Coal Operators' Association, Hazard Coal Operators' Association, Kanawha Coal Operators' Association, Logan Coal Operators' Association, Southern Appalachian Coal Operators' Association, New River Coal Operators' Association, Pocahontas Operators' Association, Winding Gulf Operators' Association, Greenbrier Coal Operators' Association, Upper Buchanan Smokeless Coal Operators' Association, and Virginia Coal Operators' Association, voluntary associations on behalf of each member thereof, hereinafter referred to as the Operators, party of the first part, and the International Union, United Mine Workers of America, and Districts 2, 3, 4, 5, 6, 16, 17, 19, 24, 28, 30 and 31, hereinafter referred to as the Mine Workers and on behalf of each member thereof party of the second part. (New Districts of the United Mine Workers of America may be established in this territory.)

Witnesseth: It is agreed that this contract is for the exclusive joint use and benefit of the contracting parties as heretofore defined and set forth in this Agreement. It is agreed that the United Mine Workers of America is recognized herein as the exclusive bargaining agency representing the employes of the parties of the first part. It is agreed that as a condition of employment all employees shall be members of the United Mine Workers of America, except in those exempted classifications of employment as provided in this contract, (see note). It is the intent and purpose of the parties hereto that this Agreement will promote an improved industrial and economic relationship in the bituminous coal industry, and to set forth herein the basic agreements covering rates of pay, hours of work, and conditions of employment to be observed between the parties in the following districts constituting the Appalachian Territory:

Northern Territory—Pennsylvania, Michigan, Ohio, together with Ohio, Brooke, Hancock and Marshall Counties of West Virginia, and Northern West Virginia, including Counties of Barbour, Braxton, Calhoun, Doddridge, Gilmer, Harrison, Jackson, Lewis, Marion, Monongalia, Pleasants, Preston, Randolph, Ritchie, Roane, Taylor, Tyler, Upshur, Webster, Wetzel, Wirt, Wood, and that portion of Nicholas County including mines served by the Baltimore and Ohio Railroad and north, Maryland and Upper Potomac District, including Grant, Mineral and Tucker Counties of West Virginia.

Southern Territory—The State of Virginia, Northern Tennessee, that part of Kentucky lying east of a line drawn north and south through the City of Louisville, and that part of West Virginia not included in Northern territory.

* * * * *

Maximum Hours and Working Time.

Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis; except in cases of accident which temporarily necessitates longer hours for those Mine Workers required on account thereof; and also excepting that number of Mine Workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

* * * * *

When day men go into the mine in the morning, they shall be entitled to two hours' pay whether or not the mine works the full two hours, but, after the first two hours, the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof. If for any reason the regular routine work can not be furnished inside day men, the employer may furnish other than the regular work.

Drivers shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named. The method at present existing covering the harnessing and unharnessing of mules shall be continued throughout the life of this Agreement.

Motormen and trip riders shall be at the passway where they receive the cars at starting time. The time required to take motors to the passway at starting time and departing from the same at quitting time shall not be regarded as a part of the day's labor, their time beginning when they reach the change or parting at which they receive cars, but in no case shall their time be docked while waiting for cars at the point named.

* * * * *

This Agreement shall become effective May 12, 1939, and shall continue in effect to March 31, 1941.

In Witness Whereof, each of the parties hereto, pursuant to proper authority, has caused this agreement to be signed by its proper officers.

UNITED MINE WORKERS OF AMERICA:
JOHN L. LEWIS, President,
PHILIP MURRAY, Vice President,
THOMAS KENNEDY, Secy.-Treas.
JAMES MARK,
Pres., District 2.

FRANK HUGHES,
Pres., District 3.
WILLIAM HYNES,
Pres., District 4.
P. T. FAGAN,
Pres., District 5.
JOHN OWENS,
Pres., District 6.
JOHN T. JONES,
Pres., District 16.
VAN A. BITTNER,
Pres., District 17.
WM. TURNBLAZER,
Pres., District 19.
JOHN HATTON,
Pres., District 24.
JOHN SAXTON,
Pres., District 28.
SAM CADDY,
Pres., District 30.
FRANK MILEY,
Pres., District 31.

OPERATORS:

CENTRAL PENNSYLVANIA COAL PRODUCERS' ASSOCIATION,
CHARLES O'NEIL, President,
WALTER A. JONES, Secy-Treas.
SOMERSET COUNTY COAL OPERATORS ASSN.,
W. E. MILLER, President,
MARTIN L. MARKEL, Secretary.

WESTERN PENNSYLVANIA COAL OPERATORS' ASSOCIATION,
J. D. A. MORROW, President,
BYRON H. CANNON, Secretary.

OHIO COAL ASSOCIATION,
R. L. IRELAND, JR., President,
D. F. HURD, Secretary.

NORTHERN PANHANDLE OF WEST VIRGINIA COAL OPERATORS' ASSN.,
R. L. BERRY, President,
GEO. A. BLACKFORD, Secretary.

GEORGES CREEK AND UPPER POTOMAC COAL ASSOCIATION,
ARTHUR B. STEWART,
B. H. McCRACKIN.

OPERATORS' ASSOCIATION OF WILLIAMSON FIELD,
L. E. WOODS, President,
J. J. ARDIGO, Secretary.

KANAWHA COAL OPERATORS' ASSOCIATION,
W. C. MITCHELL, Vice-President,
D. C. KENNEDY, Executive Secy.

LOGAN COAL OPERATORS' ASSOCIATION,
ARTHUR DOWNING, President,
H. A. McALLISTER, Exec. Direc.

NEW RIVER COAL OPERATORS' ASSOCIATION,
P. C. THOMAS, Vice President,
S. C. HIGGINS, Secretary.

POCAHONTAS OPERATORS' ASSOCIATION,
O. L. ALEXANDER, Committee,
P. P. KERR, Committee,
W. E. E. KOEPLER, Secretary.

WINDING GULF OPERATORS' ASSOCIATION,
L. T. PUTNAM, President,
P. C. GRANEY, Secretary,

GREENBRIER COAL OPERATORS' ASSOCIATION,
W. S. LECKIE.

UPPER BUCHANAN SMOKELESS COAL OPERATORS' ASSOCIATION,
C. A. HAMILL, President,
W. W. WOOD, Secretary.

SOUTHERN APPALACHIAN COAL OPERATORS' ASSOCIATION,
L. C. GUNTER, President.

MICHIGAN COAL OPERATORS' ASSOCIATION,
JOHN CARYELL, President,
FRANK R. HEATH, Secretary.

VIRGINIA COAL OPERATORS' ASSOCIATION,
GEO. H. ESSER, Secretary.

BIG SANDY-ELKHORN COAL OPERATORS ASSOCIATION,
HARRY LaVIERA, President,
H. S. HOMAN, Secretary.

HAZARD COAL OPERATORS' ASSOCIATION,
GEO. P. FITZ, President,
A. E. SILCOTT, Secretary.

NORTHERN WEST VIRGINIA COAL ASSOCIATION,

CHARLES DORRANCE, President,
T. E. JOHNSON, Treasurer.

Attest:
WALTER L. ROBISON, Chairman,
Appalachian Conference.
THOMAS KENNEDY,
Secretary.
DAVID J. McDONALD,
Assistant Secretary.

4721 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 30-139.

Contract Between the Coal Producers' Association of Illinois and Progressive Mine Workers of America, District 1.

Contract made and entered into this seventeenth day of May, A. D. 1939, by and between District 1, Progressive Mine Workers of America, Party of the First Part, and the Coal Producers Assocation of Illinois, Party of the Second part;

* * * *

Definition of Seven-Hour Day for Miners.

21. The scale of mining prices in this contract is based upon a seven-hour working day and it is definitely understood that this shall mean seven hours work at the face, exclusive of noon-time, five days a week, or thirty-five hours in the week. The Operator has the right to six days per week plant operation, if he desires, and no local ruling shall in any way affect this section, or impose conditions affecting the same.

Definition of Seven-Hour Day for Day Labor.

22. All classes of day labor are to work full seven hours and going to and coming from the respective working places is to be done on their own time. All company men shall perform whatever day labor the foreman may direct. A seven-hour day means seven hours' work at the usual working places, exclusive of noon-time, for all classes of day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from same at night. The hours per day and hours per week shall be the same for day labor as set forth in Section 21, excepting those employees specifically exempted in Section 23.

* * * *

End of Shaft Agreement.

Strip Mine Agreement.

* * * *

Definition of Seven-Hour Day for Day Labor.

Clause 22 of Shaft contract to apply.

* * * *

End of Strip Mine Agreement.

This contract becomes effective April 1st, 1939, and expires March 31, 1941.

For the Progressive Mine Workers of America, District 1.

DAVE REED,
President.
EARL EVANS,
Secretary-Treasurer.
JOHN STANLEY,
Chairman, Scale Committee.

For the Coal Producers Association of Illinois.

W. C. GILL,
President.
GLENN A. SHAFER,
Secretary-Treasurer.
B. H. FIRTH,
Chairman, Scale Committee.

This contract signed by the above this 18th day of May, 1939.

4723 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 27.

Deposition of L. C. Gunter of Knoxville, Tennessee.

Direct Interrogatories and Answers.

1. State your name, present address and occupation.

Ans. to Q. 1. My name is L. C. Gunter, 1507 Hamilton Bank Building, Knoxville, Tennessee, president of Southern Appalachian Coal Operators Association.

2. State when, where and in what capacity you first became connected with the mining or production of coal.

Ans. to Q. 2. I first became connected with the mining of coal in 1912 in Bell County Kentucky as principal owner of a coal mine and later becoming the owner of three additional mines in the same county.

3. (a) Have you ever been engaged in or connected with the mining or production of ore? (b) If so, state when, were and in what capacity you were so connected and the kind of ore produced.

Ans. to Q. 3. (a) No. (b) None.

4. Summarize your experience from the time you first became connected with the production of coal or ore down to and including the present time, giving the various capacities in which you have been employed, the various mining operations, and the locations thereof, with which you have been connected.

Ans. to Q. 4. I became president and half owner in the Climax Coal Company in Bell County Kentucky in 1912. Later I acquired three other adjoining mines, the Atlas Coal Company, the Crystal Coal Co. and the Pinnacle Coal Company, all of which were consolidated under the name of the Stoney Fork Collieries. I operated these properties until about 1924, at which time I sold them. During these years I was engaged in construction business and after selling the mines I continued in the construction business until 1933, in which year I became secretary and later became president of the Southern Appalachian Coal Operators Association. For four years, 1920 to 1924, I was also president of the same association while operating the coal mines.

5. Summarize your connection with any bargaining or negotiating entity, or arbitration or government commissions, or other similar bodies, relating to the negotiating or making of collective bargaining agreements with United Mine Workers of America or other labor organizations, giving this information chronologically, and giving the nature and general results of such bargaining, negotiation, arbitration, or other similar activity.

Ans. to Q. 5. My first experience in collective bargaining with the United Mine Workers was in the year 1917, at which time we made a contract with the United Mine Workers covering the mines in the Southern Appalachian Coal operation territory. Later, to-wit in the year 1933, when I became secretary of the Southern Appalachian Coal Operators Association we organized jointly with the United Mine Workers a Board of Arbitration for the settlement of disputes in and about the mine which has functioned continuously since that year. In the year 1937 I was appointed a member of the Federal Labor Board, which was provided for in the Coal Conservation Act of 1936. This office, which was in the Labor Department in Washington, lasted for about seven months, at which time the Supreme Court declared the labor feature of the Coal Conservation Act unconstitutional. Since 1933 I have attended all of the joint wage conferences between the United Mine Workers and the coal operators of the Appalachian Wage Conference as a member of the Scale Committee. During the last four years I have been on the negotiating committee representing the High Volatile Coal Districts of the South and have just concluded the recent wage agreement with the United Mine Workers for the Southern Wage Conference.

6. (a) Do you know whether or not it has been the general custom and practice in the coal industry within your experience and knowledge to compute the pay of underground employees on the basis of all time spent from the time such employees leave the mouth or portal of the mine at the beginning of the shift until they arrive at the mouth or portal of the mine at the end of the shift or whether the general custom and practice has been to pay such employees only for the time actually spent at the usual working place.

(b) To state the question in another way: Has it been the general custom and practice in such industry to pay underground employees for time spent in traveling from the mouth or portal of the mine to their working places in the mine and in returning from such working places to the mouth or portal of the mine?

(c) How long has such custom and practice been followed and state whether it is now being followed?

(d) Within range of your knowledge and experience, state whether such custom and practice has been practically universally followed.

Ans. to Q. 6. (a) All of the wage agreements in the negotiation of which I have participated or of which I have any knowledge provide that in coal mining the pay period for the coal mine employees is made on what is known as face to face method; that is that he is paid from the time at which he arrives at his work until he leaves the working place. The travel time to, and from the work is his own, and is not paid for by the employer. I do not know of any coal company anywhere which pays on a portal to portal basis or on any other method except that above described.

(b) No, the employee is never paid in the coal mine agreements for his travel time from the portal to the working place, nor returning from his working place to the portal.

(c) So far as I know this method of payment for working time has always prevailed in the coal industry, and is now in effect as is evidenced in the recent wage conference just concluded in Washington, D. C.

(d) Yes, this practice has been followed universally in the industry.

7. (a) State whether or not the contracts in the mining industry of which you have had knowldege or in the negotiation of which you have participated have included a definition of the day's work which excludes the time spent by the underground employees in traveling to and from their usual working places.

(b) Give the date of the first or earliest contract of which you have knowledge which contains such definition as that referred to in 7(a).

(c) If possible, attach to your deposition a copy of each contract within your knowledge which contains a definition similar to that mentioned in 7(a). If you cannot attach copies of all such contracts, then give the date of each contract, the names of the contracting parties and quote the definition referred to in 7(a) above contained therein, of which you have knowledge.

Ans. to Q. 7. (a) Yes, all contracts make specific provision covering this subject.

(b) The first contract of which I have knowledge was executed in the year 1917.

(c) The first contract of which I have knowledge was in 1917, made between the United Mine Workers and Coal operators. The next was in 1933, then in 1934, then 1935, then 1937, then 1939 and in 1941. I do not have copies of all these contracts. I quote herewith a clause which is included in all of them: "Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours of work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis, except in cases of accident which temporarily necessitate longer hours for those mine workers required on account thereof; and also excepting that number of mine workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine." I also attach a copy of the last contract made between the United Mine Workers of America and the Southern Coal Operators Conference under date of July 5, 1941, in which a similar provision is included.

8. State whether or not, in the industry with which you are familiar, it has been the usual custom and practice, both before and since contracts have been made, for underground employees before actually reaching their places of work, while going to or returning therefrom, to secure carbide, electric lamps, wedges or other light tools and equipment without having the time spent in obtaining these articles included as a part of the day's work.

Ans. to Q. 8. It has always been the custom for the employees of the mine to provide themselves with electric lamps, carbide and other small tools or accessories needed by them before entering the mine or after coming out. This procurement of supplies being done on their own time.

9. (a) What has been the general custom and practice, both before and since contracts between operators and employees were made, with respect to the underground employees, on entering the mine, depositing or taking up check numbers or to otherwise use some system of checking the men in and out of the mine, so as to enable the places of absentees to be filled and so as to know who goes in and comes out of the mine?

(c) Has it been the general custom and practice to inclued these matters as a part of the day's work?

Ans. to Q. 9. (a) It is customary at all mines for all employees to take up check numbers, cards or similar devices to show their presence in the mine, and to deposit them at a convenient place on leaving the mine.

(c) No, this work being of such a minor character, has always been done by the miner or other employee on his own time, and without being included in his pay period.

10. (a) State whether or not the custom and practice of paying underground mine employees on the basis of

time spent only at the working place (commonly called the "face to face" basis) been in dispute between employers and employees in the negotiations of contracts with which you are familiar.

(b) If you have answered the immediately preceding question in the affirmative, state when such dispute arose, how it arose, how it was disposed of. Isn't it a fact that such custom and practice has always been recognized by all parties and has never been in dispute?

(c) Have the employees or their representatives on negotiations in which you participated or of which you have knowledge contended for any change in such custom and practice?

Ans. to Q. 10. (a) The matters of payment to employees on the face to face method has always been the subject of agreement at each of the wage conferences, but has never been the subject of any controversy or argument, as the custom is accepted by both sides as the prevailing practice in the industry.

(b) No question with reference to this method of payment has ever been raised in the industry. The matter was brought up for conference between representatives of the Coal Operators and representatives of the United Mine Workers in a conference with representatives of the Wage and Hour Board. This Board had made a ruling that the time of employees in a gold mine in the west should be paid on a potral to portal basis, and an effort was being made to acquire the same method of calculating time for the coal industry. At this conference which was held in the city of Philadelphia in the year 1940, both Coal Operators and coal miners representatives stood together for the metohd of payment as practiced in the industry, that is on a face to face method. As a result of their combined effort the Wage & Hour Board ruled that the practice now in effect in the coal mine industry should continue.

(c) No.

Cross Interrogatories and Answers.

1. When did plaintiffs send you a copy of the questions asked upon direct examination?

Ans. to Q. 1. About four weeks ago during my prolonged absence and I do not have the date with me at the present time.

2. At the present time how many hours at the face are included in a daily shift for underground coal miners in the mines with which you are familiar?

Ans. to Q. 2. Seven hours constitutes the day's work.

3. Are not hours at the face in a daily shift limited to 7 for underground coal miners at the mines with which you are familiar?

Ans. to Q. 3. Yes, as applied to coal loaders.

4. Is not the prevailing number of hours at the face for underground coal miners limited to 35 hours per week?

Ans. to Q. 4. Yes, as to coal loaders.

5. Are not 7 hours per day and 35 hours per week at the face for underground coal miners prevailing in the Alabama coal mines?

Ans. to Q. 5. Yes, as far as I know these hours prevail for the coal loader.

6. If the answer to the question immediately preceding is yes, is that not true with respect to captive coal mines as well as commercial coal mines?

Ans. to Q. 6. I am not familiar with the contracts made for captive coal mines which often operate under different terms from that of a commercial mine.

7. Were you present at any negotiations between representatives of coal mine operators and representatives of the United Mine Workers of America, during which negotiations or discussions 7 hour per day and 35 hours per week at the face for underground coal miners was one of the points at issue between the coal mine operators and the United Mine Workers?

Ans. to Q. 7. Yes.

8. If the answer to the question immediately preceding is yes, when were you present at such discussions or negotiations?

Where were they carried on?

On whose behalf were you present?

And were any representatives of Republic Steel Corporation, Tennessee Coal, Iron and Railroad Company, or Sloss-Sheffield Steel and Iron Company parties to or present at such negotiations and discussions?

Ans. to Q. 8. I was present at these negotiations as a representative of the Southern Appalachian Coal Operators Association, and these discussions were carried on in the city of Washington. The year was either 1935 or 1936. I do not recall any representatives of any of the steel companies named as being present at these negotiations.

9. At the discussions and negotiations referred to in the two previous questions, did not the coal mine operators urge in opposition to 7 hours per day and 35 hours per week at the face for underground coal miners that it would be impossible for them to operate their mines under

such circumstances, and that their daily cycle of operations in the mines would be interfered with and disrupted, in consequence of which production of coal would decrease?

Ans. to Q. 9. At these conferences the operators did oppose the seven hour day and 35 hour week on the ground that it would be necessary under that method to reconstruct their methods of operation, and to revise procedure in order to maintain their production, and that such method would probably require a larger number of day men.

10. During the negotiations at which you were present or in which you participated, and at any time before a contract was entered into or an agreement reached between the coal mine operators and the United Mine Workers of America, did you or did the organizations you represented, oppose the demands of the United Mine Workers for 7 hours per day and 35 hours per week at the face for underground coal miners?

Ans. to Q. 10. Our organization opposed the 7 hour day and 35 hour week before the contract was executed.

11. If the answer to the question immediately preceding is yes, on what grounds did you or did the organizations you represent oppose the demands of the United Mine Workers of America for 7 hours per day and 35 hours per week at the face for underground coal miners?

Ans. to Q. 11. It was opposed on the ground that it would materially increase the cost of production, would require the purchase of additional machinery, and the employment of additional day men if the production was to be maintained.

12. What is (a) the minimum, (b) the maximum, and (c) the average time required by underground coal miners in each of the mines with whose operations you are

familiar, to reach the face from the portal and return to the portal from the face?

Ans. to Q. 12. There are mines in this territory in which the miners can reach the face of the coal from the portal in five to ten minutes, while in others it would require as much as an hour. There is no way of making an average as the conditions at each mine control the length of time necessary.

13. Is it not true that in many underground metal mines in the United States part or all of the time spent by underground metal miners between the collar or portal of the mine and the face was considered time worked before May 1, 1941?

Ans. to Q. 13. I am not familiar with the practices in the ore mines.

14. Please state the name and location of each of the mines to which you refer in answer to question 12 and state to which of each of said mines the minimum, maximum, and average time which you give are related.

Ans. to Q. 14. The mines to which I refer are all members of the Southern Appalachian Coal Operators Association and located in five counties in Tennessee and four counties in Kentucky, but I do not have their names available at the present.

Attached to the deposition of L. C. Gunter as an exhibit is a copy of "Southern Wage Agreement" dated Washington, D. C., July 5, 1941, executed between the Operators' Association of Williamson Field and eleven other coal mining fields located in Kentucky, West Virginia, Virginia and other states, and the International Union, United Mine Workers of America, and Districts 17, 19, 28, and 30 thereof, consisting of seventeen typewritten pages, covering hours, wages, and conditions of employment in the coal mines in the territory stated.

Among other provisions are the following.

Maximum Hours and Working Time.

Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the uqual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis; except in cases of accident which temporarily necessitates longer hours for those Mine Workers required on account thereof; and also excepting that number of Mine Workers in each mine whose daily work includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mine.

Overtime: Work by Mine Workers paid by hour or day in excess of seven (7) hours in one day or thirty-five (35) hours in any one week shall be paid for at the rate of time and one-half with the following exceptions:

Employees engaged at power houses, substantions, and pumps operating continuously for twenty-four (24) hours daily are especially exempted from the seven (7) hour day and the time and one-half provisions. Special exemptions for individual employees other than those named above when twenty-four (24) hours continuous operation daily is required are subject to arrangement between the mine management and District officers without time and one-half for overtime. Employees so especially exempted are limited to eight (8) hours per day and forty (40) hours per week and time and one-half for time worked in excess thereof.

The seven (7) hour day, five (5) day week (35 hours per week) as provided in this Agreement, shall prevail.

The following classes of Mine Workers are excepted from the foregoing provisions as to the maximum hours of work.

All Mine Workers engaged in the transportation of men and coal shall work the additional time necessary to handle man-trips and all coal in transit and shall be paid the regular hourly rate for the first seven (7) hours and time and one-half for all overtime.

Outside employees engaged in the dumping, handling and preparation of coal, and the manufacture of coke, shall work the additional time necessary, not to exceed thirty (30) minutes, to dump and prepare the coal delivered to the tipple each shift, and complete the usual duties incidental to the operation of coke ovens, and shall be paid the regular hourly rates for the first seven (7) hours and time and one-half for overtime not to exceed the thirty (30) minutes hereinbefore stated.

When day men go into the mine in the morning, they shall be entitled to two hours' pay whether or not the mine works the full two hours, but, after the first two hours, the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof. If for any reason the regular routine work can not be furnished inside day men, the employer may furnish other than the regular work.

Drivers shall take their mules to and from stables, and the time required in so doing shall not include any part of the day's labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named. The method at present existing covering the harnessing and unharnessing of mules shall be continued throughout the life of this Agreement.

Motormen and trip riders shall be at the passway where they receive the cars at starting time. The time required to take motors to the passway at starting time and departing from the same at quitting time shall not be regarded as a part of the day's labor, their time beginning when they reach the change or parting at which they receive cars, but in no case shall their time be docked while waiting for cars at the point named."

Also provisions providing the scale of minimum wages, both on tonnage basis and the hourly rates for a seven hour day.

4736 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 28.

Deposition of Francis Keegan, of Pittsburg, Kansas.

Direct Interrogatories and Answers.

Q. 1: State your name, present address and occupation.

A. 1: Francis J. Keegan, general superintendent, Western Coal & Mining Company, Franklin, Kansas. Home address, 205 West Ninth Street, Pittsburg, Kansas.

Q. 2: State when, where and in what capacity you first became connected with the mining or production of coal.

A. 2: I am 68 years of age. I began mining coal in Scotland at the age of 12. Worked in various capacities in mines in Maryland, West Virginia, Kansas, Missouri, Arkansas and Illinois.

Q. 3 (a): Have you ever been engaged in or connected with the mining or production of ore?

A. 3 (a): I have had no experience in ore mines.

Q. 3 (b): If so, state when, where and in what capacity you were so connected and the kind of ore produced.

A. 3 (b): (No answer).

Q. 4: Summarise your experience from the time you first became connected with the production of coal or ore down to and including the present time, giving the various capacities in which you have been employed, the various mining operations, and the locations thereof, with which you have been connected.

A. 4: Mine foreman from 1907 to 1913; State Mine Inspector of the State of Kansas from 1913 to 1915, inclusive; mine foreman and field superintendent from 1915 to 1919; local superintendent from 1919 to 1922 and general superintendent from 1922 to date; all deep coal mining located in Crawford County, Kansas, some in Missouri, Oklahoma, Arkansas and Illinois.

Q. 5: Summarize your connection with any bargaining or negotiating entity, or arbitration or government commissions, or other similar bodies, relating to the negotiating or making of collective bargaining agreements with United Mine Workers of America or other labor organizations, giving this information chronologically, and giving the nature and general results of such bargaining, negotiation, arbitration, or other similar activity.

A. 5: I represented our company as a member of the Southwestern Interstate Coal Operators Association in the negotiation of contracts with the officers and members of the United Mine Workers of America covering rates and conditions of employment during the past 20 years. We have always come to an agreement with the miners, sometimes after weeks and months of argument, but I do not recall ever having failed to reach an agreement eventually.

Q. 6 (a): Do you know whether or not it has been the general custom and practice in the coal industry within your experience and knowledge to compute the pay of underground employees on the basis of all time spent from the time such employees leave the mouth or portal of the mine at the beginning of the shift until they arrive at the mouth or portal of the mine at the end of the shift or whether the general custom and practice has been to pay such employees only for the time actually spent at the usual working place?

A. 6 (a): All contracts made with miners during all the years of my experience have contained printed clauses providing that time spent by the employees traveling from portal to working place and returning to portal was never computed or paid for as part of the day's work. It has been the general custom during all my years of experience in mining to pay the employees only for the time actually spent at the usual working place. At no time has it been the custom to pay for the time it took a miner or day man to reach his working place or return therefrom.

Q. 6 (b): To state the question in another way: Has it been the general custom and practice in such industry to pay underground employees for time spent in traveling from the mouth or portal of the mine to their working places in the mine and in returning from such working places to the mouth or portal of the mine?

A. 6 (b): It has never been and is not now the custom to pay the employee for time spent in traveling from the mouth or portal of the mine to his working place in the mine and in returning from such working place to the mouth or portal of the mine.

Q. 6 (c): How long has such custom and practice been followed and state whether it is now being followed?

A. 6 (c): This custom of not paying the employees for time spent in traveling from the mouth of the mine to his working place and returning has been followed as long as I can remember. It is still being followed today.

Q. 6 (d): Within range of your knowledge and experience, state whether such custom and practice has been practically universally followed:

A. 6 (d): This custom of not paying the employee for time spent in traveling from the mouth of the mine to his working place and returning has been universally followed.

Q. 7 (a): State whether or not the contracts in the mining industry of which you have had knowledge or in the negotiation of which you have participated have included a definition of the day's work which excludes the time spent by the underground employees in traveling to and from their usual working places.

A. 7 (a): The contracts in which I have participated have always included such a definition excluding the time spent by underground employees in traveling to and from their usual working places.

Q. 7 (b): Give the date of the first or earliest contract of which you have knowledge which contains such a definition as that referred to in 7 (a).

A. 7 (b): The contract for 1904.

Q. 7 (c): If possible, attach to your deposition a copy of each contract within your knowledge which contains a definition similar to that mentioned in 7 (a). If you cannot attach copies of all such contracts, then give the date of each contract, the names of the contracting parties and quote the definition referred to in 7 (a) above contained therein, of which you have knowledge.

A. 7 (c): I am unable to attach a copy of each contract within my knowledge containing a definition similar to that mentioned in 7 (a). The contract between the Southwestern Interstate Coal Operators Association and The United Mine Workers of America for the period from September 1, 1904 to March 31, 1906, contains this definition on Page 3: "All classes of day labor are to work full eight hours, and the going to and coming from the respective working places is to be done on the day hands' own time. All company men shall perform whatever day labor the foreman may direct. An eight hour day means eight hours' work in the mines at the usual working places, exclusive of noon time—which shall be one-half hour—for all classes of inside day labor." The contract between the Southwestern Interstate Coal Operators Association and the United Mine Workers of America adopted June 16, 1906, for Period ending March 31, 1908, contains the following definition: (Page 3) Section 1. "All classes of day labor are to work full eight hours, and the going to and coming from the respective working places is to be done on the day hands' own time. All company men shall perform whatever day labor the foreman may direct. An eight-hour day means eight hours' work in the mines at the usual working places, exclusive of noon time—which shall be one-half hour—for all classes of inside labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night." The contract between the Southwestern Interstate Coal Operators Association and The United Mine Workers of America adopted September 19, 1910, for the period ending March 31, 1912, contains the following definition: (Page 5) "The going to and coming from the respective working places is to be done on the employe's own time. All company men shall perform whatever labor the foreman may direct. An eight hour day means eight hours' work at the usual working places, exclusive of noon time, which shall be one-half hour for all classes of day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night." The contract between the Southwestern Interstate Coal Operators Association and The United Mine Workers of America adopted August 29, 1914, for period ending July 31, 1916, on page 4, contains the following definition: "For all classes of labor eight hours shall constitute a day's work. The going to and coming from the respective working places is to be done on the employe's own time. All company men shall perform whatever labor the foreman may direct. An eight-hour day means eight hours' work at the usual working places, exclusive of noon time, which shall be one-half hour for all classes of day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night." The contract between the Southwestern Coal Operators Association and the United Mine Workers of America for the period ending July 31, 1918, on page 5, contains this definition: "For all classes of labor eight hours shall constitute a day's work. The going to and coming from the respective working places is to be done on the employe's own time. All company men shall perform whatever labor the foreman may direct. An eight-hour day means eight hours' work at the usual working places, exclusive of noon time, which shall be one-half hour for all classes of day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night." The contract between the Southwestern Interstate Coal Operators Association and the United Mine Workers of America for the period beginning April 1, 1920 and ending March 31, 1922, on page 5, contains this definition: "For all classes of labor eight hours shall constitute a day's work. The going to and coming from the respective working places is to be done on the employe's own time. All Company men shall perform whatever labor the foreman may direct. An eight-hour day means eight hours' work at the usual working places. exclusive of noon time, which shall be one-half hour for all classes of day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night." The contract between the Southwestern Interstate Coal Operators Association and The United Mine Workers of America for the period beginning April 1, 1923 and ending March 31, 1924, on page 31, contains this definition: "For all classes of labor eight hours shall constitute a day's work. The going to and coming from the respective working places is to be done on the employe's own time. All company men shall perform whatever labor the foreman may direct. An eight-hour day means eight hours' work at the usual working place, exclusive of noon time, which shall be one-half hour for all classes of day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night." The contract between the Southwestern Interstate Coal Operators Association and the United Mine Workers of America for the period beginning April 1, 1924, and ending March 31, 1927, on page 6, contains the following definition: "For all classes of labor eight hours shall constitute a day's work. The going to and coming from the respective working places is to be done on the employe's own time. All company men shall perform whatever labor the foreman may direct. An eight-hour day means eight hours' work at the usual working places, exclusive of noon time, which shall be one-half hour for all classes of day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night." The contract between the Southwestern Interstate Coal Operators Association and the United Mine Workers of America, for the period beginning September 1, 1928, and ending April 1st, 1931, on page 9, contains this definition: "For all classes of labor eight hours shall constitute a day's work. The going to and coming from the respective working places is to be done on the employe's own time. All company men shall perform whatever labor the foreman may direct. An eight-hour day means eight hours' work at the usual working places, exclusive of noon time, which shall be one-half hour for all classes of day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night." The contract between the Southwestern Interstate Coal Operators Association and the United Mine Workers of America for the period beginning April 1, 1931, and ending April 1, 1935, on page 10, contains the following definition: "For all classes of labor eight hours shall constitute a day's work. The going to and coming from the respective working places is to be done on the employe's own time. All company men shall perform whatever labor the foreman may direct. An eight-hour day means eight hours' work at the usual working places, exclusive of noon time, which shall be one-half hour for all classes of day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night." The contract between the Southwestern Interstate Coal Operators Association and the United Mine Workers of America for the period beginning October 1, 1935, and ending April 1, 1937, on page 7, contains the following definition: "Article 1. For all classes of labor seven hours shall constitute a day's work with a maximum of thirty-five hours per week, except in cases of emergency or accident which temporarily necessitates longer hours for those mine workers required on account thereof, or as otherwise provided. The going to and coming from respective working places is to be done on the employee's own time. All company men shall perform whatever labor the foreman may direct. A seven-hour day means seven hours' work at the usual working places, exclusive of noon time, which shall be one-half hour for all classes of day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night." The contract between the Southwestern Interstate Coal Operators Association and The United Mine Workers of America for the period beginning April 1, 1937, and ending March 31, 1939, contains the following definition, on page 7, thereof: "Article 1. For all classes of labor, except as otherwise provided, seven hours shall constitute a day's work and thirty-five hours a week. Time and one-half to be paid for all over seven hours worked in any one day or thirty-five hours in any one week. The going to and coming from the respective working places is to be done on the employee's own time. All day men shall perform whatever labor the foreman may direct. A seven-hour day means seven hours' work at the usual working places, exclusive of noon-time, which shall be one-half hour for all classes of day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night." The contract between the Southwestern Interstate Coal Operators Association and the United Mine Workers of America for the period beginning April 1, 1939, and ending March 31, 1941, I am attaching to my deposition.

Q. 8: State whether or not, in the industry with which you are familiar, it has been the usual custom and practice, both before and since contracts have been made, for underground employees before actually reaching their places of work, while going to or returning therefrom, to secure carbide, electric lamps, wedges or other light tools and equipment without having the time spent in obtaining these articles included as a part of the day's work.

A. 8: The miner's supplies in Kansas, with the exception of powder, which is delivered by the company to the miner's working place, are purchased by the miner from local merchants away from the mine.

Q. 9 (a): What has been the general custom and practice, both before and since contracts between operators and employees were made, with respect to the underground employees, on entering the mine, depositing or taking up check numbers or to otherwise use some system of checking the men in and out of the mine, so as to enable the places of absentees to be filled and so as to know who goes in and comes out of the mine?

A. 9 (a): This practice has never prevailed in Kansas, Missouri, Arkansas or Oklahoma mines, but it does prevail in the Illinois mines where I have had some experience.

Q. 9 (c): Has it been the general custom and practice to include these matters as a part of the day's work?

A. 9 (c): No.

Q. 10 (a): State whether or not the custom and practice of paying underground mine employees on the basis of time spent only at the working place (commonly called the "face to face" basis) has been in dispute between employers and employees in the negotiations of contracts with which you are familiar.

A. 10 (a): There has never been any dispute over that provision of the contract at any time over all these years. It has been mutually agreeable to miner and operator alike.

Q. 10 (b): If you have answered the immediately preceding question in the affirmative, state when such dispute arose, how it arose, how it was disposed of. Isn't it a fact that such custom and practice has always been recognized by all parties and has never been in dispute?

A. 10 (b): It is a fact that such custom and practice has always been recognized by all parties and has never been in dispute.

Q. 10 (c): Have the employees or their representatives on negotiations in which you participated or of which you have knowledge contended for any change in such custom and practice?

A. 10 (c): There has never been any contention for a change in such custom and practice made by the representatives of either the miners or employees.

Cross Interrogatories and Answers.

Q. 1: When did plaintiffs send you a copy of the questions asked upon direct examination?

A. 1: Under date of June 24, 1941, I received a set of seven questions which I answered to the best of my ability under date of June 28, 1941.

Q. 2: At the present time how many hours at the face are included in a daily shift for underground coal miners in the mines with which you are familiar?

A. 2: Seven hours constitutes a day's work under the terms of our contract.

Q. 3: Are not hours at the face in a daily shift limited to seven for underground coal miners at the mines with which you are familiar?

A. 3: Yes.

Q. 4: Is not the prevailing number of hours at the face for underground coal miners limited to 35 hours per week?

A. 4: Yes, at the present time.

Q. 5: Are not seven hours per day and 35 hours per week at the face for underground coal miners prevailing in the Alabama coal mines?

A. 5: I have no knowledge of the provisions covering the operations of the Alabama mines as to the number of hours that constitutes a day's work.

Q. 6: If the answer to the question immediately preceding is yes, is that not true with respect to captive coal mines as well as commercial coal mines?

A. 6: (No answer).

Q. 7: Were you present at any negotiations between representatives of coal mine operators and representatives of the United Mine Workers of America, during which negotiations or discussions seven hours per day and 35 hours per week at the face for underground coal miners was one of the points at issue between the coal mine operators and the United Mine Workers?

A. 7: Yes.

Q. 8: If the answer to the question immediately preceding is yes, when were you present at such discussions or negotiations. A. November 4, 1935. Q. Where were they carried on? A. Pittsburg, Kansas. Q. On whose behalf were you present? A. Western Coal and Mining Company, a member of the Southwestern Interstate Coal Operators Association. Q. And were any representatives of Republic Steel Corporation, Tennessee Coal, Iron and Railroad Company, or Sloss-Sheffield Steel and Iron Company parties to or present at such negotiations and discussions? A. No, none of those were there.

Q. 9: At the discussions and negotiations referred to in the two previous questions, did not the coal mine operators urge in opposition to 7 hours per day and 35 hours per week at the face for underground coal miners that it would be impossible for them to operate their mines under such circumstances, and that their daily cycle of operations in the mines would be interfered with and disrupted, in consequence of which production of coal would decrease?

A. 9: They did to some extent but it was mainly on the increased cost of production that the 7 hour per day would bring about.

Q. 10: During the negotiations at which you were present or in which you participated, and at any time before a contract was entered into or an agreement reached between the coal mine operators and the United Mine Workers of American, did you or did the organizations you represented, oppose the demands of the United Mine Workers for 7 hours per day and 35 hours per week at the face for underground coal miners?

A. 10: Yes.

Q. 11: If the answer to the question immediately preceding is yes, on what grounds did you or did the organizations you represent oppose the demands of the United Mine Workers of America for 7 hours per day and 35 hours per week at the face for underground coal miners?

A. 11: Principally on the ground that the adoption of a 7 hour day would increase the cost of production.

Q. 12: What is (a) the minimum, (b) the maximum, and (c) the average time required by underground coal miners in each of the mines with whose operations you are familiar, to reach the face from the portal and return to the portal from the face?

A. 12 (a): 15 minutes minimum, (b) 25 minutes maximum and (c) 20 minutes average.

Q. 13: Please state the name and location of each of the mines to which you refer in answer to question 12 and state to which of each of said mines the minimum, maximum and average time which you give are related?

A. 13: Mines #22 and #24 of the Western Coal & Mining Company. Mine #22 is located one mile north of Arma, Kansas; mine #24 is located two and one-half miles southeast of Franklin, Crawford County, Kansas. The minimum, maximum and average apply to each mine alike.

Q. 14: Is it not true that in many underground metal mines in the United States part or all of the time spent by underground metal miners between the collar or portal of the mine and the face was considered time worked before May 1, 1941?

A. 14: I have no knowledge of the conditions prevailing in metal mines in reference to time worked or time paid for.

Attached to the foregoing deposition of Francis Keegan, as an exhibit, is a printed copy, consisting of cover and 106 printed pages, of "Interstate and District Contract for Shaft Mines Holding Membership in the S. I. C. O. Association, District Number 14, between the U. M. W. of A., and S. I. C. O. A., adopted at Pittsburg, Kansas, May 18, 1939, for a period beginning April 1, 1939, and ending March 31, 1941," and signed, "In Behalf of the Southwestern Interstate Coal Operators Association: George K. Mackie, Jr., President; Bernard Harrigan, Commissioner; In Behalf of the United Mine Workers of America, Henry Allai, President District 14, Joseph E. Hromek, Secretary-Treasurer District 14, Ernest Rendaci, Joe Scepansky, Proctor K. Hinkle, Louis Minor, Ernest Roscher, Scale Committee, John L. Lewis, International President, U. M. W. of A., By Henry Allai," which contract covers hours, wages, and conditions of employment in the coal mines in Cherokee and Crawford Counties, Kansas, and Barton and LaFayette Counties, Missouri.

Among other provisions are the following:

"Seven-Hour Day.

Section III.

"Article 1. For all classes of labor, except as otherwise provided, seven hours shall constitute a day's work and thirty-five hours a week. Time and one-half to be paid for all over seven hours worked in any one day or thirty-five hours in any one week.

The going to and coming from the respective working places is to be done on the employee's own time. All day men shall perform whatever labor the foreman may direct. A Seven-hour day means seven hours' work at the usual working places, exclusive of noon-time, which shall be one-half hour for all classes of day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from the same at night. The operator may refuse to allow any day man to work on any day on which he fails to be at his working place at the starting time."

* * * *

"Drivers and Motormen.

Section X.

"Article 1. Motormen and drivers shall take their motors and mules to and from the stables, and the time required in so doing shall not include any part of the day's labor. Their time beginning when they reach the change at which they receive empty cars—that is the parting motormen and drivers at the shaft bottom and the inside motormen and drivers at the parting—and ending at the same place; but in no case shall a motorman's and driver's time be docked while he is waiting for such cars at the points named. The inside motormen and drivers, at their option, may either walk to and from their parting or take with them, without compensation, either loaded or empty cars to enable them to ride. This provision, however, shall not prevent the inside motormen and drivers from bringing to and taking from the bottom regular trips, if so directed by the mine foreman; provided such work is done within the seven hours."

* * * *

"Harnessing Mules.

"Article. 32. * * * When mules are kept in the mine, if the mules are harnessed by the company the driver must be at the mine bottom, or the parting where he commences work, ready to begin at starting time."

* * * *

Machine Crews.

Section 27.

"(a) It shall be the duty of the machine crews to assemble and take into their working place such tools and materials as are necessary on their own time and begin running their machine promptly at starting time. Also it shall be their duty to uncouple and turn up the face track, operate the machine and properly undermine the coal at any time either day or night or on idle days at the operator's option.

* * * *

"(c) They shall also properly oil and give due diligence and attention to the proper care of the machine and its equipment. They shall bring out at quitting time all dull bits, used chains, broken tools, and at all times carry not less than three (3) props in their trick car.

"(d) They shall work full seven hours at the machine exclusive of lunch time and any member leaving his place of work before quitting time shall be subject to discharge, unless properly reported on the machine sheet.

"(e) It shall be the duty of the machine runner at the end of the shift to correctly report to his foreman or other person designated by the management the correct location of, and condition of his machine; hours worked, feet or rails cut; chains used; cables changed; broken or dangerous roof encountered; number of props set and names of men injured, if any. Failure to do so shall be punishable by the forfeiture of his position as runner."

Also provisions providing the scale of minimum wages, both on tonnage basis and the hourly rates, for a seven-hour day.

4752 FOR IDENTIFICATION PLAINTIFFS' EXHIBITS 26 AND 29.

Exhibit 26 is the Deposition of W. J. Jenkins, of St. Louis, Missouri, with exhibits attached, and Exhibit 29 is the Deposition of D. C. Kennedy of Charleston, West Virginia, with an exhibit attached.

These depositions in reference to customs and contracts in the coal mines of Pennsylvania, Ohio, Michigan, West Virginia, Virginia, Tennessee, Kentucky, Illinois, Missouri, Kansas, Arkansas, Oklahoma, and are substantially the same as customs and contracts testified to in the deposition of L. C. Gunter, (Plaintiffs' Exhibit 27), and the deposition of Francis Keegan (Plaintiffs' Exhibit 28).

FOR IDENTIFICATION T. C. I. EXHIBIT No. 40.

Report Showing Comparison Lost-Time Accidents (Including Fatalities) Coal Mines and Iron Ore Mines (Including No. 5 Limestone Mine) Tennessee Coal, Iron & Railroad Company—Years 1938, 1939 & 1940.

	Iron Ore Mines		Coal Mines		Percent Increase
Period	Number Lost Time Acc.	Freq.* Rate	Number Lost Time Acc.	Freq. Rate	Coal Mines Over Ore Mines
1938	39	15.96	89	16.74	5% Inc.—1-1/20 Times as Large
1939	40	11.08	123	21.17	91% Inc.—1-9/10 Times as Large
1940	52	11.91	198	24.97	110% Inc.—2-1/10 Times as Large
Total 3 Years	31	12.57	410	21.52	71% Inc.—1-7/10 Times as Large

Period	Man-Hours Worked	
1938	2,444,002	5,317,836
1939	3,609,062	5,809,220
1940	4,366,969	7,928,344
Total 3 Years	10,420,033	19,055,400

(These figures are for Ishkooda, Muscoda, Wenonah, and No. 5 Limestone—*Underground* only.)

(*) Freq. Rate—Number of accidents per million man-hours worked.

Safety & Casualty Bureau
7-20-41.

4754 FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52-A to 52-G.

This exhibit consists of:

No. 52-A: Tabulated statement entitled "Report showing comparison Lost-Time Accidents (Including Fatalities) Coal Mines and Iron Ore Mines—U. S. Bureau of Mines, 1937, 1938 & 1939;"

No. 52-B: Mimeographed manuscript entitled, "United States Department of the Interior, Bureau of Mines, R. R. Sayers, Director. Statistical and Economic Surveys Mineral Production and Economics Division, August 2, 1940. H. S. S. No. 274. Employment and Accidents at Iron-Ore Mines in the United States, 1939;"

No. 52-C: Mimeographed manuscript entitled, "United States Department of the Interior, Bureau of Mines, R. R. Sayers, Director. Statistical and Economic Surveys Mineral Production and Economics Division. For immediate release. H. S. S. No. 279. Employment and Accidents at Coal Mines in the United States, 1938. (Final Figures);"

No. 52-D: Mimeographed manuscript entitled, "United States Department of the Interior, Bureau of Mines, R. R. Sayers, Director. Statistical and Economic Surveys Mineral Production and Economics Division. For immediate Release. No. C. M. F. 119. Coal Mine Fatalities in May, 1941;"

No. 52-E: Printed pamphlet entitled, "United States Department of the Interior Bureau of Mines. Metal-Mine Accidents in the United States; 1937. Bulletin 428;"

No. 52-F: Printed pamphlet entitled, "United States Department of the Interior, Bureau of Mines, Coal-Mine Accidents in the United States: 1937. Bulletin 430;"

No. 52-G: Printed pamphlet entitled, "United States Department of the Interior, Bureau of Mines. Metal-Mine Accidents in the United States: 1939. Bulletin 435."

The following statistical tables have been taken from the said publications and are designated for printing in the record:

FOR IDENTIFICATION PLAINTIFFS' EX. #52A.

Case #5232.

Exhibit B.

Report Showing Comparison Lost-Time Accidents (Including Fatalities) Coal Mines and Iron Ore Mines—U. S. Bureau of Mines 1937, 1938 & 1939.

	Iron Ore Mines		Coal Mines		Percent Increase Coal Mines Over Ore Mines	
Period	Number Lost Time Acc.	Freq.* Rate	Number Lost Time Acc.	Freq. Rate		
1937	1,181	46.13	49,396	87.42	90%	Inc.—1-9/10 times as large.
1938	404	24.37	34,515	82.70	239%	Inc.—3-2/5 times as large.
1939	506	24.10	35,645	77.83	223%	Inc.—3-1/5 times as large.
Total 3 Years	2,091	33.10	119,556	83.00	151%	Inc.—2-1/2 times as large.

Period	Man-Hours Worked	
1937	25,602,017	565,070,730
1938	16,575,015	417,345,108
1939	20,998,807	457,964,957
Total 3 Years	63,175,839	1,440,380,795

(These figures are for all mines in the United States—*Underground only.)*

(*) Freq. Rate—Number of accidents per million man-hours worked.

Safety & Casualty Bureau.
7-19-41.

United States Department of Interior, Bureau of Mines:

Metal Mines: 1937—Bulletin No. 428, page 5.
1938—Bulletin No 435, page 5.
1939—Bulletin No. H. S. S. 274, pages 3 and 5.

Ore Mines: 1937—Bulletin No. 430, page 3.
1938—Bulletin No. H. S. S. 279, page 4.
1939—Bulletin No. C. M. F. 119, page 11.

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52-B.

Table 1.—Men Employed and Average days of Employment During 1939, by States.

State	Number of Active Operators	Number of Active Mines	Number of Men Employed				Average Days of Employment per Man
			Underground	Open-cut	Surface	Total	
Alabama	44	56	3,508	588	457	4,553	229
Michigan	22	44	4,227	267	1,749	6,243	217
Minnesota	28	65	2,085	3,043	1,142	6,270	217
New York	4	6	457	3	148	608	272
New Jersey & Pa.	5	8	570	199	186	955	295
Ga., Tenn., & Va.	18	19	3	98	...	101	144
Calif., S. Dak., Utah, Wash., & Wyo.	13	13	113	68	60	241	206
Missouri & Wis.	8	8	474	157	167	798	233
Total 1939	142[1]	219[1]	11,437	4,423	3,909	19,769	225
Total 1938	112[1]	184[1]	10,729	3,311	3,966	18,006	197

[1] Excludes an undetermined number of small pits in Alabama and Missouri.

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52-B.

Table 2.—Man-Days and Man-Hours of Employment During 1939, by States.

State	Man-Days of Employment				Man-Hours of Employment			
	Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total
Alabama	801,572	114,983	124,673	1,041,228	6,412,567	982,715	997,382	8,392,664
Michigan	932,464	34,665	385,229	1,352,358	7,487,341	277,329	3,084,683	10,849,353
Minnesota	463,731	615,575	280,312	1,359,618	3,709,857	4,924,876	2,235,353	10,870,086
New York	119,534	270	45,501	165,305	956,278	2,160	364,009	1,322,447
New Jersey & Pennsylvania	162,058	68,547	51,386	281,991	1,303,190	548,374	403,891	2,255,455
Georgia, Tenn., & Virginia	15	14,527	.....	14,542	120	119,072	.....	119,192
Calif., S. Dak., Utah, Wash. & Wyo.	24,827	11,652	13,242	49,721	198,616	92,787	105,932	397,335
Missouri & Wisconsin	116,355	27,593	42,016	185,964	930,838	220,740	336,132	1,487,710
Total 1939	2,620,556	887,812	942,359	4,450,727	20,998,807	7,168,053	7,527,382	35,694,242
Total 1938	2,071,746	605,452	878,481	3,555,679	16,575,015	4,921,185	7,019,230	28,515,430

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52-B.

Table 3.—Accidents and Accident Rates, With Average Hours of Employment Per Day and Per Year, During 1939, by States.

State	Killed	Injured				Rate per Million Man-Hours		Average Hours of Employment per Man per Day	Average Hours of Employment per Man per Year
		Permanent Total Disability	Permanent Partial Disability	Temporary	Total	Killed	Injured		
Alabama	10	3	13	131	147	1.19	17.52	8.06	1,843
Michigan	3	3	8	154	163	.28	15.02	8.02	1,738
Minnesota	6	..	16	98	114	.55	10.49	7.99	1,734
New York	..	..	2	50	52	..	39.32	8.00	2,175
New Jersey & Pennsylvania	2	..	5	60	65	.89	28.82	8.00	2,362
Georgia, Tenn., & Va.	..	..	..	1	1	..	8.39	8.20	1,180
Calif., S. Dak., Utah, Wash. & Wyo.	1	..	1	26	27	2.52	67.95	7.99	1,649
Missouri & Wisconsin	1	..	..	33	33	.67	22.18	8.00	1,864
Total 1939	23	4	45	553	602	.64	16.87	8.02	1,806
Total 1938	20	2	44	410	456	.70	15.99	8.02	1,584

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52-B.

Table 4.—Accidents During 1939, by Cause and Type of Disability.

Cause of Accident	Killed	Nonfatal				Grand Total
		Permanent Total Disability	Permanent Partial Disability	Temporary	Total	
Underground:						
1. Fall of rock or ore from roof or wall	11	..	4	116	120	131
2. Rock or ore while loading at working face	..	..	5	31	36	36
3. Hand tools	..	3	6	21	30	30
4. Explosives	1	1	5	11	17	18
5. Haulage	3	..	4	64	68	71
6. Falling down chute, winze, raise, or stope	3	..	1	17	18	21
7. Run of ore from chute or pocket	..	..	..	19	19	19
8. Drilling	..	..	4	17	21	21
9. Electricity	..	..	..	3	3	3

10. Machinery	..	..	..	31	31	31
11. Mine fires	..	..	..	..	..	..
12. Suffocation from natural gases	..	..	..	..	..	..
13. Inrush of water	..	..	..	..	..	..
14. Stepping on nail	..	..	..	5	5	5
15. Handling materials (other than rock or ore)	..	..	4	56	60	60
16. Other causes	1	..	2	54	56	57
Total Underground	19	4	35	445	484	503
Shaft:						
17. Falling down shaft	..	..	..	1	1	1
18. Objects falling down shaft	..	..	..	1	1	1
19. Breaking of cables	..	..	..	..	..	..
20. Overwinding	..	..	..	..	..	..
21. Skip, cage, or bucket	..	..	..	1	1	1
22. Other causes	..	..	..	..	..	..
Total Shaft	..	..	..	3	3	3

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52-B.

Table 4.—Accidents During 1939, by Cause and Type of Disability (Continued).

Cause of Accident	Killed	Nonfatal				Grand Total
		Permanent Total Disability	Permanent Partial Disability	Temporary	Total	
Open-cut:						
1. Falls or slides of rock or ore	..	..	..	4	4	4
2. Explosives	..	..	..	1	1	1
3. Haulage	1	..	2	7	9	10
4. Power shovels	..	..	1	5	6	6
5. Falls of persons	1	..	..	13	13	14
6. Falls of derricks, booms, etc.	..	..	1	..	1	1
7. Run or fall of ore in or from ore bins	..	..	..	..	..	..
8. Machinery	1	..	..	6	6	7
9. Electricity	..	..	..	1	1	1
10. Hand Tools	..	..	2	4	6	6
11. Handling materials	..	..	..	13	13	13
12. Other causes	..	..	1	21	22	22
Total Open-cut	3	..	7	75	82	85

Surface:						
1. Mine cars, mine locomotives, gravity or aerial trams......	1	..	..	1	1	2
2. Railway cars and locomotives.	..	..	..	1	1	1
3. Run or fall of ore in or from ore bins	..	..	..	..	..	..
4. Falls of persons	..	..	..	4	4	4
5. Stepping on nail	..	..	..	..	..	..
6. Hand Tools	..	..	..	..	..	..
7. Electricity	..	..	..	..	..	..
8. Machinery	..	..	2	4	6	6
9. Handling materials	..	..	1	10	11	11
10. Other causes	..	..	..	9	9	9
Total Surface	1	..	3	30	33	34
Grand Total	23	4	45	553	602	625

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT
No. 52-B.

Page 7.

Table 5—Employment and Accidents by Type of Mining During 1936 to 1939.

Underground.

Year	Men Employed	Man-Hours of Employment	Killed and Injured	Accident Rate per Million Man-Hours
1939	11,437	20,998,807	506	24.10
1938	10,729	16,575,015	404	24.37
1937	12,225	25,602,017	1,181	46.13
1936	9,330	18,386,226	737	40.08

Open-cut.

1939	4,423	7,168,053	85	11.87
1938	3,311	4,921,185	45	9.14
1937	6,026	10,417,686	134	12.86
1936	5,176	8,050,816	100	12.42

Surface.

1939	3,909	7,527,382	34	4.52
1938	3,966	7,019,230	27	3.85
1937	4,706	9,894,492	101	10.21
1936	4,086	8,255,579	60	7.27

By M. E. Kolhos and C. T. Herring,
Under supervision of W. W. Adams,
Employment Statistics Section,
Mineral Production and Economics Division.

P. N. 109641.

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT
No. 52-C.

Table 2.—Accidents and Employment at Bituminous and Anthracite Coal-Mines During the Year 1938, Classified by Major Classes of Work.

	Bituminous	Penna. Anthracite[1]	Total
Number of employees:			
Underground	373,271	72,360	445,631
Open-cut	11,351	3,631	14,982
Dredge	......	297	297
Surface	60,624	19,994	80,618
Total	445,246	96,282	541,528
Man-days:			
Underground	59,369,322	12,360,366	71,729,688
Open-cut	2,228,766	669,104	2,897,870
Dredge	......	42,239	42,239
Surface	10,148,962	3,456,759	13,605,721
Total	71,747,050	16,528,468	88,275,518
Man-hours:			
Underground	417,345,108	86,548,574	503,893,682
Open-cut	16,309,101	4,716,324	21,025,425
Dredge	......	365,941	365,941
Surface	71,661,952	24,221,448	95,883,400
Total	505,316,161	115,852,287	621,168,448

	Bituminous	Penna. Anthracite[1]	Total
Killed:			
Underground	823	204	1,027
Open-cut	18	10	28
Dredge	...	..	..
Surface	39	11	50
Total	880	225	1,105
Injured:			
Underground	33,692	12,885	46,577
Open-cut	1,036	182	1,218
Dredge	......	14	14
Surface	2,066	1,439	3,505
Total	36,794	14,520	51,314
Production:			
Underground	319,242,392	38,142,297	357,384,689
Open-cut	30,305,134	5,095,341	35,400,475
Dredge	......	571,024	571,024
Washery	......	2,340,444	2,340,444
Total	349,547,526	46,149,106	395,696,632
Fatality rate (per million man-hours):			
Underground	1.972	2.357	2.038
Open-cut	1.104	2.120	1.332
Dredge	....	....	....
Surface	.544	.447	.519
Total	1.741	1.942	1.779

[1] Men employed in washery operations together with the accidents to such employees are included in surface figures.

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52-C.

Table 3.—Number of Fatalities and Nonfatal Injuries, by Causes of Accidents, at Bituminous-Coal and Anthracite Mines in the United States During the Calendar Year 1938.

Cause	Bituminous		Penna. Anth.		Total	
	Fatal	Nonfatal	Fatal	Nonfatal	Fatal	Nonfatal
Underground						
1. Falls of roof	413	6,677	105	1,700	518	8,377
2. Roof fall due to car or machine knocking out post	12	99	2	66	14	165
3. Falls of face or rib	47	3,513	15	1,674	62	5,187
4. Rush of coal, rock, or gob	2	259	6	186	8	445
5. Other falling material or objects	4	1,046	6	910	10	1,956
6. Falls of persons	1	1,396	4	919	5	2,315
7. Handling materials	3	5,248	..	2,516	3	7,764
8. Hand tools	1	2,596	1	1,092	2	3,688
9. Stepping on nails or other sharp objects	..	134	..	242	..	376
10. Striking or bumping against objects	2	402	1	264	3	666
11. Mine cars and mine locomotives	142	7,836	23	1,409	165	9,245
12. Explosions of gas or coal dust	84	143	20	139	104	282

Cause	Bituminous		Penna. Anth.		Total	
	Fatal	Nonfatal	Fatal	Nonfatal	Fatal	Nonfatal
13. Explosives	23	253	11	176	34	429
14. Electricity	38	540	2	151	40	691
15. Machinery	27	2,738	..	472	27	3,210
16. Suffocation from natural gases	6	5	3	14	9	19
17. Mine fires	3	9	..	..	3	9
18. All other accidents underground	6	734	2	927	8	1,661
Total underground (excluding shaft)	814	33,628	201	12,857	1,015	46,485
Shaft and Slope						
19. Shaft and slope	9	64	3	28	12	92
Total underground (including shaft and slope)	823	33,692	204	12,885	1,027	46,557

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT
No. 52-D.

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Table 8—Bituminous-coal Mines: Employment and Accident Data, According to Classification of Mines as "Gassy" or "Nongassy."[1]

	Mines Classified as "Gassy"	Mines Classified as "Nongassy"	Classification Not Reported
Production (short tons):			
1937	149,063,758	222,217,718	44,143,999
1938	111,650,012	173,622,382	33,969,998
1939	138,378,535	186,331,869	34,660,330
Number of employees underground:			
1937	131,665	229,147	52,324
1938	121,086	203,400	48,785
1939	128,275	194,243	48,273
Number of man-shifts worked underground:			
1937	27,360,774	43,862,931	9,347,980
1938	19,710,953	32,408,156	7,250,213
1939	23,644,098	33,979,539	7,658,189
Number of man-hours worked underground:			
1937	190,914,507	308,580,983	65,575,240
1938	138,224,889	228,195,227	50,924,992
1939	165,426,146	238,559,018	53,979,793
Number of men killed underground:			
1937	402	548	178
1938	233	465	125
1939	285	409	129

	Mines Classified as "Gassy"	Mines Classified as "Nongassy"	Classification Not Reported
Number of men injured underground:			
1937	15,846	28,014	4,408
1938	10,758	19,990	2,944
1939	11,495	20,201	3,126
Fatality rate per million man-hours underground:			
1937	2.106	1.776	2.714
1938	1.686	2.038	2.455
1939	1.723	1.714	2.390
Injury rate per million man-hours underground:			
1937	83.001	90.783	67.220
1938	77.830	87.600	57.811
1939	69.487	84.679	57.911

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52-E.

Metal-Mine Accidents in the United States—1937.

Table 2.—All Mines: Number of Active Mines, Men Employed, Man-Days, Man-Hours of Employment, and Number
Ended Dec. 31, 1937.

Kind of Mine	Number of Operators	Number of Mines	Men Employed				Man-Days of Employment				
			Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total	U
Copper	100	142	13,078	2,895	5,202	21,175	3,934,098	986,839	1,576,825	6,497,762	
Iron	184	269	12,225	6,026	4,706	22,957	3,199,165	1,285,512	1,232,257	5,716,934	
Lead and zinc (Mississippi Valley)	189	252	7,627	61	778	8,466	1,645,803	11,285	175,226	1,832,314	
Gold, silver, and miscellaneous	(1)	7,932	36,240	3,054	16,520	55,814	9,144,641	486,000	3,617,963	13,248,604	
Gold, silver: Lode	(1)	5,146	32,769	910	7,418	41,097	8,295,788	154,208	1,870,302	10,320,298	
Gold: Placer	(1)	2,531	566	1,446	8,501	10,513	91,060	183,520	1,607,874	1,882,454	
Miscellaneous	225	255	2,905	698	601	4,204	757,793	148,272	139,787	1,045,852	
Nonmetal	405	445	3,101	3,583	3,333	10,017	735,499	816,334	1,009,163	2,560,996	
Total, 1937	(1)	9,040	72,271	15,619	30,539	118,429	18,659,206	3,585,970	7,611,434	29,856,610	
Total, 1936	(1)	8,451	61,327	14,075	25,530	100,932	15,872,685	3,028,685	6,308,535	25,209,905	

Hours of Employment, and Number Killed and Injured, by Kind of Mine, During the Year Dec. 31, 1937.

Man-Days of Employment			Average Hours of Employment per Man per Day				Man-Hours of Employment			
Open-cut	Surface	Total	Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total
986,839	1,576,825	6,497,762	8.00	8.00	8.00	8.00	31,472,780	7,895,221	12,614,103	51,982,104
1,285,512	1,232,257	5,716,934	8.00	8.10	8.03	8.03	25,602,017	10,417,686	9,894,492	45,914,195
11,285	175,226	1,832,314	8.02	8.00	8.10	8.03	13,198,653	90,280	1,419,789	14,708,722
486,000	3,617,963	13,248,604	7.97	8.18	8.16	8.03	72,889,230	3,975,566	29,538,412	106,403,208
154,208	1,870,302	10,320,298	7.98	7.99	8.02	7.98	66,161,851	1,232,604	14,992.105	82,386,560
183.520	1,607,874	1,882,454	7.91	8.46	8.36	8.35	720,663	1,553,267	13,444.834	15,718,764
148,272	139,787	1,045,852	7.93	8.02	7.88	7.93	6,006,716	1,189,695	1,101,473	8,297,884
816,334	1,009,163	2,560,996	7.96	8.35	7.80	8.02	5,853,936	6,815,782	7,866,485	20,536,203
3,585,970	7,611,434	29,856,610	7.99	8.14	8.06	8.02	149,016,616	29.194,535	61,333,281	239,544,432
3,028,685	6,308,535	25,209,905	8.02	8.15	7.99	8.03	127,274,741	24,676,240	50,407,744	202,358,725

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52-E.

Metal-Mine Accidents in the United States—1938.

Table 2.—All Mines: Number of Active Mines, Men Employed, Man-Days, Man-Hours of Employment, and Number
Ended Dec. 31, 1937—Continued.

Kind of Mine	Average Days Active				Average Hours per Man per Year				Number Killed				Number Inju		
	Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total	Underground	Open-cut	S
Copper	301	341	303	307	2,407	2,727	2,425	2,455	45	3	1	49	4,072	280	
Iron	262	213	262	249	2,094	1,729	2,103	2,000	26	6	1	33	1,155	128	
Lead and zinc (Mississippi Valley)	216	185	225	216	1,731	1,480	1,825	1,737	9	..	..	9	723	5	
Gold, silver, and miscellaneous	252	159	219	237	2,011	1,302	1,788	1,906	99	1	15	115	8,420	115	
Gold, silver: Lode	253	169	252	251	2,019	1,355	2,021	2,005	83	1	10	94	7,912	68	
Gold: Placer	161	127	189	179	1,273	1,074	1,582	1,495	..	..	4	4	49	30	
Miscellaneous	261	212	233	249	2,068	1,704	1,833	1,974	16	..	1	17	459	17	
Nonmetal	237	228	303	256	1,888	1,902	2,360	2,050	8	2	3	13	385	336	
Total, 1937	258	230	249	252	2,062	1,869	2,008	2,023	187	12	20	219	14,755	864	
Total, 1936	259	215	247	250	2,075	1,753	1,974	2,005	170	14	15	199	12,045	734	

[1] Not available.

R IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52-E.

Metal-Mine Accidents in the United States—1938.

oyed, Man-Days, Man-Hours of Employment, and Number Killed and Injured, by Kind of Mine, During the Year Ended Dec. 31, 1937—Continued.

Number Killed				Number Injured				Wid vs	Orphans	Rates per Million Man-Hours							
										Killed				Injured			
Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total			Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total
45	3	1	49	4,072	280	586	4,938	1	35	1.43	0.38	0.08	0.94	129.38	35.46	46.46	94.99
26	6	1	33	1,155	128	100	1,383	2	49	1.02	.58	.10	.72	45.11	12.29	101.07	30.12
9	..	..	9	723	5	28	756	8	20	.68	..	..	.61	54.78	55.38	19.72	51.40
99	1	15	115	8,420	115	1,456	9,991	60	93	1.36	.25	.51	1.08	115.52	28.93	49.29	93.90
83	1	10	94	7,912	68	933	8,913	51	82	1.25	.81	.67	1.14	119.59	55.17	62.23	108.19
..	..	4	4	49	30	449	528	1	3	..	..	.30	.25	67.99	19.31	33.40	33.59
16	..	1	17	459	17	74	550	8	8	2.66	..	.91	2.05	76.41	14.29	67.18	66.28
8	2	3	13	385	336	266	987	9	23	1.37	.29	.38	.63	65.77	49.30	33.81	48.06
187	12	20	219	14,755	864	2,436	18,055	117	220	1.25	.41	.33	.91	99.02	29.59	39.72	75.37
170	14	15	199	12,045	734	1,871	14,650	102	169	1.34	.57	.30	.98	94.64	29.75	37.12	72.40

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52.E.

Metal-Mine Accidents in the United States—1937.

Table 4.—All Mines: Average Length of Workday (Hours), Average Days Active, Average Hours per Man per Year, by States, During the Year Ended Dec. 31, 1937.

State	Average Length of Workday (Hours)				Average Days Active				Average Hours per Man per Year			
	Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total
Alabama	8.01	8.51	8.03	8.06	252	184	292	250	2,023	1,563	2,346	2,014
Alaska	8.01	8.97	8.79	8.57	280	102	208	209	2,241	915	1,829	1,788
Arizona	7.99	8.00	8.07	8.01	280	308	249	276	2,239	2,465	2,013	2,209
Arkansas	8.03	8.00	8.05	8.03	212	251	242	225	1,704	2,012	1,947	1,809
California	7.99	8.05	8.03	8.00	259	194	236	246	2,065	1,562	1,898	1,972
Colorado	8.00	7.96	8.09	8.01	255	213	223	247	2,037	1,691	1,806	1,976
Florida	...	8.35	8.47	8.40	...	220	279	242	....	1,835	2,369	2,033
Georgia	8.39	9.06	9.65	8.92	145	184	150	165	1,213	1,663	1,448	1,475
Idaho	8.01	8.10	8.00	8.01	255	94	219	239	2,040	765	1,752	1,917
Illinois	8.10	7.81	8.00	8.02	218	263	221	228	1,767	2,055	1,771	1,824
Iowa	7.95	8.03	8.00	7.96	187	259	215	196	1,486	2,082	1,721	1,557
Kansas	7.99	8.04	8.00	7.99	223	195	260	226	1,786	1,570	2,076	1,809
Kentucky	8.03	8.16	8.05	8.07	154	198	255	179	1,234	1,618	2,052	1,443
Louisiana	7.81	...	7.92	7.90	208	...	349	303	1,628	....	2,762	2,391
Maine	...	8.01	...	8.01	...	192	...	192	....	1,538	....	1,538
Michigan	8.00	8.03	8.00	8.00	273	161	261	264	2,186	1,293	2,091	2,114
Minnesota	8.00	8.04	8.00	8.02	269	221	251	240	2,152	1,774	2,007	1,926
Missouri	7.97	8.00	8.03	7.98	239	267	225	242	1,906	2,134	1,806	1,930
Montana	8.00	7.51	8.02	8.00	270	105	243	262	2,155	786	1,951	2,098
Nevada	7.97	8.00	8.01	7.98	263	246	242	256	2,093	1,968	1,935	2,045
New Hampshire	8.18	8.29	8.48	8.28	256	255	257	256	2,091	2,117	2,182	2,119
New Jersey	8.00	...	8.00	8.00	262	...	248	260	2,096	....	1,988	2,076
New Mexico	7.77	8.00	7.94	7.84	269	309	274	275	2,093	2,475	2,175	2,159
New York	7.85	7.86	7.98	7.88	279	294	297	283	2,193	2,315	2,372	2,230
North Carolina	8.31	8.17	8.27	8.25	263	177	245	220	2,188	1,442	2,022	1,816
Oklahoma	8.02	8.01	8.35	8.04	200	189	160	196	1,604	1,511	1,333	1,578
Oregon	7.94	8.09	8.07	8.00	203	127	183	184	1,613	1,026	1,473	1,474
Pennsylvania	8.25	8.43	8.76	8.48	176	320	306	258	1,450	2,698	2,684	2,187
South Carolina	8.09	10.00	8.24	8.23	334	180	231	289	2,700	1,799	1,907	2,378
South Dakota	8.00	7.96	7.98	7.99	292	248	333	305	2,335	1,972	2,659	2,439
Tennessee	8.10	9.34	8.63	8.55	234	249	272	248	1,892	2,328	2,348	2,117
Texas	7.77	8.06	7.17	7.34	283	220	334	315	2,199	1,775	2,395	2,309
Utah	7.99	8.00	8.00	8.00	266	348	303	290	2,129	2,781	2,426	2,319
Vermont	8.00	8.91	8.53	8.65	276	179	311	219	2,211	1,598	2,650	1,894
Virginia	8.00	8.29	8.02	8.09	244	223	282	248	1,955	1,846	2,260	2,006
Washington	7.99	8.00	8.04	8.01	202	206	145	185	1,618	1,652	1,162	1,483
Wisconsin	7.99	...	8.01	8.00	255	...	259	256	2,034	....	2,073	2,046
Wyoming	8.00	8.00	8.01	8.00	186	178	136	169	1,490	1,422	1,087	1,350
Other States[1]	8.14	8.05	8.92	8.16	201	169	200	191	1,634	1,357	1,784	1,559
Total, 1937	7.99	8.14	8.06	8.02	258	230	249	252	2,062	1,869	2,008	2,023
Total, 1936	8.02	8.15	7.99	8.03	259	215	247	250	2,075	1,753	1,977	2,005

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[1] Includes Connecticut, Maryland, Massachusetts, Mississippi, Nebraska, Ohio, and West Virginia.

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52-F.

Coal-Mine Accidents in the United States, 1937.

Table 1.—Comparative Accident Statistics, 1936 and 1937.

	Bituminous			**Anthracite**[1]			**Total**		
	1936	**1937**	**Percent of Change in 1937**	**1936**	**1937**	**Percent of Change in 1937**	**1936**	**1937**	**Percent Percent in 1937**
Number of mines	6,572	6,537	—0.5	....	....	.....	....	....	.....
Number of employees:									
Underground	405,027	413,136	+2.0	76,128	74,422	—2.2	481,155	487,558	+1.3
Open-cut	10,901	11,695	+7.3	4,913	4,476	—8.9	15,814	16,171	+2.3
Surface	66,572	65,940	—.9	21,041	20,187	—4.1	87,613	86,127	—1.7
Total	482,500	490,771	+1.7	102,082	99,085	—2.9	584,582	589,856	+.9
Man-days:									
Underground	79,698,806	80,571,685	+1.1	14,533,809	14,020,782	—3.5	94,232,615	94,592,467	+.4
Open-cut	2,073,127	2,389,892	+15.3	968,839	826,502	—14.7	3,041,966	3,216,394	+5.7
Surface	13,489,821	13,168,736	—2.4	4,127,091	3,893,475	—5.7	17,616,912	17,062,211	—3.1
Total	95,261,754	96,130,313	+.9	19,629,739	18,740,759	—4.5	114,891,493	114,871,072	—.017
Man-hours:									
Underground	559,733,518	565,070,730	+1.0	115,556,143	101,567,961	—12.1	675,289,661	666,638,691	—1.3
Open-cut	15,133,873	17,527,962	+15.8	7,827,731	5,975,531	—23.7	22,961,604	23,503,493	+2.4
Surface	95,033,145	92,969,503	—2.2	33,102,050	28,310,459	—14.5	128,135,195	121,279,962	—5.4
Total	669,900,536	675,568,195	+.8	156,485,924	135,853,951	—13.2	826,386,460	811,422,146	—1.8
Killed:									
Underground	1,034	1,128	+9.1	222	190	—14.4	1,256	1,318	+4.9
Open-cut	15	8	—46.7	8	6	—25.0	23	14	—39.1
Surface	49	62	+26.5	14	19	+35.7	63	81	+28.6
Total	1,098	1,198	+9.1	244	215	—11.9	1,342	1,413	+5.3
Injured:									
Underground	46,402	48,268	+4.0	16,090	13,593	—15.5	62,492	61,861	—1.0
Open-cut	1,208	1,275	+5.5	553	255	—53.9	1,761	1,530	—13.1
Surface	2,904	3,304	+13.8	2,419	1,582	—34.6	5,323	4,886	—8.2
Total	50,514	52,847	+4.6	19,062	15,430	—19.1	69,576	68,277	—1.9

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[1] Men employed in washery and dredge operations are included with surface employees. Accidents to men employed in the washery and dredge are included in surface accidents.

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 62-F.

Coal-Mine Accidents in the United States, 1937.

Table 1.—Comparative Accident Statistics, 1936 and 1937—Continued.

	Bituminous			Anthracite			Total		
	1936	1937	Percent of Change in 1937	1936	1937	Percent of Change in 1937	1936	1937	Percent of Change in 1937
Production:									
Underground	409,250,811	415,425,475	+1.5	44,726,506	42,566,351	—4.8	453,977,317	457,991,826	+.9
Open-cut	27,217,522	31,622,011	+16.2	6,203,267	5,696,018	—8.2	33,420,789	37,318,029	+11.7
Washery	....	....	.....	3,193,972	2,722,599	—14.8	3,193,972	2,722,599	—14.8
Dredge	....	....	.....	546,684	760,474	+39.1	546,684	760,474	+39.1
Total	436,468,333	447,047,486	+2.4	54,670,429	51,745,442	—5.4	491,138,762	498,792,928	+1.6
Fatality rate (per million man-hours)									
Underground	1.847	1.996	+8.1	1.921	1.871	—2.6	1.860	1.977	+6.3
Open-cut	.991	.456	—54.0	1.022	1.004	—1.8	1.002	.596	—40.5
Surface	.516	.667	+29.3	.423	.684	+61.7	.492	.671	+36.4
Total	1.639	1.773	+8.2	1.559	1.583	+1.5	1.624	1.741	+7.2
Injury rate (per million man-hours):									
Underground	82.900	85.419	+3.0	139.240	133.832	—3.9	92.541	92.795	+.3
Open-cut	79.821	72.741	—8.9	70.646	42.674	—39.6	76,693	65.097	—15.1
Surface	30.558	35.539	+16.3	73.077	55.880	—23.5	41.542	40.217	—3.2
Total	75.405	78.226	+3.7	121.813	113.578	—6.8	84.193	84.145	—.1
Fatality rate (per million short tons):									
Underground	2.527	2.715	+7.4	4.963	4.464	—10.1	2.767	2.878	+4.0
Open-cut	.551	.253	—54.1	1.290	1.053	—18.4	.688	.375	—45.5
Total	2.516	2.680	+6.5	4.463	4.155	—6.9	2.732	2.833	+3.7
Injury rate (per million short tons):									
Underground	113.383	116.189	+2.5	359.742	319.337	—11.2	137.654	135.070	—1.9
Open-cut	44.383	40.320	—9.2	89.147	44.768	—49.8	52.692	40.999	—22.2
Total	115.733	118.213	+2.1	348.671	298.191	—14.5	141.663	136.884	—3.4

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52-G.

Metal-Mine Accidents in the United States—1938,

Table 2.—All Mines: Number of Active Mines, Men Employed, Man-Days, Man-Hours of Employment, and Number
Ended Dec. 31, 1938.

Kind of Mine	Number of Operators	Number of Mines	Men Employed				Man-Days of Employment			
			Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total
Copper	(1)	96	10,743	2,667	4,172	17,582	2,393,774	761,728	1,173,786	4,329,288
Iron	(2)	184	10,729	3,311	3,966	18,006	2,071,746	605,452	878,481	3,555,679
Lead and zinc (Mississippi Valley)	146	194	5,994	51	391	6,436	1,228,809	10,495	91,091	1,330,395
Gold, silver, and miscellaneous	(1)	6,136	31,643	3,243	16,591	51,477	7,934,947	483,656	3,620,614	12,039,217
Gold, silver: Lode	(1)	3,164	28,289	727	7,219	36,235	7,081,889	148,449	1,763,847	8,994,185
Gold: Placer	(1)	2,724	628	1,811	8,860	11,299	114,060	219,447	1,730,231	2,063,738
Miscellaneous	(1)	248	2,726	705	512	3,943	738,998	115,760	126,536	981,294
Nonmetal	557	623	2,685	3,981	2,860	9,526	613,189	779,912	858,184	2,251,285
Total 1938	(1)	7,233	61,794	13,253	27,980	103,027	14,242,465	2,641,243	6,622,156	23,505,864
Total, 1937	(1)	9,040	72,271	15,619	30,539	118,429	18,659,206	3,585,970	7,611,434	29,856,610

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[1] Not available.

[2] Undetermined number of small pits in Alabama and Missouri.

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52-G.

Metal-Mine Accidents in the United States—1938,

ıes, Men Employed, Man-Days, Man-Hours of Employment, and Number Killed and Injured, by Kind of Mine, During the Year Ended Dec. 31, 1938.

Men Employed			Man-Days of Employment				Average Hours of Employment per Man per Day				Man-Days of Employment			
Open-cut	Surface	Total	Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total
2,667	4,172	17,582	2,393,774	761,728	1,173,786	4,329,288	8.00	8.00	8.00	8.00	19,146,972	6,093,829	9,389,141	34,629,942
3,311	3,966	18,006	2,071,746	605,452	878,481	3,555,679	8.00	8.13	7.99	8.02	16,575,015	4,921,185	7,019,230	28,515,430
51	391	6,436	1,228,809	10,495	91,091	1,330,395	7.96	8.20	7.97	7.96	9,783,716	86,102	725,660	10,595,478
3,243	16,591	51,477	7.934,947	483,656	3,620,614	12,039,217	7.98	8.11	8.12	8.02	63,284,426	2,920,671	29,396,774	96,601,871
727	7,219	36,235	7,081,889	148,449	1,763,847	8,994,185	7.98	8.20	7.99	7.98	56,490,426	1,217,870	14,088,089	71,796,385
1.811	8,860	11,299	114,060	219,447	1,730,231	2,063,738	7.91	8.07	8.26	8.22	901,763	1,770,236	14,294,523	16,966,522
705	512	3,943	738,998	115,760	126,536	981,294	7.97	8.06	8.01	7.99	5,892,237	932,565	1,014,162	7,838,964
3,981	2,860	9,526	613,189	779,912	858,184	2,251,285	7.97	8.17	7.65	7.92	4,887,179	6,372,130	6,568,136	27.827,445
13,253	27,980	103,027	14,242,465	2,641,243	6,622,156	23,505,864	7.98	8.10	8.02	8.01	113,677,308	21,393,917	53,098,941	188,170,166
15,619	30,539	118,429	18,659,206	3,585,970	7,611,434	29,856,610	7.99	8.14	8.06	8.02	149,016,616	29,194,535	61,333,281	239,544,432

FOR IDENTIFICATION PLAINTIFFS' EXHIBIT No. 52-G.

Metal-Mine Accidents in the United States—1938.

Table 2.—All Mines: Number of Active Mines, Men Employed, Man-Days, Man-Hours of Employment, and Number Ended Dec. 31, 1938—Continued.

Kind of Mine	Average Days Active				Average Hours per Man per Year				Number Killed				Number Inj	
	Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total	Underground	Open-cut
Copper	223	286	281	246	1,782	2,285	2,251	1,970	20	2	2	24	1,725	149
Iron	193	183	222	197	1,545	1,486	1,770	1,584	16	3	1	20	388	42
Lead and zinc (Mississippi Valley)	205	206	233	207	1,632	1,688	1,856	1,646	15	..	..	15	578	3
Gold, silver, and miscellaneous	251	149	218	234	2,000	1,209	1,772	1,877	87	2	2	91	7,504	170
Gold, silver: Lode	250	204	244	248	1,997	1,675	1,952	1,981	77	..	1	78	7,087	79
Gold: Placer	182	121	195	183	1,436	977	1,613	1,502	..	1	1	2	30	53
Miscellaneous	271	164	245	249	2,161	1,323	1,981	1,988	10	1	..	11	387	38
Nonmetal	228	196	300	236	1,820	1,601	2,297	1,871	1	4	1	6	242	306
Total 1938	230	199	237	228	1,840	1,614	1,898	1,826	139	11	6	156	10,437	670
Total, 1937	258	230	249	252	2,062	1,869	2,008	2,023	[1]187	12	20	219	14,755	864

[1] Number of widows and orphans not completely reported by mining companies.

[redacted]

TIFICATION PLAINTIFFS' EXHIBIT No. 52-G.

Mine Accidents in the United States—1938.

an-Days, Man-Hours of Employment, and Number Killed and Injured, by Kind of Mine, During the Year Ended Dec. 31, 1938—Continued.

Number Killed				Number Injured						Rates per Million Man-Hours							
										Killed				Injured			
ound	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total	Widows[1]	Orphans[1]	Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total
0	2	2	24	1,725	149	224	2,098	10	14	1.04	0.33	0.21	0.69	90.09	24.45	23.86	60.58
6	3	1	20	388	42	26	456	15	16	.97	.61	.14	.70	23.41	8.53	3.70	15.99
5	..	..	15	578	3	27	608	13	23	1.53	..	..	1.42	59.08	34.84	37.21	57.38
7	2	2	91	7,504	170	1,160	8,834	46	86	1.37	.51	.07	.94	118.58	43.36	39.46	91.45
7	..	1	78	7,087	79	700	7,866	46	86	1.36	..	.07	1.09	125.45	64.87	49.69	109.56
.	1	1	2	30	53	413	496	..	..	..	.56	.07	.12	33.27	29.94	28.89	29.23
0	1	..	11	387	38	47	472	..	..	1.70	1.07	..	1.40	65.68	40.75	46.34	60.21
1	4	1	6	242	306	178	726	3	..	.20	.63	.15	.34	49.52	48.02	27.10	40.72
9	11	6	156	10,437	670	1,615	12,722	87	139	1.22	.51	.11	.83	91.81	31.32	30.41	67.61
7	12	20	219	14,755	864	2,436	18,055	117	220	1.25	.41	.33	.91	99.02	29.59	39.72	75.37

FOR IDENTIFICAION PLAINTIFFS' EXHIBIT No. 52-G.

Table 4.—All Mines: Average Length of Workday (Hours), Average Days Active, Average Hours per Man per Year, by States, During the Year Ended Dec. 31, 1938.

State	Average Length of Workday (Hours)				Average Days Active				Average Hours per Man per Year			
	Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total	Underground	Open-cut	Surface	Total
Alabama	8.00	9.17	8.00	8.08	191	192	279	199	1,525	1,759	2,233	1,609
Alaska	8.00	8.00	8.00	8.00	291	100	212	211	2,329	801	1,694	1,691
Arizona	8.00	8.00	7.99	8.00	272	269	240	263	2,176	2,149	1,915	2,107
Arkansas	8.05	8.02	8.28	8.08	254	213	246	246	2,044	1,706	2,039	1,988
California	7.97	8.00	8.34	8.12	260	177	228	240	2,077	1,418	1,898	1,949
Colorado	7.97	7.96	8.06	7.98	254	189	226	245	2,021	1,508	1,825	1,959
Florida	...	8.15	7.90	8.04	...	101	250	214	....	1,557	1,974	1,719
Georgia	8.44	8.73	8.99	8.70	189	244	150	213	1,593	2,133	1,349	1,851
Idaho	8.13	8.02	8.00	8.10	249	111	225	236	2,027	891	1,797	1,914
Illinois	8.17	8.00	8.00	8.11	174	187	234	183	1,423	1,494	1,869	1,486
Iowa	7.89	8.16	8.00	7.93	183	211	248	188	1,445	1,721	1,980	1,489
Kansas	7.91	7.91	7.94	7.91	228	117	245	227	1,801	928	1,949	1,797
Kentucky	8.06	8.00	8.05	8.04	169	173	167	170	1,365	1,385	1,346	1,368
Louisiana	7.80	...	7.94	7.91	229	...	354	317	1,788	....	2,806	2,507
Maine	...	8.06	...	8.06	...	146	...	146	....	1,176	....	1,176
Michigan	8.00	8.10	8.01	8.01	217	179	231	220	1,735	1,453	1,852	1,765
Minnesota	8.00	8.02	7.99	8.00	185	170	219	186	1.480	1,361	1,753	1,493
Missouri	7.91	8.00	8.00	7.93	177	208	220	185	1,396	1,664	1,761	1,464
Montana	7.99	7.88	8.01	8.00	168	136	209	175	1,340	1,070	1,673	1,403
Nevada	7.88	7.99	7.99	7.92	254	248	222	245	2,004	1,977	1,770	1,940
New Hampshire	8.00	8.18	8.13	8.12	300	168	286	210	2,400	1,371	2,323	1,703
New Jersey	8.01	8.00	8.00	8.01	237	240	250	239	1,895	1,920	1,998	1,915
New Mexico	7.91	8.00	7.93	7.92	281	258	281	278	2,219	2,065	2,229	2.200
New York	7.75	8.27	7.92	7.81	218	238	281	229	1,689	1,971	2,223	1,790
North Carolina	8.35	7.96	8.33	8.14	226	181	201	198	1,890	1,444	1,671	1,613
Ohio	8.02	8.00	...	8.02	201	300	...	205	1,612	2,400	....	1,647
Oklahoma	7.98	8.05	7.95	7.98	218	175	248	215	1,740	1,409	1,971	1,716
Oregon	6.91	8.13	7.97	7.49	228	112	209	194	1,572	910	1,667	1,451
Pennsylvania	8.00	7.98	7.62	7.93	295	310	312	305	2,357	2,476	2,375	2,415
South Carolina	10.12	9.75	8.71	9.70	207	316	144	252	2,096	3,081	1,254	2,444
South Dakota	8.00	8.08	8.02	8.01	315	193	305	306	2,524	1,562	2,445	2,451
Tennessee	8.03	8.52	8.36	8.25	252	217	267	247	2,022	1,847	2,231	2,035
Texas	8.20	8.19	7.10	7.44	282	208	355	320	2,308	1,706	2,520	2,379
Utah	7.98	8.00	7.96	7.98	239	298	254	254	1,909	2,387	2,024	2,029
Vermont	10.27	9.79	9.24	9.74	200	186	237	196	2,057	1,826	2,191	1,908
Virginia	8.16	8.13	8.03	8.11	231	188	244	225	1,888	1,532	1,961	1,821
Washington	8.01	8.00	8.04	8.02	267	182	215	243	2,136	1,456	1,732	1,949
Wisconsin	7.98	8.00	8.00	7.98	217	75	235	220	1,730	600	1,879	1,760
Wyoming	8.00	8.00	8.05	8.01	122	113	135	121	974	900	1,088	971
Other States[1]	8.00	8.45	...	8.29	217	144	...	165	1,738	1,220	....	1,364
Total 1938	7.98	8.10	8.02	8.01	231	199	237	228	1,840	1,614	1,898	1,826
Total 1937	7.99	8.14	8.00	8.02	258	230	249	252	2,062	1,869	2,008	2,023

[1] Includes Connecticut, Maryland, Massachusetts, Nebraska, and West Virginia.

PLAINTIFFS' EXHIBIT NO. 12

4901

UNITED STATES DEPARTMENT OF THE INTERIOR
Harold L. Ickes, Secretary
BUREAU OF MINES
R. R. Sayers, Director

BITUMINOUS COAL

BY M. E. McMILLAN, R. L. ANDERSON
AND W. H. YOUNG

Chapter from
MINERALS YEARBOOK 1940
REVIEW OF 1939
WITH FINAL STATISTICS FOR 1938

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1940

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BITUMINOUS COAL[1]

By M. E. McMillan, R. L. Anderson, and W. H. Young

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Bituminous-coal production in 1939 was considerably greater than in 1938. During the first quarter production was high to fill orders purchased for storage by consumers in anticipation of possible suspension of mining when the wage contract expired on March 31. Output declined sharply in April and May when work ceased pending the signing of a new wage contract. The outbreak of war in Europe in September stimulated general business, particularly the heavy industries, and the production of coal increased substantially.

During the year the Bituminous Coal Division, United States Department of the Interior (formerly the National Bituminous Coal Commission), proceeded with the task of building a minimum price structure that would comply in detail with requirements of the law.

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[1] The collection of production statistics of the bituminous-coal industry previously conducted by the Bureau of Mines was transferred to the National Bituminous Coal Commission July 1, 1937. The cooperation of the Coal Commission (now the Bituminous Coal Division, U. S. Department of the Interior) in contributing this chapter to Minerals Yearbook to maintain the continuity of the bituminous-coal series is gratefully acknowledged.

Data for 1939 are preliminary; detailed statistics with final revisions will be released later. Data for 1938 are final.

Production.—The output of soft coal in 1939 was 393,065,000 tons, a 13-percent increase over 1938. The coal industry made substantial gains in common with general business activity during the latter half of the year, and the total output for the year was 27 percent above the record low of 1932, although 27 percent below the 534,989,000 tons of 1929. (See figs. 1, 2, and 4.)

Imports and exports.—Exports of bituminous coal rose from 10,490,269 tons in 1938 to 11,590,478 in 1939, a 10-percent increase. At the same time imports, which are relatively insignificant, rose 47 percent from 241,305 tons in 1938 to 355,115 in 1939. As in the past, virtually all these imports and more than 90 percent of the exports represented trade with Canada. (See fig. 10.)

Changes in stocks.—The reserve supply of coal in the hands of industrial consumers and retail coal yards rose from a total of 40,720,000 tons at the beginning of the year to 44,571,000 at the close. Between the same periods, stocks on the upper Lake docks declined 295,000 tons, and unbilled coal in cars at the mines or classification yards fell 74,000 tons. (See fig. 1 and table 18.)

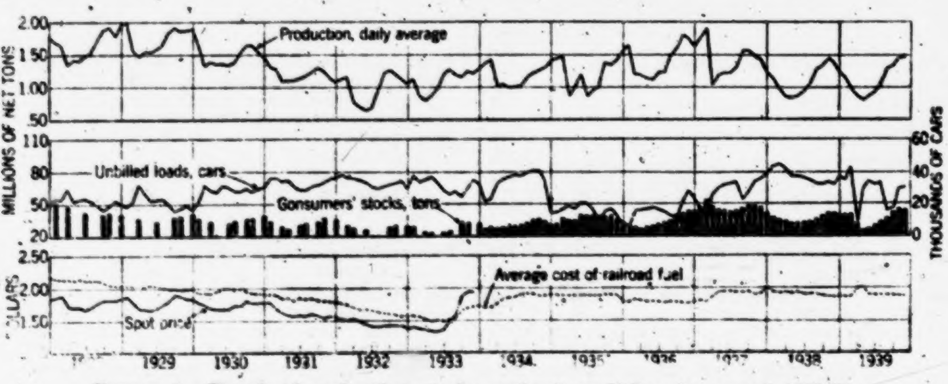

FIGURE 1.—Trends of production, stocks, and prices of bituminous coal, 1928–39.

Consumption.—After allowances have been made for foreign trade and changes in consumers' stocks the consumption of bituminous coal in 1939 totaled 377,978,637 tons, an increase of 33,328,837 from 1938. Each of the more important classes of consumers shared the increase, which ranged from 69 percent for beehive coke ovens to 7 percent for railroads. (See fig. 3 and table 4.)

Distribution.—Shipments of bituminous coal during 1939 rose substantially above the 1938 level in each of the primary channels of distribution. Changes in the monthly volume of the more important movements are shown in figure 4.

Freight rates.—The average railroad freight charge per net ton of revenue bituminous coal amounted to $2.23 in 1939 compared with $2.27 in 1938.

Trend of prices.—Spot market quotations indicate that producers averaged less per ton for their coal in 1939 than in 1938. (See tables 1 and 15.)

Mechanization.—Data available early in 1940 [3] indicate continuation of the sharp advance in mechanical loading of bituminous coal.

Sales of mechanical loading equipment for use in bituminous-coal mines, in terms of total capacity, increased 21.4 percent in 1939 over

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[3] Coal Age, February 1940, p. 63, and Mining Congress Journal, February 1940, p. 23.

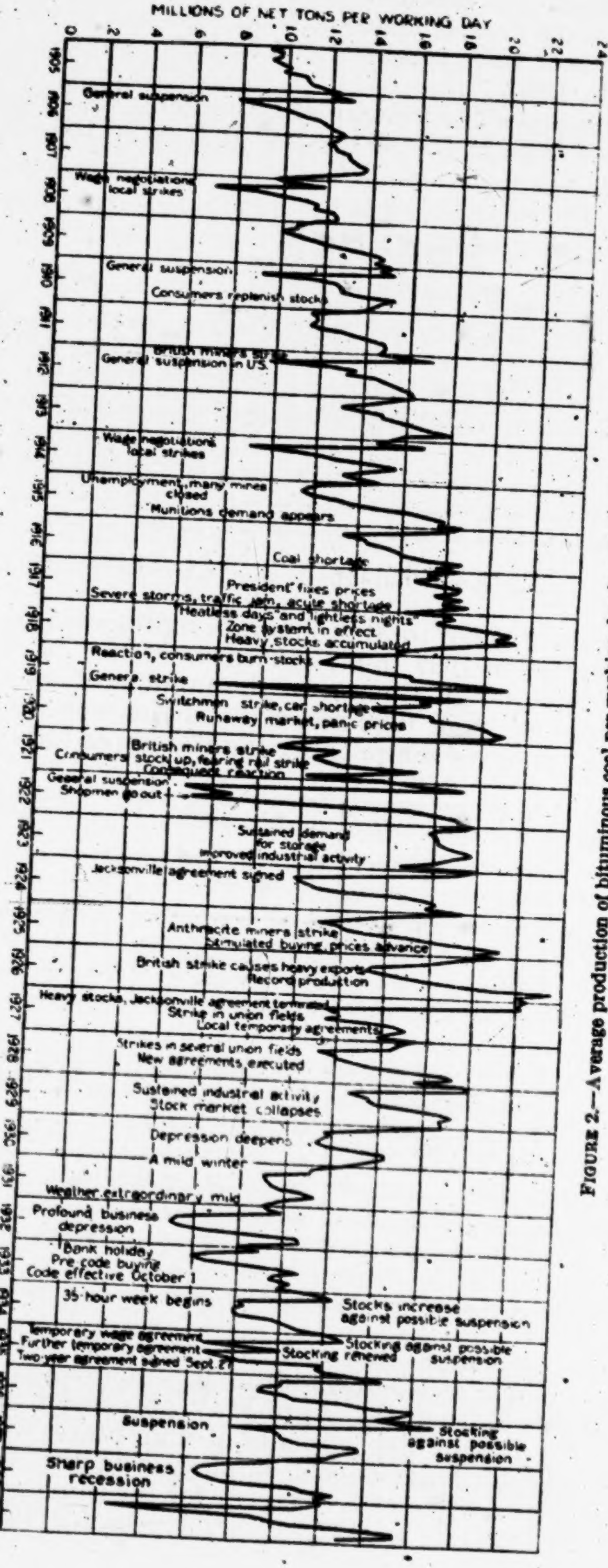

FIGURE 2.—Average production of bituminous coal per working day in each month, 1905–39.

1938. Reports from 31 manufacturers show sales of 292 mobile loaders for the current year as against 241 in 1938 and 344 in the peak year 1936. Conveyor sales totaled 1,095 in 1939 compared with 749 in 1938 and 682 in 1936.

Stripping operations.—The volume of bituminous coal produced by stripping decreased from 31,750,853 tons in 1937 to 30,406,855 in 1938.

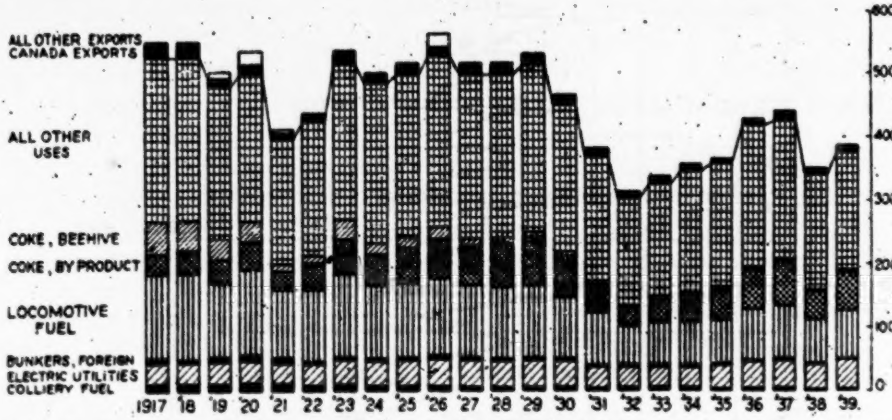

FIGURE 3.—Tonnage of bituminous coal absorbed by the principal branches of consumption, 1917-39.

However, the percentage of total production represented by strip coal rose from 7.1 percent in 1937 to 8.7 percent in 1938.

Trend of employment.—Estimates of the number of men employed at bituminous-coal mines in 1939 indicate a slight drop from the 1938 figure (441,333). Indexes compiled by the Bureau of Labor Statistics upon the basis of a sample that includes more than half the workers in the industry show a 1-percent drop in employment for 1939 if normal operations during the April-May suspension are assumed. Reports from the mining departments of nine States with more than 60 percent of the bituminous-coal employees in the United States indicate an average decline of 0.4 percent for the same period. These data suggest an estimate of 437,000 employees for 1939. In com-

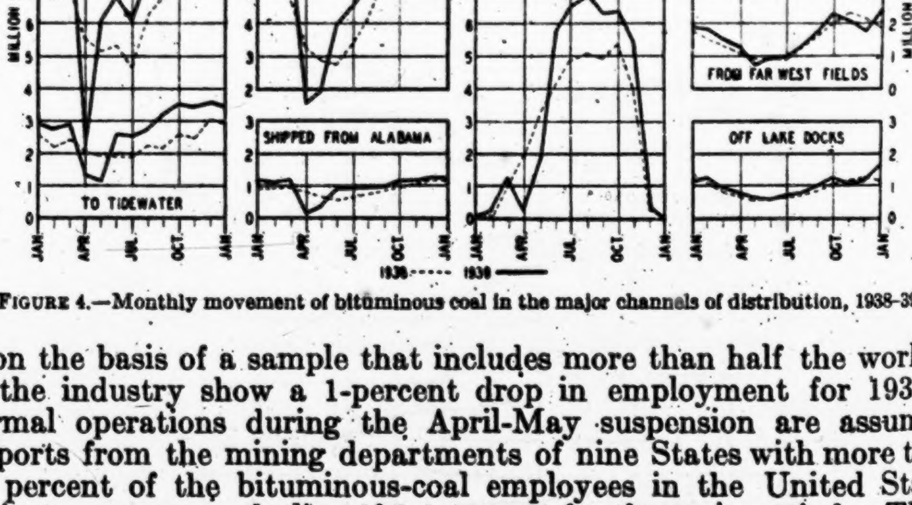

FIGURE 4.—Monthly movement of bituminous coal in the major channels of distribution, 1938-39.

parison with 1929, when the average number of men at bituminous-coal mines totaled 502,993, the 1939 figure represents a decrease of 66,000.

Statistics of employment for bituminous-coal workers cannot be interpreted properly without considering the intermittent operations that characterize most coal mines. In 1938, for instance, the bituminous mines were operated an average of 162 days out of the 261 possible under the 5-day week of the union wage agreement. Consequently, a substantial proportion of the manpower on the rolls of the industry was idle throughout the year, the number depending on the market and the season.

Trend of capacity.—The potential full-time output of active mines in the bituminous-coal industry decreased 7 percent between 1937 and 1938. The coal industry reached its peak capacity in 1923 when, upon the basis of 308 operating days, the potential output was 970,000,000 tons. Subsequent liquidations forced the closing or abandonment of thousands of mines and reduced the indicated capacity to 622,000,000 tons in 1934. The potential output upon a 308-day basis was 663,000,000 tons in 1938. Under the 5-day week full-time operations are limited to approximately 261 days. The potential capacity of operating mines upon a 261-day basis was 562,000,000 tons in 1938 compared with the total actual production of 348,544,764 tons.

Trend of fuel efficiency.—Since the World War period, improvements in the technology of fuel application have contributed to a continuing decline in the demand for coal for industrial uses. Although the effect of such improvements is cumulative from year to year, the rate of decline is smaller in recent years as the remaining margin of possible increase in fuel efficiency becomes progressively less.

The class I steam railroads reduced the average coal consumption by coal-fired locomotives from 117 pounds per 1,000 gross ton-miles of freight service in 1938 to 115 pounds in 1939. For all railroad freight service, including oil-burning and electric locomotives, the average energy consumption, converted to coal equivalent, was reduced from 115 pounds per 1,000 gross ton-miles in 1938 to 112 pounds in 1939. During the same period, public utility power plants lowered the average fuel consumption from 1.41 to 1.39 pounds per kilowatt-hour. In the iron and steel industry, the average consumption of coke in iron blast furnaces was reduced from 1.801 in 1938 to 1.778 pounds in 1939 per net ton of pig iron produced, representing a drop from 2,583.9 to 2,547.3 pounds of coking coal per net ton (2,894 and 2,853 pounds per gross ton) of pig iron for 1938 and 1939, respectively.

Improvements in combustion practice among domestic consumers and small industrial and commercial establishments also are helping to decrease the aggregate volume of fuel consumption. Furthermore, increasing economy in combustion methods is being supplemented by improvements in space-heating methods and by progress in building construction and insulation.

Competing sources of energy.—While improvements in fuel technology have acted to lessen the demand for coal in the industries affected, these same improvements have constituted a defense of coal against the spread of other sources of energy into the previous markets for coal. In the electric utility field, for example, consumption of coal has increased coincident with the development of hydroelectric projects. During the past five years, production of public utility electrical energy by steam power plants increased from 54,649,829,000 kilowatt-hours in 1935 to 85,006,941,000 in 1939, an increase of 45 percent. Statistics of current and projected expenditures for new steam plant construction indicate a continuation of this trend in the near future. Edison Electric Institute reports expenditures in 1939 of $70,560,000 for steam plants, and budget estimates for 1940 indicate a probable expenditure of $183,700,000, which will add approximately 1,650,000 kilowatt-hours to the total steam-generating capacity in 1940.

Despite the improvements in fuel economy in the utilities industry, the total coal consumption for power generation has continued to increase since 1933 except in 1938, when there was a 10-percent decrease compared with the previous year, attributable to the general slump in industrial activity and total power consumption. The upward trend was resumed in 1939 with a total coal consumption of 46,223,000 tons, an all-time high record for this industry. In addition, the utilities steam power plants used 17,423,000 barrels of fuel oil (approximately equivalent to 4,356,000 tons of coal) and 191,131,000,000 cubic feet of natural gas (equivalent to 8,310,000 tons of coal). During the past 20 years the growth of the utilities industry has approximately offset the effect of improved fuel technology in relation to aggregate coal consumption, and the annual tonnage used has moved up and down from the low of 30,000,000 to the high of 46,000,000 as general industrial activity varied. Use of fuel oil also has followed an irregularly horizontal course during this period, but the consumption of gas in utility electric power plants has increased from 22 billion feet in 1920 to 191 billion in 1939.

In the field of domestic heating comparable figures are available for mechanical firing equipment only. In this category, the use of oil and gas appears to be growing more rapidly than coal, basing estimates upon sales of new equipment. Sales of oil burners for domestic use rose from 106,933 units in 1938 to 165,711 in 1939, a 55-percent increase, whereas sales of domestic stokers (under 61 pounds per hour capacity) using bituminous coal, rose from 71,978 units in 1938 to 78,332 in 1939, a 9-percent increase. However, this does not entirely represent the relative positions of the two competing fuels in new plants because the oil-burner sales cover virtually all installations in which oil is used, while the sales of coal cover only mechanical stokers and do not consider new installations of hand-fired equipment. During the same period sales of natural gas for domestic use increased from 352,949,000,000 to 367,733,000,000 feet, a 4-percent gain (not including natural gas in mixtures sold by manufactured-gas companies).

The use of coal for locomotive fuel by railways decreased 17 percent in 1938 compared to 1937 and came back 7 percent in 1939, while the use of fuel oil followed an almost identical course, decreasing 13 percent in 1938 and increasing 3 percent in 1939. The consumption of railroad fuel varies with the fluctuations in volume of traffic.

The use of Diesel fuel increased rapidly, rising from 25,470,248 gallons in 1937 to 34,842,982 in 1938 and 48,754,423 in 1939. In the aggregate, however, Diesel fuel constitutes as yet only about a quarter of 1 percent of the total railroad fuel.

Statistics for 1939 show that the use of coal and oil by railroads, electric utility power plants, and steamships exceeded that in 1938 by 10 percent, while the oil consumption increased 7 percent. In the same period, consumption of natural gas by all industrial, commercial, and domestic consumers increased 7 percent.

Statistical tables—1939.—Tables 1 to 5 give a statistical record of the bituminous-coal industry in 1939, as indicated by available preliminary data. They also show comparative statistics for the indicated earlier years, including final figures for 1938. (See fig. 5.)

TABLE 1.—*Salient statistics of the bituminous-coal industry, 1938–39*

[All tonnage figures represent net tons]

	1938	1939 (preliminary)	Change in 1939
Production	348,544,764	393,065,000	+12.8%
Exports to Canada and Mexico [1]	9,560,717	9,975,919	+4.3%
Exports overseas and all other [1]	929,552	1,614,559	+73.7%
Imports [1]	241,305	355,115	+47.2%
Consumption in the United States (calculated) [2]	344,649,800	377,978,637	+9.7%
Stocks at end of year:			
Industrial consumers and retail yards	40,720,000	44,571,000	+9.5%
Stocks on upper Lake docks	7,885,516	7,590,254	−3.7%
Unbilled loads, at mines or in classification yards [3]	1,607,200	1,533,100	−4.6%
Price indicators (average per net ton):			
Average cost of railroad fuel purchased, f. o. b. mines [4]	$1.92	$1.91	−1¢
Average cost of coking coal at merchant byproduct ovens [5]	$4.61	$4.57	−4¢
Average cost of bunker coal to vessels in foreign trade [6]	$4.85	$4.83	−2¢
Average value of exports to all countries (at port) [7]	$3.63	$3.69	+6¢
Average retail price—38 cities [8]	$8.61	$8.52	−9¢
Average railroad freight charge per net ton [9]	$2.27	$2.23	−4¢
Underground loading machinery sold to bituminous mines: [10]			
Mobile loading machines (number)	241	292	+21.2%
Scrapers (number)	6	18	+200.0%
Conveyors, including those with duckbills (units)	749	1,095	+46.2%
Pit-car loaders (units)	139	2	−98.6%
Average number of men employed at mines operating [11]	441,333	437,000	−1.0%
Fuel-efficiency indicators:			
Pounds coal per kw.-hr. at electric power plants [12]	1.41	1.39	−1.4%
Pounds per 1,000 gross ton-miles—railroads [13]	115	112	−2.6%

[1] Figures on imports and exports compiled by M. B. Price, of the Bureau of Mines, from records of the Bureau of Foreign and Domestic Commerce.

[2] Production plus imports minus exports plus or minus net changes in consumers' stocks.

[3] Association of American Railroads.

[4] Interstate Commerce Commission. Excludes freight charges.

[5] As reported by coke operators to the Bureau of Mines.

[6] Computed from records of the Bureau of Foreign and Domestic Commerce.

[7] Computed from records of the Bureau of Foreign and Domestic Commerce. The figure represents the average value at the point of export of shipments to all foreign countries including Canada.

[8] Bureau of Labor Statistics.

[9] Average receipts per net ton of revenue bituminous coal originated, as reported by the Interstate Commerce Commission.

[10] Fraser, Thomas, Tryon, F. G., Gallagher, J. J., and van Siclen, M., Mechanization Sales: Coal Age, February 1940, pp. 63–65, and Mining Congress Journal, February 1940, pp. 23–27.

[11] The figure for 1938 is based upon reports of mine operators producing over 1,000 tons. The figure for 1939 is estimated from the employment index of the Bureau of Labor Statistics, which covers about half of the men employed in the industry, and from current monthly reports of 9 State mine departments which represent approximately 60 percent of all the bituminous-coal-mine workers in the United States.

[12] Federal Power Commission.

[13] Interstate Commerce Commission; includes coal equivalent of fuel oil consumed.

TABLE 2.—*Salient trends in bituminous mine operation, 1913–38*

		1913	1923	1929	1932	1934	1936	1937	1938
Production:									
Loaded at mines for shipment by rail	net tons	392,742,412	488,974,496	474,868,165	276,142,037	313,303,729	370,762,901	399,237,575	295,336,027
Loaded at mines for shipment by water	do	10,690,834	16,884,799	23,066,289	9,365,782	15,127,968	24,867,683		16,902,909
Made into coke at mines	do	49,458,320	27,859,316	9,128,607	1,028,456	1,647,805	2,728,577	4,884,054	1,359,876
Used at mines for colliery fuel	do	11,670,903	8,765,011	4,662,974	2,780,889	3,175,057	3,227,447	3,052,095	2,493,017
Commercial sales by truck or wagon	do	13,871,828	22,081,040	23,262,558	20,392,706	[1] 18,739,320	27,929,298	37,762,612	25,592,058
Other local sales, used by employees, etc.	do					7,374,143	9,571,997		6,860,817
Total production	do	478,435,297	564,564,662	534,988,593	309,709,872	359,368,022	439,087,903	[2] 445,531,449	348,544,764
Number of active mines of commercial size:									
Class 1 (200,000 tons or more)	number	694	748	827	465	551	660	661	526
Class 2 (100,000 to 200,000 tons)	do	837	935	660	477	485	452	469	402
Class 3 (50,000 to 100,000 tons)	do	959	1,176	668	469	479	460	448	415
Class 4 (10,000 to 50,000 tons)	do	1,558	2,742	1,361	1,111	1,072	1,085	1,117	1,042
Class 5 (1,000 to 10,000 tons)	do	1,728	3,730	2,541	2,905	3,671	4,218	3,853	3,392
Total number over 1,000 tons	do	5,776	9,331	6,057	5,427	[3] 6,258	[3] 6,875	[3] 6,548	5,777
Percent of output from mines in classes 1 and 2	percent	75.4	70.4	83.1	77.5	80.5	83.8	84.1	81.1
Average number of men employed at mines active:									
Underground	men	494,238	600,305	433,999	345,905	384,947	399,367	(⁴)	370,004
Surface, including strip pits	do	77,644	104,488	68,994	60,475	73,064	77,837	(⁴)	71,329
Total	do	571,882	704,793	502,993	406,380	458,011	477,204	491,864	441,333
Average number of days mines operated	days	232	179	219	146	178	199	193	162
Nominal length of established full-time week [5]	hours	51.6	48.4	48.5	48.6	40.0 and 35.1	35.1	35.1	35.1
Capacity of active mines with existing labor force:									
Per year of 308 days (full time before October 1933)	net tons	635,000,000	970,000,000	782,000,000	653,000,000	622,000,000	680,000,000	710,000,000	653,000,000
Per year of 261 days (5-day week basis)	do	538,000,000	823,000,000	638,000,000	554,000,000	527,000,000	576,000,000	601,000,000	552,000,000
Output per man per day [6]	do	3.61	4.47	4.85	5.22	4.40	4.62	4.69	4.89
Output per man per year	do	837	801	1,064	762	785	920	906	790
Underground output cut by machine	percent	50.7	68.3	78.4	84.1	84.1	84.8	(⁴)	87.5
Underground output mechanically loaded	do		.3	7.4	12.6	12.2	16.3	20.2	(⁴)
Quantity mined by stripping	net tons	[7] 1,280,946	11,940,134	20,268,099	19,641,128	20,789,641	28,125,857	31,750,853	30,406,855
Quantity cleaned by wet or pneumatic processes [8]	do	22,069,691	20,140,385	32,271,950	27,357,599	35,853,714	53,332,040	(⁴)	(⁴)

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[1] The earliest year in which figures were collected in strictly comparable form was 1933, when commercial sales by truck and wagon were 15,462,739 tons.

[2] The total production differs from the sum of the items shown by the amount of the changes in inventory and of tonnage not accounted for in the distribution analysis.

[3] The increase in number of mines shown for 1934–37 over preceding years is due partly to more complete coverage of small trucking mines (producing over 1,000 tons a year). See Minerals Yearbook, 1936, pp. 561–564.

[4] Data not available.

[5] The figures represent the full-time week as reported by the operator, not the hours actually worked by the men.

[6] Affected by changes in length of working day.

[7] Figures for 1914, the year of earliest record.

[6] Affected by changes in length of working day.
[7] Figures for 1914, the year of earliest record.

TABLE 3.—*Preliminary statistics of coal production in 1939, by States, with final figures for earlier years*

State	Production, in thousands of net tons								Change in 1939 (percent)	Percent of total bituminous							
	1913	1923	1929	1932	1936	1937	1938	1939 (preliminary)		1913	1923	1929	1932	1936	1937	1938	1939 (preliminary)
Alaska	2	120	101	103	137	132	155	146	−5.8	(1)	0.02	0.02	0.03	0.03	0.03	0.05	0.04
Alabama	17,678	20,458	17,944	7,857	12,229	12,440	11,062	11,995	+8.4	3.69	3.62	3.35	2.54	2.78	2.79	3.17	3.05
Arkansas	2,234	1,297	1,695	1,033	1,623	1,511	1,197	2,300	−5.8	.47	.23	.32	.33	.37	.34	.34	.58
Oklahoma	4,166	2,885	3,774	1,255	1,540	1,600	1,245			.87	.51	.71	.41	.35	.36	.36	
Colorado	9,232	10,346	9,921	5,599	6,812	7,187	5,663	5,890	+4.0	1.93	1.83	1.85	1.81	1.55	1.61	1.63	1.50
Georgia	256	76	45	27	24	(3)	(3)	(3)	(3)	.05	.01	.01	.01	.01	(3)	(3)	(3)
North Carolina		36	52	2							.01	.01					
Illinois	61,619	79,310	60,658	33,475	50,927	51,602	41,912	46,450	+10.8	12.88	14.05	11.34	10.81	11.60	11.58	12.03	11.82
Indiana	17,166	26,229	18,344	13,324	17,822	17,765	14,759	16,650	+12.8	3.59	4.65	3.43	4.30	4.06	3.99	4.23	4.24
Iowa	7,526	5,711	4,241	3,862	3,961	3,637	3,103	3,050	−1.7	1.57	1.01	.79	1.25	.90	.82	.89	.78
Kansas	7,202	4,443	2,976	1,953	2,944	2,893	2,654	6,195	+1.7	1.51	.79	.56	.63	.67	.65	.76	1.58
Missouri	4,318	3,403	4,030	4,070	3,985	4,091	3,436			.90	.60	.75	1.31	.91	.92	.99	
Kentucky:																	
Eastern	11,099	33,887	46,025	25,760	39,152	38,523	31,177	34,730	+11.4	2.32	6.00	8.60	8.32	8.92	8.65	8.95	8.84
Western	8,518	10,890	14,437	9,540	8,370	8,563	7,368	8,075	+9.6	1.78	1.93	2.70	3.08	1.91	1.92	2.11	2.05
Maryland	4,780	2,286	2,649	1,429	1,704	1,549	1,281	1,468	+14.6	1.00	.40	.50	.46	.39	.35	.37	.37
Michigan	1,232	1,172	805	446	626	562	494	434	−12.1	.26	.21	.15	.14	.14	.13	.14	.11
Montana [5]	3,241	3,148	3,406	2,125	2,988	2,965	2,732	2,810	+2.9	.68	.56	.64	.69	.68	.67	.78	.71
New Mexico	3,709	2,915	2,623	1,263	1,597	1,715	1,239	1,206	−2.7	.78	.52	.49	.41	.36	.38	.36	.31
North Dakota [5]	495	1,386	1,862	1,740	2,215	2,251	2,050	2,089	+1.9	.10	.25	.35	.56	.50	.50	.59	.53
South Dakota [5]	11	11	13	49	41	47	48	50	+4.2	(1)	(1)	(1)	.02	.01	.01	.01	.01
Ohio	36,200	40,546	23,689	13,909	24,110	25,178	18,591	19,632	+5.6	7.57	7.18	4.43	4.49	5.49	5.65	5.33	4.99
Pennsylvania (bituminous)	173,781	171,880	143,516	74,776	109,887	111,002	77,705	92,190	+18.6	36.32	30.45	26.83	24.14	25.03	24.91	22.30	23.45
Tennessee	6,860	6,040	5,406	3,538	5,108	5,213	4,472	5,280	+18.1	1.43	1.07	1.01	1.14	1.16	1.17	1.28	1.34
Texas [5]	2,429	1,187	1,101	637	843	910	879	810	−7.8	.51	.21	.20	.21	.19	.20	.25	.21
Utah	3,255	4,720	5,161	2,852	3,247	3,810	2,947	3,340	+13.3	.68	.84	.97	.92	.74	.85	.85	.85
Virginia	8,828	11,762	12,748	7,692	11,662	13,795	12,253	13,230	+7.7	1.85	2.08	2.38	2.48	2.66	3.10	3.52	3.37
Washington	3,878	2,926	2,521	1,591	1,812	2,002	1,567	1,690	+7.8	.81	.52	.47	.51	.41	.45	.45	.43
West Virginia	71,254	107,900	138,519	85,609	117,926	118,646	93,288	107,938	+15.7	14.89	19.11	25.89	27.64	26.86	26.63	26.76	27.46
Wyoming	7,393	7,575	6,705	4,171	5,781	5,918	5,204	5,383	+3.4	1.55	1.34	1.25	1.35	1.32	1.33	1.49	1.37
Other States [4]	73	20	20	23	15	24	34	34	--------	.01	(1)	(1)	.01	(1)	.01	.01	.01
Total bituminous	478,435	564,565	534,989	309,710	439,088	445,531	348,545	393,965	+12.8	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00
Pennsylvania anthracite	91,525	93,339	73,828	49,855	54,580	51,856	46,099	51,487	+11.7	--------	--------	--------	--------	--------	--------	--------	--------
Grand total	569,960	657,904	608,817	359,565	493,668	497,387	394,644	444,552	+12.6	--------	--------	--------	--------	--------	--------	--------	--------

[1] Less than 0.01.
[3] Included in "Other States."
[4] Includes Arizona, California, Georgia, Nebraska, Nevada, and Oregon. The States reporting are not identical from year to year.
[5] Lignite figures from Bureau of Mines.

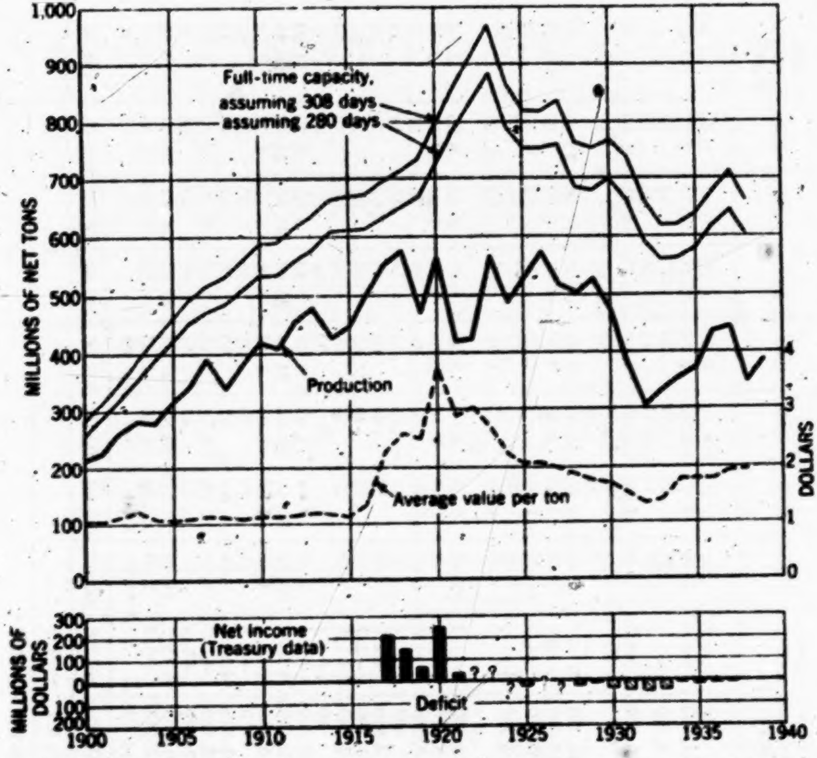

FIGURE 5.—Trends of bituminous-coal production, realization, mine capacity, and net income or deficit in the United States, 1900–39.

TABLE 4.—*Changes in the United States consumption of bituminous coal by such classes of consumers as report currently, and by all other consumers, 1929 and 1934–39, in thousands of net tons* [1]

[Information on several other classes of consumers is available for certain years. The items shown in this table are selected because they are available in strictly comparable form for each year]

Year	Consumed in the United States								Exported [8]		Total of consumption and exports [8]
	Colliery fuel	Electric power utilities [2]	Bunkers, foreign trade [3]	Locomotive fuel, class I roads [4]	Coke [5]		All other uses [6]	Total consumption [7]	To Canada and Mexico	To other countries (seaborne)	
					Beehive ovens	By-product ovens					
1929	4,663	44,937	4,287	113,894	10,028	76,759	264,987	519,555	14,727	2,702	536,984
1934	3,175	33,555	1,321	70,496	1,635	44,343	192,518	347,043	10,213	656	357,912
1935	3,103	34,807	1,576	71,335	1,469	49,046	198,956	360,292	9,044	698	370,034
1936	3,227	42,025	1,622	81,130	2,698	63,244	228,850	422,796	9,912	743	433,451
1937	3,052	44,766	1,832	82,667	4,927	69,575	221,678	428,497	12,052	1,093	441,642
1938	2,493	40,212	1,352	68,794	1,360	45,266	185,173	344,650	9,561	929	355,140
1939 [9]	2,810	46,223	1,477	73,833	2,298	61,216	190,122	377,979	9,976	1,614	389,569

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[1] Comparable data for other earlier years in Minerals Yearbook, 1937, p. 799.

[2] Geological Survey and Federal Power Commission. Represents all coal consumed by public utility power plants in power generation, including a small amount of anthracite.

[3] Bureau of Foreign and Domestic Commerce.

[4] Interstate Commerce Commission. Represents bituminous coal consumed as locomotive fuel by class I steam railways, excluding switching and terminal companies.

[5] Bureau of Mines.

[6] Obtained by subtracting the known items from the calculated total consumption. Includes general manufacturing, domestic, and many miscellaneous uses.

[7] Production plus imports minus exports, plus or minus changes in consumers' stocks.

[8] Includes imports. [9] Subject to revision.

TABLE [illegible].—*Trends in distribution of bituminous coal, 1923, 1929, 1934, 1936–39*

[For details and sources of data see Monthly Report on Distribution of Coal Shipments; tonnage figures shown in thousands of net tons]

	1923		1929		1934		1936		1937		1938		1939 (preliminary)	
	Quantity	Percent	Quantity	Percent	Quantity	Percent	Quantity	Percent	Quantity	Percent	Quantity	Percent	Quantity	Percent
New England receipts:														
Via rail across the Hudson	9,634	41.9	6,781	31.9	5,422	31.6	5,078	28.8	4,885	27.5	4,104	29.2	4,626	28.5
Via tidewater from northern ports	3,703	16.1	1,570	7.4	1,089	6.3	755	4.3	364	2.0	125	.9	222	1.4
Via tidewater from southern ports	9,671	42.0	12,875	60.7	10,662	62.1	11,774	66.9	12,553	70.5	9,808	69.9	11,390	70.1
Total New England	23,008	100.0	21,226	100.0	17,173	100.0	17,607	100.0	17,802	100.0	14,037	100.0	16,238	100.0
Tidewater loadings:														
By ports:														
At New York and Philadelphia	14,693	39.2	12,226	32.1	9,120	31.7	9,203	29.7	9,683	29.2	8,565	31.1	9,404	28.9
At Baltimore, Hampton Roads, and Charleston	22,828	60.8	25,825	67.9	19,623	68.3	21,823	70.3	23,467	70.8	19,018	68.9	23,083	71.1
Total	37,521	100.0	38,051	100.0	28,743	100.0	31,026	100.0	33,150	100.0	27,583	100.0	32,487	100.0
By fields of origin:														
From Pennsylvania and northern West Virginia	19,760	52.7	15,516	40.8	10,647	37.1	11,344	36.6	11,859	35.8	10,394	37.7	12,165	37.4
From southern low-volatile fields	13,619	36.3	17,103	44.9	13,745	47.8	15,021	48.4	16,180	48.8	13,274	48.1	16,012	49.3
From southern high-volatile fields	4,142	11.0	5,432	14.3	4,351	15.1	4,661	15.0	5,111	15.4	3,915	14.2	4,310	13.3
Total	37,521	100.0	38,051	100.0	28,743	100.0	31,026	100.0	33,150	100.0	27,583	100.0	32,487	100.0
By destinations:														
To New England	13,374	35.6	14,445	38.0	11,751	40.9	12,530	40.4	12,916	39.0	9,933	36.0	11,612	35.7
Foreign	5,122	13.7	2,852	7.5	715	2.5	837	2.7	1,249	3.8	1,029	3.7	1,691	5.2
Bunkers	5,442	14.5	5,507	14.5	1,545	5.4	1,648	5.3	1,758	5.3	1,280	4.7	1,453	4.5
Inside capes and other tonnage	13,583	36.2	15,247	40.0	14,732	51.2	16,011	51.6	17,227	51.9	15,341	55.6	17,731	54.6
Total	37,521	100.0	38,051	100.0	28,743	100.0	31,026	100.0	33,150	100.0	27,583	100.0	32,487	100.0
Lake Erie loadings (cargo and fuel):														
By fields of origin:														
From Ohio	6,417	20.9	3,734	9.5	2,625	7.3	2,908	6.4	3,231	7.1	2,390	6.8	2,356	5.7
From Pittsburgh and other Pennsylvania	9,980	32.4	8,586	21.8	10,941	30.4	11,222	24.7	11,763	26.0	8,019	22.8	9,259	22.5
From Moundsville, Fairmont, and Cumberland-Piedmont	3,277	10.7	2,184	5.5	1,313	3.7	1,648	3.6	2,319	5.1	1,389	4.0	1,963	4.8
From southern West Virginia, high-volatile	4,994	16.2	10,233	26.0	7,779	21.6	10,459	23.0	10,975	24.3	8,329	23.7	10,883	26.5
From southern West Virginia, low-volatile	2,871	9.3	7,656	19.4	6,864	19.1	10,103	22.3	8,428	18.6	7,612	21.7	8,665	21.1
From east Kentucky, Tennessee, and Virginia	3,229	10.5	6,991	17.8	6,449	17.9	9,101	20.0	8,530	18.9	7,392	21.0	7,998	19.4
Total	30,768	100.0	39,384	100.0	35,971	100.0	45,441	100.0	45,246	100.0	35,131	100.0	41,124	100.0

TABLE 5.—*Trends in distribution of bituminous coal, 1923, 1929, 1934, 1936–39*—Continued

	1923		1929		1934		1936		1937		1938		1939 (preliminary)	
	Quantity	Percent	Quantity	Percent	Quantity	Percent	Quantity	Percent	Quantity	Percent	Quantity	Percent	Quantity	Percent
Lake Erie loadings (cargo and fuel)—Continued.														
By destinations (cargo only):														
To American points	24,172	81.5	31,943	84.2	28,399	81.5	37,184	84.5	35,123	80.6	27,656	80.9	33,188	83.3
To Canadian points	5,475	18.5	6,007	15.8	6,440	18.5	6,835	15.5	8,479	19.4	6,510	19.1	6,672	16.7
Total	29,647	100.0	37,950	100.0	34,839	100.0	44,019	100.0	43,602	100.0	34,166	100.0	39,860	100.0
Across Lake Michigan car ferry	1,373	-------	1,282	-------	680	-------	799	-------	650	-------	588	-------	592	-------
West-bound rail to Mississippi Valley (revenue all-rail shipments, excluding railroad fuel, Lake coal, and movement to Kentucky points):														
From Ohio fields	22,970	14.7	12,912	7.8	11,321	11.3	11,811	9.6	11,861	9.5	8,042	8.7	9,052	8.4
From Pennsylvania fields	15,853	10.1	21,885	13.3	12,125	12.1	15,593	12.6	15,091	12.1	9,629	10.4	12,200	11.4
From northern West Virginia and Cumberland-Piedmont	2,509	1.6	5,464	3.3	3,271	3.3	3,425	2.8	3,521	2.8	2,615	2.8	3,227	3.0
From southern West Virginia, high-volatile	17,525	11.2	25,148	15.3	13,800	13.8	17,641	14.3	17,293	13.9	13,668	14.8	15,099	14.0
From southern West Virginia, low-volatile	13,535	8.6	23,691	14.4	14,916	14.9	19,140	15.5	19,575	15.8	13,335	14.5	15,946	14.8
From east Kentucky, Tennessee, and Virginia	17,789	11.3	24,057	14.6	13,463	13.4	17,659	14.3	17,953	14.5	14,120	15.3	15,749	14.7
Total from Appalachian fields	90,181	57.5	113,157	68.7	68,896	68.8	85,269	69.1	85,294	68.6	61,400	66.5	71,273	66.3
From Illinois	48,401	30.9	34,863	21.2	20,208	20.2	26,362	21.4	26,625	21.4	20,719	22.5	24,879	23.1
From Indiana	14,549	9.3	10,589	6.4	8,879	8.8	9,822	8.0	10,594	8.5	8,501	9.2	9,455	8.8
From west Kentucky [1]	3,569	2.3	6,175	3.7	2,208	2.2	1,873	1.5	1,859	1.5	1,661	1.8	1,917	1.8
Total from Middle West fields	66,519	42.5	51,627	31.3	31,295	31.2	38,057	30.9	39,078	31.4	30,881	33.5	36,251	33.7
Grand total	156,700	100.0	164,784	100.0	100,191	100.0	123,326	100.0	124,372	100.0	92,281	100.0	107,524	100.0
Total shipments from other groups (all shipments including, in this case, nonrevenue railroad fuel): [2]														
From Michigan fields	1,086	[3] .2	745	[3] .1	325	[3] .1	210	([4])	181	([3] [4])	166	([3] [4])	120	([3] [4])
From upper Lake commercial docks, all deliveries	([5])	-------	16,689	[3] 3.1	11,535	[3] 3.2	13,768	[3] 3.1	13,518	[3] 3.1	10,845	[3] 3.1	11,111	[3] 2.9
From Iowa, Missouri, and Kansas	12,222	[3] 2.2	9,488	[3] 1.8	7,007	[3] 1.9	7,647	[3] 1.7	7,202	[3] 1.6	6,528	[3] 1.9	6,278	[3] 1.6
From Arkansas, Oklahoma, and Texas	5,125	[3] .9	6,337	[3] 1.2	2,692	[3] .7	3,784	[3] .9	3,739	[3] .8	3,126	[3] .9	3,006	[3] .8
From far western fields	30,286	[3] 5.4	29,705	[3] 5.6	16,368	[3] 4.6	20,849	[3] 4.7	21,867	[3] 4.9	17,612	[3] 5.1	18,432	[3] 4.7
From Alabama field	19,569	[3] 3.5	17,503	[3] 3.3	8,812	[3] 2.5	11,539	[3] 2.6	11,771	[3] 2.7	10,382	[3] 3.0	11,075	[3] 2.8

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[1] The figures for west Kentucky cover in recent years a much smaller percentage of the field's production than do those for Illinois and Indiana and may not be fully comparable with earlier years.

[2] Excluding commercial sales by truck and wagon, except from upper Lake docks.

[3] Percent of total national shipments from all mines, all destinations.

[4] Less than 0.1 percent.

[5] Data not available.

SOURCES OF DATA AND ACKNOWLEDGMENTS

Bituminous-coal production statistics for 1939 are preliminary estimates based upon (1) weekly or monthly reports of railroad carloadings of coal and beehive coke by all the important carriers, (2) shipments by river as reported by the United States Army Engineers, (3) direct reports from a number of mining companies, and (4) monthly production statements compiled by various local operators' associations, including the following: Central Pennsylvania Coal Producers Association, Georges Creek and Upper Potomac Coal Association, Hazard Coal Operators Association, Kanawha Coal Operators Association, Eastern Ohio Operators Association, North Dakota Board of Railroad Commissioners, Utah Coal Operators Association, Virginia Operators Association, Winding Gulf Operators Association, and Operators Association of the Williamson Field. Especial acknowledgment for detailed monthly production reports is made to: Thomas Allen, Colorado inspector of coal mines; James McSherry, director, Illinois Department of Mines and Minerals; Jonas Waffle, managing director, Coal Trade Association of Indiana; J. I. Thomas, secretary, Pennsylvania Department of Mines; N. P. Rhinehart, chief, West Virginia Department of Mines; J. E. Bergin, chief inspector, Washington Department of Mines.

In the estimates for 1939 allowance has been made for commercial truck shipments, local sales and colliery fuel, and small trucking or wagon mines producing over 1,000 tons a year. Production of mines on the border between two States has been credited to the State from which the coal is extracted rather than that in which the tipple is situated. If the coal is mined from lands in both States the tonnage has been apportioned accordingly.

Valuable assistance was rendered in the preparation of this chapter by the following members of the research section of the Bituminous Coal Division: L. H. Barber, E. M. Hall, M. S. Kengla, and J. G. Kirby.

The data in this report on the output of bituminous coal in 1938 are based upon detailed annual reports of production and mine operation courteously furnished by the producers. As in previous years, all but a small percentage of the output was covered by the reports submitted. For the remaining output not directly reported, consisting chiefly of small mines, it has been possible to obtain data of reasonable accuracy from the records of the State mine departments, which have statutory authority to require such reports, or in a few instances, from railroad carloadings.

Acknowledgment is made to the many individuals and agencies both public and private that have cooperated generously in making the survey possible.

RELATIVE RATE OF GROWTH OF COAL, OIL, AND WATER POWER, 1889–1939

According to preliminary data, the total supply of available energy in the form of coal, oil and natural gas, and water power in 1939 was 24,415 trillion B. t. u., an increase of 7.2 percent over the preceding year. (See fig. 6.)

The figures are expressed in British thermal units, because some common denominator is necessary for such unlike quantities as tons

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[1] Excluding commercial sales by truck and wagon, except from upper Lake docks.
[2] Percent of total national shipments from all mines, all destinations.
[3] Less than 0.1 percent.
[4] Data not available.

of coal, barrels of oil, and cubic feet of gas. Table 6 summarizes the equivalent of each of the fuels in British thermal units. Water power is represented by the equivalent fuel required to perform the same work. The table covers the years since 1933, but corresponding data are given in graphic form for the entire period back to 1890. Details for 1889 to 1932 are given in Minerals Yearbook, 1937, page 807.

In converting water power into its fuel equivalent, two alternative assumptions have been made. The first, as in previous issues of these tables, assumes a *constant* fuel equivalent of 4.02 pounds of coal for each kilowatt-hour of water power produced throughout the entire period from 1889 to 1939. This factor was selected because it represents, in round numbers, the average efficiency of all central stations generating steam-electric power in 1913, the midpoint of the period under review. The usefulness of the *constant* factor lies in showing the rate at which water power is being developed. It permits direct comparison between the relative increase in kilowatt-hours of water power and the corresponding increase (or decrease) in tons of coal, barrels of oil, or cubic feet of gas produced. On the other hand, the constant factor makes no allowance for the fact that coal and other fuels produced today are used more efficiently than formerly.

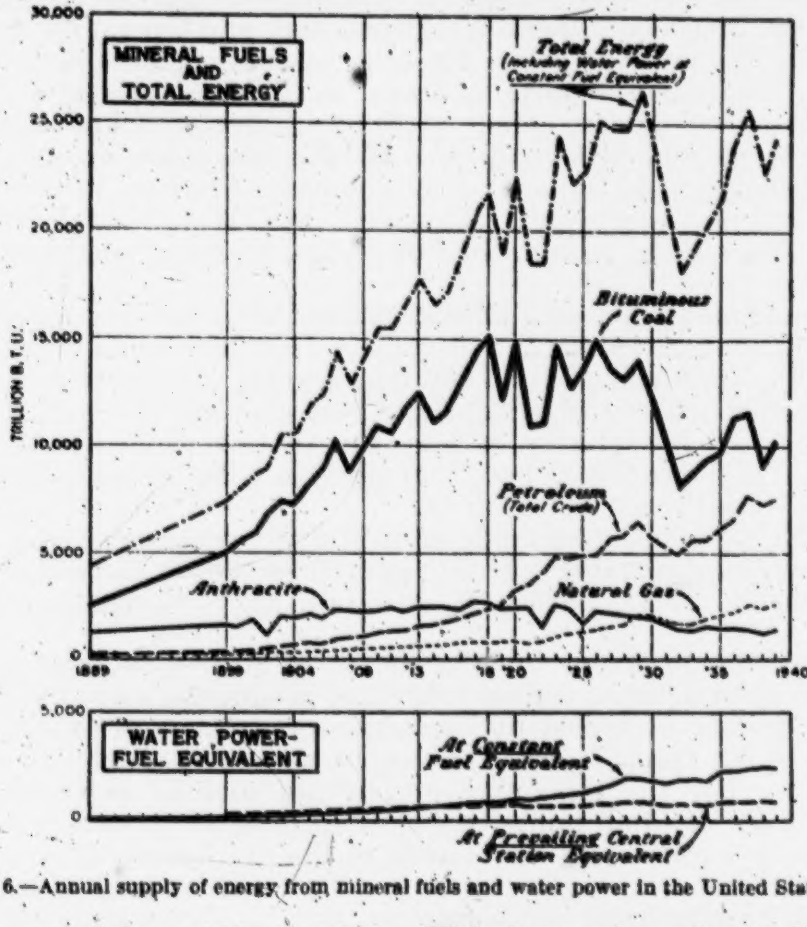

FIGURE 6.—Annual supply of energy from mineral fuels and water power in the United States, 1889-1939.

To throw light on the influence of improving fuel efficiency, a second computation of the energy equivalent of water power has therefore been made. This assumes a *prevailing* fuel equivalent, diminishing year by year, which represents the average performance of all fuel-burning central electric stations for the year in question. This average has declined from about 7.05 pounds of coal per kilowatt-hour in 1899 to 1.39 pounds in 1939. (The *prevailing* factor is thus much above the *constant* factor in 1899 and much below it in 1939.) The *prevailing* fuel equivalent indicates more nearly the amount of fuel that would have been needed in any one year to generate the same power in a steam-electric station. It should be noted, however, that the ultimate uses to which the water power generated is put often displace fuel burned much less efficiently than in central stations and that in any instance no other important branch of fuel consumption has made advances in fuel efficiency approaching that of the central stations.

As these tables attempt to determine the total energy from all fuels and from water power, the ideal factor for converting water power into fuel equivalent would be the average efficiency of all forms of fuel consumption in each year. No basis for determining such an all-embracing average exists at present, but enough is known to make certain that it would show much less reduction from 1899 to 1939 than did the central stations. For the present, a just comparison of the changing contributions of water power and of fuel to the national energy supply would lie somewhere between the results shown by the *constant* equivalent and the *prevailing central-station* equivalent in these tables.

As in earlier issues of these tables, the figures for oil and natural gas represent the entire production of crude petroleum and of gas. Most of this production does not come into direct competition with coal. Much of the supply of both oil and gas is used in regions of the country, such as California and portions of the Southwest, where coal is available only at unusually high cost because of heavy transport charges. Nearly half of the natural gas is used in the field for drilling or operating oil and gas wells and pipe lines, or for the manufacture of carbon black. More than half the oil is used in the form of gasoline, kerosene, and lubricants, for which purposes coal cannot well compete, except at very much higher levels of oil prices. Even these refined products, however, involve a certain measure of indirect competition with coal, for the energy market of the country is becoming more fluid and competitive, and a demand that cannot be met by one source of supply tends to fall back on theothers.

The subject of interfuel competition is exceedingly complex, and an elaborate analysis and the accumulation of data not now available would be required to determine even approximately how much of any one fuel actually has been displaced either by other fuels or by water power. The present tables do not permit determination of such displacement; their purpose is rather to measure the long-time trends in the total demand for energy.

The figures for anthracite represent the output from established operations only and do not include bootleg or stolen coal, the amount of which is not accurately known. The bootleg tonnage has been estimated by the Commonwealth of Pennsylvania Anthracite Coal Industry Commission at the rate of 2,400,000 tons a year during 1936 and 1937, which is equivalent to 5 percent of the output of the legitimate operations. (Trade estimates place the figure as high as 3,000,000 to 3,500,000 tons.) The Pennsylvania Department of Mines estimates the bootleg tonnage at 2,500,000 tons in 1938 and 3,500,000 in 1939. If the additional item of 2,500,000 tons were included, the total energy from anthracite in 1938 would be 1,323 trillion B. t. u. and the total energy from all sources 22,833 trillion B. t. u. If the additional item of 3,500,000 tons were included, the total energy from anthracite in 1939 would be 1,492 trillion B. t. u. and the total energy from all sources 24,510 trillion B. t. u.

Table 7 compares the relative increase in the several sources of energy by means of index numbers in which production for 1918 is represented by 100. Production of anthracite in 1939 was 48 percent below 1918 (44 percent if bootleg coal is included) and of bituminous coal 33 percent below 1918. Production of domestic petroleum increased 255 percent and natural gas 238 percent over 1918.

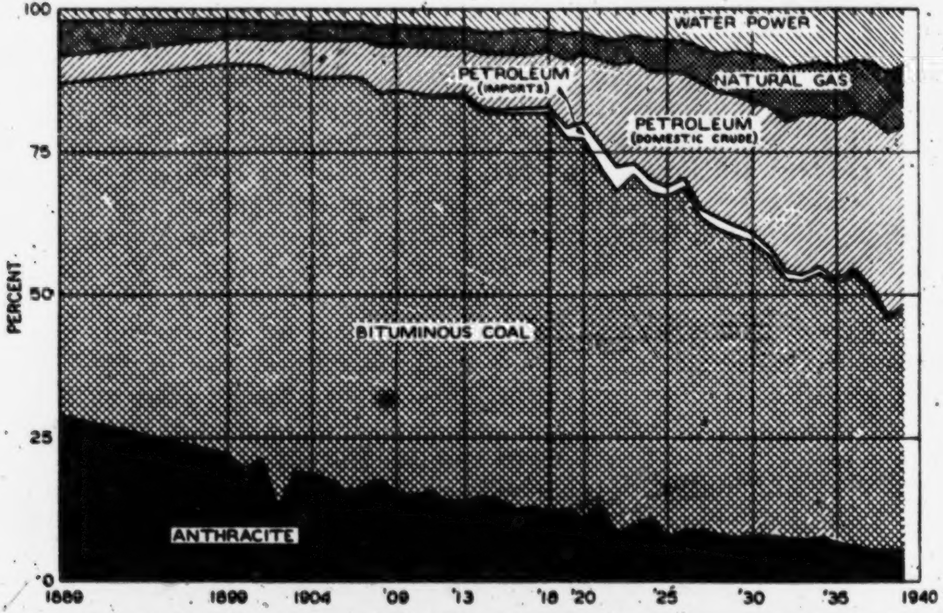

FIGURE 7.—Percent of total B. t. u. equivalent contributed by the several sources of energy, counting water power at constant fuel equivalent, 1889–1939. If water power is counted at the prevailing fuel equivalent of central stations in each year, its proportion is 3.2 percent in 1899 and 3.7 percent in 1939, and the proportions of the other sources of energy are affected accordingly.

There was a 189-percent increase in the amount of water power developed (represented by the constant fuel equivalent).

Table 8 gives the percentage composition of the total energy supply, on the alternative assumptions of water power at constant and at prevailing central-station equivalents in fuel. On the assumption of constant equivalent, the proportion contributed by water power has increased from 1.8 percent in 1899 to 9.9 in 1939. On the assumption of prevailing central-station equivalent, it has remained substantially unchanged at 3 to 4 percent. As already noted, the truth lies somewhere between the two assumptions. Upon either basis, water power furnishes a relatively small fraction of the total energy budget of the Nation, although, of course, a much larger fraction of the electric power produced by public utilities.

Coal remained the largest source of energy in 1939, contributing 47.5 percent with water power counted at constant fuel equivalent and 50.7 percent with water power at prevailing central-station equivalent.

TABLE 6.—*Annual supply of energy from mineral fuels and water power in the United States, 1933–39,*[1] *in trillions of B. t. u.*[2]

Year	Pennsylvania anthracite	Bituminous coal	Total coal	Petroleum (total crude, including that refined)		Natural gas (total production)	Total petroleum and natural gas	Total mineral fuels	Water power (fuel equivalent)		Grand total energy	
				Domestic production	Imports				At constant fuel equivalent [3]	At prevailing central station equivalent [4]	Water power at constant fuel equivalent	Water power at prevailing central station equivalent
1933	1,348	8,741	10,089	5,434	191	1,672	7,297	17,386	1,931	711	19,317	18,097
1934	1,555	9,415	10,970	5,448	213	1,904	7,565	18,535	1,896	698	20,431	19,233
1935	1,419	9,756	11,175	5,980	193	2,060	8,233	19,408	2,207	806	21,615	20,214
1936	[5] 1,485	11,504	12,989	6,598	194	2,330	9,122	22,111	2,256	812	24,367	22,923
1937	[5] 1,410	11,673	13,083	7,675	165	2,588	10,428	23,511	2,446	871	25,957	24,382
1938	[5] 1,255	9,132	10,387	7,286	158	2,468	9,912	20,299	2,466	866	22,765	21,165
1939 [6]	[5] 1,397	10,192	11,589	7,586	199	2,618	10,403	21,992	2,423	838	24,415	22,630

[1] Comparable data for earlier years in Minerals Yearbook, 1937, p. 807.

[2] The unit heat values employed are: Anthracite, 13,600 B. t. u. per pound; bituminous coal, 13,100 B. t. u. per pound; petroleum, 6,000,000 B. t. u. per barrel; natural gas, 1,075 B. t. u. per cubic foot. Water power includes installations owned by manufacturing plants and mines, as well as Government and privately owned public utilities. The fuel equivalent of water power is calculated from the kilowatt-hours of power produced wherever available, as is true of all public utility plants since 1919. Otherwise the fuel equivalent is calculated from the reported horsepower of installed water wheels assuming a capacity factor of 20 percent for manufactures and mines and of 40 percent for public utilities.

[3] Assuming 4.02 pounds per kilowatt-hour, which is the average of central electric station practice in 1913, the midpoint of the period for which data are available.

[4] Assuming the average central-station practice for each of the years for which data are available, which declined from about 7.05 pounds per kilowatt-hour in 1899 to 1.39 pounds in 1939.

[5] Does not include an unknown amount of bootleg or stolen coal. If this were included, the energy for anthracite would be approximately 1,550 trillion B. t. u. in 1936, 1,476 in 1937, 1323 in 1938, and 1,492 in 1939, and the total energy would be increased accordingly.

[6] Subject to revision.

TABLE 7.—*Index numbers for relative rate of growth of coal, oil, and water power in the United States*[1]

[The figures are expressed as a percentage of the 1918 rate]

Year	Pennsylvania anthracite	Bituminous coal	Total coal	Petroleum (total crude)		Natural gas (total production)	Total petroleum and natural gas	Total mineral fuels	Water power (at constant fuel equivalent)	Grand total	
				Domestic production	Imports					With water power at constant fuel equivalent	With water power at prevailing central station equivalent
1933	50	57	56	252	90	205	229	82	231	87	83
1934	58	62	61	255	94	246	241	88	227	94	89
1935	53	64	63	280	85	266	262	92	264	99	93
1936	55	76	73	309	86	301	291	105	270	112	106
1937	[2] 52	77	73	359	73	334	332	112	292	119	112
1938	[2] 47	60	58	341	70	318	316	97	295	104	98
1939 [3]	[2] 52	67	65	355	88	338	332	105	289	112	105

[1] Comparable data for earlier years in Minerals Yearbook, 1937, p. 809.

[2] If illicit or bootleg anthracite were included, the index for 1937 would be 55, that for 1938, 49, and for 1939, 56.

[3] Subject to revision.

TABLE 8.—*Percent of total B. t. u. equivalent contributed by the several mineral fuels and water power in the United States, 1933–39* [1]

Year	Pennsylvania anthracite	Bituminous coal	Total coal	Petroleum (total crude)		Natural gas (total production)	Total petroleum and natural gas	Total mineral fuels	Water power, fuel equivalent	Grand total, including water power
				Domestic production	Imports					
	Water power counted at *constant* fuel equivalent of approximately 4 lb. per kilowatt-hour									
1933	7.0	45.2	52.2	28.1	1.0	8.7	37.8	90.0	10.0	100.0
1934	7.6	46.1	53.7	26.7	1.0	9.3	37.0	90.7	9.3	100.0
1935	6.6	45.1	51.7	27.7	.9	9.5	38.1	89.8	10.2	100.0
1936	6.1	47.2	53.3	27.1	.8	9.5	37.4	90.7	9.3	100.0
1937	[2] 5.4	45.0	50.4	29.6	.6	10.0	40.2	90.6	9.4	100.0
1938	[2] 5.5	40.1	45.6	32.0	.7	10.8	43.5	89.1	10.9	100.0
1939 [3]	[2] 5.7	41.8	47.5	31.1	.8	10.7	42.6	90.1	9.9	100.0
	Water power counted at *prevailing* central station equivalent for year									
1933	7.4	48.4	55.8	30.0	1.1	9.2	40.3	96.1	3.9	100.0
1934	8.1	49.0	57.1	28.3	1.1	9.9	39.3	96.4	3.6	100.0
1935	7.0	48.3	55.3	29.5	1.0	10.2	40.7	96.0	4.0	100.0
1936	6.5	50.2	56.7	28.8	.8	10.2	39.8	96.5	3.5	100.0
1937	[2] 5.8	47.8	53.6	31.5	.7	10.6	42.8	96.4	3.6	100.0
1938	[2] 5.9	43.2	49.1	34.4	.7	11.7	46.8	95.9	4.1	100.0
1939 [3]	[2] 6.1	44.6	50.7	33.2	.9	11.5	45.6	96.3	3.7	100.0

[1] Comparable data for earlier years in Minerals Yearbook, 1937, p. 810.

[2] If bootleg coal were included the proportion from anthracite would be 5.7 percent in 1937, 5.8 in 1938, and 6.1 in 1939 at *constant* and 6.0 in 1937, 6.2 in 1938, and 6.5 in 1939 at *prevailing* water power equivalents.

[3] Subject to revision.

FINAL BITUMINOUS STATISTICS FOR 1938

Tables 9 to 34 give the final detailed statistics of bituminous mine operations in 1938. The subjects covered include production, number and size of mines, employment, fuel economy, stocks, foreign trade, and world production.

In accordance with the practice followed by the Bureau of Mines in previous years the statistics in this report relate to mines having an output of 1,000 tons a year or more and do not attempt to include many small mines producing less than 1,000 tons per year that sell their output by wagon or truck. Unless otherwise indicated, the net or short ton of 2,000 pounds has been used as a standard unit of measurement.

These statistics include for convenience and historical comparison the small output of anthracite and semianthracite produced outside Pennsylvania and the production of lignite. Details regarding these coals are given in tables 26 to 34, inclusive. In the standard statistics of the American coal trade they have ordinarily been combined with bituminous coal.

PRODUCTION

SUMMARY BY STATES

TABLE 9.—*Production, men employed, days operated, man-days of labor, and output per man per day at coal mines in the United States in 1938, by States*

[Exclusive of product of wagon mines producing less than 1,000 tons]

State	Net tons					Number of employees				Average number of days mines operated	Man-days of labor	Average tons per man per day
	Loaded at mines for shipment by rail or water	Shipped by truck or wagon	Coal used by employees or taken by locomotives at tipple or other uses at mines	Used for power and heat or made into coke at mines [1]	Total quantity	Underground	Surface		Total			
							In strip pits	All others				
Alabama	10,355,746	539,048	109,524	57,175	11,061,493	18,339	91	2,680	21,110	180	3,795,822	2.91
Alaska	151,656		231	2,795	154,682	100		44	144	204	29,413	5.26
Arizona, Georgia, Idaho, and Oregon	25,636	8,357	50		34,043	82		17	99	122	12,059	2.82
Arkansas	1,167,240	20,678	1,723	7,406	1,197,047	3,215	65	541	3,821	112	429,619	2.79
Colorado	3,899,117	1,468,725	90,636	[1] 204,666	5,663,144	6,897	10	1,378	8,285	169	1,400,088	4.04
Illinois	34,562,842	6,281,452	363,901	703,890	41,912,085	29,217	1,698	7,448	38,363	149	5,704,535	7.35
Indiana	12,483,953	1,813,808	309,599	151,124	14,758,484	6,244	1,935	2,350	10,529	149	1,570,984	9.40
Iowa	1,642,445	1,412,311	31,853	16,578	3,103,187	6,234	322	816	7,372	136	1,000,795	3.10
Kansas	2,390,839	246,435	6,266	10,601	2,654,141	1,861	680	545	3,086	170	525,115	5.05
Kentucky	36,910,512	1,039,787	450,115	144,804	38,545,218	45,096	60	7,007	52,163	160	8,351,492	4.62
Maryland	1,050,827	214,817	8,648	7,121	1,281,413	2,083		288	2,371	171	405,209	3.16
Michigan	166,143	292,572	8,978	26,788	494,481	1,099		106	1,205	163	195,825	2.53
Missouri	2,494,752	888,002	24,452	28,912	3,436,118	3,677	750	786	5,213	151	787,220	4.36
Montana [2]	2,524,145	191,291	13,000	3,614	2,732,050	1,126	40	359	1,525	174	265,784	10.28
New Mexico	1,103,772	87,099	13,579	34,587	1,239,037	1,968		506	2,474	153	378,011	3.28
North Dakota [2]	1,465,374	416,904	160,075	7,746	2,050,099	667	344	359	1,370	174	237,751	8.62
Ohio	14,848,698	3,311,408	328,913	101,599	18,590,618	23,306	920	3,167	27,393	145	3,984,353	4.67
Oklahoma	1,124,858	103,575	2,805	13,494	1,244,732	1,756	200	373	2,329	139	323,471	3.85
Pennsylvania	68,757,016	4,768,568	2,890,374	[1] 1,288,579	77,704,537	99,067	613	13,819	113,499	156	17,679,250	4.40
South Dakota [2]	27,148	20,570	340		48,058	18	23	9	50	170	8,507	5.65
Tennessee	4,060,006	320,884	50,835	[1] 40,678	4,472,403	7,094	4	1,168	8,266	167	1,383,487	3.23
Texas [2]	833,509	28,892	6,287	9,997	878,685	645	22	109	776	195	151,050	5.82
Utah	2,591,922	314,075	18,942	[1] 22,012	2,946,951	2,338		738	3,076	156	479,733	6.14
Virginia	11,726,660	220,247	72,457	[1] 263,672	12,283,036	14,559		2,202	16,761	174	2,918,100	4.21
Washington	1,149,909	383,249	13,881	19,934	1,566,973	1,990		601	2,591	163	423,119	3.70
West Virginia	89,873,390	985,303	1,849,829	[1] 579,650	93,288,172	87,852	56	15,131	103,039	175	18,082,703	5.16
Wyoming	4,850,881	214,001	33,524	105,471	5,203,877	3,474	44	905	4,423	181	801,879	6.49
	312,238,996	25,592,058	6,860,817	[1] 3,852,893	348,544,764	370,004	7,877	63,452	441,333	162	71,325,374	4.89

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[1] Includes coal made into beehive coke at mines in the following States in 1938: Colorado, 84,172; Pennsylvania, 765,253; Tennessee, 10,000; Utah, 15,667; Virginia, 234,765; and West Virginia, 250,019; grand total, 1,359,876 tons.

[2] Includes figures on lignite compiled by L. Mann, Bureau of Mines; see lignite tables, 1938.

TOTAL PRODUCTION SINCE BEGINNING OF MINING

TABLE 10.—*Coal produced, by States, 1928–38, with production of maximum year and cumulative production from the earliest record to the end of 1938, in thousands of net tons*

State	Maximum production		Production by years											Total production from earliest record to end of 1938
	Year	Quantity	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	
Alabama	1926	21,001	17,621	17,944	15,570	11,999	7,857	8,760	9,142	8,505	12,229	12,440	11,062	639,028
Arkansas	1907	2,670	1,661	1,695	1,533	1,154	1,033	883	857	1,133	1,623	1,511	1,197	73,541
Colorado	1917	12,483	9,848	9,921	8,197	6,604	5,599	5,230	5,211	5,911	6,812	7,187	5,663	396,922
Georgia	1903	416	58	45	7	22	27	41	33	(1)	(1)	(1)	(1)	(1)
Illinois	1918	89,291	55,948	60,658	53,731	44,303	33,475	37,413	41,272	44,525	50,927	51,602	41,912	2,447,803
Indiana	1918	30,679	16,379	18,344	16,490	14,295	13,324	13,761	14,794	15,754	17,822	17,765	14,759	735,849
Iowa	1917	8,966	3,684	4,241	3,893	3,388	3,862	3,195	3,367	3,650	3,961	3,637	3,103	311,842
Kansas	1918	7,562	2,810	2,976	2,430	1,987	1,953	2,218	2,508	2,686	2,944	2,893	2,654	231,718
Kentucky	1927	69,124	61,860	60,463	51,209	39,964	35,300	36,100	38,525	40,761	47.522	47,086	38,545	1,248,514
Maryland	1907	5,533	2,687	2,649	2,271	2,006	1,429	1,531	1,627	1,678	1,704	1,549	1,281	241,228
Michigan	1907	2,036	617	805	661	359	446	407	622	628	626	562	494	44,410
Missouri	1917	5,671	3,733	4,030	3,853	3,621	4,070	3,432	3,352	3,646	3,985	4,091	3,436	215,722
Montana	1918	4,533	3,324	3,408	3,022	2,378	2,125	2,152	2,566	2,759	2,988	2,965	2,732	117,800
New Mexico	1918	4,023	2,712	2,623	1,969	1,553	1,263	1,226	1,259	1,389	1,597	1,715	1,239	106,009
North Carolina	1922	79	61	52	29	2	2	2	3	(1)	(1)	(1)		(1)
North Dakota	1936	2,215	1,650	1,862	1,700	1,519	1,740	1,782	1,754	1,956	2,215	2,251	2,050	39,873
Ohio	1920	45,878	15,641	23,689	22,552	20,411	13,909	19,589	20,691	21,153	24,110	25,178	18,591	1,354,138
Oklahoma	1920	4,849	3,501	3,774	2,794	1,908	1,255	1,238	1,208	1,229	1,540	1,600	1,245	130,275
Pennsylvania bituminous	1918	178,551	131,202	143,516	124,463	97,659	74,776	79,296	89,826	91,405	109,887	111,002	77,705	5,965,891
Tennessee	1910	7,121	5,611	5,405	5,130	4,721	3,538	3,775	4,136	4,138	5,108	5,213	4,472	254,669
Texas	1913	2,429	1,182	1,101	834	716	637	822	759	758	843	910	879	58,242
Utah	1920	6,005	4,843	5,161	4,258	3,350	2,852	2,675	2,406	2,947	3,247	3,810	2,947	134,551
Virginia	1926	14,133	11,901	12,748	10,907	9,699	7,692	8,179	9,377	9,667	11,662	13,795	12,283	361,357
Washington	1918	4,082	2,520	2,521	2,302	1,846	1,591	1,394	1,383	1,559	1,812	2,002	1,567	126,678
West Virginia	1927	145,122	132,952	138,519	121,473	101,473	85,609	94,344	98,134	99,179	117,926	118,646	93,288	3,343,619
Wyoming	1920	9,630	6,572	6,705	6,088	4,994	4,171	4,013	4,368	5,177	5,781	5,918	5,204	280,860
Other States			167	134	160	158	175	173	188	180	217	203	237	61,695
Total bituminous			500,745	534,989	467,526	382,089	309,710	333,631	359,368	372,373	439,088	445,531	348,545	18,922,234
Pennsylvania anthracite	1917	99,612	75,348	73,828	69,385	59,646	49,855	49,541	57,168	52,159	54,580	51,856	46,099	4,282,457
Grand total			576,093	608,817	536,911	441,735	359,565	383,172	416,536	424,532	493,668	497,387	394,644	23,204,691

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[1] Included under "Other States."

PRODUCTION BY WEEKS AND MONTHS

The following tables summarize the statistics of weekly and monthly production of bituminous coal first published in the Bituminous Coal Division Weekly Coal Reports. The figures are estimates based on daily and weekly statements of cars of coal and beehive coke loaded by the principal railroads and of shipments over the more important originating rivers. The estimates are revised afterward to agree with the results of the annual statistical reports from the coal producers; therefore, the figures given here differ slightly from those issued originally in the weekly reports.

For the method used in counting holidays, see chapter on Coal in Mineral Resources of the United States, 1930, page 631.

TABLE 11.—*Estimated weekly production of bituminous coal in 1938*

Week ended	Production (net tons)	Number of working days	Average production per working day (net tons)	Week ended	Production (net tons)	Number of working days	Average production per working day (net tons)
Jan. 1	[1] 50,000	[1] 0.1	[2] 1,221,000	July 9	4,767,000	5	953,000
Jan. 8	6,842,000	6	1,140,000	July 16	5,829,000	6	972,000
Jan. 15	7,750,000	6	1,292,000	July 23	5,914,000	6	986,000
Jan. 22	7,456,000	6	1,243,000	July 30	6,010,000	6	1,002,000
Jan. 29	7,938,000	6	1,323,000	Aug. 6	5,931,000	6	989,000
Feb. 5	7,850,000	6	1,308,000	Aug. 13	6,120,000	6	1,020,000
Feb. 12	6,982,000	6	1,164,000	Aug. 20	6,395,000	6	1,066,000
Feb. 19	6,751,000	6	1,125,000	Aug. 27	6,611,000	6	1,102,000
Feb. 26	6,608,000	5.8	1,139,000	Sept. 3	7,034,000	6	1,172,000
Mar. 5	6,544,000	6	1,091,000	Sept. 10	6,612,000	5	1,322,000
Mar. 12	6,564,000	6	1,094,000	Sept. 17	7,523,000	6	1,254,000
Mar. 19	5,936,000	6	989,000	Sept. 24	8,059,000	6	1,343,000
Mar. 26	5,441,000	6	907,000	Oct. 1	8,100,000	6	1,350,000
Apr. 2	4,639,000	5.2	892,000	Oct. 8	8,140,000	6	1,357,000
Apr. 9	5,714,000	6	952,000	Oct. 15	8,443,000	6	1,407,000
Apr. 16	5,466,000	6	911,000	Oct. 22	8,287,000	6	1,381,000
Apr. 23	5,131,000	6	855,000	Oct. 29	8,802,000	6	1,467,000
Apr. 30	5,105,000	6	851,000	Nov. 5	8,233,000	6	1,372,000
May 7	4,763,000	6	794,000	Nov. 12	8,297,000	5.6	1,482,000
May 14	5,118,000	6	853,000	Nov. 19	8,582,000	6	1,430,000
May 21	5,052,000	6	842,000	Nov. 26	7,895,000	5	1,579,000
May 28	5,434,000	6	906,000	Dec. 3	8,831,000	6	1,472,000
June 4	4,772,000	5.3	900,000	Dec. 10	8,414,000	6	1,402,000
June 11	5,028,000	6	838,000	Dec. 17	8,348,000	6	1,391,000
June 18	5,138,000	6	856,000	Dec. 24	8,610,000	6	1,435,000
June 25	5,197,000	6	866,000	Dec. 31	8,111,000	5	1,622,000
July 2	5,378,000	6	896,000				
					348,545,000	306.0	1,139,000

[1] Figures represent output and number of working days in that part of the week included in the calendar year shown. Total production for the week of January 1, 1938, was 6,225,000 net tons.

[2] Average daily production for the entire week and not for the working days in the calendar year shown.

TABLE 12.—*Monthly production of coal in 1938, by States, in thousands of net tons*

The totals for the year are based upon final complete returns to the Bituminous Coal Division from all operators known to have produced more than 1,000 tons a year. The apportionment of the known yearly total among the 12 months is based upon the best information available, in some States upon direct tonnage reports by operators to the State mine department, in most cases upon current records of railroad carloadings and waterway shipments.]

State	January	February	March	April	May	June	July	August	September	October	November	December	Total
Alabama	980	998	1,003	890	745	652	674	840	896	1,046	1,098	1,240	11,062
Alaska	12	10	14	12	16	14	11	12	13	15	13	13	155
Arkansas	153	98	38	24	23	34	63	133	163	149	163	156	1,197
Colorado	625	548	439	353	265	274	250	330	522	553	754	750	5,663
Illinois	4,672	3,809	3,152	2,470	2,210	2,432	2,522	3,100	3,773	4,084	4,513	5,175	41,912
Indiana	1,474	1,445	1,286	960	840	896	898	1,060	1,226	1,328	1,520	1,826	14,759
Iowa	368	294	270	197	193	181	160	202	250	298	342	348	3,103
Kansas	338	272	190	158	116	157	143	224	266	250	232	308	2,654
Kentucky:													
Eastern	2,570	2,048	1,980	1,875	2,220	2,250	2,468	2,998	3,222	3,393	3,113	3,040	31,177
Western	802	635	579	429	417	398	444	568	717	722	766	891	7,368
Maryland	109	114	110	84	80	92	93	110	117	115	122	135	1,281
Michigan	70	60	62	27	15	15	13	18	46	52	56	60	494
Missouri	413	360	252	212	174	200	192	253	280	302	375	423	3,436
Montana	286	233	192	149	154	162	168	195	214	314	347	318	2,732
New Mexico	109	97	88	82	81	100	86	100	96	125	144	131	1,239
North Dakota	264	238	125	79	69	57	55	81	161	318	341	262	2,050
Ohio	1,618	1,403	1,538	1,259	1,160	1,242	1,274	1,540	1,692	1,988	1,950	1,918	18,591
Oklahoma	164	117	52	35	33	50	50	105	155	148	165	171	1,245
Pennsylvania bituminous	6,688	6,036	6,595	5,023	4,987	5,140	5,325	6,436	7,196	7,963	8,204	8,112	77,705
South Dakota	6	6	2	2	1	1	1	1	3	10	9	6	48
Tennessee	364	380	303	312	343	309	287	385	450	470	434	435	4,472
Texas	71	67	66	67	68	73	77	82	83	78	73	74	879
Utah	280	243	208	154	128	108	116	203	298	348	418	448	2,947
Virginia	923	935	934	744	821	864	920	1,207	1,220	1,298	1,217	1,200	12,283
Washington	142	124	116	90	92	93	95	145	144	165	182	179	1,567
West Virginia	7,574	6,979	7,277	6,019	6,170	6,801	7,073	8,253	9,095	9,627	9,419	9,001	93,288
Wyoming	456	373	405	318	317	302	304	439	468	577	642	603	5,204
Other States [1]	4	3	4	3	1	1	1	1	3	4	4	5	34
Total bituminous coal	31,535	27,925	27,280	22,027	21,739	22,898	23,763	29,030	32,769	35,740	36,611	37,228	348,545
Pennsylvania anthracite [2]	5,019	4,169	3,652	5,367	5,141	3,577	2,951	3,883	4,840	4,985	3,989	3,914	51,487
Grand total	36,554	32,094	30,932	27,394	26,880	26,475	26,714	32,913	37,609	40,725	40,600	41,142	400,032

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[1] Arizona, Georgia, Idaho, and Oregon.

[2] Pennsylvania anthracite figures from Bureau of Mines. Includes Sullivan County, washery and dredge coal, local sales, colliery fuel, and coal shipped by truck from authorized operations.

NUMBER AND SIZE OF MINES

TABLE 13.—*Number and production of commercial bituminous-coal mines in the United States in 1938, classified by size of output in each State*

[Exclusive of product of truck and wagon mines producing less than 1,000 tons]

State	Class 1A, over 500,000 net tons		Class 1B, 200,000–500,000 net tons		Class 2, 100,000–200,000 net tons		Class 3, 50,000–100,000 net tons		Class 4, 10,000–50,000 net tons		Class 5, less than 10,000 net tons		Total all classes	
	Number of mines	Quantity	Number of mines	Quantity	Number of mines	Quantity	Number of mines	Quantity	Number of mines	Quantity	Number of mines	Quantity	Number of mines	Quantity
Alabama	4	2,708,945	12	3,927,901	13	1,810,192	23	1,594,784	22	567,250	156	452,421	230	11,061,493
Alaska							1	95,509	2	57,557	3	1,616	6	154,682
Arkansas							4	266,941	33	795,431	32	134,675	69	1,197,047
Colorado			1	243,293	18	2,630,985	16	1,213,571	51	1,160,684	126	414,611	212	5,663,144
Illinois	24	19,072,209	40	14,062,567	21	2,973,303	31	2,023,073	121	2,686,427	327	1,094,506	564	41,912,085
Indiana	6	4,027,318	18	5,720,356	11	1,629,174	19	1,330,775	63	1,358,916	184	691,945	301	14,758,484
Iowa			3	885,859			6	406,424	53	1,158,606	199	652,298	261	3,103,187
Kansas			5	1,324,621	6	745,996	1	73,859	12	234,441	81	275,224	105	2,654,141
Kentucky:														
Eastern	9	7,376,634	42	11,894,403	45	6,321,040	47	3,626,680	55	1,661,900	95	296,815	293	31,177,472
Western	1	549,915	9	2,533,029	17	2,300,308	16	1,158,421	23	568,552	83	257,521	149	7,367,746
Maryland					3	469,900	3	181,248	20	463,081	56	167,184	82	1,281,413
Michigan					1	165,449	2	150,083	8	178,949			11	494,481
Missouri	1	500,146	3	1,014,350	2	303,766	5	340,706	37	815,359	138	461,791	186	3,436,118
Montana, North Dakota, South Dakota, and Texas [1]	1	1,099,106	7	2,606,224	5	762,901	4	265,723	23	470,861	230	504,077	270	5,708,892
New Mexico			2	520,302	2	256,110	2	166,353	9	221,559	24	74,713	39	1,239,037
Ohio	10	6,866,673	14	4,247,302	18	2,448,344	22	1,625,480	88	2,000,619	447	1,402,200	599	18,590,618
Oklahoma			1	237,548	1	122,036	3	179,678	21	517,587	67	187,883	93	1,244,732
Pennsylvania	39	29,657,898	77	24,783,891	68	9,638,978	85	6,224,830	220	4,893,773	701	2,505,167	1,190	77,704,537
Tennessee			4	1,043,107	13	1,863,673	10	792,386	24	573,203	68	200,034	119	4,472,403
Utah			3	1,119,227	6	814,005	8	708,843	9	185,250	32	119,626	58	2,946,951
Virginia	4	2,728,708	15	5,206,706	20	2,796,668	12	917,361	12	355,423	63	278,170	126	12,283,036
Washington			1	212,268	5	762,261	2	133,806	16	354,144	29	104,494	53	1,566,973
West Virginia	39	27,978,480	120	37,725,893	119	17,183,094	91	6,694,233	107	3,034,307	215	672,165	691	93,288,172
Wyoming	1	544,241	10	3,002,439	8	1,076,620	2	108,051	12	368,845	32	103,681	65	5,203,877
Other States [2]									1	25,636	4	8,407	5	34,043
	139	103,110,273	387	122,311,286	402	57,074,803	415	30,278,818	1,042	24,708,360	3,392	11,061,224	5,777	348,544,764

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[1] Includes lignite figures from Bureau of Mines.

[2] Arizona, Georgia, Idaho, and Oregon.

TREND OF AVERAGE VALUE PER TON, F. O. B. MINES, 1929 TO 1938

Before the Bituminous Coal Act of 1937 was passed the most valuable single index of the trend of prices at the mines was the "average value per ton, f. o. b. mines," as given in the familiar annual coal reports of the Bureau of Mines, United States Department of the Interior. This series was referred to in the Bureau of Mines reports as representing "bituminous coal," and it covered all coal other than Pennsylvania anthracite produced in the United States. It represented the bituminous-coal industry as the term ordinarily was used in the trade and included the lignite of the Dakotas, Texas, and Montana, as well as any small tonnages of hard coal produced outside of Pennsylvania.

With the passage of the Coal Act the Bureau of Mines relinquished the collection of statistics relating to bitumonous coal, effective June 30, 1937, though continuing to compile data regarding lignite. Effective on the same date, the Coal Commission became responsible for the compilation of data on bituminous coal, though not attempting to collect data regarding lignite, which was specifically exempted by the act. The records of the Commission (now Bituminous Coal Division, United States Department of the Interior), relate to all coal other than Pennsylvania anthracite and lignite, no exemptions other than lignite having been approved under the act.

To permit comparison of the old and new series, therefore, it is necessary to separate the lignites from the bituminous coals, though for convenience of the student the combined average for the two is continued in a form as nearly comparable as possible to the old series.

A more important change in the two series relates to the treatment of selling expenses. The old Bureau of Mines series of "value at the mines" excluded the selling cost. The reporting operator was asked to state the "Amount received at the mines f. o. b. cars less the selling expense." No details were asked regarding the items included in the value, and no systematic effort was made to follow up the exclusion of selling expenses. It was realized at the time that some producers might find it impractical to exclude selling costs and that some part of the selling expenses of the industry might be included in the results. Nevertheless, the reports were checked for consistency from year to year, the questions were retained in the same form without change, and the results are believed to have been comparable from one year to the next. The new series of the Coal Commission represents the total or gross realization on all coal produced and specifically includes the selling cost.

It is also possible that the two sets of data are not precisely comparable with respect to coal produced but not sold on the commercial market. In the Bureau of Mines series the reporting operator was instructed that the "value of coal not sold but used by producer, also mine fuel and coal made into coke should be estimated at average prices that might have been received." The instructions of the Coal Commission regarding such items were in effect similar, though given in greater detail.

A comparison of the two series is possible for 1936. In that year the average value per ton on the old (Bureau of Mines) basis amounted to $1.761 per ton for bituminous coal excluding lignite. The average gross realization, as collected by the Coal Commission, was $1.831 per ton. The difference amounts to $0.07 per ton, an amount somewhat less than the average selling expenditure computed per ton of all coal produced, as reported to the Coal Commission. The comparison confirms previous indications that the great majority of operators reporting in earlier years had followed instructions and omitted selling expenses in computing the average value but that some of them had included the selling expense. The change in method of reporting should be kept in mind in comparing the two sets of data. As the reports to the Commission were submitted on a detailed accounting return and made under oath they are to be accepted. The returns of earlier years, on a voluntary basis and not in all instances uniform as to treatment of selling costs, seem to have been thoroughly comparable from one year to the next and afford the best available index to the rise and fall of the mine prices received by the operator down to 1936.

TABLE 14.—*Trend of average value of bituminous coal and lignite per ton, f. o. b. mines, 1929–38*

Year	Bituminous[1] coal (subject to regulation under 1937 Act)	Lignite[2]	Total
Average value per ton less selling expense (Bureau of Mines series):			
1929	$1.782	$1.548	$1.781
1930	1.702	1.556	1.701
1931	1.542	1.410	1.541
1932	1.313	1.313	1.313
1933	1.337	1.188	1.336
1934	1.751	1.387	1.749
1935	1.772	1.120	1.767
1936	1.761	1.061	1.756
Average gross realization including selling expense (Coal Commission series):			
1936	1.831	[3] 1.061	1.826
1937	1.946	[3] 1.080	1.939
1938	1.955	[3] 1.071	1.947

[1] Includes all coal produced other than Pennsylvania anthracite and the lignite included in the second column.

[2] North Dakota, South Dakota, and the lignite counties of Montana and Texas.

[3] Figures of the Bureau of Mines, excluding selling expense as before. Data on sales realization were not collected from lignite mines by the Coal Commission.

SPOT PRICES

Spot prices afford a basis for measuring the relative strength of the forces of demand and supply in the competitive market for bituminous coal. The market quotations published in the leading trade magazines usually are based upon posted prices of larger producers, and oftentimes represent "asked" rather than "actual" prices.

Spot prices are not to be confused with sales realization, as the latter includes a large volume of coal either sold at relatively stable prices under long-term contracts or consumed by producers and their affiliates at purely nominal prices.

The following table of average spot prices is offered as an indication of trends in 1937, 1938, and 1939.

TABLE 15.—*Trend of spot prices of bituminous coal per net ton, f. o. b. mines, as indicated by trade journal quotations, 1937–39* [1]

[Based upon 130 series of comparable quotations currently published in the Black Diamond, Saward's Journal, and Chicago Journal of Commerce. These have been grouped into prepared sizes, run-of-mine, and screenings or slack, and simple averages obtained. The 3 groups have then been combined into a weighted average, counting prepared sizes at 43 percent, run-of-mine at 27 percent, and screenings or slack at 30 percent. The resulting average for all coal is not intended to show the actual realization obtained, but gives a ready comparison of the trend of prices in the 3 years.]

Month	Prepared sizes			Run-of-mine			Screenings or slack			All coal			Change in 1939 (percent)
	1937	1938	1939	1937	1938	1939	1937	1938	1939	1937	1938	1939	
January [2]	$2.49	$2.58	$2.37	$2.06	$2.22	$2.06	$1.49	$1.81	$1.40	$2.07	$2.25	$2.02	−10.2
February [2]	2.49	2.54	2.35	2.07	2.21	2.06	1.54	1.77	1.40	2.09	2.22	2.01	−9.5
March	2.39	2.48	2.23	2.06	2.07	2.01	1.70	1.50	1.37	2.09	2.06	1.91	−8.2
April	2.30	2.22	(³)	2.11	2.08	(³)	1.77	1.51	(³)	2.09	1.99	(³)	(³)
May	2.30	2.21	(³)	2.13	2.07	(³)	1.77	1.51	(³)	2.10	1.96	(³)	(³)
June [2]	2.29	2.22	2.19	2.13	2.07	2.01	1.77	1.51	1.51	2.09	1.97	1.94	−1.5
July	2.33	2.23	2.22	2.07	2.07	1.99	1.74	1.47	1.50	2.08	1.96	1.94	−1.0
August	2.38	2.28	2.24	2.10	2.06	2.00	1.72	1.41	1.49	2.11	1.96	1.95	−.5
September	2.39	2.34	2.28	2.10	2.10	2.01	1.64	1.37	1.49	2.09	1.98	1.97	−.5
October	2.44	2.47	2.48	2.10	2.10	2.27	1.60	1.38	1.69	2.10	2.04	2.19	+7.4
November	2.45	2.45	2.45	2.11	2.07	2.25	1.59	1.33	1.65	2.10	2.01	2.16	+7.5
December [2]	2.49	2.43	2.35	2.16	2.06	2.22	1.71	1.34	1.60	2.17	2.00	2.09	+4.5
Average: 12 months	2.40	2.37	2.32	2.10	2.10	2.09	1.67	1.49	1.51	2.10	2.04	2.02	−1.0

---

[1] Except as noted, these averages are based upon the following number of quotations: Prepared sizes: Chicago market, 25 quotations; Cleveland market, 29 quotations; Norfolk market, 18 quotations; Pittsburgh market, 3 quotations; total, 75 quotations. Run-of-mine: Chicago market, 7 quotations; Cleveland market, 2 quotations; Norfolk market, 7 quotations; Pittsburgh market, 0; total, 16 quotations. Screenings or slack: Chicago market, 19 quotations; Cleveland market, 11 quotations; Norfolk market, 7 quotations; Pittsburgh market, 2 quotations; total, 39 quotations. Total of all quotations used, 130.

[2] Quotations for Cleveland and Pittsburgh in January and February and for Pittsburgh in June and December have been excluded from the computed averages due to lack of comparable data.

[3] Insufficient quotations during the greater part of April and May 1939, owing to suspension of mining operations pending the completion of a new wage agreement.

LABOR STATISTICS

MEN EMPLOYED

An average of 441,333 men was employed at bituminous-coal mines in 1938, a 10-percent decrease from the total of 491,864 for 1937. (See fig. 8.) Statistics of men employed in 1938 represent annual averages of the number of workers on the rolls on the days when the mines were in operation. Except for the slight discrepancy in comparability with 1937, the figures of employment for 1938 are comparable with similar date for earlier years. (See Minerals Yearbook, 1939, pp. 776 and 787–788.)

The method used here in calculating employment gives an accurate measure of the working force in the coal industry, but it does not consider the time lost by men on the rolls through intermittent operations. To measure the influence of intermittency upon employment the factor of mine activity as indicated by the average number of days of plant operation was recorded separately. The average number of men employed when the mines were in operation was then used, in conjunction with the average number of days of operation, as a measure of the total volume of employment in the industry.

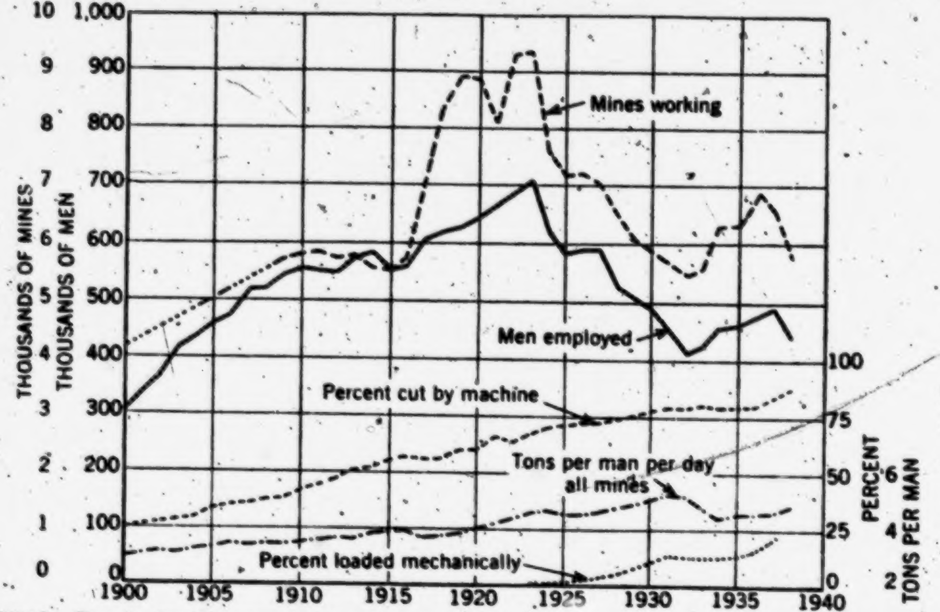

FIGURE 8.—Trends of employment, mechanization, and output per man at bituminous-coal mines, 1900-1938.

In recent years a special problem has arisen in recording employment through the adoption of local "share-the-work" agreements, by which the employees of a mine are divided into two crews or groups who work on alternate days. Such agreements for "staggering" or alternating the work are not to be confused with the practice of operating both a day and a night shift but relate rather to division of the available work between two groups of workers on the same shift, usually the day shift.

Specific inquiries regarding such agreements by the Illinois Department of Mines and Minerals in 1938 indicated that 45 mines in that State were operating with alternate crews under share-the-work agreements. If the number of men on the pay rolls had been used as a measure of employment instead of the average number of men working, the employment figures for Illinois would have been increased approximately 8 percent. A small number of employees was involved in similar reports from Indiana.

The figures on "number of men employed" as given in this report are therefore somewhat less than the total number of men on the rolls in the States where there were mines that followed the practice of spreading employment by means of share-the-work agreements. No formal agreements for dividing work have been reported to the authors from mines outside of Illinois and Indiana in 1938; however, local share-the-work agreements may have existed in other fields, which were not reported, and occasionally at still other mines a certain amount of work sharing may have been practiced without written agreement between operators and their employees.

DAYS OPERATED

The average number of days of operation at bituminous-coal mines in 1938 was 162. This represents a decline from the average of 193 days for 1937. All statistics on days of mine operation included in this report are weighted averages, in which the operating time of each mine has been weighted by the number of its employees. Several coal-mining States publish series on the number of days worked that are simple averages of the figures for each reporting mine regardless of size. As these unweighted averages are likely to be unduly depressed by small mines, which generally operate fewer days than the larger ones, they tend to understate the working time of the typical mine employee.

MAN-DAYS OF LABOR

Only a small proportion of the bituminous-coal-mine operations, however, keep an accurate record of man-days or man-hours worked. Consequently, man-days have been computed by multiplying the number of workers employed by the number of operating days. Although these computations were made for each individual mine the combined total is necessarily only an approximation.

Until the American coal industry arranges to keep an accurate record of man-days or man-hours of employment all computations of accident rates, daily earnings, and output per man will remain subject to qualification. Meanwhile, the method of multiplying men by days must be accepted as the best available procedure.

Data for 1938 indicate that bituminous-coal-mine employees performed 71,325,374 man-days of labor during the year. Table 9 gives a summary record of men employed, days operated, and output per man per day at bituminous-coal mines by States in 1938. Details by counties for 1938 are shown in table 25.

LENGTH OF WORKING DAY

Data for computing the number of hours in the average working day of bituminous-coal miners have not yet been completed for 1938. As there was no change in the provision of the union wage agreement regarding hours of work it can be assumed that the 7.02-hour-per-day average for 1935 and 1936 also would apply to 1937 and 1938. For further discussion of length of working day and detailed statistics of earlier years see Minerals Yearbook, 1937, pages 821–823.

METHODS OF RECOVERY

TABLE 16.—*Bituminous coal mined by different methods in the United States in 1938, by States*

State	From underground workings									From strip pits		Grand total production (net tons)
	Mined by hand		Shot off the solid		Cut by machines		Not specified		Total underground (net tons)	Net tons	Percent of grand total	
	Net tons	Percent of total underground	Net tons	Percent of total underground	Net tons	Percent of total underground	Net tons	Percent of total underground				
Alabama	1,311,878	11.9	1,605,453	14.5	8,098,747	73.5	8,925	0.1	11,025,003	36,490	0.3	11,061,493
Alaska	18,266	11.8	136,416	88.2	--------	--------	--------	--------	154,682	--------	--------	154,682
Arkansas	--------	--------	128,450	11.0	1,023,453	87.5	17,516	1.5	1,169,419	27,628	2.3	1,197,047
Colorado	1,158,398	20.5	264,975	4.7	4,190,492	74.1	37,610	.7	5,651,475	11,669	.2	5,663,144
Illinois	675,539	2.1	2,064,178	6.6	28,548,160	91.1	53,916	.2	31,341,793	10,570,292	25.2	41,912,085
Indiana	127,270	1.8	546,956	7.5	6,602,264	90.6	9,812	.1	7,286,302	7,472,182	50.6	14,758,484
Iowa	341,061	12.9	1,182,356	44.8	1,099,182	41.7	14,733	.6	2,637,332	465,855	15.0	3,103,187
Kansas	107,720	14.8	416,603	57.4	188,819	26.0	12,962	1.8	726,113	1,928,028	72.6	2,654,141
Kentucky:												
Eastern	1,149,857	3.7	365,058	1.2	29,643,789	95.0	18,768	.1	31,177,472	--------	--------	31,177,472
Western	189,832	2.8	129,424	1.9	6,438,633	95.2	5,677	.1	6,763,566	604,180	8.2	7,367,746
Maryland	726,997	56.7	--------	--------	544,345	42.5	10,071	.8	1,281,413	--------	--------	1,281,413
Michigan	--------	--------	--------	--------	494,481	100.0	--------	--------	494,481	--------	--------	494,481
Missouri	270,077	24.1	53,514	4.8	769,953	68.8	26,256	2.3	1,119,800	2,316,318	67.4	3,436,118
Montana and Texas [1]	136,335	5.6	774,218	31.6	1,529,428	62.3	12,707	.5	2,452,688	1,158,047	32.1	3,610,735
New Mexico	384,623	31.0	435,840	35.2	411,994	33.3	6,580	.5	1,239,037	--------	--------	1,239,037
North Dakota [1]	53,708	6.8	175,461	22.3	535,696	68.0	22,426	2.9	787,291	1,262,808	61.6	2,050,099
Ohio	370,386	2.3	125,127	.8	15,516,393	96.6	49,908	.3	16,061,814	2,528,804	13.6	18,590,618
Oklahoma	30,094	3.8	91,969	11.6	669,788	84.1	4,214	.5	796,065	448,667	36.0	1,244,732
Pennsylvania	13,121,993	17.1	2,042,122	2.7	61,381,208	80.2	27,587	--------	76,572,910	1,131,627	1.5	77,704,537
South Dakota [1]	1,420	35.4	--------	--------	--------	--------	2,589	64.6	4,009	44,049	91.7	48,058
Tennessee	591,876	13.3	475,076	10.6	3,384,155	75.7	19,007	.4	4,470,114	2,289	.1	4,472,403
Utah	123,907	4.2	55,216	1.9	2,762,751	93.7	5,077	.2	2,946,951	--------	--------	2,946,951
Virginia	217,972	1.8	678,046	5.5	11,381,055	92.7	5,963	--------	12,283,036	--------	--------	12,283,036
Washington	226,266	14.4	643,657	41.1	697,050	44.5	--------	--------	1,566,973	--------	--------	1,566,973
West Virginia	4,769,638	5.1	561,667	.6	87,700,862	94.3	29,501	--------	93,061,668	226,504	.2	93,288,172
Wyoming	167,990	3.3	161,118	3.2	4,698,826	93.4	4,525	.1	5,032,459	171,418	3.3	5,203,877
Other States [2]	1,328	3.9	28,874	84.8	3,841	11.3	--------	--------	34,043	--------	--------	34,043
	26,274,440	8.3	13,141,774	4.1	278,315,365	87.5	406,330	.1	318,137,909	30,406,855	8.7	348,544,764

[1] Includes lignite figures compiled by Bureau of Mines.

[2] Includes Arizona, Georgia, Idaho, and Oregon.

FUEL EFFICIENCY

TABLE 17.—*Indicators of the effect of fuel economy on consumption of coal per unit of performance since the World War*

	Pounds	Reduction from base period (percent)
Steam railroads:		
Pounds per 1,000 gross ton-miles freight service:		
Average, 1919–20	170	
Average, 1938	115	32.4
Average, 1939	112	34.1
Pounds per passenger-train car-mile:		
Average, 1919–20	18.5	
Average, 1938	14.9	19.5
Average, 1939	14.8	20.0
Electric public utility power plants:		
Pounds per kilowatt-hour, 1919	3.2	
Pounds per kilowatt-hour, 1938	1.4	56.2
Pounds per kilowatt-hour, 1939	1.4	56.2
Iron and steel—pounds coking coal per gross ton of pig: [1]		
1918	3,577	
1938	2,894	19.1
1939	2,853	20.2
Coke manufacture: Savings of heat values through recovery of gas, tar, light oils, and breeze by extension of byproduct in place of beehive coking, 1913–1939, expressed as percent of coal used for all coke in 1939 [2]		20.6

[1] Includes only savings through higher yields of merchantable coke per ton of coal charged and lower consumption of coke per ton of iron. Excludes economies through recovery of byproducts, which are treated in next item.

[2] These byproducts are used in part for boiler fuel, in part for metallurgical purposes, in part for domestic heating and cooking, and to a small extent for automotive fuel.

STOCKS HELD BY CONSUMERS

TABLE 18.—*Stocks of bituminous coal in hands of commercial consumers and of anthracite and bituminous coal in retail dealers' yards, 1938–39*

Date	Total stock of bituminous coal estimated (net tons)	Days' supply at current rate of consumption on date of stock taking									
		Byproduct coke plants	Steel plants	Other industrials	Coal-gas plants	Electric utilities	Retail yards, bituminous	Railroads	Cement mills	Total bituminous	Retail yards, anthracite
1938											
Jan. 1	47,074,000	56	44	42	61	79	25	32	39	40	36
Feb. 1	41,967,000	51	41	37	53	82	22	28	49	37	27
Mar. 1	38,484,000	46	35	33	51	83	22	28	53	35	26
Apr. 1	35,359,000	43	33	33	51	87	22	28	47	36	25
May 1	34,102,000	43	36	35	50	97	36	29	27	41	44
June 1	33,158,000	47	37	39	57	91	53	28	22	45	58
July 1	33,452,000	51	37	40	63	85	64	27	21	46	57
Aug. 1	33,615,000	54	35	43	68	81	69	26	18	47	58
Sept. 1	34,579,000	49	31	41	68	73	52	25	19	43	63
Oct. 1	36,507,000	47	29	42	61	72	39	24	22	41	44
Nov. 1	39,024,000	46	26	42	60	71	40	24	21	40	59
Dec. 1	40,817,000	47	24	39	57	71	34	24	24	38	51
Dec. 31	40,720,000	49	25	35	54	71	25	24	32	35	37
1939											
Jan. 1	40,720,000	49	25	35	54	71	25	24	32	35	37
Feb. 1	39,720,000	48	27	34	49	72	23	25	51	35	29
Mar. 1	39,887,000	48	32	31	45	78	19	29	46	34	25
Apr. 1	40,505,000	46	40	33	47	86	21	34	35	37	22
May 1	31,746,000	32	29	32	41	81	22	32	24	35	35
June 1	25,413,000	24	25	32	32	69	33	27	20	34	61
July 1	26,991,000	24	23	32	41	61	54	23	16	34	71
Aug. 1	29,725,000	30	24	39	48	61	56	22	19	37	61
Sept. 1	33,624,000	34	23	40	55	61	49	22	20	38	58
Oct. 1	36,943,000	34	22	43	58	59	32	20	24	35	47
Nov. 1	42,020,000	35	20	42	62	58	33	21	26	35	57
Dec. 1	45,542,000	38	19	42	58	60	34	22	29	36	58
Dec. 31	44,571,000	37	21	40	56	60	26	23	32	34	37

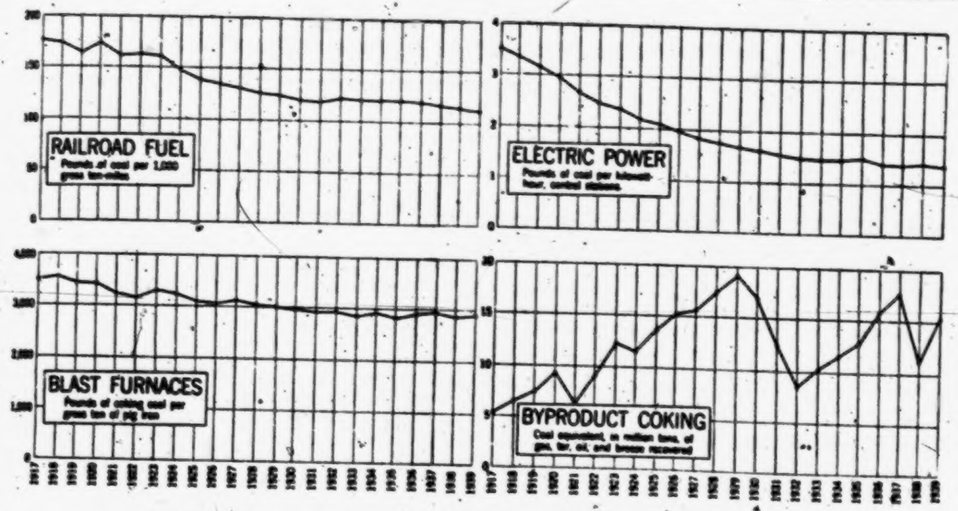

FIGURE 9.—Trends in fuel efficiency in the United States, 1917-39.

COAL LOADED FOR SHIPMENT BY INDIVIDUAL RAILROADS AND WATERWAYS

Table 19 shows the quantity of bituminous coal originated on each railroad and waterway in 1938, as reported by mine operators in answer to the following inquiry:

a. List railroads or waterways on which product was first loaded for shipment:

(Name of road or waterway) (Net tons loaded on each)

________________________ ____________
________________________ ____________
________________________ ____________

b. On coal hauled by truck, if any, to railroad siding or to river for shipment, report below:

Name of railroad ____________ Shipping point ____________ Distance hauled ______ miles.
Name of river ____________ Loading point ____________ Distance hauled ______ miles.

As these statistics include nonrevenue railroad fuel they may differ from those compiled by the railroad companies, which often show only revenue freight and include coal received from connecting lines or coal shipped off the Lakes docks, as well as that originating at mines on the lines reporting.

In general, the figures are given under the name reported by the operator, and the Bituminous Coal Division does not attempt to combine them under the name of the larger system, believing that such combination can best be made by those using the figures, as they are probably familiar with coal-traffic problems. If such combination is made, the total usually will be found to check reasonably well with the statistics issued by railroads that keep records of total coal originated.

Where the road serving the district is a subsidiary of a larger road some operators may report their coal as loaded on the subsidiary and others as loaded on the parent system (a few subsidiaries have been consolidated under the name of the parent road).

TABLE 19.—*Bituminous coal loaded for shipment in 1938 by individual railroads and waterways, as reported by operators, in net tons*

Route	State	Quantity	
		By State	Total for route
RAILROADS			
Alabama Central	Alabama	9,298	9,298
Alabama Great Southern	do	140,381	140,381
Alaska	Alaska	151,656	151,656
Algers, Winslow & Western	Indiana	1,652,298	1,652,298
Alton	Illinois	704,755	747,043
	Missouri	42,288	
Artemus-Jellico	Kentucky	373,595	373,595
Atchison, Topeka & Santa Fe	Colorado	173,496	2,191,537
	Illinois	647,061	
	Kansas	394,912	
	Missouri	106,009	
	New Mexico	870,059	
Baltimore & Ohio	Illinois	285,415	21,011,135
	Indiana	406,598	
	Maryland	97,827	
	Ohio	2,264,637	
	Pennsylvania	7,675,869	
	West Virginia	10,280,789	
Bessemer & Lake Erie	Pennsylvania	2,359,640	2,359,640
Bevier & Southern	Missouri	422,405	422,405
Birchwood Lumber Co	West Virginia	1,636	1,636
Birmingham Southern	Alabama	11,244	11,244
Buffalo Creek & Gauley	West Virginia	641,404	641,404
Cambria & Indiana	Pennsylvania	3,152,415	3,152,415
Campbell's Creek	West Virginia	889,739	889,739
Carbon County	Utah	256,648	256,648
Caseyville	Illinois	124,197	124,197
Central of Georgia	Alabama	649,644	675,280
	Georgia	25,636	
Chesapeake & Ohio	Kentucky	6,834,646	38,303,094
	Ohio	450,326	
	West Virginia	31,018,122	
Cheswick & Harmar	Pennsylvania	747,104	747,104
Chicago & Eastern Illinois	Illinois	982,675	2,494,066
	Indiana	1,511,391	
Chicago & Illinois Midland	Illinois	3,554,393	3,554,393
Chicago & North Western	do	2,101,092	2,123,755
	Wyoming	22,663	
Chicago, Burlington & Quincy	Colorado	276,301	6,797,028
	Illinois	5,619,660	
	Iowa	151,166	
	Missouri	66,593	
	Wyoming	683,308	
Chicago, Indianapolis & Louisville	Indiana	1,207,400	1,207,400
Chicago, Milwaukee, St. Paul & Pacific	Illinois	52,571	4,870,094
	Indiana	3,487,038	
	Iowa	595,743	
	Missouri	4,389	
	Montana	677,478	
	North Dakota	[1] 46,994	
	South Dakota	(1)	
	Washington	5,881	
Chicago, Rock Island & Pacific	Arkansas	6,326	1,464,936
	Illinois	655,449	
	Iowa	549,635	
	Missouri	146,490	
	Oklahoma	107,036	
Chicago, Springfield & St. Louis	Illinois	123,457	123,457
Cleveland, Cincinnati, Chicago & St. Louis	do	3,233,646	4,053,599
	Indiana	819,953	
Clinchfield	Kentucky	87,535	1,812,419
	Virginia	1,724,884	
Colorado & Southeastern	Colorado	150,972	150,972
Colorado & Southern	do	379,253	379,253
Colorado & Wyoming	do	241,464	241,464
Conemaugh & Black Lick	Pennsylvania	26,700	26,700
Crystal River & San Juan	Colorado	530	530
Cumberland & Pennsylvania	Maryland	455,127	455,127
Dardanelle & Russellville	Arkansas	37,069	37,069
Denver & Intermountain	Colorado	106,478	106,478
Denver & Rio Grande Western	do	1,103,507	2,744,294
	New Mexico	15,747	
	Utah	1,625,040	
Denver & Salt Lake	Colorado	700,760	700,760
Des Moines & Central Iowa	Iowa	94,831	94,831

See footnotes at end of table.

TABLE 19.—*Bituminous coal loaded for shipment in 1938 by individual railroads and waterways, as reported by operators, in net tons*—Continued

Route	State	Quantity: By State	Quantity: Total for route
RAILROADS—continued			
Detroit, Toledo & Ironton	Ohio	10, 253	10, 253
East Broad Top Railroad & Coal Co	Pennsylvania	411, 896	411, 896
Eastern Railway & Lumber Co	Washington	865	865
Erie	Ohio	178	1, 061, 132
	Pennsylvania	1, 060, 954	
Evansville & Ohio Valley	Indiana	8, 245	8, 245
Evansville, Suburban & Newburgh	do	178, 383	178, 383
Fort Dodge, Des Moines & Southern	Iowa	5, 259	5, 259
Forth Smith & Western	Oklahoma	113, 615	113, 615
Fort Smith, Subiaco & Rock Island	Arkansas	10, 073	10, 073
Galesburg & Great Eastern	Illinois	499, 309	499, 309
Grand Trunk	Michigan	4, 905	4, 905
Great Northern	Montana	[3] 788, 334	912, 033
	North Dakota	([3])	
	Washington	123, 699	
Harriman & Northeastern	Tennessee	240, 177	240, 177
Huntington & Broad Top Mountain Railroad & Coal Co	Pennsylvania	107, 849	107, 849
Illinois Central	Alabama	195, 901	11, 634, 507
	Illinois	7, 047, 791	
	Indiana	152, 454	
	Kentucky	4, 238, 361	
Illinois Terminal	Illinois	594, 372	594, 372
Indiana	Indiana	243, 215	243, 215
International-Great Northern	Texas	[3] 813, 096	813, 096
Interstate	Kentucky	44, 895	1, 780, 707
	Virginia	1, 735, 812	
Iowa Southern Utilities Co	Iowa	145, 542	145, 542
Johnstown & Stony Creek	Pennsylvania	88, 852	88, 852
Joplin-Pittsburg	Kansas	278, 545	278, 545
Kanawha Central	West Virginia	155, 602	155, 602
Kanawha, Glen Jean & Eastern	do	425, 293	425, 293
Kansas City Southern	Kansas	19, 599	564, 300
	Missouri	507, 095	
	Oklahoma	37, 606	
Kansas, Oklahoma & Gulf	do	20, 818	20, 818
Kelley's Creek & Northwestern	West Virginia	756, 612	756, 612
Kentucky & Tennessee	Kentucky	621, 915	621. 915
Lake Erie, Franklin & Clarion	Pennsylvania	45, 136	45, 136
Laramie, North Park & Western	Colorado	9, 824	9, 824
Ligonier Valley	Pennsylvania	174, 704	174, 704
Litchfield & Madison	Illinois	358, 478	358, 478
Louisville & Nashville	Alabama	1, 800, 125	22, 517, 797
	Illinois	20, 189	
	Kentucky	19, 871, 740	
	Tennessee	682, 589	
	Virginia	143, 154	
Mary Lee	Alabama	878, 258	878, 258
Michigan Central	Michigan	6, 037	6, 037
Midland Valley	Arkansas	279, 754	412, 387
	Oklahoma	132, 633	
Minneapolis & St. Louis	Illinois	690, 165	690, 165
Minneapolis, St. Paul & Sault Ste. Marie	North Dakota	524, 438	524, 438
Missouri-Illinois	Illinois	13, 411	13, 411
Missouri-Kansas-Texas	Kansas	241, 092	483, 832
	Missouri	60, 077	
	Oklahoma	182, 663	
	Texas	([3])	
Missouri Pacific	Arkansas	700, 693	5, 901, 685
	Illinois	3, 980, 749	
	Kansas	834, 560	
	Missouri	385, 683	
Mobile & Ohio	Alabama	73, 372	504, 468
	Illinois	431, 096	
Monongahela	Pennsylvania	1, 915, 475	8, 257, 009
	West Virginia	6, 341, 534	
Montana	Arkansas	13, 231	13, 231
Montana, Wyoming & Southern	Montana	298, 433	298, 433
Montour	Pennsylvania	4, 046, 461	4, 046, 461
Nashville, Chattanooga & St. Louis	Tennessee	681, 193	681, 193
New York Central (includes coal shipped over Kanawha & Michigan, Kelley's Creek, Toledo & Ohio Central, and Zanesville & Western)	Ohio	4, 408, 038	8, 690, 598
	Pennsylvania	3, 523, 819	
	West Virginia	758, 741	
Nicholas, Fayette & Greenbrier	do	1, 403, 696	1, 403, 696

See footnotes at end of table.

TABLE 19.—*Bituminous coal loaded for shipment in 1938 by individual railroads and waterways, as reported by operators, in net tons*—Continued

Route	State	Quantity	
		By State	Total for route
RAILROADS—continued			
Norfolk & Western	Kentucky	3,574,816	31,498,127
	Virginia	[4] 7,018,344	
	West Virginia	20,904,967	
Northern Alabama	Alabama	216,835	216,835
Northern Pacific	Montana	1,098,293	2,455,778
	North Dakota	582,697	
	Washington	774,788	
Oneida & Western	Tennessee	18,739	18,739
Pacific Coast	Washington	214,704	214,704
Pennsylvania (includes Pittsburgh, Cincinnati, Chicago & St. Louis)	Illinois	152,115	30,104,737
	Indiana	1,584,475	
	Ohio	3,822,069	
	Pennsylvania	24,114,101	
	West Virginia	431,977	
Peoria & Pekin Union	Illinois	24,555	24,555
Peoria Terminal	do	878,146	878,146
Pere Marquette	Michigan	155,201	155,261
Pittsburg & Shawmut	Pennsylvania	698,844	698,844
Pittsburg County	Oklahoma	7,290	7,290
Pittsburgh & Lake Erie	Pennsylvania	2,498,076	2,498,076
Pittsburgh & West Virginia	Ohio	269,919	1,733,471
	Pennsylvania	1,463,452	
	West Virginia	100	
Pittsburgh, Lisbon & Western	Ohio	46,828	54,317
	Pennsylvania	7,489	
Pittsburg, Shawmut & Northern	do	411,769	411,769
Quincy, Omaha & Kansas City	Missouri	27,017	27,017
Rio Grande & Eagle Pass	Texas	12,717	12,717
Rio Grande Southern	Colorado	12,420	12,420
Rockdale, Sandow & Southern	Texas	(3)	(3)
St. Louis & O'Fallon	Illinois	286,625	286,625
St. Louis-San Francisco	Alabama	833,146	2,491,350
	Arkansas	120,094	
	Kansas	611,053	
	Missouri	403,860	
	Oklahoma	523,197	
St. Louis Southwestern of Texas	Texas	(3)	(3)
Seaboard Air Line	Alabama	99,895	99,895
Southern	do	1,436,428	6,462,934
	Illinois	42,423	
	Indiana	1,232,503	
	Kentucky	1,050,185	
	Tennessee	1,596,929	
	Virginia	1,104,466	
Southern Pacific	New Mexico	217,966	217,966
Springfield Terminal	Illinois	273,753	273,753
Susquehanna & New York	Pennsylvania	11,324	11,324
Tennessee	Tennessee	640,852	640,852
Tennessee Central	do	199,527	199,527
Tennessee Coal, Iron & Railroad Co.	Alabama	2,536,353	2,536,353
Texas & Pacific	Texas	7,696	7,696
Texas Short Line	do	(3)	(3)
Thomas & Sayreton	Alabama	528,622	528,622
Toledo, Peoria & Western	Illinois	21,822	21,822
Uintah	Colorado	5,003	5,003
Union	Pennsylvania	97,545	97,545
Union Pacific	Colorado	739,109	4,932,609
	Kansas	11,078	
	Utah	7,540	
	Washington	29,972	
	Wyoming	4,144,910	
Unity	Pennsylvania	703,335	703,335
Utah	Utah	702,694	702,694
Virginian	Virginia	(4)	9,974,240
	West Virginia	9,974,240	
Wabash	Illinois	1,079,251	1,502,366
	Iowa	100,269	
	Missouri	322,846	
Western Allegheny	Pennsylvania	88,880	88,880
Western Maryland	Maryland	497,873	3,693,934
	Pennsylvania	308,474	
	West Virginia	2,887,587	

See footnotes at end of table.

TABLE 19.—*Bituminous coal loaded for shipment in 1938 by individual railroads and waterways, as reported by operators, in net tons*—Continued

Route	State	Quantity: By State	Quantity: Total for route
RAILROADS—continued			
West Virginia Northern	West Virginia	75, 339	75, 339
West Virginia Pulp & Paper Co	do	17, 160	17, 160
Wheeling & Lake Erie	Ohio	2, 871, 988	2, 871, 988
Winfield	Pennsylvania	1, 134	1, 134
Winifrede	West Virginia	89, 452	89, 452
Woodward Iron Co	Alabama	868, 951	868, 951
Youngstown & Suburban	Ohio	10, 950	10, 950
Total railroad shipments		295, 336, 027	295, 336, 027
WATERWAYS			
Allegheny River	Pennsylvania	963, 140	963, 140
Black Warrior River	Alabama	77, 293	77, 293
Green River	Kentucky	2, 168	2, 168
Illinois River	Illinois	82, 266	82, 266
Kanawha River	West Virginia	1, 819, 117	1, 819, 117
Mississippi River	Illinois	1, 955	1, 95
Monongahela River	Pennsylvania	12, 042, 824	12, 535, 515
	West Virginia	492, 691	
Muskingum River	Ohio	691, 572	691, 572
Ohio River	Kentucky	210, 656	721, 438
	Ohio	1, 940	
	Pennsylvania	1, 250	
	West Virginia	507, 592	
Youghiogheny River	Pennsylvania	8, 505	8, 505
Total waterway shipments		16, 902, 969	16, 902, 969
Grand total, loaded at mines for shipment by railroads and waterways.		312, 238, 996	312, 238, 996
Shipped by truck or wagon		25, 592, 058	25, 592, 058
Coal used by employees or taken by locomotives at tipple or other uses at mines.		6, 860, 817	6, 860, 817
Used for power and heat or made into coke at mines		3, 852, 893	3, 852, 893
Total production		348, 544, 764	348, 544, 764

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[1] South Dakota included with North Dakota.

[2] Includes North Dakota and Montana lignite.

[3] Includes Missouri-Kansas-Texas, Rockdale, Sandow & Southern, St. Louis Southwestern of Texas, and Texas Short Line for Texas lignite mines.

[4] Includes Virginian Railroad in Montgomery and Pulaski Counties.

IMPORTS AND EXPORTS [2]

TABLE 20.—*Bituminous coal*[1] *imported for consumption in the United States, 1938–39, by countries and customs districts, in net tons*

	1938	1939
Country		
North America: Canada	240, 729	296, 701
Europe:		
France	437	----
United Kingdom	139	58, 414
	241, 305	355, 115
Customs district		
Alaska	11, 634	8, 163
Buffalo	----	101
Chicago	----	2
Dakota	162	124
Duluth and Superior	78	253
***Customs district*—Continued**		
Los Angeles	1, 131	----
Maine and New Hampshire	88, 314	127, 325
Michigan	----	80
Montana and Idaho	95, 511	103, 408
New Orleans	437	----
New York	----	40, 365
Rhode Island	----	8, 238
St. Lawrence	242	6, 796
Vermont	2, 313	11, 740
Virgin Islands	139	9, 811
Washington	41, 344	38, 709
	241, 305	355, 115

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[1] Includes slack, culm, and lignite.

[2] Figures on imports and exports compiled by M. B. Price, of the Bureau of Mines, from records of the Bureau of Foreign and Domestic Commerce.

TABLE 21.—*Exports of bituminous coal to Canada and Mexico, the West Indies and Central America, and "overseas" destinations, 1935–39, in thousands of net tons*

Year	Canada and Mexico	West Indies and Central America [1]	"Overseas" (all other countries)							Grand total
			Newfoundland, Miquelon, and Bermuda	South America	Europe	Asia	Africa	Oceania	Total "overseas"	
1935	9,044	456	31	197	9	5	-------	-------	242	9,742
1936	9,912	470	44	163	50	(2)	(3)	16	273	10,655
1937	12,052	732	51	265	10	24	11	-------	361	13,145
1938	9,561	619	23	247	11	29	-------	-------	310	10,490
1939	9,976	599	76	681	165	91	2	-------	1,015	11,590

[1] Includes Bahamas and Panama.
[2] 1 ton.
[3] 3 tons.

TABLE 22.—*Bituminous coal exported from the United States, 1938–39, by countries, in net tons* [1]

Country	1938	1939	Country	1938	1939
North America:			South America—Continued.		
Bermuda	5,253	3,923	Guiana: Surinam	4,532	3,379
British Honduras	722	467	Peru	2,249	3,381
Canada	9,559,726	9,974,908	Uruguay	20,876	9,193
Central America:			Venezuela	46	81
Costa Rica	-------	39		247,302	680,821
Guatemala	158	217	Europe:		
Honduras	365	327	Denmark	-------	3,035
Nicaragua	26	75	France	11,192	-------
Panama:			Italy	-------	38,612
Canal Zone	96,310	153,278	Norway	-------	42,057
Republic of	11,651	6	Portugal	-------	4,883
Salvador	76	44	Spain	-------	25,739
Mexico	991	1,011	Sweden	-------	26,516
Miquelon and St. Pierre Islands	1	4,344	Switzerland	-------	24,549
Newfoundland and Labrador	17,703	67,869	United Kingdom	(2)	-------
West Indies:				11,192	165,391
British:			Asia:		
Barbados	609	1,284	China	21,363	53,729
Jamaica	83,637	77,786	Indochina (French)	-------	7,516
Trinidad and Tobago	42,779	38,581	Iran	6	-------
Other British	19,206	10,630	Netherland India	7,067	12,234
Cuba	347,565	292,191	Philippine Islands	-------	18,089
Dominican Republic	74	310		28,436	91,568
French	13,241	20,204	Africa:		
Haiti	28	47	Canary Islands	-------	1,701
Netherlands	3,218	3,401	Union of South Africa	-------	58
	10,203,339	10,650,942		-------	1,759
South America:					
Argentina	15,193	232,406	Grand total	10,490,269	11,590,473
Bolivia	51	2,136			
Brazil	204,294	425,022			
Chile	-------	5,011			
Colombia	12	46			
Ecuador	49	166			

[1] Amounts stated do not include fuel or bunker coal loaded on vessels engaged in the foreign trade which aggregated 1,352,480 tons in 1938 and 1,476,556 tons in 1939.
[2] Less than 1 ton.

Table 23.—*Bituminous coal exported from the United States, 1938–39, by customs districts, in net tons*

District	1938	1939
North Atlantic:		
Maine and New Hampshire	189	219
Massachusetts	2	----------
New York	3,397	1,157
Philadelphia	9,116	13,330
South Atlantic:		
Maryland	45,171	244,444
South Carolina	77,267	82,369
Virginia	781,287	1,243,397
Gulf Coast:		
Florida	14	3,540
Mobile	1,318	6,687
New Orleans	1,649	1,204
Mexican border:		
Arizona	280	598
El Paso	253	102
San Antonio	31	26
Pacific Coast:		
Los Angeles	2	1
San Diego	76	84
Pacific Coast—Continued.		
San Francisco	21,382	25,535
Washington	4,845	4,389
Northern border:		
Buffalo	605,487	619,911
Dakota	7,159	7,494
Duluth and Superior	30,783	41,273
Michigan	1,048,498	1,238,218
Montana-Idaho	263	466
Ohio	6,513,272	6,519,949
Rochester	1,042,924	1,153,914
St. Lawrence	295,341	381,796
Vermont	122	152
Wisconsin	112	101
Miscellaneous:		
Alaska	26	114
Puerto Rico	2	7
Virgin Islands	1	1
	10,490,269	11,590,478

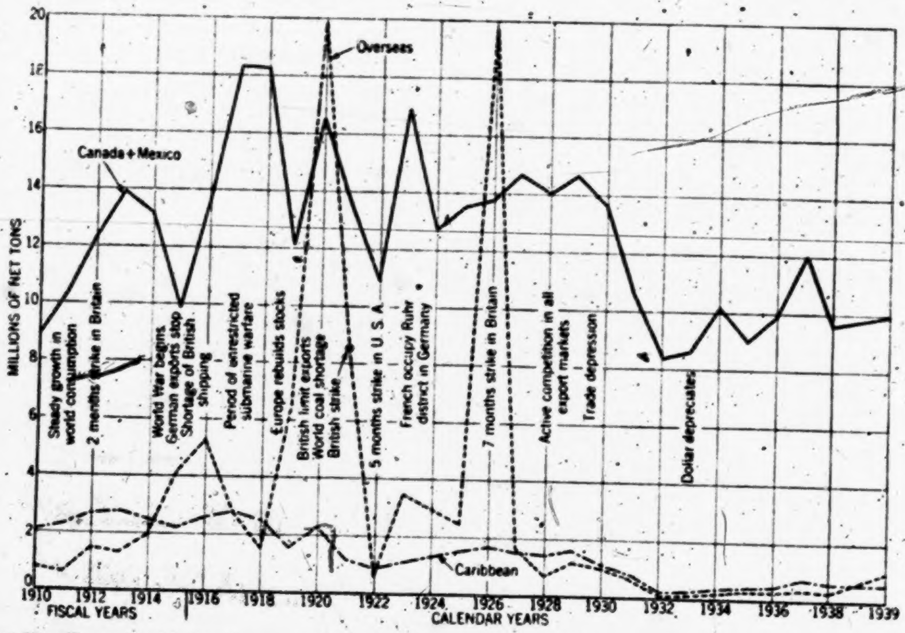

Figure 10.—Exports of bituminous coal to Canada and Mexico, the Caribbean, and "overseas" destinations, 1910–39.

Shipments to Alaska, Canton and Enderbury, Hawaii, Midway Islands, Puerto Rico, and the Virgin Islands.—In addition to export trade proper the United States supplies a small tonnage of anthracite and bituminous coal to Alaska, Canton and Enderbury, Hawaii, the Midway Islands, Puerto Rico, and the Virgin Islands. Shipments of bituminous coal to each of these possessions in 1939 were as follows: Alaska, 17,587 net tons; Canton and Enderbury, 3 net tons; Hawaii, 1,540 net tons; Midway Islands, 81 net tons; Puerto Rico, 14,709 net tons; and Virgin Islands, 69,751 net tons. Comparative shipments for 1938 were: Alaska, 23,465; Canton and Enderbury, none; Hawaii, 773; Midway Islands, none; Puerto Rico, 19,967; and Virgin Islands, 93,065.

WORLD PRODUCTION

TABLE 24.—*World production of coal and lignite, 1935–39, by countries, in thousands of metric tons* [1]

[Compiled by R. B. Miller, Bureau of Mines]

Country	1935	1936	1937	1938	1939
North America:					
Canada:					
Coal	9,358	10,308	11,014	9,815	10,965
Lignite	3,241	3,508	3,352	3,153	3,094
Greenland	6	5	6	7	(2)
Mexico	990	1,072	912	893	(2)
United States:					
Anthracite	47,317	49,513	47,043	41,820	46,708
Bituminous	335,315	395,511	401,257	313,473	353,885
Lignite	2,495	2,821	2,920	2,720	2,696
South America:					
Brazil	757	648	763	883	1,030
Chile	1,900	1,875	1,988	2,044	1,882
Colombia	200	282	330	331	(2)
Peru	85	90	99	75	63
Venezuela	6	6	7	6	3
Europe:					
Albania: Lignite	2	3	4	4	(2)
Belgium	26,506	27,867	29,859	29,585	29,847
Bulgaria:					
Coal	93	102	120	142	(2)
Lignite	1,566	1,576	1,732	1,855	(2)
Czechoslovakia:					
Coal	10,894	12,233	16,778	15,800	(2)
Lignite	15,114	15,949	17,895	14,717	(2)
Faroe Islands: Lignite				8	(2)
France:					
Coal	46,213	45,228	44,319	46,498	51,600
Lignite	907	943	1,015	1,057	
Germany: [3]					
Coal	132,379	146,707	171,148	171,788	(2)
Lignite	146,033	160,276	183,538	195,312	(2)
Austria:					
Coal	261	244	230	227	(2)
Lignite	2,971	2,897	3,242	3,342	(2)
Saar [4]	10,624	11,673	13,365	14,389	(2)
Greece: Lignite	83	106	131	108	(2)
Hungary:					
Coal	823	827	917	1,042	(2)
Lignite	6,718	7,105	8,055	8,320	(2)
Irish Free State	115	127	128	120	120
Italy:					
Coal	443	806	964	1,480	1,091
Lignite	545	769	1,059	873	1,410
Netherlands:					
Coal	11,878	12,803	14,321	13,488	12,861
Lignite	86	89	143	171	197
Poland:					
Coal	28,545	29,748	36,218	38,104	(2)
Lignite	18	14	19	10	(2)
Portugal:					
Coal	211	217	259	299	313
Lignite	20	21	23	15	35
Rumania:					
Coal	278	293	303	299	(2)
Lignite	1,667	1,672	1,880	2,097	(2)
Spain:					
Coal	7,016	(5)	(5)	5,289	6,753
Lignite	304	(5)	(5)	68	204
Svalbard (Spitsbergen)	709	784	766	627	(2)
Sweden	424	456	460	444	449
Switzerland	4	3	4	3	3
United Kingdom:					
Great Britain	225,816	232,115	244,268	230,659	236,700
Northern Ireland	4	5	1	(6)	(2)
U. S. S. R.:					
Coal	76,998	93,685	94,525	98,627	(2)
Lignite					
Yugoslavia:					
Coal	390	441	428	450	443
Lignite	4,002	4,035	4,574	5,287	5,604

See footnotes at end of table.

TABLE 24.—*World production of coal and lignite, 1935–39, by countries, in thousands of metric tons*—Continued

Country	1935	1936	1937	1938	1939
Asia:					
British Borneo	(5)	(5)	(5)	(5)	(5)
China	[7] 26,125	[7] 27,116	(5)	(5)	(5)
Chosen	1,999	2,282	2,348	(5)	(5)
Federated Malay States	383	511	638	486	402
India, British:					
Coal	23,540	23,129	25,586	28,972	(2)
Lignite	430	419	488	545	(2)
Indochina:					
Coal	1,775	2,186	2,308	2,340	2,600
Lignite				4	(2)
Japan:					
Japan proper:					
Coal	37,674	41,803	(5)	(5)	(5)
Lignite	109	109	(5)	(5)	(5)
Karafuto	1,516	2,010	(5)	(5)	(5)
Taiwan	1,597	1,744	(5)	(5)	(5)
Levant: Lignite		(6)	5	(6)	1
Netherland India	1,111	1,147	1,364	1,457	1,755
Philippine Islands		25	22	(5)	(2)
Turkey:					
Coal	2,340	2,299	2,307	2,589	2,696
Lignite	73	95	116	129	151
U. S. S. R.:					
Coal Lignite	32,062	32,785	32,616	34,261	(2)
Africa:					
Algeria	38	7	14	13	(2)
Belgian Congo: Coal	11	14	36	42	(2)
Morocco, French	53	49	107	123	116
Nigeria	262	296	369	368	(2)
Portuguese East Africa	16	8	19	10	8
Southern Rhodesia	695	705	1,029	1,044	1,118
Union of South Africa	13,574	14,642	15,491	16,284	16,888
Oceania:					
Australia:					
New South Wales	8,838	9,347	10,213	9,725	11,376
Queensland	1,069	1,064	1,138	1,131	1,339
Tasmania	126	134	93	85	99
Victoria:					
Coal	484	434	262	312	371
Lignite	2,257	3,094	3,448	3,734	3,710
Western Australia	546	574	562	614	566
New Zealand:					
Coal	838	873	986	994	2,380
Lignite	1,311	1,302	1,329	1,264	
Total, all grades	1,323,000	1,453,000	1,550,000	1,466,000	(2)
Lignite (total of items shown above)	204,000	225,000	254,000	264,000	(2)
Bituminous and anthracite (by subtraction)	1,119,000	1,228,000	1,296,000	1,202,000	(2)

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[1] Coal is also mined in Argentina, Iran, and Italian East Africa. Production figures for these countries are not available, but estimates are included in the totals. All figures for 1939 are to be considered as preliminary and subject to revision.

[2] Data not yet available.

[3] Exclusive of mines in the Saar.

[4] Mines under French control until Mar. 1, 1935

[5] Estimate included in total.

[6] Production less than 1,000 tons.

[7] Production of most important coal mines.

DETAILED STATISTICS, BY STATES AND COUNTIES

Detailed production and employment statistics are given in table 25 for each coal-producing county in the United States from which three or more operators submitted reports in 1938. Statistics for counties with less than three reporting producers have been combined with data for other counties in the same State to avoid disclosing individual returns, unless permission to publish has been granted by the operators.

In this series the reported production is classified according to the principal methods of distribution or use. Beginning with 1932 the series was expanded to include data on the growing volume of coal moving from mine to consumer by truck. For 1933–36 this tonnage was shown as "commercial sales by truck or wagon." In 1937 this tonnage was shown as "truck deliveries, including local sales." (See Minerals Yearbook, 1939, p. 813.) In 1938 the truck tonnage was shown as "shipped by truck or wagon." The truck figures for 1933 to 1936, inclusive, and 1938 are reasonably comparable.

The data in this report, like those published for many years by the Bureau of Mines, relate only to mines with an annual output of 1,000 tons or more. Although all mines, regardless of size, are subject to regulation under the provisions of the National Bituminous Coal Act of 1937, it seemed advisable to maintain the continuity of the old series by excluding the very small mines that sell by truck or wagon. This fact should be borne in mind when the statistics in this report are compared with similar data compiled by State mine departments. Differences arise largely from variations in coverage of the State reports, some of which include data for all mines regardless of size and others only data for mines employing more than a specified minimum number, which ranges from 2 to 10 men.

Because of a change in the method of reporting, the statistics of average production per man per day for 1932 to 1936 and 1938 are not precisely comparable with those for earlier years. Before 1932 they were based upon the calculated number of man-shifts, obtained by multiplying the average number of men employed at each mine by the number of days worked at the mine. Since 1932 operators have been asked to make a special report of the number of man-shifts actually worked if possible. The number of operators able to furnish this information has been small, although it is increasing from year to year. These reports were utilized to improve the accuracy of the record. Otherwise, the man-shifts were calculated by multiplying the number employed underground and on the surface by the number of days worked by the mine and tipple, respectively.

TABLE 25.—*Production, men employed, days operated, and output per man per day at bituminous-coal mines in specified States and counties in 1938*

[Note that figures relate only to active mines of commercial size, excluding truck and wagon mines producing less than 1,000 tons. Waste and refuse are not included in tonnage]

ALABAMA

County	Net tons					Number of employees				Average number of days mines operated	Man-days of labor	Average tons per man per day
	Loaded at mines for shipment by rail or water	Shipped by truck or wagon	Coal used by employees or taken by locomotives at tipple or other uses at mines	Used for power and heat or made into coke at mines	Total quantity	Underground	Surface		Total			
							In strip pits	All others				
Bibb	443,972	5,600	1,656	12,650	463,887	1,028	--------	157	1,185	153	181,392	2.56
Blount	91,476	30,931	110	180	122,697	306	24	48	378	174	65,687	1.87
Cullman	--------	26,441	10	--------	26,451	79	--------	16	95	199	18,906	1.40
Etowah	16,435	26,347	117	--------	42,899	90	--------	12	102	205	20,889	2.05
Jefferson	6,459,262	154,744	65,360	13,983	6,693,349	10,536	--------	1,459	11,995	190	2,273,151	2.94
Marion	198,301	52,544	1,475	--------	252,320	640	3	96	739	149	110,300	2.29
St. Clair	749,539	32,325	6,984	28,518	817,366	1,146	--------	101	1,247	194	241,811	3.39
Shelby	289,391	72,782	2,050	768	364,991	665	--------	136	801	185	148,411	2.46
Tuscaloosa	56,549	49,553	--------	--------	106,102	260	14	33	307	174	53,497	1.98
Walker	1,977,237	77,840	31,762	1,076	2,087,915	3,357	50	586	3,993	161	641,040	3.26
Other counties (Fayette, Jackson, Madison, and Winston)	73,584	9,932	--------	--------	83,516	232	--------	36	268	154	41,238	2.03
Total Alabama	10,355,746	539,048	109,524	[1] 57,175	11,061,493	18,339	91	2,680	21,110	180	3,795,822	2.91
ALASKA												
Total Alaska	151,656	--------	231	[1] 2,795	154,682	100	--------	44	144	204	29,413	5.26
ARIZONA, GEORGIA, IDAHO, AND OREGON												
Total Arizona, Georgia, Idaho, and Oregon	25,636	8,357	50	--------	34,043	82	--------	17	99	122	12,059	2.82

ARKANSAS

Franklin	152,847	2,711	761	2,384	158,703	354	10	51	415	140	58,150	2.73
Johnson	150,111	3,274	60	1,321	154,766	440	-------	84	524	96	50,527	3.06
Logan	394,720	443	710	560	396,433	1,162	-------	182	1,344	111	149,482	2.65
Pope	37,069	1,498	102	6	38,675	152	-------	24	176	105	18,434	2.10
Sebastian	432,493	12,752	90	3,135	448,470	1,107	55	200	1,362	112	153,026	2.93
Total Arkansas	1,167,240	20,678	1,723	[1] 7,406	1,197,047	3,215	65	541	3,821	112	429,619	2.79

COLORADO

Boulder	199,788	374,156	6,777	9,630	590,351	618	-------	113	731	212	154,742	3.82
Delta	28,609	24,151	3,200	1,024	54,984	55	-------	23	78	154	12,014	4.58
El Paso	41,163	180,442	36,121	6,582	264,308	221	-------	39	260	228	59,399	4.45
Fremont	175,007	289,149	4,609	2,247	471,012	705	-------	134	839	187	156,503	3.01
Garfield	19,582	24,260	705	365	44,912	37	-------	8	45	239	10,738	4.18
Gunnison	484,422	16,980	8,455	12,214	522,071	529	-------	103	632	169	106,936	4.88
Huerfano	524,475	61,478	3,855	1,859	591,667	815	-------	203	1,018	163	165,945	3.57
Jefferson	106,478	50,087	1,134	2,516	160,215	115	-------	27	142	211	29,950	5.35
La Plata	13,120	18,926	167	320	32,533	44	-------	9	53	185	9,791	3.32
Las Animas	649,788	52,207	3,994	[3] 97,659	803,648	1,321	-------	225	1,546	144	223,335	3.60
Mesa	21,023	40,975	586	2,532	65,116	91	-------	16	107	180	19,309	3.37
Moffat	14,886	18,359	1,960	-------	35,205	24	-------	4	28	242	6,765	5.20
Rio Blanco	-------	4,198	56	-------	4,254	7	-------	-------	7	209	1,462	2.91
Routt	685,874	20,304	4,653	30,600	741,431	1,001	-------	300	1,301	127	165,724	4.47
Weld	926,548	255,666	12,771	36,396	1,231,371	1,267	-------	165	1,432	183	262,310	4.69
Other counties (northern) (Elbert, Jackson, and Larimer)	9,824	9,181	170	732	19,907	14	10	4	28	196	5,487	3.63
Other counties (southern) (Montezuma, Montrose, and Pitkin)	530	28,206	1,423	-------	30,159	33	-------	5	38	255	9,678	3.12
Total Colorado	3,899,117	1,468,725	90,636	[3] 204,666	5,663,144	6,897	10	1,378	8,285	169	1,400,088	4.04

See footnotes at end of table.

TABLE 25.—*Production, men employed, days operated, and output per man per day at bituminous-coal mines in specified States and counties in 1938*—Continued

ILLINOIS

County	Net tons					Number of employees				Average number of days mines operated	Man-days of labor	Average tons per man per day
	Loaded at mines for shipment by rail or water	Shipped by truck or wagon	Coal used by employees or taken by locomotives at tipple or other uses at mines	Used for power and heat or made into coke at mines	Total quantity	Underground	Surface		Total			
							In strip pits	All others				
Bureau	1,603	52,442	2,288	2,758	59,091	236	7	18	261	115	29,979	1.97
Christian	3,628,051	116,371	11,436	17,760	3,773,618	1,839	--------	583	2,422	165	398,664	9.47
Clinton	27,713	89,182	2,603	8,724	128,222	379	--------	57	436	69	30,010	4.27
Edgar	52,571	28,862	200	2,511	84,144	45	16	26	87	129	11,225	7.50
Franklin	7,613,537	65,802	26,328	117,891	7,823,558	4,952	--------	1,556	6,508	142	926,082	8.45
Fulton	2,590,634	330,035	5,417	14,601	2,940,687	655	331	437	1,423	189	269,309	10.92
Gallatin	2,750	47,746	30	3,472	53,998	57	--------	12	69	210	14,502	3.72
Grundy	--------	117,664	512	2,260	120,436	156	19	22	197	151	29,766	4.05
Henry	556,326	103,090	2,105	6,210	667,731	298	70	111	479	192	92,199	7.24
Jackson	1,179,432	102,294	5,660	5,077	1,292,463	575	63	211	849	178	151,152	8.55
Knox	500,631	136,188	1,844	5,747	644,410	211	58	98	367	190	69,740	9.24
La Salle	134,557	204,005	6,014	10,323	354,899	491	102	81	674	180	121,352	2.92
Macoupin	2,918,481	146,126	47,084	126,915	3,238,606	2,009	--------	440	2,449	181	444,013	7.29
Madison	683,524	584,044	13,124	51,172	1,331,864	1,304	--------	260	1,564	148	230,737	5.77
Menard	--------	110,554	676	4,239	115,469	152	--------	30	182	202	36,703	3.15
Mercer	--------	18,863	129	1,027	20,019	66	--------	12	78	150	11,685	1.71
Montgomery	533,892	37,516	5,007	37,767	614,182	469	--------	144	613	117	71,682	8.57
Peoria	889,485	341,558	11,854	2,747	1,245,644	1,406	4	142	1,552	157	243,090	5.12
Perry	2,848,802	62,886	25,288	33,311	2,970,287	800	364	445	1,609	144	231,110	12.85
Randolph	926,154	97,975	8,667	18,322	1,051,118	383	64	175	622	157	97,557	10.77
Rock Island	--------	28,954	348	10	29,312	63	--------	8	71	167	11,836	2.48
St. Clair	795,559	1,377,225	27,252	49,423	2,249,459	1,869	72	439	2,380	146	347,135	6.48
Saline	2,971,723	64,497	13,207	50,927	3,100,354	2,789	85	569	3,443	130	447,224	6.93
Sangamon	1,351,799	533,918	12,865	17,410	1,915,992	2,487	--------	331	2,818	148	416,983	4.59
Schuyler	--------	41,376	182	1,002	42,560	60	8	19	87	219	19,088	2.23
Shelby	--------	6,700	102	26	6,828	29	--------	5	34	194	6,610	1.03
Stark	--------	17,422	17	--------	17,439	37	--------	7	44	211	9,300	1.88

Tazewell	45, 338	173, 623	247	553	219, 761	401	----	63	464	160	74, 312	2. 96
Vermilion	1, 167, 786	271, 041	97, 372	25, 294	1, 561, 490	1, 811	37	242	2, 090	138	288, 228	5. 42
Wabash	----	9, 820	125	130	10, 075	21	----	8	29	143	4, 141	2. 43
Washington	157, 537	62, 633	19, 589	17, 985	257, 744	302	----	72	374	132	49, 203	5. 24
Williamson	1, 716, 463	366, 753	7, 028	37, 972	2, 128, 216	1, 538	104	477	2, 119	118	250, 462	8. 50
Other counties [3]	1, 268, 494	534, 287	9, 301	30, 327	1, 842, 409	1, 327	294	348	1, 969	137	269, 456	6. 84
Total Illinois	34, 562, 842	6, 281, 452	363, 901	[1] 703, 890	41, 912, 085	29, 217	1, 698	7, 448	38, 363	149	5, 704, 535	[4] 7. 35
					INDIANA							
Clay	713, 797	414, 942	873	7, 822	1, 137, 434	244	428	208	880	148	129, 984	8. 75
Daviess	----	63, 139	400	2, 494	66, 033	66	11	18	95	161	15, 252	4. 33
Dubois	----	19, 095	150	20	19, 265	29	----	9	38	183	6, 970	2. 76
Fountain	----	44, 006	67	673	44, 746	45	----	24	69	164	11, 330	3. 95
Gibson	910, 764	111, 348	6, 193	22, 409	1, 050, 714	614	----	143	757	147	111, 013	9. 46
Greene	1, 774, 539	115, 480	8, 138	10, 215	1, 908, 372	439	345	275	1, 059	163	172, 216	11. 08
Knox	1, 338, 212	235, 639	6, 362	19, 369	1, 599, 582	804	19	232	1, 055	153	161, 897	9. 88
Martin	----	19, 539	85	----	19, 624	42	----	9	51	178	9, 055	2. 17
Owen	88, 017	4, 544	----	----	92, 561	4	62	38	104	80	8, 310	11. 14
Parke	----	113, 336	579	4, 315	118, 230	187	----	38	225	173	38, 908	3. 04
Perry	----	24, 083	25	2	24, 110	43	----	7	50	164	8, 211	2. 94
Pike	2, 579, 329	46, 407	6, 266	17, 043	2, 649, 045	134	522	336	992	173	171, 161	15. 48
Spencer	63, 295	17, 773	130	120	81, 318	20	34	9	63	162	10, 207	7. 97
Sullivan	1, 303, 735	63, 291	2, 714	23, 775	1, 393, 515	1, 083	101	258	1, 442	119	172, 138	8. 10
Vermillion	390, 987	124, 425	991	7, 990	524, 393	613	51	143	807	103	82, 794	6. 33
Vigo	2, 419, 507	167, 223	272, 707	30, 561	2, 889, 998	1, 433	183	384	2, 000	166	332, 770	8. 68
Warrick	842, 479	180, 542	3, 907	4, 099	1, 031, 027	285	179	195	659	154	101, 398	10. 17
Other counties (Vanderburgh and Warren)	59, 292	48, 996	12	217	108, 517	159	----	24	183	150	27, 370	3. 96
Total Indiana	12, 483, 953	1, 813, 808	309, 599	[1] 151, 124	14, 758, 484	6, 244	1, 935	2, 350	10, 529	149	1, 670, 984	[4] 9. 40

See footnotes at end of table.

TABLE 25.—*Production, men employed, days operated, and output per man per day at bituminous-coal mines in specified States and counties in 1938*—Continued

IOWA

County	Net tons					Number of employees				Average number of days mines operated	Man-days of labor	Average tons per man per day
	Loaded at mines for shipment by rail or water	Shipped by truck or wagon	Coal used by employees or taken by locomotives at tipple or other uses at mines	Used for power and heat or made into coke at mines	Total quantity	Under-ground	Surface		Total			
							In strip pits	All others				
Adams		21,341	100	105	21,546	117		10	127	146	18,579	1.16
Appanoose	284,829	106,606	1,985	83	393,503	1,403		190	1,593	113	179,447	2.19
Boone	289,930	77,843	5,663	2,082	375,518	773		89	862	162	139,695	2.69
Dallas	280,350	78,352	6,130	1,302	366,134	613		48	661	152	100,220	3.65
Davis and Taylor	202	24,027	529	16	24,774	39	14	5	58	158	9,158	2.71
Greene		19,001		5	19,006	48	15	5	68	68	4,612	4.12
Guthrie		18,462	118	25	18,605	79		8	87	161	13,998	1.33
Jasper		27,841	486	262	28,589	93		12	105	72	7,581	3.77
Jefferson and Keokuk		12,692	203	51	12,946	21	11	6	38	117	4,462	2.90
Lucas	415,432	13,369	4,893	2,135	435,829	672		63	735	148	108,819	4.01
Mahaska	91,466	111,043	2,908	1,391	206,808	81	107	39	227	173	39,380	5.25
Marion	112,468	326,871	2,375	1,264	442,978	659	107	121	887	130	114,884	3.86
Monroe	75,169	59,446	2,693	1,292	138,600	289	3	41	333	133	44,276	3.13
Page		32,247	225	15	32,487	94		13	107	186	19,896	1.63
Polk	62,128	223,043	2,781	2,048	290,000	738		68	806	124	99,889	2.90
Van Buren	64	18,613	223	35	18,935	28	13	9	50	170	8,521	2.22
Wapello	30,407	116,358	160	1,992	148,917	190	12	35	237	161	38,186	3.90
Warren		79,132	40	2,422	81,594	171	23	35	229	105	23,963	3.40
Wayne		18,426	310		18,736	82		10	92	154	14,177	1.32
Webster		27,598	31	53	27,682	44	17	9	70	158	11,052	2.50
Total Iowa	1,642,445	1,412,311	31,853	[1] 16,578	3,103,187	6,234	322	816	7,372	136	1,000,795	3.10
KANSAS												
Bourbon	136,102	23,841	236	938	161,117		54	25	79	210	16,589	9.71
Cherokee	479,669	33,001	1,454	1,293	515,417	62	144	89	295	150	44,124	11.68
Crawford	1,693,873	83,747	3,886	7,010	1,788,516	1,044	455	262	1,761	157	276,638	6.47
Labette		10,006	1	650	10,657		15	3	18	179	3,222	3.31
Linn	7,036	19,808		710	27,554	64	8	13	85	122	10,411	2.65
Osage	300	66,630	689		67,619	315	4	43	362	141	50,868	1.33
Other counties (Franklin and Leavenworth)	73,859	9,402			83,261	376		110	486	254	123,263	.68
Total Kansas [2]	2,390,839	246,435	6,266	[1] 10,601	2,654,141	1,861	680	545	3,086	170	525,115	5.05

KENTUCKY

Osage	300	66,630	689	----------	67,619	315	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Other counties (Franklin and Leavenworth)	73,859	9,402	----------	----------	83,261	376	----------	110	486	254	123,263	.68
Total Kansas [a]	2,390,839	246,435	6,266	[1] 10,601	2,654,141	1,861	680	545	3,086	170	525,115	5.05

KENTUCKY

Eastern district:												
Bell	1,620,438	73,125	68,175	6,116	1,767,854	2,332	----------	359	2,691	176	474,382	3.73
Boyd	6,222	16,823	300	----------	23,345	99	----------	17	116	125	14,519	1.61
Breathitt	5,587	3,636	31,901	362	41,486	132	----------	23	155	113	17,582	2.36
Carter	----------	38,214	----------	----------	38,214	66	----------	11	77	180	13,830	2.76
Clay	145,200	12,463	1,056	----------	158,719	273	----------	46	319	193	61,516	2.58
Floyd	4,035,311	1,767	10,921	15,722	4,063,721	4,558	----------	768	5,326	173	921,803	4.41
Greenup	----------	3,565	----------	----------	3,565	13	----------	3	16	59	950	3.75
Harlan	10,734,586	17,103	67,933	12,502	10,832,124	12,075	----------	1,601	13,676	179	2,454,104	4.41
Jackson	----------	142,213	----------	3,745	145,958	344	----------	64	408	174	71,153	2.05
Johnson	732,369	1,515	5,398	5,308	744,590	1,045	----------	132	1,177	155	182,659	4.06
Knott	174,679	----------	1,174	----------	175,853	384	----------	59	443	72	31,870	5.52
Knox	533,795	----------	3,233	2,190	539,218	614	----------	106	720	210	151,010	3.57
Laurel	----------	33,829	----------	----------	33,829	98	----------	17	115	221	25,420	1.33
Lee	----------	12,706	35	10	12,751	41	----------	7	48	133	6,394	1.99
Letcher	3,654,423	1,060	29,680	3,547	3,688,710	4,696	----------	582	5,278	160	843,976	4.37
Magoffin	67,697	846	757	----------	69,300	108	----------	19	127	145	18,352	3.78
Martin	187,504	----------	159	----------	187,663	244	----------	41	285	104	29,745	6.31
Perry	3,545,557	3,371	91,023	----------	3,639,951	4,243	----------	797	5,040	141	710,139	5.13
Pike	4,034,429	26,367	24,890	6,078	4,091,764	4,401	----------	650	5,051	169	853,496	4.79
Pulaski	----------	21,618	----------	----------	21,618	38	----------	7	45	140	6,295	3.43
Rockcastle	----------	17,653	30	----------	17,683	41	----------	9	50	128	6,423	2.75
Whitley	222,565	370	2,607	7,965	233,507	554	----------	106	660	123	81,233	2.87
Other counties (Elliott, McCreary, Morgan, Owsley, Wayne, and Wolfe)	621,915	14,590	9,544	----------	646,049	818	----------	130	948	146	138,640	4.66
Total Eastern	30,322,277	442,834	348,816	63,545	31,177,472	37,217	----------	5,554	42,771	166	7,115,491	4.38
Western district:												
Christian	28,177	26,182	161	----------	54,520	97	11	20	128	102	13,109	4.16
Daviess	----------	75,586	228	2,022	77,836	116	----------	23	139	131	18,164	4.29
Henderson	13,419	80,874	5,299	11,764	111,356	180	----------	45	225	145	32,583	3.42
Hopkins	3,043,181	167,095	58,910	12,990	3,282,176	2,670	49	534	3,253	151	490,365	6.69
Muhlenberg	1,783,532	80,238	10,700	32,088	1,906,558	2,502	----------	434	2,936	121	356,667	5.35
Ohio	204,192	19,509	3,791	844	228,336	392	----------	68	460	98	44,873	5.09
Union	443,102	95,334	17,098	18,669	574,203	620	----------	106	726	141	102,324	5.61
Webster	1,072,358	32,619	5,092	2,724	1,112,793	1,239	----------	204	1,443	113	163,716	6.80
Other counties (Butler, Hancock, and McLean)	274	19,516	20	158	19,968	63	----------	19	82	173	14,200	1.41
Total Western	6,588,235	596,953	101,299	81,259	7,367,746	7,879	60	1,453	9,392	132	1,236,001	5.96
Total Kentucky	36,910,512	1,039,787	450,115	[1] 144,804	38,545,218	45,096	60	7,007	52,163	160	8,351,492	4.62

See footnotes at end of table.

TABLE 25.—*Production, men employed, days operated, and output per man per day at bituminous-coal mines in specified States and counties in 1938*—Continued

MARYLAND

County	Net tons					Number of employees				Average number of days mines operated	Man-days of labor	Average tons per man per day
	Loaded at mines for shipment by rail or water	Shipped by truck or wagon	Coal used by employees or taken by locomotives at tipple or other uses at mines	Used for power and heat or made into coke at mines	Total quantity	Underground	Surface		Total			
							In strip pits	All others				
Allegany	593, 859	165, 657	5, 476	844	765, 836	1, 338	--------	178	1, 516	170	258, 330	2. 96
Garrett	456, 968	49, 160	3, 172	6, 277	515, 577	745	--------	110	855	172	146; 879	3. 51
Total Maryland	1, 050, 827	214, 817	8, 648	[1] 7, 121	1, 281, 413	2, 083	--------	288	2, 371	171	405, 209	3. 16
MICHIGAN												
Bay	45, 590	49, 468	2, 571	6, 308	103, 937	288	--------	24	312	132	41, 145	2. 53
Saginaw	6, 037	100, 460	1, 798	9, 388	117, 683	280	--------	35	315	176	55, 463	2. 12
Other counties (Shiawassee and Tuscola)	114, 516	142, 644	4, 609	11, 092	272, 861	531	--------	47	578	172	99, 217	2. 75
Total Michigan	166, 143	292, 572	8, 978	[1] 26, 788	494, 481	1, 099	--------	106	1, 205	163	195, 825	2. 53
MISSOURI												
Adair	60, 563	93, 970	2, 400	2, 832	159, 765	311	--------	51	362	172	62, 378	2. 56
Audrain, Lincoln, Montgomery, and Warren	--------	5, 676	10	80	5, 766	21	2	5	28	98	2, 736	2. 11
Barton	228, 003	16, 038	257	1, 285	245, 583	5	125	53	183	106	19, 405	[2] 12. 66
Bates	574, 883	9, 579	168	1, 573	586, 203	27	162	71	260	152	39, 442	[2] 14. 86
Boone	--------	12, 407	32	4	12, 443	33	6	9	48	119	5, 730	2. 17
Callaway	--------	112, 896	10	400	113, 306	--------	44	8	52	233	12, 140	[2] 9. 33
Chariton, Monroe, and Schuyler	--------	9, 131	127	56	9, 314	38	4	9	51	178	9, 090	1. 02
Clay	--------	78, 753	1, 363	1, 812	81, 928	313	--------	50	363	128	46, 593	1. 76
Dade, Jasper, and St. Clair	--------	8, 847	15	510	9, 372	6	7	7	20	203	4, 068	2. 30

Daviess, Grundy, and Platte	[illegible]	[illegible]	[illegible]	3,502	30,622	140		18	158	142	22,481	1.36
Harrison		12,883	159	628	13,670	46		13	59	156	9,231	1.48
Henry	492,473	82,057	870	6,815	582,215	28	203	83	314	165	51,859	[6] 11.23
Johnson and Morgan		11,944		633	12,577		13	6	19	187	3,552	3.54
Lafayette	177,907	75,110	3,620	3,508	260,145	965		71	1,036	139	144,483	1.80
Linn	17,395	58,706	406	28	76,535	302		55	357	176	62,710	1.22
Macon	441,179	24,434	3,262	1,906	470,781	123	61	63	247	178	44,066	[6] 10.68
Putnam		28,615	200	48	28,863	119		17	136	131	17,865	1.62
Ralls		14,660	25	10	14,695	34	4	8	46	221	10,154	1.45
Randolph	380,012	68,312	4,007		452,331	255	72	80	407	201	81,731	[6] 5.53
Ray	100,739	98,367	6,624	343	206,073	856		92	948	129	122,494	1.68
Vernon	20,016	40,618	358	2,939	63,931	55	47	17	119	126	15,012	[6] 4.26
Total Missouri [5]	2,494,752	888,002	24,452	[1] 28,912	3,436,118	3,677	750	786	5,213	151	787,220	4.36

MONTANA

Blaine and Phillips		12,616			12,616	24		5	29	180	5,226	2.41
Carbon	298,433	29,476	2,742	467	331,118	180		82	262	183	47,867	6.92
Cascade	445,972	42,542	2,073		490,587	288		42	330	191	62,883	7.80
Chouteau		8,001	20		8,021	21		5	26	197	5,110	1.57
Daniels, McCone, and Valley [7]		8,760	20	4	8,784	7	4	1	12	205	2,464	3.56
Dawson [7]		1,428	10		1,438	5		1	6	86	515	2.79
Flathead and Pondera	30	4,114	17	100	4,261	19		4	23	142	3,274	1.30
Hill		8,693	45		8,738	24		5	29	213	6,178	1.41
Musselshell and Rosebud	1,775,771	31,982	5,089	2,865	1,815,707	482	33	189	704	163	114,503	[6] 15.86
Richland [7]	3,939	8,272	700		12,911	22	3	5	30	156	4,688	2.75
Roosevelt [7]		6,582	972	5	7,559	10		4	14	145	2,033	3.72
Sheridan [7]		14,204	893	59	15,156	18		7	25	172	4,289	3.53
Other lignite counties (Custer and Wibaux) [7]		7,697			7,697	5		1	6	182	1,092	7.05
Other bituminous counties (Gallatin, Park, Powder River, and Stillwater)		6,924	419	114	7,457	21		8	29	195	5,662	1.32
Total Montana	2,524,145	191,291	13,000	[1] 3,614	2,732,050	1,126	40	359	1,525	174	265,784	10.28

See footnotes at end of table.

TABLE 25.—*Production, men employed, days operated, and output per man per day at bituminous-coal mines in specified States and counties in 1938*—Continued

NEW MEXICO

County	Net tons					Number of employees				Average number of days mines operated	Man-days of labor	Average tons per man per day
	Loaded at mines for shipment by rail or water	Shipped by truck or wagon	Coal used by employees or taken by locomotives at tipple or other uses at mines	Used for power and heat or made into coke at mines	Total quantity	Underground	Surface		Total			
							In strip pits	All others				
Colfax	604, 898	24, 025	4, 966	2, 641	636, 530	808	--------	191	999	138	137, 540	4. 63
McKinley	393, 577	43, 730	5, 176	24, 208	466, 691	853	--------	215	1, 068	167	178, 395	2. 62
Rio Arriba	15, 747	4, 469	129	--------	20, 345	23	--------	9	32	232	7, 427	2. 74
Other counties (Bernalillo, Sandoval, Santa Fe, San Juan, and Socorro)	89, 550	14, 875	3, 308	7, 738	115, 471	284	--------	91	375	146	54, 649	2. 11
Total New Mexico	1, 103, 772	87, 099	13, 579	[1] 34, 587	1, 239, 037	1, 968	--------	506	2, 474	153	378, 011	3. 28

NORTH DAKOTA (LIGNITE)[7]

County	Loaded at mines for shipment by rail or water	Shipped by truck or wagon	Coal used by employees or taken by locomotives at tipple or other uses at mines	Used for power and heat or made into coke at mines	Total quantity	Underground	In strip pits	All others	Total	Average number of days mines operated	Man-days of labor	Average tons per man per day
Adams	14, 207	25, 860	1, 600	15	41, 682	59	2	23	84	139	11, 654	3. 58
Billings, Golden Valley, and Slope	--------	4, 496	125	--------	4, 621	5	6	5	16	149	2, 380	1. 94
Bowman	68	5, 636	--------	--------	5, 704	7	2	2	11	138	1, 515	3. 77
Burke	184, 442	53, 822	60	100	238, 424	--------	49	33	82	168	13, 812	[8] 17. 26
Burleigh	199, 326	28, 063	24	20	227, 433	33	30	21	84	226	19, 002	[8] 11. 97
Divide	153, 765	8, 114	3, 800	702	166, 381	12	39	17	68	168	11, 455	[8] 14. 52
Dunn	--------	3, 153	100	100	3, 353	--------	5	1	6	125	750	4. 47
Grant	5, 151	17, 176	108	600	23, 035	16	4	5	25	148	3, 700	6. 23
Hettinger	420	16, 271	614	210	17, 515	7	17	7	31	155	4, 809	3. 64
McKenzie	--------	5, 549	--------	--------	5, 549	3	8	4	15	156	2, 340	2. 37
McLean	103, 611	22, 477	2, 523	188	128, 799	80	54	27	161	134	21, 563	5. 97
Mercer	463, 044	2, 352	77, 674	2, 310	545, 380	149	60	107	316	175	55, 195	9. 88
Morton	8, 580	17, 038	130	2, 626	28, 374	19	14	11	44	127	5, 575	5. 09
Mountrail	--------	12, 975	--------	21	12, 996	19	5	4	28	195	5, 470	2. 38
Oliver	--------	7, 490	87	70	7, 647	--------	14	4	18	95	1, 711	4. 47
Stark	60	17, 168	73, 052	652	90, 932	57	--------	6	63	239	15, 046	6. 04
Ward	331, 930	121, 470	178	97	453, 675	152	29	62	243	208	50, 648	[8] 8. 96
Williams	770	47, 794	--------	35	48, 599	49	6	20	75	148	11, 126	4. 37
Total North Dakota	1, 465, 374	416, 904	160, 075	[1] 7, 746	2, 050, 099	667	344	359	1, 370	174	237, 751	8. 62

Athens	1,544,872	16,273	7,375	17,078	1,585,598	4,048		432	4,480	84	375,943	4.22
Belmont	5,405,411	149,411	57,058	16,572	5,628,452	7,107		734	7,841	156	1,223,162	4.60
Carroll	89,725	179,139	15,508	185	284,557	328	42	39	409	169	68,983	4.13
Columbiana	89,893	269,211	685	8,308	368,097	304	102	52	458	174	79,581	4.63
Coshocton	32,126	141,541	766	819	175,252	225	15	41	281	174	48,912	3.58
Gallia	240	26,165	40		26,445	44		8	52	186	9,690	2.73
Guernsey	484,053	65,905	4,272	1,080	555,310	823		87	910	131	119,511	4.65
Harrison	1,778,444	29,178	1,341	12,118	1,821,061	1,127	83	295	1,505	196	294,254	6.19
Hocking	94,956	113,848	413		209,217	286	4	49	339	143	48,405	4.32
Holmes		30,861	40	80	30,981	39	9	7	55	199	10,951	2.83
Jackson	78,439	73,152	63,872		210,463	212	31	37	280	180	50,482	4.17
Jefferson	3,627,362	306,739	9,616	23,781	3,967,498	3,472	280	607	4,359	174	758,986	5.23
Lawrence		52,576	10,686	25	63,267	117		22	139	183	25,497	2.48
Mahoning	11,128	239,945	3,806	3,774	258,653	154	52	31	237	226	53,524	4.83
Medina		6,683	134	186	7,003	12		3	15	176	2,637	2.66
Meigs	42,528	59,707	822		103,057	122		26	148	201	29,805	3.46
Morgan and Washington	75,141	13,452	312		88,905	434		38	472	62	29,192	3.05
Muskingum	700,818	214,668	1,717	39	917,242	716	23	107	846	205	173,762	5.28
Perry	545,544	195,343	6,872	275	748,034	1,350	27	181	1,558	129	201,490	3.71
Stark	31,020	404,863	14,119	660	450,662	331	111	72	514	177	90,948	4.96
Summit		10,668			10,668	25		4	29	134	3,890	2.74
Tuscarawas	87,114	609,873	121,756	8,488	827,231	1,272	83	215	1,570	138	216,289	3.82
Vinton	10,321	59,753	6,098	195	76,367	57	53	29	139	140	19,469	3.92
Wayne		19,725		100	19,825	49		7	56	167	9,370	2.12
Other counties (Noble and Portage)	124,563	22,729	1,625	7,836	156,753	652	5	44	701	57	39,620	3.96
Total Ohio	14,848,698	3,311,408	328,913	[1] 101,599	18,590,618	23,306	920	3,167	27,393	145	3,984,353	4.67

OKLAHOMA

Coal		13,171	127	14	13,312	44		11	55	143	7,885	1.69
Haskell and Le Flore	334,186	3,763	333	3,248	341,530	827	21	164	1,012	119	120,723	2.83
Latimer	3,927	2,020	36	170	6,153	35		6	41	71	2,921	2.11
Muskogee	3,209	6,067	60	250	9,586	18	12	7	37	98	3,635	2.64
Okmulgee	204,923	17,928	418	1,046	224,315	347		54	401	140	56,116	4.00
Pittsburg	170,202	22,092	689	5,986	198,969	398		72	470	172	80,740	2.46
Tulsa	30,846	6,270	141	25	37,282	80		16	96	154	14,825	2.51
Other counties (Craig, Rogers, and Wagoner)	377,565	32,264	1,001	2,755	413,585	7	167	43	217	169	36,626	[6] 11.29
Total Oklahoma	1,124,858	103,575	2,805	[1] 13,494	1,244,732	1,756	200	373	2,329	139	323,471	3.85

See footnotes at end of table.

TABLE 25.—*Production, men employed, days operated, and output per man per day at bituminous-coal mines in specified States and counties in 1938*—Continued.

PENNSYLVANIA (BITUMINOUS)

County	Net tons					Number of employees				Average number of days mines operated	Man-days of labor	Average tons per man per day
	Loaded at mines for shipment by rail or water	Shipped by truck or wagon	Coal used by employees or taken by locomotives at tipple or other uses at mines	Used for power and heat or made into coke at mines	Total quantity	Underground	Surface		Total			
							In strip pits	All others				
Allegheny	9,248,431	1,763,612	907,845	68,673	11,988,561	11,714	77	1,746	13,537	178	2,406,107	4.98
Armstrong	2,296,145	45,267	42,493	737	2,384,642	3,396	------	475	3,871	147	568,279	4.20
Beaver	158,007	253,234	388	4,663	416,292	161	148	58	367	185	67,866	6.13
Bedford	65,835	72,094	181,706	631	320,266	539	------	78	617	151	93,235	3.44
Blair	61,227	60,721	946	------	122,894	274	------	32	306	153	46,756	2.63
Butler	275,296	264,308	6,205	3,109	548,918	1,283	5	182	1,470	126	184,825	2.97
Cambria	10,843,998	394,448	919,115	[1] 175,464	12,333,025	17,073	------	2,378	19,451	164	3,197,957	3.86
Center	218,625	86,060	18,867	160	323,712	600	------	101	701	147	102,728	3.15
Clarion	1,108,520	110,889	16,696	40	1,236,145	1,402	20	170	1,592	208	330,554	3.74
Clearfield	2,243,963	150,197	42,454	22,421	2,459,035	4,232	8	508	4,748	153	725,666	3.39
Clinton	------	33,323	203	38	33,564	52	------	7	59	212	12,504	2.68
Crawford and Venango	------	31,344	------	------	31,344	47	10	8	65	163	10,606	2.96
Elk	579,161	32,409	6,042	17,225	634,837	869	2	138	1,009	184	185,250	3.43
Fayette	9,484,997	176,743	69,586	[1] 364,505	10,095,831	12,219	77	1,836	14,132	139	1,970,868	5.12
Greene	3,437,820	4,543	18,101	13,810	3,474,274	3,150	------	577	3,727	168	626,125	5.55
Huntingdon	325,865	59,865	3,046	6,299	395,075	844	------	74	918	145	132,787	2.98
Indiana	5,209,761	38,359	230,900	[1] 197,777	5,676,797	6,492	------	732	7,224	173	1,247,072	4.55
Jefferson	1,765,703	83,508	4,660	10,329	1,864,200	2,295	5	376	2,676	175	468,409	3.98
Lawrence	168,434	31,384	2,311	481	202,610	438	4	60	502	155	77,878	2.60
Lycoming	11,324	49,813	260	469	61,866	118	2	19	139	185	25,667	2.41
Mercer	102	109,108	583	1,967	111,760	252	10	41	303	172	52,126	2.14
Somerset	3,717,196	84,651	31,245	62,152	3,895,244	6,112	------	884	6,996	136	953,147	4.09
Tioga	105,742	77,929	1,691	3,997	189,359	334	18	68	420	152	63,861	2.97
Washington	12,086,834	261,806	224,265	22,740	12,595,645	16,259	225	1,848	18,332	153	2,796,424	4.50
Westmoreland	5,215,985	485,759	159,800	[1] 307,980	6,169,524	8,683	------	1,402	10,085	128	1,292,518	4.77
Other counties (Bradford, Fulton, and McKean)	128,045	7,194	966	2,912	139,117	229	2	21	252	159	40,036	3.47
Total Pennsylvania	68,757,016	4,768,568	2,890,374	[1] 1,288,579	77,704,537	99,067	613	13,819	113,499	156	17,679,250	4.40

Corson, Dewey, and Harding	27,148	15,826	190		43,164	5	.20	7	32	199	6,353	6.79
Meade		1,076	100		1,176	6		2	8	93	740	1.59
Perkins		3,668	50		3,718	7	3		10	141	1,414	2.63
Total South Dakota	27,148	20,570	340		48,058	18	23	9	50	170	8,507	5.65
TENNESSEE												
Anderson	825,241	48,697	5,551	7,178	886,667	1,215		197	1,412	166	234,514	3.78
Campbell	1,177,409	27,000	19,932	967	1,225,308	1,940		315	2,255	167	375,925	3.26
Claiborne	831,061	24,177	10,993	2,883	869,114	1,357		203	1,560	143	223,071	3.90
Cumberland		8,124	15	175	8,314	21		5	26	172	4,471	1.86
Fentress	214,921	5,825	2,927	5,876	229,549	391		99	490	146	71,475	3.21
Hamilton		23,915			23,915	64		11	75	177	13,279	1.80
Marion	359,588	38,309	3,019	1,030	401,946	588		115	703	181	126,962	3.17
Morgan	240,177	20,750	2,410	8,696	272,033	600		94	694	239	165,845	1.64
Overton		13,831			13,831	29		4	33	171	5,658	2.44
Scott	86,659	20,560	821	2,588	110,628	159	4	26	189	205	38,743	2.86
Van Buren	661	13,110		156	13,927	38		7	45	126	5,679	2.45
Other northeastern counties (Putnam and Roane)	3,345	15,791			19,136	37		7	44	220	9,667	1.98
Other southeastern counties (Bledsoe, Grundy, Rhea, Sequatchie, and White)	320,944	60,795	5,167	[6] 11,129	398,035	655		85	740	146	108,198	3.68
Total Tennessee	4,060,006	320,884	50,835	[6] 40,678	4,472,403	7,094	4	1,168	8,266	167	1,383,487	3.23
TEXAS												
Bituminous:												
Palo Pinto, Webb, and Wise	20,413	7,590	42	4,421	32,466	199		71	270	149	40,282	.81
Lignite:[7]												
Bastrop and Milam	104,718	3,800	1,000	761	110,279	88	22	12	122	150	18,266	6.04
Henderson, Titus, and Wood	708,378	17,502	5,245	4,815	735,940	358		26	384	241	92,502	7.96
Total lignite	813,096	21,302	6,245	5,576	846,219	446	22	38	506	219	110,768	7.64
Total Texas	833,509	28,892	6,287	[1] 9,997	878,685	645	22	109	776	195	151,050	5.82

See footnotes at end of table.

TABLE 25.—*Production, men employed, days operated, and output per man per day at bituminous-coal mines in specified States and counties in 1938*—Continued

UTAH

County	Net tons					Number of employees				Average number of days mines operated	Man-days of labor	Average tons per man per day
	Loaded at mines for shipment by rail or water	Shipped by truck or wagon	Coal used by employees or taken by locomotives at tipple or other uses at mines	Used for power and heat or made into coke at mines	Total quantity	Underground	Surface		Total			
							In strip pits	All others				
Carbon	2,288,757	180,155	16,996	[10] 19,907	2,505,815	1,961	....	611	2,572	157	403,616	6.21
Emery	255,869	88,795	1,480	2,023	348,167	270	....	99	369	138	50,855	6.84
Sanpete and Sevier	....	7,095	5	....	7,100	10	....	6	16	155	2,457	2.85
Summit	7,540	24,886	141	....	32,567	29	....	8	37	253	9,352	3.48
Other counties (Grand, Iron, and Uintah)	39,756	13,144	320	82	53,302	68	....	14	82	[illegible]	13,393	3.98
Total Utah	2,591,922	314,075	18,942	[10] 22,012	2,946,951	2,338	....	738	3,076	156	479,733	6.14

VIRGINIA

County	Loaded at mines for shipment by rail or water	Shipped by truck or wagon	Coal used by employees or taken by locomotives at tipple or other uses at mines	Used for power and heat or made into coke at mines	Total quantity	Underground	In strip pits	All others	Total	Average number of days mines operated	Man-days of labor	Average tons per man per day
Buchanan	3,731,544	4,865	5,941	120	3,742,470	3,209	....	406	3,615	189	684,298	5.47
Dickenson	1,355,970	6,926	6,863	747	1,370,506	1,543	....	246	1,789	225	402,324	3.41
Lee	943,814	32,922	10,684	401	987,821	1,454	....	261	1,715	163	278,913	3.54
Montgomery and Pulaski [11]	109,642	23,384	1,441	5,265	139,732	400	....	127	527	135	71,059	1.97
Russell and Scott	430,904	69,117	5,222	4,311	509,554	892	....	124	1,016	140	142,567	3.57
Tazewell	2,726,515	47,952	20,271	5,711	2,800,449	3,045	....	547	3,592	205	736,023	3.80
Wise	2,428,271	35,081	22,035	[12] 247,117	2,732,504	4,016	....	491	4,507	134	602,917	4.53
Total Virginia	11,726,660	220,247	72,457	[13] 268,672	12,283,036	14,559	....	2,202	16,761	174	2,918,100	4.21

WASHINGTON

County	Loaded at mines for shipment by rail or water	Shipped by truck or wagon	Coal used by employees or taken by locomotives at tipple or other uses at mines	Used for power and heat or made into coke at mines	Total quantity	Underground	In strip pits	All others	Total	Average number of days mines operated	Man-days of labor	Average tons per man per day
King	339,213	259,568	4,499	1,405	604,685	853	....	250	1,103	166	182,699	3.31
Kittitas	630,092	33,265	7,744	12,282	683,383	780	....	280	1,060	162	171,753	3.98
Lewis	8,791	22,679	72	443	31,985	43	....	10	53	134	7,099	4.51
Pierce	19,827	17,004	240	100	37,171	64	....	13	77	165	12,734	2.92
Other counties (Thurston and Whatcom)	151,986	50,733	1,326	5,704	209,749	250	....	48	298	164	48,834	4.30
Total Washington	1,149,909	383,249	13,881	[1] 19,934	1,566,973	1,990	....	601	2,591	163	423,119	3.70

WEST VIRGINIA

Barbour	1,196,417	6,788	2,104	90	1,205,399	1,265	--------	158	1,423	152	215,846	5.58
Boone	2,752,576	3,887	14,647	631	2,771,741	2,855	--------	436	3,321	161	535,074	5.18
Braxton and Gilmer	4,209	5,059	10,069	4	19,341	58	--------	12	70	69	4,831	4.00
Brooke	303,042	131,002	661,268	109	1,095,421	1,027	30	157	1,214	140	170,494	6.42
Clay	661,422	1,469	20,274	17,981	701,146	698	--------	152	850	184	156,092	4.49
Fayette	10,252,273	15,047	152,012	[13] 285,127	10,704,459	10,533	--------	1,551	12,084	206	2,486,347	4.31
Grant	--------	21,405	88	73	21,566	57	--------	9	66	242	16,001	1.35
Greenbrier	1,403,696	30,615	9,490	221	1,444,022	1,628	--------	233	1,861	155	288,913	5.00
Hancock	35,313	99,834	87	5	135,239	52	26	22	100	232	23,193	5.83
Harrison	3,077,742	20,527	57,237	5,144	3,160,650	2,294	--------	384	2,678	164	439,563	7.19
Kanawha	5,767,708	58,406	55,661	5,404	5,887,179	6,144	--------	770	6,914	185	1,277,327	4.61
Lewis	--------	3,768	7,144	--------	10,912	13	--------	4	17	228	3,880	2.81
Lincoln and Wayne	--------	23,149	6	--------	23,155	40	--------	7	47	179	8,400	2.76
Logan	11,841,896	5,772	97,038	10,041	11,954,747	9,300	--------	1,877	11,177	171	1,907,852	6.27
McDowell	15,217,558	48,442	192,294	86,057	15,544,351	15,446	--------	3,272	18,718	160	2,988,616	5.20
Marion	6,484,473	25,828	212,548	39,400	6,762,249	5,327	--------	819	6,146	176	1,079,801	6.26
Marshall	253,717	73,180	123,638	2,077	452,612	569	--------	99	668	142	94,543	4.79
Mason	11,772	67,845	886	3,748	84,251	163	--------	22	185	156	28,905	2.91
Mercer	2,540,152	5,044	23,756	1,232	2,570,184	3,045	--------	718	3,763	155	583,911	4.40
Mineral	195,604	28,310	1,990	80	225,984	386	--------	62	448	186	83,528	2.71
Mingo	2,999,420	3,193	28,535	28	3,031,176	2,767	--------	453	3,220	162	522,480	5.80
Monongalia	5,291,800	24,621	18,176	71	5,334,668	3,120	--------	671	3,791	179	680,000	7.85
Nicholas	1,636	23,857	191	448	26,132	57	--------	10	67	123	8,267	3.16
Ohio	1,334,264	118,778	220	190	1,453,452	1,341	--------	128	1,469	258	379,151	3.83
Preston	310,235	18,560	12,975	[13] 7,938	349,708	840	--------	111	951	95	90,217	3.88
Putnam	573,554	4,266	4,490	179	582,489	614	--------	83	697	250	174,233	3.34
Raleigh	12,562,489	44,492	111,676	56,603	12,775,260	12,582	--------	2,016	14,598	188	2,739,523	4.66
Randolph	810,809	36,176	4,518	17,020	868,523	927	--------	168	1,095	163	178,684	4.86
Taylor	395,091	14,486	994	73	410,644	616	--------	74	690	125	86,328	4.76
Tucker	385,207	1,283	6,360	16,358	409,208	460	--------	58	518	167	86,745	4.72
Upshur	30,816	4,569	122	1,409	36,916	178	--------	45	223	41	9,173	4.02
Webster	894,240	3,817	1,296	1,647	901,000	980	--------	156	1,136	175	199,314	4.52
Wyoming	2,284,259	11,828	18,039	20,262	2,334,388	2,440	--------	394	2,834	189	535,471	4.36
Total West Virginia	89,873,390	985,303	1,849,829	[13] 579,650	93,288,172	87,852	56	15,131	103,039	175	18,082,703	5.16

See footnotes at end of table.

TABLE 25.—*Production, men employed, days operated, and output per man per day at bituminous-coal mines in specified States and counties in 1938*—Continued

WYOMING

County	Net tons					Number of employees				Average number of days mines operated	Man-days of labor	Average tons per man per day
	Loaded at mines for shipment by rail or water	Shipped by truck or wagon	Coal used by employees or taken by locomotives at tipple or other uses at mines	Used for power and heat or made into coke at mines	Total quantity	Underground	Surface		Total			
							In strip pits	All others				
Carbon	528,594	37,350	3,155	20,445	589,544	246	13	108	367	221	80,957	7.28
Converse		10,952			10,952	2	10	2	14	187	2,624	4.17
Fremont	22,663	10,796	121	4,733	38,313	28		10	38	115	4,358	8.79
Hot Springs	37,947	15,951	1,187	6,659	61,744	183		54	237	103	24,507	2.52
Johnson		7,639			7,639	10		3	13	187	2,428	3.15
Lincoln	377,609	35,982	3,819	9,080	426,490	461		101	562	154	86,497	4.93
Sheridan	558,790	63,321	2,992	2,481	627,584	274		92	366	162	59,137	10.61
Sweetwater	3,230,729	8,223	21,574	55,285	3,315,811	2,248		518	2,766	190	526,068	6.30
Uinta	7,978	8,484	114	68	16,644	16		5	21	277	5,817	2.86
Other counties (Campbell, Natrona, and Teton)	86,571	15,303	562	6,720	109,156	6	21	12	39	243	9,486	11.51
Total Wyoming	4,850,891	214,001	33,524	[1] 105,471	5,203,877	3,474	44	905	4,423	181	801,879	6.49

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[1] No coal was made into beehive coke at mines in 1938.

[2] Includes 84,172 tons made into beehive coke at mines in Las Animas County, Colo., in 1938.

[3] Other counties include Adams, Bond, Crawford, Greene, Hancock, Jasper, Livingston, Logan, Macon, Marion, Marshall, Morgan, Putnam, Warren, White, Will, and Woodford.

[4] Much of the output of the State is obtained from strip pits or by the use of loading machines, in which types of operations the production per man per day is large.

[5] Production of Home Riverside and Alston mines is credited to Missouri rather than to Kansas.

[6] The output is obtained chiefly from strip pits in which the production per man per day is large.

[7] Data on lignite compiled by L. Mann, Bureau of Mines: see Lignite tables, 1938.

[8] Includes coal made into beehive coke at mines in the following counties in Pennsylvania in 1938: Cambria, 38,777; Fayette, 333,216; Indiana, 121,489; and Westmoreland, 271,771—a grand total of 765,253 tons.

[9] Includes 10,000 tons made into beehive coke at mines in Grundy County, Tenn., in 1938.

[10] Includes 15,667 tons made into beehive coke at mines in Carbon County, Utah, in 1938.

[11] Figures compiled by L. Mann, Bureau of Mines; see Anthracite and Semianthracite Outside of Pennsylvania tables, 1938.

[12] Includes 234,765 tons made into beehive coke at mines in Wise County, Va., in 1938.

[13] Includes 250,019 tons made into beehive coke at mines in Fayette and Preston Counties, W. Va., in 1938.

STATISTICS OF LIGNITE AND OF ANTHRACITE AND SEMI-ANTHRACITE OUTSIDE OF PENNSYLVANIA [4]

PRODUCTION OF LIGNITE

In addition to the study of Pennsylvania anthracite, the Bureau of Mines canvasses the operators of lignite properties included in the areas mapped as "lignite" in Geological Survey Professional Paper 100–A, The Coal Fields of the United States. Subbituminous coal, sometimes known as "black lignite," is not included.

Fewer lignite mines were active in 1938 than in 1937, and output, number of employees, and days of operation decreased. The length of the working day in most mines was 8 hours, but many smaller operations failed to reply to the request for this information. Mechanical loading underground was not practiced to any extent, as only one or two operators in North Dakota recorded the use of mobile loaders in the year. No labor disturbances were reported.

Detailed data of production in 1938 are presented in the following tables. An historical table of world output of lignite is also given.

TABLE 26.—*Summary of production, value, men employed, days operated, man-days of labor, and output per man per day at lignite mines in the United States in 1938, by States* [1]

State	Net tons					Value	
	Loaded at mines for shipment	Commercial sales by truck or wagon	Other sales to local trade, used by employees, or taken by locomotives at tipple	Used at mines for power and heat	Total quantity	Total (thousands of dollars)	Average per ton
Montana	3,939	46,943	2,595	68	53,545	88	$1.64
North Dakota	1,465,374	416,904	160,075	7,746	2,050,099	2,380	1.16
South Dakota	27,148	20,570	340	----------	48,058	65	1.35
Texas	813,096	21,302	6,245	5,576	846,219	679	.80
Total: 1938	2,309,557	505,719	169,255	13,390	2,997,921	3,212	1.07
1937	2,437,702	569,266	195,600	15,851	3,218,419	3,477	1.08

State	Number of employees				Average number of days mines operated	Man-days of labor [2]	Average tons per man per day [2]
	Underground	Surface		Total			
		In strip pits	All others				
Montana	67	7	19	93	162	15,061	3.55
North Dakota	667	344	359	1,370	174	237,751	8.62
South Dakota	18	23	9	50	170	8,507	5.65
Texas	446	22	38	506	219	110,768	7.64
Total: 1938	1,198	396	425	2,019	184	372,107	8.06
1937	1,239	462	429	2,130	189	403,510	7.98

[1] Includes 212 active mines of commercial size; excludes wagon mines producing less than 1,000 tons.

[2] Based upon the "reported" number of man-shifts where the operator keeps a record thereof; otherwise upon the "calculated" number of man-shifts obtained by multiplying the average number of men employed underground and on the surface at each mine by the number of days worked by the mine and tipple, respectively. Using the "calculated" man-shifts throughout as developed before the year 1932, the average output per man per day was 8.51 in 1937 and 8.59 in 1938.

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[4] Compiled by L. Mann, Coal Economics Division, Bureau of Mines.

TABLE 27.—*Production, value, men employed, days operated, man-days of labor, and output per man per day at lignite mines in the United States in 1938, by States and counties*

MONTANA

County	Net tons					Value		Number of employees				Average number of days mines operated	Man-days of labor [1]	Average tons per man per day [1]
	Loaded at mines for shipment	Commercial sales by truck or wagon	Other sales to local trade, used by employees, or taken by locomotives at tipple	Used at mines for power and heat	Total quantity	Total (thousands of dollars)	Average per ton	Underground	Surface		Total			
									In strip pits	All others				
Daniels, McCone, and Valley	--------	8,760	20	4	8,784	17	$1.94	7	4	1	12	205	2,464	3.56
Dawson	--------	1,428	10	--------	1,438	2	1.39	5	--------	1	6	86	515	2.79
Richland	3,939	8,272	700	--------	12,911	25	1.94	22	3	5	30	156	4,688	2.75
Roosevelt	--------	6,582	972	5	7,559	10	1.32	10	--------	4	14	145	2,033	3.72
Sheridan	--------	14,204	893	59	15,156	23	1.52	18	--------	7	25	172	4,289	3.53
Other counties (Custer and Wibaux)	--------	7,697	--------	--------	7,697	11	1.43	5	--------	1	6	182	1,092	7.05
Total: 1938	3,939	46,943	2,595	68	53,545	88	1.64	67	7	19	93	162	15,081	3.55
1937	4,000	49,299	910	102	54,311	92	1.69	63	6	12	81	167	13,567	4.00

NORTH DAKOTA

County	Loaded at mines for shipment	Commercial sales by truck or wagon	Other sales to local trade, used by employees, or taken by locomotives at tipple	Used at mines for power and heat	Total quantity	Total (thousands of dollars)	Average per ton	Underground	In strip pits	All others	Total	Average number of days mines operated	Man-days of labor [1]	Average tons per man per day [1]
Adams	14,207	25,860	1,600	15	41,682	56	1.34	59	2	23	84	139	11,654	3.58
Billings, Golden Valley, and Slope	--------	4,496	125	--------	4,621	6	1.30	5	6	5	16	149	2,380	1.94
Bowman	68	5,636	--------	--------	5,704	8	1.40	7	2	2	11	138	1,515	3.77
Burke	184,442	53,822	60	100	238,424	269	1.13	--------	49	33	82	168	13,812	[2] 17.26
Burleigh	199,326	28,063	24	20	227,433	274	1.20	33	30	21	84	226	19,002	[2] 11.97
Divide	153,765	8,114	3,800	702	166,381	206	1.24	12	39	17	68	168	11,455	[2] 14.52
Dunn	--------	3,153	100	100	3,353	4	1.19	--------	5	1	6	125	750	4.47
Grant	5,151	17,176	108	600	23,035	29	1.26	16	4	5	25	148	3,700	6.23
Hettinger	420	16,271	614	210	17,515	21	1.20	7	17	7	31	155	4,809	3.64
McKenzie	--------	5,549	--------	--------	5,549	8	1.44	3	8	4	15	156	2,340	2.37
McLean	103,611	22,477	2,523	188	128,799	186	1.44	80	54	27	161	134	21,563	5.97
Mercer	463,044	2,352	77,674	2,310	545,380	573	1.05	149	60	107	316	175	55,195	9.88

Morton	8,580	17,038	130	2,626	28,374	34	1.20	19	14	11	44	127	5,575	5.09
Mountrail	------	12,975	------	21	12,996	18	1.39	19	5	4	28	195	5,470	2.38
Oliver	------	7,490	87	70	7,647	7	.92	------	14	4	18	95	1,711	4.47
Stark	60	17,168	73,052	652	90,932	100	1.10	57	------	6	63	239	15,046	6.04
Ward	331,930	121,470	178	97	453,675	516	1.14	152	29	62	243	208	50,648	[2] 8.96
Williams	770	47,794	------	35	48,599	65	1.34	49	6	20	75	148	11,126	4.37
Total: 1938	1,465,374	416,904	160,075	7,746	2,050,099	2,380	1.16	667	344	359	1,370	174	237,754	8.62
1937	1,577,216	470,778	193,933	9,810	2,250,837	2,639	1.17	689	407	379	1,475	181	267,522	8.41
SOUTH DAKOTA														
Corson, Dewey, and Harding	27,148	15,826	190	------	43,164	57	1.32	5	20	7	32	199	6,353	[2] 6.79
Meade	------	1,076	100	------	1,176	2	1.70	6	------	2	8	93	740	1.59
Perkins	------	3,668	50	------	3,718	6	1.61	7	3	------	10	141	1,414	2.63
Total: 1938	27,148	20,570	340	------	48,058	65	1.35	18	23	9	50	170	8,507	5.65
1937	26,444	20,426	104	5	46,979	63	1.34	18	22	7	47	165	7,769	6.05
TEXAS														
Bastrop and Milam	104,718	3,800	1,000	761	110,279	81	.73	88	22	12	122	150	18,266	6.04
Henderson, Titus, and Wood	708,378	17,502	5,245	4,815	735,940	598	.81	358	------	26	384	241	92,502	7.96
Total: 1938	813,096	21,302	6,245	5,576	846,219	679	.80	446	22	38	506	219	110,768	7.64
1937	830,042	28,763	1,553	5,934	866,292	683	.79	469	27	31	527	218	114,652	7.56

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[1] Based upon the "reported" number of man-shifts where the operator keeps a record thereof; otherwise upon the "calculated" number of man-shifts obtained by multiplying the average number of men underground and on the surface at each mine by the number of days worked by the mine and tipple, respectively. Using the "calculated" man-shifts throughout as developed before 1932, the average output per man per day in 1938 was 3.55 in Montana, 9.57 in North Dakota, 5.17 in South Dakota, and 7.67 in Texas.

[2] Output obtained chiefly from strip pits in which the production per man per day is large.

NUMBER AND SIZE OF LIGNITE MINES

There were 212 active lignite mines in 1938, as reported to the Bureau of Mines (exclusive of many small mines in Montana and North Dakota producing less than 1,000 tons annually). Of these, 24 were in Montana, 165 in North Dakota, 15 in South Dakota, and 8 in Texas. In the field as a whole the classification by size of output is as follows:

TABLE 28.—*Number and production of lignite mines in 1938, classified by size of output*

Net tons	Mines		Production		
	Number	Percent of total	Total (net tons)	Average per mine (net tons)	Percent of total
Over 200,000	4	1.9	1,511,698	377,925	50.4
100,000 to 200,000	3	1.4	511,222	170,407	17.1
50,000 to 100,000	3	1.4	210,723	70,241	7.0
10,000 to 50,000	19	9.0	391,957	20,629	13.1
Under 10,000	183	86.3	372,321	2,035	12.4
	212	100.0	2,997,921	14,141	100.0

LENGTH OF WORKING DAY IN LIGNITE MINES

The following table summarizes the replies of mine operators to the question, "Number of hours operated per shift."

Reports from mines in the lignite field in 1938, including those reporting a day of irregular length, indicate that 77 percent of the men employed were in 8-hour mines and that the weighted average working shift was 8 hours.

The established working day does not necessarily measure the length of time actually worked or the time underground, because a miner may work overtime, the mine may shut down before the full day is over, the miner may go home before work at the mine stops, and he may spend considerable time in going to and from his place of work underground. As interpreted in the wage agreements, the day means the hours of labor at the usual working place, exclusive of any time for lunch and exclusive of the time spent in going from the entrance of the mine to and from his working place (see Coal chapter in Mineral Resources, Bureau of Mines, 1930, p. 656).

TABLE 29.—*Number of lignite mines in the United States having established working shift of certain length and number of men employed therein, in 1938, by States*

State	7 hours		8 hours		9 hours		Not reporting and all others [1]		Total	
	Mines	Men	Mines	Men	Mines	Men	Mines	Men	Mines	Men
Montana			12	59	1	3	11	31	24	[illegible]
North Dakota	10	104	121	983	3	88	31	195	165	1,37
South Dakota			5	11	1	3	9	36	15	5
Texas			8	506					8	50
	10	104	146	1,559	5	94	51	262	212	2,0

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[1] Includes mines in which the day was more than 9 or less than 7 hours, was irregular, or was changed during the year; also mines where the operator has included time when the men were entering or leaving the mine, where the operator has reported the time of men in occupations in which the workday is longer than for other employees (as in stripping overburden), or where the work is staggered and two crews of men overlap.

LIGNITE LOADED FOR SHIPMENT BY INDIVIDUAL RAILROADS

TABLE 30.—*Lignite loaded for shipment by individual railroads in 1938, as reported by operators, in net tons*

Railroad	State	Quantity
Chicago, Milwaukee, St. Paul & Pacific	North Dakota South Dakota	46,994
Great Northern	Montana North Dakota	342,332
International-Great Northern	Texas	813,096
Missouri-Kansas-Texas	do	
Rockdale, Sandow & Southern	do	
St. Louis Southwestern of Texas	do	
Texas Short Line	do	
Minneapolis, St. Paul & Sault Ste. Marie	North Dakota	524,438
Northern Pacific	do	582,697
		2,309,557

METHODS OF RECOVERY

TABLE 31.—*Lignite mined by different methods in 1938, by States*

State	From underground workings (net tons)					From strip pits		Grand total production
	Mined by hand	Shot off the solid	Cut by machines	Not specified	Total underground	Net tons	Percent of grand total	
Montana	[1] 78,281	[1] 756,588		5,954	[1] 840,823	[1] 58,941	[1] 6.6	53,545
North Dakota	53,706	175,461	[2] 535,696	22,426	787,291	1,262,806	61.6	2,050,099
South Dakota	1,420			2,589	4,009	44,049	91.7	48,058
Texas	(1)	(1)			(1)	(1)	(1)	846,219
	133,409	932,049	[2] 535,696	30,969	1,632,123	1,365,798	45.6	2,997,921

[1] Texas included with Montana. [2] 22 machines were used—15 "permissible" and 7 of other types.

STRIPPING OPERATIONS

TABLE 32.—*Statistical summary of stripping operations that produced lignite in 1938, by States*

State	Strip pits [1]	Shovels, dragline excavators, and coal-loading machines [2]	Production (net tons)	Value		Number of employees			Average number of days mines operated	Man-days of labor [3]	Average tons per man per day [3]
				Total (thousands of dollars)	Average per ton	In strip pits	All others	Total			
Montana and Texas	4	2	58,941	35	$0.59	29	1	30	115	3,454	17.06
North Dakota	58	31	1,262,806	1,452	1.15	344	142	486	180	87,288	14.47
South Dakota	5	2	44,049	59	1.34	23	7	30	224	6,718	6.56
	67	35	1,365,798	1,546	1.13	396	150	546	178	97,460	14.01

[1] Includes some pits in which the stripping is done by hand.

[2] In some operations the same equipment was used for stripping or excavating and for loading the coal; his duplication has been eliminated. In others the coal was excavated by machine and loaded by hand.

[3] Based upon the "reported" number of man-shifts where the operator keeps an accurate record thereof, therwise upon the "calculated" number of man-shifts obtained by multiplying the number of men emloyed at the tipple, in loading coal, etc., and in stripping overburden by the number of days worked in ach department, insofar as separately reported by the operator.

WORLD PRODUCTION OF LIGNITE

TABLE 33.—*World production of lignite (including brown coal), 1934–39, in metri tons*

[Compiled by R. B. Miller]

Country	1934	1935	1936	1937	1938	[1] 1939
North America:						
Canada	2,915,569	3,241,118	3,507,895	3,352,316	3,153,377	3,093,514
United States	[2] 2,337,000	2,494,907	2,821,048	2,919,685	2,719,654	2,696,00
Europe:						
Albania	1,824	2,000	3,130	3,560	3,866	(3)
Bulgaria	1,567,956	1,565,971	1,576,098	1,732,119	1,855,198	(3)
Czechoslovakia	15,070,706	15,113,576	15,948,767	17,895,411	14,716,693	(3)
Faroe Islands					8,000	(3)
France	1,025,480	906,730	943,230	1,015,000	1,057,250	(3)
Germany	136,003,366	146,032,747	160,276,036	183,538,054	195,312,067	(3)
Austria	2,850,931	2,970,683	2,897,203	3,241,770	3,341,730	(3)
Greece	104,193	83,325	105,621	131,083	108,010	(3)
Hungary	6,199,085	6,717,677	7,105,004	8,055,123	8,320,000	(3)
Italy	408,616	545,482	768,563	1,059,231	872,950	1,410,00
Netherlands	92,493	86,204	88,779	143,057	170,637	197,00
Poland	26,403	18,288	13,518	18,915	9,526	(3)
Portugal	15,391	10,738	20,677	23,098	14,854	35,1
Rumania	1,623,858	1,666,761	1,671,825	1,880,477	2,096,698	(3)
Spain	296,643	303,827	(4)	(4)	68,099	204,2
U. S. S. R.	11,383,000	13,820,000	(4)	(4)	(4)	(3)
Yugoslavia	3,926,333	4,002,193	4,034,577	4,574,232	5,286,781	5,604,3
Asia:						
India, British	385,914	430,316	419,110	488,408	545,283	(3)
Indochina					4,200	27,0
Japan	124,786	108,526	109,494	(4)	(4)	(3)
Levant	540		493	4,658	700	1,0
Turkey	52,777	73,355	95,234	116,397	129,315	151,2
Oceania:						
Australia (Victoria)	2,659,545	2,257,170	3,093,768	3,448,391	3,734,441	3,709,0
New Zealand	1,248,333	1,310,660	1,301,895	1,328,805	1,264,208	(3)
	190,323,000	203,771,000	224,853,000	254,442,000	264,170,000	(3)

[1] Lignite is also mined in Italian East Africa, but complete production figures are not available. Figu or 1939 are preliminary and subject to revision.
[2] Approximate production.
[3] Data not available.
[4] Estimate included in total.

TABLE 34.—*Production, value, men employed, days mines operated, and output pe man per day at the principal hard-coal mines outside of Pennsylvania in 1938*

[Includes coal classified as anthracite and semianthracite in Geol. Survey Prof. Paper 100–A, The Co Fields of the United States]

	Arkansas	Virginia	Colorado and New Mexico	Total
Production (net tons):				
Loaded at mines for shipment	192,145	109,642	29,475	331,
Commercial sales by truck or wagon	2,634	23,384	989	27,0
Other sales to local trade, or used by employees, or taken by locomotives at tipple	73	1,441	3,013	4,
Used at mines for power and heat	1,333	5,265	1,271	7,
Total production	196,185	139,732	34,748	370,
Value:				
Total	$531,000	$373,000	$145,000	$1,049,
Average per ton	$2.71	$2.71	$4.17	$2.
Number of employees:				
Underground	586	400	92	1,0
Surface	147	127	46	[illegible]
Total employees	733	527	138	1,
Average number of days mines operated	96	135	115	1
Average tons per man per day	2.78	1.97	2.20	2.

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PENNSYLVANIA ANTHRACITE

BY M. VAN SICLEN, L. MANN
AND J. R. BRADLEY

Chapter from

MINERALS YEARBOOK 1940

REVIEW OF 1939

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1940

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PENNSYLVANIA ANTHRACITE

By M. van Siclen, L. Mann, and J. R. Bradley

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The anthracite industry is of great economic importance in the 500 square miles comprising the Pennsylvania anthracite region. Regardless of the fact that production in the anthracite industry has suffered drastic reductions in recent years, in 1938—when production was the lowest since about the turn of the century—freight-commodity statistics of the Interstate Commerce Commission showed that anthracite ranked second in tonnage originated by class I railways and fourth in revenue produced. In 1939 the value of anthracite production at the mines was $187,175,000, and the gross revenue accruing to the railroads was $102,180,268.

Prices at the mines in 1939 were lower than in 1938; wholesale prices continued to decline, and retail prices in the leading markets remained at about 1938 levels. The index of employment also decreased, although average weekly earnings advanced. Freight rates on intrastate shipments were increased. The Anthracite Institute and Anthracite Industries, Inc., continued their cooperative and trade-promotion activities, and State legislation intended to promote stabilization of the industry was defeated by a narrow margin.

Increasing competition of other fuels, unfavorable weather in several recent years, the production of illicit or "bootleg" anthracite, and competition within the industry have combined to undermine the price structure. Early in 1940 virtually the entire industry agreed to a voluntary scheme of allocation of production that apparently has brought some relief. The fairly low temperatures in the early months of 1940, together with improved business conditions and higher coastwise freight rates on bituminous coal from Hampton Roads to New York and New England, promise further increase in consumption of anthracite in 1940.

More favorable weather conditions, an increase in exports, and improved business conditions resulted in an increase in the output of anthracite in 1939. Production was 51,487,000 tons, a gain of 12 percent over 1938. Commercial shipments (excluding illicit or "bootleg" coal) were 41,063,869 tons in 1938 and 45,992,282 in 1939.

Shipments of anthracite from breakers and washeries in the first quarter of 1939 were less than in the corresponding period of 1938. In the second quarter, however, shipments advanced 13 percent over the second quarter of 1938; in the third quarter they were 32 percent higher; and in the last quarter shipments were 5 percent above 1938.

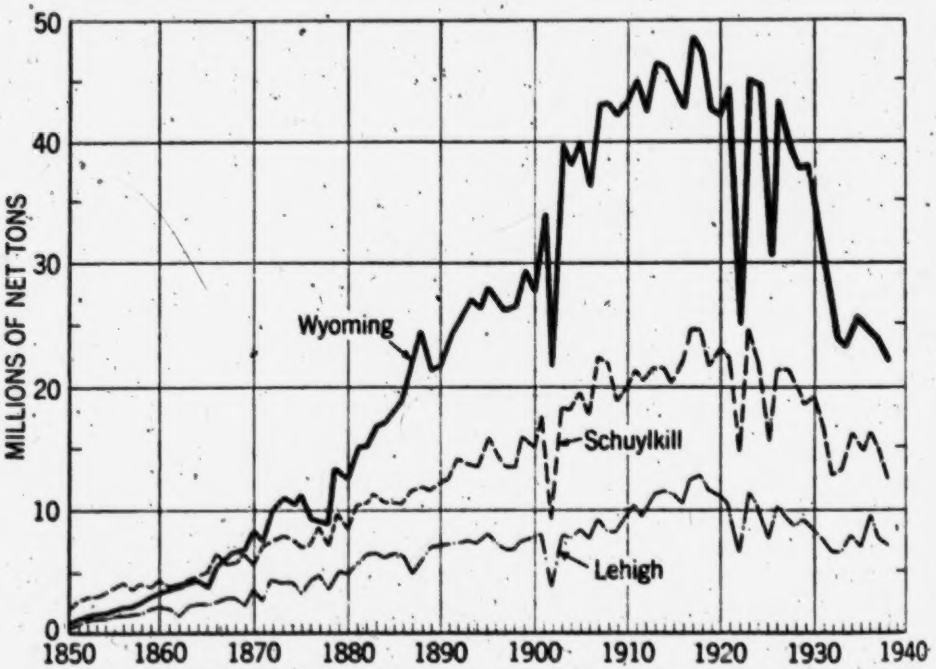

FIGURE 1.—Anthracite shipped from the Lehigh, Schuylkill, and Wyoming regions, 1850–1938.

Receipts of anthracite at the upper Lake docks increased 8 percent in 1939 over 1938, and stocks declined 2 percent during the year.

Completion of the Huber central breaker of the Glen Alden Coal Co. denotes optimism for the future of the industry. The Huber breaker is one of the first to use Menzies cone separators to treat sized feed. The plant is expected to prepare 7,000 tons of anthracite daily.

The production of anthracite increased steadily from the early years of the nineteenth century to 1924, the last normal year under old competitive conditions. The peak was reached in 1917 at 99,611,811 tons. Since 1924 competitive fuels have increased in importance. Figure 1 shows shipments of Pennsylvania anthracite by regions since 1850.

The second annual anthracite conference of Lehigh University was held at Bethlehem, Pa., April 28–29, 1939, and the third annual conference was held May 9–10, 1940. The papers presented covered a wide field and contained much new and valuable information for both the producer and consumer of anthracite. Research, new uses of anthracite, modern mechanical burning equipment, and problems of the industry arising from the general trend toward smaller sizes were discussed. Papers also were presented on combustion, economics, marketing, mining, and preparation of anthracite. The conferences were attended by persons interested in all phases of the anthracite industry. The following papers presented at the conferences are of economic interest:

CONFERENCE OF 1939

Paper 10. Use of Anthracite Ash in Building Materials and in Agriculture, by Dr. Raymond C. Johnson, Anthracite Industries fellowship, Mellon Institute of Industrial Research, Pittsburgh, Pa.

Paper 13. Some Economic Aspects of Anthracite, by Dr. Neil Carothers, dean of the College of Business Administration, Lehigh University.

CONFERENCE OF 1940

Paper 2. The Present Status of Anthrafilt Illustrated by Case Histories, by Homer G. Turner, filtration consultant, Anthracite Institute.

Paper 4. Mineral Wool from Anthracite Colliery Refuse and Anthracite Ashes, by H. J. Rose and R. C. Johnson, Anthracite Industries fellowship, Mellon Institute of Industrial Research, Pittsburgh, Pa.

Paper 8. Effect Upon the Economy of the Anthracite Industry of Grinding Large Sizes to Pea and Smaller, by Cadwallader Evans, Jr., vice president and general manager, and Harold G. Boyd, engineering statistician, Hudson Coal Co.

TABLE 1.—*Statistical trends of the Pennsylvania anthracite industry, 1935-39*

	1935	1936	1937	1938	1939
Production:					
Loaded at mines for shipment:					
Breakers……net tons	44,369,285	46,256,132	44,016,915	39,010,935	[1] 43,660,6
Washeries……do	1,794,402	2,066,973	1,337,879	1,679,509	1,766,384
Dredges……do	374,142	324,895	348,350	373,425	565,236
Sold to local trade and used by employees……net tons	2,874,970	3,226,887	2,981,391	2,722,206	3,081,073
Used at collieries for power and heat net tons	2,745,984	2,704,648	2,671,898	2,312,952	2,414,022
Total production……do	52,158,783	54,579,535	51,856,433	46,099,027	51,487,386
Value at breaker, washery, or dredge	$210,131,000	$227,004,000	$197,599,000	$180,600,000	$187,175,000
Average sales realization per net ton on breaker shipments:					
Lump and broken	$5.16	$5.05	$5.08	$5.24	$4.63
Egg	$5.44	$5.60	$5.06	$5.18	$4.73
Stove	$5.87	$6.09	$5.21	$5.33	$4.84
Chestnut	$5.64	$5.91	$5.23	$5.36	$4.87
Pea	$4.16	$4.30	$4.01	$3.88	$3.65
Total domestic	$5.45	$5.67	$5.01	$5.10	$4.64
Buckwheat No. 1	$2.88	$2.91	$2.95	$3.03	$2.90
Buckwheat No. 2 (Rice)	$1.74	$2.01	$2.26	$2.35	$2.20
Buckwheat No. 3 (Barley)	$1.08	$1.23	$1.45	$1.61	$1.62
Boiler	------	------	$.78	------	------
Other, including Buckwheat No. 4	$.57	$.68	$.79	$.87	$.91
Total steam	$2.03	$2.10	$2.21	$2.33	$2.25
Total, all sizes	$4.29	$4.42	$4.03	$4.16	$3.85
Percentage by sizes in total breaker shipments:					
Lump and broken……percent	0.3	0.3	0.4	0.3	0.6
Egg……do	7.0	6.5	5.7	5.4	5.2
Stove……do	21.8	21.3	22.1	23.7	24.1
Chestnut……do	26.1	26.4	26.2	26.0	25.8
Pea……do	10.7	10.4	10.8	10.6	11.0
Total domestic……do	65.9	64.9	65.2	66.0	66.7
Buckwheat No. 1……do	15.1	15.1	14.7	14.8	14.3
Buckwheat No. 2 (Rice)……do	9.3	8.4	7.9	7.7	7.8
Buckwheat No. 3 (Barley)……do	7.8	8.8	8.9	8.6	8.5
Boiler……do	------	------	(2)	------	------
Other, including Buckwheat No. 4 percent	1.9	2.8	3.3	2.9	2.7
Total steam……do	34.1	35.1	34.8	34.0	33.3
Producers' stocks on Dec. 31 [3]……net tons	1,911,000	2,259,000	2,154,000	1,458,000	994,000
Exports……do	1,609,000	1,678,000	1,914,000	1,909,000	2,590,000
Imports……do	571,000	615,000	396,000	363,000	298,000
Consumption (calculated)……do	51,100,000	53,200,000	50,400,000	45,200,000	49,700,000
Capacity in operation (calculated)……do	84,000,000	87,000,000	83,000,000	82,000,000	(4)
Average number of days worked	189	192	189	171	(4)
Man-days lost on account of strikes and lock-outs	763,307	407,372	580,462	579,457	(4)
Number of men on strike during year	26,127	27,574	34,346	27,435	(4)
Average number of men employed	103,269	102,081	99,085	96,417	[5] 93,000
Output per man per day……net tons	2.68	2.79	2.77	2.79	(4)
Output per man per year……do	505	535	523	478	(4)
Quantity cut by machines……do	1,848,095	2,162,744	1,894,512	1,588,407	1,881,884
Quantity mined by stripping……do	5,187,072	6,203,267	6,696,018	5,095,341	5,486,479
Quantity loaded by machines underground……net tons	9,279,057	10,827,946	10,683,837	10,151,669	11,773,833
Distribution:					
Total receipts in New England [6] net tons	5,402,000	5,287,000	4,761,000	4,468,000	4,907,000
Exports to Canada……do	1,592,000	1,664,000	1,893,000	1,896,000	2,577,000
Loaded into vessels at Lake Erie [7] net tons	559,000	689,000	674,000	450,000	531,000
Receipts at Duluth-Superior [8]……do	182,000	309,100	296,000	155,000	202,000

[1] Includes a small quantity of washery coal. [2] Less than 0.1 percent.

[3] Anthracite Institute. Figures represent prepared coal on the ground at the breaker.

[4] Data not yet available.

[5] Estimated from the report of the Pennsylvania Department of Mines; Bureau of Mines data not yet available.

[6] Commonwealth of Massachusetts, Division on the Necessaries of Life. [7] Ore and Coal Exchange.

[8] U. S. Engineer Office, Duluth, Minn.

TABLE 2.—*Statistical summary of monthly developments in the Pennsylvania anthracite industry in 1939*

[All tonnage figures represent net tons]

	1939													Change from 1938 (percent)	1938 (total)
	January	February	March	April	May	June	July	August	September	October	November	December	Total		
Production, including mine fuel, local sales, and dredge coal:															
Monthly total	5,019,000	4,169,000	3,652,000	5,367,000	5,141,000	3,577,000	2,951,000	3,883,000	4,840,000	4,985,000	3,989,000	3,914,000	51,487,000	+11.7	46,099,000
Average per working day	200,800	177,400	135,300	223,600	197,700	137,600	118,000	143,800	193,600	199,400	166,200	156,600	170,200	+12.0	151,900
Shipments, breakers and washeries only:[1] Monthly total, all sizes	4,046,821	3,381,642	3,231,929	4,841,771	4,205,564	2,959,303	2,611,299	3,146,744	4,286,905	4,333,105	3,329,218	3,434,898	43,809,199	+10.5	39,648,026
Distribution:															
Lake Erie loadings[2]	-------	-------	-------	8,745	100,783	96,534	77,538	95,190	42,949	60,281	49,077	238	531,335	+18.0	450,324
Receipts at Duluth-Superior[3]	-------	-------	-------	-------	27,506	44,066	34,391	35,554	18,258	32,372	9,579	-------	201,726	+29.8	155,462
Upper Lake dock trade:[4]															
Receipts:															
Lake Superior	-------	-------	-------	-------	20,147	62,522	34,402	35,565	18,368	35,654	9,782	-------	216,440	+21.7	177,788
Lake Michigan	447	400	1,414	11,478	40,863	41,051	36,213	54,055	17,377	30,042	37,764	328	271,432	−1.4	275,358
Deliveries (reloadings):															
Lake Superior	19,403	17,062	5,640	18,680	15,367	22,527	11,041	13,312	26,343	28,641	18,146	17,392	213,554	+1.2	210,945
Lake Michigan	22,195	22,306	16,605	17,674	21,455	32,581	30,778	28,276	33,829	27,324	18,245	17,176	288,444	−1.5	292,723
Retail yards—183 selected dealers: Deliveries[5]	367,284	329,162	316,707	275,109	221,047	200,275	251,936	264,116	324,352	298,621	257,652	333,401	3,439,752	(5)	[5]3,638,835
New England receipts:[6]															
By tide (including imports)	51,325	68,442	44,744	89,957	113,915	96,812	84,706	77,550	73,974	61,873	56,734	45,319	865,351	−11.4	977,170
By rail	387,299	343,515	290,356	376,304	437,532	252,589	273,117	257,465	365,884	439,817	323,845	294,203	4,041,926	+15.8	3,490,700
Exports[7]	185,239	173,032	160,662	153,792	376,176	216,768	179,692	145,741	447,956	292,408	141,642	116,892	2,590,000	+35.7	1,908,911
Imports[7]	27,717	34,312	18,768	12,769	43,869	24,151	28,732	35,536	43,577	8,230	13,093	7,399	298,153	−17.8	362,895
Industrial comsumption by:															
Railroads (class I only)[8]	138,818	138,516	145,855	195,060	236,468	101,070	110,143	100,967	106,950	127,937	136,320	143,561	1,681,665	+19.6	1,406,245
Electric power utilities[9]	187,886	158,256	163,931	176,076	203,247	178,573	172,467	184,651	189,582	213,611	203,133	212,615	2,244,028	+14.4	1,962,352
Other industrial consumers[10]	118,476	124,902	128,964	91,934	80,310	87,796	60,893	85,893	87,755	98,574	115,554	91,214	1,172,265	+.8	1,162,866

See footnotes at end of table.

TABLE 2.—*Statistical summary of monthly developments in the Pennsylvania anthracite industry in 1939*—Continued

[All tonnage figures represent net tons]

	1939—Continued													Change from 1938 (percent)	1938 (total)
	January	February	March	April	May	June	July	August	September	October	November	December	Total		
Stocks at end of period shown:															
Railroads (class I only)[8]	126,307	99,896	80,604	147,123	111,007	81,655	96,482	116,797	129,162	142,315	129,000	110,329	110,329	−3.3	114,078
Electric power utilities[9]	1,158,188	1,155,559	1,138,115	1,144,083	1,199,910	1,242,902	1,230,017	1,206,468	1,185,397	1,239,136	1,169,209	1,113,839	1,113,839	−8.0	1,210,768
Other industrial consumers[10]	234,974	260,403	212,551	225,169	255,256	246,390	172,644	218,600	237,639	246,010	232,037	165,842	165,842	−22.1	212,790
Stocks on upper Lake docks:[3]															
Lake Superior	129,936	112,868	107,223	87,856	92,630	132,610	155,967	178,211	170,235	177,243	168,872	151,475	151,475	+1.4	149,343
Lake Michigan	130,189	108,151	92,959	86,742	107,514	117,965	128,729	154,644	138,191	140,909	160,456	143,609	143,609	−5.4	151,813
Retail stocks—183 selected dealers[6]	[5]357,083	304,547	225,643	324,817	459,634	516,552	529,988	531,873	547,992	589,898	510,226	445,354	445,354	+5.8	421,092
Producers' stocks[1]	1,046,429	761,174	407,814	85,867	238,194	558,638	715,572	1,129,005	1,172,298	1,218,871	1,364,516	993,848	993,848	−31.8	1,457,533
Wholesale prices:[11]															
On tracks, destination:															
Chestnut	$9.73	$9.70	$9.64	$9.08	$9.15	$9.15	$8.67	$8.60	$8.65	$9.03	$9.16	$9.16	$9.14	−3.2	$9.44
Pea	$8.30	$8.25	$8.19	$7.67	$7.75	$7.81	$7.70	$7.67	$7.70	$7.93	$7.95	$7.97	$7.91	−2.2	$8.09
Index numbers (1926=100)	80.3	79.9	79.4	74.7	75.3	75.5	72.6	72.1	72.5	75.3	76.1	76.1	75.8	−2.8	78.0
Labor conditions:[11]															
Average weekly earnings	$24.74	$28.20	$21.55	$27.08	$35.84	$23.30	$18.65	$23.13	$26.64	$33.63	$26.90	$17.16	$25.52	+9.1	$23.40
Index of employment (1929 average=100)	50.0	52.2	51.7	53.0	52.6	51.2	44.7	48.5	49.4	51.9	51.3	51.0	50.6	−3.3	52.3
Index of pay rolls (1929 average=100)	38.0	45.2	34.2	43.4	57.0	36.1	25.2	33.8	40.1	52.2	42.0	26.6	39.5	+3.4	38.2

[1] Anthracite Institute.
[2] Ore and Coal Exchange, Cleveland, Ohio.
[3] U. S. Engineer Office, Duluth, Minn.
[4] Bituminous Coal Division, U. S. Department of the Interior.
[5] Data for 1938 not comparable with 1939.
[6] Commonwealth of Massachusetts, Division on the Necessaries of Life.
[7] Bureau of Foreign and Domestic Commerce.
[8] Association of American Railroads.
[9] Federal Power Commission.
[10] National Association of Purchasing Agents.
[11] Bureau of Labor Statistics.

Anthracite Institute.—The usual functions of the Anthracite Institute were carried on during the year, and especial attention was given to proposed Pennsylvania legislation to regulate the industry and to the Canadian market.

Anthracite Industries, Inc.—Laboratory tests of new anthracite-burning equipment were continued by Anthracite Industries, Inc.; approval was given to equipment meeting its requirements; and efforts were redoubled to promote the use of such equipment. Schools in anthracite merchandising were conducted, as well as a series of stoker schools, and a summer selling plan was presented to anthracite dealers. Exhibits of equipment were maintained at Boston, Philadelphia, and New York. Manufacturers cooperated with Anthracite Industries, Inc., in its exhibit at the New York World's Fair where stokers, furnaces, boilers, cooking stoves, thermostats, and other equipment were on display. It is reported that 1,152,330 persons visited the exhibit in 1939, thousands of whom saw anthracite as a thoroughly modern fuel for the first time.

There is little doubt that increased efficiency and the rapid strides made in the modernization of anthracite-burning equipment such as stokers, hand-fired boilers, and water heaters have created a favorable impression on the consuming public.

Nonfuel uses of anthracite and anthracite refuse.—The nonfuel use of anthracite, especially anthrafilt used in the purification of water, continued to expand. During the year attention was also given to the use of anthracite ashes as a soil conditioner and, after processing, as an insulating material.

Technologic developments.—There were no important technologic developments during 1939. The Pennsylvania General Assembly appropriated funds, which were matched by the anthracite industry, for a program of research, and the Secretary of Mines appointed a committee to consider a program to be conducted by the School of Mineral Industries of the Pennsylvania State College. Two specific problems will be studied: The gasification of anthracite and the production of carbon products from anthracite. Certain technologic developments, present or prospective, were discussed at the Third Annual Conference of Lehigh University in May 1940.

Weather.—According to the Monthly Weather Review, the year 1939 was slightly cooler than 1938 but was still warmer than normal in most regions. Departures from normal temperatures in some of the chief anthracite-consuming States were: New England States—January −0.8, February +2.7, March −4.5, April −3.4, October normal, November −3.1 and December +0.5; New York—January +0.2, February +4.1, March −2.2, April −2.5, November −3.0, and December +1.4; Pennsylvania—January +1.8, February +5.3, March +0.9, April −1.9, October +1.0, November −1.6, and December +2.6; New York City (one of the leading anthracite markets)—January +1.4, February +6.1, March +1.1, April −1.6. October +0.1, November −1.0; and December +1.2.

Distribution.—According to the Pennsylvania Department of Mines, rail, tide, and truck shipments of Pennsylvania anthracite to destinations in the United States totaled 44,869,453 tons in 1939 compared with 35,292,731 tons in 1938. In 1939 truck shipments were 4,824,537 tons, or 11 percent of total shipments, as against 9 percent in 1938. Virtually all truck shipments go to the Middle Atlantic States. Rail and tide shipments in 1939 totaled 40,044,916 tons, 63 percent domestic sizes and 37 percent steam sizes. Of the total steam sizes shipped by rail and tide, 95 percent went to the Middle Atlantic States.

Details covering distribution of shipments of Pennsylvania anthracite by rail and tide (truck shipments excluded) for 1937–39 are shown in table 3.

TABLE 3.—*Shipments of Pennsylvania anthracite, 1937–39, by States of destination, in net tons* [1]

[Truck shipments excluded]

	1937	1938	1939
New England States	4,128,408	3,551,572	4,480,970
New York	16,388,675	13,214,996	16,251,195
New Jersey	7,533,475	6,180,129	8,494,964
Pennsylvania	8,797,836	6,827,437	8,407,564
Delaware	213,493	168,316	194,759
Maryland	614,218	545,454	592,627
District of Columbia	290,524	248,577	256,936
Virginia	107,744	103,580	108,418
Ohio	168,505	91,017	112,833
Indiana	90,286	80,153	98,090
Illinois	358,054	254,193	277,166
Wisconsin	429,965	345,445	355,291
Minnesota	120,930	77,461	93,367
Michigan	300,316	214,768	245,519
Other States	91,314	65,873	66,217
Total United States	39,633,803	31,968,971	40,044,916
Canada	[illegible]773,086	1,631,489	2,441,070
Other foreign countries		4,476	4,456
Grand total	41,406,889	33,604,936	42,490,442

[1] Department of Mines, Harrisburg, Pa.

Freight rates.—Increases in freight rates ranging from 3 to 12 cents a gross ton were granted the railroads by the Interstate Commerce Commission on intrastate movement of coal. The so-called motor-compelled railway freight rates initiated in 1935 were extended to June 20, 1940. The trucking of anthracite to market, which became important about 1930, has expanded until it is now estimated at 4,000,000 tons annually, not including several million tons trucked from illicit or "bootleg" operations.

Competitive fuels in the United States and in the principal markets.—Sales of liquefied petroleum gases for domestic purposes throughout the United States totaled 2,084,047 barrels in 1939 compared with 1,376,952 in 1938. Sales for domestic use in 1939 represented 39 percent of total deliveries for all purposes compared with 35 percent in 1938. At the end of 1939, according to the American Gas Association, liquefied petroleum gas was being delivered through mains to consumers in 178 communities in 30 States by 82 companies supplying 49,800 customers.

According to the American Gas Association, sales of natural gas in the United States in 1938 and 1939, respectively, were as follows:

Sales for domestic use, including house heating, 349,285,000,000 and 367,731,500,000 cubic feet, an increase of 5 percent; commercial sales, 99,845,000,000 and 107,769,900,000 cubic feet, an increase of 8 percent; and industrial sales, 565,674,000,000 and 626,096,400,000 cubic feet, an increase of 11 percent.

Shipments of oil burners (for all uses other than ranges, stoves, water heaters, and space heaters) within the United States gained 56 percent over 1938 and to Canada 84 percent. Factory sales of anthracite stokers for domestic purposes were 7 percent less than in 1938.

Sales of heating and range oils in the United States increased about 13 percent in 1939 over 1938. An unusual feature of the sales of heating and range oils in 1938, as revealed in a study by the Petroleum Economics Division of the Bureau, is the fact that in New England 46 percent of the total sales represented range oil.

Principal markets.—In 1939 shipments of Pennsylvania anthracite to the principal markets (New England, New York, New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia) were only 5 percent less than in 1936, whereas in 1938 they were 26 percent lower. New England, New Jersey, and Delaware received larger tonnages than in 1936, but receipts in the other States declined. Although these principal markets continue to take by far the greater part of the anthracite produced, their percentage of the total production declined steadily until 1939, when it was slightly greater than in 1936. In 1936, 1937, 1938, and 1939, the respective percentages were 84.2, 80.2, 73.9, and 84.5. Imports of anthracite, virtually all into New England, have declined each year since 1936.

Of the total fuels represented in this study (which do not include bituminous coal, petroleum coke, or wood because of lack of statistics showing the necessary break-down), Pennsylvania anthracite comprised 64 percent in 1936, 60 percent in 1937, and 55 percent in 1938. In the same years coke for domestic use was 7, 6, and 6 percent, and heating and range oil 28, 33, and 38 percent, respectively. Imports of anthracite, briquets, and coke were only about 1 percent in each year. Imported fuel oils are included in the totals.

Of the principal anthracite markets, only New York and Pennsylvania consume much natural gas. In 1939 natural-gas sales in these States for domestic use and home heating (by utility companies making 93 percent of the sales in New York and 56 percent in Pennsylvania) totaled 42,161,945,000 cubic feet, the equivalent of about 1,730,000 tons of coal.

Shipments of briquets to these markets (including imports which declined to 1 ton in 1939) have decreased steadily since 1936, but in 1939 shipments of briquets of domestic origin were slightly higher than in 1938.

Deliveries of coke of domestic and foreign origin for domestic use also declined in 1937 and 1938 but improved in 1939.

Details showing the apparent consumption of anthracite and selected competitive fuels in the principal anthracite markets, 1936–39, are shown in table 4.

TABLE 4.—*Apparent consumption of anthracite and selected competitive fuels in the principal anthracite markets, 1936–39*

[Thousands of net tons]

Fuel	New England	New York	New Jersey	Delaware	Maryland	Pennsylvania	District of Columbia	Total	
								Quantity	Percent of total fuels
Anthracite:									
All users:[1]									
1936	4,479	[2] 18,217	[2] 8,482	250	713	13,478	348	45,967	64.1
1937	4,129	[2] 16,695	[2] 7,796	238	655	11,777	296	41,586	60.0
1938	3,553	[2] 13,452	[2] 6,421	198	574	9,603	254	34,055	55.0
1939	4,492	[2] 16,716	[2] 9,060	259	634	12,077	264	43,502	--------
Imports:[3]									
1936	612	1	--------	--------	--------	--------	--------	613	.9
1937	395	--------	--------	--------	--------	--------	--------	395	.6
1938	363	--------	--------	--------	--------	--------	--------	363	.6
1939	298	--------	--------	--------	--------	--------	--------	298	--------
Briquets:									
Domestic use:									
1936	60	57	3	1	4	21	1	147	[illegible]
1937	40	36	2	--------	2	14	1	95	.1
1938	38	27	1	--------	3	11	--------	80	.1
1939	46	23	1	--------	2	11	1	84	--------
Imports:[3]									
1936	20	--------	--------	--------	--------	--------	--------	20	([4])
1937	7	--------	--------	--------	--------	--------	--------	7	([4])
1938	14	--------	--------	--------	--------	--------	--------	14	([4])
1939	1	--------	--------	--------	--------	--------	--------	1	--------
Coke:									
Domestic use:									
1936	1,420	2,234	550	7	9	783	2	5,005	7.0
1937 [5]	1,144	1,800	443	6	7	631	2	4,033	5.8
1938 [5]	1,018	1,604	395	5	7	563	1	3,593	5.8
1939 [5]	1,077	1,696	413	5	7	596	2	3,796	--------
Imports:[3]									
1936	83	120	--------	--------	--------	--------	--------	203	.3
1937	43	77	--------	--------	--------	--------	--------	120	.2
1938	21	7	--------	--------	--------	--------	--------	28	.1
1939	12	19	--------	--------	--------	--------	--------	31	--------
Oil: Heating and range:[6]									
1936	8,003	6,370	2,731	87	477	1,740	343	19,751	27.5
1937	9,358	7,457	3,179	110	578	1,985	390	23,057	33.3
1938	9,649	7,677	3,269	101	591	2,052	406	23,745	38.4
1939	([7])	([7])	([7])	([7])	([7])	([7])	([7])	([7])	--------
Total fuel:[8]									
1936	14,677	26,999	11,766	345	1,203	16,022	694	71,706	100.0
1937	15,116	26,065	11,420	354	1,242	14,407	689	69,293	100.0
1938	14,656	22,767	10,086	304	1,175	12,229	661	61,878	100.0
1939	([7])	([7])	([7])	([7])	([7])	([7])	([7])	([7])	([7])

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[1] Pennsylvania Department of Mines, illicit coal not included.

[2] An important but undetermined part of anthracite shown as shipped to New Jersey is reshipped to New York City.

[3] Bureau of Foreign and Domestic Commerce.

[4] Less than 0.05 percent.

[5] Estimated on the basis of distribution in 1936.

[6] Converted to coal equivalent on the basis of 4 barrels of fuel oil equaling 1 ton of coal.

[7] Date not yet available.

[8] Does not include bituminous coal.

Receipts of Pennsylvania anthracite in the New England States declined nearly 61 percent from 1917 to 1939; receipts by rail decreased 44 percent and by tide 80 percent. The drop in total receipts between 1917 and 1927 was 23 percent and between 1927 and 1937, 52 percent. Table 5 gives details of receipts of anthracite in New England.

TABLE 5.—*Receipts of anthracite in New England, 1917, 1920, 1923, and 1927-39, in thousands of net tons*

Year	Receipts by tide [1]						Receipts by rail [1]	Imports [2]	Total receipts of Pennsylvania anthracite [3]
	Maine	New Hampshire	Massachusetts	Rhode Island	Connecticut	Total			
1917	432	47	2,222	555	1,165	4,421	7,259	1	11,679
1920	307	6	2,015	450	743	3,521	7,804	1	11,324
1923	437	27	2,216	511	891	4,082	8,102	145	12,039
1927	242	33	1,220	311	615	2,421	6,725	106	9,040
1928	205	35	1,373	301	528	2,442	6,934	369	9,007
1929	237	17	1,227	329	450	2,260	6,781	483	8,558
1930	275	17	1,236	271	422	2,221	6,169	658	7,732
1931	164	18	1,125	282	348	1,937	5,125	611	6,451
1932	148	10	1,014	212	275	1,659	3,980	574	5,065
1933	195	7	1,027	202	259	1,690	3,562	443	4,809
1934	168	20	946	190	266	1,590	4,382	477	5,495
1935	121	7	802	205	237	1,372	4,030	559	4,843
1936	127	14	792	198	267	1,398	3,889	612	4,675
1937	81	11	604	152	200	1,048	3,713	395	4,366
1938	93	2	554	137	191	977	3,491	363	4,105
1939	(4)	(4)	(4)	(4)	(4)	865	4,042	298	4,609

[1] Commonwealth of Massachusetts, Division on the Necessaries of Life.
[2] Bureau of Foreign and Domestic Commerce.
[3] Total receipts by rail and by tide less imports.
[4] Data not available.

According to a survey of the Commonwealth of Massachusetts, Division on the Necessaries of Life, the consumption of domestic sizes of anthracite in Massachusetts in the coal year 1938–39 (2,320,000 tons) decreased about 7 percent compared with 1937–38 and that of Buckwheat (176,000 tons) declined about 8 percent. Consumption of bituminous coal, coke, and briquets also declined, but that of fuel oil increased slightly.

Stocks.—Stocks of anthracite in the hands of railroads, electric-power utilities, and other industrial consumers at the end of 1939 were 10 percent (148,000 tons) less than at the end of December 1938. Producers' stocks declined 32 percent (464,000 tons) during the year.

Consumption.—Calculated consumption of anthracite—production, plus imports, minus exports, and plus or minus changes in producers' stocks at the beginning and end of the year—was 49,700,000 tons in 1939, a 10-percent increase over 1938. Illicit coal has not been considered in either year.

Consumption of anthracite by railroads in 1939 was 20 percent above 1938; consumption by electric power utilities rose 14 percent and other industrial consumption 1 percent over 1938.

Labor.—A new 2-year labor contract (expiring April 30, 1941) was concluded between the anthracite-mine operators and the United Mine Workers of America. The contract provides for recognition of the United Mine Workers of America as the exclusive bargaining agency and continues the 35-hour workweek, the prevailing rates of pay, and the general provisions of the previous agreement.

Favorable relations between the anthracite-producing companies and labor have resulted in closer cooperation on matters vitally affecting the industry.

TABLE 6.—*Total supplies of fuels commonly used for domestic purposes in the United States, 1924 and 1936–39*

[Wherever available the figures represent the quantity actually consumed for domestic heating or for heating offices, apartments, hotels, schools, hospitals, etc. Where such figures are not available but where the fuel is known to be used chiefly for domestic purposes, the total production (or imports) is shown to indicate the trend of growth]

	1924	1936	1937	1938	1939
SOLID FUELS (NET TONS)					
Anthracite:					
Production:					
Shipments of domestic sizes	56, 576, 296	30, 472, 986	29, 092, 974	26, 206, 508	29, 504, 632
Shipments of Buckwheat No. 1 [1]	9, 510, 508	7, 507, 767	6, 859, 707	6, 159, 006	6, 569, 902
Shipments of smaller steam sizes	11, 160, 695	10, 667, 247	10, 250, 463	8, 698, 355	9, 917, 748
Local sales	3, 043, 939	3, 226, 887	2, 981, 391	2, 722, 206	3, 081, 073
Total commercial production	80, 291, 438	51, 874, 887	49, 184, 535	43, 786, 075	49, 073, 355
Exports	4, 017, 785	1, 678, 024	1, 914, 173	1, 908, 911	2, 590, 000
Imports for consumption (chiefly from United Kingdom and U. S. S. R.)	117, 951	614, 639	395, 737	362, 895	298, 153
Fuel briquets [2]	580, 508	[3] 1, 145, 323	977, 254	868, 382	880, 981
Packaged-fuel production		66, 427	146, 037	160, 952	215, 507
Coke:					
Byproduct sales for domestic use	2, 812, 771	9, 643, 507	7, 807, 792	7, 129, 384	7, 549, 937
Beehive sales for domestic use	139, 886	377, 836	299, 726	93, 306	88, 204
Imports for consumption	82, 833	329, 959	286, 364	135, 240	141, 911
Gas-house-coke sales [4]	1, 400, 000	403, 600	350, 700	342, 300	362, 000
Petroleum-coke production	761, 100	1, 378, 200	1, 306, 600	1, 602, 200	[5] 1, 666, 400
Anthracite and semianthracite production outside of Pennsylvania	704, 513	520, 452	468, 852	370, 665	(6)
Lignite production [7]	2, 255, 385	3, 109, 689	3, 218, 419	2, 997, 921	[5] 2, 972, 000
Bituminous-coal sales for domestic use	(8)	(8)	(8)	(8)	(8)
OIL (BARRELS OF 42 GALLONS)					
Oil sales for heating buildings:					
Range oil [9]	(6)	27, 292, 000	[3] 32, 259, 000	33, 707, 000	[10] 36, 500, 000
Heating oils.[11]					
Domestic	5, 021, 000	99, 257, 000	[3] 116,617,000	118, 323, 000	[10] 135,125,000
Commercial	(6)				
Liquefied petroleum gases, domestic	(6)	714, 600	972, 000	1, 377, 000	2, 084, 000
GAS (MILLION CUBIC FEET)					
Natural-gas consumption for domestic and commercial use [12]	285, 152	454, 969	489, 234	482, 068	[5] 510, 000
Manufactured-gas sales for: [13]					
Domestic use	(6)	197, 240	194, 350	197, 052	194, 014
House heating	(6)	41, 146	45, 525	47, 918	56, 048

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[1] A considerable part of the Buckwheat No. 1 is used for domestic purposes.
[2] Production plus imports less exports. [3] Revised figures. [4] Partly estimated.
[5] Subject to revision. [6] Data not available. [7] An estimated two-thirds is used for domestic purposes.
[8] Exact data not available; estimated between 55,000,000 and 77,000,000 tons a year, including lignite and anthracite and semianthracite outside of Pennsylvania, which are shown separately.
[9] Range oil is a light distillate used for house heating, hot-water heating, and cooking.
[10] Estimated. [11] Includes all grades of fuel oil used for heating buildings.
[12] Includes gas used for heating offices, hotels, apartments, schools, hospitals, and stores and other large buildings, as well as houses.
[13] American Gas Association. Data revised as of March 1940.

Pennsylvania anthracite industry.—Trade practice and historical usage recognize two major divisions in the coal industry of the United States—bituminous coal and Pennsylvania anthracite. Anthracite and semianthracite also are mined in parts of Virginia, Arkansas, Colorado, and New Mexico. Locally these coals represent distinct and important industries, but the tonnages involved are small and for statistical convenience usually are grouped with the totals of the bituminous-coal industry. Tables in the chapter on Bituminous Coal in this volume record the 1938 production of anthracite and semianthracte outside of Pennsylvania; data for 1939 are not yet available.

The Pennsylvania anthracite industry, as here defined, includes all nonbituminous fields of that State. Trade usage commonly includes with Pennsylvania anthracite the output of the Bernice Basin in Sullivan County, although the coal of this basin is classified officially as semianthracite.

SOURCES AND ACKNOWLEDGMENTS

Annual statistics of the Pennsylvania anthracite-mining industry are prepared from a canvass by mail of all known anthracite operations, including over 400 active producers. About 95 percent of the tonnage is reported directly by producers, and the remaining 5 percent is estimated on collateral evidence. The data on individual operations furnished by the producers are voluntary and confidential, as is customary in the statistical services of the Bureau of Mines.

The standard form of report, as developed by the Bureau and its predecessor in mineral statistics, the Geological Survey, provides for data on production, shipments, mine realization of products, mine stocks, plant and equipment, and employment.

In assembling available detailed information free use has been made of the pertinent figures prepared by the Anthracite Institute, the American Association of Railroads, and the Pennsylvania Department of Mines, to all of whom thanks are extended for their cordial and continued cooperation. Thanks are due especially to the producers for reporting so promptly and, in general, so fully upon their operations in 1939, when the year as a whole was so critical for the industry.

PRODUCTION

By weeks and months.—The following tables summarize the statistics of weekly and monthly production of anthracite. Statistics of current output are estimated from tonnage reports from trade sources and from records of car loadings. The weekly and monthly figures in tables 7 and 8 have been adjusted to the annual total ascertained by direct canvass of the operators.

TABLE 7.—*Estimated weekly production of Pennsylvania anthracite in 1939, in net tons*

Week ended—	Weekly production	Number of working days	Daily average	Week ended—	Weekly production	Number of working days	Daily average
Jan. 7	943,000	5	188,600	July 15	773,000	6	128,800
Jan. 14	1,042,000	6	173,700	July 22	768,000	6	128,000
Jan. 21	1,236,000	6	206,000	July 29	758,000	6	126,300
Jan. 28	1,329,000	6	221,500	Aug. 5	776,000	6	129,300
Feb. 4	1,224,000	6	204,000	Aug. 12	833,000	6	138,800
Feb. 11	1,121,000	6	186,800	Aug. 19	783,000	6	130,500
Feb. 18	865,000	6	144,200	Aug. 26	856,000	6	142,700
Feb. 25	986,000	5.5	179,300	Sept. 2	929,000	6	154,800
Mar. 4	927,000	6	154,500	Sept. 9	832,000	5	166,400
Mar. 11	779,000	6	129,800	Sept. 16	1,215,000	6	202,500
Mar. 18	802,000	6	133,700	Sept. 23	1,362,000	6	227,000
Mar. 25	800,000	6	133,300	Sept. 30	1,271,000	6	211,800
Apr. 1	814,000	5	162,800	Oct. 7	1,262,000	6	210,300
Apr. 8	997,000	6	166,200	Oct. 14	1,240,000	6	206,700
Apr. 15	1,228,000	6	204,700	Oct. 21	1,210,000	6	201,700
Apr. 22	1,539,000	6	256,500	Oct. 28	1,149,000	6	191,500
Apr. 29	1,575,000	6	262,500	Nov. 4	753,000	5	150,600
May 6	1,497,000	6	249,500	Nov. 11	930,000	5	186,000
May 13	1,483,000	6	247,200	Nov. 18	911,000	6	151,800
May 20	936,000	6	156,000	Nov. 25	806,000	5	161,200
May 27	836,000	6	139,300	Dec. 2	856,000	6	142,700
June 3	767,000	5	153,400	Dec. 9	374,000	6	62,300
June 10	839,000	6	139,800	Dec. 16	1,114,000	6	185,700
June 17	763,000	6	127,200	Dec. 23	1,249,000	6	208,200
June 24	746,000	6	124,300	Dec. 30	1,034,000	5	206,800
July 1	878,000	6	146,300				
July 8	491,000	5	98,200	Calendar year	51,487,000	302.5	170,200

TABLE 8.—*Estimated monthly production of Pennsylvania anthracite, 1936–39* [1]

[Production figures represent thousands of net tons]

Month	1936			1937			1938			1939		
	Monthly production	Number of working days	Daily average	Monthly production	Number of working days	Daily average	Monthly production	Number of working days	Daily average	Monthly production	Number of working days	Daily average
January	5,315	26	204	4,236	25	169	4,978	25	199	5,019	25	201
February	6,952	24.5	284	3,671	23.5	156	3,646	23.5	155	4,169	23.5	177
March	3,051	26	117	4,795	27	178	4,257	27	158	3,652	27	135
April	4,757	25	190	6,779	25	271	3,149	25	126	5,367	24	224
May	5,104	25	204	4,361	25	174	4,400	25	176	5,141	26	198
June	4,292	26	165	4,635	26	178	4,450	26	171	3,577	26	138
July	3,912	26	151	2,748	26	106	2,580	25	103	2,951	25	118
August	3,492	26	134	2,903	26	112	2,735	27	101	3,883	27	144
September	3,861	25	154	3,682	25	147	3,388	25	136	4,840	25	194
October	4,593	26	177	4,848	25	194	4,180	25	167	4,985	25	199
November	4,320	23	188	4,439	24	185	3,803	24	159	3,989	24	166
December	4,931	26	190	4,759	26	183	4,533	26	174	3,914	25	157
	54,580	304.5	179	51,856	303.5	171	46,099	303.5	152	51,487	302.5	170

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[1] Production is estimated from weekly car loadings as reported by the Association of American Railroads and includes mine fuel, coal sold locally, and dredge coal. Does not include an unknown amount of "bootleg" production. In computing the average rates per working day, New Year's, Eight-hour Day (Apr. 1), Memorial Day, Independence Day, Labor Day, Mitchell Day (Oct. 29), Thanksgiving Day, Christmas, and, since the war, Armistice Day, have been counted as holidays. Beginning with 1927, Washington's Birthday is counted as a half holiday. No allowance, however, has been made for church holy days, which are observed by many of the miners. Monthly statistics from 1905 to 1925 will be found in Coal in 1925, pp. 427–428, and from 1926 to 1930 in Coal in 1930, p. 741.

Illicit coal.—A survey by the Pennsylvania Department of Mines shows that, in the latter part of 1939, 2,500 illicit or "bootleg" holes were in operation in the Pennsylvania anthracite region and that 9,000 men were employed. November production is shown as 340,000 tons. There were 337 breakers in the region, and 1,353 truckers hauled coal to the breakers. The estimated illicit production of coal in the region in 1939 was between 3,500,000 and 4,000,000 tons, or about 8 percent of the total Pennsylvania anthracite output. Competition resulting from the production of illicit coal is out of all proportion to the tonnage produced. Low market prices are possible because the capital invested is small and nothing is paid for the coal. Wages are well below the regular scale. Safety measures are inadequate, and 58 lives were reported lost during the year.

Regions, fields, and counties.—The main anthracite region covers an elongated area of about 480 square miles in eastern Pennsylvania, with its longer axis running northeast and southwest. It embraces three subregions as follows, from the northeast to the southwest: The Wyoming region, which covers a single geologic anthracite basin and is about 54 miles long by 6 miles wide at its widest point; the Lehigh region, which comprises the anthracite lands tributary to the Lehigh River that forms its eastern boundary and contains the Eastern Middle field and the section of the Southern field lying east of Tamaqua; and the Schuylkill region, which consists of the Western Middle field and the section of the Southern field lying west of Tamaqua.

The area may also be divided into four fields, using the grouping of the anthracite geologic basins as a framework, as follows: The Northern field, which is the same as the Wyoming region; the Eastern Middle or Lehigh field, which consists of a group of at least 10 small basins; the Western Middle field, a single basin about 36 miles long by 4½ miles at its widest point; and the Southern field, also a single basin, about 54 miles long by 6 miles at its widest point, which breaks into a long "fishtail" toward its western ends.

Both classifications (by regions and by fields) are used in the Bureau tables.

In order of magnitude of present production, the Northern field comes first, followed by the Western Middle, the Southern, and the Eastern Middle.

In order of length of life, based upon estimated minable reserves, the Southern field comes first, followed by the Western Middle, the Northern, and the Eastern Middle fields.

TABLE 9.—*Pennsylvania anthracite shipped, sold locally, and used as colliery fuel in 1939, by regions*

Region	Shipments		Local sales		Colliery fuel		Total	
	Net tons	Value [1]	Net tons	Value	Net tons	Value	Net tons	Value [1]
Lehigh:								
Breakers [2]	8,034,425	$30,639,000	265,076	$1,219,000	376,432	$655,000	8,675,935	$32,513,000
Dredges	48,054	55,000	14,080	18,000		----	62,134	73,000
Total Lehigh	8,082,479	30,694,000	279,156	1,237,000	376,432	655,000	8,738,067	32,586,000
Schuylkill:								
Breakers	11,376,935	41,468,000	523,311	1,536,000	306,430	464,000	12,206,676	43,468,000
Washeries	1,675,510	3,652,000	51,642	186,000	35,499	48,000	1,762,651	3,886,000
Dredges	517,182	530,000	106,317	110,000	1,160	1,000	624,659	641,000
Total Schuylkill	13,569,627	45,650,000	681,270	1,832,000	343,089	513,000	14,593,986	47,995,000
Wyoming:								
Breakers	24,242,243	95,849,000	1,971,337	8,202,000	1,592,887	1,731,000	27,806,467	105,782,000
Washeries	90,874	235,000	105,505	347,000	98,724	102,000	295,103	684,000
Dredges			17,067	32,000			17,067	32,000
Total Wyoming	24,333,117	96,084,000	2,093,909	8,581,000	1,691,611	1,833,000	28,118,637	106,498,000
Total, excluding Sullivan County:								
Breakers [2]	43,653,603	167,956,000	2,759,724	10,957,000	2,275,749	2,850,000	48,689,076	181,763,000
Washeries [2]	1,766,384	3,887,000	157,147	533,000	134,223	150,000	2,057,754	4,570,000
Dredges	565,236	585,000	137,464	160,000	1,160	1,000	703,860	746,000
Total	45,985,223	172,428,000	3,054,335	11,650,000	2,411,132	3,001,000	51,450,690	187,079,000
Sullivan County: [3] Breakers	7,059	17,000	26,738	76,000	2,890	3,000	36,687	96,000
Grand total: 1939	45,992,282	172,445,000	3,081,073	11,726,000	2,414,022	3,004,000	51,487,377	187,175,000
1938	41,063,869	166,839,000	2,722,206	10,682,000	2,312,952	3,079,000	46,099,027	180,600,000
Change, 1939 percent	+12.0	+3.4	+13.2	+9.8	+4.4	−2.4	+11.7	+3.6

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[1] Value given is value at which coal left possession of producing company, f. o. b. mines, and does not include margins of separately incorporated sales companies.

[2] Small quantity of washery coal included with breaker.

[3] For purposes of historical comparison and statistical convenience the mines of Sullivan County are grouped with the Pennsylvania anthracite region, although the product is classified as semianthracite according to the American Society for Testing Materials Tentative Standard.

TABLE 10.—*Pennsylvania anthracite produced, by fields, 1935–39, in net tons*

[The figures of breaker product include a certain quantity of culm-bank coal, which amounted to 585,564 tons in 1938. Data for 1913–25 will be found in Coal in 1925, p. 517, and for 1926–30 in Coal in 1930, p. 747]

Field	1935	1936	1937	1938	1939
Eastern Middle: Breakers	5,248,176	6,102,979	6,045,813	5,217,169	[1] 5,444,335
Western Middle:					
Breakers	10,231,664	11,469,078	10,381,521	8,877,485	9,242,223
Washeries	1,483,023	1,510,913	1,456,505	940,938	906,992
Dredges	231,711	221,800	264,588	223,961	253,819
Total Western Middle	11,946,398	13,201,791	12,102,614	10,042,384	10,403,034
Southern:					
Breakers	6,091,307	6,439,213	5,849,381	5,447,804	6,196,051
Washeries	99,204	438,465	218,541	625,335	855,659
Dredges	339,529	303,984	468,386	317,572	432,974
Total Southern	6,530,040	7,181,662	6,536,308	6,390,711	7,484,684
Northern:					
Breakers	27,700,235	27,448,035	26,707,743	24,059,598	27,806,467
Washeries	524,742	405,615	347,959	310,491	295,103
Dredges	19,227	20,900	27,500	29,491	17,067
Total Northern	28,244,204	27,874,550	27,083,202	24,399,580	28,118,637
Total, excluding Sullivan County:					
Breakers	49,271,382	51,459,305	48,984,458	43,602,056	[1] 48,689,076
Washeries	2,106,969	2,354,993	2,023,005	1,876,764	[1] 2,057,754
Dredges	590,467	546,684	760,474	571,024	703,860
	51,968,818	54,360,982	51,767,937	46,049,844	51,450,690
Sullivan County: Breakers	189,965	218,553	88,496	49,183	36,687
Grand total	52,158,783	54,579,535	51,856,433	46,099,027	51,487,377

[1] Small amount of washery coal included with breaker.

TABLE 11.—*Pennsylvania anthracite produced in 1939, by counties*

County	Shipments		Local sales		Colliery fuel		Total	
	Net tons	Value [1]	Net tons	Value	Net tons	Value	Net tons	Value [1]
Carbon	2,016,250	$7,181,000	83,468	$344,000	75,799	$180,000	2,175,517	$7,705,000
Columbia	206,692	778,000	32,181	45,000	6,023	7,000	244,896	830,000
Dauphin and Lebanon	517,076	1,878,000	61,515	92,000	4,413	7,000	583,004	1,977,000
Lackawanna	7,403,435	29,150,000	801,767	3,367,000	512,466	659,000	8,717,668	33,176,000
Luzerne	20,519,161	81,339,000	1,444,803	5,938,000	1,382,402	1,517,000	23,346,366	88,794,000
Northumberland	4,755,164	16,512,000	326,028	836,000	48,437	81,000	5,129,629	17,429,000
Schuylkill	10,327,279	34,901,000	280,764	988,000	377,706	543,000	10,985,749	36,432,000
Sullivan	7,059	17,000	26,738	76,000	2,890	3,000	36,687	96,000
Susquehanna and Wayne	155,240	595,000	3,692	15,000	3,886	7,000	162,818	617,000
Berks, Northampton, and York [2]	84,926	94,000	20,117	25,000			105,043	119,000
	45,992,282	172,445,000	3,081,073	11,726,000	2,414,022	3,004,000	51,487,377	187,175,000

[1] Value given for shipments is value at which coal left possession of producing company, f. o. b. mines and does not include margins of separately incorporated sales companies.

[2] Counties producing dredge coal only.

Fresh-mined and culm-bank coal, breaker, and washery product.—Anthracite is now produced from three sources—from mines, from old culm banks, and from the rivers that drain the anthracite region. As the three sources contribute to the country's supply, it is important to consider all of them to ascertain the total production. No difficulty is experienced in assembling the figures of production by dredges, as these are separate, distinct operations. A statistical detail requiring especial attention is the occasional practice of putting culm-bank coal through a breaker, either directly from the bank or after preliminary treatment in a washery. Table 14 shows the aggregate annual tonnages of culm-bank coal so treated.

TABLE 12.—*Pennsylvania anthracite produced in 1939, classified as fresh-mined, culm-bank, and river coal and as breaker, washery, and dredge product, by regions, in net tons*

[Exclusive of change in stock]

Region and type of plant	From mines			From culm banks	From river dredging	Total
	Underground		Strip pits			
	Mechanically loaded	Hand-loaded				
Lehigh:						
Breakers [1]	701,710	5,693,188	2,217,799	64,180		8,676,877
Dredges					62,134	62,134
Total Lehigh	701,710	5,693,188	2,217,799	64,180	62,134	8,739,011
Schuylkill:						
Breakers	1,519,048	7,848,985	2,337,985	451,499		12,157,517
Washeries			60,188	1,708,049		1,768,237
Dredges					624,659	624,659
Total Schuylkill	1,519,048	7,848,985	2,398,173	2,159,548	624,659	14,550,413
Wyoming:						
Breakers	9,553,075	17,218,855	853,937	69,885		27,695,752
Washeries			16,570	290,201		306,771
Dredges					17,067	17,067
Total Wyoming	9,553,075	17,218,855	870,507	360,086	17,067	28,019,590
Total, excluding Sullivan County:						
Breakers [1]	11,773,833	30,761,028	5,409,721	585,564		48,530,146
Washeries			76,758	1,998,250		2,075,008
Dredges					703,860	703,860
Total	11,773,833	30,761,028	5,486,479	2,583,814	703,860	51,309,014
Sullivan County: Breakers		36,687				36,687
Grand total: 1939	11,773,833	30,797,715	5,486,479	2,583,814	703,860	51,345,701
1938	10,151,669	27,990,628	5,095,341	2,340,444	571,024	46,149,106
Change, 1939 percent	+16.0	+10.0	+7.7	+10.4	+23.3	+11.3

[1] Small quantity of washery coal included with breaker.

TABLE 13.—*Pennsylvania anthracite produced in 1939, classified as fresh-mined, culm-bank, and river coal and as breaker, washery, and dredge product, by fields, in net tons*

[Exclusive of change in stock]

Field and type of plant	From mines			From culm banks	From river dredging	Total
	Underground		Strip pits			
	Mechanically loaded	Hand-loaded				
Eastern Middle: Breakers [1]	701,710	3,241,003	1,486,049	16,517		5,445,279
Western Middle:						
Breakers	1,438,763	5,969,632	1,584,437	203,947		9,196,779
Washeries			60,188	846,804		906,992
Dredges					253,819	253,819
Total Western Middle	1,438,763	5,969,632	1,644,625	1,050,751	253,819	10,357,590
Southern:						
Breakers	80,285	4,331,538	1,485,298	295,215		6,192,336
Washeries				861,245		861,245
Dredges					432,974	432,974
Total Southern	80,285	4,331,538	1,485,298	1,156,460	432,974	7,486,555
Northern:						
Breakers	9,553,075	17,218,855	853,937	69,885		27,695,752
Washeries			16,570	290,201		306,771
Dredges					17,067	17,067
Total Northern	9,553,075	17,218,855	870,507	360,086	17,067	28,019,590
Total, excluding Sullivan County:						
Breakers [1]	11,773,833	30,761,028	5,409,721	585,564		48,530,146
Washeries			76,758	1,998,250		2,075,008
Dredges					703,860	703,860
Total	11,773,833	30,761,028	5,486,479	2,583,814	703,860	51,309,014
Sullivan County: Breakers		36,687				36,687
Grand total	11,773,833	30,797,715	5,486,479	2,583,814	703,860	51,345,701

[1] Small quantity of washery coal included with breaker.

TABLE 14.—*Culm-bank coal put through breakers, 1935–39, by fields, in net tons*

Year	Northern	Eastern Middle	Western Middle	Southern	Total [1]
1935	236,000	143,000	61,000	177,000	617,000
1936	122,000	84,000	148,000	633,000	987,000
1937	95,000	67,000	102,000	606,000	870,000
1938	52,000	11,000	44,000	455,000	562,000
1939	70,000	17,000	204,000	295,000	586,000

[1] No culm-bank coal is put through breakers in Sullivan County.

SHIPMENTS, BY REGIONS AND SIZES

Shipments of anthracite, by regions and sizes, are given in table 15.

TABLE 15.—*Pennsylvania anthracite shipped in 1939, by regions and sizes* [1]

Size	Breaker shipments						Washery shipments	Dredge shipments	Grand total
	Lehigh region	Schuylkill region	Wyoming region	Sullivan County	Total				
					Excluding Sullivan County	Including Sullivan County			
Net tons									
Lump [2] and broken	40,410	45,811	162,669	----------	248,890	248,890	----------	----------	248,890
Egg	323,367	440,720	1,509,589	----------	2,273,676	2,273,676	1,316	----------	2,274,992
Stove	1,854,824	2,168,049	6,503,860	993	10,526,733	10,527,726	29,955	----------	10,557,681
Chestnut	2,000,644	2,715,965	6,569,994	1,365	11,286,603	11,287,968	168,672	----------	11,456,640
Pea	941,541	1,319,876	2,536,587	952	4,798,004	4,798,956	167,090	383	4,966,429
Total domestic	5,160,786	6,690,421	17,282,699	3,310	29,133,906	29,137,216	367,033	383	29,504,632
Buckwheat No. 1	1,246,469	1,794,366	3,185,426	640	6,226,261	6,226,901	331,589	11,412	6,569,902
Buckwheat No. 2 (Rice) [3]	668,822	1,010,288	1,731,591	1,046	3,410,701	3,411,747	297,990	27,920	3,737,657
Buckwheat No. 3 (Barley)	670,342	1,333,274	1,701,841	----------	3,705,457	3,705,457	450,330	182,626	4,338,413
Buckwheat No. 4	249,721	395,436	251,046	----------	896,203	896,203	289,983	219,066	1,405,252
Boiler	----------	----------	----------	----------	----------	----------	----------	12,300	12,300
Other	33,691	153,150	89,640	2,063	276,481	278,544	34,053	111,529	424,126
Total steam [4]	2,869,045	4,686,514	6,959,544	3,749	14,515,103	14,518,852	1,403,945	564,853	16,487,650
Grand total	8,029,831	11,376,935	24,242,243	7,059	43,649,009	43,656,068	1,770,978	565,236	45,992,282
Value									
Lump [2] and broken	$199,000	$241,000	$713,000	----------	$1,153,000	$1,153,000	----------	----------	$1,153,000
Egg	1,528,000	2,180,000	7,049,000	----------	10,757,000	10,757,000	$6,000	----------	10,763,000
Stove	9,031,000	10,795,000	31,146,000	$4,000	50,972,000	50,976,000	136,000	----------	51,112,000
Chestnut	9,911,000	13,530,000	31,482,000	6,000	54,923,000	54,929,000	741,000	----------	55,670,000
Pea	3,515,000	4,868,000	9,123,000	3,000	17,506,000	17,509,000	578,000	$1,000	18,088,000
Total domestic	24,184,000	31,614,000	79,513,000	13,000	135,311,000	135,324,000	1,461,000	1,000	136,786,000
Buckwheat No. 1	3,657,000	5,095,000	9,315,000	2,000	18,067,000	18,069,000	897,000	28,000	18,994,000
Buckwheat No. 2 (Rice) [3]	1,448,000	2,228,000	3,821,000	1,000	7,497,000	7,498,000	615,000	45,000	8,158,000
Buckwheat No. 3 (Barley)	1,107,000	2,007,000	2,893,000	----------	6,007,000	6,007,000	660,000	178,000	6,845,000

Buckwheat No. 4	215,000	358,000	235,000		808,000	808,000	239,000	141,000	1,188,000
Boiler								12,000	12,000
Other	20,000	166,000	72,000	1,000	258,000	259,000	23,000	180,000	462,000
Total steam [4]	6,447,000	9,854,000	16,336,000	4,000	32,637,000	32,641,000	2,434,000	584,000	35,659,000
Grand total	30,631,000	41,468,000	95,849,000	17,000	167,948,000	167,965,000	3,895,000	585,000	172,445,000
Average value per ton									
Lump [2] and broken	$4.92	$5.26	$4.38		$4.63	$4.63			$4.63
Egg	4.73	4.95	4.67		4.73	4.73	$4.56		4.73
Stove	4.87	4.98	4.79	$4.03	4.84	4.84	4.54		4.84
Chestnut	4.95	4.98	4.79	4.40	4.87	4.87	4.39		4.86
Pea	3.73	3.69	3.60	3.15	3.65	3.65	3.46	$2.61	3.64
Total domestic	4.69	4.73	4.60	3.93	4.64	4.64	3.98	2.61	4.64
Buckwheat No. 1	2.93	2.84	2.92	3.13	2.90	2.90	2.71	2.45	2.89
Buckwheat No. 2 (Rice) [3]	2.17	2.21	2.21	.96	2.20	2.20	2.06	1.61	2.18
Buckwheat No. 3 (Barley)	1.65	1.51	1.70		1.62	1.62	1.47	.97	1.58
Buckwheat No. 4	.86	.91	.94		.90	.90	.82	.64	.85
Boiler								.98	.98
Other	.59	1.08	.80	.48	.93	.93	.68	1.61	1.09
Total steam [4]	2.25	2.10	2.35	1.07	2.25	2.25	1.73	1.03	2.16
Grand total	3.81	3.64	3.95	2.41	3.85	3.85	2.20	1.03	3.75

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[1] Figures of shipments from breakers include 585,564 tons of culm-bank coal handled in the breakers.

[2] The quantity of lump included is insignificant.

[3] Includes Birdseye.

[4] Includes all steam sizes.

Table 16 reveals an interregional variation in the breaker production of domestic sizes as related to that of steam sizes and to total production. In 1939 the Wyoming region produced 71 percent domestic sizes and 29 percent steam sizes from a given tonnage of breaker feed; the Lehigh region, 64 percent domestic and 36 percent steam sizes; and the Schuylkill region, 59 percent domestic and 41 percent steam sizes. These percentages are relatively constant from year to year. The variations among the regions are due to differences in the physical situation and condition of the anthracite beds.

TABLE 16.—*Sizes of Pennsylvania anthracite shipped from breakers, 1937–39, by regions, in percent of total*

[Note that shipments of dredge and washery coal are not included]

Size of coal	Percent of total shipments								
	Lehigh region			Schuylkill region			Wyoming region		
	1937	1938	1939	1937	1938	1939	1937	1938	1939
Lump[1] and broken	0.5	0.4	0.5	0.5	0.4	0.4	0.3	0.2	0.7
Egg	4.8	4.5	4.0	4.9	4.2	3.9	6.5	6.3	6.2
Stove	21.0	23.0	23.1	18.1	19.3	19.0	24.7	26.2	26.8
Chestnut	25.6	24.7	24.9	23.0	23.6	23.9	28.1	27.6	27.1
Pea	11.5	12.0	11.8	11.0	11.0	11.6	10.4	10.0	10.5
Total domestic	63.4	64.6	64.3	57.5	58.5	58.8	70.0	70.3	71.3
Buckwheat No. 1	15.9	15.6	15.5	15.8	16.3	15.8	13.7	13.7	13.2
Buckwheat No. 2 (Rice)[2]	8.4	8.3	8.3	8.7	8.8	8.9	7.2	7.1	7.1
Buckwheat No. 3 (Barley)	9.2	8.5	8.4	11.2	10.7	11.7	7.7	7.5	7.0
Boiler									
Other, including Buckwheat No. 4	3.1	3.0	3.5	6.8	5.7	4.8	1.4	1.4	1.4
Total steam[3]	36.6	35.4	35.7	42.5	41.5	41.2	30.0	29.7	28.7

Size of coal	Sullivan County			Total					
				Excluding Sullivan County			Including Sullivan County		
Lump[1] and broken		11.3		0.4	0.3	0.6	0.4	0.3	0.6
Egg	1.8			5.7	5.4	5.2	5.7	5.4	5.2
Stove	15.9	10.8	14.1	22.2	23.7	24.1	22.1	23.7	24.1
Chestnut	15.8	26.4	19.3	26.2	26.0	25.8	26.2	26.0	25.8
Pea	9.5	16.6	13.5	10.7	10.6	11.0	10.8	10.6	11.0
Total domestic	43.0	65.1	46.9	65.2	66.0	66.7	65.2	66.0	66.7
Buckwheat No. 1	10.2	10.6	9.1	14.7	14.8	14.3	14.7	14.8	14.3
Buckwheat No. 2 (Rice)[2]	12.8	14.7	14.8	7.9	7.7	7.8	7.9	7.7	7.8
Buckwheat No. 3 (Barley)				9.0	8.6	8.5	8.9	8.6	8.5
Boiler	2.3			(4)			(4)		
Other, including Buckwheat No. 4	31.7	9.6	29.2	3.[illegible]	2.9	2.7	3.3	2.9	2.7
Total steam[3]	57.0	34.9	53.1	34.8	34.0	33.3	34.8	34.0	33.3

[1] The quantity of lump included is insignificant.
[2] Includes Birdseye.
[3] Includes all steam sizes.
[4] Less than 0.1 percent.

AVERAGE SALES REALIZATION

The valuation figures in this study represent value at the breaker or washery reported by the operating companies. The company is requested to "estimate value of the product not sold" and to "exclude selling expenses" in making its report.

From this it will be seen that when a producing company sells its output to a separately organized sales company (the practice of many, including certain larger producers) the value reported will exclude the margin of the sales company and may therefore be somewhat less than the circular price at which the coal is placed on the general market. This fact should be borne in mind in considering the variations in value between different regions shown in the tables for the same sizes of coal.

The average sales realization per net ton on breaker shipments only fell to $3.85 in 1939 from $4.16 in 1938, or 7 percent. By far the greater decrease was in the domestic sizes—9 percent. The drop in steam sizes was only 3 percent.

If local sales, colliery fuel, and washery and dredge coal are included, the average value per net ton on the total 1939 production was $3.64 compared with $3.92 in 1938. (See table 18.)

TABLE 17.—*Average sales realization per net ton on Pennsylvania anthracite shipments from breakers, 1937–39, by regions and sizes*

[Value does not include margins of separately incorporated sales companies]

Size	Lehigh region			Schuylkill region			Wyoming region		
	1937	1938	1939	1937	1938	1939	1937	1938	1939
Lump[1] and broken	$4.96	$5.17	$4.92	$5.24	$5.50	$5.26	$5.01	$5.16	$4.38
Egg	5.01	5.11	4.73	5.14	5.27	4.95	5.04	5.16	4.67
Stove	5.25	5.36	4.87	5.26	5.39	4.98	5.19	5.31	4.79
Chestnut	5.25	5.43	4.95	5.31	5.41	4.98	5.20	5.32	4.79
Pea	4.04	3.93	3.73	3.96	3.80	3.69	4.02	3.91	3.60
Total domestic	5.01	5.10	4.69	5.02	5.09	4.73	5.00	5.10	4.60
Buckwheat No. 1	2.98	3.06	2.93	2.87	2.93	2.84	3.00	3.08	2.92
Buckwheat No. 2 (Rice)[2]	2.29	2.36	2.17	2.17	2.27	2.21	2.31	2.39	2.21
Buckwheat No. 3 (Barley)	1.43	1.61	1.65	1.33	1.50	1.51	1.55	1.69	1.70
Total steam[3]	2.24	2.35	2.25	1.99	2.13	2.10	2.37	2.47	2.35
Total all sizes	3.99	4.13	3.81	3.73	3.86	3.64	4.21	4.32	3.95

Size	Sullivan County			Total					
				Excluding Sullivan County			Including Sullivan County		
Lump[1] and broken	-------	$3.00	-------	$5.08	$5.28	$4.63	$5.08	$5.24	$4.63
Egg	$3.97	-------	-------	5.06	5.18	4.73	5.06	5.18	4.73
Stove	4.46	3.00	$4.03	5.21	5.33	4.84	5.21	5.33	4.84
Chestnut	3.07	3.00	4.40	5.23	5.36	4.87	5.23	5.36	4.87
Pea	2.56	2.52	3.15	4.01	3.88	3.65	4.01	3.88	3.65
Total domestic	3.51	2.88	3.93	5.01	5.10	4.64	5.01	5.10	4.64
Buckwheat No. 1	2.00	1.50	3.13	2.95	3.03	2.90	2.95	3.03	2.90
Buckwheat No. 2 (Rice)[2]	.75	.50	.96	2.26	2.35	2.20	2.26	2.35	2.20
Buckwheat No. 3 (Barley)	-------	-------	-------	1.45	1.61	1.62	1.45	1.61	1.62
Total steam[3]	1.03	.73	1.07	2.21	2.33	2.25	2.21	2.33	2.25
Total all sizes	2.10	2.13	2.41	4.03	4.16	3.85	4.03	4.16	3.85

[1] The quantity of lump included is insignificant. [2] Includes Birdseye. [3] Includes all steam sizes.

Table 18.—*Average value per net ton of Pennsylvania anthracite shipped, local sales, colliery fuel, and total production, 1938–39, by regions* [1]

[Note that values in this table include washery and dredge coal]

Region	1938				1939			
	Shipments	Local sales	Colliery fuel	Total production	Shipments	Local sales	Colliery fuel	Total production
Lehigh	$4.11	$4.65	$1.80	$4.01	$3.80	$4.43	$1.74	$3.73
Schuylkill	3.63	3.00	1.56	3.51	3.36	2.69	1.50	3.29
Wyoming	4.31	4.35	1.13	4.12	3.95	4.10	1.08	3.79
Total, excluding Sullivan County	4.06	3.93	1.33	3.92	3.75	3.81	1.24	3.64
Sullivan County	2.13	2.92	.83	2.49	2.41	2.84	1.04	2.62
Grand total	4.06	3.92	1.33	3.92	3.75	3.81	1.24	3.64

[1] Value given for shipments is value at which coal left possession of producing company, f. o. b. mines, and does not include margins of separately incorporated sales companies.

NUMBER OF OPERATIONS

The total number of active plants reporting increased from 390 in 1937 to 442 in 1938. (See table 19.) Figures for 1939 are not yet available, but indications are that the upward trend continued.

Table 19.—*Number of active operations in the Pennsylvania anthracite industry in 1938* [1]

Region and type of product	Total active plants reporting [2]	Breakers [3]	Other preparation plant [4]	Washeries [5]	Culm banks operated in conjunction with breakers	Dredges	Reporting strip-pit tonnage
Lehigh:							
Breakers or mines	41	26	1		6		39
Dredges	2		1			2	
Total Lehigh	43	26	2		6	2	39
Schuylkill:							
Breakers or mines	76	34	12		6		35
Washeries	20			9			1
Dredges	31		21			31	
Total Schuylkill	127	34	33	9	6	31	36
Wyoming:							
Breakers or mines	254	76	3		3		36
Washeries	12			3			2
Dredges	1		1			1	
Total Wyoming	267	76	4	3	3	1	38
Total, excluding Sullivan County:							
Breakers	371	136	16		15		110
Washeries	32			12			3
Dredges	34		23			34	
	437	136	39	12	15	34	113
Sullivan County: Breakers	5	4					
Grand total	442	140	39	12	15	34	113

[1] Figures for 1939 not yet available.

[2] The number of active plants contains numerous duplications, that is, successions known and unknown, and leases and subleases. Each report received which was tabulated for production or for employment has been counted separately.

[3] Equipped to prepare standard sizes of fresh-mined coal.

[4] For preliminary crushing, screening, or cleaning. Usually old breakers are used for this purpose. The number reported for dredges represents reports showing men employed at tipple.

[5] Preparation plant for the sizing and cleaning of culm-bank coal.

LABOR STATISTICS

According to the Pennsylvania Department of Mines about 93,000 men were employed in the anthracite region in 1939. The number employed in 1938, as based upon direct reports to the Bureau of Mines from operators and including the employees of dredges and strip contractors, was 96,417.

Man-days lost on account of strikes were 0.2 percent less in 1938 than in 1937, and suspension of work owing to strikes and the number of men involved also declined. Comparable statistics covering 1939 are not yet available, but there were no widespread labor disputes during the year.

According to the Bureau of Labor Statistics, average weekly earnings ranged from a low of $17.16 in December to a high of $35.84 in May and averaged $25.52 during 1939, or 9 percent above the 1938 average. The index of employment (1929 average equals 100) fluctuated between 44.7 in July and 53 in April and averaged 3.3 percent below 1938. The index of pay rolls reached a low of 25.2 in July and a high of 57 in May and averaged 3.4 percent above 1938.

TABLE 20.—*Men employed and days worked at operations producing Pennsylvania anthracite in 1938* [1]

[Includes operations of strip contractors]

Region	Average number of men employed								Average number of days plant operated	Man-days of labor	Average tons per man per day
	Underground			Surface							
	Miners and their laborers	Other	Total underground	In strip pits	In preparation plant	Other	Total surface	Grand total			
Lehigh:											
Breaker	6,936	4,254	11,190	1,604	1,393	2,929	5,926	17,116	165	2,817,785	2.73
Dredge					4	12	16	16	166	2,653	20.45
Total Lehigh	6,936	4,254	11,190	1,604	1,397	2,941	5,942	17,132	165	2,820,438	2.75
Schuylkill:											
Breaker	9,694	6,626	16,320	1,453	1,726	3,604	6,783	23,103	180	4,159,058	2.65
Washery				32	229	554	815	815	178	145,393	[2] 10.77
Dredge					88	167	255	255	136	34,648	14.06
Total Schuylkill	9,694	6,626	16,320	1,485	2,043	4,325	7,853	24,173	180	4,339,099	3.20
Wyoming:											
Breaker	31,134	13,570	44,704	542	2,709	6,768	10,019	54,723	170	9,319,906	2.58
Washery				11	25	97	133	133	204	27,183	[2] 11.42
Dredge					18	6	24	24	204	4,896	6.02
Total Wyoming	31,134	13,570	44,704	553	2,752	6,871	10,176	54,880	170	9,351,985	2.61
Total, excluding Sullivan County:											
Breaker	47,764	24,450	72,214	3,599	5,828	13,301	22,728	[3] 94,942	172	16,296,749	2.68
Washery				43	254	651	948	[3] 948	182	172,576	[2] 10.88
Dredge					110	185	295	295	143	42,197	13.53
	47,764	24,450	72,214	3,642	6,192	14,137	23,971	96,185	172	16,511,522	2.79
Sullivan County: Breaker	128	45	173		13	46	59	232	95	22,011	2.23
Grand total	47,892	24,495	72,387	3,642	6,205	14,183	24,030	96,417	171	16,533,533	2.79

[1] Figures for 1939 not yet available.
[2] Represents washeries for which both production and employment were separately reported.
[3] The men shown at breakers include a number of washery employees who could not be separated from breaker employees.

TABLE 21.—*Men employed at operations producing Pennsylvania anthracite in 1938, by counties* [1]

[Includes operations of strip contractors]

County	Men	County	Men
Carbon	4,207	Schuylkill	19,317
Columbia	1,032	Sullivan	232
Dauphin	1,090	Susquehanna and Wayne	388
Lackawanna	17,091	Berks, Lebanon, Northampton, and York [2]	53
Luzerne	45,680		
Northumberland	7,327		96,417

[1] Figures for 1939 not yet available.

[2] Counties producing dredge coal only.

TABLE 22.—*Strikes, suspensions, and lock-outs in the Pennsylvania anthracite region in 1938* [1]

	Lehigh	Schuylkill	Wyoming	Sullivan County	Total	
					Excluding Sullivan County	Including Sullivan County
Total number employed	17,132	24,173	54,880	232	96,185	96,417
Men on strike	10,194	13,743	3,498		27,435	27,435
Man-days lost on account of strike	127,477	235,052	216,928		579,457	579,457
Average days lost—						
Per man employed	7.4	9.7	4.0		6.0	6.0
Per man on strike	12.5	17.1	62.0		21.1	21.1

[1] Figures for 1939 not yet available.

EQUIPMENT AND METHODS OF MINING

Mechanical loading.—The percentage of total deep-mined production of anthracite loaded mechanically continued to increase. In 1939 the 11,773,833 tons so loaded were 27.7 percent of the total underground output compared with 26.6 percent (10,151,669 tons) in 1938 and 25.1 percent (10,683,837 tons) in 1937. The total tonnage loaded mechanically underground increased 16 percent from 1938 to 1939; hand-loading advanced 10 percent.

There were 8 scrapers and 216 conveyors (including hand-loaded conveyors and conveyors equipped with duckbills or other self-loading heads) sold in the anthracite region in 1939; some were installed late in the year. No sales of mobile loading machines were reported. Returns direct from operators indicated that 535 scrapers and 1,997 conveyors were in use during the year.

TABLE 23.—*Relative growth of mechanical loading, hand loading, and stripping in Pennsylvania anthracite mines, 1935–39*

[Mechanical loading includes coal handled on pit-car loaders and hand-loaded face conveyors]

Year	Net tons			Index numbers, 1927=100		
	Mechanical loading underground	Stripping	Hand loading	Mechanical loading underground	Stripping	Hand loading
1935	9,279,000	5,187,000	34,400,000	417	241	48
1936	10,828,000	6,203,000	33,899,000	487	288	47
1937	10,684,000	5,696,000	31,883,000	481	265	45
1938	10,152,000	5,095,000	27,990,000	457	237	39
1939	11,774.000	5,486,000	30,798,000	530	255	43

TABLE 24.—*Pennsylvania anthracite loaded mechanically underground, 1935–39*

Year.	Scrapers		Conveyors and pit-car loaders [1]		Total loaded mechanically	
	Number of units	Net tons loaded	Number of units	Net tons handled	Number of units	Net tons handled
1935	[2] 508	[2] 2,662,026	1,615	6,617,031	2,123	9,279,057
1936	[2] 504	[2] 2,966,407	1,790	7,861,539	2,294	10,827,946
1937	539	2,873,289	[2] 1,855	[2] 7,810,548	2,394	10,683,837
1938	545	2,589,954	[2] 1,831	[2] 7,561,715	2,376	10,151,669
1939	535	3,088,956	1,997	8,684,877	2,532	11,773,833

[1] Includes duckbills and other self-loading conveyors, which account for only a small part of the total.
[2] Includes mobile loaders.

TABLE 25.—*Pennsylvania anthracite handled by mobile loaders and scrapers and by all types of conveyors in 1939, by fields, in net tons*

Field	Scraper loaders	Pit-car loaders	Hand-loaded face conveyors, all types [1]	Total mechanically loaded underground
Northern	2,518,347		7,034,728	9,553,075
Eastern Middle	150,922	17,368	533,420	701,710
Western Middle Southern	419,687	67,680	1,031,681	1,519,048
	3,088,956	85,048	8,599,829	11,773,833

[1] Shaker chutes, etc., including those equipped with duckbills.

Cutting machines.—The number of cutting machines in use in 1939 was less than in 1938, but a larger tonnage was cut by machines.

TABLE 26.—*Pennsylvania anthracite cut by machines, 1938–39*

Region	1938			1939		
	Cutting machines		Net tons cut by machines	Cutting machines		Net tons cut by machines
	Permissible	All other types.		Permissible	All other types	
Lehigh				145	80	1,881,884
Schuylkill						
Wyoming	150	89	1,583,907			
Total, excluding Sullivan County	150	89	1,583,907	145	80	1,881,884
Sullivan County		3	4,500			
Grand total	150	92	1,588,407	145	80	1,881,884

Strip-pit mining.—The percentage of fresh-mined anthracite produced from strip pits remained virtually constant—11.4 percent in 1939 and 11.8 percent in 1938. The tonnage mined by this method in 1939 rose in all regions. Table 27 gives the figures for several years.

TABLE 27.—*Relative growth of Pennsylvania anthracite mined from strip pits, 1915, 1920, 1925, 1930, and 1937–39, in net tons*

Year	Number of power shovels in use [1]	Quantity mined by stripping		Percent of fresh-mined total that was stripped	Number of men employed	Average number of days worked
		Total	Average per shovel			
1915	57	1,121,603	19,677	(²)	(²)	(²)
1920	96	2,054,441	21,400	2.5	(²)	(²)
1925	97	1,578,478	16,273	2.7	(²)	(²)
1930	108	2,526,288	23,484	3.7	(²)	(²)
1937	351	5,696,018	16,228	11.9	4,585	184
1938	331	5,095,341	15,394	11.8	3,642	186
1939:						
Lehigh region	134	2,217,799	16,551	25.8	(²)	(²)
Schuylkill region	121	2,398,173	19,820	20.4	(²)	(²)
Wyoming region	91	870,507	9,566	3.2	(²)	(²)
Total, 1939 [3]	[4] 346	5,486,479	15,857	11.4	(²)	(²)

[1] Certain of the equipment reported by stripping contractors may have been counted twice when moved from one small job to another during the year. The amount of such double counting is unknown but presumably is not great.

[2] Data not available.

[3] There was no strip-pit mining in Sullivan County during 1939.

[4] Includes 109 gasoline, 15 steam, 47 electric, 166 Diesel, and 9 other types of shovels.

Dredge operations.—Both the tonnage and average value of anthracite produced by dredges increased in 1939 compared with 1938.

TABLE 28.—*Pennsylvania anthracite produced by dredges, 1938–39, by rivers*

River (including tributaries)	1938			1939		
	Dredges	Net tons	Value	Dredges	Net tons	Value
Lehigh	5	123,452	$124,795	3	62,134	$73,000
Schuylkill				3	67,539	62,000
Susquehanna	29	447,572	445,784	25	574,187	611,000
	34	571,024	570,579	31	703,860	746,000

TABLE 29.—*Average receipts per net ton on all dredge coal sold, 1935–39*

Year	Average receipts	Year	Average receipts
1935	$0.88	1938	$1.00
1936	1.06	1939	1.06
1937	1.11		

FOREIGN TRADE [4]

Exports of anthracite in 1939 increased 36 percent over 1938 and comprised 5 percent of the domestic production. Imports declined 18 percent and were equivalent to 0.6 percent of United States output; the U. S. S. R. supplied 71 percent, Great Britain 23 percent, French Indochina 4 percent, and Canada (reexports) 2 percent.

TABLE 30.—*Anthracite imported for consumption in the United States, 1938–39, by countries, in net tons*

Country	1938	1939	Country	1938	1939
Canada	2,487	7,111	U. S. S. R	200,480	212,444
China	--------	20	United Kingdom	154,104	66,784
Indochina (French)	5,824	11,794		362,895	298,153

TABLE 31.—*Anthracite imported for consumption in the United States, 1938–39, by customs districts, in net tons*

Customs district	1938	1939	Customs district	1938	1939
Connecticut	11,320	6,655	New York	--------	20
Maine and New Hampshire	32,436	21,354	Rhode Island	54,642	48,240
Massachusetts	264,465	221,883	Vermont	3	1
Michigan	29	--------		362,895	298,153

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[4] Figures on imports and exports compiled by M. B. Price, of the Bureau of Mines, from records of the Bureau of Foreign and Domestic Commerce.

TABLE 32.—*Anthracite exported from the United States, 1938–39, by countries, in net tons*

Country	1938	1939
North America:		
Bermuda	1,175	1,541
Canada	1,895,718	2,577,157
Central America:		
British Honduras	--------	259
Guatemala	13	90
Honduras	--------	1
Nicaragua	22	8
Panama	1	--------
Mexico	179	150
Miquelon and St. Pierre Islands	45	62
Newfoundland and Labrador	7,471	9,349
West Indies:		
British:		
Jamaica	11	--------
Trinidad and Tobago	22	--------
Other British	268	221
Dominican Republic	2	242
French	2,865	--------
North America—Continued.		
West Indies—Continued.		
Haiti	--------	1
Netherland	6	7
South America:		
Bolivia	265	--------
Brazil	672	59
Chile	--------	1
Colombia	3	2
Ecuador	--------	1
Venezuela	15	--------
Europe:		
France	8	--------
United Kingdom	--------	49
Asia:		
Japan	149	--------
Netherland India	--------	778
Saudi Arabia	1	--------
Other Asia	--------	22
	1,908,911	2,590,000

TABLE 33.—*Anthracite exported from the United States, 1938–39, by customs districts and ports of export, in net tons*

Customs district	1938	1939
North Atlantic:		
Maine and New Hampshire	20	703
Massachusetts	294	86
New York	33,756	44,846
Philadelphia	34,908	48,000
South Atlantic:		
Maryland	459	--------
Virginia	2,865	353
Gulf Coast:		
Florida	81	47
New Orleans	6	371
Mexican Border:		
Arizona	59	37
El Paso	108	33
San Antonio	--------	22
Pacific Coast:		
Alaska	269	270
Los Angeles	149	2
San Diego	12	20
San Francisco	8	11
Northern Border:		
Buffalo	1,273,807	1,564,952
Dakota	379	117
Duluth and Superior	4,234	4,556
Michigan	4	--------
Ohio	5,068	14,501
Rochester	165,853	283,465
St. Lawrence	385,011	625,239
Vermont	1,561	2,369
	1,908,911	2,590,000

The Canadian market.—The United States strengthened its position in the important Canadian anthracite market further in 1939, notwithstanding obstacles such as an import duty, the depreciated Canadian dollar in terms of United States currency, and Canadian subventions to aid its own coal industry. In 1939 the United States supplied 66 percent of Canada's total imports of anthracite compared with 53 percent in 1938. On the other hand, of the bituminous coal available in 1939 (production, plus imports, minus exports), the United States supplied 47 percent as against 49 percent in 1938. This decline indicates Canada's efforts to make greater use of its bituminous-coal resources. The tonnage of all coal available in 1939 (29,028,000 tons) was 6 percent more than in 1938. Details of the coal and coke industry and foreign trade of Canada are given in table 34.

Table 34.—*Coal and coke industry and foreign trade of Canada, 1938–39* [1]

[Thousands of net tons]

	Coal										Coke from coal	
	Anthracite		Bituminous		Subbituminous		Lignite		Total			
	1938	1939	1938	1939	1938	1939	1938	1939	1938	1939	1938	1939
Production	......	......	10,289	11,597	489	512	3,470	3,410	14,248	15,519	2,356	2,388
Imports:												
United States	1,974	2,606	9,644	9,836	......	......	3	3	11,621	12,445	407	434
Great Britain	1,199	1,035	66	68	......	......	......	......	1,265	1,103	3	2
Germany	407	294	35	......	......	......	......	......	442	294	5	......
Belgium	34	......	......	......	......	......	......	......	34	......	......	......
French Indochina	30	43	......	......	......	......	......	......	30	43	......	......
Netherlands	37	......	......	......	......	......	......	......	37	......	......	......
U. S. S. R.	15	......	......	......	......	......	......	......	15	......	......	......
Morocco	20	......	......	......	......	......	......	......	20	......	......	......
Total imports	3,716	3,978	9,745	9,904	......	......	3	3	13,464	13,885	415	436
Exports	......	......	344	368	......	......	9	8	353	376	31	48
Available for consumption	3,716	3,978	19,690	21,133	489	512	3,464	3,405	27,359	29,028	2,740	2,776

[1] Quarterly Report on Coal and Coke Statistics for Canada, October–December 1938 and 1939. Canadian coal charged to ovens in 1938, 1,064,302 tons; 1939, 1,104,371 tons. Imported coal charged to ovens in 1938, 2,215,469 tons; 1939, 2,207,707 tons.

Imports of anthracite into Canada in 1939 were 3,977,805 tons, a gain of 7 percent over 1938. Of the total imports into Canada in 1938 and 1939, respectively, 60 and 64 percent were received from January to August, inclusive, before the outbreak of war in Europe. Of the total tonnage supplied by the United States in 1938 and 1939, respectively, 68 and 61 percent were received from January to August.

Canadian official statistics for 1939 show that of the total imports of anthracite into Canada 24 percent (941,017) tons were steam sizes—44 percent from Great Britain, 40 percent from the United States, 13 percent from Germany, and 3 percent from French Indochina.

The upward trend in the use of hydroelectricity, natural gas, and doubtless fuel oil continued. Although coal production in 1939 was 1,224,746 tons greater than in 1938, hydroelectric power, in terms of coal, increased 1,623,000 tons. Excluding 1937, coal production was greater in 1939 than in any year since 1929.

The tonnage of Canadian coal moved under assisted (railroad) rates continued to increase.

The additional subvention (not to exceed 50 cents a ton) granted November 8, 1938, by the Canadian Government to aid shipments of Nova Scotia bituminous coal to central Canada was withdrawn effective December 8, 1939.

In 1939 the Canadian Government appointed a coal administrator, and effective December 1, the coal industry and trade were required to operate under license.

The outlook for anthracite in Canada in 1940 is obscured by the international situation and developments that may result therefrom.

Among the possible developments is further depreciation of the Canadian dollar, which would facilitate the purchase of British anthracite. On the other hand, the increased cost of coal production in Britain and high ocean-freight and insurance rates should much more than offset the lower value of the Canadian dollar; however, as Britain will require Canadian timber and grain it seems probable that Canada will continue to receive British anthracite in order to conserve foreign exchange.

The trade agreement between the United States and U. S. S. R. was renewed in August for another year, during which period U. S. S. R. agreed not to ship more than 400,000 tons of anthracite to the United States.

World anthracite production.—Because of the international situation, anthracite production data for 1939 were not released in a number of countries. Available data for 1934–39 are presented in table 35.

TABLE 35.—*World production of anthracite, 1934–39, in metric tons*

[Compiled by R. B. Miller]

Country	1934	1935	1936	1937	1938	1939
Belgium	5,823,787	5,241,026	6,077,907	6,694,049	6,874,520	(1)
Bulgaria	6,921	2,223	2,323	2,542	4,000	(1)
China	5,309,810	(2)	(2)	(1)	(1)	(1)
Chosen	982,370	1,079,330	1,051,853	1,101,500	(1)	(1)
France	5,900,000	5,000,000	8,227,000	(1)	(1)	(1)
Germany	4,539,000	4,886,000	5,511,000	5,627,000	(1)	(1)
Indochina	1,554,600	1,740,606	2,150,654	2,264,978	2,289,832	2,547,000
Irish Free State	91,171	87,114	96,742	106,651	92,157	90,455
Italy	84,547	70,150	79,972	95,060	132,197	100,000
Japan [3]	(2)	(2)	(2)	(1)	(1)	(1)
Morocco, French	36,070	52,696	49,388	107,150	123,200	115,600
Peru	3,600	2,461	3,535	2,918	1,500	1,450
Portugal	196,587	205,373	207,890	241,163	281,740	294,081
Rumania	18,010	17,207	3,708	3,646	3,266	(1)
Spain	644,621	701,789	(2)	(1)	493,539	663,593
Switzerland	3,000	3,500	3,000	4,000	3,000	2,500
U. S. S. R.:						
Asiatic	243,000	850,000	410,000	(1)	(1)	(1)
European	22,003,000	25,200,000	28,100,000	(1)	(1)	(1)
United Kingdom	7,241,117	6,907,530	6,629,955	6,437,465	6,378,904	(1)
United States	51,861,930	47,317,405	49,513,463	47,043,119	41,820,115	46,708,319
World total	106,767,930	104,089,405	113,843,463	(1)	(1)	(1)
Total, exclusive of United States	54,906,000	56,772,000	64,330,000	(1)	(1)	(1)

[1] Data not available.

[2] Estimate included in total.

[3] The anthracite production of Japan is said to average about 225,000 tons a year. Production figures are not available

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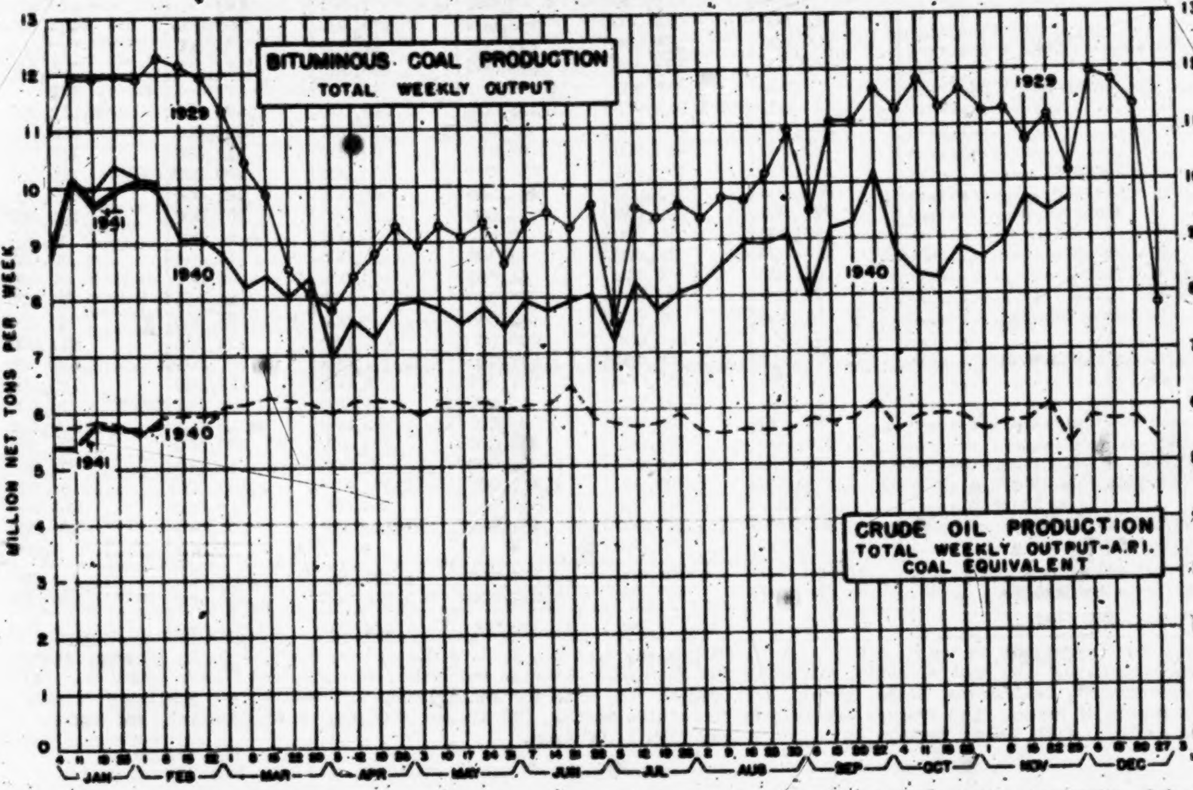
WEEKLY COAL REPORT
NO. W. C. R. 1231

February 15, 1941

UNITED STATES
DEPARTMENT OF THE INTERIOR
BITUMINOUS COAL DIVISION

PRODUCTION, STOCKS, AND CONSUMPTION OF COAL



Total weekly production of soft coal for the country continues to hover around the 10-million-ton mark. Output in the week ended February 8 is estimated at 10,080,000 net tons, as against 10,100,000 tons in the preceding week and 9,931,000 tons in the corresponding week of 1940.

TABLE I. ESTIMATED UNITED STATES PRODUCTION OF COAL, IN NET TONS
WITH COMPARABLE DATA ON PRODUCTION OF CRUDE PETROLEUM

(Data for Pennsylvania anthracite from Weekly Anthracite and Beehive Coke Report of the Bureau of Mines;
data for crude petroleum computed from weekly statistics of American Petroleum Institute)

	Week ended			Calendar year to date d			
	February 8, 1941	February 1, 1941	February 10 1940	1941 e	1940	Change from last year	1929
Bituminous coal a							
Total, including mine fuel ..	10,080,000	10,100,000	9,931,000	58,610,000	59,457,000	- 1.4%	69,983,000
Daily average	1,680,000	1,683,000	1,655,000	1,675,000	1,694,000	- 1.1%	1,976,000
Pennsylvania anthracite b							
Total, including mine fuel ..	-	1,190,000	636,000	f 5,504,000	f 6,045,000	- 8.9%	f 7,807,000
All coal							
Total, including mine fuel ..	-	11,290,000	10,567,000	f 54,034,000	f 55,571,000	- 2.8%	f 65,498,000
Crude petroleum c							
Coal equivalent of weekly output	5,795,000	5,751,000	5,908,000	33,880,000	34,620,000	- 2.1%	25,415,000

(a) Includes for purposes of historical comparison and statistical convenience the production of lignite. (b) Includes washery and dredge coal and coal shipped by truck from authorized operations. (c) Total barrels produced during the week converted to equivalent coal assuming 6,000,000 B.t.u. per barrel of oil and 13,100 B.t.u. per pound of coal. (d) Sum of 6 full weeks ending February 8, 1941, and corresponding periods in other years. (e) Subject to current adjustment. (f) Sum of 5 weeks.

The following record of daily loadings shows the variation in production from day to day in the week of February 3-8. The figures are furnished through courtesy of the Association of American Railroads, and are based on preliminary telegraphic returns. The revised totals, as reported at the end of the week, are given in Table III.

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Bituminous coal, cars	27,852	28,974	29,692	29,737	29,793	15,195

No. W. C. R. 1231

TABLE II. ESTIMATED WEEKLY PRODUCTION OF COAL, BY STATES, IN NET TONS

(The current weekly estimates are based on railroad carloadings and river shipments and are subject to revision on receipt of monthly tonnage reports from district and State sources or of final annual returns from the operators.)

State	Week ended February 1, 1941	January 25, 1941	February 3, 1940	February 4, 1939	February 2, 1929	January average 1923 e
Alaska	4,000	4,000	3,000	2,000	(f)	(f)
Alabama	344,000	340,000	336,000	278,000	369,000	434,000
Arkansas and Oklahoma	107,000	105,000	127,000	48,000	180,000	93,000
Colorado	160,000	175,000	206,000	148,000	310,000	226,000
Georgia and North Carolina	1,000	1,000	*	*	(f)	(f)
Illinois	1,183,000	1,215,000	1,421,000	1,216,000	1,674,000	2,111,000
Indiana	486,000	467,000	507,000	387,000	455,000	659,000
Iowa	61,000	67,000	88,000	89,000	112,000	140,000
Kansas and Missouri	175,000	173,000	216,000	165,000	199,000	190,000
Kentucky – Eastern	821,000	795,000	884,000	681,000	981,000	607,000
Western	225,000	217,000	308,000	217,000	399,000	240,000
Maryland	38,000	37,000	37,000	36,000	66,000	55,000
Michigan	6,000	10,000	12,000	11,000	17,000	32,000
Montana	68,000	69,000	64,000	63,000	90,000	82,000
New Mexico	25,000	25,000	25,000	33,000	62,000	73,000
North and South Dakota	61,000	73,000	52,000	65,000	f 63,000	f 50,000
Ohio	536,000	496,000	477,000	434,000	444,000	814,000
Pennsylvania bituminous	2,533,000	2,465,000	2,122,000	1,771,000	2,887,000	3,402,000
Tennessee	130,000	137,000	151,000	109,000	115,000	133,000
Texas	12,000	11,000	15,000	15,000	25,000	26,000
Utah	82,000	90,000	85,000	96,000	148,000	109,000
Virginia	334,000	333,000	336,000	270,000	273,000	211,000
Washington	43,000	42,000	34,000	36,000	64,000	74,000
West Virginia – Southern a	1,875,000	1,790,000	1,911,000	1,377,000	2,035,000	1,134,000
Northern b	667,000	644,000	657,000	560,000	745,000	762,000
Wyoming	122,000	117,000	134,000	113,000	171,000	186,000
Other Western States c	1,000	2,000	*	*	f 5,000	f 7,000
Total bituminous coal	10,100,000	9,900,000	10,208,000	8,220,000	11,889,000	11,850,000
Pennsylvania anthracite d	1,190,000	1,257,000	1,048,000	1,224,000	1,655,000	1,968,000
TOTAL, ALL COAL	11,290,000	11,157,000	11,256,000	9,444,000	13,544,000	13,818,000

(a) Includes operations on the N. & W.; C. & O.; Virginian; K. & M.; B. C. & G.; and on the B. & O. in Kanawha, Mason, and Clay counties. (b) Rest of State, including the Panhandle District and Grant, Mineral, and Tucker counties. (c) Includes Arizona, California, Idaho, Nevada, and Oregon. (d) Data for Pennsylvania anthracite from published records of the Bureau of Mines. (e) Average weekly rate for entire month. (f) Alaska, Georgia, North Carolina, and South Dakota included with "other Western States." * Less than 1,000 tons.

TABLE III. WEEKLY DISTRIBUTION STATISTICS

(See Monthly Coal Distribution Report for detailed monthly statistics)

	Week ended Feb. 8, 1941	Feb. 1, 1941	Feb. 10, 1940	Calendar year to date e 1941	1940	1929
Carloadings, f.o.b. mines, cars a						
Bituminous	161,243	161,731	168,146	934,587	1,000,369	1,224,463
Anthracite	21,249	22,420	12,073	124,593	126,757	196,073
Unbilled loads, bituminous coal a						
Number of cars at mines or classification yards	Not yet available	24,348	19,776	f 24,348	19,776	18,473
Equivalent net tons		1,217,000	989,000	1,217,000	989,000	924,000
Hampton Roads loadings, net tons b						
Foreign cargo	14,609	22,792	52,961	210,848	307,089	165,667
Foreign bunker	6,708	7,738	9,830	47,793	95,510	193,894
New England cargo	243,458	259,995	311,046	1,567,757	1,699,083	1,614,873
New England bunker	4,471	5,067	5,302	32,556	31,790	44,869
Other coastwise	147,122	147,113	133,245	834,837	770,604	571,612
Inside Capes	4,415	4,321	2,874	22,846	17,565	24,910
Total loadings	420,783	447,026	515,258	2,716,637	2,921,641	2,615,825
New England all-rail, cars c						
Bituminous	Not yet available	2,491	2,465	f 12,117	14,865	17,821
Anthracite		2,419	1,851	f 10,519	13,476	16,807
Cincinnati gateway, cars interchanged d						
Bituminous	9,898	9,953	10,370	53,828	63,348	74,861

(a) Courtesy of Association of American Railroads. Figures of loadings f.o.b. mines include railroad fuel for company use, and therefore differ from the familiar statistics of revenue freight often quoted by the carriers. (b) N. & W.; C. & O. and Virginian railroads. (c) Association of American Railroads. A small part of this tonnage remains in New York State. (d) Cincinnati Superintendents Committee. Week closes at midnight, Thursday. (e) Approximate calendar year to date. (f) Accumulation to February 1.

TABLE IV. ESTIMATED PRODUCTION OF COAL, BY DISTRICTS, IN DECEMBER, WITH TOTAL OUTPUT FOR CALENDAR YEARS 1940, 1939, AND 1937, IN NET TONS

(Districts as defined in the Coal Act of 1937. Exclusive of wagon and truck mines producing less than 1000 tons a year)

(Figures are based principally upon the records of railroad carloadings and river shipments of coal and beehive coke, supplemented by direct reports from certain local sources, which are used in estimating State production. Allowance is made for commercial truck shipments, local sales, and colliery fuel, and for trucking mines producing over 1,000 tons a year.

These records are sufficient to permit estimating the total production of coal for the United States with a high degree of accuracy. To apportion the totals among the districts involves a larger measure of estimate and hence the district tonnages are subject to a larger measure of correction when final complete reports are received from all operators at the end of the year.)

Minimum Price Area and Producing District	December, 1940		November, 1940	December, 1939	Total calendar year		
	Net tons	Percent of total			1940	1939	1937
PRICE AREA 1							
Dist. 1. Eastern Pennsylvania a ...	3,965,000	9.58	3,820,000	3,817,000	42,048,000	36,423,000	41,106,000
Dist. 2. Western Pennsylvania	6,510,000	15.72	6,615,000	6,080,000	73,073,000	57,950,000	72,253,000
Dist. 3. Northern West Virginia ...	2,350,000	5.68	2,239,000	2,231,000	25,986,000	22,685,000	24,010,000
Dist. 4. Ohio	1,940,000	4.69	1,820,000	1,861,000	22,092,000	19,632,000	25,178,000
Dist. 5. Michigan	42,000	.10	42,000	52,000	440,000	434,000	562,000
Dist. 6. Panhandle	369,000	.89	353,000	373,000	4,398,000	3,842,000	4,203,000
Dist. 7. Southern Numbered 1	4,678,000	11.30	4,782,000	4,289,000	58,918,000	49,247,000	54,275,000
Dist. 8. Southern Numbered 2	7,380,000	17.82	7,647,000	7,107,000	95,920,000	83,659,000	91,874,000
Total, Price Area 1	27,234,000	65.78	27,318,000	25,810,000	322,875,000	273,872,000	313,461,000
PRICE AREA 2							
Dist. 9. West Kentucky	861,000	2.08	761,000	826,000	8,668,000	8,075,000	8,563,000
Dist. 10. Illinois	5,411,000	13.07	4,637,000	4,788,000	49,495,000	46,450,000	51,602,000
Dist. 11. Indiana	2,050,000	4.95	1,714,000	1,704,000	18,565,000	16,650,000	17,765,000
Dist. 12. Iowa	318,000	.77	292,000	312,000	2,908,000	3,050,000	3,637,000
Total, Price Area 2	8,640,000	20.87	7,404,000	7,630,000	79,636,000	74,225,000	81,567,000
PRICE AREA 3							
Dist. 13. Southeastern	1,462,000	3.53	1,339,000	1,386,000	16,215,000	13,050,000	13,459,000
PRICE AREA 4							
Dist. 14. Arkansas-Oklahoma	252,000	.61	241,000	171,000	2,064,000	1,418,000	1,967,000
PRICE AREA 5							
Dist. 15. Southwestern:							
Bituminous coal	937,000	2.27	794,000	774,000	7,854,000	7,102,000	8,172,000
Lignite (Texas)	38,000	.09	38,000	62,000	642,000	785,000	866,000
Total, Price Area 5	975,000	2.36	832,000	836,000	8,496,000	7,887,000	9,038,000
PRICE AREA 6							
Dist. 16. Northern Colorado	305,000	.73	290,000	258,000	2,245,000	2,174,000	2,510,000
Dist. 17. Southern Colorado b	550,000	1.33	526,000	453,000	4,830,000	4,352,000	5,515,000
Dist. 18. New Mexico c	57,000	.14	48,000	51,000	536,000	576,000	884,000
Total, Price Area 6	912,000	2.20	864,000	762,000	7,611,000	7,102,000	8,909,000
PRICE AREA 7							
Dist. 19. Wyoming d	650,000	1.57	642,000	470,000	5,748,000	5,384,000	5,918,000
Dist. 20. Utah	442,000	1.07	420,000	338,000	3,524,080	3,340,000	3,810,000
Total, Price Area 7	1,092,000	2.64	1,062,000	808,000	9,272,000	8,724,000	9,728,000
PRICE AREA 8							
Dist. 21. North-South Dakota	295,000	.71	400,000	225,000	2,256,000	2,139,000	2,298,000
PRICE AREA 9							
Dist. 22. Montana	331,000	.80	347,000	278,000	2,974,000	2,810,000	2,965,000
PRICE AREA 10							
Dist. 23. Washington e	189,000	.46	187,000	149,000	1,696,000	1,692,000	2,007,000
Alaska	18,000	.04	18,000	11,000	150,000	146,000	132,000
Total, Price Area 10	207,000	.50	205,000	160,000	1,846,000	1,838,000	2,139,000
GRAND TOTAL, AREAS LISTED ABOVE f ..	41,400,000	100.00	40,012,000	38,066,000	453,245,000	393,065,000	445,531,000

(a) Includes Maryland and Grant, Mineral, and Tucker counties, West Virginia. (b) Includes Colfax County, New Mexico. (c) Includes Arizona and California, but excludes Colfax County. (d) Includes Idaho. (e) Includes Oregon. (f) For historical comparison and statistical convenience, the figures include the output of lignite. Note that no district organization has been created for District 21, North and South Dakota, the output of which is usually classified in the coal trade as lignite.

TABLE V. ESTIMATED PRODUCTION OF COAL, BY STATES, IN DECEMBER, WITH TOTAL OUTPUT FOR CALENDAR YEARS 1940, 1939, AND 1937, IN NET TONS

(Figures are preliminary estimates based on railroad carloadings and river shipments of coal and beehive coke, supplemented by direct reports from a number of mining companies, local coal operators' associations, and detailed monthly production statistics compiled by the State Mine Departments of Colorado, Illinois, Pennsylvania, Washington, and West Virginia. In making the estimates, allowance is made for commercial truck shipments, local sales, and colliery fuel, and for small trucking mines producing over 1,000 tons a year.

The estimates here given are based upon the latest information available, and differ in some cases from the current figures previously published in the Weekly Coal Report.)

	December, 1940		November, 1940	December, 1939	Total calendar year		
	Net tons	Percent of total			1940	1939	1937
Alaska	18,000	.04	18,000	11,000	150,000	146,000	132,000
Alabama	1,363,000	3.29	1,245,000	1,298,000	15,150,000	11,995,000	12,440,000
Arkansas and Oklahoma	403,000	.97	375,000	262,000	3,163,000	2,300,000	3,111,000
Colorado	797,000	1.93	767,000	654,000	6,516,000	5,890,000	7,187,000
Georgia and North Carolina	3,000	.01	2,000	2,000	29,000	25,000	11,000
Illinois	5,411,000	13.07	4,637,000	4,788,000	49,495,000	46,450,000	51,602,000
Indiana	2,050,000	4.95	1,714,000	1,704,000	18,565,000	16,650,000	17,765,000
Iowa	318,000	.77	292,000	312,000	2,908,000	3,050,000	3,637,000
Kansas and Missouri	784,000	1.90	658,000	680,000	6,736,000	6,195,000	6,984,000
Kentucky:							
Eastern	3,062,000	7.39	3,150,000	2,850,000	39,732,000	34,730,000	38,523,000
Western	861,000	2.08	761,000	826,000	8,668,000	8,075,000	8,563,000
Maryland	145,000	.35	127,000	158,000	1,478,000	1,468,000	1,549,000
Michigan	42,000	.10	42,000	52,000	440,000	434,000	562,000
Montana	331,000	.80	347,000	278,000	2,974,000	2,810,000	2,965,000
New Mexico	113,000	.27	95,000	107,000	1,081,000	1,206,000	1,715,000
North and South Dakota	295,000	.71	400,000	225,000	2,256,000	2,139,000	2,298,000
Ohio	1,940,000	4.69	1,820,000	1,861,000	22,042,000	19,632,000	25,178,000
Pennsylvania bituminous	10,263,000	24.79	10,240,000	9,668,000	112,907,000	92,190,000	111,002,000
Tennessee	515,000	1.24	465,000	485,000	6,010,000	5,280,000	5,213,000
Texas	40,000	.10	40,000	65,000	661,000	810,000	910,000
Utah	442,000	1.07	420,000	338,000	3,524,000	3,340,000	3,810,000
Virginia	1,220,000	2.95	1,195,000	1,154,000	14,950,000	13,230,000	13,795,000
Washington	186,000	.45	185,000	148,000	1,688,000	1,690,000	2,002,000
West Virginia:							
Southern a	7,357,000	17.77	7,711,000	6,993,000	95,182,000	80,696,000	89,625,000
Northern b	2,786,000	6.73	2,660,000	2,675,000	31,120,000	27,242,000	29,021,000
Wyoming	650,000	1.57	642,000	470,000	5,748,000	5,383,000	5,918,000
Other Western States c	5,000	.01	4,000	2,000	22,000	9,000	13,000
Total bituminous	41,400,000	100.00	40,012,000	38,066,000	453,245,000	393,065,000	445,531,000
Pennsylvania anthracite d	4,699,000	—	3,869,000	3,914,000	50,052,000	51,487,000	51,857,000
TOTAL, ALL COAL	46,099,000	—	43,881,000	41,980,000	503,297,000	444,552,000	497,388,000

(a) Includes operations on the N. & W.; C. & O.; Virginian; K. & M.; B. C. & G.; and on the B. & O. in Kanawha, Mason, and Clay counties. (b) Rest of State, including the Panhandle District and Grant, Mineral, and Tucker counties. (c) Includes Arizona, California, Idaho, Nevada, and Oregon. (d) Data for Pennsylvania anthracite from published records of the Bureau of Mines.

By R. McKinney and R. L. Anderson,
W. H. Young, Chief, Research Section,
O. A. Lamb, Chief, Economics Branch.

Bituminous Coal Division,
February 15, 1941.

TABLE VI. - PRODUCTION OF BITUMINOUS COAL, BY DISTRICTS, FOR THE YEARS 1923 TO 1940, INCLUSIVE, IN NET TONS 1/

(Districts as defined in the Bituminous Coal Act of 1937. Exclusive of product of wagon mines producing less than 1,000 tons)

Minimum Price Area and Producing District	1923	1924	1925	1926	1927	1928	1929
PRICE AREA 1							
Dist. 1. Eastern Pennsylvania ..	65,426,630	51,825,879	53,914,270	61,298,928	54,382,351	51,022,203	53,975,512
Dist. 2. Western Pennsylvania ..	110,251,704	81,947,040	85,168,699	96,364,435	82,908,003	84,130,243	93,613,841
Dist. 3. Northern West Virginia.	31,041,766	22,222,629	26,667,606	34,521,654	35,723,370	30,897,635	30,210,063
Dist. 4. Ohio	40,546,443	30,473,007	28,034,112	27,872,488	15,799,697	15,441,225	23,689,477
Dist. 5. Michigan	1,172,075	831,020	818,233	686,707	756,763	617,342	804,869
Dist. 6. Panhandle	6,205,749	5,406,211	5,892,065	6,304,585	7,137,267	7,211,624	6,334,637
Dist. 7. Southern Numbered 1 ...	38,440,986	40,528,849	47,960,201	54,997,208	52,188,605	52,236,558	58,118,730
Dist. 8. Southern Numbered 2 ...	80,668,418	82,997,978	100,394,421	112,292,354	113,641,978	103,279,890	105,422,812
Total, Price Area 1	373,753,771	316,232,673	350,839,547	394,338,359	362,938,034	345,036,720	372,169,941
PRICE AREA 2							
Dist. 9. West Kentucky	10,916,240	9,020,071	12,186,557	15,464,023	21,204,590	16,277,216	14,437,148
Dist. 10. Illinois	79,310,075	68,323,281	66,909,359	69,366,923	46,848,224	55,948,199	60,657,641
Dist. 11. Indiana	26,229,099	21,480,213	21,224,966	23,186,006	17,935,758	16,378,580	18,344,358
Dist. 12. Iowa	5,710,735	5,468,450	4,714,843	4,625,487	2,949,622	3,683,635	4,241,069
Total, Price Area 2	122,166,149	104,292,015	105,035,725	112,642,439	88,938,194	92,287,630	97,680,216
PRICE AREA 3							
Dist. 13. Southeastern	22,262,803	20,141,104	21,277,637	22,351,503	21,035,126	18,898,815	19,228,576
PRICE AREA 4							
Dist. 14. Arkansas-Oklahoma	1,647,933	1,687,489	1,600,136	1,972,835	2,155,923	2,378,587	2,529,269
PRICE AREA 5							
Dist. 15. Southwestern:							
Bituminous coal	10,555,629	8,985,838	9,346,889	9,924,324	9,875,969	9,443,705	10,055,807
Lignite (Texas)	1,011,997	983,815	825,695	920,664	1,169,486	1,064,185	991,062
Total, Price Area 5	11,567,626	9,969,653	10,172,584	10,844,988	11,045,455	10,507,890	11,046,869
PRICE AREA 6							
Dist. 16. Northern Colorado	2,780,226	2,889,803	2,707,341	2,949,403	2,441,147	2,896,369	3,193,506
Dist. 17. Southern Colorado	9,372,403	9,198,906	9,111,363	9,436,443	9,133,290	8,614,687	8,179,095
Dist. 18. New Mexico	1,109,272	1,142,877	1,049,823	1,070,976	1,090,051	1,052,734	1,181,504
Total, Price Area 6	13,261,901	13,231,586	12,868,527	13,456,822	12,664,488	12,563,790	12,554,105
PRICE AREA 7							
Dist. 19. Wyoming	7,575,966	6,764,218	6,554,732	6,519,488	6,771,259	6,587,683	6,708,990
Dist. 20. Utah	4,720,217	4,488,157	4,690,342	4,373,793	4,781,480	4,842,544	5,160,521
Total, Price Area 7	12,296,183	11,252,375	11,245,074	10,893,281	11,552,739	11,430,227	11,869,511
PRICE AREA 8							
Dist. 21. North-South Dakota	1,395,779	1,212,570	1,339,067	1,384,672	1,540,446	1,663,859	1,874,984
PRICE AREA 9							
Dist. 22. Montana	3,147,678	2,905,365	3,043,686	2,797,760	3,143,638	3,324,195	3,407,526
PRICE AREA 10							
Dist. 23. Washington	2,945,013	2,662,045	2,547,890	2,597,026	2,645,009	2,527,157	2,526,986
Alaska	119,826	99,663	82,868	87,300	104,300	126,100	100,610
Total, Price Area 10	3,064,839	2,761,708	2,630,758	2,684,326	2,749,309	2,653,257	2,627,596
GRAND TOTAL, AREAS LISTED ABOVE .	564,564,662	483,686,538	520,052,741	573,366,985	517,763,352	500,744,970	534,988,593

1/ For purposes of historical comparison and statistical convenience, the figures include the output of lignite and of anthracite and semi-anthracite outside of Pennsylvania.

TABLE VI. - PRODUCTION OF BITUMINOUS COAL, BY DISTRICTS, FOR THE YEARS 1923 TO 1940, INCLUSIVE, IN NET TONS (Continued) 1/

(Districts as defined in the Bituminous Coal Act of 1937. Exclusive of product of wagon mines producing less than 1,000 tons)

Minimum Price Area and Producing District	1930	1931	1932	1933	1934	1935	1936
PRICE AREA 1							
Dist. 1. Eastern Pennsylvania ..	48,564,733	42,248,549	33,582,493	35,494,008	38,220,386	37,070,456	40,334,442
Dist. 2. Western Pennsylvania ..	79,405,084	58,362,910	43,367,711	46,059,490	54,078,227	56,851,598	72,147,640
Dist. 3. Northern West Virginia.	25,751,724	20,818,854	16,773,001	18,987,459	19,227,788	19,027,614	22,791,420
Dist. 4. Ohio	22,551,978	20,410,995	13,909,451	19,588,763	20,690,564	21,153,151	24,110,078
Dist. 5. Michigan	661,113	359,403	446,149	406,584	621,741	628,384	626,145
Dist. 6. Panhandle	5,114,290	4,054,110	3,645,424	4,096,433	4,041,261	3,846,523	4,360,334
Dist. 7. Southern Numbered 1 ...	51,574,158	43,917,309	37,142,035	41,963,760	44,696,864	45,563,461	54,037,429
Dist. 8. Southern Numbered 2 ...	93,065,272	76,564,304	63,473,845	67,821,692	72,203,099	75,393,533	90,860,655
Total, Price Area 1	326,668,352	266,736,434	212,340,109	234,418,189	253,779,930	259,534,720	309,268,143
PRICE AREA 2							
Dist. 9. West Kentucky	10,915,301	8,579,500	9,540,048	7,834,397	8,214,779	8,134,122	8,370,364
Dist. 10. Illinois	53,731,230	44,303,295	33,474,553	37,413,145	41,272,384	44,525,469	50,926,599
Dist. 11. Indiana	16,489,962	14,295,165	13,323,573	13,761,052	14,793,643	15,754,214	17,822,536
Dist. 12. Iowa	3,892,571	3,388,355	3,862,435	3,194,983	3,366,992	3,650,163	3,960,700
Total, Price Area 2	85,029,064	70,566,315	60,200,609	62,203,577	67,647,798	72,063,968	81,080,199
PRICE AREA 3							
Dist. 13. Southeastern	16,687,906	12,998,680	8,704,668	9,769,505	10,120,655	9,467,486	13,159,837
PRICE AREA 4							
Dist. 14. Arkansas-Oklahoma	2,132,056	1,672,711	1,444,801	1,313,462	1,307,383	1,584,137	2,110,140
PRICE AREA 5							
Dist. 15. Southwestern:							
Bituminous coal	8,562,733	7,057,012	6,889,561	6,480,331	6,649,018	7,146,671	8,022,275
Lignite (Texas)	749,550	655,613	613,648	799,087	728,146	721,558	802,326
Total, Price Area 5	9,312,283	7,712,625	7,503,209	7,279,418	7,377,164	7,868,229	8,824,601
PRICE AREA 6							
Dist. 16. Northern Colorado	2,839,361	2,727,459	2,547,793	2,407,606	2,306,454	2,380,017	2,476,586
Dist. 17. Southern Colorado	6,350,212	4,644,661	3,677,151	3,443,609	3,586,032	4,241,409	5,146,414
Dist. 18. New Mexico	998,739	804,945	653,604	617,545	609,376	693,551	791,742
Total, Price Area 6	10,188,312	8,177,065	6,878,548	6,468,760	6,501,862	7,314,977	8,414,742
PRICE AREA 7							
Dist. 19. Wyoming	6,089,401	4,996,420	4,176,767	4,016,915	4,373,425	5,181,014	5,783,545
Dist. 20. Utah	4,257,541	3,350,044	2,852,127	2,674,986	2,406,183	2,946,918	3,246,565
Total, Price Area 7	10,346,942	8,346,464	7,028,894	6,691,901	6,779,608	8,127,932	9,030,110
PRICE AREA 8							
Dist. 21. North-South Dakota	1,712,967	1,546,792	1,788,732	1,841,647	1,796,295	1,968,753	2,256,666
PRICE AREA 9							
Dist. 22. Montana	3,022,004	2,378,052	2,125,225	2,152,207	2,565,702	2,758,906	2,988,524
PRICE AREA 10							
Dist. 23. Washington	2,306,313	1,848,358	1,592,377	1,395,400	1,384,117	1,564,589	1,818,348
Alaska	120,100	105,900	102,700	96,467	107,508	119,425	136,593
Total, Price Area 10	2,426,413	1,954,258	1,695,077	1,491,867	1,491,625	1,684,014	1,954,941
GRAND TOTAL, AREAS LISTED ABOVE .	467,526,299	382,089,396	309,709,872	333,630,533	359,368,022	372,373,122	439,087,903

1/ For purposes of historical comparison and statistical convenience, the figures include the output of lignite and of anthracite and semi-anthracite outside of Pennsylvania.

TABLE VI. - PRODUCTION OF BITUMINOUS COAL, BY DISTRICTS, FOR THE YEARS 1923 TO 1940, INCLUSIVE, IN NET TONS (Continued) 1/

(Districts as defined in the Bituminous Coal Act of 1937. Exclusive of product of wagon mines producing less than 1,000 tons)

Minimum Price Area and Producing District	1937	1938	1939 (Preliminary)	1940 (Preliminary)		
				Jan.-Dec. inclusive	Jan.-Sept. inclusive	Oct.-Dec. inclusive
PRICE AREA 1						
Dist. 1. Eastern Pennsylvania	41,106,187	33,248,510	36,423,000	42,048,000	30,340,000	11,708,000
Dist. 2. Western Pennsylvania	72,253,305	46,394,198	57,950,000	73,073,000	52,903,000	20,170,000
Dist. 3. Northern West Virginia	24,009,718	19,073,258	22,685,000	25,986,000	19,438,000	6,548,000
Dist. 4. Ohio	25,177,867	18,590,618	19,632,000	22,092,000	16,682,000	5,410,000
Dist. 5. Michigan	562,262	494,481	434,000	440,000	313,000	127,000
Dist. 6. Panhandle	4,203,108	3,136,724	3,842,000	4,398,000	3,300,000	1,098,000
Dist. 7. Southern Numbered 1	54,275,261	43,029,607	49,247,000	58,918,000	44,452,000	14,466,000
Dist. 8. Southern Numbered 2	91,874,221	74,486,913	83,659,000	95,920,000	73,153,000	22,767,000
Total, Price Area 1	313,461,929	238,454,309	273,872,000	322,875,000	240,581,000	82,294,000
PRICE AREA 2						
Dist. 9. West Kentucky	8,562,890	7,367,746	8,075,000	8,668,000	6,411,000	2,257,000
Dist. 10. Illinois	51,601,638	41,912,085	46,450,000	49,495,000	35,370,000	14,125,000
Dist. 11. Indiana	17,764,774	14,758,484	16,650,000	18,565,000	13,361,000	5,204,000
Dist. 12. Iowa	3,637,054	3,103,187	3,050,000	2,908,000	2,063,000	845,000
Total, Price Area 2	81,566,356	67,141,502	74,225,000	79,636,000	57,205,000	22,431,000
PRICE AREA 3						
Dist. 13. Southeastern	13,458,603	11,924,952	13,050,000	16,215,000	11,999,000	4,216,000
PRICE AREA 4						
Dist. 14. Arkansas-Oklahoma	1,967,452	1,538,577	1,418,000	2,064,000	1,388,000	676,000
PRICE AREA 5						
Dist. 15. Southwestern:						
Bituminous coal	8,171,610	7,025,927	7,102,000	7,854,000	5,482,000	2,372,000
Lignite (Texas)	866,292	846,219	785,000	642,000	527,000	115,000
Total, Price Area 5	9,037,902	7,872,146	7,887,000	8,496,000	6,009,000	2,487,000
PRICE AREA 6						
Dist. 16. Northern Colorado	2,509,984	2,266,152	2,174,000	2,245,000	1,433,000	812,000
Dist. 17. Southern Colorado	5,514,757	4,033,522	4,352,000	4,830,000	3,371,000	1,459,000
Dist. 18. New Mexico	884,344	608,348	576,000	536,000	386,000	150,000
Total, Price Area 6	8,909,085	6,908,022	7,102,000	7,611,000	5,190,000	2,421,000
PRICE AREA 7						
Dist. 19. Wyoming	5,918,460	5,205,115	5,384,000	5,748,000	3,892,000	1,856,000
Dist. 20. Utah	3,809,476	2,946,951	3,340,000	3,524,000	2,322,000	1,202,000
Total, Price Area 7	9,727,936	8,152,066	8,724,000	9,272,000	6,214,000	3,058,000
PRICE AREA 8						
Dist. 21. North-South Dakota	2,297,816	2,098,157	2,139,000	2,256,000	1,273,000	983,000
PRICE AREA 9						
Dist. 22. Montana	2,965,193	2,732,050	2,810,000	2,974,000	1,998,000	976,000
PRICE AREA 10						
Dist. 23. Washington	2,007,520	1,568,301	1,692,000	1,696,000	1,172,000	524,000
Alaska	131,657	154,682	146,000	150,000	104,000	46,000
Total, Price Area 10	2,139,177	1,722,983	1,838,000	1,846,000	1,276,000	570,000
GRAND TOTAL, AREAS LISTED ABOVE	445,531,449	348,544,764	393,065,000	453,245,000	333,133,000	120,112,000

1/ For purposes of historical comparison and statistical convenience, the figures include the output of lignite and of anthracite and semianthracite outside of Pennsylvania

By M. E. McMillan, R. McKinney, and R. L. Anderson,
W. H. Young, Chief, Research Section,
G. A. Lamb, Chief, Economics Branch.

Bituminous Coal Division,
February 15, 1941.

TABLE VII. - PERCENTAGE OF BITUMINOUS COAL PRODUCED, BY DISTRICTS, FOR THE YEARS 1923 TO 1940, INCLUSIVE

Minimum Price Area and Producing District	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932
PRICE AREA 1										
Dist. 1. Eastern Pennsylvania	11.59	10.72	10.75	10.69	10.50	10.19	10.09	10.39	11.06	10.84
Dist. 2. Western Pennsylvania	19.53	16.94	16.38	16.81	16.01	16.80	17.50	16.99	15.28	14.00
Dist. 3. Northern West Virginia ..	5.49	4.59	5.13	6.02	6.90	6.17	5.65	5.51	5.45	5.42
Dist. 4. Ohio	7.18	6.30	5.39	4.86	3.05	3.12	4.43	4.82	5.34	4.49
Dist. 5. Michigan	.21	.17	.16	.12	.15	.12	.15	.14	.09	.14
Dist. 6. Panhandle	1.10	1.12	1.13	1.10	1.38	1.44	1.18	1.09	1.06	1.18
Dist. 7. Southern Numbered 1	6.81	8.38	9.22	9.59	10.16	10.43	10.86	11.03	11.49	11.99
Dist. 8. Southern Numbered 2	14.29	17.16	19.30	19.58	21.95	20.63	19.71	19.90	20.04	20.50
Total, Price Area 1	66.20	65.38	67.46	68.77	70.10	68.90	69.57	69.87	69.81	68.56
PRICE AREA 2										
Dist. 9. West Kentucky	1.93	1.86	2.34	2.70	4.10	3.25	2.70	2.34	2.25	3.08
Dist. 10. Illinois	14.05	14.13	12.87	12.10	9.05	11.17	11.34	11.49	11.59	10.81
Dist. 11. Indiana	4.65	4.44	4.08	4.04	3.46	3.27	3.43	3.53	3.74	4.30
Dist. 12. Iowa	1.01	1.13	.91	.81	.57	.74	.79	.83	.89	1.25
Total, Price Area 2	21.64	21.56	20.20	19.65	17.18	18.43	18.26	18.19	18.47	19.44
PRICE AREA 3										
Dist. 13. Southeastern	3.94	4.16	4.09	3.90	4.06	3.78	3.59	3.57	3.40	2.81
PRICE AREA 4										
Dist. 14. Arkansas-Oklahoma	.29	.35	.31	.34	.42	.48	.47	.46	.44	.47
PRICE AREA 5										
Dist. 15. Southwestern:										
Bituminous coal	1.87	1.86	1.80	1.73	1.91	1.89	1.88	1.83	1.85	2.22
Lignite (Texas)	.18	.20	.16	.16	.22	.21	.18	.16	.17	.20
Total, Price Area 5	2.05	2.06	1.96	1.89	2.13	2.10	2.06	1.99	2.02	2.42
PRICE AREA 6										
Dist. 16. Northern Colorado	.49	.60	.52	.51	.47	.58	.60	.61	.71	.82
Dist. 17. Southern Colorado	1.66	1.90	1.75	1.65	1.76	1.72	1.53	1.36	1.22	1.19
Dist. 18. New Mexico	.20	.24	.20	.19	.21	.21	.22	.21	.21	.21
Total, Price Area 6	2.35	2.74	2.47	2.35	2.44	2.51	2.35	2.18	2.14	2.22
PRICE AREA 7										
Dist. 19. Wyoming	1.34	1.40	1.26	1.14	1.31	1.31	1.25	1.30	1.31	1.35
Dist. 20. Utah	.84	.93	.90	.76	.92	.97	.97	.91	.87	.92
Total, Price Area 7	2.18	2.33	2.16	1.90	2.23	2.28	2.22	2.21	2.18	2.27
PRICE AREA 8										
Dist. 21. North-South Dakota	.25	.25	.26	.24	.30	.33	.35	.37	.41	.58
PRICE AREA 9										
Dist. 22. Montana	.56	.60	.58	.49	.61	.66	.64	.64	.62	.69
PRICE AREA 10										
Dist. 23. Washington	.52	.55	.49	.45	.51	.50	.47	.49	.48	.51
Alaska	.02	.02	.02	.02	.02	.03	.02	.03	.03	.03
Total, Price Area 10	.54	.57	.51	.47	.53	.53	.49	.52	.51	.54
GRAND TOTAL, AREAS LISTED ABOVE ...	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

TABLE VII. - PERCENTAGE OF BITUMINOUS COAL PRODUCED, BY DISTRICTS, FOR THE YEARS 1923 TO 1940, INCLUSIVE (Continued)

Minimum Price Area and Producing District	1933	1934	1935	1936	1937	1938	1939 (Prel.)	1940 (Preliminary) 1/ Jan.-Dec. inclusive	1940 (Preliminary) 1/ Jan.-Sept. inclusive	1940 (Preliminary) 1/ Oct.-Dec. inclusive
PRICE AREA 1										
Dist. 1. Eastern Pennsylvania	10.64	10.64	9.96	9.18	9.23	9.54	9.27	9.28	9.11	9.75
Dist. 2. Western Pennsylvania	13.80	15.05	15.27	16.43	16.22	13.31	14.74	16.12	15.88	16.79
Dist. 3. Northern West Virginia ...	5.69	5.35	5.11	5.19	5.39	5.47	5.77	5.73	5.83	5.45
Dist. 4. Ohio	5.87	5.76	5.68	5.49	5.69	5.34	5.00	4.87	5.01	4.50
Dist. 5. Michigan	.12	.17	.17	.14	.13	.14	.11	.10	.09	.10
Dist. 6. Panhandle	1.23	1.12	1.03	.99	.94	.90	.98	.97	.99	.91
Dist. 7. Southern Numbered 1	12.58	12.44	12.23	12.31	12.18	12.35	12.53	13.00	13.35	12.05
Dist. 8. Southern Numbered 2	20.33	20.09	20.25	20.70	20.62	21.37	21.28	21.16	21.96	18.96
Total, Price Area 1	70.26	70.62	69.70	70.43	70.36	68.42	69.68	71.23	72.22	68.51
PRICE AREA 2										
Dist. 9. West Kentucky	2.35	2.28	2.18	1.91	1.92	2.11	2.05	1.91	1.92	1.88
Dist. 10. Illinois	11.21	11.48	11.96	11.60	11.58	12.03	11.82	10.92	10.62	11.76
Dist. 11. Indiana	4.13	4.12	4.23	4.06	3.99	4.23	4.24	4.10	4.01	4.33
Dist. 12. Iowa	.96	.94	.98	.90	.82	.89	.77	.64	.62	.70
Total, Price Area 2	18.65	18.82	19.35	18.47	18.31	19.26	18.88	17.57	17.17	18.67
PRICE AREA 3										
Dist. 13. Southeastern	2.93	2.82	2.54	3.00	3.02	3.42	3.32	3.58	3.60	3.51
PRICE AREA 4										
Dist. 14. Arkansas-Oklahoma	.39	.36	.43	.48	.44	.44	.36	.45	.42	.56
PRICE AREA 5										
Dist. 15. Southwestern:										
Bituminous coal	1.94	1.85	1.92	1.83	1.83	2.02	1.81	1.73	1.64	1.97
Lignite (Texas)	.24	.20	.19	.18	.20	.24	.20	.14	.16	.10
Total, Price Area 5	2.18	2.05	2.11	2.01	2.03	2.26	2.01	1.87	1.80	2.07
PRICE AREA 6										
Dist. 16. Northern Colorado	.72	.64	.64	.57	.56	.65	.55	.49	.43	.68
Dist. 17. Southern Colorado	1.03	1.00	1.14	1.17	1.24	1.16	1.11	1.07	1.01	1.21
Dist. 18. New Mexico	.19	.17	.19	.18	.20	.17	.15	.12	.12	.13
Total, Price Area 6	1.94	1.81	1.97	1.92	2.00	1.98	1.81	1.68	1.56	2.02
PRICE AREA 7										
Dist. 19. Wyoming	1.20	1.22	1.39	1.32	1.33	1.49	1.37	1.27	1.17	1.55
Dist. 20. Utah	.80	.67	.79	.74	.85	.85	.85	.78	.70	1.00
Total, Price Area 7	2.00	1.89	2.18	2.06	2.18	2.34	2.22	2.05	1.87	2.55
PRICE AREA 8										
Dist. 21. North-South Dakota	.55	.50	.53	.51	.52	.60	.54	.50	.38	.82
PRICE AREA 9										
Dist. 22. Montana	.65	.71	.74	.68	.66	.78	.71	.66	.60	.81
PRICE AREA 10										
Dist. 23. Washington	.42	.39	.42	.41	.45	.45	.43	.38	.35	.44
Alaska	.03	.03	.03	.03	.03	.05	.04	.03	.03	.04
Total, Price Area 10	.45	.42	.45	.44	.48	.50	.47	.41	.38	.48
GRAND TOTAL, AREAS LISTED ABOVE	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

1/ Figures covering the 9 months and the 3 months are not adjusted for seasonal variation. They are not directly comparable, therefore, with the annual percentages shown in the other columns.

By M. E. McMillan, R. McKinney, and R. L. Anderson,
W. H. Young, Chief, Research Section,
G. A. Lamb, Chief, Economics Branch.

Bituminous Coal Division,
February 15, 1941.

NO. B.C.B. 1231

PERCENTAGE OF BITUMINOUS COAL PRODUCED IN THE PRINCIPAL COAL ACT DISTRICTS 1923 TO 1940, INCLUSIVE

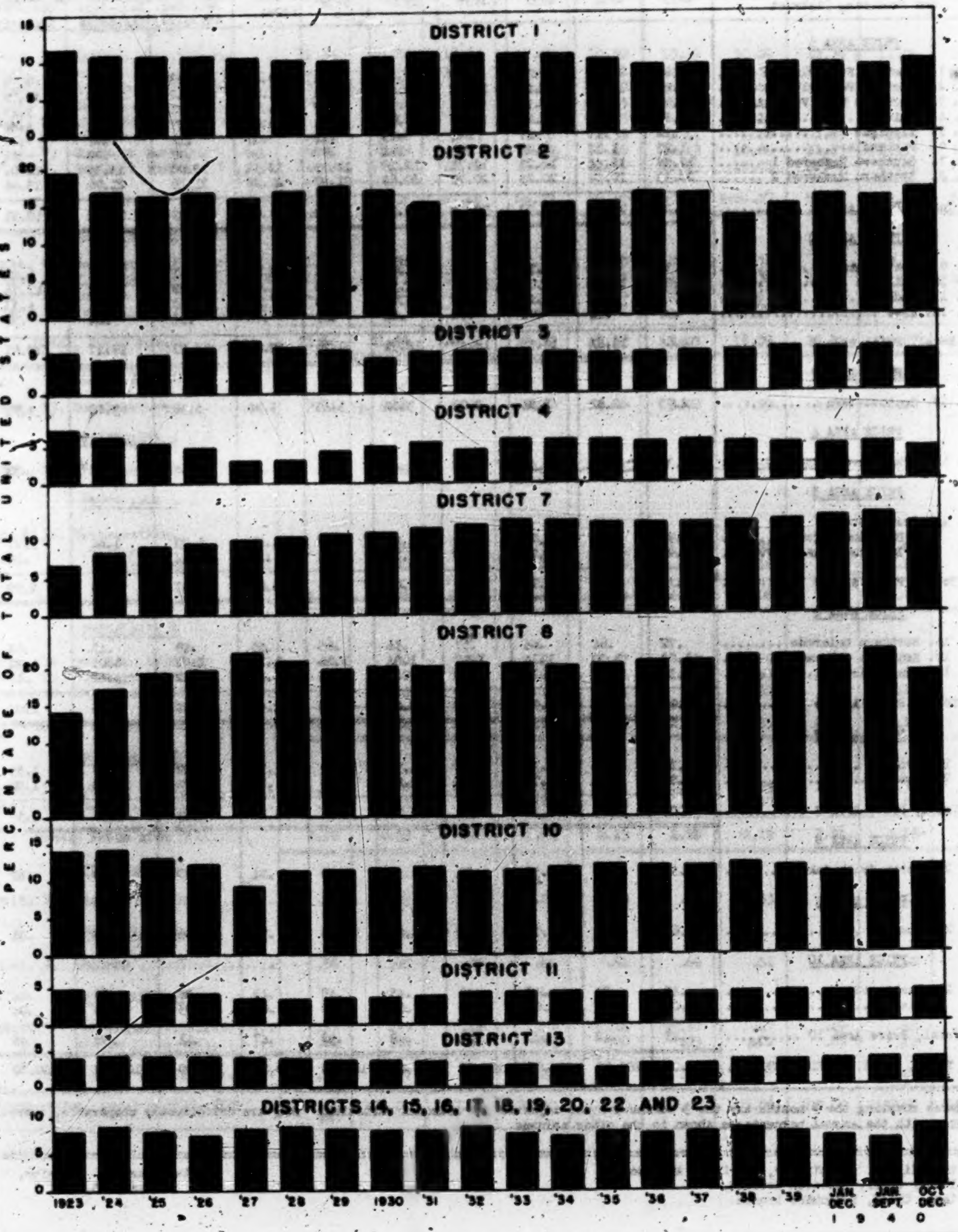


TABLE VIII. - PRODUCTION OF BITUMINOUS COAL, BY STATES, FOR THE YEARS 1923 TO 1940, INCLUSIVE, IN NET TONS 1/

(Exclusive of product of wagon mines producing less than 1,000 tons)

State	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932
Alaska	119,826	99,663	82,868	87,300	104,300	126,100	100,610	120,100	105,900	102,700
Alabama	20,457,649	19,130,184	20,004,395	21,000,962	19,765,866	17,621,362	17,943,923	15,570,058	11,998,781	7,856,939
Arkansas	1,296,892	1,451,503	1,220,039	1,459,017	1,548,834	1,660,973	1,695,108	1,533,434	1,153,555	1,033,471
Colorado	10,346,218	10,444,098	10,310,551	10,637,225	9,724,075	9,847,707	9,920,741	8,196,910	6,604,369	5,598,721
Georgia and North Carolina.	111,639	132,041	131,327	117,808	130,089	119,250	96,816	35,592	23,943	29,108
Illinois	79,310,075	68,323,281	66,909,359	69,366,923	46,848,224	55,948,199	60,657,641	53,731,230	44,303,295	33,474,553
Indiana	26,229,099	21,480,213	21,224,966	23,186,006	17,935,758	16,378,580	18,344,358	16,489,962	14,295,165	13,323,573
Iowa	5,710,735	5,468,450	4,714,843	4,625,487	2,949,622	3,683,635	4,241,069	3,892,571	3,388,355	3,862,435
Kansas	4,443,149	4,247,733	4,524,251	4,416,480	3,443,762	2,809,724	2,975,971	2,429,929	1,986,870	1,952,885
Kentucky: Eastern	33,861,077	36,127,133	42,882,113	47,460,439	47,919,408	45,583,163	46,025,452	40,293,694	31,384,121	25,759,534
Western	10,916,240	9,020,071	12,186,557	15,464,023	21,204,590	16,277,216	14,437,148	10,915,301	8,579,500	9,540,048
Maryland	2,285,926	2,133,703	2,694,572	3,078,353	2,814,842	2,686,979	2,649,114	2,270,593	2,005,773	1,428,937
Michigan	1,172,075	831,020	808,233	686,707	756,763	617,342	804,869	661,113	399,403	446,149
Missouri	3,403,151	2,480,880	2,694,215	3,008,495	3,064,343	3,732,421	4,030,311	3,853,150	3,620,497	4,069,598
Montana	3,147,678	2,905,365	3,043,686	2,797,760	3,143,638	3,324,195	3,407,526	3,022,004	2,378,052	2,125,225
New Mexico	2,915,173	2,786,063	2,556,851	2,817,923	2,935,539	2,711,851	2,622,769	1,969,433	1,552,822	1,263,386
North Dakota	1,385,400	1,200,527	1,324,620	1,370,244	1,527,939	1,649,930	1,862,130	1,700,157	1,519,307	1,739,658
South Dakota	10,379	12,043	14,447	14,428	12,507	13,929	12,854	12,810	27,485	49,074
Ohio	40,546,443	30,473,007	28,034,112	27,872,488	15,799,697	15,641,225	23,689,477	22,551,978	20,410,995	13,909,451
Oklahoma	2,885,038	2,329,615	2,325,840	2,842,673	3,818,054	3,501,325	3,774,080	2,793,954	1,908,394	1,255,466
Pennsylvania bituminous ...	171,879,913	130,633,773	136,928,019	153,041,638	132,964,639	131,202,163	143,516,241	124,462,787	97,658,698	74,775,862
Tennessee	6,040,268	4,556,555	5,454,011	5,788,741	5,783,367	5,610,959	5,405,464	5,130,428	4,721,548	3,537,882
Texas	1,187,329	1,147,011	1,008,375	1,091,158	1,326,385	1,182,034	1,100,668	833,872	716,020	636,590
Utah	4,720,217	4,488,157	4,690,342	4,373,793	4,781,480	4,842,544	5,160,521	4,257,541	3,350,044	2,852,127
Virginia	11,761,643	10,693,464	12,799,443	14,133,386	12,916,042	11,900,933	12,748,306	10,907,377	9,698,680	7,692,180
Washington	2,926,392	2,653,667	2,537,890	2,586,568	2,635,062	2,519,901	2,521,327	2,301,928	1,846,461	1,591,426
West Virginia	107,899,941	101,662,897	122,380,959	143,509,340	145,122,447	132,952,159	138,518,855	121,472,638	101,473,172	85,608,735
Wyoming	7,575,031	6,757,468	6,553,232	6,512,288	6,753,656	6,571,683	6,704,790	6,088,133	4,993,686	4,170,963
Other States 2/	20,066	16,953	12,625	19,332	32,424	27,488	20,454	27,622	24,505	23,196
Total bituminous coal ...	564,564,662	483,686,538	520,052,741	573,366,985	517,763,352	500,744,970	534,988,593	467,526,299	382,089,396	309,709,872

1/ For purposes of historical comparison and statistical convenience, the figures include the output of lignite and of anthracite and semianthracite outside of Pennsylvania.

2/ Includes Arizona, California, Idaho, Nebraska, Nevada, and Oregon. The States reporting are not identical from year to year.

TABLE VIII. - PRODUCTION OF BITUMINOUS COAL, BY STATES, FOR THE YEARS 1923 TO 1940, INCLUSIVE, IN NET TONS (Continued) 1/

(Exclusive of product of wagon mines producing less than 1,000 tons)

State	1933	1934	1935	1936	1937	1938	1939 (Prel.)	1940 (Preliminary) Jan.-Dec. inclusive	1940 (Preliminary) Jan.-Sept. inclusive	1940 (Preliminary) Oct.-Dec. inclusive
Alaska	96,467	107,508	119,425	136,993	131,657	154,682	146,000	150,000	104,000	46,000
Alabama	8,759,989	9,142,117	8,504,510	12,229,287	12,440,322	11,061,493	11,995,000	15,150,000	11,212,000	3,938,000
Arkansas	882,924	856,432	1,133,279	1,622,787	1,510,753	1,197,047	1,122,000	1,550,000	1,028,000	522,000
Colorado	5,229,767	5,210,933	5,910,511	6,811,802	7,187,211	5,663,144	5,890,000	6,516,000	4,397,000	2,119,000
Georgia and North Carolina	43,396	95,856	22,734	24,288	(3)	(3)	25,000	29,000	22,000	7,000
Illinois	37,413,145	41,272,384	44,525,469	50,926,999	51,601,638	41,912,085	46,450,000	49,495,000	35,370,000	14,125,000
Indiana	13,761,052	14,793,643	15,754,214	17,822,536	17,764,774	14,758,484	16,650,000	18,565,000	13,361,000	5,204,000
Iowa	3,194,983	3,366,992	3,650,163	3,960,700	3,637,054	3,103,187	3,050,000	2,908,000	2,063,000	845,000
Kansas	2,217,622	2,508,254	2,606,164	2,944,028	2,892,560	2,654,141	2,920,000	3,166,000	2,237,000	930,000
Kentucky: Eastern	28,265,332	30,310,456	32,626,817	39,151,586	38,523,554	31,177,472	34,730,000	39,732,000	30,300,000	9,432,000
Western	7,834,397	8,214,779	8,134,122	8,370,364	8,562,890	7,367,746	8,075,000	8,668,000	6,411,000	2,257,000
Maryland	1,530,748	1,627,112	1,673,059	1,703,589	1,548,980	1,281,413	1,468,000	1,478,000	1,086,000	392,000
Michigan	406,584	621,741	628,384	626,145	562,262	494,481	434,000	440,000	313,000	127,000
Missouri	3,432,212	3,352,283	3,645,996	3,986,999	4,091,394	3,436,118	3,275,000	3,570,000	2,532,000	1,047,000
Montana	2,152,207	2,565,702	2,758,906	2,988,524	2,905,193	2,732,050	2,810,000	2,974,000	1,998,000	976,000
New Mexico	1,226,236	1,259,323	1,388,877	1,596,775	1,714,955	1,239,037	1,206,000	1,081,000	785,000	296,000
North Dakota	1,732,272	1,753,888	1,955,510	2,215,335	2,250,837	2,050,099	2,089,000	2,256,000	1,273,000	983,000
South Dakota	59,375	42,407	13,243	41,331	46,979	48,058	50,000			
Ohio	19,588,763	20,690,564	21,153,151	24,110,078	25,177,867	18,990,618	19,632,000	22,092,000	16,682,000	5,410,000
Oklahoma	1,238,244	1,208,289	1,229,398	1,540,303	1,600,295	1,244,732	1,178,000	1,613,000	1,070,000	543,000
Pennsylvania bituminous	79,295,944	89,825,875	91,404,670	109,887,470	111,002,289	77,704,537	92,190,000	112,907,000	81,622,000	31,285,000
Tennessee	3,774,761	4,135,790	4,137,802	5,108,195	5,212,471	4,472,403	5,280,000	6,010,000	4,570,000	1,440,000
Texas	821,878	759,289	757,529	842,624	910,352	878,685	810,000	661,000	540,000	121,000
Utah	2,674,986	2,406,183	2,946,918	3,246,565	3,809,476	2,946,951	3,340,000	3,524,000	2,322,000	1,202,000
Virginia	8,178,642	9,376,681	9,667,018	11,661,636	13,795,239	12,283,036	13,230,000	14,950,000	11,265,000	3,685,000
Washington	1,394,068	1,382,991	1,559,206	1,812,104	2,001,449	1,566,973	1,690,000	1,688,000	1,171,000	517,000
West Virginia	94,343,535	98,134,393	99,179,061	117,925,706	118,646,343	93,288,172	107,938,000	126,302,000	95,508,000	30,794,000
Wyoming	4,013,167	4,367,961	5,177,142	5,780,990	5,918,399	5,203,877	5,383,000	5,748,000	3,892,000	1,856,000
Other States 2/	17,837	38,196	24,844	15,364	3/ 24,896	3/ 34,043	9,000	22,000	9,000	13,000
Total bituminous coal	333,630,533	359,368,022	372,373,122	439,087,903	445,531,449	348,544,764	393,065,000	453,245,000	333,133,000	120,112,000

1/ For purposes of historical comparison and statistical convenience, the figures include the output of lignite and of anthracite and semianthracite outside of Pennsylvania.

2/ Includes Arizona, California, Idaho, Nebraska, Nevada, and Oregon. The States reporting are not identical from year to year.

3/ Georgia and North Carolina included with "Other States."

By M. E. McMillan, R. McKinney, and R. L. Anderson,
W. H. Young, Chief, Research Section,
O. A. Lamb, Chief, Economics Branch.

Bituminous Coal Division,
February 15, 1941.

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TABLE IX. - PERCENTAGE OF BITUMINOUS COAL PRODUCED, BY STATES, FOR THE YEARS 1923 TO 1940, INCLUSIVE

State	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932
Alaska	.02	.02	.02	.02	.02	.03	.02	.03	.03	.03
Alabama	3.62	3.96	3.85	3.66	3.82	3.52	3.35	3.33	3.14	2.54
Arkansas	.23	.30	.24	.25	.30	.33	.32	.33	.30	.33
Colorado	1.83	2.16	1.98	1.86	1.88	1.97	1.86	1.75	1.73	1.81
Georgia and North Carolina	.02	.03	.02	.02	.02	.03	.02	.01	.01	.01
Illinois	14.05	14.13	12.87	12.10	9.05	11.17	11.34	11.49	11.59	10.81
Indiana	4.65	4.44	4.08	4.04	3.46	3.27	3.43	3.53	3.74	4.30
Iowa	1.01	1.13	.91	.81	.57	.74	.79	.83	.89	1.25
Kansas	.79	.88	.87	.77	.66	.56	.56	.52	.52	.63
Kentucky: Eastern	6.00	7.47	8.24	8.28	9.26	9.10	8.60	8.62	8.21	8.32
Western	1.93	1.86	2.34	2.70	4.10	3.25	2.70	2.34	2.25	3.08
Maryland	.41	.44	.52	.54	.54	.54	.50	.49	.52	.46
Michigan	.21	.17	.16	.12	.15	.12	.15	.14	.09	.14
Missouri	.60	.51	.52	.52	.59	.75	.75	.82	.95	1.31
Montana	.56	.60	.58	.49	.61	.66	.64	.64	.62	.69
New Mexico	.52	.58	.49	.49	.56	.54	.49	.42	.41	.41
North Dakota	.25	.25	.26	.24	.30	.33	.35	.37	.40	.56
South Dakota	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	.01	.02
Ohio	7.18	6.30	5.39	4.86	3.05	3.12	4.43	4.82	5.34	4.49
Oklahoma	.51	.48	.45	.50	.74	.70	.70	.60	.50	.41
Pennsylvania bituminous	30.44	27.00	26.33	26.69	25.68	26.20	26.83	26.62	25.56	24.15
Tennessee	1.07	.94	1.05	1.01	1.12	1.12	1.01	1.10	1.24	1.14
Texas	.21	.24	.19	.19	.26	.24	.20	.18	.19	.21
Utah	.84	.93	.90	.76	.92	.97	.97	.91	.87	.92
Virginia	2.08	2.21	2.46	2.46	2.49	2.38	2.38	2.33	2.54	2.48
Washington	.52	.55	.49	.45	.51	.50	.47	.49	.48	.51
West Virginia	19.11	21.02	23.53	25.03	28.03	26.55	25.89	25.98	26.56	27.64
Wyoming	1.34	1.40	1.26	1.14	1.31	1.31	1.25	1.30	1.31	1.35
Other States 2/	(1)	(1)	(1)	(1)	(1)	(1)	(1)	.01	(1)	(1)
Total bituminous coal	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

State	1933	1934	1935	1936	1937	1938	1939 (Prel.)	1940 (Preliminary) Jan.-Dec. incl.	1940 (Preliminary) Jan.-Sept. incl.	1940 (Preliminary) Oct.-Dec. incl.
Alaska	.03	.03	.03	.03	.03	.05	.04	.03	.03	.04
Alabama	2.63	2.54	2.28	2.78	2.79	3.17	3.05	3.34	3.37	3.28
Arkansas	.26	.24	.31	.37	.34	.34	.29	.34	.31	.44
Colorado	1.57	1.45	1.59	1.55	1.61	1.62	1.50	1.44	1.32	1.77
Georgia and North Carolina	.01	.01	.01	.01	(3)	(3)	.01	.01	.01	(1)
Illinois	11.21	11.48	11.96	11.60	11.58	12.03	11.82	10.92	10.62	11.76
Indiana	4.13	4.12	4.23	4.06	3.99	4.23	4.24	4.10	4.01	4.33
Iowa	.96	.94	.98	.90	.82	.89	.77	.64	.62	.70
Kansas	.66	.70	.72	.67	.65	.76	.74	.70	.67	.77
Kentucky: Eastern	8.47	8.44	8.76	8.92	8.65	8.95	8.84	8.77	9.09	7.85
Western	2.35	2.28	2.18	1.91	1.92	2.11	2.05	1.91	1.92	1.88
Maryland	.46	.45	.45	.39	.34	.37	.37	.32	.33	.33
Michigan	.12	.17	.17	.14	.13	.14	.11	.10	.09	.10
Missouri	1.03	.93	.98	.91	.92	.99	.83	.78	.76	.87
Montana	.65	.71	.74	.68	.66	.78	.71	.66	.60	.81
New Mexico	.37	.35	.37	.36	.39	.36	.31	.24	.24	.25
North Dakota	.53	.49	.53	.50	.51	.59	.53	.50	.38	.82
South Dakota	.02	.01	(1)	.01	.01	.01	.01			
Ohio	5.87	5.76	5.68	5.49	5.65	5.34	5.00	4.87	5.01	4.50
Oklahoma	.37	.33	.33	.35	.36	.36	.30	.36	.32	.45
Pennsylvania bituminous	23.77	25.00	24.55	25.02	24.92	22.29	23.45	24.91	24.50	26.05
Tennessee	1.13	1.15	1.11	1.16	1.17	1.28	1.34	1.32	1.37	1.20
Texas	.25	.21	.20	.19	.20	.25	.21	.14	.16	.10
Utah	.80	.67	.79	.74	.85	.85	.85	.78	.70	1.00
Virginia	2.45	2.61	2.60	2.66	3.10	3.52	3.37	3.30	3.38	3.07
Washington	.42	.39	.42	.41	.45	.45	.43	.37	.35	.43
West Virginia	28.28	27.31	26.63	26.86	26.63	26.77	27.46	27.87	28.67	25.64
Wyoming	1.20	1.22	1.39	1.32	1.33	1.49	1.37	1.27	1.17	1.55
Other States 2/	(1)	.01	.01	.01	(1)	.01	(1)	.01	(1)	.01
Total bituminous coal	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00	100.00

1/ Less than 0.01.
2/ Includes Arizona, California, Idaho, Nebraska, Nevada, and Oregon. The States reporting are not identical from year to year.
3/ Georgia and North Carolina included with "Other States."

By M. E. McMillan, R. McKinney, and H. L. Anderson,
W. H. Young, Chief, Research Section,
G. A. Lamb, Chief, Economics Branch.

Bituminous Coal Division,
February 15, 1941.

United States Circuit Court of Appeals for Fifth Circuit.

Tennessee Coal, Iron & Railroad Company, A Corporation,
Appellant,
vs. Civil Action No. 5232.
Muscoda Local No. 123, an unincorporated association affiliated with the International Union of Mine, Mill and Smelters Workers, et al., Appellees.

Sloss-Sheffield Steel & Iron Company, A Corporation,
Appellant,
vs. Civil Action No. 5233.
Sloss Red Ore Local No. 109, and unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, et al., Appellees.

Republic Steel Corporation, A Corporation, Appellant,
vs. Civil Action No. 5234.
Raimund Local No. 121, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, et al., Appellees.

Now come appellants (plaintiffs in the Court below) separately and severally, and serve upon appellees (defendants and defendant-intervener in the Court below) separately and severally, and file with the District Court the following designation of the portions of the record, proceedings and evidence to be contained in the record on appeal:

1. Stipulation executed between the parties on December 3, 1941, and filed in the District Court on the 8 day of December, 1941.

2. Appellant Tennessee Coal, Iron & Railroad Company's original complaint and exhibits thereto, filed on April 4, 1941.

3. Appellant Sloss-Sheffield Steel & Iron Company's original complaint and exhibits thereto, filed on April 4, 1941.

4. Appellant Republic Steel Corporation's original complaint and exhibits thereto, filed on April 4, 1941.

5. Answer of Muscoda Local No. 21935, Red Ore Miners Union, etc., Fred Trammell, Joe P. Bell, W. R. Headrick, and I. V. Robinson and Wenonah Local No. 21936, Red Ore Miners Union, etc., W. M. Kendrick, G. L. Batson, Will McGhee, and W. T. Maxwell, and Ishkooda Local No. 21937, Red Ore Miners Union, etc., J. S. Pitts, James A. Bailey, Jr., A. E. Wesley, John White, James Knox, Nathan Smith, and James Snow; and S. E. Roper and W. O. Hare, filed May 17, 1941, in case No. 5232.

6. The motion to dismiss, and answer of defendants, Muscoda Local No. 123, an unincorporated association affiliated with the International Union of Mine Mill and Smelter Workers, and W. C. Gunnin, Pete Dulaney, R. H. Martin and John Thompson, etc., and Wenoah Local No. 157, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and C. J. McDaniel, W. B. Lemley, R. E. Lemley, and Ward Jefferson, individually, etc., and Ishkooda Local No. 152, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers and E. A. Sisemore, L. H. McBrayer, Elmore Mitchell and Dennis Hart, individually, etc., and Van D. Jones, C. L. Pegues and Frank Allen, etc., filed in case No. 5232 on May 17, 1941.

7. Motion of defendants to dismiss bill of complaint and answer of defendants to bill of complaint in case No. 5233 filed on May 17, 1941.

8. Motion of defendants to dismiss bill of complaint and answer of defendants in case No. 5234 filed May 17, 1941.

9. Amendments to answer of Muscoda Local No. 123, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and W. C. Gunnin, Pete Dulaney, R. H. Martin, and John Thompson, etc., and Wenonah Local No. 157, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and C. J. McDaniel, W. B. Lemley, R. E. Lemley and Ward Jefferson, individually, etc., and Ishkooda Local No. 152, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and E. A. Sisemore, L. H. McBrayer, Elmore Mitchell, and Dennis Hart, individually, etc.; and Van D. Jones, ~~C. L. Pegues~~, and Frank Allen, etc., filed June 3, 1941, excluding therefrom the list of names on page 3 thereof, beginning with the names "Agree, Frank; Ashley, Horace C.; Allison, Toll" and substituting in lieu of said list of names the following: "Agree, Frank; Ashley, Horace C.; Allison, Toll, and approximately 1,800 others" in case No. 5232.

10. Amendment to answer of all defendants in case No. 5233, filed on June 3, 1941, excluding therefrom the list of names beginning on page 3 thereof, beginning with the names "Ashworth, J. L.; Artis, David; Allen, Sam; Anderson, Thad," and substituting in lieu of said list of names the following: "Ashworth, J. L.; Artis, David; Allen, Sam; Anderson, Thad, and approximately 575 others."

11. Amendment to answer of Raimund Local No. 121, an unincorporated association affiliated with the International Union of Mine, Mill and Smelter Workers, and John Butler, Louis Tarrant, and B. G. Stephens, etc., filed June 3, 1941, excluding therefrom the list of names beginning on page 3 thereof, with the names "Anderson, Hubert Lavell; Atkinson, James Edward," and substituting in lieu of said list of names the following: "Anderson, Hubert

Lavell; Atkinson, James Edward, and approximately 505 others", in case No. 5234.

12. Amendment to complaint of plaintiff, Tennessee Coal, Iron & Railroad Company, filed on July 7, 1941.

13. Amendment to complaint of plaintiff Sloss-Sheffield Steel & Iron Company, filed on July 7, 1941.

14. Amendment to complaint of plaintiff Republic Steel Corporation, filed on July 7, 1941.

15. Order allowing amendment of complaint of Republic Steel Corporation in Case No. 5234, filed July 31, 1941.

16. Amendment of plaintiff Republic Steel Corporation to complaint in case No. 5234, filed July 31, 1941.

17. Court's order consolidating cases for trial, made and filed on July 7, 1941.

The papers hereinafter set forth are substantially the same in each of said cases, and by agreement are to be set forth in the record one time only and considered as if set out in each case separately:

18. Notice of the Court setting the case for the purpose of pretrial hearing on Tuesday, May 20, 1941.

19. Order on pretrial hearing dated May 22, 1941, and filed May 22, 1941.

20. The order setting the case down for trial on the merits on June 23, 1941, in accordance with the pretrial order, and decrees in reference to various motions, etc., filed on May 26, 1941.

21. Motion of Philip B. Fleming, Administrator, etc., to intervene, together with pleadings of said Fleming to accompany the motion to intervene, filed May 24, 1941.

22. Order of Court granting motion of Philip B. Fleming to intervene, and requiring compliance with pretrial agreement and pretrial order, dated June 7, 1941, and filed June 11, 1941.

23. Plaintiffs' written interrogatories to Philip B. Fleming filed on June 16, 1941.

24. Motion of plaintiffs to dismiss counter claim of American Federation of Labor, et al., made and filed on June 19, 1941.

25. Motion of plaintiffs to dismiss the counter claims of International Union of Mine, Mill and Smelter Workers, et al., made and filed on June 19, 1941.

26. Plaintiffs' amendment of complaint made and filed on June 19, 1941.

27. Order of Court continuing the trial of the case from June 23, 1941, to July 8, 1941, filed on June 18, 1941.

28. Objections and answers of Philip B. Fleming, Administrator, to written interrogatories propounded by plaintiffs, filed June 27, 1941.

29. Answers of Philip B. Fleming, Intervener, to interrogatories, filed on July 1, 1941.

30. Amended answer of Philip B. Fleming, Administrator, filed on July 5, 1941.

31. The opinion of the District Court filed August 13, 1941.

32. Letter of the United States District Judge, dated August 13, 1941, and directed to the attorneys representing the various parties in the case.

33. Motion of plaintiffs for judgment or decree in their favor filed September 6, 1941.

34. Amendment to answer of defendants affiliated with C. I. O. in case No. 5234,—Republic Steel Corporation, plaintiff,—filed July 31, 1941.

Amendment to answer of defendants affiliated with C. I. O. in case No. 5233,—Sloss-Sheffield Steel & Iron Company, plaintiff,—filed July 31, 1941.

Amendment to answer of defendants affiliated with American Federation of Labor in case No. 5232,—Tennessee Coal, Iron & Railroad Company, plaintiff, filed September 10, 1941; amendment filed October 6, 1941, and amendment filed October 8, 1941.

Appellants suggest that in lieu of printing in the record the amendments above referred to in full that the following, by stipulation, be designated for printing in the record:

Amendments to cross-claims to the complaints as amended, which, in effect, added additional claimants to the cross-claims, and entered appearances as additional attorneys for defendants affiliated with the C. I. O. Lee Pressman and Joe Kovner of Washington, D. C., were made as follows:

In case No. 5234,—Republic Steel Corporation Plaintiff, —filed July 31, 1941, adding 16 additional claimants, and in the same case, amendment filed October 6, 1941, adding 113 additional claimants; and amendment to the answer and cross-claim in the same case filed October 8, 1941, adding as additional parties claimant widows, heirs at law, and administrators of twelve deceased employees.

In case No. 5233,—Sloss-Sheffield Steel & Iron Company, Plaintiff,—amendment to answer and cross-claim of defendants filed July 31, 1941, adding seven additional claimants; amendment to answer and cross-bill filed October 6, 1941, adding 9 additional claimants, and amendment to answer and cross-claim filed October 8, 1941, adding as additional parties claimant widows, heirs at law and administrators of six deceased employees.

In case No. 5232,—Tennessee Coal, Iron & Railroad Company, Plaintiff,—amendment to answer and cross-claim of defendants affiliated with American Federation of Labor, filed September 10, 1941, adding 556 additional claimants; amendment to answer and cross-claim of defendants affiliated with International Union of Mine, Mill and Smelter Workers, filed October 6, 1941, adding 85 additional claimants; amendment to answer and cross claim of defendants affiliated with International Union of Mine, Mill and Smelter Workers, filed October 8, 1941, adding as additional parties claimant widows, heirs at law, and administrators of 38 deceased employees.

The plaintiffs, within twenty days from the time of the filing of such amendments, filed as to each of them their motions to dismiss the counterclaims as amended, assigning as grounds for such motions the same grounds assigned, separately and severally, from I to V, both inclusive, as filed to said amendments to cross claims filed June 19, 1941.

It is stipulated and agreed that the above statement in reference to such amendments and motions shall be used for the record in lieu of the copying and printing thereof at length.

It is further stipulated that all amendments to the complaints of the plaintiffs, and amendments to the answer and counterclaims of defendants, shall be considered as having been made within the time allowed for pleading, and each responsive pleading, wherever necessary, shall be considered as having been refiled when amendments to the various pleadings have been made.

35. Judgment of the Court signed on September 10, 1941, and entry of Judgment thereon made and filed on the 10th day of September, 1941.

36. Decree of the Court overruling motion of plaintiffs for a judgment or decree in their favor and against the separate and several defendants signed and filed on the 3rd day of October, 1941.

37. Plaintiffs' motion to amend judgment filed September 19, 1941.

38. Plaintiffs' causes for and in support of their motion to amend the judgment filed on September 19, 1941.

39. The Court's findings of fact filed on the 10th day of September, 1941, and entry of judgment thereon on the 10th day of September, 1941.

40. Plaintiffs' objections to findings of fact and motion for amendment thereof filed September 19, 1941.

41. The Court's conclusions of law signed on September 10, 1941, and entry of judgment thereon on September 10, 1941.

42. Plaintiffs' objections to the conclusions of law filed on September 19, 1941.

43. Plaintiffs' motion for a new trial and affidavit in support thereof filed on the 19th day of September, 1941.

44. Judgment and decree of the Court overruling and denying plaintiffs' motion to amend judgment, their objections to findings of fact, their objections to and motion to amend findings of fact, and their objections to and motion to amend the conclusions of law filed on October 20, 1941.

45. Order and decree of the Court overruling plaintiffs' motion for a new trial filed November 8, 1941.

46. Notice of appeal filed on the 8th day of December, 1941, together with the citation of service thereon.

47. Appellants have filed with the District Court as a part of their designation of contents of record on appeal two copies of the Reporters' transcript of the evidence or proceedings on the trial, which was stenographically reported, and they designate as the evidence to be contained in the record on appeal all portions of the transcript of the evidence or proceedings as thus stenographically reported except those portions thereof the elimination of which has been indicated by red ink lines.

48. Appellants designate as the remaining evidence to be contained in the record on appeal, in addition to the stenographic transcript above referred to, the exhibits and papers which were admitted and received in evidence,

and which are included in Volume I, marked Exhibit "A", filed herewith and made a part hereof, and the exhibits and papers which were offered in evidence and their admission into evidence on objections of opposing parties refused by the Court, and which are included in Volume II, marked Exhibit "B", filed herewith and made a part hereof.

49. Appellants' statement of points.

E. L. ALL,
BORDEN BURR,
Attorneys for the above named Appellants, separately and severally.

Address: Birmingham, Alabama.

We hereby certify that we have served upon each of the appellees in the above named cases a full and complete copy of all the foregoing.

Dated this 14 day of January, 1942.
BORDEN BURR.

Filed January 14, 1942.
CHAS. B. CROW,
Clerk U. S. Dist. Court.

4787 APPELLEES' DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE.

Tennessee Coal, Iron & Railroad Company, A Corporation,
Appellant,
vs. Civil Action No. 5232.
Muscoda Local No. 123, an unincorporated association affiliated with the international Union of Mine, Mill & Smelter Workers, et als, (Defendants), Appellees.

Sloss-Sheffield Steel & Iron Company, A Corporation,
Appellant,
vs. Civil Action No. 5233.
Sloss Red Ore Local No. 109, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, et als, (Defendants), Appellees.

Republic Steel Corporaton, A Corporation, Appellant,
vs. Civil Action No. 5234.
Raimund Local No. 121, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, et als, (Defendants), Appellees.

Now come all the defendants in the above styled causes and all the individuals who have become parties by various amendments filed, said parties numbering several thousand, Appellees, in each of said causes, and do file this their designation of additional portions of the record, proceedings and evidence to be included in the record on appeal, which were not designated by the appellant:

1. Motion for temporary restraining order or preliminary injunction filed April 4, 1941.

2. Order setting motion for temporary restraining order or preliminary injunction for hearing on April 17, 1941, filed April 4, 1941.

3. Return of service of process filed April 10th, 1941.

4. Temporary restraining order filed April 14, 1941.

5. Order continuing the temporary restraining order filed April 24, 1941.

6. Order continuing temporary restraining order filed May 5, 1941.

7. Order continuing temporary restraining order filed May 14, 1941.

8. Defendants motion for summary judgment and accompanying affidavit filed May 20, 1941 and order thereon dated May 20, 1941.

9. Certification to attorney general filed May 26, 1941.

10. Notice of motion to intervene filed May 24, 1941.

11. Motion of intervener for modification of order and for continuance, filed June-10, 1941.

12. Plaintiff's objection to Intervener's motion for continuance. Filed June 13, 1941.

13. Motion to Intervener for production of documents, filed June 16, 1941.

14. Affidavit of Intervener on production of documents, filed June 23, 1941.

15. Order on production of documents filed June 28, 1941.

16. Motion of Intervener to take oral depositions filed June 27, 1941.

17. Praecipe on issue of subpoena. Filed June 27, 1941.

18. Objection of plaintiffs to Intervener taking deposition in Birmingham. Filed June 27, 1941.

19. Objection to Intervener, Fleming, to questions of plaintiff in taking deposition of witness, L. C. Gunter of Knoxville, Tennessee. Filed July 11, 1941.

20. Objection of Intervener, Fleming, to questions of plaintiff in taking deposition of witness, D. C. Kennedy of Charleston, West Virginia, Filed July 7, 1941.

21. Objection of Intervener, Fleming, to questions of plaintiff in taking deposition of witness, W. J. Jenkins of St. Louis, Missouri. Filed July 5, 1941.

22. Intervener Fleming's motion for continuance. Filed July 3, 1941.

23. Order filed July 3, 1941 on objection of Fleming to interrogatories propounded to him.

24. Order denying Intervener, Fleming, the right to take oral depositions. Filed July 3, 1941.

25. Exceptions of Intervener, Fleming, to order denying him the right to take oral depositions. Filed July 5, 1941.

26. Objection of Fleming to interrogatories propounded to witnesses at Terre Haute, Indiana, filed July 5, 1941.

27. Objection of Fleming to interrogatories propounded to witnesses at Pittsburgh, Kansas. Filed July 7, 1941.

28. Objection of Fleming to interrogatories propounded to Butte, Montana witnesses. Filed July 7, 1941.

29. Motion to view premises. Filed July 8, 1941.

30. Order on motion to view premises. Filed July 30, 1941.

31. Appeal bond filed by plaintiffs, filed December 5, 1941.

32. The appellees now designate as additional portions of a stenographic transcript of the evidence and proceedings filed by the appellant, all those portions thereof, the elimination of which was indicated in red ink lines by the appellant.

The appellees also had a Court reporter throughout the trial of these causes and there are differences between the transcript filed by the appellants and the transcript prepared by the reporter employed by the appellees. Counsel have agreed to try to reconcile these differences but if there remain any differences which cannot be worked out between counsel, appellees reserve the right to have the transcript truly disclose what occurred in the District Court in the trial of these causes, and further reserve the right to submit differences to the District Court to be settled by the Court so that the record shall be made to conform to the truth as provided in Rule 75(h) of the Rules of Civil Procedure and of the Rules of the United States Circuit Court of Appeals for the Fifth Circuit.

33. Appellees further designate all exhibits which were introduced in evidence and which have not been designated by the appellants and wherever the appellants designated a portion of an exhibit introduced into evidence, appellees

designate the portion of such exhibit not designated by appellant.

Throughout the documents filed with the appellant's designation and attached thereto there are to be found numerous proposals and suggestions in the nature of stipulations, or assumptions that stipulations have been made, and as to all of these, the appellees do not consent and agree by the filing of this designation. However, appellees will confer with counsel for appellants and endeavor to work out these matters for the convenience of the Court.

CRAMPTON HARRIS,
LEE PRESSMAN,
Attorneys for Muscoda Local No. 123, Sloss Red Ore Local No. 109, Raimund Local No. 121, et als; Appellees.
J. Q. SMITH, RALPH W. QUIN and W. F. SPENCER,
Attorneys for Muscoda Local No. 21935, et al. Case 5232.

I hereby certify that I have served a copy of the foregoing upon Mr. Borden Burr, attorney for appellant in Case No. 5232; and a copy upon Mr. Borden Burr, attorney for appellant in Case No. 5234; and have served a copy upon Mr. Ernest All, attorney for appellant in Case No. 5233, by mailing it to each of them by United States mail, postage prepaid, to the last known address of said attorneys.

This the 24th day of January, 1942.

CRAMPTON HARRIS,
Attorney for Appellees in #5232, #5233, #5234.

Filed January 24, 1942. Chas. B. Crow, Clerk, U. S. District Court.

4792 DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE.

In the District Court of the United States for the Northern District of Alabama, Southern Division.

Tennessee Coal, Iron & Railroad Company, A Corporation, et al, Petitioners and Plaintiffs,

vs.

Muscoda Local No. 123, an unincorporated association affiliated with the International Union of Mine, Mill & Smelter Workers, and W. C. Gunnin, et al, Defendants,

Philip B. Fleming, Administrator of the Wage and Hour Division, United States Department of Labor, Intervener.

Civil Action File No. 5232, Civil Action File No. 5233, Civil Action File No. 5234.

Comes Philip B. Fleming, Administrator of the Wage and Hour Division, Intervener in these causes, and adopts and files as his designation of additional portions of the record, proceedings and evidence of these causes, the designation of additional portions of the record, proceedings and evidence filed January 24, 1942, by defendants and other appellees who have become parties.

IRVING J. LEVY,
(Irving J. Levy)
Associate Solicitor.
JEROME A. COOPER,
(Jerome A. Cooper)
Regional Attorney.

Served by mailing a copy of the foregoing this 24th day of January, 1942, to the following:

Bradley, Baldwin, All and White,
Attorneys for Sloss-Sheffield Steel & Iron Co., Plaintiffs,
Comer Building,
Birmingham, Alabama.

Benners, Burr, McKamy and Forman,
Attorneys for Tennessee Coal, Iron & Railroad Co. and Republic Steel Corporation, Plaintiffs,
Brown Marx Building,
Birmingham, Alabama.

Crampton Harris, Esquire,
Attorney for Muscoda Local No. 123, et als, defendants,
First National Building,
Birmingham, Alabama.

Messrs. J. Q. Smith, Ralph W. Quinn, and W. F. Spencer,
Attorneys for Muscoda Local No. 21935, et als, defendants,
Earley Building,
Birmingham, Alabama.

JEROME A. COOPER.

Filed January 24, 1942, Chas. B. Crow, Clerk, U. S. Dist. Court.

CLERK'S CERTIFICATE.

The United States of America,
Northern District of Alabama.

I, CHAS. B. CROW, Clerk of the District Court of the United States for the Northern District of Alabama, Southern Division, do hereby certify that the foregoing pages numbered from Volume I, page one (1) to Volume XII, page Four Thousand Seven hundred and Ninety-four (4794) both inclusive, is a true, full and correct transcript of the record on appeal in the matter of Tennessee Coal, Iron & Railroad Company, a Corporation, Appellant, vs. Muscoda Local No. 123 Etc. Et Al., Appellees, and Sloss-Sheffield Steel & Iron Company, A Corporation, Appellant, vs. Sloss Red Ore Local No. 109 Etc. Et Al., Appellees, and Republic Steel Corporation, a Corporation, A Corporation, Appellant vs. Raimund Local No. 121 Etc. Et Al., Appellees as fully as the same does appear of record and on file in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Court, at Birmingham, in said District on this the Second day of April, A. D. 1942.

CHAS. B. CROW,
(Chas. B. Crow)
Clerk, U. S. District Court
Northern District of Alabama.

(Seal)

[fol. 4937] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of February 2nd, 1943

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY

versus

MUSCODA LOCAL NO. 123, etc., et al.

SLOSS SHEFFIELD STEEL & IRON COMPANY

versus

SLOSS RED ORE LOCAL NO. 109, etc., et al.

REPUBLIC STEEL CORPORATION

versus

RAIMUND LOCAL NO. 121, etc., et al.

On this day this cause was called, and after argument by Borden Burr, Esq., and E. L. All, Esq., for appellants, and Crampton Harris, Esq., for appellees, and Miss Bessie Margolin, Assistant Solicitor, United States Department of Labor, for Administrator of the Wage and Hour Division, was submitted to the Court.

[fol. 4938] OPINION OF THE COURT AND DISSENTING OPINION BY SIBLEY, CIRCUIT JUDGE—Filed March 16, 1943

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY, Appellant,

versus

MUSCODA LOCAL No. 123, etc., et al., Appellees

SLOSS-SHEFFIELD STEEL & IRON COMPANY, Appellant,

versus

SLOSS RED ORE LOCAL No. 109, etc., et al., Appellees

REPUBLIC STEEL CORPORATION, Appellant,

versus

RAIMUND LOCAL No. 121, etc., et al., Appellees

Appeals from the District Court of the United States for the Northern District of Alabama

(March 16, 1943)

Before Sibley, Holmes, and McCord, Circuit Judges

HOLMES, Circuit Judge:

These appeals are from a judgment declaring that the working time of underground iron-ore mining employees, [fol. 4939] comprising the work-week of such employees under Section 7 of the Fair Labor Standards Act of 1938,[1] includes time spent by them on the surface in checking in and out, obtaining and returning tools, lamps, and carbide, and time spent underground from the time they are required to report at the portal of the mine until they emerge therefrom at the end of their shift, less the fixed lunch period during which the employees are relieved of all duties; and declaring further that, since such aggregate working time exceeded the maximum work-week provided by said Act, appellants violated the Act in not compensating the employees as therein provided.

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[1] 29 U. S. C. A., Sec. 207.

Appellants, corporations principally engaged in mining iron ore, filed separate civil actions under the Declaratory Judgments Act,[2] which were consolidated for trial, and as to which a single judgment was entered without objection. The actual controversy underlying federal jurisdiction related only to the hours of employment during the time intervening between the effective date of the Act, October 24, 1938, and the dates the respective petitions were filed in April, 1941. Upon a pre-trial conference it was agreed that the primary issue was what constituted the working time that made up the work-week of the underground ore-mining employees within the meaning of Section 7 of the Fair Labor Standards Act.

Section 7 of the Act requires every employer to pay overtime wages to any employee that is engaged in commerce or in the production of goods for commerce for a work-week longer than 44 hours between October 24, 1938, and October 23, 1939, longer than 42 hours between October 24, 1939, and October 23, 1940, and longer than 40 hours thereafter. The Act defines the word "employ" to include "to suffer [fol. 4940] or permit to work." It is without dispute that, during the period involved in this suit, each employee represented by appellees was engaged in the production of goods for commerce, and that each appellant required its underground employees to work 40 hours each week at their regular working places in the depths of the mine. Whether, in addition thereto, such employees were entitled under the Act to have included in the computation of their work-week the time consumed each week in travelling from the portal of the mine to their regular working places, and in returning therefrom to the portal at the end of the shift, plus the aggregate of the time consumed each week by such employees in checking in and out and obtaining and returning lamps, carbide, and tools on the surface, or whether they were entitled to have any part of such time included in the working time comprising the work-week, is the precise question for decision.

The Act was drafted for application on a national scale, and it does not undertake to define what is working time in any particular industry or class of industries. What constitutes working time is a question of fact depending upon the particular circumstances, and is a matter for the determination of the courts in controverted cases. In the great majority of instances no question of this nature will arise, but in doubtful cases such as this the issue must be determined in accordance with common sense and the general concept of work or employment; and, as in other cases, the appellate court is controlled by the rule that the finding of the trial court upon decisive questions of fact must be upheld unless it is clearly erroneous.

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[2] 28 U. S. C. A., Sec. 400, 52 Stat. 1060.

There is no real dispute as to the facts upon which the travel-time question turns, but different inferences as to the working time may fairly and reasonably be drawn from these facts. The parties on both sides of this controversy petitioned the court below to decide the controverted issues between them, i. e., to find the facts, declare the law, and [fol. 4941] enter a declaratory judgment accordingly. The jurisdiction of the court below and of this court having been rightfully invoked, we are compelled to decide the issue as to work-time without regard to what may be the result of an accounting between the parties. Courts should not consider the consequences of their legal decisions, except in trying to ascertain the legislative intent in enacting a statute of doubtful meaning; and, whatever may be said as to inferences from the facts, the law of this case is not doubtful. Moreover, no one can say at this time what will be the result of an accounting to be had in the future. We must limit our decision to the issues presented.

At the beginning of the shift the underground employees were required to report at the portal of the mine at a specified time, there to deposit their identification check at the tally office and to board the conveyance provided by the company for transportation to a man-unloading station inside the mine. The men rode in skips or ore cars, which were usually coated with grime of the mine, and assumed a crouched position to minimize the hazard of hitting their skulls against the low tunnel ceiling. Upon reaching the underground station the men left the skip and walked the remaining distance to their respective working places. They were obliged to exercise caution at all times to avoid contact with uninsulated electric wires and other hazards, and carried several pounds of equipment to be used in their work during the day. The men frequently were given instructions as to when and how they should perform their respective duties before the skips left the portal of the mine, and at all times during the descent they were subject to company rules and under company control. The return to the portal at the end of the shift was accomplished in the same manner and under the same conditions.

[fol. 4942] After considering these and other facts of a similar nature, the court below found as a fact that all of the time thus consumed was work-time and should have been included in the computation of the employees' work-week.[3] Since this travel-time was spent on the employer's premises and subject to its directions, since it exacted mental and physical exertion from the employees under conditions both hazardous and unhealthful, and since it was a course of action pursued solely as a necessary incident to the prosecution of the employer's business, we are unable to say that this finding of the court below was clearly erroneous.

Appellants contend that the industrial history and contractual course of dealing between the parties showed conclusively that travel-time in these iron-ore mines was not working time. It may be conceded, *arguendo,* that for twenty-five years prior to 1938 iron-ore miners had not been compensated for travel-time, and that even after 1938 the parties to this suit had entered into contracts whereby it was agreed that no wages should be paid for travel-time; but the very purpose of the Fair Labor Standards Act was to eliminate labor conditions detrimental to the general welfare of workers, and the remedial machinery set up to accomplish that purpose regulated hours of work and rates of pay. Industrial custom does not warrant the continuation of abuses that the Act was created to rectify; and no contractual agreement that compensation should not be paid for travel-time is valid if in conflict with the Act. The record discloses that this agreement was not a simple statement of admitted fact, but was a compromise adjustment of real differences reached by way of negotiation and concession, and that the workers, though vainly, insisted upon their right to be paid for travel-time.

With respect to time spent by employees checking in and out, and procuring and returning tools, lamps, and carbide, [fol. 4943] the case stands differently. It apears that the workers were obliged to furnish their own tools, lamps, and carbide, and were free to exercise their own judgment as to when, where, and how they should procure their equipment. The company merely instructed them as to the equipment needed, and did not attempt further to regulate the matter. The checking system used by appellants required the employees only to deposit a metal disc at the tally house when arriving for work, and to pick it up again at the end of the shift. In addition to the practical difficulties incident to the computation of isolated moments so elusive in character, we think these pursuits should not be computed as work-time, since they fall within the category of duties incident to qualifying the employee to perform his work rather than within the scope of his actual employment.

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[3] Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123 et al., 40 Fed. Supplement 4.

Applying Section 7 of the Act to the facts of this case, we hold that the time spent by underground mining employees of appellants, from the time they were required to report and did report for work at the portal of the mine until they returned to the portal of the mine at the end of the shift, less the regular lunch period when they were relieved of all duties, constituted working time comprising the work-week; that appellants have not compensated said employees for some of said working time; and that reference of the cause to a master for calculation of amounts due said employees was proper.

It is ordered that the judgment appealed from be, and the same hereby is, modified so as to conform to our holding as to work-time. As so modified, the judgment is affirmed; and the cause is remanded to the district court for further proceedings not inconsistent with this opinion.

[fol. 4944] Sibley, Circuit Judge, Dissenting:

The judgment about to be entered, in my opinion, misconstrues and misapplies the Fair Labor Standards Act, and visits on the appellants most unjustly a heavy pecuniary penalty; and if followed in other cases and by other courts will cause great confusion in the iron and coal mining industries at a time when the country can least afford confusion.

The Act does not define "work time" or even "work". It may apply to each and every industry. What would be work in one industry may not be in another. It seems to me that a man is at work, for the purposes of the Act, when he is doing what he is hired to do. It may involve mental or physical efforts, or it may consist in simple presence. It all depends on the contract of hiring. The Act did not intend to upset and nullify the wage contracts of force in the various industries. It simply fixed minimum wages for work done under them, and maximum hours. Of course contracts yield to the Act on these points, but they still control as to the work to be done, and the way it is to be done, and as to the scale of pay if not less than the minimum fixed by the Act. These things are left to bargaining, and especially to collective bargaining under the principles of the National Labor Relations Act.

No question is older in such bargaining than the question whether "travel time" is to be included in "work time". The worker has always thought he ought not to lose all of the time necessary to go to and from his place of work; the employer has thought he ought not to pay for time that produces no work results. The dispute has been resolved in various ways in employment contracts for pay estimated by the hour. Plumbers demand and get pay from the time they leave their place of business to go to a job until they [fol. 4945] return. Railroad trainmen get pay from the time they report for duty, no matter what delay may occur in the starting of the train. Railway track-men also are paid from the hour of their assembly at the section point, though they may ride their motor car for miles before doing any track work. On the other hand carpenters, masons, and most artisans and laborers are paid for work only after they take up their tools on the job. As to coal and iron ore miners, traditionally they have been paid according to production, but their modern contracts have always included an express agreement as to their work time, and that agreement has excluded from work time the travel time in reaching the coal seam or ore bed, which were agreed to be the place of work. This is true of the collective bargains made by strong unions throughout the Appalachian region, as it is true of the bargains under which the miners in this case have worked.[1] Their work time is agreed to be that spent at the ore bed. The employers' arrangement to get them to that place reliably and safely is primarily for the

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[1] On Sept. 18, 1933, the President approved a code for the Bituminous Coal Industry under the National Industrial Recovery Act which provided: "Seven hours of labor shall constitute a day's work and this means seven hours of work at the usual working places for all classes of labor

[fol. 4946] benefit of the miner and is not work for the employer, according to these agreements. The discomforts and dangers of the trip, as well as the loss of time, are all considered in fixing the rate of pay for the work of extracting the ore, and the pay scales here involved are far above the minimum fixed by the Act. The miner's work is hard and dangerous, but his pay is supposed to compensate for all this. If it would be better to include travel time in work time, it ought to be done by a new bargain in which rates of pay are also reviewed. If the change is to be by a special statute, (some western States have such statutes), it will operate justly *in futuro*, and not by unexpected penalty, as here.

There is nothing in the Act to outlaw agreements that travel time in getting to or from the agreed place of work is not work time. This is true though the employer may organize a means of transportation and make rules for

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exclusive of the lunch period, whether they be paid on the day, or the tonnage, or other piece work basis."

The Appalachian agreement, which was and is the basis of the Union contracts with the eastern coal mines contains the provision: "Seven hours of labor shall constitute a day's work. The seven hour day means seven hours work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

Under these contracts "the usual working place" for miners has been universally understood to mean the face of the coal seam, and "travel time" to reach the seam is not "work time". The contracts and the practice have been of this sort since the eight hour day was established in 1898.

The contract between appellant Tennessee Coal and Iron Company and the union of its miners signed in October, 1938, Sect. 4, defined a day's work as eight hours, and a week's work or forty hours. "The eight hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or paid on the tonnage basis." As in coal mining, the usual working place of the miner has always been the face of the ore bed. The other appellants had more or less formal contracts to the same effect. Travel time has never been paid or expected under any of them.

its use. The agreements here that work time includes only time at the face of the ore bed are not illegal. Digging out the ore is what the miners agree to do, and for that they are paid. Getting their tools together and riding or walking to the agreed place of work is not, by force of any law, work done for the mine owner. No one, I suppose, would say that if a group of miners who had spent an hour riding to work decided of their own will not to dig any ore and spent another hour riding back, they had done any work for which they should be paid by force of the Act.

Though these miners are paid according to their production of ore, they may not under the Act be employed, that is, "suffered or permitted to work", longer than the maximum hours per week without increased pay. These mines provide against that by fixing the hours at which they admit the miners and require them to leave, and especially by limiting the hours during which power is furnished for [fol. 4947] their drills. Section 7 of the Act has not been violated in this case unless the travel time is counted as work time, contrary to the contracts of employment and contrary to the expectations of those concerned for the past four years. Identical provisions in the employment contracts of the coal miners were decided by the Administrator to be good under the Act, and his conclusion was published, and thought applicable to the contracts here involved, until recently another position was taken as to iron mines.

It is ~~now~~ proposed to assess against these appellants as back pay for overtime an estimated quarter of a million dollars, to be doubled by way of penalty, to compensate the miners for their time in going to and from their place of work, in the face of their agreements that this time was not in their work time. They are to get three times as much per hour for riding and walking to and from the work they were hired to do, as they get for doing the work itself. The injustice of it to me is shocking.

If the decision stands and is followed, chaotic conditions will ensue, and this is good ground to believe that Congress intended no such thing. If for travel time triple back pay is due by these mines, it is due by all the iron mines having similar wage agreements. Many will go broke, or have to cease operations, causing a loss of jobs to their men. The new mines are not deep, and travel time is negligible, but one of the mines here involved is old and extensive, and the travel time is about one and a half hours per day. This is nearly a quarter of the present work day of seven hours. If that time is to be unproductive, but as costly as the production time, this mine can hardly survive. The wage scales for each mine everywhere will have to be renegotiated to adjust business for the future to the new conditions, with the risk of discontents and strikes.

[fol. 4948] The decision will have to be applied also to the coal mines. Coal and iron ore occur in similar beds, and are mined in the same general way. In both, the old mines have the same difficulties. The collective agreements made by strong unions throughout the Appalachian country all contain the provision as to worktime we are now dealing with. When the Administrator first proposed to contend for what this court is about to do, it was the unions who objected most cogently, and successfully. The letter of the Legal Director of United Mine Workers of America[2] to the Administrator which appears in this record is a very strong argument against the invalidating of the agreements. That argument prevailed then. It ought to prevail now, for it applies as exactly to the iron ore workers as it did to the coal miners. The chaos predicted for the latter will come to both if the Act is so interpreted as to invalidate all these agreements.

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[2] Letter of Earl E. Houck to Philip B. Fleming, Administrator, dated July 9, 1940. That letter states, among other things: "Travel time was never considered as a part of the agreement or obligation of the employer to pay for in this industry, nor as hours worked by the employees, and this has been the case since the eight-hour day was established in the industry—April 1, 1898. It is urged that any ruling requiring such a change in the custom, tradition, and contract provision so as to change the work day from 'seven hours' work in the mines at the usual working places' to any new standard for the measurement of time worked, and to the adjustment of wage rates made necessary thereby, would create so much confusion in the bituminous industry as to result in complete chaos, and would probably result in a complete stoppage of work at practically all of the coal mines in the United States."

[fol. 4949] **JUDGMENT**

Extract from the Minutes of March 16th, 1943

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY

versus

MUSCODA LOCAL No. 123, etc., et al.

SLOSS-SHEFFIELD STEEL & IRON COMPANY

versus

SLOSS RED ORE LOCAL No. 109, etc., et al.

REPUBLIC STEEL CORPORATION

versus

RAIMUND LOCAL No. 121, etc., et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Alabama, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court appealed from in this cause be, and the same hereby is, modified so as to conform to our holding as to work-time; and as so modified, that said judgment be, and it is hereby, affirmed; and the cause is remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court;

It is further ordered and adjudged that the appellants, Tennessee Coal, Iron & Railroad Company, and the sureties on the appeal bond herein, Borden Burr and A. Benners; Sloss-Sheffield Steel & Iron Company, and the sureties on the appeal bond herein, E. L. All and W. B. White, and Republic Steel Corporation, and the sureties on the appeal [fol. 4950] bond herein, Borden Burr and A. Benners, be condemned, in solido, to pay the costs of this cause in this Court, for all of which execution may be issued out of the said District Court.

"Sibley, Circuit Judge, dissents."

[fols. 4951-4995] PETITION FOR REHEARING—Filed April 5, 1943

IN

United States Circuit Court of Appeals

FIFTH CIRCUIT

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Appellant
vs.
MUSCODA LOCAL NO. 123, ETC., ET AL
Appellees

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
Appellant
vs.
SLOSS RED ORE LOCAL NO. 109, ETC., ET AL
Appellees

REPUBLIC STEEL CORPORATION,
Appellant
vs.
RAIMUND LOCAL NO. 121, ETC., ET AL
Appellees

APPEALS ON A CONSOLIDATED RECORD FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA

APPELLANTS' PETITION FOR REHEARING

Now come the appellants, and each of them, separately and severally, and petition the Court to grant a rehearing in this cause, to set aside the judgment of affirmance heretofore rendered by it on March 16, 1943 and to enter a judgment reversing the judgment of the

District Court and declaring that the work-time of the appellants' underground employees means time spent in actual work at their usual working places underground, exclusive of time spent by them in waiting for transportation, being transported and walking from the portal of the mine to such working places and in returning to the portal at the end of the shift, and for grounds of this petition, assign the following:

In presenting this petition for rehearing, appellants feel justified in calling to the Court's attention occurrences (to which judicial notice is requested[1]) which have taken place since the submission of the case. These occurrences, together with the national impact of the decision, its repercussions and probable consequences and our sincere conviction that it is erroneous, impel us to give to the presentment of the petition our best and most conscientious effort, and to request of this Court the careful and patient consideration which it always gives to matter before it.

The transcript of the record is lengthy and complex, and it may be that we have overlooked bringing to the Court's attention matters that might have changed its views.

The enforcement of the judgment in its present form will not only heavily penalize the appellants and, contrary to custom and understanding that had existed for generations, greatly increase the earnings of all of the appellants' underground employees beyond the amount they expected and contracted to receive and have received and receipted for, but will bestow these unearned increments on many of the employees to whom the stated basic reasons for the decision have no application. The judgment not only fails to declare the law as applicable to time after May 1, 1941 (as to which the jurisdiction of the Court was properly invoked), but it adjudicates matters not embraced in either the pleadings or proof, and as to which appellants (although a contrary agreement was reached in the Court below and approved by order of the Court) have never had a day in court.

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[1] Oetjen v. Central Leather Company (1918), 246 U. S. 297, at page 301.

As grounds for the petition, the following are assigned, separately and severally:

I

The Court was in error in affirming the judgment appealed from.

II

The Court was in error in holding that:

> "Applying Section 7 of the Act to the facts of this case, we hold that the time spent by underground mining employees of appellants, from the time they were required to report and did report for work at the portal of the mine until they returned to the portal of the mine at the end of the shift, less the regular lunch period when they were relieved of all duties, constituted working time comprising the work-week; that appellants have not compensated said employees for some of said working time; and that reference of the cause to a master for calcula-

tion of amounts due said employees was proper.

"It is ordered that the judgment appealed from be, and the same hereby is, modified so as to conform to our holding as to work-time. As so modified, the judgment is affirmed; and the cause is remanded to the district court for further proceedings not inconsistent with this opinion."

III

APPELLANTS RESPECTFULLY SUBMIT THAT THE COURT WAS IN ERROR IN HOLDING THAT THE USE BY THE CONGRESS OF THE WORD "WORKWEEK" IN SECTION 7 OF THE ACT WAS WITHOUT "DOUBTFUL MEANING," AND THAT, FOR THIS REASON, IT COULD NOT CONSIDER THE "CONSEQUENCES" OF THE COURT'S DECISION NOR USE THE WELL-ESTABLISHED RULES OF STATUTORY CONSTRUCTION IN ORDER TO ASCERTAIN THE LEGISLATURE INTENT IN THE ENACTMENT OF STATUTES OF "DOUBTFUL MEANING."

It is well settled that where there is any doubt or ambiguity in the language of a statute with respect to the meaning of the words used or their application, the courts, in order to ascertain the legislative intent, will apply the established rules of judicial construction (Tennessee Coal, Iron & Railroad Company Brief, pages 153 to 168; Sloss-Sheffield Steel & Iron Company Brief, pages 77 to 107).

WE ASSERT THAT THE APPLICATION HERE OF ANY ONE OR ALL THESE RULES OF CONSTRUCTION WILL MAKE IT DEFINITE THAT THE CONGRESS IN THE USE OF THE LANGUAGE UNDER CONSTRUCTION INTENDED TO EXCLUDE TRAVELING TIME FROM THE "WORKWEEK."

The Court in its opinion uses the following language:

> "Courts should not consider the consequences of their legal decisions, except in trying to ascertain the legislative intent *in enacting a statute of doubtful meaning,*[2] and, whatever may be said as to inferences from the facts, *the law of this case is not doubtful."*—(Page 4 of the Opinion).

Appellants agree that the Court was correct in holding that "the courts should not consider the consequences of their legal decisions, except in trying to ascertain the legislative intent in enacting a statute of *doubtful meaning,"* but appellants insist that the Court was incorrect in holding that "whatever may be said as to the inferences from the facts, the law of this case is not doubtful."

The question involved in this case is the ascertainment of the intent of the Congress in the use of the word "workweek" in Section 7 of the Act as applicable to the iron ore industry and, particularly, to the iron ore mining operations of appellants.

The Court is correct in stating that "The Act was drafted for application on a national scale."

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[2] Italics and emphasis herein, unless otherwise indicated, are ours.

The Opinion overlooks the fact that it was drafted not only on national scale, but with full recognition of the fact that it was drafted for application on a nationwide industry basis. (Tennessee Coal, Iron and Railroad Company Brief, pages 142 to 145).

The undisputed evidence shows that the iron ore industry is a separate industry. It is a national industry. It is not a part of the non-ferrous metal mining industry. This fact has been additionally demonstrated by the rulings of the various departments of the Government made since the submission of this case.*

The Opinion holds that the use of the word "workweek" in application to the underground employees of these appellants is not of "doubtful meaning."

Appellants respectfully submit that those charged with the administration and enforcement of the Act, and the national iron ore mining industry, including all employers and employees, either reached a conclusion as to the intent of the Congress in the use of the word "workweek" in Section 7 of the Act opposite to the conclusion of the Court in this case, or expressly stated that the intent of the Congress in the use of the word "workweek" was doubtfully expressed.

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* The Government in various ways and at various times has designated and recognized the *non-ferrous* mining industry as one separate and apart from the ferrous mining industry.

The President's 48 hour week Executive Order, issued on February 9, 1943, authorized the designation of critical areas and designated industries to be subject to the Order. General Order No. 6 issued under this Executive Order designated the *non-ferrous mining industry* as subject to the Executive Order.

The War Labor Board has recently set up a special commission to consider wages and production of the *non-ferrous* mines.

Thus the government recognizes that the ferrous mining industry is separate and apart from the non-ferrous mining industry in harmony with this record and in support of our contention that the Administrator, while right in using a national industry measuring rod, was wrong in using one applicable only to the non-ferrous mining industry.

The foregoing assertion is supported by the following uncontradicted facts:

(a) From October 24, 1938 until March, 1941, the long established practice by custom and contract of not paying for traveling time was recognized by those charged with the administration of the Act and its enforcement and by employers and employees, the undisputed evidence showing that for two and one-half years after the enactment of the Act correctness of the face to face basis of computation and payment of wages and the exclusion of traveling time as work time *was never questioned.*

(b) On July 27, 1940, the Administrator announced that the "practice of computing working time on a face to face basis in the bitiminous coal mining industry would not be unreasonable." . . . "The term 'face to face' means the productive work performed *after the miner arrives at his usual working place, excluding the time spent in traveling* from the portal or entrance of the mine to the place of work and the time spent in returning from the working place to the portal in the evening." . . . This determination "should not be considered to apply to any mining operations where the practice of computing hours of work differs from the custom in the Bituminous coal mining industry" (Record, Volume VII, pages 4716-4717).

Since the undisputed evidence in this case shows that the traditional practice of computing hours in the iron ore mines was and had for generations been exactly similar to "the custom in the Bituminous coal mining industry" and since this was known to all interested parties, including employers and employees, it is impossible to consider this interpretation as anything except a mandate from the Administrator that this established custom could continue without fear of administrative action to the contrary.

On September 18, 1940, the Administrator again announced the same interpretation, and again assured the iron ore industry that this traditional practice of computing hours by excluding traveling time was in keeping with the administrative interpretation of the Act. (Record, Vol. VII, p. 4717).

(c) The Administrator in announcing the interpretation in reference to the metal mining industry stated in substance that the problem was so difficult of solution and he had been so long delayed in making interpretation (more than two and one-half years since the effective date of the Act) that, so far as the Administration of the Act was concerned, full forgiveness for the past was given (Record, Volume I, page 79).

The Administrator was correct in realizing the necessity for a national measuring rod; he was wrong in joining the iron ore mining industry to the non-ferrous metal mining industry. It was only by this improper union that he was able to find any facts to support his conclusion that the "portal to portal" custom was in existence prior to the enactment of the Act.

(d) In April, 1941, after the effective date of his interpretation, the Administrator again in a public statement expressed grave doubts in reference to the ruling and admitted the difficulties and complexities that confronted him in finally reaching his conclusion (Record, Volume VII, pages 4726-4733).

(e) Appellants and appellees and all other employers and employees in the iron ore industry, after the enactment of the Act both prior and subsequent to the promulgation of the Administrator's opinion "practically construed" the Act as excluding traveling time from work time. All the employers and employees in the iron ore mining industry until May 1, 1941 (when under compulsion compliance was made with the Administrator's ruling) understood and treated the word "workweek" as having been used by the Congress in keeping with and recognition of traditional customs and contracts.

APPELLANTS ASSERT THAT THE UNDISPUTED EVIDENCE IN THIS CASE SHOWS THAT UNTIL THE ISSUANCE OF THE ADMINISTRATOR'S OPINION IN MARCH, 1941, ALL PERSONS CONNECTED IN ANY WAY WITH THE IRON ORE MINING INDUSTRY OR WITH THE ADMINISTRATION OF THE ACT IN ITS APPLICATION TO THE IRON ORE MINING INDUSTRY IN GOOD FAITH AND BY PRECEPT AND EXAMPLE BELIEVED, AND ACTED UPON THE BELIEF, THAT THE CONGRESS DID NOT INTEND BY THE USE OF THE WORD "WORKWEEK" IN SECTION 7 OF THE ACT TO IN-

CLUDE TRAVEL TIME AS WORK TIME. INCLUDED IN THIS BELIEF AND ACTION THEREON WERE ALL EMPLOYEES OPERATING UNDERGROUND IRON ONE AND COAL MINES, ALL THEIR UNDERGROUND EMPLOYEES AND ALL PERSONS CHARGED WITH THE ADMINISTRATION AND ENFORCEMENT OF THE ACT.

IV

THE COURT, WAS IN ERROR IN STATING IN ITS OPINION THAT:

> "THE ACT WAS DRAFTED FOR APPLICATION ON A *NATIONAL SCALE,* AND IT DOES NOT UNDERTAKE TO DEFINE WHAT IS WORKING TIME IN ANY PARTICULAR INDUSTRY OR CLASS OF INDUSTRIES. WHAT CONSTITUTES WORKING TIME IS A QUESTION OF FACT DEPENDING UPON THE PARTICULAR CIRCUMSTANCES, AND IS A MATTER FOR THE DETERMINATION OF THE COURTS IN CONTROVERTED CASES. IN THE GREAT MAJORITY OF INSTANCES NO QUESTION OF THIS NATURE WILL ARISE, *BUT IN DOUBTFUL CASES* SUCH AS THIS THE ISSUE MUST BE DETERMINED IN ACCORDANCE WITH COMMON SENSE AND THE *GENERAL CONCEPT OF WORK OR EMPLOYMENT;* AND, AS IN OTHER CASES THE APPELLATE COURT IS CONTROLLED BY THE RULE THAT THE FINDING OF

THE TRIAL COURT UPON DECISIVE QUESTIONS OF FACT MUST BE UPHELD UNLESS IT IS CLEARLY ERRONEOUS." (Page 3 of Opinion).

The Act, as stated by the Court, "was drafted for application on a National (industry) scale and it does not undertake to define what is working time in any particular industry or class of industries."

An administrator was provided for with authority to make rules, regulations and interpretations, and while his interpretations are subject to judicial review the difficulties and expense of review in many cases make his opinions, from a practical standpoint final.

The Act provides, and has been so construed and administered, for the grouping of industries with appropriate regard to established customs and contractual relationship between employers and employees in the various industries.

The Administrator has consistently (until the rendition of the judgment appealed from) followed these provisions of the Act and has fully recognized that long existing customs and contractual relationships in a particular industry evidencing "the general conception of work or employment" in such industry (on the part of those in a position to know best and who have most interest in the matter) were not intended by the provisions of the Act to be set aside.

If this were not so—if a local instead of an established national measuring rod is used—the inevitable result of determining in each individual case the "general concept of work" would lead to many conflicting conclusions that would promote "unfair competition" instead of preventing it. For illustration, one court could conclude that the perils or discomforts in traveling to the work place in an underground mine were of a kind that made the traveling "work" while another Court (or the Administrator) could conclude that traveling time in a competing mine under exactly similar conditions was not work. The opportunities afforded by such a construction will not only bring about uncertainty and chaos in any industry but the extension of the principle will lead (as has already occurred, page —, infra) administrators to determine that traveling time is work time in a lumber plant, an open pit mine, an enclosed manufacturing plant or any other single operation, notwithstanding in the industry to which the operation belongs custom and contracts for generations have been to the contrary.

It is submitted that there can be but one "general conception of work" in an industry. The application of the Courts formula would result in as many and divergent "conceptions" of "work" as *might* be reached by the various administrators and Courts considering the facts applicable to the different members of the industry.

It is stated in the above quoted portion of the Opinion that is this case "as in other cases, the appellate court is controlled by the rule that the finding of the trial court upon decisive questions of fact must be upheld unless it is clearly erroneous."

The finding of the Court below that all of the time consumed in travel was worktime and should have been included in computation of the employee's workweek is not a finding of fact. It is rather a conclusion of law; or, at most, a determination of a mixed question of law and fact such as is subject to review by the appellate court upon which review the appellate court may substitute its judgment for that of the lower court. *Helvering v. Tex-Pen Oil Co.*, 300 U. S. 481, 491; *Bank of Waterproof v. Fidelity and Deposit Co.*, 299 Fed. 478; *Border Gas Co. v. Windrow,* 3 F. (2d) 974. It is well established that ultimate findings of fact are to be distinguished from findings of primary, evidentiary or circumstantial facts. The ultimate finding is either a conclusion of law, or, at least, a determination of a mixed question of law and fact.

Not only is this true, but, as we have previously noted the facts in relation to the fundamental question here involved are without dispute.

V

The Court was in error in stating in its opinion that:

> "APPELLANTS CONTEND THAT THE INDUSTRIAL HISTORY AND CONTRACTUAL COURSE OF DEALING BETWEEN THE PARTIES SHOWED CONCLUSIVELY THAT TRAVEL TIME IN THESE IRON ORE MINES WAS NOT WORKING TIME. IT MAY BE CONCEDED, *ARGUENDO*, THAT FOR 25 YEARS PRIOR TO 1938 IRON ORE MINERS

HAD NOT BEEN COMPENSATED FOR TRAVEL TIME, AND THAT EVEN AFTER 1938 THE PARTIES TO THIS SUIT HAD ENTERED INTO CONTRACTS WHEREBY IT WAS AGREED THAT NO WAGES SHOULD BE PAID FOR TRAVEL TIME; BUT THE VERY PURPOSE OF THE FAIR LABOR STANDARDS ACT WAS TO ELIMINATE LABOR CONDITIONS DETRIMENTAL TO THE GENERAL WELFARE OF WORKERS, AND THE REMEDIAL MACHINERY SET UP TO ACCOMPLISH THAT PURPOSE REGULATED HOURS OF WORK AND RATES OF PAY. INDUSTRIAL CUSTOM DOES NOT WARRANT THE CONTINUATION OF ABUSES THAT THE ACT WAS CREATED TO RECTIFY; AND NO CONTRACTUAL AGREEMENT THAT COMPENSATION SHOULD NOT BE PAID FOR TRAVEL TIME IS VALID IF IN CONFLICT WITH THE ACT. THE RECORD DISCLOSES THAT THIS AGREEMENT WAS NOT A SIMPLE STATEMENT OF ADMITTED FACT, BUT WAS A COMPROMISE ADJUSTMENT OF REAL DIFFERENCES REACHED BY WAY OF NEGOTIATION AND CONCESSION, AND THAT THE WORKERS, THOUGH VAINLY, INSISTED UPON THEIR RIGHT TO BE PAID FOR TRAVEL TIME." (Opinion, Page 5).

Appellants respectfully submit that the Court was in error in the above findings and conclusions.

THE FACTS "CONCEDED, *ARGUENDO*" ARE PROVEN WITHOUT CONFLICT BY THE UNDISPUTED EVIDENCE IN THE CASE.

The finding that "the record discloses that this agreement was not a simple statement of admitted fact, but was a compromise adjustment of real differences reached by way of negotiation and concession, and that the workers, though vainly, insisted upon their right to be paid for travel time" is, we respectfully insist, in conflict with the undisputed evidence.

Since mining has been an industry in Alabama (both iron ore and coal) wages have been contracted for, paid, received and receipted for with travel time excluded as work time. On October 19, *1933, for the first time,* the Union requested the including in the pay of *one-half the traveling time* (Record, page 3592-3). This request was repeated on April 13, 1934 (Record, page 3594. TCI Exhibit 6), and on June 13, 1935 (Record, Volume V, page 3623). On no occasion have the workers requested payment for *all* of the traveling time and they have never *insisted* upon their request to be paid one-half of the traveling time. The last time the Union *requested* payment for one-half the traveling time was *June 13, 1935.*

On *May 26, 1936* the Union presented a proposed contract which in their own language *expressly excluded* traveling time (TCI Exhibit 10-A, Volume V, 3629), and after this time wages continued to be paid, increased wages to be negotiated and received, jobs to be evaluated, money to be received, and written contracts to be negotiated by their General Counsel and top officials with express agreements defining the workday as exclusive of traveling time.

We respectfully insist that the above-quoted conclusions of law (and they constitute the *bedrock* of the decision) are erroneous.

The Court calls attention to the dangers of low roof, uninsulated wires, discomforts of uncomfortable travelways, etc., and states, in effect, that it was the purpose of the Fair Labor Standards Act to eliminate these and similar "labor conditions detrimental to the general welfare of the employees." We submit that there is not a word in the Act, in the discussions before the committees of the Congress, or in the debates in either House of the Congress to justify this conclusion (pages 24 to 26 of appellants' reply brief).

There exist many industries in the United States where the conditions of employment are much more detrimental to the general welfare of workers than in the underground iron ore mines. Some of these conditions are incident to the character of the work. It is impossible to make a coal mine as safe as an iron ore mine. The evidence in this case shows that fatalities and injuries are much more prevalent in gold mines than in coal mines and in coal than iron ore mines, and in some of the ore mines than in others. The same differences exist as to comfort or the incidental handling of tools. It is common knowledge that one of the most dangerous industries is that of driving tunnels, subways and underground passage ways; probably the one most offensive to the senses is working in or in the vicinity of glue factories or fertilizer plants where dead animals are used for fertilizer manufacture. In underground mines the presence of silica, water, gas, steep grades, and other natural physical conditions add to the danger and discomfort.

The same differences in conditions that exist in and about the conditions of work in these various occupations often exist in going to and from the places of work. It is inconceivable that this Act can be construed as having the purpose of preventing or diminishing these various unsafe or uncomfortable conditions of employment. Just as the evidence discloses in this case that these conditions become a part of the wage scale, so it may be assumed in all these various occupations the scale of wages is fixed upon these conditions.

It is submitted that, if traveling to or from work or waiting at the man loading station for transportation is such a dangerous or uncomfortable condition as to constitute it actual work on the theory that the Congress intended "to rectify" or "regulate" such or similar conditions, then the lunch period, under substantially the same conditions, was also intended by the Congress to constitute work time.

If the Act was intended "to eliminate labor conditions detrimental to the general welfare of workers" and to "rectify the abuses" referred to in the Opinion, then this intention could not be confined to the conditions relating to traveling and waiting for transportation at the man loading station, but would necessarily apply to the conditions of employment and the actual work at the employees' "regular working places in the depths of the mine."

The evidence discloses that the dangers and discomforts are much greater at the regular working places than along the traveling-ways or at the places provided for waiting for transportation. If the Act was designed, as asserted in the Opinion, to "eliminate" or "rectify" the conditions of employment referred to, it might of necessity have been intended by the Congress to apply to regular actual work at the working places during the normal hours of work, as well as to the places incident to traveling and waiting for transportation.

If it had been the purpose of the Congress, as found by the Court in its opinion, to rectify and regulate these conditions, it surely would have provided a remedy. The record shows that the institution of the "portal to portal" carried no remedy; it made no change in the perils; in the means or methods of conveyance; in the ventilation; in the hazards from uninsulated wires; in steepness of the grades, or in any of the various conditions. Instead of rectifying or minimizing these conditions it furnished the temptation to increase them. It made no change except to require pay for the traveling time. The employer, being deprived of almost one-third of the productive time of his employees will be tempted to speed up his transportation, and the evidence in this case shows that the transportation has been speeded up. Speed surely does not add to safety. If the employers are required to pay the employees for the time they are *waiting for transportation* at the man loading station or because of the occasional carrying of tools, the temptation is to shorten the period spent in waiting on the benches at the underground station and to add to the carrying of tools and the performance of labor. The undisputed proof in this case shows that since the institution of "portal to portal" the perils and discomforts have remained substantially the same.

The evidence produced by appellees of injuries received while riding on the skips occurred after May 1, 1941.

The record discloses that the giving of instructions, the incidental carrying and use of tools (the only matters aside from peril and discomfort, referred to by the Court as the basis of its conclusion) are equally as variant.

Not only is this true, but the decision expressly holds that "these pursuits (when performed on the surface) should not be computed as work time, since they fall within the category of duties incident to qualifying the employee to perform his work rather than within the scope of his actual employment" and because of the "practical difficulties incident to their computation" (Page 6, Opinion).

The fact that these same "pursuits" occur *underground* adds no additional characteristics of work, but the practical difficulties of their computation as shown by this record become much more difficult. The men are unaccompanied by their bosses to and from their places of work (they will receive under "portal to portal" the same rate of pay for traveling as they do for working) and the speed of their going and their activities on the way depend on their own initiative.

This part of the decision as to these "pursuits" on the surface not being work is not only correct in principle, but it necessarily abolishes the contention of appellees and the view of the District Judge that "work" as used in the statute is a synonym for "employment" and therefore that the decisions construing workmen's compensation acts as covering injuries received while going to work become applicable here.

An employee, if hurt on the surface while getting his tools or performing any of these "pursuits" is undoubtedly entitled to compensation under the Compensation Act, but, as held by the Court in this part of its decision, he is not engaged in "work" under the provisions of the Act (Appellant's Reply Brief, pages 247-248).

It is respectfully submitted that it was the sole purpose of the Act to regulate minimum wages and maximum hours. It was not intended to police the many industries for hazards and discomforts. It sought by the imposition of economic standards to prevent unfair competition in commerce by the elimination of labor conditions detrimental to the maintenance of a "minimum standard of living." The term "standard of living" (as admittedly applied to the Act) is a phrase of economic import and, as shown by the decisions of the courts and by the debates in the Congress, has a definite meaning which relates, not to conditions of employment, but to the question as to whether the wages which are being received are sufficient to enable the employees to enjoy a decent "standard of living." The Act contains no provision respecting conditions of work or labor environment, such as comforts, sanitation, conveniences of working places, existence of perils (Appellants' Reply Brief, pages 24-25).

The Court is in error in holding that the Act was intended to eliminate or rectify these conditions of employment. The payment of the minimum wage provided in the Act and the payment of overtime was not intended to and does not serve to "eliminate" or "rectify" conditions of employment. The institution of "portal to portal" leaves the labor environment unchanged and, as stated above, gives the opportunity of making conditions worse. "Conditions detrimental to the general welfare of workers" which are designed to be eliminated or rectified by this Act are only those conditions which can be bettered by increased compensation for work providing for a maintenance of a "decent standard of living."

VI

THE OPINION AND JUDGMENT OF THE COURT ARE ERRONEOUS BECAUSE THEY DISREGARD THE UNDISPUTED EVIDENCE WHICH SHOWS, WITHOUT CONFLICT, THAT AT THE TIME OF THE ENACTMENT OF THE ACT THE IRON ORE INDUSTRY WAS A NATIONAL INDUSTRY; THE EXCLUSION OF PAY FOR TRAVELING TIME HAD, FOR GENERATIONS, BEEN THE ESTABLISHED CUSTOM; THIS CUSTOM HAD BEEN EMBODIED IN CONTRACTS, AND WAS THE RECOGNNIZED "GENERAL CONCEPT OF WORK" AS UNDERSTOOD BY ALL PARTIES. THESE CONDITIONS MUST

BE ASSUMED TO HAVE BEEN WITHIN THE KNOWLEDGE OF THE CONGRESS AT THE TIME OF THE ENACTMENT OF THE ACT.

VII

THE OPINION AND JUDGMENT OF THE COURT ARE ERRONEOUS BECAUSE THEY DISREGARD THE UNDISPUTED EVIDENCE WHICH SHOWS, WITHOUT CONFLICT, THAT FOR MANY YEARS PRIOR TO THE ENACTMENT OF THE ACT OFFICIALS CHARGED WITH THE ADMINISTRATION AND ENFORCEMENT OF STATUTES CONTAINING WORDS OF SUBSTANTIALLY SIMILAR IMPORT CONSTRUED THE LANGUAGE OF SUCH STATUTES AS EXCLUDING TRAVELING TIME FROM WORK TIME:[3] AND THE NATIONAL INDUSTRIAL RECOVERY ACT, THE PROGENITOR OF THIS ACT, ON SEPTEMBER 18, 1933, HAD BEEN EXPRESSLY CONSTRUED BY THE ADMINISTRATOR AND THE PRESIDENT AS EXCLUDING TRAVELING TIME.[4]

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[3] Plaintiffs' Exhibit No. 16, Record, Vol. VII, p. 4646; Plaintiffs' Exhibit No. 17, Vol. VII, p. 4654; Plaintiffs' Exhibit No. 18, Vol. VII, p. 4658; Plaintiffs' Exhibit No. 19, Vol. VII, p. 4661; Plaintiffs' Exhibit No. 20, Vol. VII, p. 4662; Plaintiffs' Exhibit No. 45, Vol. VII, p. 4669; Plaintiffs' Exhibit No. 32, Vol. VII, p. 4693 (United States Fuel Administrator); Plaintiffs' Ex No. 46, Vol. VII, p. 4696 (President Woodrow Wilson).

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[4] Dissenting Opinion, p. 8; Plaintiffs' Exhibit No. 14, Vol. VII, p. 4700; Plaintiffs' Exhibits No. 30-55, Vol. VII, p. 4786 (President Franklin D. Roosevelt).

VIII

THE OPINION AND JUDGMENT OF THE COURT ARE ERRONEOUS BECAUSE THEY DISREGARD THE UNDISPUTED EVIDENCE WHICH SHOWS THAT SUBSEQUENT TO THE ENACTMENT OF THE ACT THE ADMINISTRATOR (UNTIL MARCH, 1941), THE NATIONAL IRON ORE INDUSTRY AND THE EMPLOYEES THEREOF (UNTIL MAY, 1941) AND (UNTIL THE HANDING DOWN OF THIS DECISION) THE NATIONAL COAL MINING INDUSTRY AND THE EMPLOYEES THEREOF AND THE ADMINISTRATOR[5] CONTINUED WITHOUT QUESTION TO FOLLOW THE ESTABLISHED CUSTOM, THE CONTRACTUAL AGREEMENTS AND THE GENERAL "CONCEPT OF WORK" WHICH HAD EXISTED FOR GENERATIONS AND WHICH EXCLUDED TRAVELING TIME FROM "WORK TIME."

In the dissenting opinion there is found the following statement:

> "The decision will have to be applied to the coal mines. Coal and iron ore occur in similar beds and are mined in the same general way. * * * That argument (the one made by the joint letter of the Bituminous Coal Mine Operators and the Union) prevailed then. It ought to prevail now, because it

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[5] The Administrator followed the joint request presented by the Houck letter, containing unanswerable argument against the Court's construction. —(Record, Vol. VII, pp. 4710-15; Dissenting Opinion, p. 11).

> applies as exactly to the iron ore workers as it did to the coal miners. The chaos predicted for the latter will come to both if the Act is so interpreted as to invalidate all the agreements." (Page 11 of the Opinion).

This statement supports the contention made by the appellants on the trial below and in this Court.—(TCI Brief, pp. 97 to 115; Sloss Brief, pp. 66-71).

Occurrences which have happened since the rendition of this decision, and which are of such common and general knowledge as to justify the Court in taking judicial notice thereof indicate the severe consequences which have and will follow the decision, and the present national unrest and uncertainty that has resulted from it.

On March 19, 1943, the International Policy Committee of the United Mine Workers of America, in submitting their "demands for wage scale increases and corrections of mining practices" for the Bituminous Coal Industry, included the following:

> "HOURS OF LABOR: That the maximum hours and working time provisions of the joint wage agreement, including the supplemental agreements regarding the six-day week, be reaffirmed with the following modifications:
>
> "(a) The six-day week to terminate when the war emergency ends.
>
> "(b) To conform with the *basic legal requirement* for the industry, the maximum hours and working time provisions be amended to *establish portal to portal for starting and quitting time for all underground workers.*"

These demands are now under consideration in the conferences being held between representatives of the Union and the Bituminous Coal Operators in the Appalachian and Southern fields in an effort to agree upon a contract to become effective upon the expiration on April 1, 1943, of the existing contracts which specifically (as has been the case since 1898) define the workday on the "face to face" basis.

In discussing the Union's demands for "portal to portal," Mr. John L. Lewis, the spokesman for the Union, stated that the men are underground on an average of about eight and one-half hours, and that now the mine workers *desire to take advantage of the law,* which (under this decision) grants the right to be paid for the time they are in the mines.

In the Supplement to Wage and Hour Reporter, March 22, 1943, Volume 6, Number 12, the text reads as follows:

> "Ruling on a question magnified by the pending wage negotiations in the coal mining industry, a Circuit Court of Appeals upholds in a split decision the 'portal to portal' method of computing hours of work for the purposes of the Fair Labor Standards Act in underground iron mines. The ruling is susceptible of far-reaching implications both in iron mines and coal mines, where *the prevailing practice* is to consider the miner's workday as beginning when he reaches the face of the mines on which he is working and ending when he leaves it."

The following quotations are from the Union's official paper:

> "The UMWA is now negotiating with mine owners of the United States for a substantial wage increase for coal mines. The miners base their claim for more pay on the rise in living cost and, also, on the fact that miners are required to spend from one to two hours daily in traveling inside the mine to and from their working places.
>
> * * *
>
> "As a means of increasing pay, 'travel time' or the time spent by the miners in traveling from the top of the shaft to the face of the coal should be paid for—*the contention recently upheld in the United States Circuit Court of Appeals for Red Ore mines in the Birmingham District.*"
>
> "A study of sixty mines producing 80 per cent of the tonnage in one area showed an average of one hour and 48 minutes in travel underground to and from the working place, making a total underground time of eight hours, 48 minutes, for a seven-hour work shift or nearly 53 hours for a six-day forty-hour week and that a recent court decision (this decision) barred 'the Union from making a new contract on the long-established 'face to face' working shift basis."

On March 26, 1943 Mr. Lewis, appearing as a witness before the Senate Committee investigating the national defense program said:

> "MR. LEWIS: I wonder what you would suggest, Senator, you having a very alert, capable mind on these things, in the light of the decision of the Fifth Circuit Court of Appeals on the portal to portal issue, that the mine workers should do. *The court says that we cannot make a contract and con-*

> *tract away the rights conveyed by the statute.* The coal operators and the War Labor Board say they won't pay for it. *I am judicially estopped from making an agreement that doesn't comply with the mandate of the court.*"

On March 30, 1942, the following comment appeared in the columns of a nationally known commentator:

> "BREAK FOR LEWIS:
>
> "The next good break Lewis got was in the recent Circuit Court of Appeals declaratory judgment in which Tennessee Coal and Iron was ordered to pay members of the Mine, Mill and Smelter Workers' Union for all time workmen are underground. Coal miners are not now paid on this 'portal to portal' basis from the time they enter the mine to the time they leave.
>
> "Instead, they are paid for the time at work at the bottom of the mine. But here is a Federal Court decision which sets a *major precedent and compels employers* to pay all miners for a longer work day, or else shorten the time actually spent at work."

It must be admitted as a matter of general and common knowledge that this decision is universally regarded as requiring compensation for traveling time in the underground coal mines of the United States, and as a probable "deus ex machina" for starting the spiral of inflation.

It is true that the operators of and employees in underground coal mines are not parties to this particular suit. It is equally true, under the undisputed offered evidence that at the time of the enactment of the Act, for years prior thereto and up to and including the present, and by reason of the conditions of nature for all time in the future, the only differences between the conditions in coal mines and iron ore mines are those of magnitude and degree and that in these differences the working places in the coal mines are at greater distances from the portal, and transportation to and from is attended with greater discomforts and hazards.

IF THIS DECISION STANDS, IT MUST BE ADMITTED THAT, IF IT WAS THE INTENT OF THE CONGRESS TO OVERTURN PRACTICES AND CONTRACTS IN THE IRON ORE MINES, IT WAS ALSO ITS INTENT TO OVERTURN THEM IN THE COAL MINES.

When suits are brought in behalf of the underground coal miners of these appellants and other coal operators in the United States to recover overtime compensation, alleging the existence of the same facts found by the Court to make traveling time work time, the District Court will necessarily apply this decision in support of the claim that the employers are liable for all the traveling time spent by the coal miners in excess of the maximum hours allowed for the workweek before overtime payment begins. If the employers in these suits seek to defend because the written agreements provide that traveling time shall not be included in the computation and payment of wages they will be confronted with this decision which states: "Industrial custom does not warrant the continuation of abuses that the Act was created to rectify; *and no contractual agreement that compensation should not be paid for traveling time is valid if in conflict with the Act.*"

If the employers in defense claim that the perils and discomforts in the conditions of employment have always existed and were taken into consideration in the wage scales agreed upon they will be confronted with this decision which holds that it was "the very purpose of the Fair Labor Standards Act to eliminate labor conditions detrimental to the general welfare of the workers," much worse in coal mines than in ore mines.

Under the offered evidence in this case as to coal mines no defense can be suggested which will not be confronted with this "on all-fours" decision. The offered evidence in this case discloses that the coal mine operators will be in a worse plight than the terrible plight in which this decision leaves the appellants because, relying upon the long established custom, their contracts and the opinion of the Administrator, the coal mine operators have continued and are continuing on the "face to face" basis, and, therefore, find themselves, under this decision, confronted with claims for overtime payments since May 1, 1941 (the date of appellants' compliance with the opinion) and with the demand of the Union that they at once comply with the decision of this Court, thereby reducing (if the claims of the Union are correct) the production of coal approximately one-third.

The record in this case shows the consequences and extent of this decision. There are approximately three-quarters of a million coal mining employees in 29 states, approximately 30,000 of them in the State of Alabama; there are approximately 25,000 underground iron ore employees in 18 states; approximately 6,000 of them in Alabama.

It is respectfully submitted that the fundamental error of this decision lies in its conclusion that the Congressmen and Senators, in voting for the enactment of the Act, intended to abrogate the existing, universal custom in the underground mines of the coal mining and iron ore industries and to declare invalid existing contracts executed in accordance with the prevailing practice and expressly providing that the wages paid the employees for their productive work at the face or usual working places should and did include compensation for the time spent in traveling to and from the face.

THE CONSEQUENCES WHICH WILL RESULT FROM THE COURT'S FORMULA OF IGNORING NATIONAL AND WELL ESTABLISHED GENERAL CONCEPT OF WORK AND SUBSTITUTING THE CONCEPTS OF ADMINISTRATION (CONTRARY TO SUCH NATIONAL CONCEPT) AS APPLIED TO EACH INDIVIDUAL OPERATION ARE WELL ILLUSTRATED BY THE FOLLOWING OCCURRENCES WHICH HAVE HAPPENED SINCE THE SUBMISSION OF THIS CASE AND OF WHICH WE THINK THE COURT SHOULD TAKE JUDICIAL NOTICE:

(a) The War Production Board in aid of increased production has repeatedly urged the United Mine Workers of America and the coal operators to extend their workweek to 48 hours per week with the understanding that overtime shall be paid, and contracts in various districts have been made and *approved by the Government* for the 48 hour week operation under the *face to face* provisions of the existing contracts.

(b) In the case of *United Steelworkers of America and Columbia Iron Mining Company,* now pending before the War Labor Board, it is the contention of the Union that under the impact of this decision it is a "legal requirement for the industry" that traveling time be paid for as work time, and that the War Labor Board should grant compensation for traveling time, thereby giving to the employees a substantial increase in wages. The Company contends that this traveling time is not a part of the workweek. *This case involves a large strip mining operation in which the men are never underground.*

(c) An appeal has recently been taken by the plaintiff to this Court from a decree of the District Judge (Judge McDuffie) in the case of *Walling, as Administrator v. Gulf States Paper Company,* in which the contention is made by the Administrator that by reason of the judgment here affirmed the time spent by employees of producers of pulpwood in traveling to and from their places of work in the woods constitutes a part of the "workweek," notwithstanding custom and contracts prior to the enactment of the law were to the contrary. The record on this appeal is in preparation.

The Administrator is taking a similar position in other cases involving traveling time.

IX

THE COURT WAS IN ERROR IN THAT THE JUDGMENT OF THE COURT APPLIES WITHOUT ANY QUALIFICATION *TO ALL UNDERGROUND EMPLOYEES.* THE FACTS UPON WHICH THIS CONCLUSION IS REACHED (PAGE 4, OPINION), UNDER THE UNDISPUTED EVIDENCE, ARE NOT IN MANY ASPECTS IN KEEPING WITH THE RECORD; APPLY TO ONLY A FEW OF THE EMPLOYEES AND NEVER APPLY TO A GREAT MANY EMPLOYEES.

The employees were not, as stated, "required to report at the portal of the mine at a specified time." They were only required to report for transportation at such a time as would enable them to reach their working places at the time the work was scheduled to begin and they had the option of taking any trip that they desired to take, provided only they reached their "regular working places" (Page 3, Opinion) at the time scheduled for work.

The Opinion further states, "there to deposit their identification check at the tally office and to board the conveyance provided by the company *for transportation* to a man unloading station inside of the mine." In the case of the Sloss mines, no deposit was made of identification checks, and in the case of the other mines, the evidence is undisputed that the purpose of the deposit of the check had no relation to the performance of the duties of the employees, but was for use in supplying vacancies in crews and was necessary for safety purposes.

The Opinion further states, "the men rode in skips or ore cars, which were usually coated with grime of the mine, and assumed a crouched position to minimize the hazard of hitting their skulls against the low tunnel ceiling." In the case of the Sloss Company, the cars contained seats and there were no dangers of low tunnel ceiling. In the case of all of the companies, the undisputed evidence shows a de minimis to a surprising degree of any accidents having ever occurred while riding on the skips. The records of accidents over a period of years prove this. The cross-examination of every appellee-witness establishes it. Only two minor accidents over a period of more than ten years was ever proven on any of these skip trips, and these were both due to the carelessness of the person injured and occurred *after* "portal to portal" was, under the compulsion of the opinion, instituted. The Record shows that, in the case of the Tennessee Company, the main slopes and headings are *electrically lighted* and that from the surface to the underground unloading station, a large portion of the way the roof is *concreted!* No ore employee has ever complained of the cars having on them the "grime of the mine," and the "crowded position" is no more "work" than the crowded conditions on the early morning rides in the subways of our large cities.

The undisputed evidence shows that in the Spaulding *mine of the Republic Company (employing 156 underground employees) not a single condition of fact set forth in the Opinion has ever applied.* The men walk from the surface to their places of work through a manway with none of the discomforts or hazards referred to (a worker going over a plowed filed to the cotton patch under an August sun is much more uncomfortable).

The Opinion further states, "They were obliged to exercise caution at all times to avoid contact with uninsulated electric wires and other hazards and carried several pounds of equipment to be used in their work during the day."

This, we respectfully submit, is a finding of fact applicable only to a comparatively few of the employees. The record shows these wires in only one mine, and at places where only a few employees travel. It is not applicable at all to most of the service employees, who constitute fifty per cent of the employees on an average of all appellants. Most of the service employees carried no tools or equipment. Many of them were never required to come in contact with any electrical wires. Some of them never go into the headings. The record shows that the dangers of electrical wires were exceptional and really non-existing. *Not a single injury has been or can be traceable to this assumed hazard.*

"The carrying of several pounds of equipment" even among the production crew is limited to one or two members of the crew; most of them never carry any equipment, and those who do carry it, do so for their own convenience.

The Opinion further states, "The men frequently were given instructions as to when and how they should perform their respective duties before the skips left the portal of the mine and at all times during the descent they were subject to Company rules and Company control."

The instructions given at the top of the mine were given only occasionally and only to foremen (many of whom are on a salaried basis and do not even come within the provisions of the Act). We respectfully submit that there cannot be found in the record a *single instance of an instruction given to the production employees as to how they should perform their work when they reached their working places.* On the contrary, the undisputed evidence is that the head miners in the case of the Tennessee Company and the foremen and assistant foremen in the case of Republic and Sloss, who had charge of the men at their places of work, never assumed this control or charge until they had reached the places of work. *They did not even ride down on the same skips with the men or walk with them from the man loading station.*

The statement that, "At all times during the descent they were subject to Company rules and Company control" is likewise true only to a very limited extent. They were subject, for safety purposes, to rules as to conduct and behavior on the skips, *but never as to supervision or rules or control in reference to the details of the work that they were employed to perform.*

APPELLANTS RESPECTFULLY SUBMIT

THAT THE COURT IS IN ERROR IN ITS RULING THAT ALL TIME UNDERGROUND (EXCLUSIVE OF LUNCH PERIOD) IS WORK TIME TO ALL OF APPELLANTS' UNDERGROUND EMPLOYEES.

(a) There isn't a single fact used as a basis for the judgment (or a scintilla of evidence in the Record) which existed or now exists in reference to the 156 underground employees of the Republic Company. *Whatever the final judgment is it should exclude these and like employees from its terms.*

(b) Most of the service employees and many of the productive employees are free from the application of the essential facts which form the basis of the opinion and judgment. *In all fairness the judgment should be modified to exclude these and like employees from its terms or at least give the appellants an opportunity to present the facts in reference to these particular employees, instead of convicting them on facts having no application to them.*

X

THE COURT WAS IN ERROR IN HOLDING (A) THAT "*THE ACTUAL CONTROVERSY*" RELATED ONLY TO THE HOURS OF EMPLOYMENT DURING THE TIME INTERVENING BETWEEN THE EFFECTIVE DATE OF THE ACT, 1938, AND THE DATES THE RESPECTIVE PETITIONS WERE FILED IN APRIL, 1941, (PAGE 2, OPINION) AND IN ADJUDICATING (B) "THAT

APPELLANTS HAVE NOT COMPENSATED SAID EMPLOYEES FOR SOME OF SAID WORKING TIME" AND THAT "REFERENCE OF THE CAUSE TO A MASTER FOR CALCULATION OF AMOUNTS DUE SAID EMPLOYEES WAS PROPER" (PAGE 6, OPINION).

(a) APPELLANTS WERE MORE CONCERNED WITH THE CONSTRUCTION OF THE LAW FOR THE TIME AFTER MAY 1, 1941, THAN THE TIME BEFORE.

The facts in reference to this are undisputed. They are not denied or even referred to in either the judgment and opinion of the District Court or of this Court. These facts are set forth in brief of the Tennessee Coal, Iron and Railroad Company, pages 198 to 214, inclusive, and in the brief of the Sloss Company, pages 111 to 117.

While the claim for reimbursement, ~~some~~ threefold more than the miners expected or contracted to receive, was and is important to appellants, the declaration of the law as to the future is of far greater importance. The justiciable controversy as to the future existed both with appellee-employees and with appellee-intervenor. In fact, as to the intervenor the justiciable controversy related only to the period of time after May 1, 1941.

It cannot under the authorities be asserted and it has not been asserted in this case that "the actual controversy underlying federal jurisdiction'' related only to the claim for reimbursement of wages.[6]

The judgment of this Court as it now stands demonstrates the irreparable injury the appellants would have been put to had they, in opposition to the Administrator's opinion, taken the certain risk of administrative action on the part of the Administrator and of the daily enormous accumulation of claims for reimbursement on the part of the employees.

The undisputed evidence shows that there existed an actual justiciable controversy between the appellants and the underground employees and between appellants and the Administrator,[7] not only as to prior, but more substantially as to future, time; that, under the compulsion of the Administrator and employees announced (and pleaded) intentions, they went at great expense, cost, and loss of production on the ''portal-to-portal'' basis, and that a judicial declaration was required and requested as to whether or not traveling time was necessarily and under any conditions excluded from work time.

This judicial inquiry the court failed to answer and confined its answer to the time prior to May 1, 1941. It predicated this answer on the employees "reporting to the portal," there depositing "their identification checks;" there "boarding the conveyances (provided by the company for transportation) coated with grime of the mine" and riding in a "crouched position;" on the danger of "uninsulated wires," and because of instructions and supervision at the portal, etc.

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[6] Compare Parker v. Brown, 63 St. Ct. 312-313 (January, 1943) where the Court states: "Appellees' allegations of irreparable injury are in general terms. . . . A majority of the Court is also of the opinion that the suit is within the equity jurisdiction of the Court, since the Complainant alleges and the evidence shows threatened irreparable injury to respondent's business and threatened prosecution by reason of his having marketed his crop under the protection of the District Court's decree."

[7] This was the sole controversy with the Administrator, as set up in his answer (Record, Volume I, page 301). As stated by him in evidence: "*I intend to follow the interpretation in question*, unless otherwise directed by the authoritative ruling of the courts *or* unless I shall subsequently decide that my prior interpretation is incorrect." (Record, Volume I, page 384).

Every one of these basic conditions can be eliminated at much less cost than compliance for all time with the judgment.

(b) The pleadings, the proof, the agreement of parties, and the orders of the trial court all show without controversy that the only issue plead, tried, and submitted was the judicial declaration as to whether or not the Congress intended by the use of the word "workweek" in Section 7 of the Act to exclude or include traveling time. The opinion correctly states that "*upon a pre-trial conference, it was agreed that the primary issue was what constituted the worktime that made up the workweek of the underground iron ore mining employees within the meaning of Section 7 of the Fair Labor Standards Act.*"

This same agreement, approved by the Court under its pre-trial order, in referring to the claims for overtime compensation filed by the underground miners stated that on the consideration of the question as to whether or not the underground employees are entitled to recover against the plaintiff and, if so, how much, "the parties *shall have the right and opportunity of pre-*

senting for the court's consideration their respective claims, rights and defenses" (Record, Volume I, page 305).

The pleadings in this case, under the undisputed evidence, insofar as the claims for overtime compensation are concerned, have never been heard by any court. The consideration of the claims for overtime payment were deferred and reserved by express agreement and by order of the court until the construction of the Act in relation to traveling time was disposed of. These appellants, if this judgment stands, have been deprived of any opportunity to present either to the District Court or to this Court their defenses (apart from the question of whether the travel time was work time) to these claims for overtime compensation (and they have defenses which in good faith, in equity and in law, they wish to have the opportunity of presenting and having determined) either by pleading, evidence, argument, or briefs.

The Court erred in holding that "appellants have not compensated said employees for some of said working time." This proposition is discussed in original briefs in this cause (Tennessee Coal, Iron and Railroad Company, pages 198 to 214; Sloss-Sheffield Brief, pages 111 to 117). The issue of whether any particular man or any group of men or miners involved in these cases worked over the prescribed workweek was not tried, and no evidence was introduced upon that point. There is positively no evidence in this record to show that any individual miner, employee or any of the appellees worked for as much as forty hours in any one workweek.

The question of whether or not it was the intention of the Congress to include traveling time as worktime alone was tried in the District Court.

WHEREFORE, APPELLANTS RESPECTFULLY SUBMIT:

(a) THAT WHETHER OR NOT THE COURT STANDS BY ITS PRESENT OPINION THAT TRAVELING TIME IS WORK UNDER THE FACTS FOUND TO HAVE EXISTED PRIOR TO MAY 1, 1941, IT SHOULD ANSWER THE JUDICIAL INQUIRY AS TO WHETHER OR NOT TRAVELING TIME AFTER MAY 1, 1941 WILL BE WORK IF THE FACTS NOW USED AS A BASIS FOR THE OPINION SHOULD BE ELIMINATED.

(b) THAT THE COURT SHOULD NOT, AS IS DONE BY THE PRESENT JUDGMENT, DEPRIVE APPELLANTS OF THE OPPORTUNITY BY PLEADINGS AND PROOF TO MAKE THEIR DEFENSES TO THE CLAIMS FOR OVERTIME, EVEN IF THE OPINION AND JUDGMENT OF THE COURT THAT TRAVELING TIME IS WORKTIME STANDS.

CONCLUSION

Appellants aver that the pecuniary amount involved in this case is large; that the effect of the judgment is to require appellants to suffer unusual and burdensome penalties; is to give their underground employees compensation greatly in excess of the amounts they contracted to accept, have received and receipted for; is to overturn practices established for many years by agreed customs and embodied in contracts; that it is in conflict with uniform administrative and judicial interpretation of statutes of similar purpose and import; that its effect is national in its scope in that certainly all the underground iron ore, limestone, and coal mines in the United States will have their contracts and present agreed practices set aside; and that the decision is of the greatest concern to millions of people and the general public.

Appellants further assert that the record in this case is of such length and complexity as to have made it a matter of difficulty for any one in a short time to become familiar with the many matters of substance which it embraces; that it will be extremely difficult for appellants to present this petition for a rehearing, in accordance with the provisions of Rule 29 of this Court, unless permission is granted for argument.

WHEREFORE, APPELLANTS RESPECTFULLY PETITION THE COURT, SEPARATELY AND SEVERALLY:

(A) THAT PERMISSION BE GIVEN FOR ARGUMENT OF THIS PETITION BEFORE THE COURT AT SUCH TIME AND UNDER SUCH [fol. 5021] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 15, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 5020]

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 4937 to 5019 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 10278, wherein Tennessee Coal, Iron & Railroad Company is appellant, and Muscoda Local No. 123, etc., et al., are appellees; Sloss-Sheffield Steel & Iron Company is appellant, and Sloss Red Ore Local No. 109, etc., et al., are appellees; Republic Steel Corporation is appellant and Raimund Local No. 121, etc., et al., are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, Volumes I, II, III, IV, V, VI and VII, numbered from 1 to 4936 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 7th day of August, A. D. 1943.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal.)

[fol. 5019] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY, Appellant,

versus

MUSCODA LOCAL NO. 123, etc., et al., Appellees

SLOSS-SHEFFIELD STEEL & IRON COMPANY, Appellant,

versus

SLOSS RED ORE LOCAL NO. 109, etc., et al., Appellees

REPUBLIC STEEL CORPORATION, Appellant,

versus

RAIMUND LOCAL NO. 121, etc., et al., Appellees

On Consideration of the Application of the Appellants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 7th day of August, 1943.

(Signed) E. R. Holmes, United States Circuit Judge.

[fol. 5017] MOTION AND ORDER STAYING MANDATE—Filed August 7, 1943

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY, Appellant,

versus

MUSCODA LOCAL NO. 123, etc., et al., Appellees

SLOSS-SHEFFIELD STEEL & IRON COMPANY, Appellant,

versus

SLOSS RED ORE LOCAL NO. 109, etc., et al., Appellees

REPUBLIC STEEL CORPORATION, Appellant,

versus

RAIMUND LOCAL NO. 121, etc., et al., Appellees

Appeals from the District Court of the United States for the Northern District of Alabama

[fol. 5018] Come the Appellants in the above entitled consolidated cause, and each of them, separately and severally, and state unto the Court that they and each of them will make application to the Supreme Court of the United States for a writ of certiorari to review the decision of this Court,

Wherefore, they and each of them pray the Court to stay the mandate in said cause for thirty days in order for them to make such application to the United States Supreme Court and for such time thereafter as is required to enable the said Supreme Court to consider and pass upon such application.

E. F. All, Borden Burr, Attorneys for Appellants and each of them.

[fol. 5016] **Order Denying Rehearing**

Extract from the Minutes of July 27th, 1943

Tennessee Coal, Iron & Railroad Company,

versus

Muscoda Local No. 123, etc., et al.

No. 10278

Sloss Sheffield Steel & Iron Company,

versus

Sloss Red Ore Local No. 109, etc., et al.

Republic Steel Corporation,

versus

Raimund Local No. 121, etc., et al.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

"Sibley, Circuit Judge, dissents as to the merits."

statute in which the same inference is not only implicit but must serve as the basis for an absolute rule of law that travel-time underground is work-time.

It being unnecessary for us to decide anything about the propriety of referring the case to a master for an accounting, since the parties have agreed that the court shall determine whether or not the employees are entitled to recover and, if so, how much,[24] the petition for a rehearing is denied.

[fol. 5015] **Sibley**, Circuit Judge, dissents as to the merits.

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[24] By their conduct and agreements the parties have waived questions of misjoinder of causes of action, misjoinder of parties, and the right of trial by jury. Rules 20, 21, 38, and 39 of Federal Rules of Civil Procedure. A common question of law and fact in a multiplicity of suits is not of itself an independent ground of equitable jurisdiction, either in the courts of Alabama or in the federal courts. Matthews v. Rogers, 284 U. S. 521, and authorities cited at page 530. See also Tribette v. Railroad Co., 70 Miss. 182, 12 So. 32, 19 L. R. A. 660, 35 Am. St. Rep. 642, which the Supreme Court of Alabama followed in Southern Steel Co. v. Hopkins, 174 Ala. 465, 57 So. 11, 40 L. R. A. (N. S.) 464, wherein the Alabama court reconsidered its former opinion and adopted the rule announced in the Tribette case upon the question of the jurisdiction of equity to prevent a multiplicity of suits. For a history of the latter case, see Cumberland Telephone & Telegraph Company v. Williamson, 57 So. 559, and Griffith's Chancery Practice, Sec. 439, p. 461.

Syndicate,[22] a case from the Fifth Circuit, the court said that a finding of fact must be upheld "even though conflicting inferences fairly might be drawn by reasonable men from the undisputed facts."[23]

All of these decisions are persuasive of the correctness of our construction of that portion of Rule No. 52, previously quoted, which is that, in actions tried upon the facts without a jury, a finding of fact should not be set aside as clearly erroneous if from the undisputed facts and circumstances two reasonable inferences were fairly deducible and the trial court found in favor of one as being the correct inference. Any other construction of the rule would be equivalent to holding that a reasonable inference fairly drawn from undisputed facts was clearly erroneous, which would be reducing the matter to an absurdity. On the other hand, as will be pointed out in the next paragraph, very serious consequences with reference to state mining statutes might follow a final authoritative ruling that the only reasonable inference deducible is that travel-time is not work-time.

If the contention is sound that the court below should have entered a declaratory judgment for appellants, as [fol. 5014] prayed, but could not correctly enter one against them, as it did, because only one reasonable inference could fairly be drawn from the undisputed facts in evidence (which was that travel-time was not work-time), then the question instantly presents itself as to whether or not the Utah and Arizona statutes are merely arbitrary fiats, violative of the Fourteenth Amendment. The appellants would probably not press their argument to this extent, and yet if it were clearly error for the court below to make the inference it did as to working time, it would be difficult to conceive of facts in existence sufficient to uphold a state drawn therefrom, what is working time is always a question of fact for the court or jury. In view of the diverse legislation above cited, and the general diversity of opinion on the subject, it cannot successfully be argued in this case that only one fair and reasonable inference may be drawn from the facts and circumstances in evidence.

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[22] 110 F. (2) 748, 750.

[23] Cf. Turner v. New York, 168 U. S. 90, 95, 18 S. Ct. 38, 42 L. Ed. 392, wherein it was held that a mere inference of fact from the evidence was not reviewable by the Supreme Court on writ of error, that court being authorized to review only questions of law. This decision is authority for the proposition that such an inference as we are considering is a question of fact, and not a mixed question of law and fact as is being contended by appellants.

Although from a state court decision,[20] the following is highly persuasive upon the point under discussion:

> "The trior of an issue of fact, whether judge or jury, where the ultimate fact to be proven depends on the surrounding facts and circumstances of the transaction out of which the ultimate fact grew, must by process of reasoning and deduction find the ultimate fact. If, from the undisputed facts and circumstances, two reasonable inferences of fact may be drawn, which inferences are conflicting, and the trior of the issue of fact has found in favor of one as the more reasonable, such finding will not be set aside on appeal, unless against the overwhelming weight of the evidence.
>
> "The chancellor in this case heard and saw the witnesses testify, and observed their demeanor on the witness stand. It could have been reasonably inferred from the undisputed evidence that the transfer of the bank deposit was intended as a gift absolute, and, on the other hand, it could have been reasonably inferred that it was a transfer in trust. The chancellor found that the latter was the more reasonable inference. The two inferences, of course, were conflicting. The chancellor settled the conflict. This court cannot substitute its judgment for his."

[fol. 5013] That the federal rule is practically the same, see *South Chicago Coal and Dock Co.* v. *Bassett*,[21] wherein the petitioners urged that whether the decedent was a member of the crew was a question of law, since the facts were undisputed; but the Supreme Court held it to be one of fact, and said that even if the evidence permitted conflicting inferences, there was enough to sustain the Commissioner's ruling. In *Commissioner* v. *Horseshoe Lease* evidence as to what constituted working time of employees in the particular circumstances. The Act of Congress in this respect differs from the legislation of those mining states that limit work-time in underground mines to eight hours per day, and that include in this reckoning all time spent underground.[19]

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[20] Huckaby v. Jenkins, 121 So. 130, 131, 153 Miss. 359, 361.

[21] 309 U. S. 251, 260, 60 S. Ct. 544, 84 L. Ed. 732, 738.

The pertinent distinction between such state legislation and the Fair Labor Standards Act is that the state legislatures themselves drew the inference of fact as to the working time of miners and enacted a general law on the subject, whereas the Congress failed to provide a general rule or definition in any particular industry. As appellants themselves have pointed out, Section 7 is not limited in its application to any single industry, but is designed to provide a law as to overtime compensation for every sort of work to which the statute is applicable. A detailed code for each industry would have been utterly impracticable. Application to each particular situation of the uniform rule laid down by Congress was wisely left to the courts. Therefore, in actions under the Fair Labor Standards Act, the courts must decide justiciable controversies as to working time upon the law and the facts in [fol. 5012] accordance with the principles governing their jurisdiction and procedure. Unless the facts are undisputed and only one reasonable inference may fairly be

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[19] Arizona Laws of 1912, c. 28, Secs. 2 & 3, p. 59; Arizona Code Ann. (1939), Vol. 4, Secs. 56-115; Utah Laws of 1937, c. 59, amending Rev. Stat. (1933), Secs. 49-3-2. Cf. Nevada Comp. Laws (1929), Vol. 5, Sec. 10237. In the Wyoming statute an express disclaimer was inserted excepting "time consumed in going to and returning from work". Wyo. Rev. Stat. Ann. (1931), Secs. 63-103, 63-107. The Nevada statute limits underground work to eight hours, and provides that this shall "include the time employed, occupied, or consumed from the time of reaching the point of employment or place of work in any underground mine, and in returning to the surface from said point or place of work, and that it is the intent and purpose of this act that the period of time between arriving at the point or place of work, in any underground working, and returning to the surface from such point of work shall not exceed eight (8) hours within any twenty-four hours."

[fol. 5010] In a supplemental brief, one of the appellants says that the effect of our decision, the plain and definite holding of the majority, is that as a matter of law the time consumed in traveling from the portal of the mine to the face and in returning therefrom to the portal "must be included in the working time that makes up the work-week of every ore-mining employee within the meaning of Section 7 of the Fair Labor Standards Act." We did not so hold, and such should not be the effect of our decision.

We have written in vain if our opinion is to be interpreted as providing a rigid definition of working time, or as upholding the portal-to-portal theory as a matter of law, or as denying the principle that in close cases it is well to afford the fullest possible scope to agreements among the individuals who are actually affected. The evidentiary value of such agreements in relation to working time is for the jury or other fact-finding tribunal.[17] We have expounded no rigid definition of working time.

The Act fails to provide one, and we should not do what was deemed unwise to do by legislation. The Congress probably failed to define working time for the same reason that it refrained from attempting to define the regular rate of pay, namely, "because the employment relationships to which the Act would apply were so various and unpredictable".[18]

[fol. 5011] Appellants sought by declaratory judgment to obtain a rigid definition of working time favorable to them. They now chide us for laying down such a definition against them. We did not do either; we merely refused, because not clearly erroneous, to set aside a finding supported by

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[17] Agreements as to working time or the rate of pay are not conclusive if the parties do not act in conformity to the agreements. The court below found that during approximately sixty years of iron-ore mining in the Birmingham district red-ore miners had been paid without regard to the number of hours spent daily at the face or at any specified place or station; and that there had never been any custom under which the miners were paid solely for time actually spent at their particular stations underground.

[18] Walling v. Belo Corporation, 316 U. S. 624, 634, 86 L. Ed. 1716, 1723.

Whether one is working, resting, idling, playing, or preparing to work is as much a matter of fact as whether one is asleep or awake, or is laughing or crying. In *Skidmore* v. *Swift & Co.*, —— F. (2) ——, this court recently held, in an action for overtime compensation under 29 U. S. C. A. 207, that the burden was on the employees to segregate the actual hours of their employment from the time spent by them in playing, sleeping, bathing, shaving, and dressing. So we say the Act does not define these instances; their peculiar character must be determined by evidence. Two people may be in swimming, an instructor and his pupil; one will be working and the other playing. The working time of every miner is a definite controlling fact that can and must be finally determined in order to fix the amount of wages due him under the federal statute. It is a fact that cannot be found in any statute or decision or law book (except statutes not applicable in this case), but must be determined by the court or jury in any justiciable controversy wherein a real issue arises with respect thereto.[16]

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[16] The court below found the following: The employees were required to report at the beginning of a shift in time to catch the vehicle on one of its trips underground. After *reporting at the mouth of* the mine the men were daily subject to instructions by the company, and frequently were given their first instructions of the day prior to entering the slope. They were forbidden to enter the mines until their brass checks had been deposited at the tally house. At this point vacancies in working crews were ordered filled by company officials; the head miner or crew foreman began to assemble his crew and to issue orders to its members. When the miners reported at the mouth they were in their working clothes and had their indispensable lamps. The loading of the men into the vehicle in which they were to be transported, as well as the speed and schedule of the vehicle, were under the control and supervision of appellants. They required the men to ride rather than to walk, and required certain ones to ride on particular trips. The miners, being under the disciplinary rules of the company and the supervision of its officials, were subject to conditions peculiar to their occupation from the time they entered the portal until their exit therefrom.

Supreme Court held that members of a train crew under orders, liable to be called at any moment and not at liberty to go away, were none the less on duty when inactive. The court said: "Their duty was to stand and wait." [13]

The law in dispute in the instant case covers less than a page,[14] but the facts are contained in seven volumes of a printed record of nearly five thousand pages. The federal act does not supersede the local law in the several states except to the extent of a conflict between them. It is for this reason that we attach importance to an Alabama decision distinguishing between a finding of fact and a conclusion of law.[15] In that case the court did not discuss the distinction, but what courts do is sometimes more important than what they say; and this is what the Alabama court did: Upon an issue as to the relation between the workman and the employer, it set aside the trial court's conclusion of law as inconsistent with its finding of fact. If the status of a workman when injured on the defendant's premises is a factual condition, the same is true as to the activities of miners. In the case cited we find the Supreme Court of Alabama drawing the distinction between questions of law and fact. The same distinction exists in federal law and procedure, and there is nothing to the contrary in the Fair Labor Standards Act.

[fol. 5009] If the Alabama law governs, then why does not the agreement as to rates of pay and hours of employment prevail? The answer is this: *It does except to the extent that the agreement conflicts with the paramount provisions of federal law.* No agreement as to the hours worked or as to the time of employment is valid if the actual employment is longer than the time stipulated and is in excess of the hours specified in Section 7 of the Act.

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[13] Missouri, K. & T. Ry. Co. v. United States, 231 U. S. 112, 119.

[14] No employer shall employ any of his employees for a workweek longer than 44, 42, or 40 hours, respectively, "unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one half times the regular rate at which he is employed." Sec. 7(a) of Act of June 25, 1938, c. 676, 57 Stat. 1063, 28 U. S. C. A. 207.

[15] Overton v. Belcher, 168 U. S. 442.

the meaning of the Act. There is no decision of an appellate court directly in point, though there is one from a federal district court in Idaho.[9] Workmen's compensation cases are not very helpful; they prove too much;[10] but one of them is of value not as a compensation case [fol. 5008] but as an authority to support our ruling that what is working time is a question of fact.[11] There is a decision under the Hours of Service Act[12] wherein the

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[9] Sunshine Mining Co. v. Carver, 41 Fed. Supp. 60, wherein the court held that time spent by miners in travelling from portal of mine to their usual place of work and back to portal should be included in hours worked, for which they were entitled to compensation under the Fair Labor Standards Act. See also Sirmon v. Cron & Gracey, 44 Fed. Supp. 29.

[10] In such cases the employee is generally protected while on or about the premises of his employer. In Jett v. Turner, 110 So. 702, the Supreme Court of Alabama said (p. 704):

> "While the employee is being transported by the employer pursuant to the contract of employment, it cannot be questioned they have entered upon the day's work wherein mutual duties of employer and employee are presently being performed. The pay of the employee has begun, not in wages, but in service. * * *"

See also Overton v. Belcher, 168 So. 442; Moss v. Hamilton, 174 So. 622.

Moss Tie Co. v. Tanner, 44 F. (2) 928, was a case from the 5th Circuit under the Longshoremen and Harbor Workers Compensation Act, 33 U. S. C. A. 901 et seq., holding that an employee is generally in the course of employment while going to or from place of work by only practical route.

In Bountiful Brick Co. v. Giles, 276 U. S. 154, under the Workmen's Compensation Act of Utah, the United States Supreme Court said that the employment may begin in point of time before the work is entered upon and, probably as a general rule, may be said to begin "when the employee reaches the entrance of the employer's premises where the work is to be done."

[11] Overton v. Belcher, 168 U. S. 442.

[12] Act of March 4, 1907, c. 2939, 34 Stat. 1415.

The statute simply says that no one shall be employed for a workweek longer than the hours stated, unless the employee receives compensation for the excess hours at a rate not less than one and one-half times the regular rate. That is all the pertinent law involved in this controversy. It is the only statutory provision necessary to be construed. It must be liberally construed.[7] The language is plain; it requires no outside aid in its interpretation; it contains simple words that are in common use; and, under fundamental rules of construction, such words must be given their usual and ordinary meaning.[8] The statute itself defines the word employ to include to suffer or to permit to work. The legislative intent is clear, but it is expressed in general terms and does not extend to particular instances. The myriads of circumstances in which it would be necessary to determine working time in individual cases or classes of cases could not be covered with particularity by statute.

The record in this case presents no substantial question of law except whether or not the finding of the district court as to working time was clearly erroneous. This depends upon whether the inference, which was the basis of the finding, was a reasonable one. As modified by us, we think it was, because the ordinary man might fairly have drawn it [fol. 5007] from the evidence. It was a deduction that the average disinterested person might naturally have made from the facts. The deduction being warranted by the facts, it was not arbitrary and not clearly erroneous. This being true, the rule above quoted is that the finding "shall not be set aside".

These mines are located in Alabama. The contract of employment is being performed there, and the law of that state governs its performance subject to the overriding provision of the federal act that requires payment to employees of additional compensation for employment in excess of the hours specified. This controversy is over the amount of wages that should be paid; it turns upon the number of hours that the miners were employed within

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[7] Bowie v. Gonzalez, 117 F. (2) 11; Carleton Screw Products Co. v. Fleming, 126 F. (2) 537.

[8] Hamilton v. Rathbone, 175 U. S. 414, 421; Mackenzie v. Hare, 239 U. S. 299, 308; Caminetti v. United States, 242 U. S. 470, 485; Louisville & Nashville Railroad Co. v. United States, 282 U. S. 740, 759.

The third point stressed by appellants is that a mixed question of law and fact was submitted to the district court, in answer to which it incorrectly found the facts and errone- [fol. 5005] ously declared the law. On appeal both contentions may be reduced to a single question of law, which is: Was the finding of fact of the court below as to working time clearly erroneous? In reviewing the decision of the trial court we are bound by Rule 52 of the federal rules of civil procedure, which provides that: "Finding of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

Even where there is no dispute about the facts, if different reasonable inferences may fairly be drawn from the evidence, an appellate court is forbidden to disturb the findings based on such inferences unless they are clearly erroneous. That this dispute turns upon questions of fact does not withdraw it from judicial cognizance in an action for a declaratory judgment. "The legal consequences flow from the facts and it is the province of the courts to ascertain and find the facts in order to determine the legal consequences. That is every day practice."[6] The parties saw fit to submit the issues of fact to the court, without a jury, but this does not render indistinguishable the issues of law and fact. What constituted the work-week of these employees and how many hours they were suffered or permitted to work are questions of fact.

Upon reviewing the judgment as to the facts, an appellate court looks first to the findings of the court below, and then to the evidence in the record to ascertain whether or not those findings are clearly erroneous. The character of the controversy and the issue to be determined are the same as if this were merely an action by an employee for damages under Section 7 of the Act, viz: How many hours constituted [fol. 5006] his workweek or how long did his employer suffer or permit him to work? In its ultimate aspect this is a dispute over wages, only one element of which is in controversy: the working time, which is a factual quantity of wages just as the regular rate is a factual element of wages. These two factors multiplied together form the product that indicates the compensation.

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[6] Aetna Life Ins. Co. v. Haworth, 300 U. S. 227, 242.

As to the first objection, we have previously pointed out that the declaratory judgment is limited by the facts of the case. It is decisive of the exact controversy that appellants petitioned the court to determine and agreed was the primary issue to be decided. They asserted, and asked the court to say, that no part of the time spent by their underground employees in the bath house, or in going to and from the bath house, or to and from the portal, or to and from the man-loading station, or to and from [fol. 5004] their actual working places, constituted a part of the workweek under Section 7 of the Fair Labor Standards Act. We held, in substance, that no part of the time spent in going to and from the bath house, or in the bath house, or in going to and from the portal, was working time, but that the employment began at the time the employees were required to report and did report at the portal for departure underground, and ended upon their return thereto at the end of the shift less the lunch period. If not required to report at any special time, as contended, then the compensatory employment should begin at the time of departure for the trip underground.

The second objection is that this court did not declare the rights and legal relations of the parties as they existed or may exist subsequent to the date suit was filed. There are no facts in the record to support a finding covering this period, and no finding thereon was made by the district court; but we were told at the hearing, and it is stated in one of the briefs, that after the filing of these suits wages were paid upon a portal-to-portal basis. We cannot enter advisory judgments upon hypothetical facts. The declaratory judgments procedure does not change the essential requisites for the exercise of judicial power. The courts are limited in their jurisdiction to cases of actual controversy of a justiciable nature.[5] We have, therefore, decided the only actual controversy over which we have jurisdiction; and the plenary effect of the judgment as *res judicata* is ample protection for the future.

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[5] Nashville, Chattanooga & St. Louis Ry. v. Wallace, 288 U. S. 249; Ashwander v. Valley Authority, 297 U. S. 288, 325, 56 S. Ct. 466, 473, 80 L. Ed. 688, 699; Aetna Life Ins. Co. v. Haworth, 300 U. S. 227, 57 S. Ct. 461, 81 L. Ed. 617, 108 A. L. R. 1000; Gully, Tax Collector, v. Interstate Nat. Gas Co., 82 F. (2) 145 (C. C. A. 5th).

must decide the issue presented in accordance with the law and the evidence. The procedure is expressly provided for in number 57 of the federal rules of civil procedure, and the technicalities of equity practice do not prevail therein The courts are limited in their jurisdiction to cases of actual controversy of a justiciable nature, thus excluding an advisory decree.[3]

In the case before us both sides joined in the petition for a judicial declaration of the rights and legal relations of the parties, and no objection was made to a consolidation of the cases for trial or to the entry of a single judgment containing such declaration. On the contrary, at a pretrial hearing it was agreed by all of the parties that the primary issue in controversy was what constituted the working time that made up the workweek of employees within the meaning of Section 7 of the Act. The contention of each [fol. 5003] side was stated, and it was agreed that, if the court decided the above issue against appellants, it would then determine whether appellees were entitled to recover and, if so, how much. The rights of all parties were reserved to present their respective claims and defenses upon an accounting. From these and other agreements in the record,[4] it appears that there is only one controverted issue before us at this time, which is what constitutes the working time of these underground ore-mining employees.

The objections to the majority opinion raised on the petition for rehearing may be subdivided, and stated under three heads, as follows:

(1) That the declaration is too narrow to cover all but a few of appellants' employees.

(2) That it is so restricted as to time as to include only the period extending from the date of the Act to the filing of suit.

(3) That this court erroneously declared the law as to when the working time of the employees began and ended.

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[3] Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 325, 56 S. Ct. 466, 473, 80 L. Ed. 688, 699.

[4] R. pp. 278-283.

The parties agreed below that, if the issue as to working time should be decided against appellants, the court should then determine whether or not the employees were entitled to recover and, if so, how much. In the absence of this agreement there was nothing to show that reference to a master for an accounting was necessary after the issue as to working time was finally adjudicated. A declaratory judgment is for the purpose of finally settling an actual controversy, and ordinarily should not be entered if it will not do so. We do not understand that appellants even now are objecting to the reference. They seem to think they have been cut off from presenting defenses to claims against them on the accounting; but in this they are in error except that the declaratory judgment herein as to what constitutes working time will be *res judicata* in any controversy that may arise between the same parties. In order to remove all doubt on this subject, it is ordered that our former opinion and judgment be amended by striking out the following: "that appellants have not compensated said employees for some of said working time."

The apparent confusion in which the appellants find themselves is doubtless caused by their failure to recall the nature of the actions that they themselves originally [fol. 5002] instituted. This appeal involves three separate civil actions that were consolidated for trial in the court below and disposed of by a single judgment. All of these suits were brought under the Federal Declaratory Judgments Act, which provides that in cases of actual controversy the courts of the United States shall have power to declare the rights and other legal relations of any interested party petitioning therefor, and that such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.[1]

This is a procedural statute that provides an additional remedy for use in cases of which the federal courts already have jurisdiction. It should be given a liberal construction and application.[2] A court may not arbitrarily refuse to exercise such jurisdiction in a proper case, but

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[1] Judicial Code, Sec. 274d, as amended; 28 U. S. C. A. 40; Rule 57 of Federal Rules of Civil Procedure.

[2] Miss. Power & Light Co. v. City of Jackson, 116 F. (2) 924, cert. denied, 61 S. Ct. 741.

[fol. 5000] OPINION ON PETITION FOR REHEARING, SIBLEY, CIRCUIT JUDGE, DISSENTS—Filed July 27, 1943

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY, Appellant,
versus
MUSCODA LOCAL No. 123, ETC., et al., Appellees;

SLOSS-SHEFFIELD STEEL & IRON COMPANY, Appellant,
versus
SLOSS RED ORE LOCAL No. 109, ETC., et al., Appellees;

REPUBLIC STEEL CORPORATION, Appellant,
versus
RAIMUND LOCAL No. 121, ETC., et al., Appellees

Appeals from the District Court of the United States for the Northern District of Alabama

ON PETITION FOR REHEARING—July 27, 1943

Before Sibley, Holmes, and McCord, Circuit Judges

HOLMES, Circuit Judge:

In the petition for a rehearing it is stated that the court's opinion in this case is far-reaching in its effect, extending [fol. 5001] to all iron-ore, limestone, and coal-mining employees in the United States, and "is of the greatest concern to millions of people and the general public". In the same petition it is argued that the facts upon which the court's conclusion was based "applied to only a few of the appellants' employees and never applied to a great many employees". Passing over the inconsistency of these statements, it is only necessary to say that if the facts on which our opinion is based apply only to a few of appellants' employees, then the law as we have declared it affects only those few, because the law arises out of the facts: *Ex facto jus oritur.*

2. The petition for rehearing improperly presents matters not in the record.

3. The petition is a perversion of the judicial process.

CRAMPTON HARRIS,
LEE PRESSMAN,
J. Q. SMITH,
Attorneys for Defendants (Appellees)

I hereby certify that I have mailed copy of the foregoing motion to each Counsel for the Appellants this 13th day of April, 1943.

CRAMPTON HARRIS,
Attorney for Defendants (Appellees)

[fols. 4998-4999] MOTION OF APPELLEES TO STRIKE PETITION FOR REHEARING—Filed April 14th, 1943

IN

United States Circuit Court of Appeals

FIFTH CIRCUIT

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Appellant
vs.
MUSCODA LOCAL NO. 123, ETC., ET AL
Appellees

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
Appellant
vs.
SLOSS RED ORE LOCAL NO. 109, ETC., ET AL
Appellees

REPUBLIC STEEL CORPORATION,
Appellant
vs.
RAIMUND LOCAL NO. 121, ETC., ET AL
Appellees

MOTION TO STRIKE PETITION FOR REHEARING

Now come all the defendants (Appellees) and move the Court to strike the Petition for Rehearing filed by the Appellants in this cause and for grounds of said motion assign the following separately and severally:

1. The petition for rehearing is a flagrant violation of Rule 29 of this Court.

matters argued at length in appellants' original briefs, in oral argument, and in their reply brief. The only new matter mentioned is not only irrelevant to this case, but is plainly inappropriate in this proceeding.

The "occurrences * * * which have taken place since the submission of the case" (petition, pp. 2, 23-31) clearly do not present a proper basis for rehearing. These so-called "occurrences" on which appellants rely consist of fragmentary newspaper accounts, and other expressions of opinion as to the possible effect of this Court's decision upon pending undetermined administrative proceedings, about which neither appellant, appellees, nor the Court can be adequately informed in a proceeding of this nature. Such expressions of opinion as to the possible effect of a decision upon other cases would not have been relevant or proper evidence at the trial and *a fortiori* are not grounds for a new trial or rehearing. But in any event they are not matters of record in this case nor do they have any bearing on the factual and legal issues involved. There is no occasion for a rehearing or a reconsideration of the Court's decision. Accordingly it is respectfully submitted that the petition for rehearing be denied.

Irving J. Levy,
Acting Solicitor,
Bessie Margolin,
Assistant Solicitor,
United States Department of Labor.

April 1943.

[fols. 4996-4997] MEMORANDUM IN OPPOSITION TO PETITION FOR REHEARING—Filed April 13, 1943

In the United States Circuit Court of Appeals for the Fifth Circuit

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY,
APPELLANT

v.

MUSCODA LOCAL NO. 123, ETC., ET AL., APPELLEES

SLOSS-SHEFFIELD STEEL & IRON COMPANY, APPELLANT

v.

SLOSS RED ORE LOCAL NO. 109, ETC., ET AL., APPELLEES

REPUBLIC STEEL CORPORATION, APPELLANT

v.

RAIMUND LOCAL NO. 121, ETC., ET AL., APPELLEES

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA

MEMORANDUM IN OPPOSITION TO APPELLANTS' PETITION FOR REHEARING

The petition for rehearing presents no pertinent legal or factual matters not already thoroughly presented and considered by this Court. The greater part of the petition is merely another reargument of

We hereby certify that we are of counsel for the above named petitioners in the above styled cause; that we are authorized on behalf of petitioners to file this petition and to make this certification; that we are familiar with the matters and things in said petition set forth; that, in our opinion and best judgment, the petition is well founded in point of fact and law; that service of copies hereof has been made upon counsel for adverse parties, and twenty (20) copies hereof filed with the Clerk of this Court.

This 2nd day of April, 1943.

....

....

Attorneys for Petitioners.

LATING TO THE DECLARATION AS TO TRAVELING TIME) AS THEY MAY IN GOOD FAITH PRESENT;

(F) IN ANY EVENT TO SO MODIFY ANY JUDGMENT RENDERED AS TO ELIMINATE THEREFROM THE FOLLOWING PROVISIONS IN THIS JUDGMENT: "THAT APPELLANTS HAVE NOT COMPENSATED SAID EMPLOYEES FOR SOME OF SAID WORKING TIME; AND THAT REFERENCE OF THE CAUSE TO A MASTER FOR CALCULATION OF AMOUNTS DUE SAID EMPLOYEES WAS PROPER;"

(G) AND, IN ANY EVENT, TO DETERMINE BY ITS JUDGMENT THE JUSTICIABLE CONTROVERSY EXISTING BETWEEN APPELLANTS AND APPELLEES AS TO THE CONSTRUCTION OF SECTION 7 OF THE ACT IN RELATION TO THE PERIOD OF TIME SUBSEQUENT TO MAY 1, 1941.

E. L. ALL,

S. M. BRONAUGH

BORDEN BURR
Attorneys for Petitioners

T. F. PATTON,
Cleveland, Ohio
BRADLEY, BALDWIN, ALL & WHITE,
Birmingham, Alabama
BENNERS, BURR, McKAMY & FORMAN,
Birmingham, Alabama
Of Counsel

CONDITIONS AS THE COURT MAY PRESCRIBE;

(B) THAT THIS PETITION FOR REHEARING BE GRANTED;

(C) THAT THE JUDGMENT OF AFFIRMANCE HEREIN BE SET ASIDE AND THE JUDGMENT OF THE DISTRICT COURT BE REVERSED AND A PROPER ONE RENDERED;

(D) THAT A JUDGMENT BE RENDERED HEREIN JUDICIALLY DECLARING, IN SUBSTANCE, THAT IT WAS NOT THE INTENTION OF THE CONGRESS, IN THE ENACTMENT OF SECTION 7 OF THE ACT, AND BY THE USE OF THE LANGUAGE THEREIN CONTAINED, TO INCLUDE TRAVELING TIME OF APPELLANTS' UNDERGROUND EMPLOYEES AS A PART OF THEIR WORKWEEK;

(E) THAT IN ANY EVENT, IF THE COURT CONCLUDES THAT SECTION 7 OF THE ACT SHOULD BE JUDICIALLY CONSTRUED AS INCLUDING ANY PORTION OF THE TRAVELING TIME OF APPELLANTS' UNDERGROUND EMPLOYEES, IN RENDERING SUCH JUDGMENT AND REMANDING THE CASE, IT SHALL PRESERVE TO THE APPELLANTS THEIR RIGHTS TO INTERPOSE IN THE DISTRICT COURT AND HAVE THERE DETERMINED SUCH DEFENSES AS TO THE CLAIMS OF THEIR UNDERGROUND EMPLOYEES FOR OVERTIME PAYMENT FOR TRAVELING TIME (OTHER THAN THOSE RE-

FILE COPY

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NO. 409

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Petitioner,

versus

MUSCODA LOCAL NO. 123, ETC., ET AL.,
SLOSS-SHEFFIELD STEEL & IRON COMPANY,
Petitioner,

versus

SLOSS RED ORE LOCAL NO. 109, ETC., ET AL.,
REPUBLIC STEEL CORPORATION,
Petitioner,

versus

RAIMUND LOCAL NO. 121, ETC., ET AL.,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No.________________

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Petitioner,

versus

MUSCODA LOCAL NO. 123, ETC., ET AL.,
SLOSS-SHEFFIELD STEEL & IRON COMPANY,
Petitioner,

versus

SLOSS RED ORE LOCAL NO. 109, ETC., ET AL.,
REPUBLIC STEEL CORPORATION,
Petitioner,

versus

RAIMUND LOCAL NO. 121, ETC., ET AL.,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners (appellants in the Court below) Tennessee Coal, Iron and Railroad Company, a corporation (hereinafter referred to as Tennessee), Sloss-Sheffield Steel & Iron Company, a corporation (hereinafter referred to as Sloss), and Republic Steel Corporation, a corporation (hereinafter referred to as Republic), separately and severally pray that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Fifth Circuit entered on the 16th day of March, 1943, and as modified on the 27th day of July, 1943, in the opinion and decree denying appellants' petition for rehearing.

A transcript of the record in the case, including the proceedings in said Court, is furnished herewith in accordance with the Rules of this Court.

JURISDICTION

The jurisdiction of this Court is based on Section 240 (a) of the Judicial Code, 28 U. S. C. 347, as amended by the Act of February 13, 1925.

SHORT STATEMENT OF THE MATTER INVOLVED

These are actions for declaratory judgments under the provisions of the Federal Declaratory Judgment Act[1] to obtain judicial declaration whether the word "workweek" as used in Section 7 of the Fair Labor Standards Act of 1938[2] includes or excludes the time spent by the underground iron ore mining employees of petitioners in going to and from their usual places of work, and all their time spent underground and while not engaged in any physical work or service for their employers.[1]

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[1] Section 274 (d) of the Judicial Code, 28 U. S. C. 400.

[2] Act of June 24, 1938, effective October 24, 1938, cited as Fair Labor Standards Act of 1938, 52 Statutes at Large, 1060-9, 29 U. S. C. 201-19 (hereinafter referred to as the Act).

Section 7 of the Act is as follows:

"Section 7. Maximum hours.

"(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

"(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

"(2) for a workweek longer than forty-two hours during the second year from such date, or

"(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

The petitioners sought by declaratory judgments or, in the alternative, by injunctions, to prevent the bringing of a multiplicity of suits by their underground iron ore mining employees for compensation for so-called "portal to portal" travel time[2] and to obtain a declaration that there is no obligation to consider such travel time as time worked within the meaning of the Fair Labor Standards Act of 1938.

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[1] For petition of Tennessee see R. 25-115; of Sloss, R. 116-175; of Republic, R. 177-221; Answer of Red Ore Miners Union, R. 225-231; Answer of Smelters Union, R. 232-247; Amended Answer, R. 674-681; Answer of Intervener-Administrator, R. 289-304.

[2] "Portal to portal" time as herein referred to includes all the time (except the lunch period) consumed by the employee while underground.

7

The United States District Court for the Southern Division of the Northern District of Alabama[5] found that:

> "The working time of the underground ore mining employees of plaintiff, within the meaning of Section 7 of the Fair Labor Standards Act of 1938, includes all time spent by plaintiff's said employees from the time they report at the collar or portal of the mine or mouth of the mine, until they emerge from the collar, portal, or mouth of the mine at the end of the shift, and includes the aggregate of all time spent by said employees on the surface in obtaining and returning lamps, carbide and tools and in checking in and out. This time worked does not include any fixed lunch period of one-half hour or more during which said underground ore mining employee is relieved of all duties,"

and decreed that counter-claims filed by the defendants for themselves and others for compensation for such working time be set down for separate trial and judgment.

From the decrees entered[6] the appellants took appeal to the United States Circuit Court of Appeals for the Fifth Circuit.[7]

The Circuit Court of Appeals (Circuit Judges Sibley, Holmes and McCord—Judge Sibley dissenting) affirmed the judgment on the principal questions involving "portal to portal" travel time, but modified it by excluding from the workweek the "time spent by employees in checking in and out and procuring and returning tools, lamps and carbide.'"[8]

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[5] R. 568; 40 Fed. Supp. 4.

[6] R. 494-506; 568-9.

[7] R. 562-660.

Upon petition for rehearing[9] the Circuit Court of Appeals on July 27, 1943, rendered an opinion[10] denying appellants petition for rehearing.

Copies of the original opinion of the Circuit Court of Appeals, and of the dissenting opinion, and of the opinion of the Court on petition for rehearing are set forth in the Appendix.

QUESTIONS PRESENTED

The questions presented are:

1. Did the Congress in the enactment of the Act require—regardless of custom or agreement—that the "workweek" of petitioners' underground employees should include travel time?

2. Did the Congress in the enactment of the Act intend to change the well-known "face to face"[11] basis

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[8] Appendix, p. 64; 135 F. (2d) 320.

[9] R. 4951-4995.

[10] Appendix, p. 77.

[11] "Payment for working time spent in and about the usual working places. Because many of the underground miners (known as "productive employees") perform their work at the face of the mine where they produce ore, the practice of computing and paying wages for the time spent by the employees at work, exclusive of travel time, has always been generally referred to, and is referred to herein, as "face to face."

This reference includes service employees, such as trackmen, electricians, pipemen, etc., who do not produce coal and whose work is performed at various places in the mine. Approximately 50% of the underground employees are service employees. The wages of service employees have always been computed and paid on the hourly basis, while at times the wages of productive employees have been on the tonnage or piece basis.

of computing the wages of petitioners' underground employees as it, for generations prior to the enactment of the Act, had been understood, adopted and followed by the iron ore mining industry in Alabama and elsewhere in the United States?

3. Did the Congress in the enactment of the Act intend to render invalid the provisions in the then effective, collectively-bargained agreements which expressly provided that the wages of petitioners' underground employees should be computed on the "face to face" basis?

4. Did the Congress in the enactment of the Act intend to deny to petitioners and other members of the iron ore mining industry and their employees the right of agreeing, through the process of collective bargaining, upon a reasonable measure of what constitutes work?

5. Have the petitioners, in computing and paying for the "workweek" of their underground employees on the "face to face" basis, as provided by custom and by agreements with the representatives of their employees, complied with and discharged the obligations imposed upon them by Section 7 of the Act?

6. Does the Act purport to regulate or provide additional compensation for working conditions? In other words, does the Act authorize the Administrator to eliminate or rectify incidental perils and discomforts of underground mining or, in the alternative, to require that additional compensation be paid because of the existence of such perils and discomforts by labeling as worktime time spent under such conditions?

7. Did the Congress intend that the standard of a

"workweek" (even though established for many years prior to the enactment of the Act by custom or agreement in an industry) should be rejected and superseded by the variable concepts of the jury or other fact-finding tribunal investigating conditions in individual situations?

8. Did the Circuit Court of Appeals err in its conclusion that the question of what constituted the "workweek" of petitioners' employees was a question of fact for the jury or other fact-finding tribunal?

9. If it be decided that the Court did not err in its conclusion that a question of fact is involved in each case, did it not err in finding facts contrary to the undisputed evidence and in applying to all of the petitioners and their employees much evidence which applied to only one or more of petitioners or to only some of their employees?

REASONS FOR GRANTING THE WRIT

Petitioners respectfully submit that there exist special and important reasons for the granting of the writ of certiorari herein prayed for because:

1. The decision of the Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court.

2. The decision of the Circuit Court of Appeals is an untenable construction of an important Federal statute in that it holds that it was the intention of the Congress in the enactment of Section 7 of the Act—

(a) to annul existing wage agreements executed in good faith, with no intention of violation of the Act, but in reliance upon long-established custom, previous interpretations of similar statutes and opinions of the Administrator under the Act until he announced a contrary opinion on March 23, 1941;

(b) to restrain employers and employees from making reasonable agreements (by collective bargaining according to the principles and under the provisions of the National Labor Relations Act) defining work for which compensation should be paid, the rates of pay provided being greatly in excess of the minimum rates specified by the Fair Labor Standards Act of 1938;

(c) to force employees and employers to adopt a construction of the words "work" and "workweek" radically different from the general concept of these words as understood and acted upon by all interested parties for many years in the iron ore mining industry.

3. The Circuit Court of Appeals has by judicial construction enlarged the scope of a Federal statute by determining that time which had not by custom or by agreement been considered as worktime should be included as part of the workweek for the purposes of the Fair Labor Standards Act of 1938, although the Act does not in terms require, and there is no evidence that Congress intended, that the word "workweek" in any industry should have any meaning other and different from that applied by custom or agreement in that particular industry.

4. The Circuit Court of Appeals has erroneously invalidated contracts executed in good faith between the parties as a result of the full process of collective

bargaining and providing a reasonable basis in harmony with the long-established and well-recognized prevailing practice existing in the industry as being a proper definition of a day's work in the ore mines.

5. As a result of the decision of the Circuit Court of Appeals, these petitioners, under the asserted claims of the defendants, stand the peril of being subjected to the payment of enormous sums of money as overtime compensation and to the other severe penalties of the Act, and the defendants will claim the windfall of a totally unexpected largesse contrary to their frequent construction of the Act and the provisions of their written agreements.

6. The decision erroneously holds that there was no justiciable controversy between petitioners, the original defendants, and the intervener-defendant with reference to the period of time subsequent to May 1, 1941, and erroneously refuses to construe Section 7 of the Act with respect to its application to such time.

7. For the reasons stated herein, the decision has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

8. The judgment of the Court, when considered with the two opinions, is so uncertain and doubtful in its meaning and application to the separate and several petitioners, to the separate and several mines of each petitioner, and as to the individual workers or groups of workers in each of said mines, as to call for an exercise of this Court's power of supervision.

9. The decision is in violation of the due-process clause of the Constitution of the United States.

Petitioners further respectfully submit that the importance of the question of federal law involved in the decisions is demonstrated by:

1. Its use as a judicial precedent in support of the claim of the United Mine Workers of America that (contracts and practices and administrative interpretations to the contrary notwithstanding) it was the intention of the Congress to include as a part of the "workweek" all of the underground time of coal miners.

2. The extension by the Administrator of the principle of the decision to employers and employees in various industries and to many situations not previously regarded as imposing upon employers the obligation, under the provisions of Section 7 of the Act, for the payment of traveling time.

STATEMENT

I

THE PARTIES

Petitioners[12] operate on and under Red Mountain in Jefferson County, Alabama, approximately thirteen underground iron ore mines in close proximity to each other, employing approximately 6,000 underground employees. The distances from the portal to the various working places vary greatly in the same mine and even more so between the different mines. Petitioners also operate underground coal mines known as "captive mines" in close proximity to their ore mines. They employ from 6,000 to 8,000 underground miners in their coal mines.

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[12] In addition to the petitioners the only other company in Alabama engaged in substantial underground iron ore operations is the Woodward Iron Company. Evidence was offered showing that the underground operations, practices and contractual relations of the Woodward Company with its employees were substantially the same as those of petitioners. Hereafter, where the word "petitioners" is used in connection with these matters, it is intended to includ the operations of the Woodward Iron Company.

Petitioners are members of the national iron ore mining industry and in the manufacture and sale of their products are in competition with each other and with other members of the industry.

International Union of Mine, Mill and Smelter Workers and its locals, affiliated with the CIO, and the Red Ore Miners Union, affiliated with the American Federation of Labor (this latter union being bargaining agency and defendant only in the case of Tennessee), together with certain designated officers and members of the unions and employees of the petitioners were the original parties defendant. The defendants represent substantially all the underground employees of petitoners and the suits were made class actions. The Administrator of the Act, by intervention, became a party defendant.

II

CONSTRUCTION OF SECTION 7 OF THE ACT BY THE ADMINISTRATOR

On *October 24, 1938,* the Act became effective.

On *July 27, 1940,* the Administrator of the Act made the following announcement:

> "In view of the circumstances described by the industry in submitting its inquiry,* Colonel Fleming announced that practice of computing working time on a 'face to face' basis in the bituminous coal mining industry would not be unreasonable. Colonel Fleming explained the term 'face to face' to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work and the time spent in returning from the working place to the portal in the evening. The Administrator added that the determination in the bituminous coal mining industry should not be considered to apply to any mining operations where the traditional practice of computing hours worked differs from the custom in the bituminous coal mining industry."—(R. 4717).

The administrator has never changed or departed from this ruling.

On *March 23, 1941*, the Administrator of the Act announced (effective May 1, 1941) what he termed "A Modified Portal to Portal Wage Hour Opinion," reading as follows:

> "The workday in underground metal mining starts when the miner reports for duty as required at or near the collar of the mine, and ends when he reaches the collar at the end of the shift.

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*The "inquiry" referred to was a letter dated *July 9, 1940*, signed jointly by the representatives of the United Mine Workers of America and the Appalachian Joint Conference Negotiating Committee. A copy of this letter (a portion of which is quoted in the dissenting opinion of Judge Sibley) is set forth in the Appendix.

> "The workday also includes the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out.
>
> "The workday does not include any fixed lunch period of one-half hour or more during which the miner is relieved of all duties, even though the lunch period is spent underground."—(R. 77).

In issuing the opinion, the Administrator stated:

> "that because the Division had not heretofore taken a definite stand on the various problems involved, it would not seek to compel the payment of restitution from mine owners who have been operating on a face to face or other bases inconsistent with the principles outlined in the report. This enforcement policy of the Division cannot, however, interfere with the rights of employees or their representatives to sue under Section 16 (b) of the Fair Labor Standards Act."—(R. 78).

The Administrator, in his answer, admitted the issuance of the opinion as stated above, and alleged:

> "That the proper interpretation of Section 7 of the Fair Labor Standards Act of 1938 is as set forth in the Opinion and Report, a copy of which is annexed to plaintiff's petition as Exhibit 'A'."—(R. 301).

In his answer to interrogatories the Administrator stated:

> "I intend to follow the interpretation in question unless otherwise directed by the authoritative ruling

of the Courts or unless I shall subsequently decide that my prior interpretation is incorrect."—(R. 384).

III

PRIOR TO THE ENACTMENT OF THE ACT IT WAS THE "TRADITIONAL PRACTICE" IN THE ORE MINES OF ALABAMA AND ELSEWHERE TO COMPUTE WORKING TIME ON THE "FACE TO FACE" BASIS. PETITIONERS AND THEIR EMPLOYEES RECOGNIZED AND ASSENTED TO THIS PRACTICE.

At the time of and for more than fifty years prior to the enactment of the Act it had been the uniform and traditional practice in Alabama iron ore mines and in the iron ore mining industry throughout the nation:

(a) To compute working time on the "face to face" basis:

(b) To consider "work" as including the time spent by the miner at his usual working place and as excluding the time spent in traveling to and from the usual working place;

(c) To fix and pay wages; to classify and evaluate jobs; to grant wage increases and to arrange the cycles of mining operations on the "face to face" basis; and—

(d) For many years prior to the enactment of the

Act, the underground employees of petitioners received either four times a month or twice a month written statements showing their earnings computed on the "face to face" basis, and, upon receiving the amount thus shown to be due them, acknowledged in writing the payment in full of all amounts due them."[14] All the employees who testified admitted that they knew the compensation thus received and receipted for excluded pay for traveling time.[15]

The Smelters Union on October 19, 1933, April 13, 1934, and June 13, 1935, in their written proposals for contracts, demanded the payment by the company of one-half the traveling time[16] and upon refusal of these demands thereafter abandoned any contention for the payment of any portion of the traveling time, and on May 26, 1936, and thereafter in their written proposals for contracts expressly defined the day's work on the "face to face" basis."[17]

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[14] Witness Ball, R. 806-8; T. C. I. Exhibits Y, Y-1 through Y-46, R. 3557 et seq., T. C. I. Exhibits V, V-1 through V-48, R. 3572 et seq., Sloss Exhibits 22, 22-1 to 22-77, R. 3840 et seq., Republic Exhibit No. 15, R. 4020.

[15] Witnesses Ball, R. 798, 840-2 Cameron, R. 1096-7, Brown, R. 1163-6, Smith, R. 1236, Scott, R. 1276, Carter, R. 1702, Goodwin, R. 1763-4, Harper, R. 1299-1300, Costner, R. 1422, Russell, 1485, DeSollar, R. 1551-2, Urquhart, R. 1632, Thompson, R. 1864, Lacey, R. 2152, Patterson, R. 2458, Scruggs, R. 2514, Gaines, R. 2849, Gilbert, R. 2898-9, Horsley, R. 2964, Butler, R. 3058-60, Trammell, R. 3122-3, White, R. 3145, Knox, R. 3162.

The testimony of witnesses in ore mines outside Alabama whose depositions were taken by the Administrator was to the same effect.—Witnesses Swanson, R. 4081, Burck, R. 4108, 4133-4; Runn, R. 4182, Debeltz, R. 4201-4, Pechek, R. 4230, Bovitz, R. 4251-2, Sopko, R. 4279, Pilotto, R. 4310, Eagloski, R. 4327.

[16] R. 3591, 3595 and 3623.

[17] T. C. I. Exhibit 10-A, R. 3629-3638.

IV

THE TRADITIONAL PRACTICE OF COMPUTING HOURS WORKED ON THE "FACE TO FACE" BASIS, WHICH HAD EXISTED FOR MANY YEARS IN THE IRON ORE MINING INDUSTRY WAS EMBODIED IN "BONA FIDE COLLECTIVE BARGAINING AGREEMENTS" BETWEEN PETITIONERS AND THEIR EMPLOYEES.

The Locals of the International Union of Mine, Mill and Smelter Workers were organized among the employees of petitioners in the spring of 1933. They became sufficiently strong to close down by strikes all mining operations in 1934 and again in 1936.[18]

In the case of Tennessee some of the employees were represented by the Brotherhood of Mine Workers of Captive Mines which was organized prior to 1933 and was later absorbed by the American Federation of Labor under the name of Red Ore Miners Union.

The strike of 1934 was settled by the efforts of the Conciliation Service of the United States Department of Labor, the men returning to work under the provisions of letters of understanding sent by the petitioners and the unions to the Department of Labor, providing for the return to work of the employees on the "face to face" basis.[19] The letters of understanding were extended by agreement of the parties until June 24, 1936.[*]

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[18] Witness Ball, R. 869-74 and 884.

[19] R. 3604-18, 3750, 3861, 3983-3991.

Thereafter petitioners (with the exception of Republic) executed written agreements with the unions defining "a day's work" in the following language:

> "Eight hours shall constitute a day's work and forty hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight hours in any one day or for overtime in excess of forty hours in any one week.
>
> "The eight-hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or paid on the tonnage basis."[*]

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[*] R. 881, 3625-6, 3760.

[*] The agreements made between the unions and the Alabama iron ore mining companies containing this provision are set out in the record as follows:

Sloss Exhibit No. 8: Agreement between Sloss and Employees Representatives dated July 21, 1936.—(R. 3774).

T. C. I. Exhibit No, 18; Agreement between Tennessee and Brotherhood dated May 31, 1937.—(R. 3720);

Sloss Exhibit No. 9: Agreement between Sloss and Employees Representatives dated September 13, 1937.—(R. 3782);

T. C. I. Exhibit No. 19: Agreement between Tennessee and Brotherhood dated June 15, 1938.—R. 3728);

Sloss Exhibit No. 13: Continuation of agreement set forth as Sloss Exhibit No. 9 dated September 3, 1938.—(R. 3796);

T. C. I. Exhibit No. 14 (the same as Exhibit "C" to Tennessee petition): Agreement between Tennessee and Smelters Union dated October 6, 1938—(R. 105);

Sloss Exhibit No. 15: Agreement between Sloss and Smelters Union dated September 9, 1939.—(R. 3804);

Sloss Exhibit No. 34: Agreement between Woodward and Smelters Union dated November 11, 1939.—(R. 3916);

Sloss Exhibit No. 18 (the same as Exhibit "B" to Sloss petition):

V

BACKGROUND OF THE ACT — ADMINISTRATIVE INTERPRETATIONS OF PRIOR STATUTES CONTAINING THE WORD "WORKWEEK" OR WORDS OF SIMILAR IMPORT.

The long established and well known definition of the "workweek" as set forth above in the agreements between petitioners and their employees had been, previous to the enactment of the Act, sanctioned and adopted in the following, among other, official rulings and interpretations:

(1) An award of a Board of Arbitration presided over by Judge George Gray as the agreed umpire.

This Board held its sessions in Birmingham, Alabama, in *1903* for the purpose of settling differences existing between the Alabama coal mine operators and their employees, represented by the United Mine Workers of America. The arbitration resulted in the execution of a contract carrying the traditional "face to face" definition of the day's work with the exclusion of the traveling time.—(R. 2180).

Agreement between Sloss and Smelters Union dated September 11, 1940.—(R. 152);

T. C. I. Exhibit No. 20: Agreement between Tennessee and Red Ore Miners Union dated December 23, 1940.—(R. 3737).

Sloss Exhibit No. 36: Agreement between Woodward and Smelters Union dated December 30, 1940.—(R. 3939);

Exhibit "C" to Sloss Petition: Agreement between Sloss and Smelters Union dated March 17, 1941.—(R. 166).

(2) The United States Fuel Administration Agreement and Award of Arbitration Committee for coal mines in Southeastern Kentucky and Eastern Tennessee on *November 10, 1917*.

The arbitration was held under the direction of H. A. Garfield, United States Fuel Administrator, with Rembrandt Peale serving as umpire.—(Plaintiff's Exhibit No. 32, R. 4693).

(3) On *December 14, 1917*, on the recommendation of the United States Fuel Administrator the Alabama coal operators and the Mine Workers Union settled their disputes by accepting the award containing the definition of the day's work as agreed to in the Tennessee-Kentucky field and as set forth in (2) above. —(Plaintiff's Exhibit No. 31, R. 4695).

(4) The Report and Award of the Bituminous Coal Commission appointed by President Wilson to adjust matters in controversy between bituminous coal miners and operators of the country, a copy of which was transmitted to the representatives of the Alabama Coal Operators Association and of the Mine Workers Union by President Wilson on *March 19, 1920*, and agreed to by the parties.—(Plaintiff's Exhibit No. 46, R. 4696-99).

(5) The National Industrial Recovery Act enacted by the Congress on *June 16, 1933*, was the progenitor of the National Labor Relations Act and of the Fair Labor Standards Act. It provided for the adoption of codes for specific industries, the codes, when approved by the President, having the force of law.

The codes of fair competition thus became complete employer and employee charters, covering:

(a) Minimum wages and maximum hours, and

(b) The protection and maintenance of the rights of collective bargaining.

On *September 18, 1933* (R. 4700-1) President Roosevelt, following meetings and negotiations between the United Mine Workers of America and the various coal associations, their agreement on the code, its recommendation by the Deputy Administrator and its approval by the Administrator, approved the code agreed to by the bituminous coal industry.

This code completely covered all employer-employee relations, and provided in Article III, "Maximum Hours of Labor," that:

> "Seven hours of labor shall constitute a day's work, and this means seven hours of work at the usual working places for all classes of labor exclusive of the lunch period."—(R. 4705).

President Roosevelt gave his second approval to this well established definition of the underground miner's "day's work" when, in approving the Appalachian Agreement reached between the coal operators and the Mine Workers Union on *September 21, 1933*, he used the following language.

> "In approving this agreement it is with the understanding that the hours and wages and conditions of employment recited herein may also be applied to the employees who are not parties hereto and that the requirements of Section 7 (a) of the NIRA will be complied with in carrying out this agreement."—(R. 4786).

The Code of Fair Competition for the bituminous coal industry remained in full force and effect until *May 27, 1935,* when this Court declared NIRA unconstitutional.*

After the invalidation of NIRA by the Supreme Court of the United States the Congress enacted the National Labor Relations Act and embodied in this Act permanent legislation regarding collective bargaining rights in substance the same as previously embodied in NIRA, and on *June 24, 1938,* enacted the Fair Labor Standards Act of 1938 which embodied the substantive labor provisions of NIRA in reference to minimum wages, maximum hours, and child labo

Representative Keller, a member of the Conference Committee, in debate preceding the final passage of the Fair Labor Standards Act, *June 14, 1938,* said:

> "This bill eliminates the defects and preserves the best features of the National Industrial Recovery

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*The petitioners have always, in the operation of their iron ore mines, followed the methods and practices used in the operation of their coal mines.

A code for the iron ore mining industry was never adopted.

The petitioners, however, following their usual custom, adopted in 1933 the provisions of the coal code in reference to their iron ore mining operations and at this time announced to the representatives of the unions that the provisions of the coal code would be followed in the iron ore mining operations.—(R. 3591-93).

On May 26, 1936, the Smelters Union, in recognition of the essential similarity in the coal and iron ore mining operations, presented and requested the execution of a written contract which contained the exact definition which then prevailed and had for years prevailed in the union contracts with the coal mines throughout the country, namely:

> "The eight hour day means eight hours in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period."—(R. 3629, 3632).

Act. In doing so a better procedure is provided, so that no rights may be affected without opportunity to be heard. NRA put down a floor for wages and a ceiling to hours of work."—(Vol. 83, Congressional Record, Part 8, p. 9264, 75th Congress, Third Session, June, 1938).

6. Beginning in the year *1898* the coal operators and the United Mine Workers of America in Alabama and elsewhere in the United States negotiated and executed wage agreements defining the day's work on the "face to face" basis and excluding "portal to portal" traveling time.*

7. Prior to the enactment of the Act the Congress and the legislatures of a number of the States had enacted health laws limiting hours of employment. The courts construing these laws, and those charged with their interpretation, administration and enforcement had uniformly ruled, in effect, that the hours of permissible labor excluded time spent in going to and from the place of work.*

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*Illustrative of these wage agreements see R. 4749-4842.

**Ex Parte Martin*, (Supreme Court of Calif., 1909), 106 Pac. 235. Several of the western states adopted laws similar to the California statute after its construction by the Supreme Court of California. The States of Utah (Chap. 59, Laws of Utah, 1937), Arizona (Section 1958, Arizona Revised Codes, 1928), and Nevada (Section 10237, Nevada Compiled Laws), alone, adopted a different state policy and enacted, under police power, statutes which, in substance, provided that the period of employment in underground mines should not be more than "eight hours per day computed from the time the men go underground until they return to the surface."

Plaintiff's Exhibit No. 16: 26 Opinions of Attorneys General 64. "Eight hour Law—Reclamation Service."—(R. 4646); Plaintiff's Ex-

VI

CONSTRUCTION OF THE ACT SUBSEQUENT TO ITS ENACTMENT BY THE PARTIES AND BY ADMINISTRATIVE AND ENFORCEMENT OFFICIALS

1. Petitioners and their employees (represented by strong national unions) and the iron ore mining industry throughout the United States continued, after the enactment of the Act, to operate on the "face to face" basis; this traditional concept of the day's work continued to be embodied in wage agreements; and the employees received thereunder increases in wages, additional pay through incentive plans, and other valuable considerations. Some of these agreements were executed as late as September 11, 1940, December 28, 1940, and March 17, 1941.—(See footnote 21, supra).

2. The national coal industry has continued to the present time to compute and pay wages on the "face to face" basis, either under collectively bargained wage

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hibit No. 17: 26 Opinions of Attorneys General 605, "Eight Hour Law—Hours of Service of Lock Tenders, Etc.—(R. 4654); Plaintiffs' Exhibit No. 18: 27 Comptroller of the Treasury 1060, "Traveling Expenses—Railway Postal Clerks"—(R. 4658); Plaintiffs' Exhibit No. 19: 9 Decisions of the Comptroller General 200, "Compensation—Extra Pay for Night Work, Railway Postal Clerks."—(R. 4661); Plaintiffs' Exhibit No. 20: 14 Comptroller General 907, "Compensation—Overtime—40 Hour Week."—(R. 4662); Plaintiffs' Exhibit No. 21: Opinion of the Attorney General of the U. S.—application of the Eight-Hour Law to Employees of the Civilian Conservation Corps.—(R. 4666).

agreements or directives of the government.* The number of employees in the coal mining industry exceeds 500,000.

3. The Administrator, with full knowledge of the constructions by the parties, administered the act in the iron ore mining industry on the "face to face" basis until he rendered his opinion on *March 23, 1941.*—(R. 76, et seq.). He had previously, on *July 27, 1940* (R. 4716) approved the "face to face" basis in reference to bituminous coal mines in words which could have left no doubt in the minds of any reasonable person that the same interpretation should and would be followed in the case of the iron ore mining industry.

4. The Attorney General, charged with the enforcement of the Act, has never sought to enforce the "portal to portal" interpretation in reference to underground iron ore or coal mines.

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*The wage agreements in the coal industry expired on March 31, 1943, and subsequent to the decision of the District Court in this case on August 13, 1941. Based upon such decision, the United Mine Workers of America demanded pay for "portal to portal" travel time, asserting such to be a legal requirement for the industry. Such demand was not made in the 1941 negotiations which took place prior to the District Court decision. This demand was implemented during the course of the 1943 contract negotiations by the decision of the Circuit Court of Appeals on March 16, 1943, six days after the start of negotiations.

This Court is requested to take judicial notice of the hearings before, and the decisions and directives of, the National War Labor Board in its Case No. 111-1284 involving the Coal Operators and the Mine Workers Union and in which the "portal to portal" question is of paramount importance. Since the rendition of the final decision in this case, several suits have been filed and are now pending in various District Courts of the United States seeking judicial construction of Section 7 of the Act in its application to underground coal miners in its relation to portal to portal compensation.

VII

THE CONGRESS DID NOT INTEND THE ACT TO BE CONSTRUED AND ADMINISTERED WITH REFERENCE TO THE VARYING CONDITIONS IN INDIVIDUAL PLANTS CONTRARY TO REASONABLE STANDARDS PREVIOUSLY ADOPTED BY CUSTOM OR AGREEMENT IN AN INDUSTRY.

1. The intention of the Congress that the Act should be administered on the basis of reasonable standards adopted by custom or agreement in an industry and not on an individual plant basis is demonstrated:

(a) By the fact that the National Industrial Recovery Act, the progenitor of the Act, was enacted and administered on an industry basis;

(b) By the Congressional debates upon the passage of the Act;

(c) By the context* of the Act;

(d) Because the constitutional base of the Act was the prevention of unfair competition in commerce.*

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*Section 5 (a) and (b) of the Act—"Industry Committees."

*Fair competition through the elimination of sweat shop conditions can only be secured by so administering the Act as to prevent a member of an industry from engaging in unfair competition with other members of the same industry. Unfair competition will follow if a "jury or other fact-finding tribunal" is allowed to ignore the general concept of the industry and to substitute therefor an individual judgment drawn from the facts of an individual plant.

United States v. Darby Lumber Company (Feb. 13, 1941), 61 Sup. Ct. 451, at p. 457.

2. The Administrator has administered the Act on an industry basis with full recognition that long existing customs and contractual relationships in a particular industry and "the general concept of work or employment" in such industry (on the part of those in position to know best and who have the most interest in the matter) were not intended by the provisions of the Act to be set aside.*

VIII

DECISIONS OF THE CIRCUIT COURT OF APPEALS

An analysis of the original opinion and judgment of the Circuit Court of Appeals, and the opinion and judgment rendered on petitioners' application for a rehearing, shows that the Circuit Court of Appeals:

1. Held that all the time spent underground (except the lunch period) is in and of itself work time. Otherwise stated, all time spent underground must be paid for as work without reference to whether the employee is being transported, is waiting for transportation, is walking, is resting, etc.

2. Based its decision on its application of facts on an

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*This is strongly illustrated by the opinion of the Administrator (p. 24, supra) in reference to the coal mining industry, and by his opinion in reference to the metal mining industry, his opinion in the coal mining industry being correct both in his method of interpretation and his application of facts, while in the case of metal mining industry his method was correct and consistent, but his application of the facts by including the iron ore mining industry with the gold, silver, zinc and copper mines of the west, an entirely separate industry or industries, was erroneous.

individual or plant basis instead of on an industry basis.

3. Departed from its announced method of individual application by applying to all petitioners and their employees much evidence which applied to only one or more of petitioners, or to only some of their employees, and by ignoring evidence which clearly distinguished the case of some of petitioners or their employees from others.

4. Based its conclusion that all the time spent underground was in and of itself work on the predicate that the purpose of the Act was "to eliminate labor conditions detrimental to the general welfare of workers" and to "rectify abuses" growing out of the dangers and discomforts incidental to underground iron ore mining.

5. Either attached no importance to, or ignored, the undisputed evidence that in all petitioners' mines and in the iron ore mines elsewhere in the United States it had been, for a long time prior to the enactment of the Act, the established practice, embodied in contractual agreements, recognized and agreed to by all employers and employees, to pay wages on the "face to face" basis, and held that the Congress intended by the use of the word "workweek" to overturn the practice and annul the agreements.

6. Set aside as invalid wage agreements made between the parties not in evasion of the Act, but in reliance upon previous and existing interpretations and traditional practices.

7. Denied to the parties the rights of collective bargaining with reference to "portal to portal" traveling time.

8. Based its affirmance on the conclusion that the finding of facts of the District Court was not clearly erroneous, when the undisputed evidence was not only contrary to such finding, but the question of the field left open for bargaining and contracts was a matter of law, and not a question of fact.

9. Held that there did not exist a justiciable controversy between petitioners and the defendants in reference to the construction of Section 7 of the Act for the time subsequent to May 1, 1941 and refused to declare judicially the intent of Congress in reference to such time. The application of the Act to the time subsequent to May 1, 1941, is, at least, equally important as the period from the enactment of the Act to that date, and, indeed, is the only controversy between petitioner and the intervener-administrator.

Petitioners respectfully submit that in all the matters above set forth the Circuit Court of Appeals was in error.

CONCLUSION

It is respectfully submitted that, for the reasons stated, the petition for writ of certiorari should be granted.

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STATE OF ALABAMA)
JEFFERSON COUNTY) ss

Borden Burr, being first duly sworn, deposes and says that he is the attorney for the petitioners, above named; that he prepared the foregoing petition and that the allegations thereof are true as he verily believes.

Subscribed and sworn to before me this day of September, 1943.

Notary Public.

STATE OF ALABAMA)
JEFFERSON COUNTY) ss

I, Borden Burr, Attorney at Law, admitted to practice in the Supreme Court of the United States, hereby certify that I have examined the foregoing Petition for Writ of Certiorari; that the same is not made for purposes of delay, and that in my opinion said petition is meritorious and well founded in law and ought to be granted and the Writ issued.

I further certify that I have personally given notice of the filing of the petition, together with a copy of the petition, supporting brief, and printed record by serving copies thereof on Crampton Harris and J. Q. Smith, Birmingham, Alabama, and Bessie Margolin, Assistant Solicitor, United States Department of Labor, Washington, D. C., counsel for respondents.

BRIEF AND ARGUMENT OF BORDEN BURR AND E. L. ALL, OF BIRMINGHAM, ALABAMA, AND R. T. RIVES OF MONTGOMERY, ALABAMA, IN SUPPORT OF FOREGOING PETITION.

I

PURPOSE OF THE ACT

The Circuit Court of Appeals, in effect, held that all time underground was in and of itself a part of the "workweek" because it was the purpose of the Act to "eliminate" or "rectify" the incidental perils and discomforts of underground mining.[1]

In the case of *United States v. F. W. Darby Lumber Company,* (February 23, 1941); 61 Sup. Ct. Rep., 451-63, construing the Fair Labor Standards Act of 1938, this Court said:

> "Its (the Act's purpose) as we judicially know from the declaration of policy in Paragraph 2 (2) of the Act, and from the reports of Congressional Committees proposing the legislation, is to exclude from interstate commerce goods produced for the commerce, under conditions detrimental to the maintenance of the minimum standards of living neces-

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[1] Opinion of District Court, R. 568, 40 Fed. Supp. 4; Opinions of Circuit Court of Appeals, Appendix, pp. 64 and 77.

sary for health and general well being—and to prevent the use of interstate commerce as a means of competition in the distribution of goods so produced.

"The motive and purpose of the present regulation is plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions, which competition is injurious to the commerce and to the state from and to which the commerce flows. * * *

"As we have said the evils aimed at by the Act are the spread of sub-standard labor conditions through the use of the facilities of interstate commerce for competition by the goods so produced, with those produced under the prescribed or better labor conditions; and the subsequent dislocation of the commerce itself caused by the impairment or destruction of local business by the competition made effective through interstate commerce. * * *

"Both provisions are minimum wage requirements compelling the payment of a minimum standard wage with a prescribed increased wage for overtime of not less than one and one-half the regular rate at which the worker is employed."—(pp. 455, 457, 461).

In the case of *Fleming v. Belo Corporation* (5th C. C. A., affirmed by this Court June 3, 1942, 66 Sup. Ct Rep. 1223), 121 Fed. Rep. (2d) 207, the Circuit Court of Appeals, after quoting from the Darby case, said:

"There is nothing here about spreading the work, nothing about penalizing overtime, nothing about abrogating the right of contract, nothing about requiring an employer to further raise wages already far above the sub-standard struck down and the minimum standard set up in the Act."

The opinion of the Court construing the word "workweek" as including all the time (except the lunch period) spent underground is repugnant to the purpose of the Act. The policy and purpose of the Act (power being derived from the interstate commerce clause of the Constitution) may be briefly stated to prevent:

(a) Sweat shop wages;

(b) Unfair competition in commerce, and

(c) By application of "financial pressure to avoid the extra wage and to assure workers additional pay to compensate them for the burden of workweek beyond the hours fixed in the Act.'"[2]

The evidence discloses that sweat shop wages did not exist in the iron ore mines. On the contrary the wages paid were far in excess of the minimum,[3] were in keeping with fair compensation for the incidental perils and discomforts, were the result of collective bargaining, and took into consideration the time spent in traveling to and from the working place.

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[2] (a) and (b) above find their support in the case of *United States v. F. W. Darby Lbr. Co., supra.,* and (c) above in the case of *Overnight Motor Transportation Co. v. Missell,* 316 U. S. 572.

[3] Witness Ball, R. 850-51; T. C. I. Exhibit No. 8, R. 3604-11; Witness McBrayer, R. 2589; Sloss Exhibit No. 2, R. 4024-31, etc.

The inevitable result of the decision will be the restraint of interstate commerce instead of its protection and the causing, instead of the prevention, of "unfair competition in commerce."

The distances from the portal to the working places vary in all underground iron ore mines; some are shallow, some are deep. Previous to the enactment of the Act the wage scales were based, and wages were paid, in all underground iron ore mines, on the "face to face" basis. Changing to the "portal to portal" basis gives to competitors having shallow mines an unfair advantage over competitors having the deep mines; raises the relative production costs in the mines with longer travel time; and less overtime compensation i paid, reduces the relative production of the mines having longer travel time.

A striking illustration of this is found in the undisputed evidence in this case. Republic, a competitor of the other petitioners, operates its Spaulding Mine within a comparatively short distance of the mines of the other petitioners. This mine is so near the surface that no mechanical transportation is used, and the underground employees, in walking from the surface to their places of work, and returning, consume a maximum of fifteen minutes.[1] Some of the mines of the other petitioners, located on the same mountain, by reason of the depth of the slopes and the location of the ore, require the men, in order to reach their places of productive work, to use mechanical transportation to the underground loading stations and to walk from there to their working places. The time thus spent in traveling is, in some instances, a maximum of one and one-half hours as compared with the fifteen minutes in the Spaulding Mine. This illustration is typical of underground iron ore mining operations in Alabama and throughout the United States. The same inequalities, in a marked degree, exist as between all the mines, and within each mine.

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[1] Witness Thompson, R. 1908-12; Map of Spaulding Mine, R. 4022.

When the Congress enacted the law it must be assumed to have had knowledge of these general conditions, and, certainly, it did not intend, in the passage of an act having as its principal purpose the prevention of unfair competition, to destroy the uniformity which had always existed of paying and computing wages on the "face to face" basis, and thereby to establish unfair competition by reason of the total lack of uniformity which would follow the computation and payment of wages on the "portal to portal" basis.

Not only is the decision contrary to the expressed purpose of the Act, but it is grounded by the Circuit Court of Appeals on a statement of the purpose of the Act which, petitioners respectfully assert, is diametrically opposed to the intent of the Congress in its enactment. The Court states:

> "It may be conceded, *arguendo,* that for twenty-five years prior to 1938 iron-ore miners had not been compensated for travel-time, and that even after 1938 the parties to this suit had entered into contracts whereby it was agreed that no wages should be paid for travel-time; but the very purpose of the Fair Labor Standards Act was to eliminate labor con-

> tions detrimental to the general welfare of workers, and the remedial machinery set up to accomplish that purpose regulated hours of work and rates of pay. Industrial custom does not warrant the continuation of abuses that the Act was created to rectify; and no contractual agreement that compensation should not be paid for travel-time is valid if in conflict with the Act."—(Appendix, p. 69).

The bedrock of the Court's decision is the alleged existence of "abuses" and of "labor conditions detrimental to the general welfare of the employees" growing out of the dangers and discomforts incidental to underground iron-ore mining, and the Court holds, in effect, that it was the purpose of the Act to eliminate "these and similar abuses" and "labor conditions detrimental to the general welfare of the employees."

It was not the intention of the Congress to police the many industries for perils and discomforts. It was the intention, by the imposition of economic standards, to prevent unfair competition in commerce by eliminating the competitive advantage of sub-standard wages detrimental to the maintenance of a minimum standard of living. The term "standard of living" is a phrase of economic import, and, as shown by the decisions of the courts and by the debates in Congress, has a definite meaning which relates, not to general conditions of employment or working environment, but to the question as to whether the wages which are being received are sufficient to enable the employees to enjoy a decent "standard of living."

The decision is in error in holding that the Act was intended to "eliminate" or "rectify" the general conditions of employment or working environment. The payment of the minimum wage provided in the Act and the payment of overtime was not intended, and does not serve, to "eliminate" or "rectify" such conditions of employment. The institution of "portal to portal" leaves the perils, discomforts and labor environment of the employees unchanged, both while working and while traveling to and from work.

The lack of logic in the decision is demonstrated by its holding that lunch time spent among the alleged perils near the working place is not work, but the time spent waiting for the transportation, at the underground loading station, electrically lighted, with comfortable seats, etc., is work.—(T. C. I. Exhibit 22, R. 3750).

II

THE CONGRESS DID NOT INTEND THE ACT TO BE CONSTRUED AND ADMINISTERED WITH REFERENCE TO THE VARYING CONDITIONS IN INDIVIDUAL PLANTS CONTRARY TO REASONABLE STANDARDS PREVIOUSLY ADOPTED BY CUSTOM OR AGREEMENT IN AN INDUSTRY.

The Circuit Court of Appeals in its application of Section 7 of the Act to the underground employees of petitioners places each employee's "portal to portal" time on an individual basis[*] and contrary to the intent of the Congress ignores the reasonable standard adopted by the industry.

The National Industrial Recovery Act (the progenitor of the Act and of the National Labor Relations Act) , was expressly predicated on an "industry" basis, and its administration and enforcement depended upon codes of fair competition for industries.

The decision in this case ignores the fact that the Congress intended that the working time in each industry should be as defined by the reasonable practices, contracts and concept of the industry.

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[*] We quote from the concurring opinion of Wayne L. Morse, rendered on June 17, 1943, in the Matter of Operators Negotiating Committee, Appalachian Joint Conference and Southern Appalachian Joint Wage Conference and United Mine Workers of America, Case No. 111-1284 before the National War Labor Board:

> "It should not be overlooked that the President of the United Mine Workers of America has rested his claim to portal to portal travel time pay on the theory that the Mine workers are entitled to such pay as a legal right. He has cited the decision of the Fifth Circuit Court of Appeals in the *Tennessee Coal, Iron and Railroad Case,* decided March 16, 1943, in support of this contention. However, Mr. Lewis' demand in fact has not been for the actual travel time spent by the individual miner underground, but for an adjustment of travel time pay to be distributed in an equal amount to all the Mine Workers, including those above and below the ground, irrespective of whether the individual Mine Worker actually travels underground.
>
> "Thus, Mr. Lewis' demand has not been for compensation for any legal claim that the individual miners may have, but rather, it is a demand for a wage increase for all the miners in excess of the wage stabilization policies of the Board couched in terms of portal to portal pay. It is a demand for a form of payment which could not possibly be collected under the Fair Labor Standards Act, because the very decision which the representatives of the Mine Workers cite makes clear that the portal to portal travel time pay allowed in that case is individual to the employee who travels underground in accordance with the time which he actually travels."

Representative Keller, in debate preceding the final passage of the Act, stated:

> "National standards alone are essential to fair competition. The present unregulated system is productive of competitive advantages and disadvantages. A manufacturer who pays $5 for $5 worth of work in New England, in the South, or in the West, is entitled to protection against his competitor who pays less than $5 for $5 worth of work. The employee who performs $5 worth of work in Pennsylvania, Alabama, or Illinois, is entitled to the value of his work."—(Vol. 83, Congressional Record, Part 8, p. 9264).

It is obvious that under the decision Tennessee and Sloss in some of their mines, for the same wage, will receive approximately six hours of productive work for which their competitor, Republic, at its Spaulding Mine, will receive approximately eight hours of productive work.

The Act provides, and has been so construed and administered, for the grouping of industries with appropriate regard to established customs and contractual relationships between employers and employees in the various industries.

The Intervener-Administrator fully recognizes that the Act should be administered on an industry basis. In reaching his opinion in this case the intervener interpreted the Act on an industry basis, but was incorrect in grouping the iron ore mining industry with what he designated the "metal mining industry." The gold, silver, copper and other non-ferrous mines have never been connected with or related to the iron ore mining industry; they are located, for the most part, in parts of the country where there are few, if any, iron ore mines; they follow different practices; and, most important of all, they do not come into any kind of competition with the iron ore mining industry or the manufacture of products of which iron ore is the principal ingredient.[*]

Petitioners respectfully submit that it was the intention of the Congress to have the word "workweek," in its application to the iron ore mining industry, applied in accordance with the existing facts, conditions, customs and contracts of that industry.

As stated by this Court in the case of *United States v. Isham,* 17 Wallace 496, 507:

> "The words of a statute are to be taken in the sense in which they would be understood by that public in which they are to take effect."

The decision of the Circuit Court of Appeals ignores the undisputed proof that at and prior to the time of the enactment of the Act employers and employees, unions and mine operators, administrators and interpretors of the Act, and of similar legislation, and the

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[*] The War Labor Board has, since the decision, followed common knowledge by recognizing non-ferrous mining industry as a separate, distinct industry.—(Case of Non-Ferrous Metal Companies, 11 L. R. R. 278—Establishment of Non-Ferrous Metal Commission, 11 L. R. R. 513).

Congress, in the prior enactment of laws of similar purpose and content, had all recognized the established practice of defining the workday on the "face to face" basis.

III

THE TERM "WORKWEEK," UNDEFINED IN THE ACT, REQUIRES INTERPRETATION

Section 7 of the Act, in all its provisions, is intended by the Congress for universal application to all employers and employees engaged in commerce, or in the production of goods for commerce, regardless of whether the work is performed on the surface or underground. If there is any basis for a difference of opinion as to its application to a particular act or activity of any employee or group of employees, or to any industry or group of industries, then the process of interpretation is absolutely necessary. The fact alone that the Act provides for an Administrator with duties of regulation and enforcement bespeaks the necessity of interpretation in the matter of its application.

The fact that numerous bulletins have been released, and their contents evidencing the process of interpretation in the application of the word "workweek" in various fields, shows the necessity. Many of these releases, as illustrated by bulletins with respect to the matter with which the parties are here concerned, demonstrate that the Administrator is uncertain and indecisive as to the proper application of the pertinent provisions of the Act. Difficulty or uncertainty in particular application renders interpretation essential.

Particular attention is invited to some of the expressions used by the Administrator in some of these releases:

> "We are not yet disposed to take any particular position as to whether the half hour spent eating lunch underground may be deducted from hours worked. The problem is a very difficult one because the employee is required to eat under very unfavorable conditions and is subject to many of the hazards of his job while eating. On the other hand, we recognize that the employee does have time off in order to have lunch and an argument can be made that such time need not be considered as hours worked. But, as I say, the Division is not prepared at the present time to make any definitive determination on this question."—(R. 397-398, 403-404):

The need of interpretation is clearly and definitely shown by the Administrator when he states in his Modified Portal to Portal Wage Hour Opinion:

> "that because the Division had not heretofore taken a definite stand on the various problems involved, it would not seek to compel the payment of restitution from mine owners who have been operating on a face to face or other bases inconsistent with the principles outlined in the report."—(R. 78).

It would be difficult to conclude that the process of interpretation is not here needed in the face of the uncontradicted evidence that from time immemorial until the rendition by the Administrator of his Modified Portal to Portal Wage Hour Opinion it had never been considered or suggested by any one that traveling time should be included as a part of the "workweek" in underground iron ore mines.

IV

APPLICABLE RULES OF STATUTORY CONSTRUCTION

In interpreting the term "workweek" as used in the Fair Labor Standards Act, the intention of the Congress must be determined. In finding that intent consideration must be given to:

(a) The reasonable standards in the industry to which the Act is sought to be applied, as evidenced by prevailing working conditions, practices, and bona fide wage agreements between employers and employees by which working time is defined;

(b) Reasonable standards in other industries in which working conditions, practices, and bona fide wage agreements between employers and employees are essentially the same as in the industry under consideration;

(c) The sense in which the same term, or terms of the same import, have been used in prior federal statutes;

(d) The rulings or opinions of administrative officers in construing terms of like import in prior federal statutes;

(e) Prior and subsequent practices and rulings of administrative officers charged with the administration of the statute or similar statutes;.

(f) The practical construction of those for whose benefit the statute was enacted; and

(g) The generally accepted meaning of the same term, or terms of the same import, as evidenced by the use of such term, or terms, in state statutes relating to hours of work, the judicial interpretations of such terms, and practices thereunder by those to whom they apply.

The above is a shorthand rendering of the decisions of the courts in the following cases:

United States v. F. W. Darby Lumber Company, (February 13, 1941), 61 Sup. Ct. 451-63;

United States v. Irwin, (April 6, 1942), 62 Sup. Ct. 899;

Interstate Commerce Commission v. Baltimore and Ohio Railroad Company, 145 U. S. 263;

United States v. Farrar, 281 U. S. 624;

Reiche v. Smythe, (1872), 13 Wallace 162; 20 L. Ed. 566;

Mark v. United States, (1896), 161 U. S. 297; 17 S. Ct. 476; 40 L. Ed. 706;

Chicago v. Sheldon, (1870), 9 Wall. 54; 19 L. Ed. 594;

Stairs v. Peaslee, (1855), 18 Howard (U. S.) 521; 15 L. Ed. 474;

National Lead Company v. United States, 252 U. S. 140;

United States v. Isham, 17 Wallace 496-507; 21 L. Ed. 729;

United States v. Turner Turpentine Company, (C. C. A. 5th, 1940), 111 F. (2d) 400;

McDonald v. Hovey, 110 U. S. 619;

Ex Parte Martin, (Cal. Sup. Ct.) 106 Pac. 235.

It is undisputed that at the time of the enactment of the Act the "face to face" basis of paying wages had existed for many years and had become the established custom; that this traditional custom had been embodied in bona fide wage agreements between petitioners and their employees; that these same conditions had likewise existed in the other underground iron ore mines in the United States and in the underground coal mining industry.

It is also a fact that language of the same import as here under consideration, in reference to the same subject matter and having in view the same purpose, had been used by the Congress in the enactment of the National Industrial Recovery Act.

In the case of *United States v. Irwin,* supra, this Court applied the rule as to the interpretative effect of a prior statute upon a subsequent act—saying:

> "The question before us therefore is whether the construction of the library was a 'public work' as that term is used in the Miller Act. We think that it is, that the Assistant Secretary of the Interior was consequently authorized to require respondents to post a bond. * * *
>
> "No aid in ascertaining the meaning of 'public

works' is to be found in the Miller Act itself. But in the National Industrial Recovery Act, passed two years before the Miller Act Congress defined it as including 'any projects of the character heretofore constructed or carried on either directly by public authority or with public aid to serve the interests of the general public'."

The Congress having, in this Act, substantially reenacted the wage and hours of service provisions of NIRA, with the same purpose in view, and using substantially the same terms, must be presumed to have been familiar with the construction of those terms by the President, the Administrator, and the parties affected, and not having indicated in the Act any contrary intent, must be presumed to have adopted the congressional, executive and administrative interpretation of NIRA.

United States v. Farrar, supra.
Interstate Commerce Commission v. Baltimore and Ohio Railroad Company, supra;
Reiche v. Smythe, supra,

We call the Court's attention to the case of *United States v. Turner Turpentine Company, supra,* (U .S. Circuit Court of Appeals, Fifth Circuit) where the Court, in applying this rule of statutory construction, said:

"It is now a settled principle of statutory construction that Congress or a legislature in legislating with regard to an industry or activity, must be regarded as having had in mind the actual conditions to which the act will apply, that is, the needs and usages of such activity. When then, Congress, in passing an act like the Social Security Act, uses, in laying down a broad general policy of exclusion, a term of as general import as 'agricultural labor,' it must be considered that it used the term in a sense and intended it to have meaning wide enough and broad enough to cover and embrace agricultural labor of any and every kind, as that term is understood in the various sections of the United States where the act operates. This does not mean, of course, that a mere local custom which is in the face of the meaning of a general term used in an act, may be read into the act to vary its terms. It does mean, however, that when a word or term intended to have general application in an activity as broad as agriculture, has a wide meaning, it must be interpreted broadly enough to embrace in it all the kinds and forms of agriculture practiced where it operates, that its generality reasonably extends to."

It is also undisputed that employers and employees in the iron ore mining industry and the coal mining industry, all beneficiaries of the Act, and the Administrator (until March 25, 1941, and, in the coal mining industry until the present time) in every respect construed the Act as indicating the intention of the Congress to adopt in its enactment the long established practice and the contractual construction.

Not only did the defendant employees here continue their daily lives, receive their daily wage, accept the benefit of job evaluations on a higher wage basis, receive and retain increases in wages[1] and other valuable consideration, but they carried forward, after full negotiation, in express written wage agreements, the previously established "face to face" definition of the work day.

The decision states that the workers vainly insisted upon their right to be paid for travel time, and intimates that, for this reason (in addition to the one assigned that the contracts were invalid because in conflict with the Act), the wage agreements should be received with suspicion.—(Appendix, p. 69).

There is no evidence supporting this intimation. On the contrary, it is undisputed that in the negotiations leading to the execution of the 1940 contract of the Union with the Tennessee Company the Union had the benefit of the following advisors: Lee Pressman, its general counsel; James Lipscomb, its Birmingham counsel since 1933 (Mr. Pressman and Mr. Lipscomb being counsel of record in this case), Reid Robinson, its International President, and the presidents and other officers of the Alabama locals (many of whom were witnesses in the instant case).—R. 2715-18). The Union was represented by its top officials in the negotiation and execution of other contracts.

In this connection it is to be remembered that the United Mine Workers of America, in some respects the most powerful labor organization in America, either did not try or failed to change a "face to face" policy to a "portal to portal" policy in the bituminous coal mining industry. It must follow, therefore, that any failure (if an attempt was made) to effect a change from the "face to face" policy to the "portal to portal" policy did not result from inefficient representation.

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[1] Employees received wage increases since 1934 (there were other increases before), all based on eight hours "face to face," basis, in 1934, 1936, 1937, 1940 and 1941, all as the result of collective bargaining.—(R. pp. 1794-96).

The evidence is also undisputed that the Union never suggested or requested the payment of full traveling time until October, 1940, and that the last time it had ever suggested or requested pay for one-half traveling time was June 13, 1935.

The record also discloses that the Union was sufficiently strong in 1934 and 1936 to close down by strikes all petitioners' iron ore mining operations (R. 869-74, 884); that when it executed the Tennessee 1938 contract, as a part of the consideration for its execution, it received not only increased wages but an agreement re-employing approximately 100 former employees with reimbursement for back wages amounting to approximately $100,000.—(R. 2295).

In this connection we quote from the opinion of the Circuit Court of Appeals, Fourth Circuit, in the case of *E. I. duPont de Nemours and Co. v. National Labor Relations Board,* 116 F. (2d) 388, at page 398:

> "We are of the opinion that the labor group is now quite aware of its statutory rights, and is instilled with an aggressive spirit that, before the passage of the Act, may long have been kept dormant. The still picture of a sheep-like body of laboring men, placidly led by a dominating employer, is not rep-

resentative of the true situation. Since the passage of the Act, the picture has been quite effectively streamlined. We see today a mobile labor force, strengthened by statutory safeguards, working on comparatively even terms with the employer, who may often owe his particular strength to a superior economic, educational and social position. Under this view of the modern industrial situation, we surely cannot indulge in any assumption of weakness on the part of the employee; certainly we can not vary the specific terminology of the Act to meet these alleged weaknesses.'"[*]

V

FREEDOM OF CONTRACT

It was not the intention of the Congress to restrict freedom of contract beyond the necessary purpose of preventing unfair competition in commerce. Likewise, the Congress did not intend to restrict the rights of collective bargaining which it has shown a zealous and consistent purpose to preserve and maintain.

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[*] The District Court, in its opinion (R. 494, 40 Fed. Supp. 4), cited in support of its statement of lack of equality in bargaining the decision of this Court in the case of *Holden v. Hardy*, 159 U. S. 366 at page 397. This case was decided February 28, 1898.

It is also interesting to note that the State of Utah, whose hours of labor statute was under consideration in the Holden-Hardy case, subsequently found it necessary, in order to adopt a new legislative policy (Chap. 59, Laws of Utah, 1937), expressly provided that the period of employment in underground mines should not be more than "eight hours per day computed from the time the men go underground until they return to the surface."

This Court has indicated its intention in the construction of the Act to preserve the freedom of contract. In the case of *Williams v. Terminal Company*, 315 U. S. 386, the Court held, (though in the absence of contract tips were not wages but gratuities to be retained by the employee), that the employer and employee were free by contract to agree that tips constituted wages under the provisions of the Act. The Williams case is especially significant here because there this Court held that a contract, treating tips as wages arose from the publication of an order by the employer to that effect, and the action of the employees in continuing to work in the face of the order. In the case here we have ratification not only by continuing to work, but continuing to work under an express contract negotiated under full bargaining processes establishing wage rates on a "face to face" basis.

This Court also recognized freedom of contract in the case of *Walling v. Belo Corporation*, 316 U. S. 624. In that case this Court used the following language:

> "The problem presented by this case is difficult—difficult because we are asked to provide a rigid definition of 'regular rate' when Congress has failed to provide one. Presumably, Congress refrained from attempting such a definition because the employment relationships to which the Act would apply were so various and unpredictable. And that which was unwise for Congress to do, this Court should not do. When employer and employees have agreed upon an arrangement which has proven mutually satisfactory, we should not upset it and approve an

> inflexible and artificial interpretation of the Act which finds no support in its text and which as a practical matter eliminates the possibility of a steady income to employees with irregular hours. Where the question is as close as this one, it is well to follow the Congressional lead and to afford the fullest possible scope to agreements among the individuals who are actually affected."

The dissenting opinion of Judge Sibley (in the present case) correctly construes the Act by not denying freedom of contract, and in holding that the contracts made here were valid. The decision overruling the application for rehearing recognizes the principle of freedom of contracts, but reaches an erroneous conclusion in stating:

> "We have written in vain if our opinion is to be interpreted as providing a rigid definition of working time, or as upholding the portal-to-portal theory as matter of law, or as denying the principle that in close cases it is well to afford the fullest possible scope to agreements among the individuals who are actually affected. The evidentiary value of such agreements in relation to working time is for the jury or other fact-finding tribunal. We have expounded no rigid definition of working time.—Appendix, p. 89).

We respectfully submit that the opinion does lay down "a rigid definition of working time," and does "uphold the portal-to-portal theory as a matter of law," not only in application to these petitioners, but as a judicial precedent to all other underground mines having similar conditions. It says, in effect, that all time spent underground, exclusive of the lunch period, is working time. If it does not so hold, it has failed to answer the question presented by the petitions in this case for declaratory judgments. The Administrator, in his opinion, stated, and the defendants, pursuant to that opinion, contended, that all underground time except lunch time was working time. Petitioners sought a judicial declaration of the law as to this controversy. They did not deny that any portion of underground time spent at work should be computed as working time, but insisted that time consumed in traveling, or walking, or waiting for transportation was not intended by the Congress to be work time in the face of the established practice and the terms of the wage agreements existing at and prior to the enactment of the Act.

The decision refers the evidentiary value of the established practices and of the wage agreements to the "jury or other fact-finding tribunal." It gives no consideration to the evidentiary value of the established practice and the existing wage agreements as essential factors in arriving at the intent of the Congress.

The original opinion states:

"No contractual agreement that compensation should not be paid for travel-time is valid if in conflict with the Act."

The opinion on rehearing states:

"The evidentiary value of such agreements in relation to working time is for the jury or other fact-finding tribunal."

The first statement, we submit, is sound, and the second statement is in error. Necessarily the field left for the operation of contracts as to what constitutes working time is uniform in every case and in every part of the nation. That question can not be left to the varying determination of each separate jury or fact finding tribunal. On the same evidence one jury might return one verdict and another jury an opposite verdict, and neither verdict could be set aside "if different reasonable inferences may fairly be drawn from the evidence." Each varying decision tends to increase "unfair competition in commerce." Such chaos and confusion can be avoided only by holding that the validity and effect of such contracts are matters of law for the courts to decide.

The employer-employee relationship is founded in contract. Work is what the employee is paid to do. It is conceded by the decision that the Act does not require that the employee be paid for lunch time in the mine nor for traveling time to and fro between the mine and the bath (change) house, but that the parties are at liberty to agree either that such time is work time or that it is not, and if work time, to agree upon the compensation to be paid therefor.

What then is the boundary line between instances where the parties may agree as to what constitutes work time to be paid for as such and cases where such agreements are in conflict with the Act? The Act applies to employees who are engaged in commerce or in the production of goods for commerce. The employees here involved were engaged in the production of goods for commerce. Section 3 (j) of the Act defines when an employee is so engaged. Any contract which would exclude from work time to be paid for, time spent in the actual production of such goods, or, as in this case, in the mining and handling of the ore, would defeat the purpose of the Act and hence would be void. On the other hand, to hold that parties can not agree that compensation shall not be paid for travel time, or that the effect of such an agreement is an evidentiary question for the jury, tends to defeat the purpose of the Act and to promote unfair competition, because the amount of time necessarily spent in traveling to and from the place of actual production varies widely between different places of employment. As said in the dissenting opinion, "There is nothing in the Act to out-law agreements that travel time in getting to and from the agreed place of work is not work time."

Treating the validity of agreements in relation to working time as a question of fact, with their evidentiary value to be determined by the jury, the Court has held that if the ordinary man might fairly have drawn the inference from the evidence that time for which the parties agreed no compensation should be paid was in fact work time, then such finding should not be set aisde. If the validity of agreements as to working time is treated as a matter of law, the conclusion is diametrically opposite — the non-pay time must be clearly work time or the agreement is valid and effective.

To treat the validity of agreements in relation to working time as questions of fact to be determined by a jury leads to confusion which would inevitably arise from the possibility, or even probability, of contrary conclusions. To treat the validity of agreements in such relation as questions of law results in uniformity of conclusions, and insures stability of economic relationship and conditions.[*]

The Act was intended to have application for a permanent period of time and on a national scale. To operate successfully for the future, the parties must be free to contract as to any time that is not clearly work time. What is not clearly work must be left subject to the contract of the parties.

The Act has large economic significance. In putting a floor under wages per hour it would protect large numbers of unorganized and underpaid employees not yet protected by the process of collective bargaining. In putting a ceiling, though a somewhat elastic ceiling, above the number of hours per week, it would spread employment among as many employees as practicable. Both the minimum wage and the maximum hour provisions would tend to increase purchasing power among those who would exercise that power and thereby would increase the demand for goods and bring about increased production to the benefit of employers as a whole and of the public generally. Such benevolent purposes of the Act would fail of accomplishment if the burdens of the increased wages should fall unequally upon employers engaged in the same industry. The Act was intended to protect rather than to penalize the employer who paid his employees in excess of the minimum wages and worked them for ~~less than the~~ maximum hours. The Act looked beyond the individual employer and employee to the industry as a whole, to the consumer and to the public generally.

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[*] The suit brought (Aug. 31, 1943) by coal mining employees of Tennessee Company as a class action for all employees who are members of the United Mine Workers of America is an action at law in which recovery is sought for each employee for overtime compensation covering traveling time. Under the decision here under consideration, we respectfully submit, if the "evidentiary value of the agreements in relation to working time is for the jury," the jury in the case above referred to will be given the right to determine what constitutes work in the coal mines of the Tennessee Company and the validity vel non of any agreements in respect thereto. We respectfully submit that this can not be the law.

The rule enunciated by the Court is, we submit, much too narrow to be applied to an Act having such broad economic operation. That rule seems to be that the employer must pay wages whenever the employee is subject to his order or control. Applied to its logical conclusion, it would seem to include the lunch hour also, for the employee must eat his lunch within the mine and to some degree is subject to the employer's control. It would include all the time that the employee is required to be on the employer's premises. It would include (as was the original contention of defendant unions) all the time spent in the bath house changing clothes. That rule fails to distinguish between purposes and degrees of control. At times the control of the employer is slight and is simply for the purpose of safeguarding his employees;[10] at other times the purpose is to produce the goods to be sold to the consumer. The rule or standard applied by the Court of Appeals does not look beyond the individual employer and the individual employee. The true rule, we submit, looks to a passing on of economic benefits. The consumer purchases the goods and pays the employer for the goods produced. The employer in turn must pay the employee for work going into the actual production of those goods. He may pay the employee for his time in getting to and from the place of production, in gathering his tools and equipment, and other time preparatory to entering upon or leaving the process of production of goods. That, however, is a matter of contract between the parties."

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[10] The undisputed evidence in the instant case shows that the employee while riding the skip in and out of the mine was subject to safety rules but was never under the direction of and was not accompanied by his supervisor—(R. 1305, 1381, 1387, 1949-50 and 3750).

"The extent to which this principle of the validity of agreements being a question for the determination of the fact finding tribunal can be carried is illustrated by the tribunal of the Administrator, since the judgment in this case was rendered by the District Court, in the case of *Walling, Administrator v. Gulf States Paper Company,* now pending on appeal in the Circuit Court of Appeals for the Fifth Circuit. In that case the Administrator contended that, under this decision, the time spent by woodcutters, for their convenience, in riding in employers' trucks from their homes to the woods was work time notwithstanding the established custom for years and the contracts between the parties were to the contrary.

The Administrator, in a recent ruling has held that time spent by the employees in changing clothes under uncomfortable conditions due to temperature, etc., was work time without any consideration being given to previous custom and existing contracts.

The Circuit Court of Appeals for the Fifth Circuit, in the case of *Skidmore v. Swift and Company* (in Mss.) has recently sustained an agreement between the employer and employees that the employees would stay in the fire house of the employer during the night and should receive compensation only for the time actually consumed in answering fire calls.

These rulings and decision illustrate the difficulties and complexities which will arise if this question is left for the determination of "juries or other fact finding tribunals."

Petitioners respectfully submit that the decision interferes with the right of collective bargaining. Under the rigid definition of working time as given by the decision the parties are deprived of the opportunity to validly contract in reference to the method of computing and paying wages in underground iron ore mines.

In the case of *Fleming v. Belo Corporation*, supra, at page 214, the Circuit Court of Appeals for the Fifth Circuit said:

> "Freedom of contract, within constitutionally valid limitations, is, in the United States of America, one of the fundamental freedoms and this is particularly so in regard to labor relations. When, then, it is contended as here, that a statute has cut off or limited this freedom, a litigant must point to something more than his opinion that it ought to be cut off or limited, must point to language clearly and validly so providing. There is no more authoritative principle in the field of labor law than that, subject of course, to valid statutes designed to prohibit substandard conditions and unfair labor practices, wages, hours, and work conditions are the proper subject of contract between employer and employee and their agreements must be, and are, given full effect in the courts."

If the incubus of the judicial precedent of this decision is removed and the parties having the most interest, the greatest knowledge and the longest experience in underground mining are permitted to negotiate and reach an agreement on the question of traveling time compensation, the chaos which, as predicted by Judge Sibley in his dissenting opinion, has occurred, would terminate.

VI

THERE EXISTS A JUSTICIABLE CONTROVERSY BETWEEN PETITIONERS AND DEFENDANTS IN REFERENCE TO THE CONSTRUCTION OF SECTION 7 OF THE ACT FOR THE TIME SUBSEQUENT TO MAY 1, 1941.

Petitioners were as much concerned with the construction of the law for the time after May 1, 1941, (the time when petitioners, under the compulsion of the Administrator's ruling, put into effect the "portal to portal" basis of computation and payment of wages) as for the time before.

The facts with reference to this are undisputed. They are not denied or even referred to in either the judgment and opinion of the District Court, or of the Circuit Court of Appeals.

The potential liability for unpaid wages since the effective date of the Act is tremendous and represents a complete windfall to the employees who not only did not expect payment for travel time, but who had expressly contracted that they would not claim payment therefor.

However, the determination, if sustained, adds millions of dollars each year in the future to the cost of petitioners' business.

The undisputed evidence shows that there existed an actual justiciable controversy between the petitioners and the underground employees, and between petitioners and the Administrator,[3] not only as to prior but as to future time; that, under the compulsion of the Administrator's opinion and employees' announced (and pleaded) intentions, petitioners changed to the "portal to portal" basis, at great expense, cost, and loss of production. A judicial declaration was required and requested as to whether or not traveling time was it and of itself a part of the "workweek."

This judicial inquiry the decision failed to answer, and confined its answer to the time prior to May 1, 1941. It predicated this answer on the employees "reporting to the portal," there depositing "their identification checks;" there boarding the conveyance (provided by the company for transportation) coated with grime of the mine" and riding in a "crouched position;" on the danger of "uninsulated wires," and because of instruction and supervision at the portal, etc.[4]

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[3] This was the sole controversy with the Administrator, as set up in his answer.—R. 301). As stated by him in evidence: "I intend to follow the interpretation in question, unless otherwise directed by the authoritative rulings of the court or unless I shall subsequently decide that my prior interpretation is incorrect."—(R. 384).

[4] In some of petitioners' mines, and as to some of the employees in all the mines the employees did not "report to the portal;" in some of the mines there was no "depositing of identification checks," or "boarding of conveyances," or riding in "a crouched position," or "danger from uninsulated wires." The lower court pooled all of the evidence without regard to its application, to parties or mines, but if such had been the evidence as to all the parties and all the mines of all petitioners, and all the employees, these conditions could have been eliminated for the future.

Every one of these basic conditions can be eliminated at much less cost than compliance for all time with the judgment.

Declaratory judgment proceedings are most helpful in permitting parties to conduct themselves in the future with a minimum of damage on account of uncertainties as to their rights under statutes of uncertain meaning.

VII

THE CIRCUIT COURT OF APPEALS ERRED IN ITS APPLICATION OF EVIDENCE

We are not disposed in a brief supporting a petition for a writ of certiorari to discuss the evidence in relation to the findings of the Courts below. We respectfully assert, however, that if and when the writ is granted it can and will be demonstrated by the record in this case that the finding of facts as made by the District Court, and relied upon by the Court of Appeals, is in substantial and determinative matters contrary to the undisputed evidence, and also that the decision was reached by applying to all the petitioners and their employees much evidence which applied to only one or more of the petitioners or to only some of their employees.

CONCLUSION

We respectfully request that the petition for the writ of certiorari be granted.

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APPENDIX

OPINION OF UNITED STATES CIRCUIT COURT OF APPEALS FOR FIFTH CIRCUIT RENDERED MARCH 16, 1943.

IN THE

United States Circuit Court of Appeals

FOR THE FIFTH CIRCUIT

NO. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Appellant,

versus

MUSCODA LOCAL NO. 123, Etc., Et al.,
Appellees.

SLOSS-SHEFFIELD STEEL & IRON COMPANY,
Appellant,

versus

SLOSS RED ORE LOCAL NO. 109, Etc., Et al.,
Appellees.

REPUBLIC STEEL CORPORATION,
Appellant,

versus

RAIMUND LOCAL NO. 121, Etc., Et al.,
Appellees.

Appeals from the District Court of the United States for the Northern District of Alabama.

(March 16, 1943)

Before SIBLEY, HOLMES, and McCORD,
Circuit Judges.

HOLMES, Circuit Judge: These appeals are from a judgment declaring that the working time of underground iron-ore mining employees, comprising the work-week of such employees under Section 7 of the Fair Labor Standards Act of 1938,[1] includes time spent by them on the surface in checking in and out, obtaining and returning tools, lamps, and carbide, and time spent underground from the time they are required to report at the portal of the mine until they emerge therefrom at the end of their shift, less the fixed lunch period during which the employees are relieved of all duties; and declaring further that, since such aggregate working time exceeded the maximum work-week provided by said Act, appellants violated the Act in not compensating the employees as therein provided.

Appellants, corporations principally engaged in mining iron ore, filed separate civil actions under the Declaratory Judgments Act,[2] which were consolidated for trial, and as to which a single judgment was entered without objection. The actual controversy underlying federal jurisdiction related only to the hours of employment during the time intervening between the effective date of the Act, October 24, 1938, and the dates the respective petitions were filed in April, 1941. Upon a pre-trial conference it was agreed that the primary issue was what constituted the working time that made up the work-week of the underground ore-mining employees within the meaning of Section 7 of the Fair Labor Standards Act.

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[1] 29 U. S. C. A., Sec. 207.

[2] 28 U. S. C. A., Sec. 400, 52 Stat. 1060.

Section 7 of the Act requires every employer to pay overtime wages to any employee that is engaged in commerce or in the production of goods for commerce for a work-week longer than 44 hours between October 24, 1938, and October 23, 1939, longer than 42 hours between October 24, 1939, and October 23, 1940, and longer than 40 hours thereafter. The Act defines the word "employ" to include "to suffer or permit to work." It is without dispute that, during the period involved in this suit, each employee represented by appellees was engaged in the production of goods for commerce, and that each appellant required its underground employees to work 40 hours each week at their regular working places in the depths of the mine. Whether, in addition thereto, such employees were entitled under the Act to have included in the computation of their work-week the time consumed each week in traveling from the portal of the mine to their regular working places, and in returning therefrom to the portal at the end of the shift, plus the aggregate of the time consumed each week by such employees in checking in and out and obtaining and returning lamps, carbide, and tools on the surface, or whether they were entitled to have any part of such time included in the working time comprising the work-week, is the precise question for decision.

The Act was drafted for application on a national scale, and it does not undertake to define what is working time in any particular industry or class of industries. What constitutes working time is a question of fact depending upon the particular circumstances, and is a matter for the determination of the courts in controverted cases. In the great majority of instances no question of this nature will arise, but in doubtful cases such as this the issue must be determined in accordance with common sense and the general concept of work or employment; and, as in other cases, the appellate court is controlled by the rule that the finding of the trial court upon decisive questions of fact must be upheld unless it is clearly erroneous.

There is no real dispute as to the facts upon which the travel-time question turns, but different inferences as to the working time may fairly and reasonably be drawn from these facts. The parties on both sides of this controversy petitioned the court below to decide the controverted issues between them, i.e., to find the facts, declare the law, and enter a declaratory judgement accordingly. The jurisdiction of the court below and of this court having been rightfully invoked, we are compelled to decide the issue as to work-time without regard to what may be the result of an accounting between the parties. Courts should not consider the consequences of their legal decisions, except in trying to ascertain the legislative intent in enacting a statute of doubtful meaning; and, whatever may be said as to inferences from the facts, the law of this case is not doubtful. Moreover, no one can say at this time what will be the result of an accounting to be had in the future. We must limit our decision to the issues presented.

At the beginning of the shift the underground employees were required to report at the portal of the mine at a specified time, there to deposit their identification check at the tally office and to board the conveyance provided by the company for transportation to a man-unloading station inside the mine. The men rode in skips or ore cars, which were usually coated with grime of the mine, and assumed a crouched position to minimize the hazard of hitting their skulls against the low tunnel ceiling. Upon reaching the underground station the men left the skip and walked the remaining distance to their respective working places. They were obliged to exercise caution at all times to avoid contact with uninsulated electric wires and other hazards, and carried several pounds of equipment to be used in their work during the day. The men frequently were given instructions as to when and how they should perform their respective duties before the skips left the portal of the mine, and at all times during the descent they were subject to company rules and under company control. The return to the portal at the end of the shift was accomplished in the same manner and under the same conditions.

After considering these and other facts of a similar nature, the court below found as a fact that all of the time thus consumed was work-time and should have been included in the computation of the employees' work-week.[1] Since this travel-time was spent on the employer's premises and subject to its directions, since it exacted mental and physical exertion from the employees under conditions both hazardous and unhealthful, and since it was a course of action pursued solely as a necessary incident to the prosecution of the employer's business, we are unable to say that this finding of the court below was clearly erroneous.

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[1] Tennessee Coal, Iron and R. Co. v. Muscoda Local No. 123 et al. 40 Fed. Supplement 4.

Appellants contend that the industrial history and contractual course of dealing between the parties showed conclusively that travel-time in these iron-ore mines was not working time. It may be conceded, *arguendo*, that for twenty-five years prior to 1938 iron-ore miners had not been compensated for travel-time, and that even after 1938 the parties to this suit had entered into contracts whereby it was agreed that no wages should be paid for travel-time; but the very purpose of the Fair Labor Standards Act was to eliminate labor conditions detrimental to the general welfare of workers, and the remedial machinery set up to accomplish that purpose regulated hours of work and rates of pay. Industrial custom does not warrant the continuation of abuses that the Act was created to rectify; and no contractual agreement that compensation should not be paid for travel-time is valid if in conflict with the Act. The record discloses that this agreement was not a simple statement of admitted fact, but was a compromise adjustment of real differences reached by way of negotiation and concession, and that the workers, though vainly, insisted upon their right to be paid for travel-time.

With respect to time spent by employees checking in and out, and procuring and returning tools, lamps, and carbide, the case stands differently. It appears that the workers were obliged to furnish their own tools, lamps, and carbide, and were free to exercise their own judgment as to when, where, and how they should procure their equipment. The company merely instructed them as to the equipment needed, and did not attempt further to regulate the matter. The checking system used by appellants required the employees only to deposit a metal disc at the tally house when arriving for work, and to pick it up again at the end of the shift. In addition to the practical difficulties incident to the computation of isolated moments so elusive in character, we think these pursuits should not be computed as work-time, since they fall within the category of duties incident to qualifying the employee to perform his work rather than within the scope of his actual employment.

Applying Section 7 of the Act to the facts of this case, we hold that the time spent by underground mining employees of appellants, from the time they were required to report and did report for work at the portal of the mine until they returned to the portal of the mine at the end of the shift, less the regular lunch period when they were relieved of all duties, constituted working time comprising the work-week; that appellants have not compensated said employees for some of said working time; and that reference of the cause to a master for calculation of amounts due said employees was proper.

It is ordered that the judgment appealed from be, and the same hereby is, modified so as to conform to our holding as to work-time. As so modified, the judgment is affirmed; and the cause is remanded to the district court for further proceedings not inconsistent with this opinion.

SIBLEY, Circuit Judge, Dissenting:

The judgment about to be entered, in my opinion, misconstrues and misapplies the Fair Labor Standards Act, and visits on the appellants most unjustly a heavy pecuniary penalty; and if followed in other cases and by other courts will cause great confusion in the iron and coal mining industries at a time when the country can least afford confusion.

The Act does not define "work time" or even "work." It may apply to each and every industry. What would be work in one industry may not be in another. It seems to me that a man is at work, for the purposes of the Act, when he is doing what he is hired to do. It may involve mental or physical effort, or it may consist in simple presence. It all depends on the contract of hiring. The Act did not intend to upset and nullify the wage contracts of force in the various industries. It simply fixed minimum wages for work done under them, and maximum hours. Of course contracts yield to the Act on these points, but they still control as to the work to be done, and the way it is to be done, and as to the scale of pay if not less than the minimum fixed by the Act. These things are left to bargaining, and especially to collective bargaining under the principles of the National Labor Relations Act.

No question is older in such bargaining than the question whether "travel time" is to be included in "work time." The worker has always thought he ought not to lose all of the time necessary to go to and from his place of work; the employer has thought he ought not to pay for time that produces no work results. The dispute has been resolved in various ways in employment contracts for pay estimated by the hour. Plumbers demand and get pay from the time they leave their place of business to go to a job until they return. Railroad trainmen get pay from the time they report for duty, no matter what delay may occur in the starting of the train. Railway track-men also are paid from the hour of their assembly at the section point, though they may ride their motor car for miles before doing any track work. On the other hand carpenters, masons, and most artisans and laborers are paid for work only after they take up their tools on the job. As to coal and iron ore miners, traditionally they have been paid according to production, but their modern contracts have always included an express agreement as to their work time, and that agreement has excluded from work time the travel time in reaching the coal seam or ore bed, which were agreed to be the place of work. This is true of the collective bargains made by strong unions throughout the Appalachian region, as it is true of the bargains under which the miners in this case have worked.[1] Their work time is agreed to be that spent at

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[1] On Sept. 18, 1933, the President approved a code for the Bituminous Coal Industry under the National Industrial Recovery Act which provided: "Seven hours of labor shall constitute a day's work and this means seven hours of work at the usual working places for all classes of labor exclusive of the lunch period, whether they be paid on the day, or the tonnage, or other piece work basis."

The Appalachian agreement, which was and is the basis of the Union contracts with the eastern coal mines contains the provision: "Seven hours of labor shall constitute a day's work. The seven hour day means seven hours work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

Under these contracts "the usual working place" for miners has been universally understood to mean the face of the coal seam, and "travel time" to reach the seam is not "work time." The con-the ore bed. The employers' arrangement to get them to that place reliably and safely is primarily for the benefit of the miner and is not work for the employer, according to these agreements. The discomforts and dangers of the trip, as well as the loss of time, are all considered in fixing the rate of pay for the work of extracting the ore, and the pay scales here involved are far above the minimum fixed by the Act. The miner's work is hard and dangerous, but his pay is supposed to compensate for all this. If it would be better to include travel time in work time, it ought to be done by a new bargain in which rates of pay are also reviewed. If the change is to be by a special statute, (some western States have such statutes), it will operate justly *in futuro,* and not by unexpected penalty, as here.

There is nothing in the Act to outlaw agreements that travel time in getting to or from the agreed place of work is not work time. This is true though the employer may organize a means of transportation and make rules for its use. The agreements here that work time includes only time at the face of the ore bed are not illegal. Digging out the ore is what the miners

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tracts and the practice have been of this sort since the eight hour day was established in 1898.

The contract between appellant Tennessee Coal and Iron Company and the union of its miners signed in October, 1938, Sect. 4, defined a day's work as eight hours, and a week's work as forty hours. "The eight hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or paid on the tonnage basis." As in coal mining, the usual working place of the miner has always been the face of the ore bed. The other appellants had more or less formal contracts to the same effect. Travel time has never been paid or expected under any of them.

agree to do, and for that they are paid. Getting their tools together and riding or walking to the agreed place of work is not, by force of any law, work done for the mine owner. No one, I suppose, would say that if a group of miners who had spent an hour riding to work decided of their own will not to dig any ore and spent another hour riding back, they had done any work for which they should be paid by force of the Act.

Though these miners are paid according to their production of ore, they may not under the Act be employed, that is, "suffered or permitted to work," longer than the maximum hours per week without increased pay. These mines provide against that by fixing the hours at which they admit the miners and require them to leave, and especially by limiting the hours during which power is furnished for their drills. Section 7 of the Act has not been violated in this case unless the travel time is counted as work time, contrary to the contracts of employment and contrary to the expectations of those concerned for the past four years. Identical provisions in the employment contracts of the coal miners were decided by the Administrator to be good under the Act, and his conclusion was published, and thought applicable to the contracts here involved, until recently another position was taken as to iron mines.

It is now proposed to assess against these appellants as back pay for overtime an estimated quarter of a million dollars to be doubled by way of penalty, to compensate the miners for their time in going to and from their place of work, in the face of their agreements that this time was not in their work time. They are to get three times as much per hour for riding and walking to and from the work they were hired to do, as they get for doing the work itself. The injustice of it to me is shocking.

If the decision stands and is followed, chaotic conditions will ensue, and this is good ground to believe that Congress intended no such thing. If for travel time triple back pay is due by these mines, it is due by all the iron mines having similar wage agreements. Many will go broke, or have to cease operations, causing a loss of jobs to their men. The new mines are not deep, and travel time is negligible, but one of the mines here involved is old and extensive, and the travel time is about one and a half hours per day. This is nearly a quarter of the present work day of seven hours. If that time is to be unproductive, but as costly as the production time, this mine can hardly survive. The wage scales for each mine everywhere will have to be renegotiated to adjust business for the future to the new conditions, with the risk of discontents and strikes.

The decision will have to be applied also to the coal mines. Coal and iron ore occur in similar beds, and are mined in the same general way. In both, the old mines have the same difficulties. The collective agreements made by strong unions throughout the Appalachian country all contain the provision as to worktime we are now dealing with. When the Administrator first proposed to contend for what this court is about to do, it was the unions who objected most cogently, and successfully. The letter of the Legal Director of

United Mine Workers of America[a] to the Administrator which appears in this record is a very strong argument against the invalidating of the agreements. That argument prevailed then. It ought to prevail now, for it applies as exactly to the iron ore workers as it did to the coal miners. The chaos predicted for the latter will come to both if the Act is so interpreted as to invalidate all these agreements.

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[a] Letter of Earl E. Houck to Philip B. Fleming, Administrator, dated July 9, 1940. That letter states, among other things: "Travel time was never considered as a part of the agreement or obligation of the employer to pay for in this industry, nor as hours worked by the employees, and this has been the case since the eight-hour day was established in the industry—April 1, 1898. It is urged that any ruling requiring such a change in the custom, tradition, and contract provision so as to change the work day from 'seven hours' work in the mines at the usual working places' to any new standard for the measurement of time worked, and to the adjustment of wage rates made necessary thereby, would create so much confusion in the bituminous industry as to result in complete chaos, and would probably result in a complete stoppage of work at practically all of the coal mines in the United States."

A True copy:
Teste:

OAKLEY F. DODD,
Clerk of the United States Circuit Court of
Appeals for the Fifth Circuit.

OPINION OF UNITED STATES CIRCUIT COURT OF APPEALS FOR FIFTH CIRCUIT ON APPLICATION FOR REHEARING RENDERED JULY 27, 1943.

IN THE

United States Circuit Court of Appeals

FOR THE FIFTH CIRCUIT

NO. 10278

Tennessee Coal, Iron & Railroad Company,
Appellant,
versus
Muscoda Local No. 123, Etc., Et al.,
Appellees.
Sloss-Sheffield Steel & Iron Company,
Appellant,
versus
Sloss Red Ore Local No. 109, Etc., Et al.,
Appellees.
Republic Steel Corporation,
Appellant,
versus
Raimund Local No. 121, Etc., Et al.,
Appellees.

Appeals from the District Court of the United States for the Northern District of Alabama.

ON PETITION FOR REHEARING

(July 27, 1943)

Before SIBLEY, HOLMES, and McCORD,
Circuit Judges

HOLMES, Circuit Judge: In the petition for a rehearing it is stated that the court's opinion in this case is far-reaching in its effect, extending to all iron-ore, limestone, and coal-mining employees in the United States, and "is of the greatest concern to millions of people and the general public." In the same petition it is argued that the facts upon which the court's conclusion was based "applied to only a few of the appellants' employees and never applied to a great many employees." Passing over the inconsistency of these statements, it is only necessary to say that if the facts on which our opinion is based apply only to a few of appellants' employees, then the law as we have declared it affects only those few, because the law arises out of the facts: *Ex facto jus oritur.*

The parties agreed below that, if the issue as to working time should be decided against appellants, the court should then determine whether or not the employees were entitled to recover and, if so, how much. In the absence of this agreement there was nothing to show that reference to a master for an accounting was necessary after the issue as to working time was finally adjudicated. A declaratory judgment is for the purpose of finally settling an actual controversy, and ordinarily should not be entered if it will not do so. We do not understand that appellants even now are objecting to the reference. They seem to think they have been cut off from presenting defenses to claims against them on the accounting; but in this they are in error except that the declaratory judgment herein as to what constitutes working time will be *res judicata* in any controversy that may arise between the same parties. In order to remove all doubt on this subject, it is ordered that our former opinion and judgment be amended by striking out the following: "that appellants have not compensated said employees for some of said working time."

The apparent confusion in which the appellants find themselves is doubtless caused by their failure to recall the nature of the actions that they themselves originally instituted. This appeal involves three separate civil actions that were consolidated for trial in the court below and disposed of by a single judgment. All of these suits were brought under the Federal Declaratory Judgments Act, which provides that in cases of actual controversy the courts of the United States shall have power to declare the rights and other legal relations of any interested party petitioning therefor, and that such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

This is a procedural statute that provides an additional remedy for use in cases of which the federal courts already have jurisdiction. It should be given a liberal construction and application.[1] A court may not arbitrarily refuse to exercise such jurisdiction in a proper case, but must decide the issue presented in accordance with the law and the evidence. The procedure is expressly provided for in number 57 of the federal rules of civil procedure, and the technicalities of equity practice do not prevail therein. The courts are limited in their jurisdiction to cases of actual controversy of a justiciable nature, thus excluding an advisory decree.[3]

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[1] Judicial Code, Sec. 274d, as amended; 28 U. S. C. A. 40; Rule 57 of Federal Rules of Civil Procedure.

[2] Miss. Power & Light Co. v. City of Jackson. 116 F. (2) 924, cert. denied, 61 S. Ct. 741.

In the case before us both sides joined in the petition for a judicial declaration of the rights and legal relations of the parties, and no objection was made to a consolidation of the cases for trial or to the entry of a single judgment containing such declaration. On tl contrary, at a pretrial hearing it was agreed by all of the parties that the primary issue in controversy was what constituted the working time that made up the workweek of employees within the meaning of Section 7 of the Act. The contention of each side was stated, and it was agreed that, if the court decided the above issue against appellants, it would then determine whether appellees were entitled to recover and, if so, how much. The rights of all parties were reserved to present their respective claims and defenses upon an accounting. From these and other agreements in the record,[4] it appears that there is only one controverted issue before us at this time, which is what constitutes the working time of these underground ore-mining employees.

The objections to the majority opinion raised on the petition for rehearing may be subdivided, and stated under three heads, as follows:

(1) That the declaration is too narrow to cover all but a few of appellants' employees.

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[3] Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 325, 56 S. Ct. 466, 473, 80 L. Ed. 688, 699.

[4] R. pp. 278-283.

(2) That it is so restricted as to time as to include only the period extending from the date of the Act to the filing of suit.

(3) That this court erroneously declared the law as to when the working time of the employees began and ended.

As to the first objection, we have previously pointed out that the declaratory judgment is limited by the facts of the case. It is decisive of the exact controversy that appellants petitioned the court to determine and agreed was the primary issue to be decided. They asserted, and asked the court to say, that no part of the time spent by their underground employees in the bath house, or in going to and from the bath house, or to and from the portal, or to and from the man-loading station, or to and from their actual working places, constituted a part of the workweek under Section 7 of the Far Labor Standards Act. We held, in substance, that no part of the time spent in going to and from the bath house, or in the bath house or in going to and from the portal, was working time, but that the employment began at the time the employees were required to report and did report, at the portal for departure underground, and ended upon their return thereto at the end of the shift less the lunch period. If not required to report at any special time, as contended, then tl compensatory employment should begin at the time of departure for the trip underground.

The second objection is that this court did not declare the rights and legal relations of the parties as they existed or may exist subsequent to the date suit was filed. There are no facts in the record to support a finding covering this period, and no finding thereon was made by the district court; but we were told at the hearing, and it is stated in one of the briefs, that after the filing of these suits wages were paid upon a portal-to-portal basis. We cannot enter advisory judgments upon hypothetical facts. The declaratory judgment procedure does not change the essential requisites for the exercise of judicial power. The courts are limited in their jurisdiction to cases of actual controversy of a justiciable nature.[5] We have, therefore, decided the only actual controversy over which we have jurisdiction; and the plenary effect of the judgment as *res judicata* is ample protection for the future.

The third point stressed by appellants is that a mixed question of law and fact was submitted to the district court, in answer to which it incorrectly found the facts and erroneously declared the law. On appeal both contentions may be reduced to a single question of law, which is: Was the finding of fact of the court below as to working time clearly erroneous? In reviewing the decision of the trial court we are bound by Rule 52 of the federal rules of civil procedure, which provides that: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

Even where there is no dispute about the facts, if different reasonable inferences may fairly be drawn from the evidence, an appellate court is forbidden to disturb the findings based on such inferences unless they are clearly erroneous. That this dispute turns upon questions of fact does not withdraw it from judicial cognizance in an action for a declaratory judgment. "The legal consequences flow from the facts and it is the province of the courts to ascertain and find the facts in order to determine the legal consequences. That is every day practice."[*] The parties saw fit to submit the issues of fact to the court, without a jury, but this does not render indistinguishable the issues of law and fact. What constituted the workweek of these employees and how many hours they were suffered or permitted to work are questions of fact.

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[5] Nashville, Chattanooga & St. Louis Ry. v. Wallace, 288 U. S. 249; Ashwander v. Valley Authority, 297 U. S. 288, 325, 56 S. Ct. 466, 473, 80 L. Ed. 688, 699; Aetna Life Ins. Co. v. Haworth, 300 U. S. 227, 57 S. Ct. 461, 81 L. Ed. 617, 108 A. L. R. 1000; Gully, Tax Collector v. Interstate Nat. Gas Co., 82 F. (2) 145 (C. C. A. 5th).

Upon reviewing the judgment as to the facts, an appellate court looks first to the findings of the court below, and then to the evidence in the record to ascertain whether or not those findings are clearly erroneous. The character of the controversy and the issue to be determined are the same as if this were merely an action by an employee for damages under Section 7 of the Act, viz: How many hours constituted his workweek or how long did his employer suffer or permit him to work? In its ultimate aspect this is a dispute over wages, only one element of which is in controversy: the working time, which is a factual quantity of wages just as the regular rate is a factual element of wages. These two factors multiplied together form the product that indicates the compensation.

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[*] Aetna Life Ins. Co. v. Haworth, 300 U. S. 227, 242.

The statute simply says that no one shall be employed for a workweek longer than the hours stated unless the employee receives compensation for the excess hours at a rate not less than one and one-half times the regular rate. That is all the pertinent law involved in this controversy. It is the only statutory provision necessary to be construed. It must be liberally construed.[1] The language is plain, it requires no outside aid in its interpretation; it contains simple words that are in common use; and, under fundamental rules of construction, such words must be given their usual and ordinary meaning.[2] The statute itself defines the word employ to include to suffer or to permit to work. The legislative intent is clear, but it is expressed in general terms and does not extend to particular instances. The myriads of circumstances in which it would be necessary to determine working time in individual cases or classes of cases could not be covered with particularity by statute.

The record in this case presents no substantial question of law except whether or not the finding of the district court as to working time was clearly erroneous. This depends upon whether the inference, which was the basis of the finding, was a reasonable one. As modified by us, we think it was, because the ordinary man might fairly have drawn it from the evidence. It was a deduction that the average disinterested person might naturally have made from the facts. The deduction being warranted by the facts, it was not arbitrary and not clearly erroneous. This being true, the rule above quoted is that the finding "shall not be set aside."

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[1] Bowie v. Gonzalez, 117 F. (2) 11; Carleton Screw Products Co. v. Fleming, 126 F. (2) 537.

[2] Hamilton v. Rathbone, 175 U. S. 414, 421; Mackenzie v. Hare, 239 U. S. 299, 308; Caminetti v. United States, 242 U. S. 470, 485; Louisville and Nashville Railroad Co. v. United States, 282 U. S. 740, 759.

These mines are located in Alabama. The contract of employment is being performed there, and the law of that state governs its performance subject to the overriding provision of the federal act that requires payment to employees of additional compensation for employment in excess of the hours specified. This controversy is over the amount of wages that should be paid; it turns upon the number of hours that the miners were employed within the meaning of the Act. There is no decision of an appellate court directly in point, though there is one from a federal district court in Idaho.[9] Workmen's compensation cases are not very helpful; they prove too much;[10] but one of them is of value not as a compensation case but as an authority to support our ruling that what is working time is a question of fact."[11] There is a decision under the Hours of Service Act[12] wherein the Supreme Court held that members of a train crew under orders, liable to be called at any moment and not at liberty to go away, were none the less on duty when inactive. The court said: "Their duty was to stand and wait."[13]

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[9] Sunshine Mining Co. v. Carver, 41 Fed. Supp. 60, wherein the court held that time spent by miners in traveling from portal of mine to their usual place of work and back to portal should be included in hours worked, for which they were entitled to compensation under the Fair Labor Standards Act. See also Sirmon v. Cron & Gracey, 44 Fed. Supp. 29.

[10] In such cases the employee is generally protected while on or about the premises of his employer. In Jett v. Turner, 110 So. 702, the Supreme Court of Alabama said (p. 704):

> "While the employee is being transported by the employer pursuant to the contract of employment, it cannot be questioned they have entered upon the day's work wherein mutual duties of employer and employee are presently being performed. The pay of the employee has begun, not in wages, but in service. . . . "

The law in dispute in the instant case covers less than a page,[14] but the facts are contained in seven volumes of a printed record of nearly five thousand pages. The federal act does not supersede the local law in the several states except to the extent of a conflict between them. It is for this reason that we attach im-

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See also Overton v. Belcher, 168 So. 442; Moss v. Hamilton, 174 So. 622.

Moss Tie Co. v. Tanner, 44 F. (2) 928, was a case from the 5th Circuit under the Longshoremen and Harbor Workers Compensation Act, 33 U. S. C. A. 901 et seq., holding that an employee is generally in the course of employment while going to or from place of work by only practical route.

In Bountiful Brick Co. v. Giles, 276 U. S. 154, under the Workmen's Compensation Act of Utah, the United States Supreme Court said that the employment may begin in point of time before the work is entered upon and, probably as a general rule, may be said to begin "when the employee reaches the entrance of the employer's premises where the work is to be done."

[11] Overton v. Belcher, 168 U. S. 442.

[12] Act of March 4, 1907, c. 2939, 34 Stat. 1415.

[13] Missouri, K. & T. Ry. Co. v. United States 231 U. S. 112, 119.

[14] No employer shall employ any of his employees for a workweek longer than 44, 42, or 40 hours, respectively, "unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one half times the regular rate at which he is employed." Sec. 7 (a) of Act of June 25, 1938, c. 676, 57 Stat. 1063, 28 U. S. C. A. 207.

portance to an Alabama decision distinguishing between a finding of fact and a conclusion of law."[9] In that case the court did not discuss the distinction, but what courts do is sometimes more important than what they say; and this is what the Alabama court did: Upon an issue as to the relation between the workman and the employer, it set aside the trial court's conclusion of law as inconsistent with its finding of fact. If the status of a workman when injured on the defendant's premises is a factual condition, the same is true as to the activities of miners. In the case cited we find the Supreme Court of Alabama drawing the distinction between questions of law and fact. The same distinction exists in federal law and procedure, and there is nothing to the contrary in the Fair Labor Standards Act.

If the Alabama law governs, then why does not the agreement as to rates of pay and hours of employment prevail? The answer is this: It does except to the extent that the agreement conflicts with the paramount provisions of federal law. No agreement as to the hours worked or as to the time of employment is valid if the actual employment is longer than the time stipulated and is in excess of the hours specified in Section 7 of the Act. Whether one is working, resting, idling, playing, or preparing to work is as much a matter of fact as whether one is asleep or awake, or is laughing or crying. In *Skidmore v. Swift and Co.*, . . . F. (2) . . . . . this court recently held, in an action for overtime compensation under 29 U. S. C. A. 207, that the burden was on the employees to segregate the actual hours of employment from the time spent by them in playing, sleeping, bathing, shaving, and dressing. So we say the Act does not define these instances; their peculiar character must be determined by evidence. Two people may be in swimming, an instructor and his pupil; one will be working and the other playing. The working time of every miner is a definite controlling fact that can and must be finally determined in order to fix the amount of wages due him under the federal statute. It is a fact that cannot be found in any statute or decision or law book (except statutes not applicable in this case), but must be determined by the court or jury in any justiciable controversy wherein a real issue arises with respect thereto."

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[9] Overton v. Belcher, 168 U. S. 442.

In a supplemental brief, one of the appellants says

"The court below found the following: The employees were required to report at the beginning of a shift in time to catch the vehicle on one of its trips underground. After reporting at the mouth of the mine the men were daily subject to instructions by the company, and frequently were given their first instructions of the day prior to entering the slope. They were forbidden to enter the mines until their brass checks had been deposited at the tally house. At this point vacancies in working crews were ordered filled by company officials; the head miner or crew foreman began to assemble his crew and to issue orders to its members. When the miners reported at the mouth they were in their working clothes and had their indispensable lamps. The loading of the men into the vehicle in which they were to be transported, as well as the speed and schedule of the vehicle, were under the control and supervision of appellants. They required the men to ride rather than to walk, and required certain ones to ride on particular trips. The miners, being under the disciplinary rules of the company and the supervision of its officials, were subject to conditions peculiar to their occupation from the time they entered the portal until their exit therefrom.

that the effect of our decision, the plain and definite holding of the majority, is that as a matter of law the time consumed in traveling from the portal of the mine to the face and in returning therefrom to the portal "must be included in the working time that makes up the work-week of every ore-mining employee within the meaning of Section 7 of the Fair Labor Standards Act." We did not so hold, and such should not be the effect of our decision.

We have written in vain if our opinion is to be interpreted as providing a rigid definition of working time, or as upholding the portal-to-portal theory as a matter of law, or as denying the principle that in close cases it is well to afford the fullest possible scope to agreements among the individuals who are actually affected. The evidentiary value of such agreements in relation to working time is for the jury or other fact-finding tribunal." We have expounded no rigid definition of working time.

The Act fails to provide one, and we should not do what was deemed unwise to do by legislation. The Congress probably failed to define working time for the same reason that it refrained from attempting to define the regular rate of pay, namely, "because the

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"Agreements as to working time or the rate of pay are not conclusive if the parties do not act in conformity to the agreements. The court below found that during approximately sixty years of iron-ore mining in the Birmingham district red-ore miners had been paid without regard to the number of hours spent daily at the face or at any specified place or station; and that there had never been any custom under which the miners were paid solely for time actually spent at their particular stations underground.

employment relationships to which the Act would apply were so various and unpredictable.'"

Appellants sought by declaratory judgment to obtain a rigid definition of working time favorable to them. They now chide us for laying down such a definition against them. We did not do either; we merely refused, because not clearly erroneous, to set aside a finding supported by evidence as to what constituted working time of employees in the particular circumstances. The Act of Congress in this respect differs from the legislation of those mining states that limit work-time in underground mines to eight hours per day, and that include in this reckoning all time spent underground."

The pertinent distinction between such state legislation and the Fair Labor Standards Act is that the state legislatures themselves drew the inference of fact as to the working time of miners and enacted a general law on the subject, whereas the Congress failed to pro-

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"Walling v. Belo Corporation, 316 U. S. 624, 634, 86 L. Ed. 1716, 1728.

"Arizona Laws of 1912, c. 28. Sec. 2 & 3, p. 59; Arizona Code Ann. (1939), Vol. 4. Secs. 56-115; Utah Laws of 1937, c. 59, amending Rev. Stat. (1933), Secs. 49-3-2. Cf. Nevada Comp. Laws (1929), Vol. 5, Sec. 10237. In the Wyoming statute an express disclaimer was inserted excepting "time consumed in going to and returning from work." Wyo. Rev. Stat. Ann. (1931), Secs. 63-103, 63-107. The Nevada statute limits underground work to eight hours, and provides that this shall "include the time employed, occupied, or consumed from the time of reaching the point of employment or place of work in any underground mine, and in returning to the surface from said point or place of work, and that it is the intent and purpose of this act that the period of time between arriving at the point or place of work, in any underground working, and returning to the surface from such point of work shall not exceed eight (8) hours within any twenty-four hours."

vide a general rule or definition in any particular industry. As appellants themselves have pointed out, Section 7 is not limited in its application to any single industry, but is designed to provide a law as to overtime compensation for every sort of work to which the statute is applicable. A detailed code for each industry would have been utterly impracticable. Application to each particular situation of the uniform rule laid down by Congress was wisely left to the courts. Therefore, in actions under the Fair Labor Standards Act, the courts must decide justiciable controversies as to working time upon the law and the facts in accordance with the principles governing their jurisdiction and procedure. Unless the facts are undisputed and only one reasonable inference may fairly be drawn therefrom, what is working time is always a question of fact for the court or jury. In view of the diverse legislation above cited, and the general diversity of opinion on the subject, it cannot successfully be argued in this case that only one fair and reasonable inference may be drawn from the facts and circumstances in evidence.

Although from a state court decision,* the following is highly persuasive upon the point under discussion:

> "The trior of an issue of fact, whether judge or jury, where the ultimate fact to be proven depends on the surrounding facts and circumstances of the transaction out of which the ultimate fact grew, must by process of reasoning and deduction find the ultimate fact. It, from the undisputed facts and circumstances, two reasonable inferences of fact may be

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*Huckaby v. Jenkins, 121 So. 130, 131, 153 Miss. 359, 361.

drawn, which inferences are conflicting, and the trior of the issue of fact has found in favor of one as the more reasonable, such finding will not be set aside on appeal, unless against the overwhelming weight of the evidence.

"The chancellor in this case heard and saw the witnesses testify, and observed their demeanor on the witness stand. It could have been reasonably inferred from the undisputed evidence that the transfer of the bank deposit was intended as a gift absolute, and, on the other hand, it could have been reasonably inferred that it was a transfer in trust. The chancellor found that the latter was the more reasonable inference. The two inferences, of course, were conflicting. The chancellor settled the conflict. This court cannot substitute its judgment for his."

That the federal rule is practically the same, see *South Chicago Coal and Dock Co. v. Bassett,*[a] wherein the petitioners urged that whether the decedent was a member of the crew was a question of law, since the facts were undisputed; but the Supreme Court held it to be one of fact, and said that even if the evidence permitted conflicting inferences, there was enough to sustain the Commissioner's ruling. In *Commissioner v Horseshoe Lease Syndicate,*[a] a case from the Fifth Circuit, the court said that a finding of fact must be upheld "even though conflicting inferences fairly might be drawn by reasonable men from the undisputed facts."*

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[a] 309 U. S. 251, 260, 60 S. Ct. 544, 84 L. Ed. 732, 738.

[a] 110 F. (2) 748, 750.

All of these decisions are persuasive of the correctness of our construction of that portion of Rule No. 52, previously quoted, which is that, in actions tried upon the facts without a jury, a finding of fact should not be set aside as clearly erroneous if from the undisputed facts and circumstances two reasonable inferences were fairly deducible and the trial court found in favor of one as being the correct inference. Any other construction of the rule would be equivalent to holding that a reasonable inference fairly drawn from undisputed facts was clearly erroneous, which would be reducing the matter to an absurdity. On the other hand, as will be pointed out in the next paragraph, very serious consequences with reference to state mining statutes might follow a final authoritative ruling that the only reasonable inference deducible is that travel-time is not work-time.

If the contention is sound that the court below should have entered a declaratory judgment for appellants, as prayed, but could not correctly enter one against them, as it did, because only one reasonable inference could fairly be drawn from the undisputed facts in evidence (which was that travel-time was not work-time), then the question instantly presents itself as to whether or not the Utah and Arizona statutes are merely arbitrary fiats, violative of the Fourteenth Amendment. The appellants would probably not press their argument to this extent, and yet if it were clearly error for the court below to make the inference it did as to working time, it would be difficult to conceive of facts in existence sufficient to uphold a state statute in which the same inference is not only implicit but must serve as the basis for an absolute rule of law that travel-time underground is work-time.

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*Cf. Turner v. New York, 168 U. S. 90, 95, 18 S. Ct. 38, 42 L. Ed. 392, wherein it was held that a mere inference of fact from the evidence was not reviewable by the Supreme Court on writ of error, that court being authorized to review only questions of law. This decision is authority for the propositon that such an inference as we are considering is a question of fact, and not a mixed question of law and fact as is being contended by appellants.

It being unnecessary for us to decide anything about the propriety of referring the case to a master for an accounting, since the parties have agreed that the court shall determine whether or not the employees are entitled to recover and, if so, how much,* the petition for a rehearing is denied.

SIBLEY, Circuit Judge, dissents as to the merits.

A True copy:

Teste:

OAKLEY F. DODD,
Clerk of the United States Circuit Court of
Appeals for the Fifth Circuit.

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*By their conduct and agreements the parties have waived questions of misjoinder of causes of action, misjoinder of parties, and the right of trial by jury. Rules 20, 21, 38, and 39 of Federal Rules of Civil Procedure. A common question of law and fact in a multiplicity of suits is not of itself an independent ground of equitable jurisdiction, either in the courts of Alabama or in the federal courts. Matthews v. Rogers, 284 U. S. 521, and authorities cited at page 530. See also Tribette v. Railroad Co., 70 Miss. 182, 12 So. 32, 19 L. R. A. 660, 35 Am. St. Rep. 642, which the Supreme Court of Alabama followed in Southern Steel Co. v. Hopkins, 174 Ala. 465, 57 So. 11, 40 L. R. A. (N. S.) 464, wherein the Alabama court reconsidered its former opinion and adopted the rule announced in the Tribette case upon the question of the jurisdiction of equity to prevent a multiplicity of suits. For a history of the latter case, see Cumberland Telephone & Telegraph Company v. Williamson, 57 So. 559, and Griffith's Chancery Practice, Sec. 439, p. 461.

LETTER FROM UNITED MINE WORKERS OF AMERICA AND COAL OPERATORS TO ADMINISTRATOR OF WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR

1617 Pennsylvania Boulevard,
Philadelphia, Pa., July 9, 1940.

Col. Philip B. Fleming, Administrator,
Wage and Hour Division,
Department of Labor,
Washington, D. C.

Dear Mr. Administrator:

As a result of certain investigations which have been conducted by the Wage and Hour Division at bituminous coal mines in Pennsylvania, particularly at the Revloc shaft of the Monroe Coal Mining Company, and a conference that has been held by your Supervising Inspector, Mr. Caffey, at Pittsburgh, Pa., with a committee of the Western Pennsylvania Coal Operators' Association concerning the application of the Fair Labor Standards Act of the bituminous coal mining industry, certain questions have arisen that are disturbing to both employers and employees within the industry. These uncertainties have been continuing for some time and are causing much concern to the mine workers and the mine operators, especially with reference to "travel time."

Today, the Negotiating Committee of the Appalachian Wage Conference, namely: Messrs. J. D. A. Morrow, President of Pittsburgh Coal Company; L. T. Putnam of the Raleigh Wyoming Mining Company, Beckley, W. Va.; L. C. Gunter of the Southern Appalachian Coal Operators' Association, Knoxville, Tenn.; Charles O'Neill, President of United Eastern Coal Sales Corporation, New York City; C. E. Cowan, Vice-President of Monroe Coal Mining Company; Frederick H. Knight, Counsel for Monroe Coal Mining Company; W. L. Robinson, President of the Youghiogheny & Ohio Coal Company and Chairman of the Appalachian Wage Conference on the one hand, and Mr. Earl E. Houck, Director of the Legal Department of the United Mine Workers of America, met with Mr. Dorsey, Regional Director, Philadelphia, Pa., and Mr. Gallagher, Regional Counsel, Philadelphia, Pa., at which time these questions were discussed at length, particularly the application of the Act as to the questions of hours of work in the bituminous coal industry.

The mine workers and the mine operators present presented their views to representatives of the Wage and Hour Division as to the provisions of the Appalachian Wage Agreement covering maximum hours and working time. We have filed with the Division copy of the Appalachian Wage Agreement, and the entire provision as to maximum hours and working time is included therein. The pertinent language, however, is "Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis * * *." The Appalachian Wage Agreement is the basic agreement for the bituminous mines in the States of Pennsylvania, Ohio, West Virginia, Virginia, Eastern Kentucky, Southeastern Tennessee and Maryland. In this territory there are several thousand rail shipping mines employing from 300,000 to 325,000 men, and some twenty-three operating districts. Each of the districts work out a local wage agreement covering its own territory, subject, however to the provisions that it must include within it all of the provisions of the Appalachian Agreement.

The mines in the Appalachian region produce 70% of the total bituminous coal produced in the United States annually. Also, the Appalachian Agreement is used by the United Mine Workers of America as a basic agreement upon which the district agreements of the remaining 30% of the country is predicated.

The United Mine Workers of America and coal operators of the United States have been negotiating wage agreements for a period of fifty years. The Appalachian Agreement, covering as it does a great number of men and mines, has been worked out over that period of time and covers within its general provisions myriad wage rates, conditions of work, and hours of employment. This agreement, with its twenty-three supplemental agreements, constitutes a whole document. In these conferences, of course, hours of work has been one of the principal matters of consideration during this period of time. Hours of work with wage rates constitute the heart of any such agreement. In this basic industry we have provided for seven-hour days, five-day weeks, thirty-five hours per week, with high rates of pay. The basic inside a day rate in the North is $.857 per hour, and in the South it is $.80 per hour. The underground workers are paid on this basis, with maximum rates for mobile loading machine operators, approximate $1.09 per hour. In addition, the government provides, "work by mine workers paid by hour or day in excess of seven hours in one day, or thirty-five hours in any one week, shall be paid for at the rate of time and one-half * * *." It is our opinion that these substantive provisions of the agreement are among the highest standards of labor provided in any industry in the United States, both as to hours of working time and as to wages paid. There is full and complete understanding in the industry between employer and employees as to the application of these provisions. This method of measuring the working time at the places of work has been the standard provision in the basic wage agreements for almost fifty years and is the result of collective bargaining in its complete sense.

There are many reasons why the provision as to working time has been set out as provided by this agreement. The impracticability of measuring time by any other method is inherent in the very nature of mining coal. Coal mines are sometimes very extensive. When they are first opened up, the working places, are, of course, closer by and near to the opening of the mine. In such cases there is no problem of either transportation of the men to the working places or time consumed in reaching them; but as mines grow older, the working places move farther, and farther away from the portal or opening of the mine, and as such conditions develop, it becomes necessary for provision to be made for transportation of the men over long distances to their working place. This is usually provided by what is known in the industry as "man trips." These trips are scheduled to leave the outside or opening of the mine at a certain hour, so that all the employees will reach their working places by the hour at which work regularly begins at the working places throughout the mine, and these trips are also scheduled to leave the inside of the mine when the day's work is done, at the conclusion of the seven-hour period of work at the working places.

Among other provisions of the agreement, there is provided a time for starting the day's work and a lunch period, as well as a time for expiration of the work day. There is some variation in this, depending upon local conditions as to the starting and quitting time at the various collieries. The agreement provides for certain tolerance. In any event, the starting and quitting time are no more than seven hours apart, exclusive of the lunch period.

In the many conferences that have been held over this period of fifty years, naturally all manner of suggestions and proposals for amplification or amendment of the agreement has been made both by the mine workers and the operators.

The uniform high rates of pay that have always been included in the wage agreement of the mining industry contemplate the employee's working day beginning when he arrives at his usual working place. Hence, travel time was never considered as a part of the agreement or obligation of the employer to pay for in this industry, nor as hours worked by the employees, and this has been the case since the eight-hour day was established in the industry—April 1, 1898.

It is urged that any ruling requiring such a change in the custom, tradition and contract provision so as to change the work day from "seven hours" work in the mines at the usual working places" to any new standard for the measurement of time worked, and to the adjustment of wage rates made necessary thereby, would create so much confusion in the bituminous industry as to result in complete chaos, and would probably result in a complete stoppage of work at practically all of the coal mines in the United States. Such a ruling, moreover, would establish such diversity of time actually spent at productive work as between different bituminous coal mines and within each mine that there would be no basis on which any general wage scales could be predicated, collective bargaining would therefore be rendered impossible throughout this industry, and the very purpose of the Fair Labor Standards Act would be defeated. In such an event, it would make necessary the reassembling of the Appalachian Joint Wage Conference and it would be faced with an issue that would be almost impossible of solution by agreement, resulting in an industrial conflict that would paralyze the nation. This would be a most unhappy result to flow from an act that was passed by the Congress to aid workers in industries that had unreasonably long hours and unreasonably low rates of pay, as contrasted with the short hours and the high rates of pay in the bituminous coal mines. The great amount of money involved in the case of extra payment by the operators or the great changes that would be required in the rates of pay to the miners, should any change in the present contract be necessary by reason of a new standard for the measurement of time worked, is so serious that a negotiated adjustment would seem to be impossible.

For the foregoing reasons, we believe that your Division should accept the standards of wages and hours of work, and the definition of working time, as set forth in the Appalachian agreement (which embodies the customs and traditions of the bituminous mining industry), as complying both with the provisions of the Fair Labor Standards Act and of Interpretative Bulletin No. 13, to the effect that "reasonable standards agreed upon between the employer and the employee will be accepted for the purposes of the Act."

We therefore respectfully request that your Division issue a supplement to Interpretative Bulletin No. 13, stating that the standards of wages and hours of work, and definition of working time, set forth in the Appalachian Agreement, entered into on May 12, 1939, between twenty-three district associations of bituminous coal operators comprising the Appalachian coal producing area and the International Union, United Mine Workers of America, and the several district agreements based thereon, conform to and satisfy the requirements of the Wage and Hour Act.

Respectfully submitted,

For the United Mine Workers of America:

(S) EARL E. HOUCK,
Director of the Legal Department.

For the Operators:

(S) W. L. ROBISON, Chairman,
(S) CHARLES O'NEILL,
(S) L. T. PUTNAM,
(S) L. C. GUNTER,
(S) J. D. A. MORROW,
Appalachian Joint Conference
Negotiating Committee.

(Plaintiff's Ex. No. 25, R. 1710-16).

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IN THE

Supreme Court of the United States

October Term, 1943

—o—

NO. 409

—o—

TENNESSEE COAL, IRON & RAILROAD
COMPANY, Et al.,
Petitioners,

vs

MUSGODA LOCAL NO. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND
SMELTER WORKERS, Et al.,
Respondents.

—o—

BRIEF FOR PETITIONER

TENNESSEE COAL, IRON & RAILROAD CO.

—o—

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IN THE

Supreme Court of the United States

October Term, 1943

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NO. 409

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TENNESSEE COAL, IRON & RAILROAD COMPANY, Et al.,

Petitioners,

vs

MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, Et al.,

Respondents.

—o—

BRIEF FOR PETITIONER

TENNESSEE COAL, IRON & RAILROAD CO.

On certiorari to the United States Circuit Court of Appeals of the Fifth Circuit to review the decree of that Court entered on the 16th day of March, 1943, as modified on the 27th day of July, 1943, (R. 4997-5011) modifying and affirming as modified by a divided Court a decree of the District Court of Alabama entered on the 10th day of September, 1941.—(R. 568-9).

I

OPINIONS BELOW

The opinion of the District Court (R. 494-506) is reported in 40 Fed. Supp. 4.

The opinion of the Circuit Court of Appeals (R. 4938-4942) is reported in 135 Fed. (2d) 320.

The opinion of the Circuit Court of Appeals denying petitioners' petition for rehearing (R. 4997-5010) is reported in 137 Fed. (2d) 176.

The opinions of the Circuit Court of Appeals appear in the Appendix to petitioner's petition for a writ of certiorari at pages 64 to 77 and 77 to 95.

II

JURISDICTION

The jurisdiction of this Court is based on Section 240 (a) of the Judicial Code, 28 U. S. C. 347, as amended by the Act of February 13, 1925.

III

PARTIES

The petitioners are operators of underground iron ore mines in Alabama. They brought separate actions for declaratory judgments under the provisions of the Federal Declaratory Judgments Act, Section 274 (d) of the Judicial Code, 28 U. S. C. 409.—(R. 25, 116, 177). The actions were consolidated for trial.—(R. 487).

Philip B. Fleming, Administrator of the Wage and Hour Division of the United States Department of Labor, was permitted on his own motion to intervene.—(R. 304-5).

It was admitted and found by the District Court that local unions named as defendants "fairly represent the class of underground ore mining employees of the plaintiffs."—(R. 565).

IV

QUESTION INVOLVED

The fundamental question involved is whether the Fair Labor Standards Act of June 25, 1938, Chap. 678, Sec. 152, Stat. 1060, requires so-called "portal to portal" travel time to be included in the computation of the "work week" prescribed by the Act.

The phrase "portal to portal" includes all the time spent underground by the miners, exclusive of the lunch period. The phrase "face to face" includes the time spent at the usual working places. The phrase "travel time" includes all the time spent by the miner in getting from the mouth of the mine to the usual working places and returning therefrom to the mouth of the mine.

V

THE STATUTE

The pertinent provisions of the Act are as follows:

"Section 7. Maximum hours.

"(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

"(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

"(2) for a workweek longer than forty-two hours during the second year from such date, or

"(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

VI

STATEMENT

1. *Events leading to the commencement of the suits.*

Apparently no one thought when the Fair Labor Standards Act was passed that the Congress had intended to invalidate the method of computing work time that had uniformly prevailed in the bituminous coal and iron ore mining industries as long as any one can remember or to invalidate or impair the obligation of agreements fairly arrived at by the process of collective bargaining.

Before the Act took effect and on October 6, 1938, the International Union of Mine, Mill and Smelter Workers, affiliated with the CIO, entered into a written contract with the Tennessee Company which defined the work day thus:

> "Section 4—Hours of Work. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.
>
> "The eight hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."—(R. 107).

Among the signatories were C. J. McDaniel, E. T. Patterson and J. M. Lemley, witnesses for the respondents; Reid Robinson, International President; Van D. Jones, International Representative, and others, and there were present during the negotiations Lee Pressman, the General Counsel of the International Unions and one of the attorneys for the respondents herein, and William Mitch, Regional Director of the CIO and President of District No. 20, United Mine Workers of America.—(R. 2447-8).

By its terms the contract was to remain in effect until changed or terminated by either party on ten days' notice. It remained in full force and effect until May 5, 1941, when in compliance with the opinion of the Administrator, another agreement was made which provided that the travel time should start "when the employee is required to report for transportation at the entrance of the mine," and should end "when he returns to that point," and which contained the following provision:

> "It is understood that the above inclusion as a part of the day's work of the traveling time reasonably necessary for the employee to go to and from his usual working place has been herein agreed to by the Company in compliance with the opinion rendered by the Administrator of the Wage and Hour Division of the Department of Labor which becomes effective May 1, 1941. The Company denies the correctness of said opinion. Suits are now pending for the judicial determination of this question. It is, therefore, agreed that if and when there is a final judicial interpretation (this agreement then being in existence) overruling or modifying the opinion of the Administrator or in the event the Administrator changes his opinion or the law is amended, the question of whether or not the definition of the workday herein agreed to shall thereupon be changed so as to comply with the court's decision or the law as interpreted or amended shall immediately become a question for negotiation, and, if not settled between the parties by such negotiation within thirty (30) days after such final judicial interpretation or change or amendment has occurred, neither of the parties hereto shall be further bound or obligated by the definition of the day's work as herein contained, and the parties shall proceed as hereinafter provided for in Section 15 hereof."—(R. 4625, 4627-8).

The Act was enacted on June 25, 1938, and became effective on October 24, 1938.

On three prior occasions, to-wit, on *October 19, 1933,* *April 13, 1934 and June 13,1935,* the International Union had included among its demands that the travel to the place of work be on Company time and that the men leave on their own time.—(R. 888). It is obvious that that demand was not seriously made since it is undisputed that at the subsequent meetings held in collective bargaining the subject was not even brought up for discussion.—(R. 870, 876-7, 882). As early as May 26, 1936, the Union submitted a proposed wage agreement in which the "face to face" basis of wage computation and payment in the exact language as used in subsequent written wage agreements executed between the Unions and the Tennessee, Sloss and Woodward Companies was proposed.—(R. 3632).

As late as *July 9, 1940,* Earl E. Houck, Director of the Legal Department of the powerful United Mine Workers of America, and a Committee of the Operators addressed a letter to the Administrator asking him to accept the definition of working time in the Appalachian Agreement as complying with the provisions of the Act; which they said embodied "the custom and traditions of the bituminous mining industry."—(R. 4715).

That definition was:

> "Section 4—Hours of Work. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.
>
> "The eight (8) hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

The letter also said, referring to the "face to face" method agreed to:

> "This method of measuring the working time at the place of work has been the standard provision in the basic wage agreements for almost fifty years and is the result of collective bargaining in its complete sense."—(R. 4712).

The letter then proceeded to give many cogent reasons in support of that method, all equally applicable to the iron ore industry, and said that:

> "As mines grow older, the working places move farther and farther away from the portal or opening of the mine, and as such conditions develop, it becomes necessary for provision to be made for transportation of the men over long distances to their working places"

and that the adjustment of wage rates to any new standard of measurement

> "would create so much confusion in the bituminous industry as to result in complete chaos, and would probably result in a complete stoppage of work at practically all of the coal mines in the United States."—(R. 4713-14).

The Houck letter is set out in the Appendix.

On *July 27, 1940,* on the basis of that letter, the Administrator issued a public release in which he said "that the practice of computing working time on a 'face to face' basis in the bituminous coal mining industry would not be unreasonable," explaining that "face to face" meant the productive work performed after the miner arrived at his usual working place, excluding the time spent in traveling from the portal or entrance of the mine to the place of work and the time spent in returning from the working place to the portal in the evening.—(R. 4717).

The opinion of the Administration, the Houck letter and all evidence offered by appellants relating to the coal mining industry were excluded from evidence.

On *March 23, 1941,* the Administrator announced what he called a "Modified Portal to Portal Wage Hour Opinion," in which he said that "the work day in underground metal mining starts when the miner reports for duty as required at or near the collar of the mine and ends when he reaches the collar at the end of the shift" and also includes "the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out."—(R. 76-8).

The District Court agreed with the Administrator on both points.—(R. 568). The Circuit Court of Appeals eliminated the time spent in obtaining and returning lamps, carbide and tools and the time spent in checking in and out.—(R. 4947 and 4841-42).

The Administrator concluded his announcement by saying:

> "That because the Division had not heretofore taken a definite stand on the various problems involved, it would not seek to compel the payment of restitution from mine owners who have been operating on a face to face or other bases inconsistent with the principles outlined in the report. This enforcement policy of the Division cannot, however, interfere with the rights of employees or their representatives to sue under Section 16 (b) of the Fair Labor Standards Act."—(R. 78).

The Administrator, in memorandum in opposition to petitioners' petition for writ of certiorari, places reliance on the report of the Wage and Hour Division on which his opinion was based (Exhibit A to Petitioner's Complaint, R. 75 at 85-9) in support of his assertion (contrary to the evidence—pp. 10-12, infra) that the "traditional practice" of computing and paying wages on the "face to face" basis had not existed in the industry.—(Administrator's Memorandum in Opposition to Appellants' Petition for Certiorari, p. 14).

While these ex parte statements can not be considered as evidence of their truth, the report states, "The only important group of mines now operating on a face to face basis are those in Alabama."—(R. 86). All the respondents' witnesses who testified on the subject testified that the "face to face" basis traditionally existed not only in the ore mines in Alabama but also in all the ore mines elsewhere in the United States.—(pp. 10-12, infra).

The report purports to have been based on an investigation "including field surveys and questionnaires, reports by the Division's Regional Directors, and public conferences before the undersigned at Salt Lake City * * * and Birmingham."—(R. 80).

Upon the announcement of the Administrator's opinion the Unions, representing approximately 6,000 underground employees, demanded the payment of overtime compensation for all travel time since October 24, 1938, the infliction upon the appellants of the severe penalties of Section 7 of the Act and demanded their future compliance with the Administrator's opinion.

Thereupon, on *April 4, 1941,* petitioners filed in the District Court their separate actions for declaratory judgments, or, in the alternative, by injunctions, to prevent the bringing of a multiplicity of suits by their underground iron ore mining employees for compensation for so-called "portal to portal" travel time, and to obtain a declaration that as to past and future there was no obligation to consider the portion of the time spent by the underground employees in traveling to and from their usual places of work and while not engaged in physical work or service as time worked within the meaning of the Fair Labor Standards Act of 1938.

Interrogatories were directed to the Administrator and motions were made to require the production of the evidence on which he based his opinion, but the objections of the intervener to the interrogatories were sustained and the motion to produce overruled on the ground that the evidence was confidential.—(R. 381-2).

2. *Tradition and Custom.*

The Circuit Court of Appeals said:

> "It may be conceded, *arguendo*, that for twenty-five years prior to 1938 iron-ore miners had not been compensated for travel time * * *."—(R. 4941).

The undisputed fact is that as long as any one can remember "portal to portal" travel time has not been included in the computation of working time, either in the iron ore or the bituminous coal mines in any of the principal states producing either iron ore or coal or both.

The Administrator under an oral commission took the evidence of a number of witnesses who worked in the underground ore mines of the Lake Superior Region. Their depositions (R. 4032-4416) were offered in evidence by the petitioners and admitted over the objection of the respondents.—(R. 2221). These witnesses uniformly testified that they were at all times paid on the "face to face" basis.—(R. 4081, 4108, 4133-4, 4230, 4251-2, 4279, 4327).

As typically illustrative of this testimony, we quote:

> "Q Now, from the time you started working in '24, until May 1, 1941, what you called the collar-to-collar plan never was in force or operation, was it?
>
> "A No.
>
> "Q You didn't have it at all during that whole period of time?
>
> "A No.
>
> "Q Your time was computed and you received your

pay and the company men, or day men, whatever you call them, received their pay on the basis of eight hours, not including traveling time?

"A Yes.

"Q That is right, isn't it?

"A That is right.

"Q And that was, so far as your experience is concerned, the universal custom during that period of time?

"A Yes."—(Witness Burck, R. 4133-4).

Joseph Bovitz, who had been a miner in the underground iron ore mines of Minnesota since 1907, testified:

"Q Now, in Minnesota, though, it never has been the practice to pay the miners for travel time, has it?

"A No.

"Q And you have known about it for 30 years of your own knowledge?

"A Yes.

"Q And you know that the companies never did pay for the travel time up until May 1, 1941. That is correct, is it not?

"A Yes."—(R. 4251-2).

Petitioners also proved that the "face to face" basis had traditionally existed in the States of Wyoming and Colorado.—(R. 4417, 4419, 4420, 4436).

The same practice has uniformly prevailed in Alabama.—R. 798, 840-2, 1096-7, 1163-66, 1236, 1276, 1299-1300, 1422, 1484-85, 1551-2, 1632, 1702, 1767-4, 1794, 1864, 2152, 2296, 2300, 2458, 2514, 2598-9, 2671, 2849, 2898-9, 3058-60, 3122-3, 3145, 3162). All respondents' witnesses so testified. As typically illustrative of this testimony we quote the following:

"Q Now, never in your experience as a miner since you have been mining in Alabama—you have never received any pay for the time you spent in traveling to and from the place where you produced the ore, have you, Mr. Butler?

"A I have not.

"Q And the custom and practice in all the mines you have ever worked in during all that period of time has always been not to pay the men for any time spent in traveling to and from the place where they produce the ore?

"A Yes, sir."—(Witness Butler, R. 3058-60).

• • • •

"Q That didn't include the time you spent riding down and back from your working place?

"A No, sir. It was the policy face to face.

"Q Has that always been the policy out there, face to face?

"A As far as I know.

"Q For everybody?

"A For everybody." — (Witness Trammell, R. 3122-3).

The petitioners tendered evidence of a similar invariable custom in the bituminous coal mines by various witnesses, (R. 1976, 2047, 2049, 2108, 2110, 2111, 2112, 2114-17, 2132, 2154, 2170, 2178, 2187, 2192, 2195, 2203-4, 2214-15), but the evidence was excluded.—(R. 2079).

The facts, however, are of such common knowledge that the Court will take judicial notice of them.

The practice of transporting the men to and from the unloading stations in the coal mines and the method of reaching the working places as described in the Houck letter (R. 4713) does not differ essentially from that in the iron ore mines, and the same problems exist in both, except, as is commonly known, and as shown by the offered evidence, the coal mines are gaseous and the iron ore mines are not, and the traveling distances, and the incidental perils and discomforts, are greater in the coal mines.

3. *Recognition of the traditional "face to face" method by public and quasi public authorities, relevant statutory enactments, and administrative rulings on eight-hour and like Laws prior to the enactment of Fair Labor Standards Act.*

Evidence was tendered which showed the following:

(1) In arbitration proceedings held in the City of Birmingham in 1903 presided over by Judge George Gray, a representative of the Union thus stated the traditional method:

> "The day is reckoned from the time the miner commences work in the morning at seven or a quarter past seven, until half past four. The time is started from the time the driver hitches to the car until he unhitches from the car and from the time the miner gets to the face of the coal until he leaves the face of the coal.
>
> "Question: And where it applies to the miner, it is from the time he gets to the face of the coal until he leaves the face of the coal?
>
> "Answer: Yes, sir, that is where they count it.
>
> "Question: Where the eight hour day is in force, it counts from the time men actually get to their working place in the mine until they leave it?
>
> "Answer: Yes, sir.
>
> "Question: While walking in there you are not on company time?
>
> "Answer: No, sir."—(Offer of Proof by Ed Flynn, R. 2193).

The arbitration resulted in a wage agreement on the "face to face" basis.

(2) On *October 25, 1917,* a Board of Arbitration presided over by Rembrandt Peale—in an award approved by U. S. Fuel Administrator Garfield thus defined the work day:

> "An eight hour day means eight hours work at the usual working places of all classes of employees. This shall be exclusive of the time required in reaching such workings places in the workings and departing from the same at night."—(R. 4694-5).

(3) On *March 9,* ~~*1940,*~~ 1920 President Wilson transmitted to Mr. Brewster, Chairman of the Operators' Scale Committee, and to Mr. Lewis, President of the United Mine Workers of America, a copy of the report and award of the Bituminous Coal Commission, on the basis of which an agreement was reached between the Operators and the Union on March 31, 1920, which included the exact definition last above quoted.—(R. 4696, 4759).

(4) On *September 18, 1933,* President Roosevelt, on the recommendation of Hugh S. Johnson, Administrator of NIRA, approved the Code of Fair Competition for the Bituminous Coal Industry containing the following definition of a day's work:

> "Seven hours of labor shall constitute a day's work and this means seven hours work at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid on the day or tonnage or other piece work basis."—(R. 4701, 4705).

(5) On *September 21, 1933,* the President approved the Appalachian Agreement, which defined the work day as follows:

"Eight hours of labor shall constitute a day's work. The eight hour day means eight hours' work in the mines at the usual working places for all classes of labor exclusive of the lunch period."—(R. 4787).

(6) Three states had by plain and express statutes included travel time by a limitation of permissible hours underground, viz: Utah by Chap. 59, Laws of Utah, 1937; Arizona by Sec. 1958, Arizona Revised Codes, 1928; Nevada by Sec. 10237, Nevada Compiled Laws.

(7) In *1917* the Alaska Legislature passed an Act which provided that the period of employment in underground mines

> "shall not exceed eight hours within any twenty-four hours, except on such days as change of shift is made, excluding, however, any intermission of time for lunch or meals, or otherwise going to, or from the place where the work is actually carried on, whether going to or coming from the place of work be in going on, or off shift, or in going to or returning from meals or lunch. It being the intention of this article to limit the hours of employment in any twenty-four hours to eight hours of actual labor at the face or other place or places where the work or labor to be done is actually performed."—(Section 2132, Compiled Laws of Alaska).

(8) In *1909* California enacted an eight-hour law for persons employed in underground mines.—(Stat. 1909, p. 279, c. 181, approved March 10, 1909).

The Supreme Court of California sustained its constitutionality (Ex Parte Martin, 106 Pac. 235), and in construing it held that the eight hours included the work at the face of the mine and excluded travel time, saying:

> "Giving to the words of the act their ordinary and reasonable meaning, the limitation of time is to be construed as referring to the time when men are actually en-

gaged in work, not when they are going to and from their work. There is nothing in the language of the act which would justify a more restricted interpretation."—Ex Parte Martin, 106 Pac. 238-9).

Subsequently at least ten other states enacted substantially similar statutes, and presumably adopted the construction of the Supreme Court of California, viz: Washington (Sec. 8794 Remington's Revised Statutes of Washington); Colorado (Sec. 101, Chap. 97, Colorado Statutes Annotated, 1935); Kansas (Sec. 49-282 Gen. Statutes of Kansas Annotated, 1935); Idaho (Section 43-704, Idaho Code Annoted, 1932); Wyoming (Chap. 63-103 Wyoming Revised Statutes, 1931); Oregon (Oregon Laws, 1920, Chap. 8, p. 6716); Oklahoma (Statutes, 1931, Sec. 13717, Constitution, Art. 23, Sec. 4); Missouri (Missouri Revised Statutes, 1939, Sections 10167-9); Montana (Revised Codes of Montana, 1935, Vol. 2, 302-79; Constitution of Montana, Art. XVIII).

Our research has not disclosed any construction of such statutes contrary to that of the Supreme Court of California, with the exception of *Butte Miners Union No. 1 v. Anaconda Copper Mine Company* (1941), 112 Mont. 418, 118 Pac. (2) 148.

In this case the Supreme Court of Montana, by a divided Court, held, rather apologetically, that travel time of underground copper mine employees should be included as a part of the work day, and based its judgment entirely upon the Modified Portal to Portal Opinion of the Administrator, stating, in effect, that a contrary ruling would be in conflict with the "public official act of the Executive Department of the United States" and would result in administration and enforcement in a condition that would be "for all practical purposes inconsistent and chaotic." The dissenting opinion called attention to the fact that the

Legislature of Montana had on five separate occasions pronounced the policy of the state by refusing to amend the Montana statute so as to provide by express language that all underground time should constitute a part of the work day, and concluded with the statement that "the courts can not do by construction what the Legislature refused to do by amendment."

(9) Many administrative rulings have been made construing eight-hour and like statutes as applying only to *effective labor.*

Opinions of the Attorney General on October 11, 1906 (R. 4646) and on May 11, 1908.—R. 4654).

Ruling of the Comptroller of the Treasury on June 12, 1921.—(R. 4658).

Rulings of the Comptroller General on November 11, 1929 (R. 4661), on June 18, 1935 (R. 4662), and on October 28, 1937.—(R. 4669).

The latter ruling involved the transportation of government employees from San Francisco to their places of work on Angel Island and return on a government steamer.

(10) Under the Bituminous Coal Act of 1937 (15 U. S. C. 828-851), the basis of minimum prices was "the weighted average of the total cost" of production, and the cost of labor was specifically included as one of the items upon which total cost must be computed. The "weighted average cost" base was determined in Docket 15 from cost compilations covering the calendar year *1936* and the first nine months of *1937*. The hearings, however, were not concluded until *April, 1939*, and the Director's findings and order establishing effective minimum prices were not issued until *August 8, 1940.* Later adjustments of the weighted average cost (cf. Docket 21) were made. It was the universal practice in making the reports to the Com-

mission to include only labor costs for "face to face" work, and equally evident that the minimum prices for the sale of coal were predicated on these costs.

4. *Recognition of the traditional "face to face" method by public and quasi public authorities and administrative rulings relating to the Fair Labor Standards Act and acts of similar purport subsequent to the enactment of the Fair Labor Standards Act.*

Evidence was admitted or tendered on the trial of the case, and subsequent events have occurred since the trial of such common knowledge that the Court will take judicial notice of them, which showed the following:

(1) Appellants and their employees (represented by strong national unions) and the iron ore mining industry throughout the United States continued, after the enactment of the Act, to operate on the "face to face" basis; this traditional concept of the day's work continued to be embodied in wage agreements; and the employees received thereunder increases in wages, additional pay through incentive plans, and other valuable considerations. Some of these agreements were executed as late as September 11, 1940, December 23, 1940, and March 17, 1941.—(T. C. I. Exhibit No. 14, R. 105; Sloss Exhibit No. 15, R. 3804; Sloss Ex. No. 34, R. 3916; Sloss Exhibit No. 18, R. 152; T. C. I. Exhibit No. 20, R. 3737; Sloss Exhibit No. 36, R. 3939; Exhibit C to Sloss Petition, R. 166).

(2) On *July 27, 1940,* the Administrator of the Act approved the "face to face" basis of computation and payment of wages for the bituminous coal mining industry.—(R. 4717).

The Administrator has never changed or departed from this ruling.

The substantially parallel conditions which existed in the coal mines and the ore mines could have left no doubt in the mind of any reasonable person that the coal mining industry opinion would be followed in the case of the iron ore mining industry.

(3) The Administrator induced or allowed the iron ore mining industry to continue the computation and payment of wages on the "face to face" basis until he rendered his Modified Portal to Portal Opinion on March 23, 1941, and stated in the release of the opinion that because the Division had not heretofore taken a definite stand it would not seek to compel the payment of restitution from mine owners who had not been operating on the "face to face" basis.—(R. 76, p. 8, supra).

(4) The Attorney General, charged with the enforcement of the Act, has never sought to enforce the "portal to portal" interpretation in reference to iron ore or coal mines.

(5) The coal mining industry continued until recently to compute and pay wages on the "face to face" basis either under collectively bargained wage agreements or directives of the government.

(6) Since the rendition of the opinion of the Circuit Court of Appeals the following occurrences have happened which are of such common knowledge that the Court will take judicial notice of them:

One of these facts of common knowledge is referred to in the reply of respondent Unions (p. 6) to the petition for writ of certiorari in the following language:

> "It is a matter of common knowledge that the contracts between the coal operators and the mine workers expired on March 31, 1943, and that 'portal to portal' pay subsequent to that expiration date has been under negotiation."

We respectfully direct the Court's attention to the following additional matters of common knowledge:

(a) No demand for "portal to portal" travel time was made in the *1941* negotiations between the International Policy Committee of the United Mine Workers of America and the Coal Operators.

(b) The wage agreement executed between the Union and the Operators in 1941 expired on *March 31, 1943,* and negotiations for a new contract began on *March 10, 1943.*

(c) The original decision in this case was rendered on March 16, 1943.

(d) In *August, 1943,* class actions were filed by the United Mine Workers of America in the District Courts of Alabama, Kentucky and West Virginia seeking to recover for the employees overtime compensation for "portal to portal" travel time since the effective date of the Act. These cases are pending.

(e) On *March 19, 1943,* the National Policy Committee of the Union amended its demanded definition of hours of labor so that the existing demands which until this time had been on the traditional "face to face" basis should be modified "to conform with the basic legal requirements of the industry and the maximum hours of work time provisions be amended to establish "portal to portal" for starting and quitting time for all underground workers."

In presenting this demand John L. Lewis, President of the Union stated:

> "The Mine Workers desire to take advantage of the law which, under the Alabama decision, grants them the right to be paid for the time they are in the mines."

(f) On *March 26, 1943,* Mr. Lewis, appearing as a witness before the Senate Committee investigating the national defense program, said:

> "I wonder what you suggest, Senator, you having a very alert, capable mind on these things, in the light of the decision of the Fifth Circuit Court of Appeals on the portal-to-portal issue, that the mine workers should do. The Court says that we cannot make a contract and contract away the rights by the statute. I am judicially estopped from making an agreement that does not comply with the mandate of the Court."

of Proceedings Senate Committee Investigating National
Defense Program.

(g) On *June 18, 1943*, the National War Labor Board issued its directive denying the demand of the Mine Workers for the establishment of "portal to portal" for starting and quitting time, and directed that the contracts which expired on March 31, 1943, should (with certain amendments not relating to travel time) remain in force and effect until *March 31, 1945*, thus experssly providing for the carrying forward of the traditional agreement for the computation and payment of wages on the "face to face" basis.

The following excerpts are taken from the opinions and statements of the National War Labor Board in support of the above mentioned directive:

> "In the second place, the whole economic structure of the bituminous coal mining industry has been built upon the payment of wages on the 'face to face' basis. To now reconstruct the maximum hours and working time provisions applicable to bituminous coal mining, so as to cure the inequality due to different individual travel time, would create utter confusion in the economics and in the wage structure of the industry, which could only adjust itself to this new system over a period of years. The considerations involved in such a change, both economically and with reference to the fair treatment of the individual workers, are so complex that they could be satisfactorily worked out only by a long period of collective bargaining, if at all.

"In normal times of peace it would be possible for the interested parties, and for impartial men, to give reasonable consideration to these complex problems, but at the present time, when the country, engaged in a wartime struggle for its very existence, the uncertainties and disturbances involved in working out such a plan would be intolerable. A time of war is no time to settle long standing and complex questions of this character. This is particularly true, as we pointed out in connection with the north-south differential in the Cotton Textile Cases, when a disturbance of long standing relationships established by years of collective bargaining would require us to disregard our responsibilitity to stabilize wage rates in conformance with the national stabilization program. .

* * * *

"In the bituminous mines involved in this dispute the parties have agreed throughout more than fifty years of collective bargaining that wages should be paid on the 'face to face' basis; that is, on the basis of time spent at the working places. On July 18, 1940, the Administrator of the Wage and Hour Division of the Department of Labor, following representations made jointly to him by the Operators and the United Mine Workers, expressed the opinion 'that the practice of computing working time on a "face to face" basis in the bituminous mining industry would not be unreasonable under the provisions of the Fair Labor Standards Act.

"The Appalachian agreements of 1941 were entered into between the parties in the light of this ruling. They retained the old maximum hours and working time provisions in which compensation was based on the 'face to face' principle. The Mine Workers chose at that time 'face to face' rather than 'portal to portal' pay for their own reasons which they had given to the Wage and Hour Administrator in the letter of July 9, 1940. They agreed to put up with the inequality that comes from the fact that individual mine workers have to spend different periods of time in travel.

"When the negotiations for the new contract were initiated in March of this year the mine workers demanded, as they had a right to do, that the new contract should make provision for additional compensation for travel time. Their demand was that the operators should pay for travel time 'to conform with the basis and legal requirement for the industry.' On August 13, 1941, the United States District Court in Alabama had decided that all time spent underground in iron ore mines was working time and should be included in the computation of the employees' work week under Section 7 of the Fair Labor Standards Act, and on March 16, 1943, this decision was affirmed by the Fifth Circuit Court of Appeals.

* * * *

"Having denied the general wage increase in its directive order of May 25, the Board pointed out that the claim of the Mine Workers for travel pay involved the assertion of a legal right under the Fair Labor Standards Act. A legal claim of that kind, if it has any foundation at all, is an unknown liability hanging over the business of every bituminous coal operator, and there is nothing more destructive of business than hidden liens and unknown liabilities."

The opinions of Chairman Davis and Member Morse are set out in the Appendix.

(h) On *July 30, 1943,* in the District Court of the United States for the Western District of Virginia the Jewel Ridge Corporation, operating coal mines in Southwestern Virginia, filed its petition for a declaratory judgment on the question of "portal to portal" pay to underground miners, and prayed for a declaration that travel time was not a part of the work week under Section 7 of the Fair Labor Standards Act.

During the trial of this case the Union amended its answer which, as originally filed, had claimed travel time since the effective date of the Act, so as to disclaim payment for travel time which had occurred prior to March 31, 1943, the expiration date of contracts which provided for the "face to face" basis.

7

The trial of this case has now been concluded and is awaiting the decision of the District Judge.

(i) On *September 23, 1943*, the Mine Workers Union and the Illinois Coal Operators executed a second wage agreement, subject to the War Labor Board's approval and to an increase in minimum coal prices. This agreement was submitted to the War Labor Board and approved by it, in principle, on October 26, 1943. The decision concludes with this paragraph:

> "Furthermore, if and when the operators and the mine workers in cooperation succeed in reducing the average travel time for all the mines covered by the Agreement below 45 minutes a day, and simultaneously increasing the productive working time at the face, a contract could be approved allowing the miners a further increase in their daily wage.. If the average travel time can thus be reduced to 30 minutes a day, the mine workers could be paid the full amount of the proposed Illinois Agreement. If the Illinois Agreement is modified as above indicated it will be approved by the War Labor Board."

(j) On *November 29, 1943*, the president of the United States, recognizing the differences which, as a matter of common knowledge, existed in different mines, appointed a special committee to conduct a study of travel time in the underground bituminous coal mines having contracts with the United Mine Workers of America in order to ascertain the "average travel time in these mines." This committee is functioning at the present time.

(k) During the "portal to portal" controversy the bituminous coal mines were closed three times by strikes. The government twice had to assume control of them to secure production of coal and it is still operating them as this brief is written. It has been publicly announced, however, that they are to be returned to the operators under negotiated contracts providing for the computation of wages under complicated formulae based on an arbitrary allowance to all employees alike of forty-five minutes of travel time with the rate for travel time being two-thirds that for productive work time.

Thus, through the process of collective bargaining with administrative approval and authority, partial rates for some travel time are to be paid to all employees alike regardless of the actual travel time of each.

5. *The legislative history of the Fair Labor Standards Act of 1938.*

The Court will take judicial notice of the following:

(1) The National Industrial Recovery Act, enacted by the Congress on June 16, 1943 (48 Stat. 201) was the progenitor of the National Labor Relations Act and of the Fair Labor Standards Act.

This Court, on May 27, 1935, declared NIRA unconstitutional.

The Congress subsequently, for the purpose of legislating in reference to the two fundamental objects of NIRA, enacted the National Labor Relations Act and the Fair Labor Standards Act, the former Act covering the protection and maintenance of the rights of collective bargaining, and the latter minimum wages and maximum hours.

The codes of fair competition adopted or promulgated under the provisions of NIRA became complete employer and employee charters covering minimum wages and maximum hours.

The Bituminous Coal Code, stemming from negotiations between the United Mine Workers of America and the various coal associations, was approved by the President of the United States, by the Administrator and by the industry. The code thus adopted expressly provided for computation and payment of wages on the traditional "face to face" basis.—(R. 4705).

(2) Representative Keller, a member of the Conference Committee, in debate preceding the final passage of the Fair Labor Standards Act, June 14, 1938, said:

> "This bill eliminates the defects and preserves the best features of the National Industrial Recovery Act. In doing so a better procedure is provided, so that no rights may be affected without an opportunity to be heard. NRA put down a floor for wages and a ceiling to hours of work."—(Vol. 83, Congressional Record, Part 8, p. 9264, 75th Congress, Third Session, June, 1938).

(3) The Senate Committee in paragraph II of Report of July 6, 1937, said:

> "The right of individual or collective employees to bargain with their employers concerning wages and hours is recognized and encouraged by this bill. It is not intended that this law shall invade the right of employer and employee to fix their own contracts of employment, wherever there can be any real, genuine bargaining between them. It is only those low-wage and long-work-hour industrial workers who are the helpless victims of their own bargaining weakness that this bill seeks to assist to obtain a minimum wage."—(Senate Report No. 884).

The evidence in this case shows that the iron ore miners of the Tennessee Company for a period of time for several years prior to May 1, 1941, received an average wage of 68 cents per hour.—(R. 850-51).

(4). On June 2-22, 1937, joint hearings on the Fair Labor Standards Act were held before the Committee on Education and Labor, United States Senate, and the Committee of Labor, House of Representatives. The following excerpts from the Joint Hearings are quoted:

"MR. LEWIS: * * * My recommendation as to rate of pay is a minimum of 40 cents per hour. As to hours of work, the standard in my opinion should be 5 days of 7 hours each or 35 hours per week, with authority granted to the Board to expand to a 40-hour maximum, or to reduce to a 30-hour maximum * * *."—(p. 222-272).

"SENATOR LaFOLLETTE: * * * as I understand it, the objective of this bill as outlined in Section 23, one of them is to prevent the Board from going in and upsetting collective bargaining agreements or entering the field where collective bargaining is actually functioning in a bona fide manner, and thereby producing the result of the action of the employer and employee represented by genuine and effective labor organization."—(p. 280).

"MR. LEWIS: * * * For instance, frankly I would not want this bill to convey power to a board to order an investigation into all of the wage agreements in the mining industry right now, or to give the board power to decide that the collective bargaining agreements in the mining industry were not sound, not proper, were confiscatory, or not in harmony with the facts of the industry, and order a modification thereof. I think the power of the Board should be limited to cases which run below the level of the standards fixed by Congress. I see endless confusion in the adoption of Section 5 now. I see a drift towards the complete fixation of wages in all industry by governmental action."—(p. 281-2).

"THE CHAIRMAN: As I understand your position, boiled down, with reference to the minimum wage—I want to be sure—it is that you favor a minimum wage law written in such a way that it will preserve to the utmost the right of bargaining between employers and employees, but which will at the same time raise the low, substandard condition of millions of people, those who have been living in that sphere and have not as yet been able to elevate themselves either by their own barbaining or by collectively bagaining?

"MR. LEWIS: That is correct, Senator."—(p. 307).

(5) During the Senate debate on the bill on July 29, 1937, the following statements were made:

"MR. WALSH: Next does the bill effect collective bargaining agreements already made or hereafter to be made between employers and employees?

"MR. BLACK: It does not.

"MR. WALSH: There is one exception to that, is there not? The bill does not affect collective bargaining agreements where the hours are less than 40 per week, or where the wages are more than 40 cents per hour?

"MR. BLACK: That is correct.

"MR. WALSH: But if a collective bargaining agreement had been entered into at 36 cents per hour wages, the board would have jurisdiction to set that agreement aside and to fix, if the facts warranted, a minimum wage of 40 cents?

"MR. BLACK: The board would have jurisdiction to do it, but under the provisions of the law it would be my judgment that the board would be very reluctant, indeed, to attempt to interfere with a bona fide agreement made between employers and employees."—(Congressional Record, Vol. 81, p. 7650).

6. *The Congress has been zealous in defining the right and maintaining the results of collective bargaining.*

National Labor Relations Act, July 5, 1935, c. 372, 49 Stat. 449.

Railway Labor Act, May 20, 1926, c. 347, 44 Stat. 577; 48 Stat. 1186, June 21, 1934;

Norris-LaGuardia Act of March 23, 1932, c. 90, 49 Stat. 70;

War Labor Disputes Act, June, 1943, 78th Congress.

7. *The Context of the Fair Labor Standards Act of 1938.*

The context of the Fair Labor Standards Act shows that the word "workweek" [Sec. 7 (a)] was used in accordance with the concept of the industry and in a much more restricted meaning than the words "on duty" as used in the Hours of Service Act relative to railroads (U. S. C. A., Title 45, c. 3, Sec. 62); or the words "arising out of or in the course of employment" [*Bountiful Brick Company v. Giles* (January, 1928), 266 U. S. 154, 72 L. Ed. 507] as generally used in workmen compensation acts; or the words "injury sustained while in the performance of his duty" as used in the compensation law as to public employees (U. S. C., Title 5, Chap. 15, Sec. 75-1); or the words "arising out of or in the course of employment" as used in the Longshoremen and Harbor Worker's Compensation Act (U. S. C., Title 33, Section 902).

We quote from the Fair Labor Standards Act:

> "Section 3 (g): 'Employ' includes to suffer or permit to *work*.
>
> * * * *
>
> "(j): 'Produced' means produced, manufactured, mined, handled, or in any other manner *worked* on in any State; and for the purpose of this chapter an employee shall be deemed to have been engaged in the *production* of goods if such employee was employed in producing, manufacturing, mining, handling, transporting or in any other manner *working* on such goods, or in any process or occupation necessary to the production thereof, in any State."

Section 5 of the Act provides for the appointment by the Administrator of an industry committee for each industry, and Section 8 provides for the issuance of wage orders, and, following hearings and the recommendations of the industry committee, the fixing of the minimum rate for the industry; and requires, in the fixing of such minimum rate, the consideration, among other relevant factors, of the following:

> "(1) competitive conditions as affected by transportation, living and production costs;
>
> "(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and
>
> "(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum-wage standards in the industry."

Other provisions of Sections 2 and 8 of the Act emphasize the purpose of the Congress to determine these matters on an industry basis, and assure the opportunity for all members of the industry under consideration to have due notice of the hearings and full opportunity to be heard before the decisions of the Administrator, or the recommendations of the industry committee shall become effective.

In prescribing minimum wages and maximum hours for industry as a whole the Congress attempted no definition of "work" or "workweek," thus, in view of its presumed knowledge of the different concepts, customs and traditions of different industries, evidencing an intention to afford the widest scope to agreements of the parties immediately concerned.

8. *The practice and custom in the petitioner's iron ore mines.*

~~As in the case of the~~ bituminous coal mines, the distances of the working places from the portals differ very greatly. The longer the mines are worked, the farther the working places become from the portals. For example, in the Spaulding Mine of Republic Steel Corporation, the working places are only five or six minutes' walk from the portal.—(R. 1910). In some of the mines the travel time exceeds one hour and a half. Where the slopes and headings have been extended a sufficient distance to make walking inconvenient, the employees are transported in cars or in so-called "skips" from the mouth of the mine to the unloading stations from where they walk to their working places. Distances vary greatly in different mines, and even in the same mine.—(R. 766).

The employees called by the respondents all admitted that they had never been paid for travel time.—(pp. 11-12, supra).

The typical daily procedure as testified to by Ball, general superintendent of Tennessee Company (R. 777-807), Cameron, division superintendent, (R. 1083-1095), Brown, a mine foreman of Tennessee Company (R. 1156-1178), Neal, division superintendent (R. 2298), Scott, a mine foreman (R. 1254), Goodwin, a mine foreman (R. 1727), and Carter, a division superintendent (R. 1653), was substantially as follows:

The Company provided a bath house and locker room near the tipple where upon arriving and leaving the employees changed their clothes and took a bath if they wished. Having changed into his mine clothes on arriving, the employee purchased carbide, if he needed any, at a small house near the tipple, the Company selling it at cost, but it being optional with the employee to purchase from the company or elsewhere. He then deposited his check, a metal disc bearing a number, at the tipple office, solely as a measure of safety and identification.

The government, under the Act providing for Federal inspection of coal mines (Federal Coal Mine Inspection Act of May 7, 1941, 55 Stat. 177) has recommended coal mine inspection standards which expressly provide for an exactly similar method of checking in and out of mines.—

(U. S. Dept. of the Interior, Bureau of Mines, Information Circular No. 7204, Sec. 12 (General Practice) par. 36).

The miner then boarded whatever skip he pleased, the Company merely preventing over-crowding and filling vacancies in crews, if there were any. If an employee did not arrive at the tipple until after the regular trips were over, he was permitted to reach his working place in some other way. If, on the day shift, he was supposed to report to his foreman or head miner at the working place at 6:45. Until then he was under no supervision or direction except as to his behavior for his own safety and the protection of property.—(R. 1037, 1229, 1265, 2434-7, 2442, 2509-10, 2535, 2543, 2562, 2675, 2851, 2905, 3052).

The respondents' own witnesses testified that the employees did not come under the supervision of the foreman or head miners until they reach their respective working place.—(R. 974, 1159, 2435, 2510-11, 2561, 2645, 2893-4, 2917).

When a production crew was short of men, substitutes would be provided from the service men at the underground loading stations, and since the substitute might thus be late in arriving at the face, he was none-the-less paid full time.—(R. 963, 983-5).

The working time of the day shift was from 6:45 A. M. to 3:15 P. M., and the men were paid for eight hours even though they may not all have worked actually eight hours. For example, the "shooting" to prepare for the next day's work was at 3:10. The drilling and charging having been completed, all but those required to light the fuses were expected to leave the heading, and in practice they left at irregular intervals before 3:10 and went to the loading stations where benches were provided for them to sit until they were able to board a skip to return to the surface, where they again changed their clothes and took a bath if they desired to do so.

One of the reasons of the District Court for finding that there had been no custom not to pay for travel time was the fact that for their own safety men were permitted to leave the working places at irregular times before the "shooting" and were paid for full time, and the District Judge thought that they thus received some pay for travel time.—(R. 497).

There were two classes of employees, (a) service men, i.e., timber and track men, motormen and transportation men, and (b) production men or heading crews.—(R. 758).

The service men in the mines of the Tennessee Company numbered approximately 60 per cent of the total underground employees (R. 758); in the Republic Mines, 46 per cent (R. 1848); and in the Sloss Mines, 36 per cent (R. 1441).

The service men reported to their foremen near the loading stations and obtained their tools from tool boxes located there, and their work day began then. The production men reported to the head miners at the face, and obtained their tools which had been conveyed there by the company, and their workday then began. The time of the production men was kept by the head miner, and of the service men by a foreman.—(R. 791, 797-8, 1047-9, 1087-93, 1095).

The employees were paid and receipted for full payment either twice or four times a month (R. 903), and the statements necessarily told them that travel time was not included in the computation of work time.—(T. C. I. Exhibits Y and V, R. 3557-3586).

The foregoing is substantially undisputed.

The respondents' evidence consisted largely of exaggerations of the discomforts and hazards of underground travel and alleged carrying of tools to and from the portals.

It has always been and is now the contention of petitioner that in considering the issue as to whether or not the portion of the time spent by the miners in traveling to and from their usual places of work and while not engaged in physical work or service constituted a part of the "work-week," evidence relating to the incidental perils and discomforts of underground mining was not relevant. Petitioners objected to this line of evidence when it was first presented by respondents on the cross-examination of Witness Ball, renewed the objection when such evidence was first affirmatively offered by respondents, and upon the objection being overruled, were allowed a continuing objection and exception to all such testimony.—(R. 2393-4).

The Congress did not intend by the enactment of the Act to eliminate, ameliorate, or regulate conditions of employment, and it legislated only in reference to minimum wages and maximum hours.—(p. 45, 55-59, infra).

Aside from the discomforts and perils that are incidental to all underground mining operations, the evidence discloses that the conditions in the mine of this petitioner were, in safety and comfort, equal to, if not superior to those customarily existing in other mining operations.

The District Judge in his opinion states:

> "These conditions (previously cited by the Court as a reason for his conclusion that all time spent underground was worktime) are recited not for the purpose of censure of the plaintiff's manner of maintenance of their mines for these conditions may well be normal conditions in iron ore mines and practically inevitable."—(R. 502).

If it be assumed, however, that such evidence is material, the finding of facts as made by the District Court and relied upon by the Circuit Court of Appeals is, in substantial and determinative matters, contrary to the undisputed evidence, and the decision was reached by applying to all the petitioners and their employees much evidence which applied to only one or more of the petitioners, or to only some of their employees. In many instances the findings are predicated upon evidence which did not depict the average or usual conditions, but exceptional, casual, and the worst conditions in one particular mine or in one particular portion of one particular mine, and not existing in and representative of all mines.

Support for the above assertion is found in the following typical illustrations:

1. The undisputed evidence shows the existence of the traditional "face to face" practice in the mines of petitioners and elsewhere in the United States, notwithstanding the District Court's finding to the contrary. (pp. 10-12, supra); that no perils or discomforts existed in the Spaulding Mine of the Republic Company (R. 1908-12); that the practice of depositing "identification checks" at the "portal of the mine" (R. 4942) never prevailed in the Sloss Mines or at the Spaulding Mine of Republic (R. 1513, 786-7, 1908-12) and prevailed in the other mines solely for the purpose of safety and furnishing identification of those underground; that the "hazards of hitting their skulls against the low tunnel ceiling" (R. 4940) did not exist at all in the Spaulding Mine of Republic and existed in the other mines only when the workers became careless of their own safety, and had resulted in a long period of time in a minimum of minor injuries only (R. 972, 2645-6, 2788-92); that the cars used by the Tennessee Company for transporting miners operated on tracks in electrically lighted slopes having concrete roofs for a portion of the way from the surface to the underground loading stations (R. 978, 3750-D).

2. A composite finding as to all the mines is made that "the men frequently were given instructions as to when and how they should perform their respective duties before the skips left the portal of the mine and at all times during the descent they were subject to company rule and under company control."—(R. 4940-1).

This statement has no application in the case of the Spaulding Mine of Republic. In the other mines where mechanical transportation was used, the evidence is undisputed that the men in going to and from their working places were not accompanied by their supervisors or foremen and received no orders en route of any kind in reference to the performance of their duties.—(R. 1087, 1159, 1265). The only rules or control that the miners were subject to while on the skips were those relating to safety and having no connection with the details of the performance of their work.—(R. 1037-39). The undisputed evidence shows that the instructions referred to were given only occasionally and then only to a few of the employees, and that the great majority of the employees never received any instructions of any kind at the surface. These incidents are well defined by the original decision of the Court of Appeals in its opinion as follows:

> "We think that these pursuits should not be computed as work time since they fall within the category of duties incident to qualifying the employee to perform his work rather than within the scope of his actual employment."—(R. 4942).

3. It is undisputed that the composite findings of the carrying of tools, the giving of instructions, or the exercise of any acts of control were not supported by the testimony because these acts were infrequent, casual and sporadic, for the convenience of the miners and to their own advantage in saving time and effort, and in the case of all of the serv-

ice, and in the case of most of the productive, employees, were practically non-existent.—(R. 3105-6, 2663, 2694, 2746, 1271, 2519, 2743, 2731-2, 1087, 1159, 1265, 1037-39).

It is undisputed that in the mines of the Tennessee Company means were provided for getting all tools and supplies to the working places during the regular eight-hour shift.—(R. 2519-21, 2855-6, 3116, 3121, 3151).

Occasionally a miner might pick up a few wedges as he passed the piles of material or stick a piece of drill steel down his pants leg (R. 953), but it is undisputed that the practice was as above stated for the Company to transport the tools to the working places.

The District Court found:

> "Plaintiffs' employees occasionally obtain and return tools and frequently obtain carbide (at T. C. I. and Sloss) on the surface before entering the mine. At Republic, employees pick up a battery light, rented to them by the company, and turn the battery light in when they emerge from the mine at the end of a shift.—(R. 561).

9. *The history of Collective Bargaining of the Tennessee Company with the CIO.*

On October 19, 1933, the three local unions affiliated with the International Union of Mine, Mill & Smelter Workers, herein referred to as the Smelters' Union, at a conference with the officers of the Tennessee Company, presented six demands. Three of them were as follows;

> "4. Suggestion that men enter the mines on their own time and come out on Company time;
>
> "5. Suggestion for an 8-hour day and 40-hour week and
>
> "6. Suggestion that rates of pay be increased accordingly."—(R. 3592).

The company answered the demands as follow:

> "The three suggestions are considered as one since they can be answered as such. The code adopted for coal mining is being followed very closely by this Company in connection with its ore mining operations and that code provides for 8 hours of work at the usual working place, exclusive of the lunch period, for a 40-hour week and for certain wage scales.
>
> "While we do not propose the adoption of identical wage scales at the ore mines as those of coal mines, proper differentials are being maintained and adjustments have been made to secure a fair wage to each employee."—(R. 3593).

Attention has been called above to the definition of working time in the bituminous coal industry.

On *April 13, 1934,* representatives of the same union, including the respondents' witnesses, Anderson and McDaniel, presented twenty-two demands to the Company, the eighth demand reading as follows:

> "In view of the fact that the Company can force the men to enter and leave the mines at any time stated by the Company, we ask the right to enter on our own time and leave on the Company's time."—(R. 3595).

The union then claimed to represent ninety per cent of the employees.—(R. 3594). It was strong enough to close down the mines from May 4th to July 2, 1934.—(R. 869-74, 884).

Operations were resumed on the "face to face" basis, excluding all travel time as the result of mediation, the agreement reached being evidenced by an exchange of letters between the Company and the Honorable Frances Perkins, Secretary of Labor, and Commissioners Dewey and Richardson.—(T. C. I. Ex. 8, R. 3604-18).

It is undisputed that the agreement reached excluded travel time, the demand for one-half travel time not having been brought up during the negotiations.—(R. 876-7).

The agreement then reached was due to expire on June 24, 1935. On *June 13, 1935*, the representatives of the same locals met the General Superintendent in conference and presented a contract for the ensuing year containing seventeen sections. Section 9 read:

> "9. It is agreed that the employees shall enter the mines on their own time and come out on the Company's time."—(R. 3623).

The Company suggested that the existing agreement outlined in the Perkins' letter be continued for another year and that was agreed to.—(R. 88).

It is undisputed that the three foregoing demands for one-half of travel time were the only demands ever presented up to that time by any union employee or representative of employees, for any travel time in whole or in part, and that those demands were not seriously made since they were never referred to in any of the subsequent discussions.—(R. 882).

On *May 26, 1936*, the same Union presented the Company a proposed contract to terminate in 1937 which contained the following provision:

> "An eight hour day and five day week (40 hours per week) shall prevail, exclusive of the thirty minute lunch period, with option to run through without suspension if agreed to between the Company and the Mine Committee.
>
> "The eight hour day means eight hours in or about the mines, at the usual places for all classes of work, (other than those excepted from this Agreement), exclusive of the lunch period, whether they be paid by tonnage, except in case of accident, which temporarily necessitates longer hours for those employees required on account thereof, and also except those whose daily work

includes the handling of man-trips and those who are required to remain on duty while men are entering and leaving the mines."—(R. 3632).

It also contained the following:

> "When an employee has no work at the face and is given other labor he shall be paid at the scale for such labor."—(R. 3636).

The Company had proposed an incentive plan, which the Smelters' Union refused to accept with the result that the mines were again closed by a strike from May 31, 1936, to August 19, 1936.

The Union had proposed among other things that the men have "no time off for lunch."

In the discussions which followed, the following was said, as shown by the minutes:

> "Mr. Ball: No drag scrape or section crew except during emergency be permitted to start work before usual working time and must cease work at the regular quitting time.
>
> "Our studies show that the men do not do that now.
>
> When we check men in the mines we expect them to give a full eight hours work. The next paragraph states:
>
> "Days work to consist of eight hours, 6:30 a. m., to 2:30 p. m., and 6:30 p. m., to 2:30 a. m., with no time off for lunch.
>
> "Our answer to that is No. Our men go in the mines about 6:05 a. m., and they get to their working places about 6:45 a. m. Lunch is from 11:45 to 12:15. However, if the men want their lunch at some other time that is O.K. Quitting time is 3:15. That is eight hours face to face. Men that are working all day need their lunch period. They get up early and to keep in the best physi-

cal condition these hours should remain as they are. This also applied to the service men. Are there any comments?

"Mr. Horn: That is clear."—(R. 3673-4).

The incentive plan proposed by the Company contained the following definition:

> "A fair day's work: This is the daily production of an average section crew working at the average rate of skilled miners with the average allowance for personal necessities, fatigue, and general mining delays and conditions."—(R. 3966).

The only suggestion on the part of the Union was that there be inserted after the words "an average section crew working" the words "in an average heading."—(R. 3648).

On *August 19, 1936,* the men returned to work under the Governor's Agreement (T. C. I. Ex. 13, R. 3687), under the terms of which the incentive plan was to be given a four months' trial, and after that period the men continued to work.

On *October 6, 1938,* before the Act took effect, the agreement of that date was executed as stated.—(p. 4, supra).

By its terms the contract was to remain in effect until changed or terminated by either party on ten days' notice. It remained in full force and effect until May 5, 1941, when, in compliance with the opinion of the Administrator, another agreement was made as stated.—(p. 5, supra).

No demands for travel time, except the three casual demands above referred to, were made by any employee, representative of employees, or union prior to October 5, 1940, when, following a press release of the Wage and Hour Division, which incorrectly set out the facts in the case of the Cornucopia Gold Mines (R. 1066, 1068), the CIO Locals for the first time raised the question of compensation and demanded payment for travel time.—(T. C. I. Ex. 21, R. 3747-9).

The CIO Locals made similar demands upon the other petitioners and the Woodward Iron Company.

The Administrator subsequently by implication, corrected the prejudical and incorrect statement contained in his release in relation to the *Cornucopia Gold Mines Case* by stating that the decree of the District Court in the Cornucopia Case was a consent decree predicated upon the fact that the respondent therein, previous to the enactment of the Act, had, with the agreement of its employees, computed and paid the wages of its gold mine employees on the "portal to portal" basis, and subsequent thereto, and in evasion of the Act, not only changed it to the "face to face" basis, but adopted an arbitrary and incorrect length of time as covering their travel time.

VII

ERRORS OF THE CIRCUIT COURT OF APPEALS

1. The Circuit Court of Appeals erred in holding that the question whether travel time should be included in the computation of working time was a question of fact.

2. The Circuit Court of Appeals erred in sustaining the findings of the District Court on the ground that they were not clearly erroneous.

3. The Circuit Court of Appeals erred in sustaining the finding of the District Court that there was no custom not to include travel time in the computation of working time, though conceding arguendo "that for twenty-five years prior to 1938 iron-ore miners had not been compen-

sated for travel-time, and that even after 1938 the parties to this suit had entered into contracts whereby it was agreed that no wages should be paid for travel-time."

4. The Circuit Court of Appeals erred in holding that it was the intention of the Congress in passing the Fair Labor Standards Act to regulate the environment and physical conditions of work and that travel time was a part of work time because of its discomforts and hazards.

5. The Circuit Court of Appeals erred in affirming the decision of the District Court that travel time was to be computed in determining working time.

6. The Circuit Court of Appeals erred in setting aside agreements made through the process of collective bargaining on the ground that their "evidentiary value" was to be determined by a jury or other fact finding tribunal.

7. The Circuit Court of Appeals erred in its suggestion that the agreements set aside may not have been voluntary, because of the lack of bargaining equality.

8. The Circuit Court of Appeals erred in disregarding the exclusion by the District Court of relevant evidence.

VIII

SUMMARY OF ARGUMENT

1. *When the Fair Labor Standards Act was passed immemorial custom and agreements arrived at by the process of collective bargaining had established the "face to face" method as the standard and measure for computing working time in the iron ore industry.*

Both the custom and the agreements were established by undisputed evidence.—(pp. 4-25, supra).

The Circuit Court of Appeals conceded both. It disregarded the custom on the erroneous view that the Act was intended "to eliminate labor conditions detrimental to the general welfare of the workers." It disregarded the agreements on the ground that they were not voluntary, although arrived at by the duly authorized bargaining agents, in fact, by the top men not only in the Locals but in the International organization as well.— (p. 4, 18, supra).

If contracts so arrived at are to be thus lightly disregarded, one of the paramount purposes of the Congress to insure and safeguard collective bargaining will be frustrated.

2. *In the absence of anything in the Act to the contrary, it was competent for the parties immediately concerned to agree, in accordance with immemorial custom, that "working time" or the "work week" should include only productive time.*

The Circuit Court of Appeals thought the matter doubtful and upheld the District Court only under the rule that findings must be upheld unless "clearly erroneous."

But the question was not one of fact to be decided by a jury or other fact finding tribunal, one way in one case and the opposite way in another, resulting in unequal competitive conditions, which it was the purpose of the Act to prevent.

Moreover, under the decisions below the deeper mines will be at a great disadvantage with those whose headings are only five or six minutes walk from the portal, as in the case of Republic's Spaulding mine. The inevitable result will be that the newly opened mines will be rapidly exhausted and the older mines will be operated only when the demands exceed the ability of the shallow mines to supply them.

We adopt as our own the cogent reasons given in the Houck letter of July 9, 1940, to the Administrator for the submission that this is peculiarly a case "to afford the fullest possible scope to agreement among the individuals who are actually affected."

But the majority of the Circuit Court of Appeals thought that "the evidentiary value of agreements in relation to working time is for the jury or other fact finding tribunal."

3. *It was not the intention of the Congress to nullify long established customs and standards of measurement or to impair the obligation of contracts fairly arrived at through the process of collective bargaining.*

The Act is strictly a wage and hours law, establishing minimum wages and maximum hours. It did not attempt to define "work week."

The Congress must be deemed to have known of the long established custom and standard for measuring the work week in the bituminous and iron ore mining industries and the long administrative history set forth in the statement of the case.—(p. 4-49, supra).

If it had intended to abrogate long established customs and standards of measurement it would not have left the term "work week" wholly undefined. It could not have intended by implication to invalidate agreements arrived at through the process of collective bargaining at the very time it was attempting to strengthen and safeguard that process.

4. *Subsequent interpretations and administrative rulings of the Fair Labor Standards Act, and of acts of similar import, and the subsequent practical construc-*

tion of the Act by the parties, the industry, and the public generally, demonstrate that it was not the intention of the Congress to constitute travel time a part of the "work-week."

Petitioner's contention that the Congress must be deemed to have known of and to have legislated in the light of the traditional practice, contractual agreements, and the long administrative history set forth in the Statement of the Case (p. 4-49, supra) is strengthened by the undisputed fact that following the enactment of the Act the interested parties, including the beneficiaries under the terms of the Act and its Administrator, and all others, construed Section 7 (a) as authorizing the continuance and not in any way prohibiting the computation and payment of wages on the traditional "face to face" basis.

5. *The grounds of the decision below are untenable and without the support of authority.*

The finding of the District Court, affirmed by the Circuit Court of Appeals, that there was no custom not to include travel time in work time was based on two plain *nonsequitors,* (a) that the men were employed on a tonnage or task as well as an hourly basis, and (b) that they were permitted to leave the headings at irregular intervals before the "shooting" and were paid for a full day though they actually worked less.

The holding of both the District Court and the Circuit Court of Appeals that the purpose of the Act was to eliminate unhealthful conditions and uncomfortable and hazardous means of travel is obviously unsound. The Act was passed to promote the general welfare of the workers by enabling them to maintain minimum standards of living. It has nothing to do with health, safety or physical conditions of labor, except, of course, as health is promoted by a proper standard of living.

It was a fundamental error to hold that the question was one of fact. There were no substantial disputes of fact. There were no conflicting inferences to be drawn from the facts. At most there might be differences of opinion. The Administrator apparently had one opinion as to the bituminous coal mines in 1940 and another as to iron ore mines in 1941.

It may be safely assumed that if this question were one of fact to be decided by the Administrator or other fact finding tribunal conditions approved as proper and harmless in one industry or plant might be disapproved in another industry or plant where the conditions may have been the same or better. Necessarily the field left for the operation of agreements as to what constitutes work time must be uniform in every case and in every part of the nation. That question cannot be left to the determination of each separate jury or fact finding tribunal. On the same evidence one jury might return one verdict and another an opposite verdict, and neither could be set aside "if different reasonable inferences may be fairly drawn therefrom." Each varying decision tends to increase "unfair competition in commerce." Such chaos and confusion can be avoided only by holding that the validity and effect of such agreements are matters of law for the courts to decide. To hold that parties cannot agree that compensation shall not be paid for travel time, or that the effect of such an agreement is an evidentiary question for the jury, tends to defeat the purpose of the Act and to promote unfair competition because the amount of time necessarily spent in traveling to and from the working place varies widely not only in different mines, but as between the working places in the same mine. As said in the dissenting opinion, "There is nothing in the Act to outlaw agreements that travel time in getting to and from the agreed place of work is not work time."

Treating the validity of agreements in relation to working time as a question of fact, with their evidentiary value to be determined by the jury, the Court has held that if the ordinary man might fairly have drawn the inference from the evidence that the employees ought to receive compensation for travel time, then such finding should not be set aside. If the validity of agreements as to working time is treated as a matter of law, the conclusion is diametrically opposite—the non-pay time must be clearly work time or the agreement is valid and effective.

To treat the validity of agreements in relation to working time as questions of fact to be determined by a jury leads to confusion which would inevitably arise from the possibility, or even probability, of contrary conclusions. To treat the validity of agreements in such relation as questions of law results in uniformity of conclusions, and insures stability of economic relationship and conditions.

The Act was intended to have application for a permanent period of time and on a national scale. To operate successfully for the future the parties must be free to contract as to any time that is not clearly work time. What is not clearly work must be left subject to the contract of the parties.

ARGUMENT

POINT I

WHEN THE FAIR LABOR STANDARDS ACT WAS PASSED, IMMEMORIAL CUSTOM AND AGREEMENTS ARRIVED AT BY THE PROCESS OF COLLECTIVE BARGAINING HAD ESTABLISHED THE "FACE TO FACE" METHOD AS THE STANDARD AND MEASURE FOR COMPUTING WORKING TIME IN THE IRON ORE INDUSTRY.

The District Court said there was no such custom, obviously for untenable reasons which will be considered under Point IV. The majority of the Circuit Court of Appeals admitted both the custom and the agreement, but also disregarded them on untenable grounds which will likewise be considered under Point IV. The point with which we are immediately concerned is that the fact is established beyong the possibility of cavil or doubt.

The petitioners also tendered evidence which showed beyond the possibility of doubt that the "face to face" method had prevailed in the bituminous mines as long as anyone could remember. The evidence was excluded although the petitioners' bituminous mines in Alabama are practically alongside of their iron ore mines.

This evidence was excluded although the admitted and offered evidence showed without dispute that petitioner operated within a few miles of each other, and as an integrated part of its manufacturing operations, coal and iron ore mines; that the operations of both classes of mines as to ingress and egress of workmen, methods of mining, distances of travel, incidental perils and discomforts, competition, wage structure and wage agreements, payment and receipt of wages, etc., were substantially or identically the same except that the travel distances and incidental perils and discomforts were greater, and the history of wage agreements through collective bargaining was longer in the coal mines than in the iron ore mines, and, despite the admitted and undisputed evidence that substantially similar conditions to those described above had for years uniformly and traditionally existed in the iron ore and coal mines throughout the United States, and, also, despite the ruling of the Administrator on July 18, 1940, that the "traditional practice of computing work time on a 'face to face' basis in the bituminous coal mining industry would not be unreasonable," and despite the fact that all the administrative interpretations, arbitration awards and legislative and judicial declarations (p. 10-28, supra) had sanctioned or directed the "face to face" basis in all coal mines throughout the nation.

When the Congress enacted the Act it must be assumed to have had knowledge of these matters and to have legislated in the light thereof.

United States v. Irwin (April 6, 1942), 62 Sup. Ct. Rep. 899;

Interstate Commerce Commission v. Baltimore and Ohio Railroad Co., 145 U. S. 263;

Reiche v. Smythe (1872), 13 Wallace 162;

Mark v. United States, 161 U. S. 297;

United States v. Farrar, 281 U. S. 624;

Hahn v. United States, 107 U. S. 402;

Stairs v. Peaslee (1855), 18 Howard 521;

National Lead Company v. United States, 252 U. S. 140;

United States v. Isham, 17 Wallace 496-507:

The Congress did not specify in the Act that all time spent underground in coal mines or ore mines should be a part of the "work week," and it did not intend to provide that such time should be work in the ore mines and not work in the coal mines; it did not intend to create the anomalous situation that fellow employees of the Tennessee Company, living in the same village, represented by the same Union, receiving their wages in the same manner at the same time and place, having the same general superintendence, working and traveling underground under the same general conditions, encountering substantially the same incidental perils and discomforts, should, if a coal miner, be not paid for travel time, but if an ore miner, be paid for travel time. The Congress did not intend to declare as valid the "face to face" provisions in the wage agreements with the United Mine Workers of America and void the exactly same provisions in the wage agreements with the International Union of Mine, Mill and Smelter Workers, both, at the time of the enactment of the Act, affiliated with the Congress of Industrial Organization.

It is respectfully submitted that the facts in reference to the bituminous coal mines, employing approximately 500,000 employees were not only relevant in ascertaining the intent of the Congress as to the iron ore mines employing 20,000 employees, but have a controlling effect in showing that the construction of the Circuit Court of Appeals of Section 7 of the Act does not represent or accord with the intention of the Congress.

If any possible doubt can arise against the assertion that it was the intention of the Congress not to legislate differently in reference to coal mines and iron ore mines, this doubt is dissolved by the application of the principle that when the language used is indefinite or ambiguous the practical interpretation by the parties themselves is entitled to great, if not controlling influence.

Chicago v. Sheldon, 9 Wallace 54.

The undisputed evidence shows that subsequent to the enactment of the Act, Section 7 (a) of the Act has been construed by the industry, the parties beneficiary, the Administrator of the Act, the National War Labor Board, the Secretary of the Interior as Solid Fuels Administrator and agent of the Government in assuming control of the coal mines, and everyone else as authorizing the continuance of the traditional practice of computing and paying wages on the "face to face" basis and the making of agreements relating to travel time.

In the light of the foregoing it is clear beyond the peradventure of a doubt that the construction of the Circuit Court of Appeals to the contrary cannot be maintained.

The practices and customs in the bituminous coal mines have been the subject of administrative action so frequently that they are matters of common knowledge. The Congress certainly was aware and the Court will take judicial notice of the settlement of 1917, approved by Fuel Administrator Garfield, of the report of the Bituminous Coal Commission in 1920, approved by President Wilson, and of the Code of Fair Competition for the bituminous coal industry adopted under the NIRA and approved by President Roosevelt; indeed, the National Labor Relations Act and the Fair Labor Standards Act were passed to accomplish the purposes of NIRA, of which the Congress could not have been ignorant.—(p. 13-26, supra).

POINT II

IN THE ABSENCE OF ANYTHING IN THE ACT TO THE CONTRARY, IT WAS COMPETENT FOR THE PARTIES IMMEDIATELY CONCERNED TO AGREE, IN ACCORDANCE WITH IMMEMORIAL CUSTOM, THAT "WORKING TIME" OR THE "WORK WEEK" SHOULD INCLUDE ONLY PRODUCTIVE TIME.

The majority of the Circuit Court of Appeals thought the matter was doubtful, indeed so doubtful that they were able to sustain the decision of the District Court only by invoking the rule that findings not "clearly erroneous" should be sustained. They were at pains in denying the motion for a rehearing to say that they had not adopted a rigid definition of "working time," had not upheld the portal-to-portal theory as a matter of law; and had not denied the principle that in close cases it is well to afford the fullest scope to agreements among the individuals who are actually affected (137 Fed. (2d) 176, 183).

A matter so doubtful that it can only be resolved by invoking the rule against disturbing findings not "clearly erroneous" would seem to be close enough to be decided according to the concepts, customs and practices in the industry by those immediately concerned.

In *Walling v. Belo Corp.*, 316 U. S. 624, Mr. Justice Byrnes, speaking for a majority of the Court, said:

> "The problem presented by this case is difficult—difficult because we are asked to provide a rigid definition of 'regular rate' when Congress has failed to provide one. Presumably, Congress refrained from attempting such a definition because the employment relationships to which the Act would apply were so various and unpredictable. And that which it was unwise for Congress to do, this Court should not do. When employer and employees have agreed upon an arrangement which has proven mutually satisfactory, we should not upset it and approve an inflexible and artificial interpretation of the Act which finds no support in its text and which as a practical matter eliminates the possibility of steady income to employees with irregular hours. Where the

question is as close as this one, it is well to follow the Congressional lead and to afford the fullest scope to agreements among the individuals who are actually affected."—(pp. 634-5).

That language is exactly apposite to the instant case.

There is no suggestion here of any effort to circumvent or defeat the statute. A good faith agreement was made, participated in on behalf of the Union by their top officials and legal advisers even of the International Union. That agreement defined "work day" in the exact terms of a definition proposed by the Union itself two years earlier. Under that agreement employees worked until May, 1941, nearly three years after the passage of the Act, and they received and receipted for their payments in full, knowing that travel time had not been included in the computation of working time. Under the decisions below they are now to receive a windfall of nearly three years back pay with time and a half for overtime.

The cogent reasons set forth in the Houck letter for treating the matter as an appropriate subject for contract apply with full force to the instant case and, whether that letter was admissible as evidence or not, we adopt it as a part of our argument and annex it as an appendix to this brief.

It was competent for the parties immediately concerned to agree that all, any part or no part of travel time, even from the home to the place of work at the face, should be included in computing work time. The question cannot be made to turn on mere incidents varying in different cases, such as the occasional carrying of a tool from the portal or loading station or even the discomforts and hazards of travel.

The opinions of Chairman Davis and Mr. Morse in the Matter of Operators Negotiating Committee and United

Mine Workers of America, delivered June 19, 1943 (Case No. 111-1284), show that the subject is peculiarly one for the agreement of the parties (p. 21-25, supra and appendix).

Surely the fullest scope should be given for the settlement by the parties themselves of questions of such complexity and difficulty.

If the incubus of the judicial precedent of this decision is removed, and the parties having the most interest, the greatest knowledge, and the longest experience in underground mining are permitted to negotiate and reach an agreement on the question ~~to~~ of travel time compensation, the chaos which, as predicted in the Houck letter, in the dissenting opinion in this case, and in the opinions of the National War Labor Board, has occurred, would not have occurred.

POINT III

IT WAS NOT THE INTENTION OF THE CONGRESS TO NULLIFY LONG ESTABLISHED CUSTOMS AND STANDARDS OF MEASUREMENT OR TO IMPAIR THE OBLIGATION OF CONTRACTS FAIRLY ARRIVED AT THROUGH THE PROCESS OF COLLECTIVE BARGAINING.

The Act is purely and simply a wage and hours act. There is no question here but that the wages paid by the petitioner were far above the prescribed minimum. The sole question is whether travel time is to be included in work time. The very fact that the Congress attempted no definition of "work time" or "workweek" shows that it did not intend to upset long established customs and standards of measurement and definition, and that it did intend to leave the matter to the parties immediately concerned. Of that there is affirmative evidence in the report of the Senate Committee of July 6, 1937, (p. 26, supra), and in what was said on July 29, 1937 in debate in the Senate (p. 28, supra).

In construing the Act in *United States v. Darby,* 312 U. S. 100, this Court said:

> "Its purpose, as we judicially know from the declaration of policy in Section 2 (a) of the Act, and the reports of Congressional committees proposing the legislation, S. Rept. No. 884, 75th Cong. 1st Sess.; H. Rept. No. 1452, 75th Cong. 1st Sess.; H. Rept. No. 2182, 75th Cong. 3d Sess.; Conference Report, H. Rept. No. 2738, 75th Cong. 3d Sess., is to exclude from interstate commerce goods produced for the commerce and to prevent their production for interstate commerce, under conditions detrimental to the maintenance of the minimum standard of living necessary for health and general well-being; and to prevent the use of interstate commerce as the means of competition in the distribution of goods so produced * * *. (pp. 109-110).
>
> * * * *
>
> "The motive and purpose of the present regulations are plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions, which competition is injurious to the commerce and to the states from and to which the commerce flows. (p. 115).
>
> * * * *
>
> "As we have said the evils aimed at by the Act are the spread of substandard labor conditions through the use of the facilities of interstate commerce for competition by the goods so produced with those produced under the

prescribed or better labor conditions; and the consequent dislocation of the commerce itself caused by the impairment or destruction of local businesses by competition made effective through interstate commerce. (p. 122).

* * * *

"Both provisions are minimum wage requirements compelling the payment of a minimum standard wage with a prescribed increased wage for overtime of 'not less than one and one-half times the regular rate' at which the worker is employed." (p. 125).

It is not a health law, except of course as proper standards of living promote health. It does not say a thing about the physical conditions of labor. It was passed, of course, to promote the general welfare of the workers by assuring them a minimum standard of living, and the lower courts thought that it could be sustained because the improvement of working conditions promoted general welfare; but that was not the matter on which the Congress was legislating and the introduction of the "portal to portal" method of computing the work week will tend to nullify the constitutional basis of the Act by creating unequal competitive conditions.

The matter is peculiarly one for the parties themselves to work out through the process of collective bargaining. In 1938 the definition of the bituminous coal industry was adopted exactly as the Union itself had proposed two years earlier. The Union had included a demand for one-half of travel time in the demands presented by them in 1933, 1934 and 1935, obviously for bargaining purposes since the matter was never pressed.

The employees have received substantial increases in pay on the definition of "work day" proposed by their own Union. Presumably all relevant factors were taken into account in fixing the rates of compensation; at any rate they were fixed on the basis that the work week did not include travel time.

It is inconceivable that the Congress could have intended to nullify contracts fairly arrived at by the process of collective bargaining at the very time when they were strengthening and safe-guarding that process in every way, and we know from the debates as well as from the text of the Act that they had no such intention.

The Supreme Court of California decided that an Act of that state passed in 1909 which prohibited the employment of workers in underground mines more than eight hours out of twenty-four (Stat. 1909, p. 279, c. 181, approved March 10, 1909) was not violated by excluding travel time from work time, saying:

> "Giving to the words of the act their ordinary and reasonable meaning, the limitation of time is to be construed as referring to the time when men are actually engaged in work, not when they are going to and from their work. There is nothing in the language of the act which would justify a more restricted interpretation." —(*Ex Parte Martin*, 106 Pac. 238-9).

Ten other states passed substantially similar acts after the above decision and, as far as our research discloses, that decision has never been questioned with the exception of the decision in the case of *Butte Miners Union No. 1 v. Anaconda Copper Mining Company*.—(p. 16, supra). With the knowledge of those statutes and of that decision, the Congress used, without defining, the term "workweek" which has a much more restricted meaning than "employ" or "employment."

Three states, Arizona, Nevada and Utah, in plain terms limited the time that employees could work in underground mines to eight hours. The Congress did not see fit to follow that example.

The Legislature of Alaska in 1917 expressly adopted the "face to face" method of computing work time in underground mines. The Congress did not see fit to follow that example.

In short, without defining it, the Congress used a term which might be made to fit the varying concepts, customs, traditions and standards of different industries when it could very easily have provided that travel time should be included in the computation of a "workweek" if it had so intended.

It centered its attention on minimum wages and maximum hours of work, with the obvious intention that the Act should be applied in accordance with the traditions, customs and standards of different industries.

In Walling v. Belo Comporation, 316 U. S. 624, this Court sustained an agreement of the parties defining "regular rate," though it was charged and some of the members of the Court thought that it was an evasion of the statute.

In Williams v. Jacksonville Terminal Co., 315 U. S. 386, this Court sustained an agreement that "tips" should constitute a part of "wages."

There is no suggestion in the instant case of any attempt to evade or circumvent the statute. A fair agreement, made in good faith, establishing the method for computing "working time" or the "work-week" in accordance with the unbroken custom of the industry was equally within the scope of agreements which the Congress left the parties free to make, since it attempted no definition of those terms and prescribed no method of computation, though presumed to know of the prevailing method in the industry.

POINT IV

THE PRINCIPAL PURPOSE OF THE FAIR LABOR STANDARDS ACT AND ITS CONSTITUTIONAL BASE WAS THE PREVENTION OF UNFAIR COMPETITION IN COMMERCE.

Not only did the Circuit Court of Appeals err in holding that it was the purpose of the Fair Labor Standards Act to "eliminate labor conditions detrimental to the general welfare of workers" and "these (the incidental perils and discomforts) and similar abuses," but it overlooked or ignored that the purpose and constitutional base of the Act was to prevent unfair competition in commerce.

> *United States v. F. W. Darby Lumber Company* (February 23, 1941), 61 Sup. Ct. Rep. 451-63;
>
> *Fleming v. Belo Corporation* (5th C. C. A., affirmed by this Court June 3, 1942, 66 Sup. Ct. Rep. 1223), 121 Fed. Rep. (2d) 207.

The inevitable result of the decision is the restraint of interstate commerce instead of its protection, and the causing, instead of the prevention, of "unfair compensation in commerce." The distances from the portal to the work places vary in all underground iron ore and coal mines—some are shallow, some are deep. Changing to the "portal to portal" basis gives to competitors having shallow mines an unfair advantage over competitors having deep mines, raises the relative production costs in the mines with longer travel time, and, unless overtime compensation is paid, reduces the relative production of the mines having longer travel time. A striking illustration of this is found in comparing the Spaulding Mine of Republic where the travel time is approximately fifteen minutes, with other mines where, in some instances, it exceeds one and one-half hours, This is typical of underground ore mining operations in Alabama and throughout the United States. The same inequalities, in a marked degree, exist as between all mines and within each mine.

POINT V

THE GROUNDS OF THE DECISIONS BELOW ARE UNTENABLE AND WITHOUT THE SUPPORT OF AUTHORITY.

(1) The District Court found that there was no custom in iron ore mining not to include travel time in the computation of work time, which the Circuit Court of Appeals affirmed as not clearly against the evidence.

The reasons for the decision of the District Court were:

(a) that men were employed on a tonnage or task basis.

But the definition in the contract tendered by the Union itself in 1936 included the phrase "whether they be paid by tonnage" (p. 6, supra); and the written agreement actually executed on October 6, 1938, included the phrase "whether they be paid by the day or be paid on the tonnage basis.—(p. 4, supra). Of course there is no difficulty in computing the extra time no matter on what basis the employees are paid.

(b) that employees were actually paid for eight hours work though in fact they may actually have worked less than eight hours.

All of the men except those who actually lighted the fuses were, for their own safety, required to leave the headings before the "shooting" and in practice they did leave at irregular intervals before and went to the loading stations where benches were provided for them to sit. If a crew happened to be short, the mine foremen assigned a substitute at the loading stations who was thus frequently late on the first day in arriving at the face. In such instances the men were all credited with a full eight hours work. That reasonable, practicable and fair method of treating the employees certainly does not show that it was not the custom or the agreement to exclude travel time from work time in the computation of work time.

The majority of the Circuit Court of Appeals disposed of the admitted custom on the ground that the purpose of the Act "was to eliminate labor conditions detrimental to the general welfare of the workers," and the respondents greatly magnify the supposed discomforts and hazards of underground travel and the alleged poor ventilation of the mines. But the Act does not say a single word on the subject of those conditions.

Alabama has passed a statute on the subject in relation to the bituminous coal mines.—(Code of Alabama, 1940, Title 26, Chap. 2, Sections 30-166).

The Congress itself has passed an Act on the subject.—Federal Coal Inspection Act, May 7, 1941, 55 Stat. 177).

It is common knowledge that the hazards in underground coal mining are greater than in the iron ore mines as the latter are not gaseous. This Court said that minimum wages and maximum hours were prescribed to promote the "general welfare" of the workers and the courts below evidently thought that anything that promoted general welfare was within the Act, though it was absolutely silent on anything but minimum wages and maximum hours.

(2) The majority of the Circuit Court of Appeals set aside the agreement on the ground that it was not voluntary. They said:

> "The record discloses that this agreement was not a simple statement of admitted fact, but was a compromise adjustment of real differences reached by way of negotiation and concession, and that the workers though vainly, insisted upon their right to be paid for travel time."—(135 F. (2d), 320, 322-323).

The very purpose of collective bargaining is to adjust differences by negotiations and concession. There is no suggestion in this case that there was any over-reaching or coercion. On the contrary, the undisputed evidence shows that the wage agreements were reached after extensive negotiations and the execution of the agreements were participated in and closed by the top officials of the Union, including counsel.—(p. 4, 6, supra). The definition of "work day" was proposed by the Unions themselves exactly as they had proposed it two years before. The Congress certainly did not intend that agreements fairly arrived at by collective bargaining should be set aside on such fanciful grounds.

(3) It was a fundamental error to hold that the question was one of fact.

There was no substantial dispute of fact. There were no conflicting inferences to be drawn from the facts. At most there might be a difference of opinion. The Administrator had one opinion as to the bituminous coal mines in 1940 and another as to the iron ore mines in 1941.

Such a question was peculiarly one to be settled by the parties concerned. The Congress certainly did not intend that a jury or other fact finding tribunal should be permitted to decide the question in one way in one case and a different way in another, with the resulting confusion and impairment of the very constitutional basis of the Act, nor did it intend that the construction of the Act or the "evidentiary value" of contracts fairly arrived at through the process of collective bargaining should be for a jury or other fact finding tribunal.

We desire especially to call the Court's attention to the very cogent dissenting opinion of Judge Sibley.—[135 F. (2d) 323-325].

4. The decisions below have no support in the authorities.

Compensation cases for personal injuries or death of an employee by accident "arising out of or in the course of his employment," like *Bountiful Brick Co. v. Giles,* 266 U. S. 154, and cases under the Federal Hours of Service Act limiting the time that railroad employees may be required to "remain on duty," considered by this Court in *Missouri, K. and T. Ry. Co. v. United States,* 231 U. S. 112, are not at all analogous.

Sunshine Mining Co. v. Carver, 41 F. Supp. 60, and *Butte Miners Union No. 1 v. Anaconda Copper Mining Co.,* 118 Pac. (2d) 148, involved different mining operations in Idaho and Montana, respectively, having a different history from those involved in the instant case. Neither court held in those cases that the question was one of fact.

In the *Sunshine Mining Company Case* the mine involved was a non-ferrous one. It did not appear that the practice by traditional custom and contract had been for many years to pay wages on the "face to face" basis. The District Judge intimates that his decision would have been different if previous custom and existing agreements had been shown, and clearly indicated the inherent right of bargaining by the use of the following words: —

> "Before and after the adoption of the Wage and Hour law the lunch hour periods have been set aside as non-working time and that was recognized by the Union who did not consider the lunch period as time worked, as ap-

pears by the proposed contracts they submitted to the plaintiff. They knew before entering the mine that they were granted a lunch period of a certain time in which to eat their lunch and rest while in the mine, and when in doing so they are relieved of all duties. Under such circumstances, in the absence of an agreement between the employer and employees that the lunch period should be work time, the conclusion is inevitable that one would not be actually working while he is eating his lunch or resting, for he is not at that time rendering any services."

In the case of ***Butte Miners Union No. 1, supra,*** the decision was predicated entirely upon the necessity, so the majority of the Court held, of following the Modified Portal to Portal Opinion of the Administrator in order to prevent inconsistent and chaotic methods of administration in the federal and state fields.

None of the great iron ore and coal mining states have enacted statutes on the subject and in all it has been the uniform practice from time immemorial to compute working time on a "face to face" basis.—(p. 1510-11 supra). If the Congress had intended to override such long established customs and to invalidate express agreements arrived at by collective bargaining, it would have said so in plain terms and would not, by deliberately refraining from any definition of "working time" or "workweek," have afforded the fullest possible scope to agreements among individuals who are actually affected.

CONCLUSION

It is respectfully submitted that the judgment of the Circuit Court of Appeals for the Fifth Circuit should be reversed and a judgment rendered herein declaring that it was not the intention of the Congress, in the use of the word "workweek," as it appears in Section 7 of the Act, in its application to petitioner's employees to require "portal to portal" travel time to be included in the computation of the "workweek" prescribed by Section 7 of the Act.

Nathan L. Miller,

Borden Burr,
Attorneys for Petitioner,
Tennessee Coal, Iron and Railroad Company.

The undersigned, of counsel for Tennessee Coal, Iron & Railroad Company, petitioners, hereby certifies that a printed copy of this brief has this day been served upon Crampton Harris and J. Q. Smith, Birmingham, Alabama, of counsel for respondents, and upon Bessie Margolin, Assistant Solicitor, United States Department of Labor, and the Solicitor General of the United States, Washington, D. C., this the ______ day of December, 1943.

____
Borden Burr.

APPENDIX

LETTER FROM UNITED MINE WORKERS OF AMERICA AND COAL OPERATORS TO ADMINISTRATOR OF WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR

1617 Pennsylvania Boulevard,
Philadelphia, Pa., July 9, 1940.

Col. Philip B. Fleming, Administrator,
Wage and Hour Division,
Department of Labor,
Washington, D. C.

Dear Mr. Administrator:

As a result of certain investigations which have been conducted by the Wage and Hour Division at bituminous coal mines in Pennsylvania, particularly at the Revloc shaft of the Monroe Coal Mining Company, and a conference that has been held by your Supervising Inspector, Mr. Caffey, at Pittsburgh, Pa., with a committee of the Western Pennsylvania Coal Operators' Association concerning the application of the Fair Labor Standards Act of the bituminous coal mining industry, certain questions have arisen that are disturbing to both employers and employees within the industry. These uncertainties have been continuing for some time and are causing much concern to the mine workers and the mine operators, especially with reference to "travel time."

Today, the Negotiating Committee of the Appalachian Wage Conference, namely: Messrs. J. D. A. Morrow, President of Pittsburgh Coal Company; L. T. Putnam of the

Raleigh Wyoming Mining Company, Beckley, W. Va.; L. C. Gunter of the Southern Appalachian Coal Operators Association, Knoxville, Tenn.; Charles O'Neill, President of United Eastern Coal Sales Corporation, New York City; C. E. Cowan, Vice-President of Monroe Coal Mining Coming; Frederick H. Knight, Counsel for Monroe Coal Mining Company; W. L. Robinson, President of the Youghiogheny & Ohio Coal Company and Chairman of the Appalachian Wage Conference on the one hand, and Mr. Earl E. Houck, Director of the Legal Department of the United Mine Workers of America, met with Mr. Dorsey, Regional Director, Philadelphia, Pa., and Mr. Gallagher, Regional Counsel, Philadelphia, Pa., at which time these questions were discussed at length, particularly the application of the Act as to the questions of hours of work in the bituminous coal industry.

The mine workers and the mine operators present presented their views to representatives of the Wage and Hour Division as to the provisions of the Appalachian Wage Agreement covering maximum hours and working time. We have filed with the Division copy of the Appalachian Wage Agreement, and the entire provision as to maximum hours and working time is included therein. The pertinent language, however, is "Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid by the tonnage basis * * *." The Appalachian Wage Agreement is the basic agreement for the bituminous mines in the States of Pennsylvania, Ohio, West Virginia, Virginia, Eastern Kentucky, Southeastern Tennessee and Maryland. In this territory there are several thousand rail shipping mines employing from 300,000 to 325,000 men, and some twenty-three operating districts. Each of the districts work out a local wage agreement covering its own territory, subject, however to the provisions that it must include within it all of the provisions of the Appalachian Agreement.

The mines in the Appalachian region produce 70 per cent of the total bituminous coal produced in the United States annually. Also, the Appalachian Agreement is used by the United Mine Workers of America as a basic agreement upon which the district agreements of the remaining 30 per cent of the country is predicated.

The United Mine Workers of America and coal operators of the United States have been negotiating wage agreements for a period of fifty years. The Appalachian Agreement, covering as it does a great number of men and mines, has been worked out over that period of time and covers within its general provisions myriad wage rates, conditions of work, and hours of employment. This agreement, with its twenty-three supplemental agreements, constitutes a whole document. In these conferences, of course, hours of work has been one of the principal matters of consideration during this period of time. Hours of work with wage rates constitute the heart of any such agreement. In this basic industry we have provided for seven-hour days, five-day weeks, thirty-five hours per week, with high rates of pay. The basic inside a day rate in the North is $.857 per hour, and in the South it is $.80 per hour. The underground workers are paid on this basis, with maximum rates for mobile loading machine operators, approximate $1.09 per hour. In addition, the government provides, "work by mine workers paid by hour or day in excess of seven hours in one day, or thirty-five hours in any one week, shall be paid for at the rate of time and one-half * * *." It is our opinion that these substantive provisions of the agreement are among the highest standards of labor provided in any industry in the United States, both as to hours of working time and as to wages paid. There is full and complete understanding in the industry between employer and employees as to the application of these provisions. This method of measuring the working time at the place of work has been the standard provision in the basic wage agreements for almost fifty years and is the result of collective bargaining in its complete sense.

There are many reasons why the provision as to working time has been set out as provided by this agreement. The impracticability of measuring time by any other method is inherent in the very nature of mining coal. Coal mines are sometimes very extensive. When they are first opened up, the working places, are, of course, closer by and near to the opening of the mine. In such cases there is no problem of either transportation of the men to the working places or time consumed in reaching them; but as mines grow older, the working places move farther, and farther away from the portal or opening of the mine, and as such conditions develop, it becomes necessary for provision to be made for transportation of the men over long distances to their working place. This is usually provided by what is known in the industry as "man trips." These trips are scheduled to leave the outside or opening of the mine at a certain hour, so that all the employees will reach their working places by the hour at which work regularly begins at the working places throughout the mine, and these trips are also scheduled to leave the inside of the mine when the day's work is done, at the conclusion of the seven-hour period of work at the working places.

Among other provisions of the agreement, there is provided a time for starting the day's work and a lunch period, as well as a time for expiration of the work day. There is some variation in this, depending upon local conditions as to the starting and quitting time at the various collieries. The agreement provides for certain tolerance. In any event, the starting and quitting time are no more than seven hours apart, exclusive of the lunch period.

In the many conferences that have been held over this period of fifty years, naturally all manner of suggestions and proposals for amplification or amendment of the agreement has been made both by the mine workers and the operators.

The uniform high rates of pay that have always been included in the wage agreement of the mining industry contemplate the employee's working day beginning when he arrives at his usual working place. Hence, travel time was never considered as a part of the agreement or obligation of the employer to pay for in this industry, nor as hours worked by the employees, and this has been the case since the eight-hour day was established in the industry—April 1, 1898.

It is urged that any ruling requiring such a change in the custom, tradition and contract provision so as to change the work day from "seven hours" work in the mines at the usual working places" to any new standard for the measurement of time worked, and to the adjustment of wage rates made necessary thereby, would create so much confusion in the bituminous industry as to result in complete chaos, and would probably result in a complete stoppage of work at practically all of the coal mines in the United States. Such a ruling, moreover, would establish such diversity of time actually spent at productive work as between different bituminous coal mines and within each mine that there would be no basis on which any general wage scales could be predicated, collective bargaining would therefore be rendered impossible throughout this industry, and the very purpose of the Fair Labor Standards Act would be defeated. In such an event, it would make necessary the reassembling of the Appalachian Joint Wage Conference and it would be faced with an issue that would be almost impossible of solution by agreement, resulting in an industrial conflict that would paralyze the nation. This would be a most unhappy result to flow from an act that was passed by the Congress to aid workers in industries that had unreasonably long hours and unreasonably low rates of pay, as contrasted with the short hours and the high rates of pay in the bituminous coal mines. The great amount of money involved in the case of extra payment by the operators or the great changes that would be required in the rates of pay to the miners, should any change in the present contract be necessary by reason of a new standard for the measurement of time worked, is so serious that a negotiated adjustment would seem to be impossible.

For the foregoing reasons, we believe that your Division should accept the standards of wages and hours of work, and the definition of working time, as set forth in the Appalachian agreement (which embodies the customs and traditions of the bituminous mining industry), as complying both with the provisions of the Fair Labor Standards Act and of Interpretative Bulletin No. 13, to the effect that "reasonable standards agreed upon between the employer and the employee will be accepted for the purpose of the Act.

We therefore respectfully request that your Division issue a supplement to Interpretative Bulletin No. 13, stating that the standards of wages and hours of work, and definition of working time, set forth in the Appalachian Agreement, entered into on May 12, 1939, between twenty-three district associations of bituminous coal operators comprising the Appalachian coal producing area and the International Union, United Mine Workers of America, and the several district agreements based thereon, conform to and satisfy the requirements of the Wage and Hour Act.

Respectfully submitted,

For the United Mine Workers of America:

(S) EARL E. HOUCK,
Director of the Legal Department.

For the Operators:

(S) W. L. ROBINSON, Chairman,
(S) CHARLES O'NEILL,
(S) L. T. PUTNAM,
(S) L. C. GUNTER,
(S) J. D. A. MORROW,
Appalachian Joint Conference
Negotiating Committee.

(Plaintiff's Ex. No. 25, R. 1710-16).

OPINIONS OF CHAIRMAN DAVIS AND MEMBER MORSE OF NATIONAL WAR LABOR BOARD

—o—

NATIONAL WAR LABOR BOARD

Washington, D. C., June 17, 1943

—o—

CASE NO. 111-1284

—o—

In the Matter of

OPERATORS NEGOTIATING COMMITTEE, APPALACHIAN JOINT CONFERENCE

and

OPERATORS NEGOTIATING COMMITTEE, SOUTHERN APPALACHIAN JOINT WAGE CONFERENCE

and

UNITED MINE WORKERS OF AMERICA

—o—

OPINION

The Operators Negotiating Committee of the Appalachian Joint Conference and the Operators Negotiating Committee of the Southern Appalachian Joint Wage Conference have reported to the Board that no agreement has been reached with the United Mine Workers of America on any of the issues which the National War Labor Board, in its directive order of May 25th, referred back to the parties for further negotiation.

The principal question so referred was whether the parties could agree upon a reasonable settlement of the claim advanced by the United Mine Workers that the underground workers are lawfully entitled to additional compensation for travel time, under the provisions of the Fair Labor Standards Act.

Since the parties have failed to agree it becomes our duty, under the national no-strike policy and Executive Order No. 9017 of January 12, 1942, finally to determine this labor dispute.

We have directed the parties to execute new contracts containing all the basic provisions of the old Appalachian Agreements, with certain modifications which are specified in the Directive Order. These include a provision for an additional $30.00 of vacation pay as provided for in our directive order of May 25th, and provisions requiring the operators to pay for safety equipment and devices, including electric light and cap rentals, and for blacksmithing and to furnish necessary tools and equipment without charge. The order does not provide for the payment of any additional compensation for travel time or "portal to portal" pay.

PORTAL TO PORTAL ISSUE

The Board, in its discussions of this case, has considered the matter of additional compensation for travel time in two aspects, (1) the inequality that comes from basing the pay of all underground workers on the hours worked at their working places in the mines, when the individual workers spend different amounts of time getting from the portal of the mine to their working places and back from the working places to the portal, and (2) the legal claim advanced by the United Mine Workers for additional pay for travel time under the Fair Labor Standards Act.

(1) The inequality that results from basing the pay of all the miners on the same hours worked at their working places, regardless of the amount of time that the indi-

vidual worker has to spend in traveling, is an inequality that could be cured only by including in the pay of individual mine workers an additional compensation *according to the amount of time that they actually spent in traveling.* Plans which have that effect are now in use in the iron ore mines of the country and in coal mines in other countries.

In the bituminous mines involved in this dispute the parties have agreed throughout more than fifty years of collective bargaining that wages should be paid on the "face to face" basis; that is, on the basis of time spent at the working places. On July 18, 1940, the Administrator of the Wage and Hour Division of the Department of Labor, following representations made jointly to him by the Operators and the United Mine Workers, expressed the opinion that "the practice of computing working time on a 'face to face' basis in the bituminous mining industry would not be unreasonable" under the provisions of the Fair Labor Standards Act. The Appalachian Agreements of 1941 were entered into between the parties in the light of this ruling. They retained the old maximum hours and working time provisions in which compensation was based on the "face to face" principle. The Mine Workers chose at that time "face to face" rather than "portal to portal" pay for their own reasons which they had given to the Wage and Hour Administrator in the letter of July 18, 1940. They agreed to put up with the inequality that comes from the fact that individual mine workers have to spend different periods of time in travel.

When the negotiations for the new contract were initiated in March of this year the mine workers demanded, as they had a right to do, that the new contract should make provision for additional compensation for travel time. Their demand was that the operators should pay for travel time "to conform with the basis and legal requirement for the industry." On August 13, 1941 the United States District

Court in Alabama had decided that all time spent underground in iron ore mines was working time and should be included in the computation of the employees' work week under Section 7 of the Fair Labor Standards Act, and on March 16, 1943 this decision was affirmed by the Fifth Circuit Court of Appeals.

The inequality in the present "face to face" systems of mnpayment is measured by the actual time spent by the individual ~~mine worker~~ traveling to and from his working place in the mine. It cannot be removed by a general increase to all mine workers. After such an increase the inequality would remain just what it was before. Sam Smith who works seven hours at his working place in the mine and has to spend two hours a day getting in and out would still get the same wage as John Jones who works seven hours at his working place in the mine and has to spend only 20 minutes getting in and out.

We have, of course, during our consideration of this dispute, given careful thought to the possibility of working out an agreement which actually takes care of this inequality. We have been stopped by two obstacles either one of which would make impossible the necessary adjustment at this time.

In the first place neither party to the dispute has proposed to us any kind of a plan that would actually take care of this inequality. The only thing that has been suggested is a general wage increase equally applicable to all the mine workers. In our directive order of May 25th, after most careful deliberation, we held that no general wage increase for wage earners could be approved. In the comments accompanying that order we discussed the economic position of the bituminous mine workers and pointed out why we could not approve any general wage increase for them. At a later place in this opinion we have made further reference to this subject, for reasons which appear at that place.

In the second place, the whole economic structure of the bituminous mining industry has been built upon the payment of wages on the "face to face" basis. To now reconstruct the maximum hours and working time provisions applicable to bituminous coal mining, so as to cure the inequality due to different individual travel time, would create utter confusion in the economics and in the wage structure of the industry, which could only adjust itself to this new system over a period of years. The considerations involved in such a change, both economically and with reference to the fair treatment of the individual workers, are so complex that they could be satisfactorily worked out only by a long period of collective bargaining, if at all.

In normal times of peace it would be possible for the interested parties, and for impartial men, to give reasonable consideration to these complex problems, but at the present time, when the country, engaged in a wartime struggle for its very existence, the uncertainties and disturbances involved in working out such a plan would be intolerable. A time of war is no time to settle long standing and complex questions of this character. This is particularly true, as we pointed out in connection with the north-south differential in the Cotton Textile Cases, when a disturbance of long standing relationships established by years of collective bargaining would require us to disregard our responsibility to stabilize wage rates in conformance with the national stabilization program.

(2) In our directive order to May 25th, after ruling that no general wage increase could be approved, we spoke of the legal claim asserted by the Mine Workers for further compensation under the Fair Labor Standards Act. We referred that claim to the parties for further negotiation as a possible basis for agreement on some approvable wage increase, since payments due under the Fair Labor Standards

Act may be approved without regard to the wage stabilization policy defined by the Anti-inflation Act of October 2, 1942. It was however, made very clear in our directive order of May 25th that any wage increase based upon this claim could be approved, under the wage stabilization policy, only if the amount of the increase were genuinely and reasonably related to the claim advanced by the Mine Workers under the Fair Labor Standards Act. We said that the proposed settlement must be submitted with supporting data "sufficient to enable the Board to determine whether or not it constitutes a genuine settlement of alleged claims arising under the Fair Labor Standards Act, and not an indirect wage increase in violation of the wage stabilization policies."

In the negotiations following our order of May 25th the representative of the mine workers continued to insist upon a general wage increase of $2.00 a day. No real attempt was made to relate this amount to any amount of compensation that might be due under the Fair Labor Standards Act. The representatives of the mine workers failed to make any report to the Board on those negotiations. The representatives of the operators were unable to submit to the Board any data by which the Board might determine what amount of wage increase would constitute a genuine settlement of the alleged claim.

The mine workers' demand of $2.00 a day was, as we were informed, based upon an assumption or estimate that the travel time amounted on the average to an hour and one-half a day; that this travel time should be paid for at the rate of time and one-half because the Appalachian Agreements, which provided no pay for travel time, did provide a premium rate of time and one-half for productive working time beyond 35 hours a week. In this way the amount was brought up to an estimated average of $2.25 a day for each underground worker. The United Mine Workers proposed to spread this amount over all the workers including those who did not go underground, and so arrived at the proposed general wage increase of $2.00 for all mine workers. We understand that the Mine Workers subsequently indicated to the Operators a willingness to reduce their demand to $1.50 a day, and that still later in negotiations with the Central-Pennsylvania Coal Producers Association there was a tentative agreement upon a further reduction to $1.30 per day.

It is obvious that these figures are out of all proportion to any amount that could possibly be due to the mine workers under the Fair Labor Standards Act, even if the courts should decide all questions in controversy in favor of the mine workers. The demand is plainly and unmistakably a demand for an "indirect wage increase in violation of the wage stabilization policies," contrary to the Board's directive order of May 25, 1943.

The overtime payment due to an individual mine worker, on the assumption that travel time is working time, under the Fair Labor Standards Act, may be calculated in accordance with the standard method used by the Wage and Hour Division (See Method A in footnote). Under this method the straight-time weekly earnings are divided by the actual hours worked plus the hours spent in traveling to and from the work place to the entrance to the mine. Work and travel hours of 40 and under are compensated at the computed straight-time average hourly rate and hours over 40 at time and one-half the hourly rate. From the sum of straight-time and overtime earnings the actual earnings under the wage contract are subtracted, the remainder constituting the payment required under the Act. For a miner paid at the rate of $1.00 an hour under the Appalachian Agreement for work at the face, the extra compensation for a 6-day week for travel time of one hour or less would be zero and for one and one-half hours would be

$1.02. The total liability of any operator under the Fair Labor Standards Act would be the sum of his liability to those workers whose travel time amounted to one hour per day or more. To average the travel time of all mine workers and use that average figure for travel time in the Wage and Hour Division's method of calculation would not measure the operator's liability at all.

Thus, the opportunity we gave to the Mine Workers and the Operators to work out a reasonable settlement of the claim under the Fair Labor Standards Act was not taken advantage of, and they did not reach a settlement. We cannot force upon them a settlement of a lawsuit which we have no power to decide.

As we pointed out in our directive order of May 25, it is not within the province of the National War Labor Board to determine whether or not the law requires payment for all time spent underground in the bituminous coal mines. If the United Mine Workers, or any individual miners seek a settlement of the dispute as to the legal rights of bituminous mine workers to additional compensation under the Fair Labor Standards Act, the Wage and Hour Division of the Department of Labor is the government agency provided for the settlement of such questions subject, of course, to court review as provided by Section 10 of that Act. Our Executive Order No. 9017 "does not apply to labor disputes for which procedures for adjustment or settlement are otherwise provided until those procedures have been exhausted," and it provides that "nothing herein shall be construed as superceding or in conflict with the provisions of . . . the Fair Labor Standards Act."

METHOD A

a. Weekly earnings at straighttime (42 hours x $1.00) .... =$42.00

b. Average hourly earnings $42.00 : 48) = .875
c. Straight-time earnings for 48-hour week (40 x $.875) = 35.00
d. Earnings for hours over 40 at time and one-half (8 x $1.312) = 10.50
e. Total earnings for purposes of F. L. S. A. (c : d) = 45.50
f. Total earnings under present wage contract = 45.50
g. Extra compensation for travel time = 0

As we pointed out in our Directive Order, it is possible at any time, should the parties ever agree to a settlement of this legal claim, for the National War Labor Board to pass upon it and to say whether or not the amount agreed upon is an allowable wage increase representing a genuine settlement of the claim, or a hidden wage increase contrary to the stabilization program. The distribution of the payment involved in any such settlement is a matter for the Wage and Hour Division to approve or disapprove.

WHY THE MINE WORKERS' DEMAND FOR A GENERAL WAGE INCREASE CANNOT BE APPROVED

In the directive order of May 25th, we decided that no general wage increase for the mine workers could be approved under the Act of October 2, 1942 and the relevant Executive Orders, Regulations and Policies. This national stabilization policy applies, of course, to the mine workers as well as to all other wage earners in the country.

It has been asserted that the mine workers undergo such hardships and earn such low wages that they are entitled to special treatment, out of line with and beyond the limitations of the national stabilization policy. Because of this the Board feels that in this opinion there should be set forth in greater detail the reasons why the mine workers' demand for a general wage increase cannot be approved by the Board.

There are, within the wage stabilization policy, certain circumstances under which special wage adjustments to groups of industrial workers may be approved, even though the wages of these workers have already been increased 15 per cent or more since January 1, 1941.

(1) Wage earners whose wages are insufficient to maintain a decent standard of living may, under this policy, have their wages increased.

But the minimum wage for any mine workers under the present Appalachian agreements is 73.6 cents an hour, and for able-bodied mine workers the minimum is 85.7 cents an hour. That hourly wage rate is certainly above any level that could be thought of as insufficient to maintain a decent standard of living.

(2) Wage increases may be made to correct relatively low wage rates within a wage structure where there are substantial inter-plant inequalities such as to give rise to justifiable dissatisfaction among a particular group of workers whose low wage rates amount to unfair discrimination.

In the Appalachian Agreement, however, relative wage rates for different occupations have been carefully worked out by many years of collective bargaining. No objection has been raised by the Mine Workers to these relative rates except in the occupations of greasers, trappers, flaggers, switch-throwers, and slate pickers. This objection has been recognized and taken care of by the Board's Directive Order which provides that all able-bodied workers in these classifications shall be paid not less than .857 per hour and $6.00 per day.

(3) The War Labor Board, under the supplemental directive issued by the Director of Economic Stabilization

on May 12, 1943, is authorized to approve within carefully specified limits non-inflationary wage adjustments made with reference to prevailing wage rates in the same industry, or even in other industries where there are comparable occupations. Except in rare and ususual cases such adjustments cannot be above the minimum going wages found by the Board to be sound and tested going rates paid for similar occupations in the labor market area. The adjustments must in all ordinary cases be made within the existing price structure or within the existing levels of production cost. If the Board in an exceptional case approves wage adjustments which effect price ceilings or increase production costs above the levels prevailing in comparable plants or establishments, then such adjustments do not become effective unless and until they are also approved by the Director of Economic Stabilization.

There is no basis for wage increases to the bituminous mine workers under this inter-plant or inter-industry rule. Basic wage rates are established throughout the bituminous coal industry by negotiated agreements based fundamentally upon the agreed wage rates in the Appalachian area. There are, therefore, no higher wage rates for similar occupations anywhere within the bituminous coal industry, upon which the Board could base an approval for a wage increase to these mine workers.

In our directive order of May 25th, the hours and earnings of bituminous coal miners were compared with those in other industries. It was pointed out that when the increased demand for coal to meet war requirements and the arrangements for operating the mines on a 6-day week are taken into account, the hourly, weekly, and weekly, and annual wages of the bituminous coal miners make a very favorable showing with similar earnings reported for industrial workers in other industries.

As we said in the comments accompanying that directive order, the mine workers have already received an average increase in straight-time hourly earnings of 18.2 per cent since January 1, 1941. With the provision for a 6-day week and the war time time demand for bituminous coal, the mine workers in March, 1943, were able to secure an average weekly take-home of $42.97 for a work week of 38.3 hours which is 65.3 per cent greater than their average weekly take-home in January, 1941, when they averaged 29.7 hours per week. Most of this increase was due to the substantial rise in weekly hours of work. "Assuming that this increase of weekly hours of work will continue through 1943, under the operation of the 6-day week and the war mine workers in March, 1943, were able to secure an average annual income for 1943 will be over $2,150 which is 77.4 per cent greater than in 1940 and 23.8 per cent greater than in 1942."

Taking the industry as a whole, mine workers under the 6-day week who, as in March 1943, work about 38 hours per week at the hourly rates provided for in the Appalachian Agreements as amended by the Directive Order of the Board, may expect weekly earnings which will exceed their weekly earnings n March 1941—just prior to the April 1st wage increase of $1.00 or $1.40 a day—by 60.5 per cent. Measured in terms of the increases not merely in food but in all the items which go to make up the mine workers' cost of living, this increase amounts to 32.3 per cent above March, 1941.

It is quite true that these figures are statistical averages without much appeal to the individual worker who has difficulty in making both ends meet. But it cannot be overlooked that these statistical averages truly reflect the present economic conditions of the workers in the bituminous coal industry, as compared with the conditions under which they have heretofore lived, and as compared with the wage rates and incomes of workers in other industries.

There is no doubt that the mine workers have in the past suffered very great hardships from low wages and substandard living conditions, but in the period since 1932— the low point of the pre-war depression — their average weekly earnings have risen progressively step by step from a deeply substandard level of approximately $14.00 a week in 1933 to approximately $43.00 a week in March, 1943, which puts the mine worker up among the higher paid workers in the war industries.

The further wage increase of $2.00 a day demanded now by the Mine Workers is an additional increase of 28.6 per cent on top of the average increase of 18.2 per cent which these wage earners have already received since January 1, 1941, or a total increase of 46.9 per cent.

It is obviously impossible for the War Labor Board to approve any such increase for the mine workers under the national wage stabilization policy. To approve it would fly in the face of decision after decision of this Board in which we have had to limit the wage increases allowed to the wage earners in most of the great war industries of the country.

Any such departure from the general rule would destroy the whole wage stabilization program. It would defeat its own ends. The resulting increases in costs of production could only have the effect to further increase all prices, including particularly farm and food prices, to levels which would nullify the wage increases. It would expose the mine workers themselves to a renewed danger that their payroll dollars would be reduced to small change before they get to the grocery store.

NEGOTIATING CONDITIONS INSISTED UPON BY THE UNITED MINE WORKERS

The War Labor Board cannot fail to note that, by the insistence of the United Mine Workers, the negotiations for the new Appalachian Agreements have been carried on under conditions which violate the national no-strike agreement and are in themselves a defiance of the national wage stabilization policy.

The effect of the national no-strike agreement has been, in all other labor disputes in all other industries in America, that the War Labor Board has been able to carry on its consideration of the dispute free from the coercive pressure that results in war time when vital war production is interrupted or threatened with interruption.

In normal times a strike or a threat to strike is a recognized and permissible accompaniment to collective bargaining. The National Labor Relations Act provides that "nothing in this Act shall be construed so as to interfere with or impede or diminish the right to strike." In the national no-strike agreement this recognized right was deliberately laid aside by American labor for the duration of the war. The War Labor Board was created as a war agency empowered, by agreement, finally to determine industrial disputes without interruptions of war production.

It is one thing to use against an employer the economic pressure of a strike in peace time. That pressure has normally an effect limited to economic considerations affecting the individual employer or group of employers. In time of war an interruption of vital war production has an entirely different effect. It become a coercive pressure with all the intensity of a destructive attack upon the national welfare. It is for that reason that, in the statement unanimously adopted by the War Labor Board on June 2, 1943, we spoke of "the overhanging and intolerable threat of strikes interrupting war production."

In this dispute the United Mine Workers, under the leadership of Mr. Lewis, have repudiated the no-strike agreement and insisted upon coming to the bargaining table with their demands in one hand and in the other hand the threat of a strike in an industry which affects the war production more vitally, perhaps, than any other industry. They have sought to use that threat, including the actual interruption of essential war production, to secure for themselves a favored position at a time when all responsible labor organizations in America have loyally adhered to the no-strike pledge.

The War Labor Board will not participate in any such proceedings, and it will not, under such pressure, approve for the mine workers a wage increase which, for the vital purpose of protecting the wage-earner's dollar, has been denied to wage-earners in other industries.

SPECIAL CONCURRING OPINION

This writer concurs in all the views expressed in the majority opinion. However, for purposes of emphasis, he wishes to make the following comments:

1. In the Directive Order of May 25, 1943, the Board ruled that under the wage stabilization policies established by the Act of Congress of October 2, 1942, and Executive Orders 9250 and 9328, the Mine Workers are not entitled to a general wage increase in the instant case. The record is clear that the straight time hourly wage rates for miners have increased more than 15 per cent since January 1, 1942, and, therefore, the miners are not entitled to a general wage increase under the "Little Steel" formula. Neither are they entitled to a general wage increase to correct substandards

of living because the wage rate of $1.00 per hour with resulting weekly earnings under the existing sixday-week arrangement of more than $40.00 cannot be considered substandard wages.

There is no evidence in the record which would justify a general wage increase in this case under that criterion in the National wage policy which permits of increases to correct gross inequities. To the contrary, the record shows that the hourly rates and the earnings of the miners under present production demands compare favorably with wages in other industries. It is true that the wages in a few other industries such as shipbuilding, automobile, and petroleum refining, are higher, but when the wages of the Mine Workers are compared with American industry generally, it cannot be said that any gross inequities exist which justify giving a general wage increase at this time in excess of the "Little Steel" formula.

Likewise, a general wage increase cannot be justified on the ground that it is needed to aid in the effective prosecution of the war because, as this writer stated in his decision of October 16, 1942, in the Ford case:

> "It would be a reflection upon the patriotism of the . . . employees to attempt a justification of a general wage increase upon the basis of any argument that such an increase should be granted . . . to aid in the effective prosecution of the war. An 'all-out' production effort on the part of American workers does not have to be bought or bribed by inflationary general wage increases, which in turn, endanger our war economy and in the long run, decrease real wages."

2. In the Board's decision of May 25, 1943, it pointed out that any wage adjustments made by the parties in compliance with the Fair Labor Standards Act would be consistent with the National wage stabilization policy. It told

the public that any composition which the parties made in settlement of any legal claim under the Fair Labor Standards Act as to travel time from portal to portal would be approved if supported by data showing that the composition was a genuine settlement of an alleged legal claim and not an indirect wage increase in violation of the Board's wage stabilization policies.

However, the Board made it perfectly clear that it is not within the province of the Board to determine whether the Fair Labor Standards Law requires payment for all time spent underground. Hence the Board referred to the parties for negotiations the matter of adjusting the union's legal claim to compensation for travel time from portal to portal. Unfortunately, the parties were unable to reach any agreement on the issue.

Therefore, the Board must rule that this legal question is one for court determination. If the War Labor Board should attempt to rule whether or not the Mine Workers are entitled to travel time as a matter of law under the Fair Labor Standards Act, it would be exceeding its jurisdiction by attempting to settle a legal claim which rests solely within the jurisdiction of the courts under the Fair Labor Standards Act. This the Board will not do.

3. It should not be overlooked that the President of the United Mine Workers of America has rested his claim to portal to portal travel time pay on the theory that the Mine Workers are entitled to such pay as a legal right. He has cited the decision of the Fifth Circuit Court of Appeals in the *Tennessee Coal, Iron and Railroad Company case,* decided March 16, 1943, in support of this contention. However, Mr. Lewis' demand in fact has not been for the actual travel time spent by the individual miner underground, but for an adjustment of travel time pay to be distributed in an equal amount to all the Mine Workers, including

those above and below the ground, irrespective of whether the individual Mine Worker actually travels underground.

Thus, Mr. Lewis' demand has not been for compensation for any legal claim that the individual miners may have, but rather, it is a demand for a wage increase for all the miners in excess of the wage stabilization policies of the Board couched in terms of portal to portal pay. It is a demand for a form of payment which could not possibly be collected under the Fair Labor Standards Act, because the very decision which the representatives of the Mine Workers cite makes clear that the portal to portal travel time pay allowed in that case is individual to the employee who travels underground in accordance with the time which he actually travels.

It would be thoroughly dishonest for the War Labor Board in the name of portal to portal pay to grant a wage increase to all the miners, including those who travel underground and those who do not. Any pay which the courts might decree the individual miners had coming for the actual time they travel underground could not be ordered by the War Labor Board to be averaged among all the mine workers in the absence of an agreement between the parties to that effect. Any such award by the Board would be recognized for what it really would be; namely, an unjustifiable rationalization for breaking the wage stabilization policy of the Board in order to satisfy the demands of the miners for a general wage increase. Such an action would open the flood gates of general wage increases in excess of the wage stabilization policies of the Government because if the United Mine Workers of America should succeed in securing such a wage increase from the Board, many other unions would attempt, with justification, to adopt the same tactics and demand general increases under one label or another.

Throughout the history of this case, the War Labor

Board has taken the position that the same policies, the same rules, and the same procedures must be applied by the War Labor Board to this case as to all other cases which have come before the Board. It has followed the principle that it must decide all cases on the theory that this is a government of one law and one flag, with equal justice to all. Having found that the facts of the case do not justify a general wage increase under any of the criteria set forth in the Executive Orders which define the wage stabilization policies of the Government, the Board does not propose to circumvent those policies by granting a general wage increase indirectly or by subterfuge under the guise of portal to portal pay averaged over all the workers.

4. Lastly, this writer wishes to point out that the Board has not been diverted from applying the same rules to this case as to all other cases by the union's resort from time to time to economic action and threats of economic action. It has insisted on seeing to it that the miners receive all that they are entitled to under the wage stabilization policies of the Government in accordance with the record before it, but it has held fast to the principle that they should not receive more than they are entitled to, even though they threaten the use of economic power.

As a result of the economic action taken by the United Mine Workers of America and their officers in violation of the no-strike pledge, there is one issue which has developed in this case which surpasses all others in significance so far as the security of this nation is concerned; namely, whether or not in the midst of a war the Mine Workers will abide by the same rules and the same laws which are applicable to all other groups. If this issue involving the supremacy of law should ever be sacrificed at the altar of expediency or under coercion of power, the damage to the war effort would be much more costly not only to the national morale, but also to actual war production than would be the losses, unthinkable as they are, which would result from a coal strike. It is one issue which cannot be compromised if we are to retain a government by law. This writer is confident that 130,000,000 Americans do not want it compromised in this case or in any other.

Opinion by
WAYNE L. MORSE.

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IN THE

Supreme Court of the United States

October Term, 1943

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NO. 409

—o—

TENNESSEE COAL, IRON AND RAILROAD COMPANY, Et al,

Petitioners,

vs.

MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, Et al,

Respondents.

—o—

BRIEF FOR PETITIONER SLOSS-SHEFFIELD STEEL & IRON COMPANY

—o—

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TENNESSEE COAL, IRON AND RAILROAD
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MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND
SMELTER WORKERS, Et al,

Respondents.

—o—

BRIEF FOR PETITIONER

SLOSS-SHEFFIELD STEEL & IRON COMPANY

—o—

On certiorari to the United States Circuit Court of Appeals for the Fifth Circuit to review the decree of that Court entered on the 16th day of March, 1943, as modified on the 27th day of July, 1943 (R. 4997-5011), modifying and affirming as modified by a divided Court a decree of the District Court for the Southern Division of the Northern District of Alabama entered on the 10th day of September, 1941 (R. 568-9).

I

OPINIONS BELOW

The opinion of the District Court (R. 494-506) is reported in 40 Fed. Supp. 4.

The opinion of the Circuit Court of Appeals (R. 4938-4942) is reported in 135 Fed. (2d) 320.

The opinion of the Circuit Court of Appeals denying petitioners' petition for rehearing (R. 4997-5010) is reported in 137 F. (2d) 176.

The two opinions of the Circuit Court of Appeals appear in the appendix to petitioners' petition for writ of certiorari at pages 64 to 67 and 77 to 95.

II

JURISDICTION

The jurisdiction of this Court is based on Section 240 (a) of the Judicial Code, 28 U. S. C. 347, as amended by the Act of February 13, 1925.

III

PARTIES

The petitioners are the owners and operators of underground iron ore mines in Alabama. Petitioners instituted, separately, actions for declaratory judgment under the provisions of the Federal Declaratory Judgment Act, Section 274 (d) of the Judicial Code, 28 U. S. C. 400 (R. 25, 175, 177). The actions were consolidated for trial (R. 487).

Philip B. Fleming, Administrator of the Wage and Hour Division of the United States Department of Labor, was permitted on his own motion to intervene (R. 304-5).

It was admitted by the defendants in each of the petitions and found by the District Court that the local unions named as defendants fairly represented the class of underground ore mining employees of the plaintiffs (R. 565).

IV

BASIC QUESTION INVOLVED

The basic question involved is whether the Fair Labor Standards Act passed June 25, 1938, effective October 24, 1938, Chapter 678, Section 152, Stat. 1060, requires travel time ("portal to portal") to be included in the computation of the "workweek" as prescribed in the Act.

The phrase "portal to portal" as appears in the record and as generally understood includes all the time spent underground by the miners, exclusive of the lunch period. The phrase "face to face" includes the time spent at the usual working places. The phrase "travel time" includes all the time spent by the miners in going from the mouth (portal) of the mine to the usual working places and in returning to the mouth (portal).

V

THE STATUTE

The pertinent provisions of the Act are:

"Section 7. *Maximum Hours.*

"(a) No employer shall, except as otherwise provided in this section, employ any of its employees who is engaged in commerce, or in the production of goods for commerce . . .

"(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

"(2) for a workweek longer than forty-two hours during the second year from such date, or

"(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours specified at a rate not less than one and one-half times the regular rate at which he is employed."

VI

STATEMENT

1. *Circumstances and events which led up to, and brought about, the commencement of the suits.*

The three petitioners and Woodward Iron Company (not a party to the suits) operate fourteen underground iron ore mines in Red Mountain, Jefferson County, Alabama, these being the only such mines in the State and producing all, or substantially all, of Alabama's iron ore. The mining operations were largely done underground and the employees reached their working places by traveling from the mouth or portal of the mines to their working places underground in part by riding on cars provided by the companies, and in part by walking from the point of discharge from the cars. The return trip involved the same process.

Under the long existing and established custom and practice from the very beginning of the iron ore mining industry in Alabama, and the contracts between the bargaining representatives of the miners and the companies since 1934, compensation has not been paid to these employees for the traveling time consumed by them in going from the mouth or portal of the mines to the working places and returning.

At the time the Fair Labor Standards Act became effective, October 24, 1938, petitioners were operating their iron ore mines under contracts with their employees providing that traveling time was not a part of work time and was not to be compensated for by the companies. On October 6, 1938, before the Act became effective, the International Union of Mine, Mill and Smelter Workers entered into a written contract with the Tennessee Company which defined work time as follows:

> "Section 4.—Hours of work. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.
>
> "The eight (8) hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis." (R. 107).

This contract contained a provision that it would remain in effect until terminated or changed by either party upon ten (10) days' written notice to the other. It in fact remained in force and effect until May 5, 1941, when another agreement was made following the opinion of the Administrator.

Prior to the passage of the Act the Sloss Company and the Union, representing its maintenance and production underground employees, entered into and observed contracts containing this same definition of work time. Subsequent to the passage of the Act contracts containing a similar definition of work time were entered into between Sloss and the Union and such contracts remained in effect until May 1, 1941. One of these contracts was executed on September 9, 1939, to become effective on September 16, 1939, and to remain in effect for one (1) year from that date and from year to year thereafter subject to the right of termination as therein provided (R. 3804, 3805, 3810). This contract was followed by the agreement dated and executed September 11, 1940, to become effective September 16, 1940, and to remain in full force and effect for two (2) years from said date and from year to year thereafter, subject to termination notice as therein provided (R. 152, 154, 159-160). Each of these contracts defined work time as follows:

> "Eight hours work per day shall constitute a day's work and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period."

The same uniform practice of computing work time as time spent at the face or usual working places was followed between Woodward Iron Company and its underground employees, and contracts containing this definition were in effect both before and after the passage of the Act and up until March 1, 1941.

On only few occasions had the Union included its demands or requests that any of the time spent in traveling to or from the places of work should be on company time, and these requests were that travel time one way be on the company's time and the other way on the employees time (R. 888, 1620, 3751-2, 3866-7).

These requests appear not to have been seriously made since they were abandoned in subsequent negotiations without being mentioned or insisted upon (R, 870, 876-7, 882).

It thus appears that it was the conception of no one when the Fair Labor Standards Act was passed that Congress intended thereby to invalidate the practice and method of computing work time that had prevailed throughout the bituminous coal and iron ore mining industries since time immemorial, or to invalidate, nullify and hold for naught the obligation of agreements recognized and understood by employer and employee alike and arrived at by the process of collective bargaining.

On July 9, 1940, Earl E. Houck, Director of United Mine Workers of America, and a committee of coal operators wrote a letter to the Administrator in which they discussed the matter of travel time in its relation to the bituminous coal mining industry, in which they requested him to accept the definition of work time in the Appalachian agreement which, they said, embodied "the custom and traditions" of the bituminous coal mining industry, as complying with the provisions of the Fair Labor Standards Act (R. 4715). The definition referred to in this letter is:

> "Section 4.—Hours of work. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.
>
> "The eight (8) hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

In the letter, relative to the "face to face" method of computation of work time it is said:

> "There is full and complete understanding in the industry between employer and employees as to the application of these provisions. This method of measuring the working time at the places of work has been the standard provision in the basic wage agreements for almost fifty years and is the result of collective bargaining in its complete sense. (R. 4712).

The letter proceeds:

> "There are many reasons why the provision as to working time has been set out as provided in this agreement. The impracticability of measuring time by any other method is inherent in the very nature of mining coal. Coal mines are sometimes very extensive. When they are first opened up, the working places are, of course closer by and near to the opening of the mine. In such cases there is no problem of either transportation of the men to the working places or time consumed in reaching them; but as mines grow older, the working places move farther and farther away from the portal or opening of the mine, and as such conditions develop, it becomes necessary for provision to be made for transportation of the men over long distances to their working places." (R. 4713).

With respect to the effect of an attempt to adjust wage rates to any new standard of measuring work time, it is said in the letter that such

> ". . . would create so much confusion in the bituminous industry as to result in complete chaos, and would probably result in a complete stoppage of work at practically all of the coal mines in the United States." (R. 4714).

The cogent reasons advanced in this letter against the disturbance of the "face to face" method of considering and computing work time are equally applicable to the iron ore industry.

On July 27, 1940, on the basis of this letter the Administrator issued a public release in which he said, among other things, that

> ". . . the practice of computing working time on a 'face to face' basis in the bituminous coal mining industry would not be unreasonable,"

explaining the "face to face" basis to mean the productive work performed after the miner arrives at his usual working place, excluding the time spent in traveling from the portal of the mine to the place of work and in returning therefrom to the portal (R. 4717).

That letter and this release of the Administrator were offered in evidence by the respondents and rejected by the District Court.

On March 23, 1941, almost a year after his foregoing opinion was issued, the Administrator announced what he called the "Modified Portal to Portal Wage-Hour Opinion," in which he expressed a contrary opinion, namely, that "the work day in underground metal mining starts when the miner reports for duty as required at or near the collar of the mine and ends when he reaches the collar at the end of the shift" and also includes "the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out." (R. 76-8).

The District Court agreed with the Administrator both with respect to the underground travel time and as to the time spent on the surface. (R. 568). The Circuit Court of Appeals eliminated the time spent on the surface in obtaining and returning lamps, carbide and tools, and the time spent in checking in and out. (R. 4947, 4841-2).

In concluding his announcement the Administrator said:

> "That because the Division had not heretofore taken a definite stand on the various problems involved, it would not seek to compel the payment of restitution from mine owners who have been operating on a face to face or other bases inconsistent with the principles outlined in the report. This enforcement policy of the Division cannot, however, interfere with the rights of employees or their representatives to sue under Section 16(b) of the Fair Labor Standards Act." (R. 78).

The Administrator, in his memorandum opposing petitioners' petition for writ of certiorari, in asserting that the "traditional practice" of computing and paying wages on the "face to face" basis had not existed in the industry, seems to rely on the report of the Wage and Hour Division upon which the opinion was based.

Immediately upon the release of the opinion of the Administrator the Union, representing approximately six thousand underground employees of Tennessee, Sloss, Republic and Woodward, demanded the payment of overtime compensation for all travel time since October 24, 1938, demanded future compliance with the Administrator's opinion, and threatened to institute suits to recover such overtime compensation.

Thereupon the petitioners filed in the District Court their several actions for declaratory judgments, seeking to obtain a declaration by the Court that as to both past and future there was no obligation to consider that portion of the time spent by the underground employees in traveling to and from their usual working places and while not engaged in work or service as work time within the meaning of the Fair Labor Standards Act.

The answers of the respondents denied generally the averments of the petitions and challenged the right of petitioners to a declaratory judgment (R. 248, et. seq.). Later the respondents filed their amended answer wherein they averred:

> "For a further separate defense, these defendants allege that under the Fair Labor Standards Act of 1938 the workweek for the employees of the plaintiff engaged in production of goods for commerce includes all the time when a miner reports for duty as required at or near the collar or portal of the mine and ends when such miner reaches the collar or portal of the mine at the end of the shift, and all the time spent on the surface in obtaining and returning lamps, carbide and tools, and checking in and out." (R. 675).

On May 24, 1941, Philip B. Fleming, Administrator of the Wage and Hour Division of the United States Department of Labor, filed a motion for leave to intervene, alleging that he was directly and solely responsible for the administration of the Act and that any determination or interpretation of the same would directly affect the administration thereof; that the object of petitioners' petitions was to obtain an interpretation of the term "workweek" contained in Section 7 of the Act which would be contrary to the interpretation placed thereon by him; and that for such reason he had an interest in the cause and sought to assert his claims and defenses presenting both questions of law and fact which were common to the main action. (R. 286).

Thereafter, the intervenor filed answers which, in effect, denied all the material allegations of petitioners' petitions and challenged the right of petitioners to a declaratory judgment and their interpretation of Section 7 of the Act, asserting that the interpretation placed upon it by him in his report and opinion (attached as Exhibit A to petitioners' petitions) was the correct interpretation of said term.

Following the intervention of the Administrator the petitions were amended so as to make the averments thereof, and the prayer, applicable to the Administrator, and to present to the Court for determination and declaratory judgment the question of the correctness of the Administrator's opinion and report and his right to enforce it as against the petitioners.

It clearly appears, therefore, that the issue tendered by the pleadings relates not only to the situation as it existed prior to the institution of the suits but to the future as well.

2. *Tradition, custom and practice of computing work time upon "face to face" basis.*

The undisputed evidence is that from the very dawn of the iron ore mining industry in Alabama travel time has never been included in the computation of work time in that industry. (R. 798, 840-2, 1096-7, 1163-66, 1236, 1276, 1299-1300, 1422, 1484-85, 1551-2, 1632, 1702, 1763-4, 1794, 1864, 2152, 2296, 2300, 2453, 2514, 2598-9, 2671, 2849, 2898-9, 3058-60, 3122-3, 3145, 3162). All of the respondents' witnesses testified that they had never received compensation for the time they spent going to and from their working places. (R. 2458, 2514, 2849, 2898-9, 2964, 3058-60, 3122-3).

The same tradition and custom has existed with respect to both the bituminous coal mining and iron ore mining industries in all of the principal states producing coal and iron ore.

The Administrator under oral commission took the testimony of witnesses who worked in the iron ore mines in the Lake Superior Region. The depositions of these witnesses (R. 4032-4416) were offered in evidence by the petitioners and admitted in evidence over the objection of the respondents. (R. 2221). The testimony of all of these witnesses was to the effect that they had always been compensated on the "face to face" basis. (R. 4081, 4108, 4133-4, 4182, 4204, 4230, 4251-2, 4279, 4310, 4327, 4420, 4424). Typical of the testimony of these witnesses is:

The witness Michael Burck, who has worked on the Vermillion Range in Minnesota since 1924, testified:

"Q. Whether you worked day or night, what hours were you paid for?
"A. Eight.
"Q. Where were you working those eight hours?
"A. I was a miner most of the time, working in—putting out iron ore.
"Q. Well, would it be correct to say that during your

eight hours you were at the face of the mine?

"A. Yes."—(R. 4108).

* * * *

"Q. Now, from the time you started working in '24, until May 1, 1941, what you called the collar-to-collar plan never was in force or operation, was it?

"A. No.

"Q. You didn't have it all during that whole period of time?

"A. No.

"Q. Your time was computed and you received your pay and the company men, or day men, whatever you call them, received their pay on the basis of eight hours, not including traveling time?

"A. Yes.

"Q. That is right, isn't it?

"A. That is right.

"Q. And that was, so far as your experience is concerned, the universal custom during that period of time?

"A. Yes." (R. 4133-4).

The witness Leander Runn, who has worked both on the Mesabi Range and the Vermillion Range in the Lake Superior Region for many years, testified:

"A. Of course, we had to work eight hours at the face.

"Q. Now, if you were working eight hours and getting paid for eight hours, you weren't getting paid for all your time?

"A. You would be bound to travel on your own time both ways." (R. 4182).

John Debeltz, who started underground mining in 1923 or 1924, in the Lake Superior Region, testified:

"A. Well, we were getting paid before May 1st, we were getting paid for, well, what we really were in the place, right at the face.

"Q. So you contend you weren't getting paid for any traveling time?

"A. No." (R. 4204).

Anton Rechek testified as follows:

"Q. It never has been and never was, prior to May

1, 1941, the custom and the practice of the company to pay the men for traveling time?

"A. No." (R. 4230).

Joseph Bovitz, who had worked in the underground iron ore mines in Minnesota since 1907, testified as follows:

"Q. Now, in Minnesota, though, it never has been the practice to pay the miners for travel time, has it?

"A. No.

"Q. And you have known about it for 30 years of your own knowledge?

"A. Yes.

"Q. And you know that the companies never did pay for the travel time up until May 1, 1941. That is correct, is it not?

"A. Yes." (R. 4251-2).

Andrew Sopko, who has had 35 years experience in iron ore mining in the Lake Superior Region, testified as follows:

"Q. And it is true, is it not, that in all those places, all the mines, you have ever worked in, it has never been the practice to pay the men for time spent in traveling to and from the face or place where they worked?

"A. Never been.

"Q. Until May 1, 1941?

"A. Sure, that is how it was.

"Q. Prior to May 1, 1941, in every mine that you have ever worked in.—

"A. Well, you see—

"Q. Wait a minute now; let me finish the question. In every mine that you have ever worked in, you left the top before the shift began?

"A. Yes, sure.

"Q. And you left the bottom after the shift ended?

"A. Yes.

"Q. So that meant that you were traveling both in and out on your own time?

"A. Yes, sir.

"Q. All right. Didn't it get to be later in some of the mines that you worked—didn't you go in on your own time and come out on the company's time?

"A. We never did." (R. 4279).

Florindo Pilotto, who has worked for many years in the underground iron ore mines in Michigan, testified as follows:

"Q. As I understand your testimony, you have never worked in any mine where they paid you for traveling time going to and from the working place?

"A No, they never did.

"Q. Never have?

"A. No.

"Q. In other words, you travel on your own time?

"A. On my own time.

"Q. And you worked on what we call eight hours at the face?

"A. Eight hours; yes." (R. 4310).

George Rupp, who resides at Pueblo, Colorado, and who has been connected with iron ore mining in Colorado since 1929 as General Superintendent and Manager of the Mining Department of the Colorado Fuel & Iron Corporation, testified as follows:

"Q. Well, now, you stated a moment ago that the method of computing the men's time, the underground workers' time, was on a face basis. Do I understand that to mean at the working place down in the mine?

"A. Yes.

"Q. Has that been the practice at the Sunrise mine?

"A. Yes.

"Q. Continuously?

"A. Yes." (R. 4420).

The petitioners presented a number of witnesses by whom they offered to prove a similer invariable custom, practice and contract history in the bituminous coal mines.

(R. 1976, 2047, 2049, 2108, 2110, 2111, 2112, 2114-17, 2132, 2154, 2170, 2178, 2187, 2192, 2195, 2203-4, 2214-15). This proffered evidence was excluded. (R. 2079).

The facts, however, with respect to the bituminous coal mining industry are so generally and commonly known that the Court will take judicial notice of them.

The methods and means of travel by the underground miners from the portal of the mine to the working places and return as described in the Houck letter (R. 4713) do not differ materially from those employed in the iron ore mines, including all the incidents of travel time. Varying distances of the working places from the surface are the same. The one pronounced difference is that the coal mines are gaseous and the iron ore mines are not.

3. *The traditional "face to face" method of computation of work time has for many years prior to the enactment of the Fair Labor Standards Act been recognized by public and quasi public authorities, by statutory enactments, and by administrative rulings on Eight Hour and similar laws.*

(a) A Board of Arbitration, presided over by Rembrandt Peale, on October 25, 1917, made an award, which was approved by the United States Fuel Administrator, in which the work day was defined as follows:

> "An eight hour day means eight hours work at the usual working places of all classes of employees. This shall be exclusive of the time required in reaching such working places in the workings and departing from the same at night." (R. 4694-5).

(b) On March 19, 1920, President Wilson transmitted to the Chairman of the Coal Operators' Scale Committee and to Mr. Lewis, President of the United Mine Workers of America, a copy of a report and award of the Bituminous

Coal Commission, upon the basis of which an agreement was reached, which included the definition of work time last above quoted. (R. 4696, 4759).

(c) On September 18, 1933, on the recommendation of Hugh S. Johnson, NIRA Administrator, President Roosevelt approved the Code of Fair Competition for the Bituminous Coal Industry, which contained the following definition of work time:

> "Seven hours of labor shall constitute a day's work and this means seven hours work at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid on the day or tonnage or other piece work basis." (R. 4701, 4705).

(d) The President, on September 21, 1933, approved the Appalachian Agreement, in which the work day was defined as follows:

> "Eight hours of labor shall constitute a day's work. The eight hour day means eight hours' work in the mines at the usual working places for all classes of labor exclusive of the lunch period." (R. 4787).

The matters hereinabove immediately referred to are matters of public record of which the court will take judicial notice.

(e) Three states had enacted statutes prescribing a limitation upon permissible hours underground, which statutes employed plain and express language to include travel time —Utah (Chap. 59, Laws of Utah, 1937); Arizona (Sec. 1958, Arizona Revised Codes 1928); Nevada (Sec. 10237, Nevada Compiled Laws). The fact that the Legislatures of these states expressly included travel time is significant.

(f) In 1909 California enacted an eight-hour law applicable to persons employed in underground mines—Stat. 1909, p. 279, c. 181, approved March 10, 1909.

In *Ex Parte Martin,* 106 Pac. 235, the Supreme Court of California sustained the constitutionality of this law, and held that the eight-hour provision included work at the face of the mine and excluded travel time. The court said:

> "Giving to the words of the act their ordinary and reasonable meaning, the limitation of time is to be construed as referring to the time when men are actually engaged in work, not when they are going to and from their work. There is nothing in the language of the act which would justify a more restricted interpretation."

After the California statute was passed a number of other states enacted statutes of similar import, and presumably adopted the interpretation of the Supreme Court of California.

In our investigation we have not discovered any case in which any such statute has been construed differently, with the exception of the case of *Butte Miners Union No. 1 v. Anaconda Copper Mining Co.* (1941) 112 Mont. 418, 118 Pac. (2d) 148, in which the Supreme Court of Montana, by a divided Court, held that the travel time of miners working underground in copper mines should be included as a part of the work day. The Court based its judgment entirely upon the Administrator's modified portal to portal opinion, on some theory of avoiding conflict in administration and enforcement. The dissenting opinion reviewed the history of the legislation on the subject and emphasized that the Legislature of Montana had on a number of occasions pronounced the policy of the state by refusing to amend the statute so as to expressly provide that all underground time should constitute a work day. The forcible statement is made in the dissenting opinion that,

> ". . . the courts can not do by construction what the Legislature refused to do by amendment."

4. *Rulings and administrative interpretations that eight hour laws and like statutes apply only to effective work.*

Rulings of the Comptroller General on November 11, 1929 (R. 4661), on June 18, 1935 (R. 4662), and on October 28, 1937 (R. 4669).

Ruling of the Comptroller of the Treasury on June 12, 1921 (R. 4658).

Opinions of the Attorney General on October 11, 1906 (R. 4646) and on May 11, 1908 (4654).

5. *Recognition of "face to face" method of wage computation by public and quasi public authorities and by administration rulings with respect to the Fair Labor Standards Act and other acts of similar purport since the enactment of the Fair Labor Standards Act.*

(a) Petitioners and their employees and the employers and employees in the iron ore mining industry throughout the United States continued after the Fair Labor Standards Act became effective to compute work time on the "face to face" basis. Some of the latter agreements were executed on September 11, 1940, December 23, 1940, and March 17, 1941. (R. 105, 152, 166, 3737, 3804, 3916, 3939).

(b) On July 27, 1940, the Administrator approved the "face to face" policy of wage computation for the bituminous coal mining industry. (R. 4717). The Administrator has never changed or departed from this ruling.

(c) The iron ore mining industry was induced or allowed by the Administrator to continue the traditional method of computation of work time until the modified portal to portal opinion was released on March 13, 1941. In that release the Administrator stated that because the

Division had not taken a definite stand it would not compel the payment of restitution from mine owners who had been operating on the "face to face" basis. (R. 76, p. 9, supra).

(d) The coal mining industry has continued until very recently to compute wages on the "face to face" basis either under existing contracts or pursuant to the directives of public officials.

(e) Since the decision of the Circuit Court of Appeals significant occurrences have happened which are of such common knowledge as that the Court will take judicial notice of them:

(1) No demand for portal to portal travel time was made in the 1941 negotiations between the International Policy Committee of the United Mine Workers of America and the coal operators.

(2) The wage agreement executed between the Union and the operators in 1941 expired on March 31, 1943, and negotiations for a new contract began on March 10, 1943.

(3) The original decision in this cause by the Circuit Court of Appeals was rendered on March 16, 1943.

(4) Following the decision, on March 19, 1943, the Union amended its demand with respect to hours of work from the "face to face" basis to "portal to portal." This amended demand was presented by John L. Lewis, President of the Union, who stated:

> "The Mine Workers desire to take advantage of the law which, under the Alabama decision, grants them the right to be paid for the time they are in the mines."

(5) On March 16, 1943, Mr. Lewis, appearing as a witness before the Senate Committee investigating the National Defense Program, said:

"I wonder what you suggest, Senator, you having a very alert, capable mind on these things, in the light of the decision of the Fifth Circuit Court of Appeals on the portal-to-portal issue, what the mine workers should do. The Court says that we cannot make a contract and contract away the rights by the statute. I am judicially estopped from making an agreement that does not comply with the mandate of the Court."

(6) On June 18, 1943, the National War Labor Board, in its directive, denied the demand of the Union for the establishment of "portal to portal" for starting and quitting time and directed that the contracts which expired on March 31, 1943 (with certain amendments not relating to travel time), remain in effect until March 31, 1945, thus expressly providing for the carrying forward of the traditional agreements for the computation and payment of wages on the "face to face" basis.

(f) The increase in wages referable to travel time, as demanded by the Union, involved a general increase to each and all of the miners, regardless of the amount of time spent by the individual in going from the portal to the working place and in returning, and regardless of whether or not any time was so spent. The compensation thus demanded was not for compensation on the statutory basis or on the basis of the decision of the Circuit Court of Appeals, and demonstrates the impracticability of the application of the "portal to portal" basis of computation of work time. The National War Labor Board in its opinion called attention to this fact in concluding that in the form in which compensation for travel time was demanded it amounted only to a general increase in wages, which the Board refused to grant.

The character of the demands made and the method in which they were handled by the War Labor Board demonstrates the impracticability of applying the "portal to portal" basis of compensation to underground mining operations in which the distances of the working places vary so greatly, and that the issue is one which lends itself peculiarly to the processes of collective bargaining. The Houck letter and the dissenting opinion of Judge Sibley of the Circuit Court of Appeals are prophetic of the chaos and confusion which would result from holding that travel time is work time within the meaning of the Fair Labor Standards Act.

The Congress is presumed to have known the prevailing conditions at the time of the passage of the Act and must be presumed by the use of the word "workweek," undefined, not to have intended to nullify bona fide contracts fairly arrived at through the processes of collective bargaining.

6. *Legislative history of the Fair Labor Standards Act.*

(1) The National Labor Relations Act on the one hand and the Fair Labor Standards Act on the other sprung from the National Industrial Recovery Act enacted by Congress on June 16, 1933, and declared unconstitutional by this Court on May 27, 1935. The former Act represents a reenactment of that phase of NIRA designed for the protection and maintenance of the rights of collective bargaining, and the latter to fix and regulate minimum wages and maximum hours.

The approved Code of Fair Competition for the Bituminous Coal Industry under the National Industrial Recovery Act, signed by the President on September 18, 1933, shows the administrative conception and definition of work time under that Act, which must have been in the mind of Congress in the use of the word "workweek" in the Fair Labor Standards Act. This Code provides:

> "Seven hours of labor shall constitute a day's work and this means seven hours' work at the usual working

places for all classes of labor exclusive of the lunch period, whether they be paid on the day or the tonnage or other piece work basis." (R. 4700-6).

(2) Representative Keller, a member of the Conference Committee, in debate preceding the final passage of the Fair Labor Standards Act, June 14, 1938, said:

"This bill eliminates the defects and preserves the best features of the National Industrial Recovery Act. In doing so a better procedure is provided, so that no rights may be affected without an opportunity to be heard. NRA put down a floor for wages and a ceiling to hours of work." (Vol. 83, Congressional Record, Part 8, p. 9264, 75th Congress, Third Session, June, 1938).

(3) The Senate Committee in paragraph II of Report of July 6, 1937, said:

"The right of individual or collective employees to bargain with their employers concerning wages and hours is recognized and encouraged by this bill. It is not intended that this law shall invade the right of employer and employee to fix their own contracts of employment, wherever there can be any real, genuine bargaining between them. It is only those low-wage and long-work-hour industrial workers who are the helpless victims of their own bargaining weakness that this bill seeks to assist to obtain a minimum wage." (Senate Report No. 884).

(4) On June 2-22, 1937, joint hearings on the Fair Labor Standards Act were held before the Committee on Education and Labor, United States Senate, and the Committee of Labor, House of Representatives. The following excerpts from the Joint Hearings are quoted:

"MR. LEWIS: * * * My recommendation as to rate of pay is a minimum of 40 cents per hour. As to hours of work, the standard in my opinion should be 5 days of

7 hours each or 35 hours per week, with authority granted to the Board to expand to a 40-hour maximum, or to reduce to a 30-hour maximum * * *." (p. 272).

"SENATOR LaFOLLETTE: * * * as I understand it, the objective of this bill as outlined in Section 23, one of them is to prevent the Board from going in and upsetting collective bargaining agreements or entering the field where collective bargaining is actually functioning in a bona fide manner, and thereby producing the result of the action of the employer and employee represented by genuine and effective labor organizations." (p. 280).

"MR. LEWIS: * * * For instance, frankly I would not want this bill to convey power to a board to order an investigation into all of the wage agreements in the mining industry right now, or to give the board power to decide that the collective bargaining agreements in the mining industry were not sound, not proper, were confiscatory, or not in harmony with the facts of the industry, and order a modification thereof. I think the power of the Board should be limited to cases which run below the level of the standards fixed by Congress. I see endless confusion in the adoption of Section 5 now. I see a drift towards the complete fixation of wages in all industry by governmental action." (pp. 281-2).

"THE CHAIRMAN: As I understand your position, boiled down, with reference to the minimum wage — I want to be sure — it is that you favor a minimum wage law written in such a way that it will preserve to the utmost the right of bargaining between employers and employees, but which will at the same time raise the low, substandard condition of millions of people, those who have been living in that sphere and have not as yet been able to elevate themselves either by their own bargaining or by collectively bargaining?

"MR. LEWIS: That is correct, Senator." (p. 307).

(5) During the Senate debate on the bill on July 29, 1937, the following statements were made:

"MR. WALSH: Next does the bill affect collective bargaining agreements already made or hereafter to be made between employers and employees?

"MR. BLACK: It does not.

"MR. WALSH: There is one exception to that, is there not? The bill does not affect collective bargaining agreements where the hours are less than 40 per week, or where the wages are more than 40 cents per hour?

"MR. BLACK: That is correct.

"MR. WALSH: But if a collective bargaining agreement had been entered into at 36 cents per hour wages, the Board would have jurisdiction to set that agreement aside and to fix, if the facts warranted, a minimum wage of 40 cents?

"MR. BLACK: The Board would have jurisdiction to do it, but under the provisions of the law it would be my judgment that the Board would be very reluctant, indeed, to attempt to interfere with a bona fide agreement made between employers and employees." (Congressional Record, Vol. 81, p. 7650).

7. *Mining Practices of Petitioners.*

As hereinabove stated, substantially all iron ore mined underground in Alabama is produced by the three petitioners and Woodward Iron Company (not a party but whose operations, customs and practices are shown by the testimony). The vein of ore which they all mine is in or near Red Mountain near Birmingham, Alabama, and outcrops generally at the top of the mountain and pitches downward at an angle of approximately 25 to 30 degrees until the basin is approached, when it begins to level out. The vein is entered by means of a slope which is driven along the ore vein. At intervals, openings called "headings" are driven off on both sides of the slope at right angles thereto and the ore is mined by drilling and shooting into the ore between the headings. The working places where the ore is taken from the seam between headings are called "stopes." While ore is mined and removed in driving the slope and the headings, this work is development work for the purpose of gaining access to the main body of the ore between the headings. (R. 758-766).

The place where this ore is mined, principally in the stopes, is called the "face" of the ore, and the term "face" is applied to the usual working place of the miners whose productive work is directly involved in mining the ore and moving it to the haulageways in the headings. The point where it is delivered at the haulageway is called the "knuck." The working place of all the production miners extends from the knuck to the face from which the ore is removed, and this working place of these men is referred to generally as the "face." From the early beginning of the underground mining industry in Alabama the worktime of the production employees, by established custom and usage, commenced at the "face," and their compensation was computed upon the basis of work done there, exclusive of the time spent in going to and from the "face," hence the term "face-to-face." (R. 798, 840, 1096, 1864).

Obviously, the progress of the mining operations requires the extension of the slope, and the driving of more headings. The new working place, with such progress, becomes farther from the opening or mouth of the mine—called in the Administrator's bulletin and papers "portal." Of necessity, the distances of the working places of the mining crews from the portal vary. Some of the working places are very near the mouth of the mine, while others are at great distances therefrom.

The underground employees are divided into two classes: (1) The production men, whose work is peculiarly connected with the actual mining operations, and whose work is at the "face" as above described; and (2) maintenance and service men who maintain the ways, tracks, pipes, electrical equipment, etc., in the mine. The working places of the maintenance and service men are underground wherever their services are needed. Their working time begins at the point underground where they are first required to be at the beginning of the shift.

The evidence shows without dispute that all maintenance and service men were paid on a time basis and that the computation of their wage has never been on a production or tonnage basis. Since 1934 their compensation has been at an hourly rate. (R. 1588, 1847, 965).

In the Sloss mines approximately thirty-six per cent of the total number of underground employees are service and maintenance workers (R. 1441); in the Republic mines approximately forty-six per cent. (R. 1848), and in the mines of the Tennessee Company approximately sixty per cent (R. 758).

In the early history of ore mining, and before the slopes were extended substantial distances from the surface, manways were provided parallel to, and a short distance from, the slopes for the men to enter the mine and walk to their places of work. As the mine workings were extended cars or "skips" were provided to transport the underground employees to their places of work, or to a common or central loading station underground from which they walked to their places of work at the beginning of the shift, and to which they returned at the end of the shift to board the cars for return to the surface. Several cars were coupled together to form a trip (called a "mantrip") and several trips of cars were used in transporting the men, leaving the surface or portal at regular intervals before the beginning of a shift and leaving the inside terminus a few minutes after the shift ended.

There was a regular time prescribed by the company for the men to begin work at their underground working places and a prescribed time when work was to stop. The mantrips were scheduled so as to permit the miners to reach their places of work at the beginning of the shift and to leave their places of work at the end of the shift for return to the surface. The schedules were designed and arranged as far as possible to enable the men working in the more distant places to catch the earlier shift, and those whose travel distances were less to catch later trips according to the distance of their working places from the surface and from the loading stations.

The petitioners provided bath houses on the surface equipped with lockers for use by the men in changing their clothes at the beginning and ending of the shifts. The use of the bath houses was optional with the men. (R. 778, 1410).

The general practice was that all of the men took with them into the mines a small light, in some mines electric and in others carbide. This light was attached to the front of their caps. Occasionally small tools were picked up by some of the production men, as a matter of convenience to themselves, at or near the top or en route to the face where work commenced. The percentage of the men who did this was very small. In the main and as a rule, all the tools with which the men worked were taken by company men on company time to or near the place where they might be needed; and always all of the heavier tools and mining equipment were hauled to or near the working place by service crews who performed this service for the company on company time. (R. 1494, 1419, 1311).

8. *History of Negotiations and Agreements between the Union and the Sloss Company.*

The International Union of Mine, Mill and Smelter

Workers organized the miners at the red ore mines of the company in 1933. In the fall and winter of that year a few meetings between the company representatives and the mine committee were held but no agreement was entered into for that year.

In 1934 an instrument dated April 13, in the form of a proposal for a contract was presented by the Union and the company. The proposal contained a number of demands among which was the demand that the miners enter the mines on their own time and leave on the company's time. (R. 3751) The record shows that a similar proposal was presented to the other petitioners and Woodward Iron Company. On May 4, 1934, the Union called a strike in which all the miners of all four companies struck. The matter of travel time was not the cause of the strike. (R. 1326-7). Nor was that matter a subject of discussion at meetings during the strike. (R. 1328). The strike was later settled when a representative of the United States Department of Labor came to Birmingham and held meetings between representatives of the Union and of the several companies interested. The settlement agreement was evidenced by letters addressed by the companies to the Secretary of Labor, in which letters the matter of traveling time was not mentioned. (R. 4024-6). Following this agreement the miners returned to work and the matter of travel time was treated by the companies, by the men, and by the Union in accordance with the established custom and practice, namely, under the established custom and practice of computing work time on the face-to-face basis. (R. 1333).

In 1935 the Union again presented a proposed agreement, one of the provisions of which was that the employees enter the mines on their own time and come out of the mines on the company's time. (R. 3755). The negotiations following this proposal culminated in a letter directed to the District President of the Union, and other representatives of the Sloss ore mine employees, which contained in effect the agreement of the previous year. (R. 3760). Following this letter computation of working time was continued on the face-to-face basis. (R. 1347).

In 1936 the Union's proposal for a contract for the ensuing year contained a provision for an eight-hour day and a five-day week and defining the eight-hour day as follows:

> "The eight-hour day means eight hours in or about the mines, at the usual working places for all classes of work (other than those excepted from this agreement) exclusive of the lunch period, whether they be paid by the day or paid by tonnage * * *." (R. 1356, 3768).

The negotiations for that year closed with an agreement which contained the provision that:

> "An eight-hour day and five days per week per employee shall prevail, exclusive of the lunch period. The eight-hour day means eight hours of work in the usual working places, exclusive of the lunch period."

Negotiations in 1937 were participated in on behalf of the Union by Mr. Reid Robinson, National President of the International Union of Mine, Mill and Smelter Workers, and Mr. Barco, representing the United States Department of Labor. The negotiations culminated in an agreement which contained the same provisions with respect to travel time as that contained in the contract for the year before. (R. 3782). Pursuant to this provision the face-to-face basis of computing work time was continued. (R. 375-6).

The negotiations for the year 1938 resulted in the extension of the 1937 agreement for a period of one year.

The Union's proposal for a contract for the year 1939 and the contract which was subsequently signed for that year contained the same provisions with reference to travel time as had the contracts for the two previous years. (R. 3804). This contract, as hereinabove pointed out, was executed almost one year after the effective date of the Fair Labor Standards Act and was to expire practically two years after such effective date.

The Union's proposal for a contract in 1940 contained a provision including travel time in the work day. (R. 3815). After negotiations, however, an agreement was arrived at which embodied the same provision with respect to travel time as that contained in the contracts for the three preceding years. (R. 152). This agreement was executed on September 11, 1940, to become effective on September 16, 1940, and to remain in force and effect for two years from said date, subject to the right of termination as therein provided. On September 12, 1940, the District representative of the Union addressed a letter to the General Manager of the Sloss in which he stated that the contract which had been signed the day before,

> "does not preclude the right of the organization to continue in its request for pay for travel time spent by the employees in going to and from their working places, nor does it in any way waive the contentions of the Local Union that said travel time should be treated as hours worked."

The letter closes with the paragraph:

> "As you know, this matter of travel time is now before the Wage and Hour Division of the U. S. Department of Labor and the decision is still pending." (R. 1470, 3837),

The company's reply to this letter, dated September 14, 1940, stated:

> "As you of course realize, the agreement was arrived at through the process of collective bargaining and was

signed by both parties in good faith after fully threshing out the matter you now refer to.

"The company expects to carry out the agreement and believes that the union will carry it out as made.'" (R. 3838).

VII

ASSIGNMENTS OF ERROR

1. The Circuit Court of Appeals erred in holding that the question whether travel time should be included in the computation of working time is a question of fact.

2. The Circuit Court of Appeals erred in treating the finding or opinion of the District Court that travel time is work time as a finding of fact.

3. The Circuit Court of Appeals erred in sustaining the finding of the District Court that there was no custom not to include travel time in the computation of working time, though conceding arguendo "that for twenty-five years prior to 1938 iron-ore miners had not been compensated for travel-time, and that even after 1938 the parties to this suit had entered into contracts whereby it was agreed that no wages should be paid for travel time."

4. The Circuit Court of Appeals erred in holding that it was the intention of Congress in passing the Fair Labor Standards Act to regulate the environment and physical conditions of work and that travel time is a part of work time because of its discomforts and hazards.

5. The Circuit Court of Appeals erred in affirming the decision of the District Court that travel time was to be computed in determining working time.

6. The Circuit Court of Appeals erred in setting aside agreements made through the process of collective bargaining.

7. The Circuit Court of Appeals erred in its suggestion that the agreements set aside may not have been voluntary, because of the lack of bargaining equality.

8. The Circuit Court of Appeals erred in disregarding the exclusion by the District Court of relevant evidence.

SUMMARY OF THE ARGUMENT

(1) In interpreting the term "workweek" as used in the Fair Labor Standards Act, the intention of Congress must be arrived at. In finding that intent consideration must be given to:

(a) The reasonable standards in the industry to which the Act is sought to be applied, as evidenced by prevailing working conditions, and by customs and practices and bona fide contracts or arrangements between employers and employees by which work time is defined;

(b) Reasonable standards in other industries in which working conditions and customs and practices and bona fide contracts or arrangements between employers and employees are essentially the same;

(c) The sense in which the same term, or terms of the same import, have been used in prior Federal statutes;

(d) The rulings or opinions of administrative officers in construing terms of like import in prior Federal statutes; and

(e) The generally accepted meaning of the same term, or terms of the same import, as evidenced by the use of such terms in state statutes relating to hours of work, the judicial interpretation of such terms, and the custom and practice thereunder of those to whom they apply.

(2) The purpose of the Fair Labor Standards Act was

to fix a minimum wage and maximum hours of work. It was not the intention of Congress in its enactment to restrict freedom of contract beyond the purpose of preventing unfair competition in commerce. It did not intend to restrict the rights of collective bargaining, which it has shown a zealous and consistent purpose to preserve and maintain.

The constitutional basis of the Fair Labor Standards Act is to promote the flow of interstate commerce and to prevent the unfair competition which is created by employers who pay their workers less than a living wage.

(3) It was not the purpose of the Fair Labor Standards Act to eliminate labor conditions detrimental to the general welfare of the workers.

The Act is one of economic import only. It is neither a health measure nor a police measure.

(4) There exists a justiciable controversy between petitioners and respondents (including the Administrator, Intervener) with reference to the construction of Section 7 of the Fair Labor Standards Act for the time subsequent to May 1, 1941.

(5) The undisputed evidence established the existence, before, and at the time of, the enactment of the Fair Labor Standards Act of agreements between employers and employees throughout the iron ore mining industry under the terms of which work time was computed on the "face to face" basis. It, therefore, follows that the question of the validity of these contracts and the effect to be given to them is a question of law for the Court and not a question of fact to be decided by a jury or fact finding tribunal.

ARGUMENT

POINT I

IN INTERPRETING THE TERM "WORKWEEK" AS USED IN THE FAIR LABOR STANDARDS ACT, THE INTENTION OF CONGRESS MUST BE ARRIVED AT. IN FINDING THAT INTENT CONSIDERATION MUST BE GIVEN TO:

(a) *The reasonable standards in the industry to which the Act is sought to be applied, as evidenced by prevailing working conditions, and by customs and practices and bona fide contracts or arrangements between employers and employees by which work time is defined.*

The Fair Labor Standards Act was enacted for nationwide application in all of its provisions. Section 7, prescribing the maximum hours of work per week and requiring the payment of overtime for work performed in excess of those hours, was intended to apply to all industries, with all the varying conditions and circumstances under which the work is performed.

The constitutional basis of the Act is to prevent unfair competition within an industry which is brought about by sweat shop conditions, including long hours of work at less than a living wage. In the light of the purposes of the Act it must be presumed that the Congress in its enactment, and particularly in the use of the word "workweek," totally undefined, viewed the prevailing working conditions, the customs and practices and bona fide contracts or arrangements between employers and employees by which work time is defined. It intended that the Act be construed consistently with established and existing practices. It did not intend to revolutionize conditions in industry which had been established by collective bargaining. Had the Congress intended to radically change such standards it could and would have employed adequate definitive language to clearly express that intent.

The principle that the Act was intended to be applied on an industry basis is recognized and advanced by the Administrator in his Bulletins and Releases addressed to the question of the interpretation of the word "workweek" in its application to underground mining in the coal and iron ore industries. This rule of interpretation cannot be questioned.

In the case of *United States v. Turner Turpentine Company* (C. C. A. 5th, 1940) 111 F. (2d) 400, the question was whether the production of gum and its processing into turpentine and resin was "agricultural labor" within the meaning of the Social Security Act. The opinion of the Court cites the statutes of several states which together produce approximately 90 per cent of the gum turpentine and gum resin produced in the United States. Federal acts containing similar definitions were cited. In the opinion the Court said:

> "It is now a settled principle of statutory construction that Congress or a legislature in legislating with regard to an industry or activity, must be regarded as having had in mind the actual conditions to which the act will apply, that is, the needs and usages of such activity. When then, Congress in passing an act like the Social Security Act, uses, in laying down a broad general policy of exclusion, a term of as general import as 'agricultural labor,' it must be considered that it used the term in a sense and intended it to have a meaning wide enough and broad enough to cover and embrace agricultural labor of any and every kind, as that term is understood in the various sections of the United States where the act operates. *This does not mean, of course, that a mere local custom which is in the face of the meaning of a general*

term used in an act, may be read into the act to vary its terms... It does mean, however, that when a word or term intended to have general application in an activity as broad as agriculture, has a wide meaning, it must be interpreted broadly enough to embrace in it all the kinds and forms of agriculture practiced where it operates, that its generality reasonably extends to." (Emphasis supplied).

Cf Maddox v. Jones (District Ala. 1941) 42 F. Supp. 35.

(b) *Reasonable standards in other industries in which working conditions and customs and practices and bona fide contracts or arrangements between employers and employees are essentially the same.*

In enacting the Fair Labor Standards Act and in using the undefined term "workweek," it is presumed that the Congress was familiar with the standards in all industries to which the Act is sought to be applied.

The record shows without dispute that the same customs and practices and contracts between employers and employees in the great bituminous coal industry, which employs a half million miners, were the same as those in the iron ore mining industry with respect to the definition of work time. Certainly, it cannot be presumed that the Congress did not give due and serious consideration to those customs and practices in both industries when it enacted the Fair Labor Standards Act and without defining the word "workweek." Notwithstanding, we now have by interpretation of the Administrator the anomalous situation of having the term "workweek" include travel time in the ore mines and exclude travel time in the coal mines. This situation is particularly emphasized by the operations of petitioners and Woodward Iron Company. Each of these companies operates in connection with its business both iron ore mines and coal mines, a short distance apart. Both operations are essential in the production of the material which they process and sell in the market in interstate commerce. The contracts with the ore miners and the coal miners, insofar as the definition of work time is concerned, are the same. Both exclude travel time. The conditions of travel are substantially the same in the two industries. The mode of travel is the same. All of the incidents of travel between the mouth of the mines to the working places and return are essentially the same. Whatever hazards attend travel are the same, with the exception that the coal mines are gaseous and the ore mines are not.

If the Congress intended, as the Administrator has found, that travel time in coal mines was not work time, does it not follow that the Congress also intended a like result in the iron ore mining industry?

(c) *The sense in which the same term, or terms of the same import, have been used in prior Federal statutes evidences the intent of the Congress in leaving the word "workweek" undefined in the Fair Labor Standards Act.*

We have hereinabove called attention to the pertinent provision of the Code of Fair Competition for the Bituminous Coal Industry, as approved by the President on September 18, 1933. The Code contains the provision:

> "Seven hours of labor shall constitute a day's work and this means seven hours at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid on the day or the tonnage or other piece work basis."

Congress must be deemed to have intended that work time to be included in the workweek under the Fair Labor Standards Act should be given the same meaning as was prescribed by those in charge of the administration of the

National Industrial Recovery Act, under which the Bituminous Coal Code was adopted.

The policy of the National Industrial Recovery Act and of the Fair Labor Standards Act are in many aspects the same. In those aspects they evidence the same policy. They are kindred acts. The similarity of the provisions of the sections of the Bituminous Coal Code and the pertinent provisions of the Fair Labor Standards Act command notice. The word "employ" is used in both, and with the same meaning. In the Code we find a definition of the word "workday" as meaning the prescribed hours of work at the usual working place, exclusive of the lunch period. In the Fair Labor Standards Act we find the word "workweek" undefined.

In approving and giving effect to the Code the President recognized the established custom and practice with respect to the computation of work time. In using the term "workweek" in the Fair Labor Standards Act the Congress is presumed to have intended that that term be given that interpretation which conforms to the definition of the seven-hour day in the Code and to the uniform customs, practices and contracts by which work time is defined.

It is a familiar and well established rule that, where a statute that has been construed by the Courts has been reenacted in the same or substantially the same terms, the legislature is presumed to have been familiar with its construction, and to have adopted it as a part of the law, unless a different intention is indicated.

Edwards v. Wabash Ry. Co. (C. C. A. 2nd, 1920) 264 Fed. 610; *McDonald v. Hovey,* 110 U. S. 619, 28 L. Ed. 269; *Marshall v. Commissioner of Revenue* (C. C. A. 3rd, 1940) 111 F. (2d) 935; *Deming v. United States* (C. C. A., D. C.), 37 F. (2d) 818; *State, ex rel. Norfolk Beet Sugar Co. v. Moore,* 50 Neb. 88, 61 Am. St. Rep. 538;

Ross v. Miller (N. J. 1935) 178 Atl. 771; *Gilmore v. Preferred Accident Ins. Co.* 283 N. Y. 92, 27 N. E. (2d) 515, 129 A. L. R. 986; *Reiche v. Smythe,* 13 Wallace 162, *Appel v. Mellon,* 33 F. (2d) 805; *Marx v. U. S.* 161 U. S. 297, 40 L. Ed. 706; *Purtell v. Philadelphia and Reading Coal and Iron Company,* 256 Ill. 110, 99 N. E. 899, Ann. Cas. 1913, Sec. 335, 43 L. R. A. (N.S.) 193; *Great Northern Ry. Co. v. Ward Co.* (N.D.) 208 N. W. 768.

(d) The foregoing authorities are equally applicable in cases where a prior statute has received interpretation by any administrative or executive department of the Government.

(e) The generally accepted meaning of the same term, or terms of the same import, as evidenced by the use of such terms in state statutes relating to hours of work, the judicial interpretation of such terms, and the custom and practice thereunder of those to whom they apply are persuasive in arriving at the intent of the Congress in the use of the word "workweek" in the Fair Labor Standards Act.

We have in our Statement called attention to the California eight-hour law relating to hours of work in underground mines and to its interpretation in the case of *Ex Parte Martin,* 106 Pac. 238, and to the fact that after the enactment of the California statute a number of other states enacted similar statutes.

It is significant that the statutes of Utah, Arizona and Nevada provide for a maximum period of employment of eight hours, and in clear and unmistakable langauge provided that the travel time from surface back to surface is included within those hours. The express language employed in these statutes evidences the conception that travel time would be excluded from work time unless specifically included in the legislative enactment.

POINT II

THE PURPOSE OF THE FAIR LABOR STANDARDS ACT WAS TO FIX THE MINIMUM WAGE AND MAXIMUM HOURS OF WORK. IT WAS NOT THE INTENTION OF CONGRESS IN ITS ENACTMENT TO RESTRICT FREEDOM OF CONTRACT BEYOND THE PURPOSE OF PREVENTING UNFAIR COMPETITION IN COMMERCE. IT DID NOT INTEND TO RESTRICT THE RIGHTS OF COLLECTIVE BARGAINING WHICH IT HAS SHOWN A ZEALOUS AND CONSISTENT PURPOSE TO PRESERVE AND MAINTAIN.

The Act relates only to the minimum wage and maximum hours. The record shows that the compensation paid to the employees of petitioners greatly exceeded the minimum prescribed in the Act. Congress did not intend to restrict the processes of collective bargaining so long as the minimum wage is paid. Affirmative evidence of this appears in the report of the Senate Committee which considered this legislation prior to its passage. Excerpts from these debates appear in the Statement appearing hereinabove. The question of the effect of this legislation upon the process of collective bargaining was expressly brought up in the Committee by Senator Walsh when he inquired as to whether or not the legislation would effect collective bargaining agreements already made or thereafter to be made and was told that it would not.

The effect of the decision in the Circuit Court of Appeals is to nullify bona fide contracts arrived at by collective bargaining in which the minimum wage far exceeds the minimum prescribed in the Act. This interpretation of the Act is counter to the purpose of the Act, as is evidenced by the comments and expressions of the legislators in committee when considering this phase of the Act.

In *Williams v. Terminal Company*, 315 U. S. 386, this Court held that the employer and employee were free to contract and agree that tips constituted wages under the provisions of the Act.

In *Walling v. Belo Corporation*, 316 U. S. 624, this Court recognized that employer and employee must be left free to contract under the provisions of the Act "because the employment relationships to which the Act would apply were so various and unpredictable." In the course of its opinion the Court further said that it is well to afford the fullest scope to agreements between parties affected by the Act.

POINT III

IT WAS NOT THE PURPOSE OF THE FAIR LABOR STANDARDS ACT TO ELIMINATE LABOR CONDITIONS DETRIMENTAL TO THE GENERAL WELFARE OF THE WORKERS.

The holding of both the District Court and the Circuit Court of Appeals that the purpose of the Act was to "eliminate labor conditions detrimental to the welfare of the workers" and to "rectify abuses growing out of the dangers and discomforts incidental to underground iron ore miners" is unsound. The purpose of the act was to regulate wages and hours. It was intended thereby to promote the general welfare of the workers only by improving their standards of living in so far as the matter of wages and hours might affect it. The Act does not deal with health, safety, hazards or labor environment.

U. S. vs. F. W. Darby Lumber Co., 61 Sup. Ct. Rep. 451-63.

Fleming vs. Belo Corporation, (5th C. C. A.) 121 Fed.

Rep. (2d) 207, affirmed by this Court June 3, 1942, 66 Sup. Ct. Rep. 1223.

The Fair Labor Standards Act was not designed to accomplish the same ends as the Hours of Service Act (Act of March 4, 1907, c. 2939, 34 Stat. 1415) and similar laws passed by a number of the States. The purpose of the Federal Hours of Service Act was "to prevent the dangers which necessarily arise to the employee and to the public from continuing men in a dangerous and hazardous business for periods so long as to render them unfit to give that service which is essential to the protection of themselves and those entrusted to their care. It is common knowledge that the enactment of this legislation was induced by reason of the many casualties in railroad transportation which resulted from requiring the discharge of arduous duties by tired and exhausted men whose power of service and energy had been so weakened by overwork as to render them unattentive to duty or incapable of discharging the responsible labors of their position."

Atchison, etc., R. Co. vs. U. S. (1917), 224 U. S. 336, 378 S. Ct. 535, 61 L. Ed. 1175.

The Hours of Service Act places an absolute limit upon the hours of permissible service in the occupations which it affects. Its purpose and design is entirely different from the Fair Labor Standards Act. The Fair Labor Standards Act does not limit the hours of service. It merely requires the payment of time and one-half for time worked in excess of the prescribed workweek.

POINT IV

THERE EXISTS A JUSTICIABLE CONTROVERSY BETWEEN PETITIONERS AND RESPONDENTS (INCLUDING THE ADMINISTRATOR, INTERVENER) WITH REFERENCE TO THE CONSTRUCTION OF SECTION 7 OF THE FAIR LABOR STANDARDS ACT FOR THE TIME SUBSEQUENT TO MAY 1, 1941.

The circumstances immediately leading up to the filing of these suits and the pleadings of all the parties clearly show that a justiciable controversy is presented applicable as well to the period after May 1, 1941 as to the period prior to that date. The Administrator's opinion announcing the portal-to-portal policy as applicable to the metal mining industry was followed by demands of the employees of the Petitioners for overtime compensation for travel time, and by threats to sue therefor. The Administrator in his pronouncement stated that his enforcement policy would not relate to the past. Consequently, his interest was necessarily confined to the future.

The Petitioners' petitions ask for an interpretation of Section 7 of the Act and for a declaration that the time spent by the underground employees in traveling from the portal to the working place and returning was not work time to be included in the workweek. Respondents in their answers allege their interpretation of the Act which is identical with the opinion of the Administrator.

The Administrator filed a motion to intervene, alleging that he was directly and solely responsible for the administration of the Act and that any interpretation would directly affect the administration thereof and that, for that reason, he was interested in the cause. His motion was granted. He thereafter filed an answer setting up his interpretation of the act as the proper interpretation.

It appears conclusively from these circumstances that the pleadings require an interpretation by which the Petitioners may be guided in the future conduct of their business. The transition made by Petitioners to portal to portal, at the expense of decreased production was made because of the great hazard which might result from a violation of the Administrator's enforcement opinion and order.

POINT V

THE UNDISPUTED EVIDENCE ESTABLISHED THE EXISTENCE BEFORE, AND AT THE TIME OF, THE ENACTMENT OF THE FAIR LABOR STANDARDS ACT OF AGREEMENTS BETWEEN EMPLOYERS AND EMPLOYEES THROUGHOUT THE IRON ORE MINING INDUSTRY UNDER THE TERMS OF WHICH WORK TIME WAS COMPUTED ON THE "FACE TO FACE" BASIS. IT, THEREFORE, FOLLOWS THAT THE QUESTION OF THE VALIDITY OF THESE CONTRACTS AND THE EFFECT TO BE GIVEN TO THEM IS A QUESTION OF LAW FOR THE COURT AND NOT A QUESTION OF FACT TO BE DECIDED BY A JURY OR FACT FINDING TRIBUNAL.

The undisputed testimony in the record shows that, before and at the time of the enactment of the Act throughout the iron ore mining industry in the United States the clearly understood agreements between employers and employees were that travel time was not included in work time for which compensation was payable. The "face to face" policy was universal in the industry. We submit that under these circumstances any finding or opinion that travel time was included in work time, is a conclusion of law and not a finding of fact. When the evidence is undisputed as to the contractual relationship and the terms of the contract, the question of the validity of the agreements is a question of law for the Court.

It is well established that ultimate findings of fact are to be distinguished from findings of primary, evidentiary or circumstantial facts. An ultimate finding is a conclusion of law or at least a determination of a mixed question of law and fact which is subject to review and on such review the appellate court may substitute its judgment for that of the lower court. Cf. *Helvering c. Tex-Penn Oil Co.,* 300 U. S. 481, 491, as well as authorities supra.

Not only may the Appellate Court review findings of fact which are not supported by evidence, but it is also entitled to disregard findings of fact that are based upon fallacious reasoning or data. No presumption of correctness attaches to a finding or decision of a regulatory body or administrative officer if the method of determination is essentially wrong. *United States v. Wyckoff-Creosoting Co.,* 271 U. S. 263; *Northern Pac. Ry. Co. v. Department of Public Works,* 268 U. S. 39; *Duffin v. Lucas,* 55 F. (2d) 786; *Wilson Coal Land Co. v. Commissioner,* 87 F. (2d) 185.

If it be treated as a question of fact and left to the determination in each individual case by a jury or fact finding tribunal, conflicting decisions upon the same testimony would inevitably result. Varying decisions based upon the same facts would tend to increase "unfair competition in commerce." Such chaos and confusion can be avoided only by the holding that the validity and effect of the agreements are matters of law for the Court. As said in the dissenting opinion in the Circuit Court of Appeals:

> "There is nothing in the Act to outlaw agreements that travel time in getting to and from the agreed place of work is not work time."

CONCLUSION

It is respectfully submitted that the judgment of the Circuit Court of Appeals for the Fifth Circuit should be reversed and a judgment rendered herein declaring that it was the intention of the Congress, in the use of the word "workweek" as it appears in Section 7, Fair Labor Standards Act, in its application to Petitioner's employees, not to require portal to portal travel time to be included in the computation of the workweek prescribed by Section 7 of the Act.

E. L. All,

S. M. Bronaugh,

William B. White,

Attorneys for Petitioner,
Sloss-Sheffield Steel & Iron Co.

APPENDIX

LETTER FROM UNITED MINE WORKERS OF AMERICA AND COAL OPERATORS TO ADMINISTRATOR OF WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR

1617 Pennsylvania Boulevard,
Philadelphia, Pa., July 9, 1940.

Col. Philip B. Fleming, Administrator,
Wage and Hour Division,
Department of Labor,
Washington, D. C.

Dear Mr. Administrator:

As a result of certain investigations which have been conducted by the Wage and Hour Division at bituminous coal mines in Pennsylvania, particularly at the Revloc shaft of the Monroe Coal Mining Company, and a conference that has been held by your Supervising Inspector, Mr. Caffey, at Pittsburgh, Pa., with a committee of the Western Pennsylvania Coal Operators' Association concerning the application of the Fair Labor Standards Act of the bituminous coal mining industry, certain questions have arisen that are disturbing to both employers and employees within the industry. These uncertainties have been continuing for some time and are causing much concern to the mine workers and the mine operators, especially with reference to "travel time."

Today, the Negotiating Committee of the Appalachian Wage Conference, namely: Messrs. J. D. A. Morrow, President of Pittsburgh Coal Company; L. T. Putnam of the

Raleigh Wyoming Mining Company, Beckley, W. Va.; L. C. Gunter of the Southern Appalachian Coal Operators Association, Knoxville, Tenn.; Charles O'Neill, President of United Eastern Coal Sales Corporation, New York City; C. E. Cowan, Vice-President of Monroe Coal Mining Coming; Frederick H. Knight, Counsel for Monroe Coal Mining Company; W. L. Robinson, President of the Youghiogheny & Ohio Coal Company and Chairman of the Appalachian Wage Conference on the one hand, and Mr. Earl E. Houck, Director of the Legal Department of the United Mine Workers of America, met with Mr. Dorsey, Regional Director, Philadelphia, Pa., and Mr. Gallagher, Regional Counsel, Philadelphia, Pa., at which time these questions were discussed at length, particularly the application of the Act as to the questions of hours of work in the bituminous coal industry.

The mine workers and the mine operators present presented their views to representatives of the Wage and Hour Division as to the provisions of the Appalachian Wage Agreement covering maximum hours and working time. We have filed with the Division copy of the Appalachian Wage Agreement, and the entire provision as to maximum hours and working time is included therein. The pertinent language, however, is "Seven hours of labor shall constitute a day's work. The seven-hour day means seven hours' work in the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid by the tonnage basis * * *." The Appalachian Wage Agreement is the basic agreement for the bituminous mines in the States of Pennsylvania, Ohio, West Virginia, Virginia, Eastern Kentucky, Southeastern Tennessee and Maryland. In this territory there are several thousand rail shipping mines employing from 300,000 to 325,000 men, and some twenty-three operating districts. Each of the districts work out a local wage agreement covering its own territory, subject, however to the provisions that it must include within it all of the provisions of the Appalachian Agreement.

The mines in the Appalachian region produce 70 per cent of the total bituminous coal produced in the United States annually. Also, the Appalachian Agreement is used by the United Mine Workers of America as a basic agreement upon which the district agreements of the remaining 30 per cent of the country is predicated.

The United Mine Workers of America and coal operators of the United States have been negotiating wage agreements for a period of fifty years. The Appalachian Agreement, covering as it does a great number of men and mines, has been worked out over that period of time and covers within its general provisions myriad wage rates, conditions of work, and hours of employment. This agreement, with its twenty-three supplemental agreements, constitutes a whole document. In these conferences, of course, hours of work has been one of the principal matters of consideration during this period of time. Hours of work with wage rates constitute the heart of any such agreement: In this basic industry we have provided for seven-hour days, five-day weeks, thirty-five hours per week, with high rates of pay. The basic inside a day rate in the North is $.857 per hour, and in the South it is $.80 per hour. The underground workers are paid on this basis, with maximum rates for mobile loading machine operators, approximate $1.09 per hour. In addition, the government provides, "work by mine workers paid by hour or day in excess of seven hours in one day, or thirty-five hours in any one week, shall be paid for at the rate of time and one-half * * *." It is our opinion that these substantive provisions of the agreement are among the highest standards of labor provided in any industry in the United States, both as to hours of working time and as to wages paid. There is full and complete understanding in the industry between employer and employees as to the application of these provisions. This method of measuring the working time at the place of work has been the standard provision in the basic wage agreements for almost fifty years and is the result of collective bargaining in its complete sense.

There are many reasons why the provision as to working time has been set out as provided by this agreement. The impracticability of measuring time by any other method is inherent in the very nature of mining coal. Coal mines are sometimes very extensive. When they are first opened up, the working places, are, of course, closer by and near to the opening of the mine. In such cases there is no problem of either transportation of the men to the working places or time consumed in reaching them; but as mines grow older, the working places move farther, and farther away from the portal or opening of the mine, and as such conditions develop, it becomes necessary for provision to be made for transportation of the men over long distances to their working place. This is usually provided by what is known in the industry as "man trips." These trips are scheduled to leave the outside or opening of the mine at a certain hour, so that all the employees will reach their working places by the hour at which work regularly begins at the working places throughout the mine, and these trips are also scheduled to leave the inside of the mine when the day's work is done, at the conclusion of the seven-hour period of work at the working places.

Among other provisions of the agreement, there is provided a time for starting the day's work and a lunch period, as well as a time for expiration of the work day. There is some variation in this, depending upon local conditions as to the starting and quitting time at the various collieries. The agreement provides for certain tolerance. In any event, the starting and quitting time are no more than seven hours apart, exclusive of the lunch period.

In the many conferences that have been held over this period of fifty years, naturally all manner of suggestions and proposals for amplification or amendment of the agreement has been made both by the mine workers and the operators.

The uniform high rates of pay that have always been included in the wage agreement of the mining industry contemplate the employee's working day beginning when he arrives at his usual working place. Hence, travel time was never considered as a part of the agreement or obligation of the employer to pay for in this industry, nor as hours worked by the employees, and this has been the case since the eight-hour day was established in the industry—April 1, 1898.

It is urged that any ruling requiring such a change in the custom, tradition and contract provision so as to change the work day from "seven hours" work in the mines at the usual working places" to any new standard for the measurement of time worked, and to the adjustment of wage rates made necessary thereby, would create so much confusion in the bituminous industry as to result in complete chaos, and would probably result in a complete stoppage of work at practically all of the coal mines in the United States. Such a ruling, moreover, would establish such diversity of time actually spent at productive work as between different bituminous coal mines and within each mine that there would be no basis on which any general wage scales could be predicated, collective bargaining would therefore be rendered impossible throughout this industry, and the very purpose of the Fair Labor Standards Acts would be defeated. In such an event, it would make necessary the reassembling of the Appalachian Joint Wage Conference and it would be faced with an issue that would be almost impossible of solution by agreement, resulting in an industrial conflict that would paralyze the nation. This would be a most unhappy result to flow from an act that was passed by the Congress to aid workers in industries that had unreasonably long hours and unreasonably low rates of pay, as contrasted with the short hours and the high rates of pay in the bituminous coal mines. The great amount of money involved in the case of extra payment by the operators or the great changes that would be required in the rates of pay to the miners, should any change in the present contract be necessary by reason of a new standard for the measurement of time worked, is so serious that a negotiated adjustment would seem to be impossible.

For the foregoing reasons, we believe that your Division should accept the standards of wages and hours of work, and the definition of working time, as set forth in the Appalachian agreement (which embodies the customs and traditions of the bituminous mining industry), as complying both with the provisions of the Fair Labor Standards Act and of Interpretative Bulletin No. 13, to the effect that "reasonable standards agreed upon between the employer and the employee will be accepted for the purpose of the Act.

We therefore respectfully request that your Division issue a supplement to Interpretative Bulletin No. 13, stating that the standards of wages and hours of work, and definition of working time, set forth in the Appalachian Agreement, entered into on May 12, 1939, between twenty-three district associations of bituminous coal operators comprising the Appalachian coal producing area and the International Union, United Mine Workers of America, and the several district agreements based thereon, conform to and satisfy the requirements of the Wage and Hour Act.

Respectfully submitted,

For the United Mine Workers of America:

(S) EARL E. HOUCK,
Director of the Legal Department.

For the Operators:

(S) W. L. ROBINSON, Chairman,
(S) CHARLES O'NEILL,
(S) L. T. PUTNAM,
(S) L. C. GUNTER,
(S) J. D. A. MORROW,
Appalachian Joint Conference
Negotiating Committee.

(Plaintiff's Ex. No. 25, R. 1710-16).

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IN THE

Supreme Court of the United States

October Term, 1943

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NO. 409

—o—

TENNESSEE COAL. IRON AND RAILROAD COMPANY, Et al.,

Petitioners,

vs.

MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, Et al.,

Respondents.

—o—

BRIEF FOR PETITIONER REPUBLIC STEEL CORPORATION

—o—

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Petitioners,

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MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, Et al.,

Respondents.

—o—

BRIEF FOR PETITIONER

REPUBLIC STEEL CORPORATION

—o—

On certiorari to the United States Circuit Court of Appeals of the Fifth Circuit to review the decree of that Court entered on the 16th day of March, 1943, as modified on the 27th day of July, 1943, (R. 4997-5011) modifying and affirming as modified by a divided Court a decree of the District Court of Alabama entered on the 10th day of September, 1941.—(R. 568-9).

I

OPINIONS BELOW

The opinion of the District Court (R. 494-506) is reported in 40 Fed. Supp. 4.

The opinion of the Circuit Court of Appeals (R. 4938-4942) is reported in 135 Fed. (2d) 320.

The opinion of the Circuit Court of Appeals denying petitioners' petition for rehearing (R. 4997-5010) is reported in 137 Fed. (2d) 176.

The opinions of the Circuit Court of Appeals appear in the Appendix to petitioners' petition for a writ of certiorari at pages 64 to 77 and 77 to 95.

II

JURISDICTION

The jurisdiction of this Court is based on Section 240 (a) of the Judicial Code, 28 U. S. C. 347, as amended by the Act of February 13, 1925.

III

PARTIES

The petitioners are operators of underground iron ore mines in Alabama. They brought separate actions for declaratory judgments under the provisions of the Federal Declaratory Judgments Act, Section 247 (d) of the Judicial Code, 28 U. S. C. 409.—(R. 25, 175, 177). The actions were consolidated for trial.—(R. 487).

Philip B. Fleming, Administrator of the Wage and Hour

Division of the United States Department of Labor, was permitted on his own motion to intervene.—(R. 304-5).

It was admitted and found by the District Court that local unions named as defendants "fairly represent the class of underground ore mining employees of the plaintiffs."—(R. 565).

IV

QUESTION INVOLVED

The fundamental question involved is whether the Fair Labor Standards Act of June 25, 1938, Chap. 678, Sec. 152, Stat. 1060, requires so-called "portal to portal" travel time to be included in the computation of the "work week" as prescribed by the Act.

The phrase "portal to portal" includes all the time spent underground by the miners, exclusive of the lunch period. The phrase "face to face" includes the time spent at the usual working place. The phrase "travel time" includes all the time spent by the miner in getting from the mouth of the mine to the usual working place and returning therefrom to the mouth of the mine.

V

THE STATUTE

The pertinent provisions of the Act are as follows:

> "Section 7. Maximum hours.
>
> "(a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

"(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

"(2) for a workweek longer than forty-two hours during the second year from such date, or

"(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

VI

STATEMENT

The fundamental question involved in the appeal of petitioner Republic Steel Corporation (hereinafter referred to as the Republic Company) is in all respects the same as that in the appeal of the Tennessee Coal, Iron and Railroad Company (hereinafter referred to as the Tennessee Company), and for the convenience of the Court and of parties, and to avoid repetition, the petitioner Republic Company, having secured the consent of the attorneys for the Tennessee Company, asks the permission of the Court to adopt, so far as applicable, the Brief and Argument filed herein by the petitioner Tennessee Company.

The pleadings, errors assigned, the principles of law are the same and the applicable facts are characteristic and in many respects substantially the same in the two cases.

There were differences in the methods and conditions of operations, length of slopes, distances from the portals to the working places, and collective bargaining histories, which, as petitioner contends, have no probative value so far as the fundamental question of the intent of the Congress in the enactment of Section 7 of the Act is concerned. The Republic Company, however, sets out herein the following differences which might be considered substantial.

1. *The iron ore operations of the Republic Company.*

The operations of the Republic Company consisted of two: (1) Its iron ore mine at Spaulding, and (2) its iron ore mine at Raimund.

By oversight the operations at Spaulding were omitted from the original petition. Upon discovery of this oversight, and with permission of the Court these operations were added by amendment.—(R. 491-3).

The vein of iron ore at Spaulding ran from 20 to 22 feet in thickness. The thickness of the seam at the Raimund mine was about six and one-half feet. The metallic content of ore at Spaulding was much higher than at Raimund. The Spaulding mine had been re-opened in September, 1940, and the useability of the ore had been made satisfactory through the operation of a benefication plant which eliminates or reduces the silica and other foreign substances.—(R. 1908-9). The Spaulding mine was the most shallow mine on Red Mountain (the mountain in which all the iron ore mines of petitioners are located) and the Raimund mine one of the deepest.—(R. 1919). In the Spaulding mine there was no mechanical transportation and the employees walked to and from their working places.—(R. 1910). In the Raimund mine the employees were transported in cars from the tipple to the underground station, a distance of approximately 2,100 feet.—(R. 1835); the employees walked from the underground station to their places of work, and returning after the day's work had the option of either auxiliary mechanical transportation to the underground station or walking.—(R. 1838-39). The longest walking distance from the underground station at

Raimund was 7,575 feet and the shortest 2,425 feet. At Raimund the employees walked along the headings, using for the most part the roadbed of the tracks.—(R. 1839-41). At Spaulding the employees walked from the entrance of the mine to the working places and returned in a manway (not connected with haulage) which was "dry and a good way to travel."—(R. 1911). The walking distance in the Spaulding mine was approximately 500 feet.—(the exact distance is indicated on the map of the Spaulding Mine, Republic Exhibit No. 16, R. 4022)—and the time consumed by the employees in walking from the surface to the working places and return was approximately fifteen minutes.—(R. 1910). The time consumed by the employees in Raimund mine in going from portal to working places and return varied in accordance with different witnesses but in some instances and as testified to by some witnesses the time was approximately one hour and twenty-five minutes.—(R. 1901).

2. *Other differences in operation.*

There were other differences in the operations of the Republic Company, the Tennessee Company, the Sloss Company, the Woodward Company and other iron ore mining companies. None of these are of any particular materiality or relevancy. Among these the following may be mentioned:

The Republic Company, since 1936, has used electric lamps instead of carbide lamps. The lamps are rented to the employees. When carbide was used the employees bought it at various places, and the company did not, as did other petitioners, sell the carbide at the mines. When the electric lamps began to be used a place convenient to the tipple was provided where the lamps were obtained by the men contemporaneously with the deposit of their checks.—(R. 1851-2). The Republic Company charged a fee of fifty cents per month for the privileges of the bath house, the use of the bath house being optional and some of the employees changing at home.—(R. 1849). The Republic Company used substantially the same method of depositing checks on entering the mine and taking them up on leaving as did the Tennessee Company, and for the same safety purposes.—(R. 1850-51). The Sloss and Woodward companies did not use the deposit of check methods. —(R. 1387, 1575). The character of car used for the man-trips was different in the case of the Republic Company from that of any of the other operators. In the operations of the Republic Company the work-day ran from 6:30 A. M. to 2:30 P. M., and 7:00 P. M. to 3:00 A. M., with no time out for lunch period, lunch being on the company's time.—(R. 1853, 1862, 1927). The system of mining in the mines of the Republic Company was on a mechanical basis to a less degree than in the case of the Tennessee Company. The wages of the productive men of the Republic Company were on the tonnage basis, but the rates of pay were fixed on evaluations made on the hourly basis and the undisputed evidence shows that the computation and pay of service employees before and after May 1, 1941, was on an hourly basis.—(R. 1844-47). In the case of the Republic Company forty-six per cent of the employees were service employees.

Virgil Powell, a witness for respondents, was the only service employee of the Republic Company who testified in the case. Powell testified on direct examination that he ran a hoisting engine and was a company man (R. 3086); that he worked regular hours, the work usually covering nine hours. It appeared that it was necessary for him to work overtime—nine hours instead of eight—and in reference to this he testified that when he worked overtime he was paid for it.—(R. 3088).

3. *History of Contractual Relations and Collective Bargaining.*

Prior to the enactment of the Act and at the time of the trial of the case, the Republic Company had not executed a written agreement with the Smelters Union. With this exception the collective bargaining history of the Republic Company is substantially the same as that of the other iron ore mining operators. We summarize below this history:

1. Since the beginning of its operations and until May 1, 1941, the Republic Company had traditionally computed and paid, and its employees had accepted and receipted in full therefor wages on the "face to face" basis.

In reference to this we quote from the testimony of all the witnesses who testified concerning pay for traveling time in the iron ore operations of the Republic Company.

Norman E. Thompson, Superintendent of Ore Mines, testified:

> "Q I want to ask you both as to the service crews and the production crews, since you have been connected with the company and had knowledge of it, up until May 1, 1941, was the pay or the wage ever computed—the pay of the men ever computed or paid on any basis other than the basis you have described, face to face or working place to working place?
>
> "A Not to my knowledge.
>
> "Q Has there ever been any payment for traveling time to either one of those crews in going to and from their working places?
>
> "A No, sir."—(R. 1864).

J. M. Hassler, Chief Engineer for the Birmingham District and Superintendent of Industrial Relations for the

Republic Company, testified to the same effect.—(R. 2119-20).

John Butler, a contractor at Raimund mines of the Republic Company and a witness for the respondents, testified:

> "Q Now, never in your experience as a miner since you have been mining in Alabama—you have never received any pay for the time you spent in traveling to and from the place where you produced the ore, have you, Mr. Butler?
>
> "A I have not.
>
> "Q And the custom and practice in all the mines you have ever worked in during all that period of time has been not to pay the men for any time spent in traveling to and from the place where they produce the ore?
>
> "A Yes, sir."—(R. 3058-60).

R. H. Kendricks, M. C. Crawford and Hiram S. Peterson, in an affidavit dated October 2, 1940, among other things, stated as follows:

> "All of affiants further depose that during all of the time of their employment by the Republic Company they have been acquainted with the custom and practice in the ore mine of the Company in reference to computing the hours of work for which men are paid, and know that the computation was made and the men were paid on the basis of time actually spent by them at the face or at their usual working places; that the men have always been paid and have always accepted their pay on the basis of time spent at the working place and without any consideration for the time spent in going to and from the portal of the mine to the face."—(Plaintiff's Exhibit No. 49, R. 4451).

Kendricks was an officer of the Smelters Union for a long period of time prior and subsequent to the enactment of the Act, and he, Crawford and Peterson had been employees of the Republic Company at its Raimund operations for a great many years.

2. The computation and payment of wages, the statements of account given to the employees, the receipts of the employees acknowledging ~~time~~ twice monthly the receipt in full payment of all amounts due, and indicating computation and payment of wages on the "face to face" basis, the general location of the mines, operating conditions, usages in the ore mines of petitioner, as set out in reference to the operations of the Tennessee Company, are substantially the same in reference to the Republic Company. The facts in reference to the contractual relations (with the exception of the executed contracts with the Smelters Union) are substantially the same.

We summarize the evidence relating to the contractual and bargaining negotiations between the Smelters Union and the Republic Company as follows:

(a) The Smelters Union was organized at Raimund sometime in 1933 and has remained there ever since. Since its organization the company has met regularly with committees of the Union, these meetings have been held "at least once a month, sometimes oftener, depending on the amount of negotiations we had."—(R. 1867). The testimony and exhibits disclose that with the exception of the times set out hereinafter the union never made any suggestion of changing from the "face to face" basis of wage computation and payment, or of being paid for any portion of the traveling time.

(b) At one of the meetings held with the Union Committee on *September 30, 1933*, the Smelters Union Committee presented to the management its written communication under seal setting out thirteen demands, the sixth demand reading as follows:

> "* * * and (6) the men enter the mine on their own time and come out of the mine on the company time."—(Republic Exhibit No. 2, R. 3975, 1868).

This was the first time that any demand or request had ever been made by the committee. So casual was the demand that it was not brought up for discussion at the meeting of the committee with the management.—(R. 1870).

(c) On *December 21, 1933,* the Smelters Union filed with the "Regional Board operating under the National Labor Board by the Authority of the United States under the National Industrial Recovery Act"—(the progenitor of the Fair Labor Standards Act)—its complaint making a number of charges against the company including substantially the same demands which were included in Republic Exhibit No. 2, supra. Among these demands was the following:

> "6. That the men be not required to enter and leave their place of work on their own time."—(Defendants' Exhibit No. 9, R. 4581, 4586).

This complaint stated that the Union was functioning with 97 per cent membership of the entire employees of the company, and was signed on behalf of the Union by Byrd H. Barksdale and J. A. Lipscomb, Mr. Lipscomb being one of the attorneys of record for the Union in this case.

Attached to the charges was a copy of the grievances presented to the company on the *30th day of September, 1933,* by Republic Exhibit No. 2, supra.

A hearing was held on this complaint before the Board in Atlanta, Georgia, and at that time no complaint or demand was made in reference to the charge in the complaint that the men should not be required to enter and leave their places of work on their own time.—(R. 1870).

The complaint before the Regional Labor Board was settled on *January 15, 1934*, the terms of the settlement being stated in a letter directed by counsel of the Republic Company to Mr. Marion Smith, Chairman of the Board.—(Republic Exhibit No. 3, R. 3976, 1873). This agreement not only made no provision for the payment for any portion of the travel time, but provided that the men would return to work on the same eight hour day that they had previously worked and the men returned to work on the "face to face" basis.—(R. 1874).

(d) On *March 13, 1934*, the Union presented to the company another written list of grievances and demands, the tenth of which was in the following language:

> "That the men be not required to enter and leave their place of work on their own time."—(Republic Exhibit No. 4, R. 3978-80).

In the discussion with the Union Committee in reference to these demands there was no mention made of and no discussion about this demand.—(R. 1878). There was no change made after the presentment of these demands and the operations of the company remained on the "face to face" basis.

(e) In *1934* the employees of the company engaged in the general strike on the mountain and closed down the Raimund mines. Conciliation negotiations in reference to the Republic Company's operations were had, George Cole, the International Vice-President of the Union, and the members of the Union Committee representing the employees and Conciliator Richardson the Government.

As a result of these negotiations the strike was settled; an adjustment of wages by way of an increase was made, and the men returned to work on the "face to face" plan which had previously prevailed.—(R. 1878-9).

The correspondence referred to as the Perkins letter of understanding, which set forth the terms under which the men returned to work, was substantially the same in the case of the Republic Company as it was in the case of the Tennessee, the Sloss and the Woodward companies.—(Republic Exhibit No. 5, R. 3983-90; 1880-81). The letters on behalf of the Union were signed by George B. Cole, International Vice-President, and its local committeeman, Rufus Kendrick (one of the affiants whose affidavit is quoted *supra*), and the letters on behalf of the Republic Company by its District Manager.

The men agreed to and did return to work on the "face to face" plan, and again no contention was made during the negotiations concerning payment for any portion of the travel time.—(R. 1881).

The wage scale attached to the letter of understanding shows an increase of rates of pay to all the service employees and of the drag tonnage rates to drill helpers and muckers of the productive employees.—(Republic Exhibit No. 5, R. 3988-90).

(f) On *June 17, 1935,* the Union presented to the Republic Company a proposed complete labor agreement. This proposal contained the following suggestion in reference to travel time:

> "9. It is agreed that the employees shall enter the mine on their own time and come out on the company's time."—(Republic Exhibit No. 6, R. 3991, 3994).

A meeting was held with the committee that presented these demands and again no insistence was made upon the demand and there was no discussion with reference to it.—(R. 1884).

On *July 13, 1936,* the company made a written reply to the demands of the Union as set forth in Republic Exhibit

No. 6, stating, among other things, that the company intended to continue its present policy which had given satisfaction for the past twelve months, that the demands were denied, and that operations would proceed in accordance with the Perkins letter of understanding until such time as it might be indicated that this arrangement was no longer practicable.—(Republic Exhibit No. 8, R. 3996). The employees continued to work on the "face to face" plan.—(R. 1884-1888).

(g) On *May 26, 1936,* the same letter was directed and delivered to the Republic Company as was directed and delivered to the Tennessee Company.—(T. C. I. Exhibit No. 10 and 10-A, R. 3627, 3629). This proposal of the union contained this provision:

> "The eight hour day means eight hours in or about the mines at the usual working places for all classes of work."—(Republic Exhibit No. 7, same as T. C. I. Exhibit No. 10 and 10-A, R. 3627, 3629, 1885).

(h) On *December 26, 1939,* the Union sent to the company by registered mail a letter enclosing a proposed agreement in all respects identical with Republic Exhibit No. 9 presented to the company on September 26, 1939, and which made no reference to traveling time.—(Republic Exhibit No. 10, R. 4003-4; Republic Exhibit No. 9, R. 3997).

It is undisputed that during all these negotiations the employees, with knowledge, continued to work on the "face to face" basis; that the only demands or requests they ever made for payment of traveling time were as stated above, and that in all instances these requests were made casually, never insisted upon, and finally abandoned by presenting requests for the making of a contract which, in express terms, defined the work day to be "eight hours at the usual working places."

(i) On *January 9, 1939,* the Smelters Union filed charges before the National Labor Relations Board, and on *May 1, 1940,* filed an amended charge.—(Republic Exhibits Nos. 11 and 12, R. 4004, 4007). These charges abandoned the previous demand which was made in the charges before the Regional Labor Board and made no complaint against, or requested changing, the traditional "face to face" basis of wage computation and payment.

It is undisputed that the settlement of these charges was made by stipulation, the stipulation being signed by Borden Burr as attorney for the company, J. A. Lipscomb as attorney for the Smelters Union, Horace C. Wilkinson as attorney for Brotherhood of Captive Mines, and Alexander E. Wilson, Jr., as attorney for the National Labor Relations Board (Republic Exhibit No. 13, R. 4009, 4012), that during this proceeding there was no "claim or complaint on the part of the Union that they were not being paid or should be paid for any portion of the traveling time, and that they ought to be paid for it, and that they continued to work on the 'face to face' basis."—(R. 1897).

(j) On *October 12, 1940,* the union presented, after the press release in the *Cornucopia Gold Mine Case,* to the Republic Company the same resolution which was presented to the Tennessee Company and the Sloss Company giving notice of its claim for "portal to portal" pay.—(Republic Exhibit No. 14, R. 4018).

4. *Operations of the Republic Company subsequent to May 1, 1941.*

The Republic Company, under the compulsion of the opinion of the Administrator on May 1, 1941, changed its operations so as to prevent its employees from remaining underground in excess of eight hours per day and forty hours per week. The means of effecting this change were different from the other petitioners and were substantially as follows:

Prior to May 1, 1941, all the underground employees of Raimund Mines entered the mines at Number 2 Slope. Since May 1, 1941, all the employees deposit their checks at Number 2 Slope, and a portion of them enter the mine at Number 2 Slope, and the remainder are transported by bus to Number 1 Slope where they enter the mine, being compensated (pursuant to the opinion of the Administrator) for the time spent in this bus transportation. The average decrease per man in working time at the working place since May 1, 1941, has been about an hour and twenty five minutes, and with an increase in force of 25 or 30 men (the mining operations, other than the changes in transportation and the addition of men remaining the same), production has decreased on an average between 225 and 250 tons per day at the Raimund Mines.—(R. 1900-1903).

5. *The undisputed facts proved that prior to the enactment of the Act the "face to face" method of computing and paying wages had been recognized and approved by the industry, public and quasi-public authorities, the public generally, statutory enactments of like import and similar purpose, and administrative rulings on eight hour and similar laws.*

At the risk of some repetition we summarize somewhat chronologically the facts and conditions as they existed at the time of and prior to the enactment of the act, of which the Congress must be presumed to have had knowledge, and to have legislated in the light of such knowledge in the enactment of the Act:

1. From time immemorial it had been the traditional custom of the iron ore mining industry in Alabama and elsewhere in the United States to compute and pay wages

on the "face to face" basis and there had never been so far as the evidence disclosed a ton of ore extracted in Alabama or elsewhere in the United States on the "portal to portal" basis.

2. All written agreements which had been negotiated through the process of collective bargaining had expressly provided for the computation and payment of wages on the "face to face" basis.

3. Jobs in the Alabama ore mines had been classified and evaluated, wages had been fixed and paid, the cycles of mining operations had been arranged, and wage increases and other valuable rights given to the miners had been based on the "face to face" basis.

4. At least twice a month the employees had received written statements indicating that their earnings were computed on the "face to face" basis, and upon receiving the amounts thus shown to be due them, they acknowledged in writing payment in full of all wages due them.

5. It had been the universal, traditional custom in the bituminous coal mines of Alabama, and in the bituminous and anthracite coal mines of the United States to compute and pay wages on the "face to face" basis, and there had never been so far as the evidence disclosed a ton of bituminous or anthracite coal extracted in the United States on the "portal to portal" basis, and from as early as *1898* this traditional practice had been embodied in all the written agreements negotiated and reached by the coal operators and the United Mine Workers of America representing over half a million coal miners.

6. In *1903* an arbitration board presided over by Judge George Gray recommended, and the Mine Workers Union and the Alabama operators, including petitioners, pursuant to the recommendation, executed a wage agreement providing for the "face to face" basis.—(R. 2193).

7. On *October 25, 1917*, the Peale-Garfield arbitration award expressly provided for the "face to face" basis.—(R. 4694-5).

8. On *March 9, 1920*, President Wilson approved the award of the Bituminous Coal Commission, and, on the basis of this award and approval, the operators and the Mine Workers Union, on *March 31, 1920*, executed a wage agreement expressly providing for the "face to face" basis. —(R. 4696, 4759).

9. On *September 18, 1933*, President Roosevelt, on the recommendation of the Administrator of the National Industrial Recovery Act, acting under the Authority of the National Industrial Recovery Act (the progenitor of this Act) approved the Code of Fair Competition for the Bituminous Coal Industry, as agreed upon by the industry and the Mine Workers Union, and which expressly provided for the "face to face" basis.—(R. 4701-5).

10. On *September 21, 1933*, President Roosevelt approved the Appalachian Agreement which expressly provided for the "face to face" basis.—(R. 4787).

The Courts below sustained respondents' objections to the introduction in evidence of all the above, and other matters relating to coal mines.

The petitioner assigns this as error.—(p. 30, infra). It submits, however, that all said matters are of public record and the Court will take judicial notice thereof.

11. Alaska (Sec. 2132 Compiled Laws of Alaska), Arizona (Sec. 1958, Arizona Revised Codes, 1928), Utah (Chap. 59, Laws of Utah, 1937), and Nevada (Sec. 10237, Nevada Compiled Laws) had all by plain and express statutes included travel time by a limitation of permissible hours underground. These were the only states in the United States which had thus adopted a policy similar in purpose to the "portal to portal" basis.

12. In *1909* California enacted an eight-hour law for persons employed in underground mines.—(Statutes, Page 279, Chap. 181, approved March 10, 1909).

The Supreme Court of California, in construing this statute, held that the eight hours included only the work at the face of the mine and excluded travel time.—Ex Parte Martin, 109 Pac. 238-9.

Subsequently, and at times when the decision of the Supreme Court of California was the only outstanding construction, many other states enacted substantially similar statutes to the California statute, and, presumably adopted the construction of that court.

13. Whenever any question calling for the construction of laws of similar import had been submitted to the construction of administrators of federal laws or governmental departments without exception the construction given had been in harmony with the ordinary and usual meaning accorded to the word "work," namely, that it meant productive work and did not include the time spent in going to and from the place of work.

Petitioner respectfully asserts that at the time of the enactment of the Fair Labor Standards Act all previous administrative, legislative and judicial actions or interpretations of this question had been such as to expressly exclude travel time from work time. There were none to the contrary.

6. *The undisputed facts proved that subsequent to the enactment of the Act the "face to face" method of computing and paying wages was recognized by the Administrator of the Act, the industry, other and allied industries, the beneficiaries under the Act, public and quasi public authorities, and the public generally.*

1. Petitioners and their employees (represented by strong national unions), and the iron ore mining industry throughout the United States continued, after the enactment of the Act, to operate on the "face to face" basis; this traditional concept of the day's work continued to be embodied in all the executed written agreements; and the employees received increases in wages, additional pay through incentive plans, and other valuable considerations based on the "face to face" basis.

2. On *July 27, 1940,* the Administrator of the Act approved the "face to face" basis of computation and payment of wages for the bituminous coal mining industry.—(R. 4717).

The Administrator has never changed or departed from this ruling.

3. The Administrator induced or allowed the iron ore mining industry to continue the computation and payment of wages on the "face to face" basis until he rendered his Modified Portal to Portal Opinion on March 23, 1941, and indicated his doubt and uncertainty by stating in the release of the opinion that because the Division had not theretofore taken a definite stand it would not seek to compel the payment of restitution from mine owners who had not been operating on the "portal to portal" basis.—(R. 78).

This release of the Administrator stated that the Alabama mines had always operated on the "face to face" basis.

4. The Attorney General, charged with the enforcement of the Act, has never sought to enforce the "portal to portal" interpretation in reference to iron or coal mines.

5. The coal mining industry continued until recently

to compute and pay wages on the "face to face" basis either under collectively bargained wage agreements or directives of the government.

6. At the time of the announcement of the decision under review the Mine Workers Union and the bituminous coal operators were negotiating for a new agreement to take the place of the agreement expiring on March 31, 1943. During the past nine months the bituminous coal industry has been in complete chaos, three general strikes having occurred closing substantially all the bituminous coal mines in the United States. The Union demanded, on the basis of the decision under review, the insertion in the agreement under negotiations of a provision requiring "portal to portal" compensation. It also demanded reimbursement by way of overtime compensation for all travel time since the enactment of the Act, and suits were brought and are pending seeking to recover this compensation and inflict upon the operators the severe penalties of the Act.

During these nine months the government, under direction of the President, has twice taken possession and management of the bituminous coal mines and at this time has possession and management of the greater portion of the coal mines.

The War Labor Board declined to approve agreements (the first Illinois contract) submitted by the operators and the Mine Workers Union which provided for compensation for travel time on a basis in conflict with its former decision. The Board called attention to the facts and arguments set forth in the Houck letter—(Appendix, Tennessee Company Brief)—and emphasized the difficulties and complexities which would follow the overruling of the traditional "face to face" practice and the institution of the "portal to portal" basis.

Finally the War Labor Board approved the second Illinois contract which provided for a complicated formula of computing and paying the miners wages, and included payment for travel time at a different rate from that paid for the productive work, and on an arbitrarily assumed travel time of forty-five minutes for all inside coal mine workers.

The War Labor Board has also recently approved an agreement between the Coal Producers Association of Illinois and the American Federation of Labor Progressive Mine Workers which carries forward previous provisions of the contract, made provision for settlement of "portal to portal" compensation from April 1 to November 1, 1943, on the basis of $40 per miner, but made no provision for compensation for future travel time other than a clause which provides that if any competitive field makes a labor contract with terms more favorable to the unions or the operators then the agreement will be revised accordingly.

In further recognition of the uncertainty and complexities arising out of the demand of the Mine Workers (stemming from the decision of the Circuit Court of Appeals) for portal to portal compensation the President of the United States appointed a committe to investigate and report to the War Labor Board on the facts relative to travel time in the bituminous coal mines. The questionnaire sent out by this committee gives detailed instructions as to how the questionnaire is to be answered in reference to travel time in slope mines, shaft mines, and drift mines, and indicates the many different methods to be used in locating the portal and in furnishing the required information.

On *December 11, 1943,* upon the insistence of the Secretary of the Interior, additional operators, producing a large tonnage of coal, have agreed with the Mine Workers Union (subject to the approval of the War Labor Board, an increase in the maximum price of coal sufficient to cover the increased cost occasioned by the agreement, and other conditions) upon a proposed agreement which includes substantially the provisions previously included in the Illinois agreement, commonly known as the Lewis-Ickes agreement, and provides for a work day of eight hours and forty-five minutes (including an assumed forty-five minutes for travel time) with fifteen minutes of the former thirty minutes lunch period made a part of productive work making an overall day of nine hours.

The proposed agreement also contains the following clauses:

> "14. There shall be paid to each employee on the pay roll of the employer from April 1, 1943, to June 20, 1943, as his distributive share of and in full of all amounts due for portal to portal since April 1, 1943, the sum of Forty ($40.00) Dollars payable in equal installments during the four months commencing on the first day of the calendar month following the effective date of this Supplemental Agreement. Any employee on the payroll during said period for a time less than the full said period shall be paid a corresponding pro rata share of such Forty ($40.00) Dollars.
>
> "15. The payments herein provided for shall be construed to be in full settlement and discharge of all portal to portal compensation accruing prior to April 1, 1945, and in settlement and discharge of all pending litigation by the mine workers against the operators and by the operators against the mine workers signatory hereto for such portal to portal compensation. In consideration of such acceptance and discharge the operators and mine workers signatory hereto agree that all actions at law and suits in equity heretofore instituted by them involving the question of portal to portal compensation shall be dismissed. This paragraph shall be without prejudice to any right of any party signatory to this Supplemental Agreement arising after April 1, 1945."

The matters set forth above (6) are of such common knowledge that the Court will take judicial notice thereof.

VII

THE CONTEXT OF THE FAIR LABOR STANDARDS ACT OF 1938.

The context of the Fair Labor Standards Act shows that the word "workweek" [Section 7 (a)] was used in accordance with the concept of the industry and in a much more restricted meaning than the words "on duty" as used in the Hours of Service Act relative to railroads (U. S. C. A., Title 45, c. 3, Sec. 62); or the words "arising out of or in the course of employment" [*Bountiful Brick Company v. Giles* (January, 1928), 266 U. S. 154, 72 L. Ed. 507] as generally used in workmen compensation acts; or the words "injury sustained while in the performance of his duty" as used in the compensation law as to public employees (U. S. C., Title 45, Chap. 15, Sec. 75-1); or the words "arising out of or in the course of employment" as used in the Longshoremen and Harbor Workers' Compensation Act (U. S. C., Title 33, Section 802).

We quote from the Fair Labor Standards Act:

> "Section 3 (g): 'Employ' includes to suffer or permit *to work*.
>
> * * * *
>
> "(j): 'Produced' means produced, manufactured, mined, handled, or in any other manner *worked* on in any States; and for the purpose of this chapter an employee shall be deemed to have been engaged in the *production* of goods if such employee was employed in producing, manufacturing, mining, handling, transporting or in any other manner *working* on such goods, or in any process or occupation necessary to the production thereof, in any State."

Section 5 of the Act provides for the appointment by the Administrator of an industry committee for each industry, and Section 8 provides for the issuance of wage orders, and, following hearings and the recommendations of the industry committee, the fixing of the minimum rate for the industry; and requires, in the fixing of such minimum rate, the consideration, among other relevant factors, of the following:

"(1) competitive conditions as affected by transportion, living and production costs;

"(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

"(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry."

Other provisions of Sections 2 and 8 of the Act emphasize the purpose of the Congress to determine these matters on an industry basis, and assure the opportunity for all members of the industry under consideration to have due notice of the hearings and full opportunity to be heard before the decisions of the Administrator, or the recommendations of the industry committee shall become effective.

VIII

THE LEGISLATIVE HISTORY OF THE FAIR LABOR STANDARDS ACT OF 1938.

The Court will take judicial notice of the following:

1. The National Industrial Recovery Act, enacted by the Congress on June 16, 1933, was the progenitor of the

National Labor Relations Act and of the Fair Labor Standards Act.

This Court, on May 27, 1935, declared NIRA unconstitutional.

The Congress subsequently, for the purpose of legislating in reference to the two fundamental objects of NIRA, enacted the National Labor Relations Act and the Fair Labor Standards Act, the former Act covering the protection and maintenance of the rights of collective bargaining, and the latter minimum wages and maximum hours.

The codes of fair competition adopted or promulgated under the provisions of NIRA became complete employer and employee charters covering minimum wages and maximum hours.

The Bituminous Coal Code, stemming from negotiations between the United Mine Workers of America and the various coal associations, was approved by the President of the United States, by the Administrator, and by the industry. The code thus adopted expressly provided for computation and payment of wages on the traditional "face to face" basis.—(R. 4705).

2. Representative Keller, a member of the Conference Committee, in debate preceding the final passage of the Fair Labor Standards Act, June 14, 1938, said:

> "This bill eliminates the defects and preserves the best features of the National Industrial Recovery Act. In doing so a better procedure is provided, so that no right may be affected without an opportunity to be heard. NRA put down a floor for wages and a ceiling to hours of work."—(Vol. 83, Congressional Record, Part 8, p. 9264, 75th Congress, Third Session, June, 1938).

3. The Senate Committee, in paragraph II of Report of July 6, 1937, said:

"The right of individual or collective employees to bargain with their employers concerning wages and hours is recognized and encouraged by this bill. It is not intended that this law shall invade the right of employer and employee to fix their own contracts of employment, wherever there can be any real, genuine bargaining between them. It is only those low-wage and long-work-hour industrial workers who are the helpless victims of their own bargaining weakness that this bill seeks to assist to obtain a minimum wage."—(Senate Report No. 884).

4. On June 2-22, 1937, joint hearings on the Fair Labor Standards Act were held before the Committee on Education and Labor, United States Senate, and the Committee on Labor, House of Representatives. The following excerpts from the Joint Hearings are quoted:

"MR. LEWIS: * * * My recommendation as to rate of pay is a minimum of 40 cents per hour. As to hours of work, the standard in my opinion should be 5 days of 7 hours each or 35 hours per week, with authority granted to the Board to expand to a 40-hour maximum or to reduce to a 30-hour minimum * * *.—(p. 272).

"SENATOR LaFOLLETTE: * * * As I understand it the objective of this bill as outlined in Section 23, one of them is to prevent the Board from going in and upsetting collective bargaining agreements or entering the field where collective bargaining is actually functioning in a bona fide manner, and thereby producing the result of the action of the employer and employee represented by genuine and effective labor organization."—(p. 280).

"MR. LEWIS: * * * For instance, frankly I would not want this bill to convey power to a board to order an investigation into all of the wage agreements in the mining industry right now, or to give the Board power to decide that the collective bargaining agreements in the mining industry were not sound, not proper, were confiscatory, or not in harmony with the facts of the industry, and order a modification thereof. I think the power of the Board should be limited to cases which run below the level of the standards fixed by Congress. I see endless confusion in the adoption of Section 5 now. I see a drift towards the complete fixation of wages in all industry by governmental action."—(p. 281-2).

"THE CHAIRMAN: As I understand your position, boiled down, with reference to the minimum wage—I want to be sure—it is that you favor a minimum wage law written in such a way that it will preserve to the utmost the right of bargaining between employers and employees, but which will at the same time raise the low, substandard conditions of millions of people, those who have been living in that sphere and have not as yet been able to elevate themselves either by their own bargaining or by collectively bargaining?

"MR. LEWIS: That is correct, Senator."—(p. 307).

5. During the Senate debate on the bill on July 29, 1937, the following statements were made:

"MR. WALSH: Next does the bill affect collective bargaining agreements already made or hereafter to be made between employers and employees?

"MR. BLACK: It does not.

"MR. WALSH: There is one exception to that, is there not? The bill does affect collective bargaining agreements where the hours are less than 40 per week, or where the wages are more than 40 cents per hour?

"MR. BLACK: That is correct.

"MR. WALSH: But if a collective bargaining agreement had been entered into at 36 cents per hour wages, the Board would have jurisdiction to set that agreement aside and to fix, if the facts warranted, a minimum wage of 40 cents?

"MR. BLACK: The Board would have jurisdiction to do it, but under the provisions of the law it would be my judgment that the board would be very reluctant, indeed, to attempt to interfere with a bona fide agreement made between employers and employees."—(Congressional Record, Vol. 81, p. 7650).

IX

THE CONGRESS, IN RECENT YEARS, HAS BEEN ZEALOUS IN DEFINING THE RIGHT AND MAINTAINING THE RESULTS OF COLLECTIVE BARGAINING.

National Labor Relations Act, July 5, 1935, c. 372, 49 Stat. 449;

Railway Labor Act, May 20, 1926, c. 347, 44 Stat. 577; 48 Stat. 1186, June 21, 1934;

Norris-LaGuardia Act of March 23, 1932, c. 90, 49 Stat. 70;

War Labor Disputes Act, June, 1943, 78th Congress.

X

ERRORS OF THE CIRCUIT COURT OF APPEALS

1. The Circuit Court of Appeals erred in affirming the decision of the District Court that travel time was to be computed in determining work time.

2. The Circuit Court of Appeals erred in holding it was the intention of the Congress in the enactment of Section 7 (a) of the Fair Labor Standards Act of 1938 to constitute all the time spent underground by the employee a part of the work week.

3. The Circuit Court of Appeals erred in holding that the question whether travel time should be included in the computation of work time was a question of fact to be determined by the trial tribunal.

4. The Circuit Court of Appeals erred in sustaining the findings of the District Court on the ground that they were not clearly erroneous.

5. The Circuit Court of Appeals erred in sustaining the finding of the District Court that there was no custom not to include travel time in the computation of work time though conceding, arguendo, "that for twenty-five years prior to 1938 iron ore miners had not been compensated for travel time, and that even after 1938 the parties to this suit had entered into contracts whereby it was agreed that no wages should be paid for travel time."

6. The Circuit Court of Appeals erred in holding that it was the intention of the Congress in enacting the Fair Labor Standards Act to regulate the environment and physical conditions of work and that travel time was a part of work time because of its discomforts and hazards.

7. The Circuit Court of Appeals erred in disregarding the exclusion by the District Court of relevant evidence.

8. The Circuit Court of Appeals erred in including the employees of petitioner at its Spaulding mines within the ambit of its judgment and opinion.

9. The Circuit Court of Appeals erred in affirming the decision of the District Court that there did not exist a justiciable controversy between petitioners and respondents in reference to the construction of Section 7 of the Act for the time subsequent to May 1, 1941.

XI

ARGUMENT

IT WAS NOT THE INTENT OF THE CONGRESS TO OVERTURN TRADITIONAL CUSTOMS AND TO INVALIDATE AGREEMENTS BASED THEREON

Petitioner asserts that when the Fair Labor Standards Act was enacted traditional customs and all wage agreements had established the "face to face" method as the standard and measure for computing work time in the iron ore mining industry.

The District Court held that there was no such custom. It assigned as a reason for this holding that the men were employed on a tonnage or task basis and that the employees were actually paid for eight hours work though in fact they may have actually worked less than eight hours.

Not only are these reasons in absolute conflict with the evidence relating to service employees, but they are untenable in reference to the productive employees. There is no evidence in this record to support this finding and the undisputed evidence is to the contrary both in respect to the traditional practice and contractual relationships. The fact that this petitioner had not executed written wage agreements with the Union does not in anyway militate against this conclusion. A verbal or implied agreement to pay wages is as effective as a written agreement.

In the case of *Williams v. Jacksonville Terminal Company,* 315 U. S. 398 (6-8), this Court gave validity to an implied agreement in reference to the application to the Company's credit of tips of the red caps notwithstanding continuous protestations against such application by the employees, and held that because the employees remained at work subject to the requirements of the employer a new contract was created.

The Circuit Court of Appeals, while admitting the right of parties to bargain in full exercise of freedom of contract, erroneously affirmed the judgment of the District Court by holding that the agreements were invalid because in conflict with Section 7 of the Act. It based this conclusion on two clearly untenable grounds: (1) That the agreements were contrary to the purpose of the Act which was to eliminate "labor conditions detrimental to the general welfare of the employees," and because the "industrial custom" (admitted *arguendo*) did not "warrant the continuation of abuses that the Act was created to rectify"; and (2) a suggested lack of bargaining equality between the parties.

The first reason is disproven by the history of the Act, including statements made in committee reports, the joint conference report of the Senate and House Committees, and the debates when the Act was under consideration.—(Tennessee Company Brief, pp. 25-28). It is crystal clear that it was not the intention of the Congress in the enactment of the Act to police the many industries for perils or discomforts or to litigate as to any conditions of employment other than those relating to minimum wages or maximum hours.

The lack of logic in this reasoning by the Circuit Court of Appeals is demonstrated by its holding in the decision that lunch time spent among the alleged perils near the working places is not work, but the time spent in transportation or in waiting for transportation, where the dangers and discomforts are much less, is work.

This lack of logic becomes even more glaring when judicial notice is taken of the fact that in the recent government approved coal agreements as negotiated first by Secretary Ickes and the Mine Workers Union and subsequently in the Illinois contract and as now proposed in other contracts it is provided that the miners must spend fifteen minutes of their lunch period in productive work, and is further provided that the miners must spend underground a total of nine hours a day for six days in the week. Surely an official recognition that miners shall be required by contract to spend a minimum of nine hours underground is out of harmony with the construction of the Act that it was the intention of the Congress to ameliorate or eliminate underground perils.

In the second place no support can be found for the suggestion of the Circuit Court of Appeals that these wage agreements are void because the parties, directly making them or impliedly agreeing to them, lacked bargaining equality. The record in this case so convincingly answers such a suggestion that no further comment is necessary.

E. I. duPont de Nemours and Co. v. NLRB, 116 F. (2d) at Page 398.

THE QUESTION AS TO WHAT CONSTITUTED WORK WAS ONE OF LAW AND NOT OF FACT AND IT WAS THE INTENTION OF THE CONGRESS FOR THE ESTABLISHED PRACTICES AND EXISTING CONTRACTS OF THE PARTIES AND OF THE INDUSTRY TO BE TAKEN INTO CONSIDERATION IN DETERMINING THIS QUESTION.

The majority of the Circuit Court of Appeals did not finally hold as a matter of law that it was the intention of the Congress to set aside the traditional custom and to void the agreement, but admitting arguendo, the existence of the custom, and emphasizing the right of contract, held that the cases of petitioners were, on the facts, border line cases and affirmed the judgment of the District Court by invoking the rule that findings not clearly erroneous should be sustained, that the effect of the custom and of the agreements was purely evidentiary—not matters of law — and, therefore, the findings of the District Court could not be disturbed because the fact finding tribunal had concluded, after hearing the evidence, that no weight should be given to the custom or the contractual agreements.

The District Judge in his opinion stated:

> "In the last analysis, therefore, plaintiffs must stand or fall on the question whether the time in issue was employment and work, as a matter of simple fact."—(R. 500).

In its opinion on original hearing the Court of Appeals stated:

> "What constitutes working time is a question of fact depending upon the particular circumstances, and is a matter for the determination of the courts in controverted cases. In the great majority of instances no questions of this nature will arise, but in doubtful cases such as this the issue must be determined in accordance with common sense, and the general concept of work or employment;"—(The Court ignores the fact that the "general concept" of the industry, of the unions, of the employees, and of all who had been charged with administration and interpretation—save only the belated opinion of the Administrator—had been at all times on the "face to face" basis)—"and, as in other cases, the appellate court is controlled by the rule that the finding of the trial court upon decisive questions of fact must be upheld unless it is clearly erroneous."—(R. 4939-4940).

Upon rehearing the Court of Appeals amplified its view that this question was one of fact:

> "Was the finding of fact of the court below as to work-

ing time clearly erroneous? In reviewing the decision of the trial court we are bound by Rule 52 of the federal rules of civil procedure, which provides that: 'Finding of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witness.'

"Even where there is no dispute about the facts, if different reasonable inferences may fairly be drawn from the evidence, an appellate court is forbidden to disturb the findings based on such inferences unless they are clearly erroneous. That this dispute turns upon questions of fact does not withdraw it from a judicial cognizance in an action for a declaratory judgment. 'The legal consequences flow from the facts and it is the province of the courts to ascertain and find the facts in order to determine the legal consequences. That is every day practice.' (Citing Aetna Life Ins. Co. v. Haworth, 300 U. S. 242). The parties saw fit to submit the issues of fact to the court, without a jury, but this does not render indistinguishable the issues of law and fact. What constituted the workweek of these employees and how many hours they were suffered or permitted to work are questions of fact."—(R. 5001).

Further on rehearing the Circuit Court of Appeals said:

"Whether one is working, resting, idling, playing or preparing to work is as much a matter of fact as whether one is asleep or awake, or is laughing or crying. In Skidmore v. Swift & Co., ——— F. (2d) ——, this court recently held in an action for overtime compensation under 29 U. S. C. A. 207, that the burden was on the employees to segregate the actual hours of their employment from the time spent by them in playing, sleeping, bathing, shaving and dressing. So we say the Act does not define these instances; their peculiar character must be determined by evidence. Two people may be in swimming, an instructor and his pupil; one will be working and the other playing. The working time of *every miner** is a

---

*Notwithstanding this conclusion, the Court rendered a judgment that *all time per se* spent underground must be treated as a part of the work week although the individual miner or employees in a particular mine, i.e., the Spaulding mine of petitioner, may have never been submitted to perils and discomforts and may have never committed any of the acts the commission of which the Court held caused all time underground to be a part of the work week.

> definite controlling fact that can and must be finally determined in order to fix the amount of wages due him under the federal statute. It is a fact that cannot be found in any statute or decision or law book (except statute not applicable to this case), but must be determined by the court or jury in any justiciable controversy wherein a real issue arises with respect thereto."—(R. 5005).

It is, we submit, a matter of law as to what constitutes work, though whether an employee actually is engaged in work is a matter of fact. No one could deny that the mining and handling of the iron ore which the employees are hired to produce are activities constituting *work*. Of course, it is true that whether an individual employee is engaged in working, resting, idling, playing, or eating, is a question of fact. It is respectfully submitted that the Courts below became confused from their failure to separate the two concepts. They are as distinct as are the legal definitions and constituents of murder and the question of whether a defendant has committed murder.

Circuit Judge Sibley, in his dissenting opinion, we submit, correctly and tersely defined work:

> "It seems to me that a man is at work, for the purpose of the Act, when he is doing what he is hired to do. It may involve mental or physical efforts, or it may consist in simple presence. It all depends on the contract of hiring."—(R. 4942-3).

"What he is hired to do" is a matter of construction of the contract of employment, and hence for the Court to decide. Whether the employee is actually doing or performing "what he is hired to do" is, of course, a question of fact.

The constitutional base of the Act was the prevention on unfair competition in commerce.

United States v. F. W. Darby Lumber Co., 312 U. S. 100; 61 Sup. Ct. Rep. 451-63.

If the Act should be construed to restrict the rights of the parties to enter into and carry out contracts further than necessary to assure fair competition in commerce, then it might deprive them of their liberty of contract in violation of the Fifth Amendment.

West Coast Hotel Co. v. Parrish, 300 U. S. 379, overruling *Adkins v. Children's Hospital,* 261 U. S. 525.

THE DECISION OF THE CIRCUIT COURT OF APPEALS NECESSARILY BRINGS ABOUT "UNFAIR COMPETITION IN COMMERCE."

It cannot be contended that the traditional custom and the contractual agreements to compute and pay wages on the "face to face" basis in any way restrict or interfere with fair competition in commerce. On the contrary, due to the inequalities, complexities and discriminations which it is admitted by all will result (and are now resulting, p.2024, supra) from the forced imposition of the "portal to portal" basis, unfair competition in commerce will necessarily result. This is made clear not only by the statements in the Houck letter, the decisions of the War Labor Board, the provisions of the recent Ickes-Lewis agreements, but by the undeniable fact that the mine which is compelled to pay, contrary to traditional custom, contracts and physical conditions greater compensation for longer travel time is placed at a competitive disadvantage with the mine which will pay for shorter travel time. It can be definitely stated that the travel distances in every instance vary as between different mines and as between different working places in the same mine. There is probably no single miner, and certainly no group of miners, whose travel time does not vary with almost every day's work.

The judgment of the Circuit Court of Appeals is, therefore, in direct conflict with the main purpose of the Act and its constitutional base.

EMPLOYEES OF SPAULDING MINE OF PETITIONER IMPROPERLY INCLUDED WITHIN THE JUDGMENT

There is not a scintilla of evidence in this case to justify the judgment of the Circuit Court of Appeals in including within the coverage of the judgment the employees of petitioner's Spaulding Mine. There was no evidence to show mine perils or discomforts in this mine. On the contrary, the men went to and returned from their places of work by walking a comparatively short distance on "a very good way to travel."—(R. 1911). The inclusion in the judgment of the Spaulding employees is an illustration of how far the question of payment for travel time may be extended if the Circuit Court of Appeals is correct in its holding that what constitutes work becomes in all cases a matter for the determination of the trial tribunal. If the travel time of the Spaulding mine employees of petition is work, then, by the same token, all time spent by employees upon the premises of their employer or in traveling to and from work may likewise become work time. The implications and reverberations of such a holding are almost beyond the imagination.

Employees of sawmills, of pulpwood producers, and of many other industries ride to and from their places of work in conveyances of their employers; employees of operators of open pit mines are transported and walk long distances to their machine shovels; manufacturing plants are within enclosures and their employees check in at the gates and then walk long distances to report for work to their foreman at their places of work; home workers with the furnished material and their finished product ride through crowded subways to and from the business lofts of their employers, and in these instances (and myriad of like instances) the concept of work prior to enactment of the Act had been established by custom and embodied in agreements. Did the Congress intend to overrule the custom, to invalidate the agreements and to leave to various "trial tribunals" (with no consideration given to the traditional custom and established agreements) the determination of the question as to whether or not the work done by the individual employee or the employees of an individual plant did or did not constitute a part of the work week? That such was not the intention of the Congress is negatived by the fact that at the time of the enactment of the Act Congress is presumed to have had knowledge, and to have acted in conformity therewith, that all previous laws of similar purpose and import, all administrative rulings, and all judicial constructions had recognized and established the "face to face" basis of computing and paying wages in the underground iron ore mines and coal mines throughout the United States. The application of this past history and past administrative experience in the aid of the construction of the Act is and has always been recognized as the best aid for the construction of subsequent statutes of similar import or purpose.

Interstate Commerce Commission v. Baltimore and Ohio Railroad Company, 145 U. S. 263;

Reiche v. Smythe (1872), 13 Wallace, 162; 20 L. Ed. 566;

Mark v. United States, (1896), 161 U. S. 297; 17 S. Ct. 476; 40 L. Ed. 706;

U. S. v. Farrar, 281 U. S. 624;

Stairs v. Peaslee, (1855), 18 Howard (U. S.) 521; 15 L. Ed. 474;

National Lead Company v. United States, 252 U. S. 140;

United States v. Turner Turpentine Company, (C. C. A., 5th, 1940), 111 F. (2d) 400.

It is well settled that the practical construction of the parties and of those charged with the administration of the Act subsequent to its enactment should be considered in the construction of the Act. In the case of *Williams v. Jacksonville Terminal Company*, supra, the Court says:

> "While no findings as to its coverage appears in the records we are clear from the 1937 contract, *its practical application by the parties* and the new arrangements ultimately concluded, that the red caps were not within its terms."

See also *Chicago v. Shelton*, 9 Wallace 54.

This Court has recognized that the language used in the National Industrial Recovery Act and its construction in the administration of that Act should be accorded great weight in construing subsequent statutes.

In the case of United States v. Irwin (April 6, 1942), 62 Sup. Ct. 899, the Court had under consideration the question as to whether the construction of a library at Howard University, authorized by Congress in 1931, was a "public work" as that term was used in the Miller Act (enacted August 24, 1935), and which required the giving of prescribed bonds before a contract exceeding $2,000 in amount for the construction of any public work of the United States was awarded. The Supreme Court stated:

> "The question before us therefore is whether the construction of the library was a 'public work' as that term is used in the Miller Act. We think that it is, that the Assistant Secretary of the Interior was consequently authorized to require respondents to post a bond. * * *
>
> "No aid in ascertaining the meaning of 'public works'

is to be found in the Miller Act itself. But in the National Industrial Recovery Act, passed two years before the Miller Act Congress defined it as including 'any projects of the character heretofore constructed or carried on either directly by public authority or with public aid to serve the interests of the general public."

The Court, using the definition contained in an act relating to a similar subject matter, concluded that the library at Howard University fell within the terms of this definition and was, therefore, a "public work."

In the case of *Williams v. Jacksonville Terminal Company*, supra, the Court using it as an index to the intent of the Congress referred to the National Industrial Recovery Act and administrative practice thereunder and under other prior acts, using the following words:

> ". . . Under the NRA the inclusion of tips in wages on a plan similar to the accounting and guarantee plan, here involved, was proposed. In the approved codes tips were not expressly credited towards wages, but the relatively lower minimums for those customarily receiving tips may indicate that tips were given weight although not expressly mentioned. The federal social security laws define wages for old age benefits and social security taxes as 'all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.' The regulations of the Social Security Board state, 'The following are excluded from the computation of "wages:" * * * Tips or gratuities paid directly to an employee by a customer of an employer, and not in any way accounted for by the employee to employer.' The Railroad Retirement Act § 1 (h), and the Railroad Unemployment Insurance Act § 1 (i), exclude tips from 'compensation' within the meaning of their provisions. The Railroad Retirement Board has determined that all earnings of the red caps, accounted for to the carriers under the plan here in question, are 'money remuneration' and therefore 'compensation' under the acts and not forbidden 'tips.' We can therefore examine the

Fair Labor Standards Act with the safe assumption that th word 'wages' has no fixed meaning either including or excluding gratuities." (In footnote 21 the Court cites various codes in support of the text).

In the case under consideration the NRA Code expressly provided for computation and payment of wages on the "face to face" basis with the approval of the President. (Page 18, ante).

THERE EXISTS A JUSTICIABLE CONTROVERSY BETWEEN PETITIONERS AND RESPONDENTS IN REFERENCE TO THE CONSTRUCTION OF SECTION 7 OF THE ACT FOR THE TIME SUBSEQUENT TO MAY 1, 1941

Petitioners were as much concerned with the conctructions of the law for the time after May 1, 1941, as for the time before.

The facts with reference to this are undisputed. They are not denied or even referred to in either the judgment of the District Court, or of the Circuit Court of Appeals.

While the claims for reimbursement, some three-fold more than the miners expected or contracted to receive, were and are important to petitioners, the declaration of the law as to the future is of at least equal importance.

The undisputed evidence shows that there existed an actual justiciable controversy between the petitioners and the underground employees, and between petitioners and the Administrator, not only as to prior, but more substantially as to future time—[This was the sole controversy with the Administrator, as set up in his answer.—(R. 301). As stated by him in evidence: "I intend to follow the interpretation in question, unless otherwise directed by the authoritative rulings of the courts or unless I shall subequently decide that my prior interpretation is incorrect."—(R. 384)]—that, under the compulsion of the Administrator's opinion and employees' announced (and plead) intentions, petitioners changed to the "portal to portal" basis at great expense, cost, and loss of production. A judicial declaration was required and requested as to whether or not travel time was in and of itself a part of the "workweek."

This judicial inquiry the decision failed to answer, and confined its answer to the time prior to May 1, 1941. It predicated this answer on the employees' "reporting to the portal," there depositing "their identification check;" there "boarding the conveyance (provided by the company for transportation) coated with the grime of the mine" and riding in a "crouched position;" on the danger of "uninsulated wires," and because of instruction and supervision at the portal, etc.

Every one of these basic conditions can be eliminated at much less cost than compliance for all time with the judgment.

Declaratory judgment proceedings are most helpful in permitting parties to conduct themselves in the future with a minimum of damage on account of uncertainties as to their rights under statutes of uncertain meaning. The three recent nationwide coal strikes have failed of settlement largely because of the uncertainty as to whether or not the United Mine Workers of America and the coal operators, under the provisions of the Act, had the right to bargain collectively with respect to travel time.

CONCLUSION

It is respectfully submitted that the judgment of the Circuit Court of Appeals for the Fifth Circuit should be reversed and a judgment rendered herein declaring that it was not the intention of the Congress in the use of the word "workweek" as it appears in Section 7 of the Act in its application to petitioner's employees, to require "portal to portal" travel time to be included in the computation of the "workweek" prescribed by Section 7 of the Act.

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The undersigned, of counsel for Republic Steel Corporation, petitioner, hereby certifies that a printed copy of this brief has this day been served upon Crampton Harris and J. Q. Smith, Birmingham, Alabama, of counsel for respondents, and upon Bessie Margolin, Assistant Solicitor, United States Department of Labor, and the Solicitor General of the United States, Washington, D. C., this the ______ day of December, 1943.

Borden Burr.

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IN THE

Supreme Court of the United States

October Term, 1943

—o—

NO. 409

—o—

TENNESSEE COAL, IRON & RAILROAD
COMPANY, Et al

Petitioners,

vs.

MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, Et al,

Respondents.

—o—

REPLY BRIEF FOR THE PETITIONER TENNESSEE COAL, IRON & RAILROAD COMPANY.

—o—

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—o—

REPLY BRIEF FOR THE PETITIONER TENNESSEE COAL, IRON & RAILROAD COMPANY.

—o—

In replying to the respondents' and intervenor's briefs Petitioner follows the order and designation of subjects by each.

—o—

REPLY TO RESPONDENTS' BRIEF

I

"STATEMENT OF THE CASE"

Respondents state:

"The petitioners have not given a full, and complete portrayal of the facts in their statement of the case. And while the respondents are not required by the rules of this Court to give a statement of facts, we believe that a more accurate statement will save this Court time and labor, give a clearer understanding of the case and demonstrate the correctness of the findings and opinion of the courts below."

Respondents' "STATEMENT OF FACTS AS TO TENNESSEE COMPANY" makes no reference to the following facts which are of the utmost importance and relevancy:

(a) That as long as any one can remember "portal to portal" travel times had not been included in the computation and payment of working time either in the iron ore or bituminous coal mines.—(Petitioner's Brief, pp. 10-13);

(b) That the traditional "face to face" method, both prior and subsequent to the enactment of the Act, had been universally recognized by public and quasi public authorities, relevant statutory enactments and administrative interpretations of like laws.—(Petitioner's Brief, pp. 13-25);

(c) That the interested parties, both prior and subsequent to the enactment of the Act, construed it in accordance with the traditional custom, and carried forward this construction into collectively bargained wage agreements.—(Petitioner's Brief, pp. 4-49);

(d) That the legislative history of the Act and its context clearly indicated that the intention of the Congress was not to overturn the traditional custom, render invalid contracts and wage agreements reached through the process of collective bargaining, or to substitute for the customs, traditions and concept of the industry and the parties concerned the variant judgments of juries or trial tribunals.—(Petitioner's Brief, pp. 25-31);

(e) That the inevitable result of compelling as a matter of law the "portal to portal" basis is to cause, instead of to prevent, "unfair competition in commerce" and to bring about a result wholly contrary to the purposes of the Act.—(Respondent's Brief, pp. 60-62).

None of the undisputed facts summarized above have been or can be denied. Respondents seek to avoid these indices to Legislative intent by resting their case on the discomforts and hazards of underground travel, the alleged carrying of tools to and from the portal and the alleged control exercised by the petitioners over the miners.

Petitioner anticipated this position and summarized the evidence in its principal brief.—(Petitioner's Brief, pp. 34 to 42).

The statements there made apply with equal if not greater force to respondents' and intervener's brief.

"THE ASSEMBLY"

Although it was found below that the men were required to be at the portal at a set time, the respondents' own statement on page 4 shows that is not the case. It is said that

"they must be ready to ride the mantrips when they start running." What is obviously meant is that they are expected to catch a trip in time to report for work to their respective foremen or head miners at the working places at the beginning of the work day.

It is undisputed that they board whatever skip they please, the Company supervisor merely counting them in properly to fill the skips and to prevent overcrowding, and that if a man does not arrive at the portal until the regular trips are over, a special trip is made for him.—(R. 975).

It is stated in respondents' brief, "All head miners that was chose as head miners was required to be at the tally house at 6 o'clock to check the men.—(R. 2428)."

Nine head miners of the Tennessee Company testified as witnesses for respondents. Only one of these (Patterson) gave evidence of this kind, and Patterson admitted that this related only to the men who were chosen as head miners when the incentive plan was first placed in operation in 1936 and only for the period of the installation of the plan.—(Patterson, R. 2428-32).

It is stated that the checks are turned in to the timekeeper, possibly to infer that he records the time, but the undisputed evidence shows that the checks were turned in to the tally house men, mine foremen and assistant mine foremen, and the only time records the timekeeper has are the ones turned in by the foremen and head miners.—(R. 791).

"RECEIVING ORDERS"

The references on page 5 of respondents' brief disprove the statement they are intended to support.

They show that a mine foreman may occasionally inform a service foreman or a head miner of some roof or other condition or of a change from one heading to another or the like. It would be strange indeed if men working together daily did not talk about their work when they happen to meet.

The record shows that the respondents examined as witnesses in their behalf only nineteen employees of the Tennessee Company. Of these twelve were productive employees—nine head miners (or crew foremen), two drag operators and one section helper; seven were service employees—three service crew foremen, two skip tenders, one combination trip rider and timber crew man, and one outside hoist;

ing engineer. Out of the nineteen examined twelve were crew foremen.

Many of these did not testify concerning giving or receiving orders:—(R. 2639, 2651, 2757, 2500, 3126).

Those who did testify to receiving orders or instructions stated that these orders were in reference to supplying vacancies in crews, were casual and occasional, related to information as to condition of the top as ascertained by the previous shift and information as to the receipt of equipment which had been previously ordered.—(R. 3194, 3141, 3114, 3102, 2728-29-30, 2739-41, 2627, 2745-6, 2435-6).

Others testified positively that no orders were given or received.—(R. 3154, 3180, 2543, 2593).

"CARRYING TOOLS"

The respondents say this was frequent. The District Court found it was occasional (R. 500), and the Circuit Court of Appeals held that these activities, together with obtaining carbide for the lamps, did not constitute the time spent on the petitioner's premises on the surface work time.—(R. 4947, 4841-2).

The respondents do not deny that the Company provides

for the regular transport during working hours of tools to the working places.—(R. 2519-20-21, 2730-31, 3121, 3151).

As illustrative of this testimony we quote:

"Q When you got to your working place you were the boss up there except as the mine foreman or assistant mine foreman came around?

"A As far as the heading crew, yes, sir.

"Q If you ran out of anything up there you sent some of your crew back to get it?

"A I could.

"Q You did, didn't you?

"A Very seldom.

"Q The reason you didn't do it, you had your men to pick it up on the way in?

"A Yes, sir.

"Q And kept you from running out?

"A Yes, sir.

"Q You had the right to send them back?

"A Yes, sir.

"Q But picking up this light stuff on the way up, it saved time walking back and going back and saved the time of doing that for producing ore?

"A Yes, sir."—(Kirby, Head Miner, R. 2730-31).

Trammell, an underground dispatcher, after testifying that it was his duty to send the tools and material to the men as needed, stated:

"Q When they got to the bottom with the hangers and wedges and stuff of that kind, I believe you say sometimes in preference to having your crew bring them up they would take them up themselves?

"A Yes, sir. They might have six hangers and fifty wedges and they would take one hanger and two or three wedges and leave the rest of them for me to send in."—(R. 3121).

White, a head miner, testified:

"Q And they (motor crew) will bring it (materials and tools) any time you want them to bring it, won't they, Mr. White?

"A Yes, sir.

"Q That is their duty, and whenever you want them to bring it?

"A Yes, sir."—(R. 3151).

See also to the same effect R. 2608-9, 2655-57, 2742-3, 2752, 3142.

Respondents cite R. 3117, which is the testimony of Trammel, in support of their assertion that the carrying of tools, etc., "was a frequent occurrence," nothwithstanding that his statement it was a "frequent occurrence" is immediately qualified by his statement that the Company had an underground supply house, and by his statements on cross-examination quoted above.

Respondents, in the foot-note to their brief (p. 6) include as the supplies claimed to have been frequently carried "fifty pound boxes of powder, dynamite," and other material which the undisputed evidence shows was kept in the powder magazine, could not be obtained except on requisition, and could never be carried to the working places except during the eight-hour work period, one or two members of each productive crew being sent from their places of work on Company time to obtain the powder, dynamite, etc., when needed.—(R. 1090).

Respondents emphasize the necessity of the miners carrying lights (Respondents' Brief, 5-32). Common knowledge and sense inform us that this necessity has and always will exist in underground mines and other places where darkness or semi-darkness exists; so also are work clothes, heavy spiked safety shoes, etc., necessary equipment, likewise the carpenter's tools, the painter's ladders, and in the case of many miners (i.e., Sloss and Republic) the pick and shovel which by agreement the miner furnishes and carries. Prior to the direction of the War Labor Board in its order directing the Mine Workers Union and the Bituminous Coal Operators to execute a contract on the face-to-face basis, electric cap lamps, etc., were universally furnished by the miners. The Ickes-Lewis agreement of November 3, 1943, and the other contracts recently executed (Respondents' brief, Page 47), for the first time in the history of the industry, carry a provision requiring electric cap lamps and carbide lamps to be furnished by the management without charge; the provision reading as follows:

> "Safety equipment and devices including electric cap lamps, and also carbide lamps shall be furnished by the management without charge. This shall not include, however, personal wearing apparel such as hats, clothing, shoes and goggles. In lieu of furnishing carbide lamps and carbide, the operator may, at his option, pay to the mine workers who use carbide lamps at their work six cents per day, and the mine workers shall continue to furnish their own carbide lamps and carbide."

"UNDERGROUND CONVEYANCE"

Under this heading respondents paint a lurid and exaggerated picture of dangers and difficulties in transportation, difficulties and dangers in walking, and lack of toilet facilities underground.

The undisputed evidence shows that these general conditions incidental to underground mining have not been lessened or ameliorated by the institution of "portal to portal" and that the conditions existed substantially the same after May 1, 1941, (the effective date of the Administrator's ruling) as they did before, and that they were fully recognized by the miners as being incidental to, and a part of, underground mining.—(R. 2469).

In addition to this, the respondents have grossly exaggerated the perils and discomforts. They state that men have been injured getting into these skips and while riding in them.

The only specific evidence that respondents were able to produce of skip injuries were instances occurring after the institution of "portal to portal," and the undisputed evidence, when the testimony on cross-examination is taken into consideration, shows a *de minimis* of injuries on skips (R. 2645-6, 2788-92), and no injuries from electric wires or otherwise while walking to and from the places of work. The record also shows that there was only one temporary lost time accident charged to "skip, cage or bucket" in the entire iron ore mining industry in a year's time.—(R. 4875).

The instances cited by respondents will be found to have been exceptional occurrences, and petitioner states emphatically that the record shows that conditions in its mines as to safety and comfort are equal to if not better than those which have always been recognized as a matter of common knowledge to have existed incidentally and necessarily in all underground ore mines.—(T. C. I. Exhibit No. 22, R. 3750-a, etc.). The District Judge so stated in his opinion.—(R. 502).

Respondents' brief states, "While riding on the skips the men are subject to the rules and discipline of the Company."

The evidence is undisputed that this is true only to the extent of providing for the safety of the miners. The rules and regulations of the Company complained of (Defendants' Exhibit No. 1, R. 4453) make this clear, and are, in substance, the same as Rules 55, 58, 63 and 64 as provided by U. S. Department of the Interior, Bureau of Mines, in its Tentative Standards of Safety for Coal Mines.—(Information Circular No. 7204, Sec. 17).

It should be noted also in reference to the matters discussed above, that these or worse condition are and always have been common to all underground iron ore mines and coal mines to such an extent that it is a matter of common knowledge; that these conditions have not been lessened or improved by the institution of "portal to portal." On the other hand, miners, by the recent government-approved bituminous coal contracts, are required to stay underground a total of nine hours with only fifteen minutes for a lunch period; that it was not the purpose of the Congress to legislate in reference to perils and discomforts of work.

"NO FACE TO FACE BASIS OF PAYMENT"

"Face to face" is merely a term. It includes the "working place" of the service employees although it may not be at the "face." The real question is whether the employees were ever paid travel time. Every one of the respondents witnesses questioned on the subject said, "No!"—(R. 2458, 2514, 2671, 2849, 2898-9, 2964, 3058-60, 3122-3, 3145, 3162). The Circuit Court of Appeals said that for twenty-five years before the passage of the Act they had not been compensated for travel time.—(R. 4940). The report to the Administrator upon which his opinion was grounded so stated.—(R. 86).

The definition in the contract tendered by the Union after the incentive plan went into operation included the phrase "whether they be paid by tonnage" (R. 4715), and the written agreement under negotiation for several months prior and executed on October 6, 1938, contained the phrase "whether they be paid by the day or paid on the tonnage basis."—(R. 107).

The fact that the Company did not require the exact time that each man actually worked at the face to be kept and that it did not make deductions for lost time for which the men were not responsible merely shows that it was liberal and prudent, not that it paid for travel time.

The method of keeping accounts or whether the wages were calculated or paid on an hourly or tonnage basis is beside the mark and does not constitute the real question involved in this litigation. The real question is whether travel time was a part of working time. Under the "portal to portal" method it is. Under the "face to face" method it is not. However liberal the Company may have been in giving a full day's pay estimated on eight hours spent at the working place, although the men in instances (the members of the productive crews who necessarily left the face before shots were made) did not actually work a full day, it is undisputed that they received no pay for travel time. It is likewise undisputed that whenever an employee was required to work over time and beyond the eight hours he received overtime compensation.—(R. 795, 3554-6).

All references and citations in respondents' brief relate to working less than the eight hours.

"TONNAGE OR CONTRACT OR TASK BASIS"

This is an effort to support one of the untenable reasons assigned by the District Court for finding that there was no such custom as asserted by the petitioners.—(Petitioners' Brief, p. 61).

It is wholly irrelevant to that question whether the men are paid on a tonnage, contract, task or time basis. In either case their time and a half compensation must be computed and paid both under the statute and the contracts.

The standard provision for the computation of working time in all the contracts is expressly made applicable to "all classes of labor * * * whether they be paid by the day or be paid on the tonnage basis."—(R. 107).

The statements of respondents in reference to the incentive plan which was put into operation in 1936 are misleading and inaccurate.

It is true that in 1936 the miners struck against the incentive plan. The men did not lose the strike. The Union contracted with Governor Graves and the Company to give the incentive plan a four months trial, returned to work under the plan (which was based in every aspect—job evaluation, fixing of standards of production, wage scales, cycle of operations, etc.,—on eight hours at the usual working place) and have continued to work under the plan until the present time.

That the plan is good can be determined, if the Court is interested, by reading it (R. 3957), and the explanation given of it to the Unions (R. 3638, 3648), and by the testimony of Mr. Halfpenny (R. 1787-1824). That the Union was itself convinced of its good is demonstrated by the result of the four-months trial and by the fact that every written contract made with the Unions since 1936 (including the contract of May 5, 1941, R. 4625) provides for working under it and thereby gives full approval to it.

If the Court can take judicial knowledge of the fact, it is a fact that the CIO Union thinks so well of the incentive plan that it now has pending before the War Labor Board a demand that it be extended to the manufacturing plants and other operations of the Company.

The evidence is also undisputed that under the plan the miners were not only guaranteed a minimum wage based on 80 per cent of a normal day's work, but they actually received under it about 15 per cent increase in earnings.—(R. 1797).

The incentive plan is neither difficult to understand or to describe. It was, briefly stated, a system whereby the employees were guaranteed certain occupational rates per hour for eight hours work at their usual working places underground. In addition to these guaranteed occupational rates, if the mine crews produced over a certain number of tons, which was called a standard production or base tonnage, they received extra compensation for that tonnage.—(R. 849, 3957).

In fixing the occupational rates each job was valued separately on an eight-hour day and all calculations excluded traveling time.—(R. 1792-3).

The record further shows that the rate was calculated on "production" and was "an evaluated rate for that job for eight hours work on that kind of work."

The proposed incentive plan made this clear.—(R. 3957-8).

"CONTRACTUAL RELATIONS"

The respondents do not deny that the agreement of October 6, 1938 (R. 107) was fairly arrived at by the process of collective bargaining. They could not well do so.—(Respondents' Brief, p. 4).

It contained the same definition of working time as the proposed contract tendered by the Union itself in 1936 (Id. p. 39).

Surely it is not to have less weight because it was the first formal written contract executed by the Company and the Union through the process of collective bargaining. If contracts do not all have the same sanctity, the Union certainly should regard such a contract as inviolable.

Undoubtedly collective bargaining had been practiced in the bituminous industry much longer. For that reason its customs and methods had received greater attention from the public and administrative authority. But the Congress could not have intended to permit one rule for the computation of working time in an industry which had long practiced collective bargaining and require a different rule in an industry in which the practice had just begun, immemorial custom having been the same in both.

We are indebted to the respondents for printing the dissenting opinion of Messrs. Meany and Woll of the War Labor Board on the Portal to Portal question. It shows the precise similarity between the bituminous and ore industries on the question here, except that the discomforts and hazards are greater in the bituminous mines than in the ore mines.

As a matter of fact the management of the Tennessee Company had negotiated with the committees of the Unions since they first began to organize the employees in 1933.—(Petitioner's Brief, pp. 37-41).

The respondents say it refused to recognize the Union until it executed the contract of 1938 with it.

Just what constitutes Union recognition may be debatable. The respondents quote excerpts which, standing alone, might give the impression that management refused to meet or negotiate with the committees of the Union.

The record establishes exactly the contrary. It shows not only that the Company was "entirely willing to deal" with the committee on matters of collective bargaining, but that it did so.—(R. 3605, 3603-20, 3626, 3636-3686, 3687-90, 3693-3703, 3708-3721, Stipulation of Counsel, R. 688-692); it shows that petitioner engaged in constant and continuous negotiations with the two Unions; that regular meetings were held at frequent intervals with the committees and officials of the Unions by the Division Superintendents and their staffs, and at regular stated times with the General Superintendent of Ore Mines and Quarries, and on occasions with the President of the Company.—(R. 3591-3604, 3619, 3648-86, 4469, 4471-4504).

In addition to the meetings represented by the minutes referred to above, from July 6, 1934, until the date of trial in July, 1941, the record discloses written minutes of 204 meetings of the officials of the Company with the committees of the Unions.—(Stipulation of Counsel, R. 688-692).

The record shows that grievances of every conceivable kind and character were presented and disposed of at these meetings. It is submitted that the minutes of all these meetings furnish the strongest kind of negative testimony that the Unions were not even requesting payment for travel time. The Stipulation of Counsel contains the statement:

> "None of the minutes above enumerated (T. C. I. Exhibits 41 to 46, both inclusive) contain any discussion of 'portal to portal'."—(R. 692).

The only times any question was ever presented by the Unions in reference to any claim for payment of travel time were on the three occasions, October 19, 1933, April 13, 1934, and June 13, 1935, when the Smelters Union in its written demands casually requested that "the men enter the mine on their own time and come out on the company time."—(R. 3592, 3595, 3623). It is undisputed on these three occasions no insistence was made upon the suggestion, and that on May 26, 1936, after the Smelters Union had developed sufficient strength to close down all the iron ore mines on the mountain, in presenting its complete proposed wage agreement, it gave as its own definition of the work day the identical language contained in the traditional coal contracts, and which was, after extensive bargaining, incorporated in the executed contract of 1938.—(R. 3636, 107).

From this time until shortly after the Cornucopia Gold Mines Case neither the Unions nor any employee of petitioner nor the Administrator nor any one else connected directly or indirectly with the Act ever in any way questioned the fairness and legality of computing and paying wages on the "face to face" basis, but, on the other hand, daily gave recognition and consented both expressly and impliedly thereto.

The statements contained in respondents' brief (pp. 15 to 18 and 41 to 42) have no significance as to the claim that there is no history of collective bargaining. While it is true that during this period of time (1933 to 1938) the Company refused to negotiate a contract with the Unions as such, it negotiated with each of the Unions, their officers and committees as representatives of their respective members.

The so-called Perkins letters of understanding not only show bargaining with the Unions, but resulted in a return to work with increased wages on the "face to face" basis, without any request or suggestion being made for the payment of travel time.

II

"ARGUMENT"

(Respondents' Brief, p. 28)

Apparently to give some indirect support to the ruling that the purpose of the Act was to eliminate physical conditions detrimental to the general welfare of the workers, but without venturing directly to support that ruling, the respondents quote in their summary from Section 2 of the Act.

But the "labor conditions" referred to by the Congress were sub-standard wages and excessive working hours. The "labor conditions" referred to by the Court below were the alleged discomforts and hazards of underground travel and the alleged poor ventilation of the mines.

"The maintenance of the minimum standard of living necessary for health and general well-being of workers" can not be construed to mean "the maintenance of physical conditions necessary to safety, comfort and health."

The respondents concede that the Act "does not give a definition of work" and on pages 30 and 31 quote definitions which show that the term may be applied without limit to any conscious effort, physical or mental.

The Congress set no limits. Did it intend that the question should be one of fact to be decided by the triers of fact according to their individual opinions, or a question of law for the court, to be decided according to the concepts, customs, standards, methods and agreements of each industry?

Petitioner respectfully submits that respondents entirely misconstrue the real question under consideration. In doing so they follow the fundamental error committed by the

Circuit Court of Appeals in holding that the question under consideration was one of fact and not of law. The real question here is the intention of the Congress, which, in the enactment of the Act, did not define work, did not limit the time that could be spent underground, as three Western States had done, did not legislate for the "portal to portal" method or against the "face to face" method, and did not delegate to any one the power to determine what constituted work. The Congress realizing that there might be and were, indeed, differences of opinion as to what constituted work, left the subject wholly undefined, and the question is whether it intended the matter to be decided by a trial tribunal in each individual case or to be determined as a question of law.

Simply stated, what constitutes work is a question of law and whether an employee is actually engaged in work becomes a question of fact.

The Congress made no effort to define work in reference to all industries or to any named industry; it did not intend to revolutionize the existing traditional custom as to what constituted work in a particular industry and abrogating existing contracts which defined work in accordance with the traditional existing custom.

Respondents, following the lead of the Circuit Court of Appeals, take the position that the previous traditional custom, the existing contracts, the history of the Act, including the administration of NIRA, the construction by the Administrator of the Act in the case of the bituminous coal mining industry, the practical construction of the parties, the concept of the industry should all be ignored and the question of whether or not travel time is work time should become a question of fact to be determined in each individual case. In seeking thus to ignore the ascertainment of the intent of the Congress respondents misconceive the entire purpose of this litigation.

Petitioners were seeking not a trial of fact as to whether an individual or groups of individuals in a particular mine were working or playing or resting; they were seeking a declaration as to whether or not it was the intent of the Congress that all time spent underground *per se* was work time.

The Circuit Court of Appeals has held that all time spent underground from "portal to portal" is work time. As a ground for this holding it and respondents rely upon testimony depicting the conditions of employment of some of the miners. In doing this they have selected items of testimony which do not comport with the testimony as a whole, as we have demonstrated. In many instances the cited testimony is contradicted or explained in prior or subsequent testimony of the witness quoted from; in most instances the conditions or references selected depict not the average or usual conditions but casual, exceptional and the worst conditions in one particular mine or in one particular portion of one particular mine and present these conditions as existing in and representative of all mines. As to some of the mines of petitioners such conditions never existed (Spaulding of the Republic Company and petitioner's Number 5 Mine). Treating this testimony as an overall picture the Court decreed, by the pooling of scattered evidence that in all mines, due to these conditions, all travel time must be paid for as work time, and thereby has not only turned the case from a petition to declare the intent of the Congress in the enactment of the Act to a fact finding expedition in reference to various individuals.

The distinctions between this case and the cases cited by the respondents were pointed out in our main brief, pp. 64-65.

As the Circuit Court of Appeals pointed out, workmen's compensation cases are not in point.

The Hours of Service Cases are not in point. There is no question here of when employees are "on duty." There is no question of employees filling in time with other work while waiting for their regular work. The purpose of the Hours of Service Act is to prevent the danger which must necessarily arise to the employee and to the public from men continuing in a dangerous and hazardous business for a period so long as to render them unfit to give that service which is essential to the protection of themselves and the public. Employees are defined in the Act as "persons actually engaged in or connected with the movement of any train." The time spent by the trainmen during which they were completely relieved from duty and were not subject to call was held to constitute hours on duty within the sixteen hour provision because of the fact that the period was not long enough to give an opportunity for substantial rest.

The cases cited by respondents show that the purpose of the Hours of Service Act was to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon.

It is well known that the Congress was moved to enact this legislation on account of the large numbers of disastrous wrecks and other accidents due to tired and overworked employees. Petitioner takes no issue with the statement that "no contract can defeat the will of Congress."—(Petitioners' Brief, pp 42-45). The cases cited in support of this established principle of law have no application here where we are concerned only with the question as to whether or not it was the intent of the Congress to invalidate contracts entered into not in evasion of the law but in accordance with the concepts, customs, standards and methods of the industry and the agreements of the parties clearly arrived at by the process of collective bargaining.

It is said by respondents that the Company has been paying for travel time since May, 1941, without disaster. On account of the penal provisions of the Act it, under compulsion, has been paying for travel time as a temporary measure —with what consequences this record does not disclose.

There have been times, as shown by the evidence in this case, when these mines were not able to operate but a few days a week. When such times recur or, for that matter, when normalcy is restored the question of the loss of from one to two hours of productive work per day may mean the life or death of any industry.

"THE COAL SITUATION"

Petitioner has always taken the position that in ascertaining the intent of the Congress on the sole question here under consideration it must be assumed that the Congress did not intend to have the work "workweek" construed one way in reference to petitioner's underground ore mines and in an exactly opposite way in reference to petitioner's underground coal mines.

It is common knowledge that the public generally has considered the decision in this case as setting a judicial precedent in the case for the construction of Section 7 of the Act in its application to the coal mines. The Court will take judicial knowledge that it was on this construction that the suits referred to were brought.—(Respondents' Brief, p. 47).

Respondents state that "all suits on 'portal to portal' are to be dismissed." They have not up to this moment been dismissed. Should they be dismissed with prejudice this could only dispose of the claims of those who are parties to the proceedings and could not possibly include the several hundred coal mines which were released from government control because they continued to operate during the last two strikes as non-union operations.

Respondents say that the War Labor Board, the Ickes-Lewis agreement of last November and the agreements under which many of the bituminous mines were returned to the owners all "recognize that travel time is work time."

The War Labor Board ruled that that was a legal question for Court determination.

According to their published terms, the contracts referred to provide complicated formulae for effecting a uniform increase of pay for all on an assumed average of travel time at two-thirds of the rate for production time, regardless of the actual travel time of each employee. That plainly violates the Act according to the decision here for review. Those contracts can only be sustained on the ground that a difficult and complex problem was worked out by the parties concerned through the process of collective bargaining, perhaps somewhat stimulated by the forceful personality of the distinguished Secretary of the Interior.

It is significant that the respondents find it necessary to go to England and to what they term "benighted Europe" for precedents for the portal-to-portal opinion for precedents in the iron ore mines.

They say that the portal-to-portal problem has now been settled for the bituminous industry until March, 1945, and that the iron ore mines have been "paid portal-to-portal" since May 1, 1941.

The ore miners have received portal-to-portal pay since May 1, 1941, under a temporary arrangement induced by the Administrator's modified portal-to-portal opinion (Main Br. p. 5). But the decree grants to the employees an unexpected windfall of nearly three years back pay at a time-and-a-half rate with a double recovery despite the

October, 1938, agreement, since when the respondents say the Union has prospered greatly. They attribute that prosperity to the Wage and Hours Act, although the forty-hour week had already been established in the ore mines before that Act was passed and the employees were receiving far more than the minimum wage prescribed by the Act, and the Union first demanded pay for travel time when the Administrator published said opinion.

Undoubtedly the December agreements in the bituminous coal industry have added to the complexities of the future problem in the iron ore industry. The bituminous miners and the ore miners are now being paid on wholly different bases under the same Act and if the decree under review be affirmed they will continue to be paid on different bases for a time at least in the future. If, however, as we confidently submit, the Act was misinterpreted below, the future problem in the iron ore industry, difficult as it may be, will have to be worked out by the parties concerned through the process of collective bargaining in the light of this Court's construction of the Act, which is not academic and does not depend on hypothetical facts as to the past, present or future, as the lower courts erroneously supposed.

These agreements, if this decision stands, are invalid so far as the individual miner is concerned, and the operators making them have for their protection only the good faith of the Union.

This condition as to which there can be no difference of opinion demonstrates the correctness of petitioner's contention that this question is one that should be left to the process of collective bargaining and that unless this is done the turmoil and chaos which has existed for the last nine months in the coal mining industry will continue to exist.

Respondents stated "that these pressures are being lifted by private agreement." If the agreements which, in keeping with traditional custom, had been executed in this case had not been declared invalid by this decision the "pressures" referred to would have never existed.

II

REPLY TO INTERVENER'S BRIEF[1]

1. "STATEMENT"

Intervener incorrectly defines the phrases "face to face" and "portal to portal." The terms as commonly used include all underground miners and "face to face" is commonly used as excluding travel time and "portal to portal" as including travel time.

Intervener seeks to make it appear that the men report at the tipple house for work and are from then on subject to the orders of the Company.

On page 5 he says the check-in board tells who are on the job and "ready for work." The supporting references show that the quoted words are supplied by the intervener. Of course the check-in system shows who are in the mine and that is its purpose.

It is said that instructions are given at the portal to "the crew or its head miner." Again, the supporting references show that the word "crew" is supplied by the intervener and that, as would be quite natural, the service foreman and head miners talk with the mine foremen when they meet at the portal and that the latter naturally tell them of roof or other conditions requiring attention, or of a change from one heading to another, and the like.

In the text on page 7 it is said that the men "frequently" pick up tools on the surface, and in the foot note it is said they do this "regularly." As pointed out on page 4 supra, the District Court found that that was done "occasionally" and it is not disputed that the Company provided for the regular transport of the tools to the working places during working hours.

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[1] Printer's proof of intervener's brief was not served on petitioner until January 7, 1944. Time does not permit us to do more than point out some of its erroneous statements and conclusions.

What is said on pages 8 to 10 under the subject of "supervision" shows that the supervision before the men actually report to their superiors at the working places is solely for their own safety and so the intervener virtually admits on page 11.

To support the inference that the men have to report at the portal at a certain time it is said on page 9 that they are subject to discharge if they report late. The supporting reference shows simply that they were expected to be at the working places on time. Of course they were required to catch one of the regular trips but the intervener admits they scheduled themselves.

Intervener laboriously attempts (pp. 18-25) to support the finding of the District Court that there had been no custom to pay the men on the "face to face" method. He says that some were paid on a tonnage or task basis and that the company was thus concerned solely with production—not with the time spent. That overlooks the fact that the time and one-half compensation has to be computed and paid in all cases and that the standard definition of working time in all the contracts is expressly made applicable to all classes of labor whether paid on a time or tonnage basis.

The intervener says that accurate records were not kept of the actual time each man worked at the face. If a man was on the job he was credited with a full day's work without deduction for time when he might not actually be working as where, for their own safety, the men are required to be away from the headings before the "shooting," which regularly occurs five minutes before quitting time, and if he is not required to light the fuses each man naturally leaves when his particular job is done.

He says (p. 24) the service men can not be paid on the "face to face" since they do not work at the "face." Since the service men have no fixed working places the only practicable method was adopted of having their work day begin when they obtained their tools at the tool boxes and reported to their respective foremen just as the work day of the productive men began when they obtained their tools at the heading and reported to their respective head miners, though a miner might have picked up a few wedges, a piece of drill steel or an oil can on his way to the heading.

He says (p. 24) that if a service man is switched to a production crew he gets paid for his travel time. Again the supporting reference shows that when a service man is thus first assigned to a production crew he is apt to be late in arriving at the heading because he did not get the notice of the shift in time. None the less, he is credited with a full day's work.

Intervener charges that the claim of the "face to face" custom is artificial. He shows his appreciation of its importance by his own artificial and labored reasoning in support of the finding of the District Court. He deals wholly with terminology—not with substance. He ignores the fact that the question of substance is whether there was a custom not to pay the men for travel time. They all say so, and the Circuit Court of Appeals so found.

Intervener does not attack the agreement between the Tennessee Company and the Union of October 6, 1938 on the subject it was not fairly arrived at by the process of collective bargaining. He says (p. 26-27) that "though the Tennessee Company did on occasion meet and talk with Union representatives it refused consistently to recognize the Union as a collective bargaining agent up to the eve of the enactment of the National Labor Relations Act." Apparently he does not think the Company is entitled to any credit for honestly complying with the law.

The Company had taken the position that it would not deal with the Union as such but did deal with the committees of the Union since it first began to organize the employees in 1933 as the intervener admits. Though he seems to think that an understanding on which the men continued to work or one arrived at by mediation was not a contract, he fails to point out that the Union, as well as the company, addressed a letter to the Department of Labor when the 1934 strike was settled.

Intervener says (p. 30) that from the earliest date the Smelters' Union protested the injustice of requiring the men to travel underground on their own time, which is quite inconsistent with the claim that there had never been a custom not to pay the men for travel time. Again the supporting references show that "the protest" was the inclusion with other demands in 1933, 1934 and 1935 of a formal demand that the men should enter the mine on their own time and leave on company time.

Intervener states that petitioners' Statement of the Case is not only "incomplete and misleading on this aspect of the case (traditional custom and contract), but more importantly they make only passing, superficial reference to the most pertinent and significant evidence in the record—evidence showing what their employees do and conditions to which they are subjected during the time in question."

Petitioner asserts that the reverse is true. The fact in reference to the traditional practice (which are undisputed and correctly stated by petitioners) constitute by far the most pertinent and significant evidence in the record. Not only is this true, but the position now taken by intervener is entirely inconsistent with his position in his "Modified

Portal to Portal Wage-Hour Opinion," his opinion in reference to bituminous coal mines and his answer filed in this case.

The Act was set up on a national industry basis. It has always been and is now being administered on an industry basis. The Administrator has so interpreted it in reference to the bituminous coal mining industry and its application to the precise question here involved.

The Administrator, in his "Modified Portal to Portal Wage-Hour Opinion" correctly based his interpretations on an industry basis but incorrectly made the iron ore mining industry a part of the metal mining of industry of the West, an industry with which it has never had the remotest kinship, competitive or other relationship, and which is located principally in the Western States where, under police power, the States have adopted the policy of prohibiting underground work in excess of eight hours and also expressly including travel time as a part of the permissible underground eight hours.

"A. NATURE AND CONDITIONS OF THE UNDERGROUND TRAVEL IN PETITIONERS' MINES."

With even less accuracy and with more exaggeration than exists in respondents' brief intervener depicts the underground working conditions.

Petitioner's Reply to Respondents' Brief (pp. 5 to 9, supra) is applicable to intervener's brief.

Intervener's brief on its face shows that, as did the Courts below, the intervener, to sustain the judgment against this petitioner, relies on evidence which related solely to other petitioners, and, likewise, to sustain the judgments against other petitioners, evidence which related to petitioners other than that petitioner, and yet now persists, contrary to his previous attitude, in declining to consider the question, as was the intention of the Congress, on an industry basis and not on an individual basis.

Striking illustrations of this can be found throughout the intervener's brief. In fact, he refers to evidence as to operations "by the Sloss Company" (p. 5), to evidence (p. 12) of head miners (this petitioner alone had head miners), as to different kinds of skips of different companies, of Sloss, of Republic (p. 12), as to the variant distances in different mines (p. 13—but not in reference to the Spaulding Mine where the distance was negligible), to evidence by one witness who, it is stated, testified "to the ever present danger of falling slate," when the citation shows that this evidence applied solely to the Woodward Company and was completely qualified by further testimony of the witness.

The citations as to the manways and "passageways which run up and down hill, paths filled with water, high voltage electric cables," etc. (p. 14) relate to testimony not common to all mines or any one mine but to only a part of one mine —without showing that much of this testimony shows the conditions described were temporary, in some instances the passageway being a temporary one used while a permanent passageway was being built. This is especially true of the steps referred to so grief-strickenly as existing at the Raimund Mine of the Republic Company (p. 15).

The statement recites, as if applicable to petitioner's mines, that "one man out of each crew regularly picked up powder at the powder house en route to the working face." This was the testimony of one witness referring only to one mine of the Sloss Company and was entirely contrary to the undisputed evidence which showed that in this petitioner's mines the powder was and could only be obtained on company time.—(R. 1090).

The illustrations given above of the contents of this statement are typical of the statement.

"B. EVIDENCE OF PETITIONERS' PRACTICES WITH RESPECT TO TRAVEL TIME."

The intervener takes the same position in reference to this as do respondents. The position is clearly untenable. (pp.10 to 12, supra).

When intervener announced his "Modified Portal to Portal Wage-Hour Opinion" he found that the "face to face" method had traditionally existed in the Alabama mines.

Petitioner was not on trial for violation of the National Labor Relations Act. The length of time of the execution of collective bargaining agreements has no relevant bearing on the intent of the Congress. The real question is whether or not such agreements, when made, in keeping with the traditional practice and concept of the industry were valid within the legislative intent.

"C. THE ADMINISTRATOR'S INTERPRETATIONS"

In explaining, or, as it now appears, apologizing for the Administrator's interpretations it is stated that the proper basis of administering and construing the Act was "on a nation wide basis" and in relation to "practice" in an "industry." This position was correct, and the present position of intervener in an effort to sustain the judgments on an individual basis is out of harmony with the history of the Act, its context and interpretations.

"D. DECISIONS OF THE COURTS BELOW."

It is admitted that these decisions judicially declare that all time spent underground by petitioner's employees in and of itself constitutes work time.

"SUMMARY OF THE ARGUMENT AND ARGUMENT."

Petitioner's reply to the argument of respondents is equally applicable to the Summary of Argument and Argument of intervener.— (pp. 1 to 23, supra).

The intervener attempts (pp. 44-45) to support the ruling below that the employees are entitled to compensation for going to and from work because that is a "process or occupation" necessary to production within the meaning of Section 3 (j).

The respondents made no such claim and admitted that the Congress did not attempt to define "workweek." Its manifest unsoundness shows how far the intervener deems it necessary to go to support the opinion. He lifts the quoted words from their context without quoting the whole section which was a definition of "produced,"—not "work." The statute provides that an employee is deemed to be engaged in the production of goods "if such employee was engaged in producing, manufacturing, mining, handling, transporting or in any manner working on such goods or in any process or occupation necessary to the production thereof." Traveling to and from work is not a "process or occupation" necessary to the production of goods. The quoted words are used to make it plain that production of goods includes all stages of production.

We do not claim, as the intervener supposes, that the statute only applies to productive work.

The intervener cites (p. 54) Arizona, Utah and Nevada statutes as showing the reasonableness and practicability of the "portal to portal" principle. He fails to appreciate the significance of the fact that two states had expressly provided that the eight hour limitation should apply to all time underground and that one state provided that it should apply only to travel one way.

We are indebted to the intervener for calling attention in the foot note to the fact that Wyoming expressly wrote into its statute the decision of the Supreme Court of California in the Martin case by providing that its eight hour statute "shall be construed to mean eight hours of actual labor and shall not include the time consumed in going to and from work."

With those examples before it the Congress adopted neither but left the matter to be determined not by a jury or other fact finding tribunal, as the lower court thought, but in each industry according to its concept, customs and needs, by the parties concerned through the process of collective bargaining.

It is interesting to note that despite this labored effort to support the finding of the District Court that there was no custom in the petitioner's mines to pay on the "face to face" method intervener is driven abroad from Airzona and Utah for precedent for the "portal to portal" method (p. 54-56).

We do not contend that a statute may be lawfully violated either by custom or agreement.

The claim that the "face to face" method has not been established by "bona fide collective bargaining" is completely refuted by the agreement of October 6, 1938, whose bona fides is not questioned even if it had not been preceded, as we maintain, by five years of real collective bargaining, and even though, as is suggested, it was made because of the Fair Labor Standards Act. We say that it was exactly the sort of agreement that the Congress considered the parties were free to make and was made by collective bargaining in the way contemplated by the Congress.

The fact that the Company complied with the Acts of the Congress—the National Labor Relations Act, and the Fair Labor Standards Act—is not an argument that one would expect the intervener and the respondents to urge against it.

As a matter of fact, the employees had been granted the forty hour week and were receiving much more than the prescribed minimum wage long before the Fair Labor Standards Act was passed, and the question of paying for travel time was not raised by the Union until nearly three years afterwards.

The statement is made, "This case does not involve the bituminous coal mines."

This is true only to the extent that the judgments do not adjudicate the rights of the coal miners or coal mine operators because they are not parties to the litigation. It is entirely incorrect, however, when the question of the intent of Congress is taken into consideration (pp. 21 to 23, supra).

Intervener at this late day admits that his coal mine interpretation was "wrong to the extent that it may be inconsistent with the decisions of the Court's below" (intervener's brief p. 44) and states that "the present Administrator has been prepared to revise it since the decision of the Court of Appeals in the instant case but has refrained from doing so only because of the filing of petition for certiorari in the instant case and because of the pendency of the coal controversy before the War Labor Board."(Int. Br. 61)

It is respectfully submitted that the undisputed facts in reference to the coal mines show that the intervener was right in this decision.—(Petitioner's Brief, pp. 13 to 15, Houck Letter; Petitioner's Brief, p. 67 set seq., Dissenting Opinion of A. F. of L. Members of the National War Labor

Board, Respondent's Brief, p. 51 et seq.). Nothing further is needed to prove the correctness of the coal mine opinion and the incorrectness of the "Modified Portal to Portal Wage-Hour Opinion" in its application to the iron ore mining industry.

III

THE ACT OF FEBRUARY 25, 1920

Our attention has only just been called to the Act of February 25, 1920, to promote the mining of coal and other minerals on the public domain.—(41 U. S. Stat. 437).

Section 30 of that Act, now Section 187, 30 U. S. A., provided that all leases should contain a provision for a "work day" not exceeding eight hours for underground workers.

In the following month after the passage of the Act, Mr. Lewis, President of the United Mine Workers, at the request of the President of the United States, pursuant to the report and award of the Bituminous Coal Commission appointed by the President, signed a wage agreement defining the work day as meaning "eight hours work in the mines at the usual working places."—(R. 4759).

Last March Mr. Lewis was moved by the decision of the Circuit Court of Appeals in the instant case for the first time to demand the "portal to portal" method for the bituminous worker and then not to obtain compensation for the actual travel time of each employee but a uniform increase of pay for all.

On April 1, 1920, the Commissioner of the Land Office issued Circular No-679 containing regulations for leases under the statute of 1920 and a form of lease, and it is a matter of public record in the Land Office that hundreds of coal leases were made. The United Mine Workers of America mined the coal under those leases and obviously worked under the "face to face" method of computing working time.

There appears to have been no administrative ruling construing the meaning of the term "work day" as used in the Act of 1920. The public officials charged with the administration of the Act, the United Mine Workers and the lessees accepted the standard "face to face" definition as in compliance with the statute.

A practical construction for twenty years by the administrative officers and the parties concerned should have more weight than even a formal administrative ruling.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

NO. 409

TENNESSEE COAL, IRON & RAILROAD COMPANY, *Petitioner,*

vs.

MUSCODA LOCAL NO. 123, ETC., Et al., *Respondents.*

SLOSS-SHEFFIELD STEEL & IRON COMPANY, *Petitioner,*

vs.

SLOSS RED ORE LOCAL NO. 109, Etc., Et al., *Respondents.*

REPUBLIC STEEL CORPORATION, *Petitioner,*

vs.

RAIMUND LOCAL NO. 121, Etc., Et al., *Respondents.*

REPLY OF RESPONDENTS, MUSCODA LOCAL No. 123, ET AL., TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BIRMINGHAM PRINTING COMPANY, BIRMINGHAM, ALA.

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REPLY OF RESPONDENTS, MUSCODA LOCAL No. 123, ET AL., TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

STATEMENT OF THE CASE

Each of the three companies brought a suit against its underground ore mining employees and various Unions of such employees. By agreement the cases were tried together. The plaintiffs asked for declaratory judgments and for injunctions to prevent the employees from bringing suit for overtime compensation claimed to be due them under the Fair Labor Standards Act of 1938.

The plaintiffs invited the Wage and Hour Administrator under the Fair Labor Standards Act of 1938 to intervene in the suits. The invitation was accepted.

The District Court rendered declaratory judgments in favor of the employees. The companies then appealed to the United States Circuit Court of Appeals for the Fifth Circuit. That Court affirmed the judgment of the lower court with a slight modification. The companies applied for a rehearing. The Circuit Court of Appeals denied the petition for rehearing, rendering an additional opinion.

QUESTION

The precise statement of the question involved is found in the Order on Pre-Trial Hearing, which is found on page 278 of the transcript and which reads in part as follows:

> "2. It was agreed by all of the parties that the following are all of the issues in controversy in this cause:
>
> "a. What constitutes the working time which makes up the workweek of the underground ore mining employees of the plaintiff within the meaning of Section 7 of the Fair Labor Standards Act of 1938.

"(1) In reference to "a" above, the plaintiff contends that such workweek does not include that portion of the time spent by the underground ore mining employees in being transported or walking to and from their usual working places.

"(2) In reference to "a", above, the defendants contend that the workweek covers all time from portal to portal as announced in the opinion and report of the Wage & Hour Administrator under the Fair Labor Standards Act on March 23, 1941, also includes aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools and in checking in and out.

"b." If the Court determines issue "a" adversely to the plaintiff, the Court will further determine whether or not the defendants and other underground iron ore employees who are now or who hereafter may become parties are entitled to recover against the plaintiff, and if so, how much.

"On the consideration of "b", above, the parties shall have the right and opportunity of presenting for the Court's consideration all of their respective claims, rights and defenses."

The District Court upheld the contention of the defendants as stated in paragraph numbered 2.

The Circuit Court of Appeals held that the workweek did not include the aggregate of the time spent on the surface in obtaining and returning lamps, carbide and tools, and in checking in and out. The exact holding of the Circuit Court of Appeals is found in this language of the original opinion:

"Applying Section 7 of the Act to the facts of this case, we hold that the time spent by underground

> mining employees of appellants, from the time they were required to report and did report for work at the portal of the mine until they returned to the portal of the mine at the end of the shift, less the regular lunch period when they were relieved of all duties, constituted working time comprising the workweek." (135 Fed. 2nd., page 323).

The question whether the employees were at work from portal to portal was and is a question of fact. The District Court so held in this language:

> "In the last analysis, therefore, plaintiffs must stand or fall on the question whether the time in issue was employment and work, as a matter of simple fact." (40 F. Supp., page 8).

In its opinion on rehearing the Circuit Court of Appeals agreed with the District Court. The opinion contains this language:

> "What constituted the work-week of these employees and how many hours they were suffered or permitted to work are questions of fact." (R. page 5001).

POINTS OF LAW

1.

"The finding of the Court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury." (28 U.S.C.A. Sec. 773):

Stanley v. Supervisors of Albany, 121 U.S. 535 at 547;

Hathaway v. Cambridge National Bank, 134 U.S. 494 at 498;

Dooley v. Pease, 180 U.S. 126 at 131;

Brooks v. Willcuts, 78 F. 2nd 270;

Gideon-Anderson L. Co. v. St. Louis Southwestern Ry. Co., 88 F. 2nd 232;

Union Bleachery v. United States, 79 F. 2nd 549 at 550;

North American Acc. Ins. Co. v. Anderson, 100 F. 2nd 452 at 455-6;

Funk v. Aetna Life Ins. Co. of Hartford, Conn., 9 Cir., 95 F. 2nd 38.

II.

"Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses." (Rule 52 of the Rules of Civil Procedure, U.S. 308, page 65).

ARGUMENT

The petition and supporting brief deal so extensively with a union not a party to this suit that it seems advisable to identify the parties. The employees involved are ore miners who are for the most part members of the CIO. A few hundred employees of one petitioner only are members of the AFL. These are not suits between the petitioners and the United Mine Workers of America.

After enumerating nine alleged reasons for granting the writ, the petitioners start over again and give two additional reasons not apparent on the record. The first reason (page 10 of Petition) involves the assertion that United

Mine Workers of America claim that it was the intention of the Congress to include as a part of the "work week" all of the underground time of coal miners. If counsel for petitioners hope by indirection to suggest that a decision favorable to them is a matter of national importance because it will settle the unsettled coal situation, counsel are mistaken. It is a matter of common knowledge that the contracts between the coal operators and the mine workers expired on March 31, 1943, and that portal to portal pay subsequent to that expiration date has been under negotiation.

The solution of the coal problem does not pivot upon a construction of the Fair Labor Standards Act. It turns upon the execution of a contract between the operators and the mine workers. Hence, we respectfully submit that the effort to obtain a review of the ore miners case by briefing and arguing the rights of coal miners, whose cases have not been tried and which may or may not be tried, should meet with the same failure in this Court that it has suffered in the District Court and in the Circuit Court of Appeals.

That effort has been constant and persistent. The courts below, however, tried the cases of the parties litigant who were then before the courts. It is not in accordance with the essential nature of the judicial process to review a decision between plaintiff "A" and defendant "B" in order to predetermine a case that may or may not come up between plaintiff "X" and defendant "Y". Such a course of action is legislative rather than judicial.

One basic fact which should be borne in mind is that the defendant employees are now being paid from portal to portal. The verified petitions filed during April 1941 solemnly assured the court of the ruin which would follow if the ore miners got pay from portal to portal. The trial did not start until July 8, 1941, but the petitioners began to pay on a portal to portal basis on May 1, 1941. They are still paying ore miners on that basis.

Since the Declaratory Judgments Act deals with cases of actual controversy, it is easy to see why the lower courts did not write an abstract essay for the period subsequent to May 1, 1941. It is correspondingly difficult to see how the petitioners can sincerely complain about this attitude of the courts.

TRIAL BY JUDGE WITHOUT A JURY

Congress has enacted that in a trial without a jury, the findings of the judge shall have the same weight as the verdict of a jury. In *Stanley v. Supervisors of Albany*, 121 U.S. 535 at 547, Mr. Justice Field uses this language:

> "Several of the assignments of error presented for our consideration are to rulings of the court below upon the evidence before it; to its finding of particular facts; and to its refusal to find other facts. Such rulings are not open to review here; they can be considered only by the court below. Where a case is tried by the court without a jury, its findings upon questions of fact are conclusive here; it matters not how convincing the argument that upon the evidence the findings should have been different."

In the case of *Hathaway v. Cambridge National Bank*, 134 U.S. 494 at 498, we find the following statement:

> "The first three assignments of error allege errors merely in the findings of fact by the court. Those errors are not subject to revision by this court, if there was any evidence upon which such findings could be

made. The *Francis Wright,* 105 U.S. 381, 387; *McClure v. United States,* 116 U.S. 145, 152; *Union Pacific Railway v. United States,* 116, U.S. 154, 157; *Merchants' Ins. Co. v. Allen,* 120 U.S. 67, 71."

Then in the case of *Dooley v. Pease,* 180 U.S. 126 at 131, the same rule is pronounced:

> "Where a case is tried by the court, a jury having been waived, its findings upon questions of fact are conclusive in the courts of review, it matters not how convincing the argument that upon the evidence the findings should have been different. *Stanley v. Supervisors,* 121 U.S. 547."

See, to the same effect, *Brooks v. Willcuts,* 78 F. 2nd 270; *Gideon-Anderson L. Co. v. St. Louis Southwestern Ry. Co.,* 88 F. 2nd 232.

The Circuit Court of Appeals for the 4th Circuit, in *Union Bleachery v. United States,* 79 F. 2nd 549 at 550, expresses the rule as follows:

> "It is well settled, of course, that the findings of the trial judge in a case such as this have the effect of the verdict of a jury, and that, even where properly excepted to, they will not be disturbed if supported by any substantial evidence."

The Circuit Court of Appeals for the 10th Circuit, in the case of *North American Acc. Ins. Co. v. Anderson,* 100 F. 2nd 452 at 455-6, gives recognition to the ancient doctrine in the following language:

> "In the instant case, a jury in effect having been waived, the trial judge was the trier of the facts, charged with the duty of making deductions from the undisputed facts, and this court may not substitute its own conclusions as to the facts for those of the court

below, when same are supported by substantial evidence as it is under this record."

* * * * * * * *

"In Funk v. Aetna Life Ins. Co. of Hartford, Conn., 9 Cir., 95 F. 2nd 38, the defense was "change of occupation". A jury was waived and the trial court found for defendant, and on appeal it was held that the court was without jurisdiction to consider the sufficiency of the evidence to support the findings."

When we consider the fact that the District Judge sees and hears the witnesses, gets the expression on their faces and the tone of their voices, and sees the shifting interplay of forces between counsel and frequently hears many side remarks and statements of counsel that never find their way into the printed record, it is not strange that his judgment should be given great weight.

There are many other cases cited in footnotes 33 and 34 to Title 28 U.S.C.A. Section 875 which uphold this legal principle.

The Fair Labor Standards Act of 1938 requires that men employed in excess of a specified number of hours in a work week be paid for such excess at one and one-half times their regular rate of pay. The word employ is defined by the Act to include "to suffer or permit to work." The only question in the case, as we see it, is whether the underground ore miners were at work while going from the portal to the face and back again. That is a simple question of fact.

We have never understood that this Court was very much concerned about questions of fact in civil cases. Neither have we understood that the amount of money involved determined whether a case was one of national importance.

We respectfully submit that under the decisions of this Court, the rules of civil procedure and the Acts of Congress, the petitioners are not entitled to a writ of certiorari.

Respectfully submitted,

Crampton Harris

Crampton Harris, *Counsel for Employees in Unions affiliated with C.I.O.*

Lee Pressman

Lee Pressman, *Counsel for Employees in Unions affiliated with C.I.O.*

J. Q. Smith

J. Q. Smith, *Counsel for Employees in Unions affiliated with A. F. of L.*

I hereby certify that I have mailed a copy of the foregoing reply to Mr. Borden Burr, counsel of record for the Tennessee Coal, Iron & Railroad Company, and another copy to him as counsel of record for the Republic Steel Corporation, and that I have mailed a copy to Mr. Ernest All, counsel of record for Sloss-Sheffield Steel & Iron Company, this 21st day of October, 1943.

Crampton Harris

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No. 409

In the Supreme Court of the United States

OCTOBER TERM, 1943

TENNESSEE COAL, IRON & RAILROAD COMPANY,
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SLOSS-SHEFFIELD STEEL & IRON COMPANY,
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SLOSS RED ORE LOCAL NO. 109, ETC., ET AL.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, INTERVENER

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OPINIONS BELOW

The opinion of the District Court (R. 494–506) is reported in 40 F. Supp. 4. The opinion of the Circuit Court of Appeals (R. 4938–4942) is reported in 135 F. (2d) 320; its opinion denying the petition for rehearing (R. 4997–5010) is reported in 137 F. (2d) 176.

QUESTION PRESENTED

Although petitioners purport to state nine different questions, they are simply different versions of the same single question: Whether time spent by metal miners in traveling underground to and from the "working face" constitutes employment or work for which compensation must be paid under the Fair Labor Standards Act.[1]

STATUTE INVOLVED

The statutory provisions involved are Sections 3 (g), 3 (j), and 7 (a). These provisions are set forth in the Appendix.

STATEMENT

This action was instituted by petitioners, three metal mining companies operating red ore mines in Jefferson County, Alabama (R. 556), under the Federal Declaratory Judgments Act (c. 512, 48 Stat. 955, sec. 274D; 28 U. S. C., sec. 400). Petitioners sought a declaratory judgment as to their liability under Section 7 of the Fair Labor

---

[1] The phrases "face to face" and "portal to portal" are commonly used as shorthand terms of reference in describing the basis of payment of miners. The "face to face" basis includes only time spent at the place where the miner actually drills and loads—the so-called "working face." The "portal to portal" basis includes time spent in traveling between the portal or entrance to the mine and the working "face," as well as the time spent in actual productive work at the "face."

Standards Act, for time spent by the miners descending and traveling underground to and from the working "face." The several labor unions and union officials representing petitioners employees were named as defendants and the Administrator of the Wage and Hour Division was invited to intervene. Upon petition of the Administrator, the District Court permitted the intervention (R. 304–305).

Although there are slight variations in the operating methods of the 13 mines involved here, the conditions with respect to the travel time are substantially similar. For many years, at all the mines except the two operated by the Sloss Company,[2] the miners have been required to check in and hang up individual brass checks on a tally or check-in board (R. 787, 2658, 2733, 2741, 2745). No employee has been permitted to enter petitioners' mines without depositing his brass check at the tally house at the entrance of the mines (*ibid.*). The check-in board, as many witnesses stated, graphically informs the mine foreman, the assistant mine foreman, head miners, or foremen of the particular service crews, if and when all of the members of the respective crews are "on the job" and ready for work (R. 561, 787, 963, 3043–3044).

---

[2] At the Sloss mines the employee formerly went to the tally house and "would tell the boss man 'I am here'" (R. 2797).

At this point the appropriate representative of the company will make provision for vacancies in the working crew (R. 561, 2432, 2509, 2734, 2739, 3031, 3043–3044, 3099), will instruct the crew or its head miner to change the regular working place should that be necessary, and give additional operating instructions (R. 561, 2740, 2741, 2728–2731, 3032, 3097, 3114). Numerous witnesses testified that the head miners are told by the mine foremen at the tally house or in its immediate vicinity how to proceed with their day's work (R. 2728–2730, 2740, 2746), how to overcome certain problems confronting them in their mining operations (R. 2740–2741), where to obtain needed tools, equipment, timber, and supplies (R. 2402, 2730, 2743, 2752, 2959), and are given additional information not only related to their jobs but absolutely indispensable to their successful performance. The men regularly pick up, at or near the portal of the mine, or near the man loading and unloading stations, various tools and supplies required for the performance of their work at the "face"; these tools and supplies are carried by the men on their underground journey to the "working face" (R. 1716, 2400–2402, 2731, 2804–2805, 2808, 2960, 3032, 3098).

The District Court found (R. 502–503): "the evidence has made clear that the transportation was had under the strict control and supervision of the plaintiffs [petitioners]," that petitioners "prescribed the schedule of the trips, the speed of the trips, the loading of the men into the trips, the rules of conduct during the trips, and in most cases required the men to ride the trip rather than walk" (R. 502–503). In addition, the men are subject to the disciplinary rules of the companies in the loading of the skips and throughout the trip (R. 503, 563). By reporting late at the portal of the mine, a miner might be subject to outright discharge from the services of the company (deft. ex. 29, R. 4599). As the District Court found, "Clearly, during the trips up and down the men were under the complete supervision of the plaintiffs" (R. 503).

A graphic picture was presented by the numerous witnesses of the 6,000-foot ride (R. 786) from the loading platform at the portal to the man-unloading station, either in ore skips or in man cars. Petitioners load 30 to 40 men in ore skips (R. 784, 1191, 1229, 1708, 1771–1772, 3026), and force them to ride down with bodies contorted and heads drawn down below the level of the skip top to avoid being crushed by the overhanging mine ceiling (R. 1708–1709, 2395, 2641, 2693, 2759, 3025–3029).[3] According to the finding of the District Court: "The cars have been nearly always crowded to the extreme. The positions which the men have been required to assume during the transportation varies from a crouch with their bodies overlying one another to a rigid propping of legs and arms against the sides of the car and the fellow passengers. These positions were assumed partially because of the press of human bodies in the cars and partially because of the necessity of keeping head and body in a deflected position in order to avoid injury from collision with low points in the roofs of the mine slopes or with projections from the roofs" (R. 502).

---

[3] "There is not a slope on Red Mountain where the roof clears the top of the skip more than a few inches for most of the length of the slope" (*The Ore Miner*, December 1938, deft. ex. 5, R. 4455).

The many descriptions in the record [4] of injuries during the course of transportation bear witness to the fact that the descent into petitioners' mines is attended not only by the greatest discomfort and inconvenience, but also by considerable peril.

From the time they jump into the skips and descend the three to twelve thousand feet underground (R. 1262, 1308, 1565, 1663, 1838–1840; T. C. I. ex. 1, 2, and 3, R. 3587–3589; Sloss ex. 10, R. 3790; Sloss ex. 11, R. 3791; Republic ex. 1, R. 3974; Republic ex. 16, R. 4022)—in one mine 640 feet below the level of the sea (R. 3005)—the employees are in an environment entirely different from that which they have left on the surface. Immediately they became subject, as one of petitioners' witnesses admitted, to the ever present dangers of falling slate (R. 1565). As stated by the District Court, "The trips were, of course, in the comparative darkness and enclosure of an artificially lighted mine. The air was humid and malodorous, the ventilation relatively poor and the heat increasing with the descent into the mine" (R. 502, 563).

---

[4] R. 972–973, 1475, 1709, 2642, 2643, 2789, 2791–2792, 3039, 3120; *The Ore Miner*, December 1938, deft. ex. 5, R. 4454–4456; *ibid.*, February 1940, deft. ex. 6, R. 4461.

Additional discomforts and perils attend the men after they are unloaded from the skips, when they continue their journey by foot (R. 504, 563). As the miners near the working headings, the atmosphere is naturally increasingly heavy with ore dust and powder smoke. Where it has been necessary to do timbering in the passageway, there is frequently the pungent odor of creosoted timbers (R. 969), and due to the complete indifference of petitioners to all problems of sanitation, the mine air is befouled with the odors of human sewage from the man-unloading station to the slopes (R. 2408, 2821-2822). "During these walks, the physical conditions encountered by the men were even more difficult than during the part of the descent spent in riding. The atmosphere becomes warmer and more humid, the ventilation even less effective and the air fetid. The roof is low in places, requiring the walkers to stoop. The footing is irregular, sometimes rough, sometimes wet and slippery, overhead wires (often not insulated or guarded) and pipes must be carefully avoided. The passageways are up and down grades of varying steepness. In short, a very substantial amount of physical and mental energy is required during this walking" (Opinion of District Court, R. 504). "The conditions are clearly conditions peculiar to the occupation of the men in the class represented by the defendants, conditions replete with hazards, conditions requiring physical exertion and mental alertness, and conditions unpleasant and burdensome to those encountering them" (R. 502).

The District Court ruled (1) that the time in controversy (including time spent at the surface obtaining and returning lamps and tools and checking in and out) constitutes work time (R. 565), since the activities and the travel are under the control of the employers "in the interest of efficient operation of their mining business," and since "such time is a necessary and incidental part of the actual production of ore" (R. 503); (2) that there was no custom in petitioners' mines excluding such time from the workweek (R. 496, 557), and, in any event, an occupational custom or usage cannot operate to avoid the requirements of the Act (R. 499). With respect to the alleged custom, the court observed (R. 499) that "it would be a mockery of the beneficent purposes of the Act if the provisions prohibiting employment for over a specified number of hours for each workweek, except at an increased rate of compensation, were held to incorporate a custom to pay employees only for a part of the time worked by them."

The Circuit Court of Appeals (R. 4938–42) affirmed, but modified that part of the District Court's decision which held that the time spent by employees checking in and out, and procuring and returning tools, lamps, and carbide at the surface of the mine was also working time (R. 4942).[8]

ARGUMENT

1. The District Court's findings that the travel time was "under the strict control" and "the complete supervision" of the petitioners (R. 502–503), that "it exacted mental and physical exertion" and was "pursued solely as a necessary incident to the prosecution of the employer's business" (R. 504, 566, 4942) suffice to bring the travel time squarely within the terms of the statute. The facts in the record, with forceful eloquence, establish that the miners are not only employed during this underground travel, but are engaged in hard work. The employer, of course, obtains more profit when the employee is drilling or loading ore than when he is descending in the skip or passing through haulageways and man-

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[8] The Government believes that the Court of Appeals was in error in ruling that this time was not part of the working time. Since the amount of time thus consumed in this case was negligible, it is not deemed of sufficient importance to warrant certiorari.

ways enroute to the working "face." But there is nothing in the statute suggesting that compensation should be paid only for productive or active work. The statute requires that the employee be compensated for his *employment* in the production of goods for commerce and for *"any process or occupation necessary"* to such production (Sections 7(a), 3(g), 3(j); italics supplied).

The decisions under the Act are consistent in holding that such underground travel is working time. In addition to the decisions of the courts below, the District Court of Idaho, in the case of *Sunshine Mining Co.* v. *Carver,* 41 F. Supp. 60, held that underground travel in gold, silver, copper, lead, and other metal mines, constituted working time compensable under the Act. See also *Butte Miners' Union No. 1* v. *Anaconda Copper Min. Co.,* 112 Mont. 418, 118 P. (2d) 148 (1941), construing the Montana Eight Hour Law to include the "portal-to-portal" principle as applied to employment in underground mines.[*] Other nonproductive activities, such as waiting for work, or standing by on call, or preparation of machines and engines preparatory to productive work, which are necessary or incident to the employment, also have consistently been recognized as constituting work time within the meaning of the Act. *Fleming* v. *North Georgia Mfg. Co.*, 33 F. Supp. 1005 (N. D. Ga.); *Reck* v. *Zarnocay*, 33 N. Y. S. (2d) 582 (Sup. Ct. N. Y., N. Y. Co. 1941); *Walling* v. *Sun Publishing Co.*, 47 F. Supp. 180, 191 (W. D. Tenn.); *Travis* v. *Ray*, 41 F. Supp. 6 (W. D. Ky.); *Walling* v. *Blue Mt. Logging Co.*, No. 380, W. D. Wash., decided October 13, 1942; *Davies* v. *City of Seattle*, 67 Wash. 532, 121 P. 987 (1912).

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[*] *Ex Parte Martin,* 157 Calif. 59, 106 P. 235 (1909), a 35-year-old decision of the Supreme Court of California, upon which petitioners rely (Pet. p. 22), is the single decision holding that underground travel is not part of the workday.

These decisions are in accord with the decisions interpreting analogous statutes. Particularly pertinent are the decisions under the Federal Hours of Service Act,[7] limiting the consecutive hours of service of railroad employees. In *Missouri, K. & T. Ry. Co.* v. *United States*, 231 U. S. 112,

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Principal reliance was placed upon the case of *United States* v. *Post*, 148 U. S. 124, which was apparently misinterpreted by the California court. To the extent that the *Post* decision is pertinent, it seems to be contrary to the result reached by the California court.

[7] C. 2939, 34 Stat. 1415, 45 U. S. C., sec. 61. Section 2 provides in part: "it shall be unlawful for any common carrier * * * to require or permit any employee * * * to be or remain on duty for a longer period than sixteen consecutive hours * * * *Provided*, That no operator, train dispatcher, or other employee * * * shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period * * *."

The term "on duty" is essentially the same as "employment" or "work." The term "work" has been defined to include "employment." "task," "duty." See Webster's Inter-this Court held that time spent "waiting, doing nothing" while the engine was sent off for water and repairs, should be included in determining whether the employees had been on continuous duty in violation of the provisions of the Hours of Service Act. Mr. Justice Holmes, speaking for the Court, pointed out that the employees "were under orders, liable to be called upon at any moment, and not at liberty to go away.’ He held that they were "none the less on duty when inactive. Their duty was to stand and wait" (231 U. S. at 119).[8] See also *Bountiful Brick Co.* v. *Giles*, 276 U. S. 154, 158, where this Court stated that "as a general rule, employment may be said to begin when the employee reaches the entrance to the employer's premises where the work is to be done * * *."[9] In the instant case the em-

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national Dictionary (2nd Ed.) p. 2950; *State* v. *Rose*, 125 La. 462, 51 So. 496, 497 (1910); *Chicago & A. R. R. Co.* v. *Bragonier*, 119 Ill. 51, 63, 7 N. E. 688, 693 (1886).

[8] To the same effect see *United States* v. *Southern Pac. Co.*, 245 Fed. 722 (C. C. A. 9); *Minneapolis & St. L. R. R. Co.* v. *United States*, 245 Fed. 60 (C. C. A. 8), certiorari denied, 245 U. S. 666; *San Pedro, L. A. & S. L. R. R. Co.* v. *United States*, 213 Fed. 326, 329 (C. C. A. 8); *United States* v. *Denver & R. G. R. R. Co.*, 197 Fed. 629 (N. Mex.); *United States* v. *Illinois Cent. R. R. Co.*, 180 Fed. 630 (N. D. Iowa), and *United States* v. *Chicago, M. & P. S. Ry. Co.*, 195 Fed. 783 (W. D. Wash.).

[9] It is recognized that employment under the workmen's compensation laws extends beyond employment for which wages are due. However, the above-quoted statement appears to have been an enunciation of the rule of general application, rather than of the broader rule applied in work-

ployees were under orders to report and check in at the entrance to the mine. They were required to be ready to descend according to a schedule prescribed by the employer, and they were subjected to the control and disciplinary rules of the employer during all of the time in question. It need not be denied that although the principles which determine when a man is at work for his employer are clear, they may be difficult to apply in some factual situations near the borderline. But the evidence here indicates beyond peradventure that the Court is confronted with no borderline case.

The reasonableness of the ruling that underground travel time is working time is confirmed by the fact that two of the great mining States, Arizona and Utah, since 1912 and 1937 respectively, have expressly provided that the eight hour per day limitation upon work in underground mines encompasses all time spent underground. Laws 1912, c. 28, secs. 2 and 3, p. 59, Ariz. Code Ann. (1939), vol. 4, sec. 56-115. Utah Laws (1937), c. 59, amending Rev. Stat. (1933), sec. 49-3-2.[10]

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men's compensation cases. The particular injury involved occurred before the employee reached the entrance to the employer's premises.

[10] As the Fair Labor Standards Act is not limited to one industry, but is designed to provide the standard for every kind of work, the absence of an explicit provision as to working time in mines is of no significance.

2. The essence of petitioners' position is that an alleged custom or "traditional practice" in the industry precludes recognition of underground travel time as part of the workweek. The claimed existence of such a custom, far from being undisputed as petitioners assert (pet. p. 45), was one of the most controversial issues at the trial (cf. with petitioners' claims, for example, Wage and Hour Division Report on "Hours Worked" in Underground Metal Mining, attached by petitioners as Exhibit A to their complaints, R. 79, at 85–89). This dispute as to the facts was resolved by the District Court's finding that "the evidence has disclosed no such custom" (R. 496, 497, 498).[11] This finding of the District Court would seem conclusive of petitioners' contention with respect to custom. But in any event, as the District Court appropriately pointed out, "it could not be contended that the custom prevailed to deny the defendants compensation" for activities which "actually constituted employment or work" (R. 499; 40 F. Supp. at 8). A custom which would dissipate the statutory right, like an agreement to accept less than the statute requires, is void. *United States* v. *Morley Construction Co.,* 98 F.

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[11] This finding was based upon proof that during the greater part of the iron ore mining history in the Birmingham area, payment of the producing crews has been on a tonnage or task basis, "without regard to hours worked at any point" (R. 496; 40 F. Supp. 4, 7).

(2d) 781, 788 (C. C. A. 2), certiorari denied, 305 U. S. 651; *Waterman S. S. Corp.* v. *National Labor Relations Board*, 119 F. (2d) 760, 762 (C. C. A. 5); *Fleming* v. *Warshawky & Co.*, 123 F. (2d) 622 (C. C. A. 7); *Johnson* v. *Dierks Lumber & Coal Co.*, 130 F. (2d) 115 (C. C. A. 8). In the words of the Eighth Circuit in the last cited case, "We do not think the act means that an employer may claim all of an employee's time and compensate him for only a part of it" (at p. 120).

Petitioners make a point of the Administrator's press release relating to his enforcement policy in the bituminous coal mining industry (Pet. pp. 11–12). As appears from the record, the Administrator's coal mining policy was influenced by factors not present in petitioners' mines.[12] Moreover, the release in question was only an informal declaration made by the Administrator for enforcement purposes.

3. Petitioners' assertion that the decision below erroneously fails to construe the application of the Act with reference to the period of time subsequent to May 1, 1941[13] (pet. 9, 60), is devoid of merit. This contention is simply a bid for an advisory opinion on a hypothetical statement of

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[12] R. 79, at 94–96; pl. exh. No. 4B for identification, R. 4716; pl. exh. No. 25 for identification, R. 4710–4715; pl. exh. No. 6 for identification, R. 4726, 4729–4730^{a}).

[13] Subsequent to May 1, 1941, petitioners changed their method of compensation and put into effect the "portal-to-portal" basis of payment.

facts. The Circuit Court of Appeals, in its opinion denying rehearing (R. 5000), adequately answered this contention by pointing out that the court's jurisdiction was limited "to cases of actual controversy of a justiciable nature" (citing: *Nashville, Chattanooga & St. Louis Ry.* v. *Wallace*, 288 U. S. 249; *Ashwander* v. *Valley Authority*, 297 U. S. 288, 325; *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227), and that "the plenary effect of the judgment as *res judicata* is ample protection for the future."

CONCLUSION

The decision below is correct. There is no conflict. While it cannot be said the question is unimportant, we do not believe further review is required and accordingly we oppose the issuance of the writ.

Respectfully submitted.

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✓ Douglas B. Maggs,
Solicitor,

✓ Irving J. Levy,
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November 1943.

APPENDIX

Fair Labor Standards Act, c. 676, 52 Stat. 1060 (29 U. S. C., sec. 201 *et seq.*):

Section 3 (g):

"Employ" includes to suffer or permit to work.

Section 3 (j):

"Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.

Section 7 (a):

No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

U. S. GOVERNMENT PRINTING OFFICE: 1943

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IN THE

Supreme Court of The United States

OCTOBER TERM, 1943

No. 409

TENNESSEE COAL, IRON & RAILROAD COMPANY, Et al.,

Petitioners,

vs.

MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS, Et al.,

Respondents.

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BIRMINGHAM PRINTING COMPANY, BIRMINGHAM, ALA.

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IN THE

Supreme Court of The United States

OCTOBER TERM, 1943

No. 409

TENNESSEE COAL, IRON & RAILROAD
COMPANY, Et al.,
Petitioners,
vs.
MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS, Et al.,
Respondents.

STATEMENT OF THE CASE

The individual respondents are all underground employees in the iron mines of the petitioners. These individuals are for the most part members of unions affiliated with the C. I. O. A small number are members of unions affiliated with the A. F. of L. The case neither concerns surface employees nor does it involve any suit between coal miners and coal operators.

The specific question in this case is, "What constitutes the working time which makes up the workweek of the underground ore mining employees of the appellants' within the meaning of Section 7, of the Fair Labor Standards Act of 1938".

The question arises on a petition for a declaratory judgment and for an injunction and upon appropriate pleadings of the defendants named in the petition.

The Declaratory Judgments Act, 28 U. S. C. A. Section 400, is applicable to "Cases of Actual Controversy".

The answer to the specific question is found in the facts of the employer-employee relationship existing between the plaintiff and its employees, who are defendants in the cause, during the period of time from October 24, 1938, the effective date of the Fair Labor Standards Act of 1938, and May 1, 1941. No question arises out of the relationship subsequent to May 1, 1941 because on that date the employer began to comply with the provisions of the Fair Labor Standards Act.

All parties are in agreement that the plaintiff was engaged in the production of goods for interstate commerce from October 24, 1938 to May 1, 1941. All parties are also in agreement that the employees of the defendant, who were named in the petition and those who later became parties defendant, were engaged in the production of goods for interstate commerce.

The plaintiff contends that it has complied with the Maximum Hours provision (29 U. S. C. A. Section 207) of the Fair Labor Standards Act of 1938 and is under no obligation to pay the defendants any other compensation than that already received. The defendants contend that they were employed for a workweek longer than 44 hours during the first year from October 24, 1938, for a workweek longer than 42 hours during the second year from such date, and for a workweek longer than 40 hours after the expiration of the second year from such date until May 1, 1941 without receiving compensation for their employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which they were employed. The correct answer to these respective contentions depends upon the answer to the question, "What was the working time of the plaintiffs' employees from October 24, 1938 to May 1, 1941?"

The facts in the record give a clear cut answer to the question. The petitioners have not given a full, and complete portrayal of the facts in their statement of the case. And while the respondents are not required by the rules of this Court to give a statement of facts, we believe that a more accurate statement will save this Court time and labor, give a clearer understanding of the case and demonstrate the correctness of the findings and opinion of the courts below.

STATEMENT OF FACTS AS TO TENNESSEE COMPANY

The operations of the Tennessee Company are substantially the same at all its iron ore mines. And the operations of the night shift are substantially the same as the day shift, hence a description of the procedure on the day shift is typical.

THE ASSEMBLY

The whistle blows at 6 A.M. Before that time the employees have been to the bath house on the company premises and changed to their working clothes. Some of them arrive at the bath house as early as 5:40 or 5:45 A.M. After changing to their working clothes, they proceed to a tally house near the mouth of the mine.

At the tally house all employees check in. They do this by turning in to the timekeeper or the mine foreman a brass check, which is furnished by the company to each employee. "He is checked in generally by the mining foreman, and his brass check is hung on the board by the mining foreman or timekeeper in there. It is lined up opposite his crew." (R. 1674). All employees must check in before going down into the mine.

In the early days the timekeeper was at the underground manloading station. In 1933 and 1934 the timekeeper was taken outside the mine and stationed at the outside tally house. (R. 797, 3215).

The company did not require the employees to be at the bath house at any particular time but did require that they be ready to ride the mantrips when they started running. The cars in the mantrip were ore cars. The mantrips ran at a particular time. The schedule operated automatically. (R. 3349). Some of the skips (mantrips) started at 6 o'clock A.M. On the average the skips began running at 6:07 A.M. "All head miners that was chose as head miners was required to be at the tally house at 6 o'clock to check in the men." (R. 2428).

One indispensable piece of equipment for all underground employees is a carbide lamp. The carbide comes in cans and a can lasts a man about two days. Hence, every two days every underground employee buys carbide from the company and he buys it at the tally house from the company timekeeper.

RECEIVING ORDERS

Not only do we find the employees checking in and picking up an indispensable item of their equipment before they board the mantrip, but we also find these employees receiving orders, directions, or instructions before they catch the mantrip. (R. 2692, 2728, 2734, 2739, 2730, 2741, 3097, 3099, 3102, 3173, 3175, 3176).

CARRYING TOOLS

It appears beyond all dispute that employees of the Tennessee Company carried various tools and necessary items of equipment with them on the mantrip from time to time.[1] A metal container was fastened on the bail of the skip for the purpose of carrying such things. (R. 2745).

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[1] Without distinguishing between the different mines, the record shows that the things carried by the men include the following: wedges (R. 1271, 2402, 2519, 2663, 2679, 2737, 3098, 3116-3117), hangers (R. 1271, 2402, 2519, 2663, 2725, 2735, 2737, 3116-3117), hooks (R. 1212, 1271), quarrying bars (R. 2663, 2694, 2746), picks (R. 2804, 3032, 3098), pick handles (R. 2804, 3098), shovels (R. 2804, 3032, 3098), shovel handles (R. 2805), rock hammers (R. 2804, 3032, 3098), hammer handles (R. 2805), Stilson wrenches (R. 2806), pipe fittings (R. 1271, 2694), pipes (R. 2685), drill valves and fittings (R. 1271, 2402), drill bits (R. 2960, 3032), drill and jackhammer steel (R. 1271, 2402, 2663, 2664, 2677, 2679, 2694, 2725, 2736, 2737, 2739, 2811, 3116-3117), hose (R. 2685, 2694), "C" hooks (R. 1212, 1271), water fittings (R. 2694).

After the men get off the mantrip at the man unloading station, they pick up other supplies near that station and carry them on their persons as they walk to the face of the seam.[2]

The carrying of the listed tools, equipment and material was not sporadic. It was a frequent occurrence up to May 1, 1941. (R. 3117).

UNDERGROUND CONVEYANCE

The ore cars in which the men rode into and out of the mines were made of steel. The floors of these steel cars were frequently covered with muck from the ore hauled in them. The cars were hauled into and out of the mine by means of cables. Rollers for the cables were suspended from the roof and constituted a danger to the men. While in these cars the men were compelled to assume crouching and cramped positions. Their bodies fitted one into the other like a rack of spoons. The roofs did not clear the top of the skip (ore car) more than a few inches for most of the length of the slopes (R. 4455).

Men had been injured getting into these skips and while riding in them.

Mr. Ewing Carter, a witness for the Tennessee Company, testified as follows:

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[2] These supplies include fifty pound boxes of powder (R. 2808), dynamite caps (R. 2810, 2960), fuses (R. 2811-2960), oil and dope for the motors (R. 1203-1204, 1246, 2519, 2678, 2685, 2694, 2735, 2746, 2756) hitchcutters (R. 3121) and in the case of servicemen, supplies (R. 2677) required for their particular activities.

"A. Mr. Harris, I don't know exactly the nature. We have had a dozen men injured in the skip in the last 10 years, only one, a lost-time accident, from striking his head, and that was last Monday night. The others have been ankles, feet and hands, getting in and out.

"Q. Ankles, feet and hands; in other words, they jump down in the skip and turn and twist their ankles or hurt their hands?

"A. Climb out and injure their ankles getting out or someone steps on a man's hand.

"Q. And you have a man injured?

"A. Yes, sir.

"Q. And you have had men packed in so their ribs were injured?

"A. Yes. (R. 1709)"

Very often the men complained about being crowded in the skip too heavily and mashed. (R. 2490).

After the men got out of the skips at the man unloading station, they had long distances to walk, carrying the equipment, materials and supplies hereinabove listed. At all times, from the moment they entered the mine until they left the mouth of the mine at the end of the shift, they were exposed to the danger of falling rock. As they walked they had to traverse places that were wet and slippery, portions of track cluttered with ore which had fallen from the cars, and in places, to dodge, at peril of great bodily injury if they failed to do so, mine cars which would run along the same passages they were traversing. In places they had to bend over because of the closeness of the roof. In many places, they had to be alert to keep the tools they were carrying from coming in contact with unguarded electric wires. As they walked further into the mine the air became more humid.

The mines were utterly without any kind of toilet facilities. To relieve themselves the men merely used any convenient place in the mines. This situation has lasted for years so that the odor of human sewage became perceptible at the man unloading station and grew more perceptible the deeper an employee went into the mine. Mine timbers were rotting and their oxidation was likewise adding to the unpleasant conditions under which these employees of the petitioners performed their activities and for which appellant has always refused to pay.

When the miners put down their drills and started out of the mine at the end of the shift, they had to walk under such conditions that they were wet with sweat when they arrived at the hoodlum, or man loading station. Arriving there they had to wait until the skips, owned and operated by the employer, were finished with their hauling of ore and could be used to haul the men. A representative of the Company counted them out into the skip just as they counted them into it at the mouth of the mine. That representative determined how many men could go in the skip and when it would move out. Arriving at the mouth of the mine, they went to the tally house and checked out. Their brass check was then returned to them and they could then go to the bath house and bathe and change out of their working clothes.

While riding on the skips the men are subject to the rules and discipline of the company. They are instructed not to push or to have any rough play in the skip and to keep their heads below the top and not stick their heads up suddenly (R. 974). They are not allowed to push or shove before getting into the skip (R. 1040). No smoking is allowed (R. 3229). The first two rules of the Tennessee Company deal with riding on skips (R. 2380).

NO FACE TO FACE BASIS OF PAYMENT

The attorney for the Tennessee Company has argued that the men were paid on a "face-to-face basis." That statement is inaccurate and necessitates an examination of the system used by the company in keeping time and paying wages. Mr. Ball, General Superintendent, testified as follows:

> "Q. Now, I don't quite understand that, quite, Mr. Ball. You say it always shows 8 hours. Would that mean if he stayed there 6 hours it would still show 8 hours, or if he stayed there 9 it would still show 8 hours?
>
> "A. Yes. They didn't keep an accurate time at the working face, and as the rates of pay and the day's work was computed on an 8-hour basis, he put down 8 hours."—(R. 1024).

Mr. Ewing Carter testified as follows:

> "A. I don't want to get too deep into the accounting department, because I might slip, but as far as I can tell you, the board was checked up

there—the timekeeper checked that board to get a distribution on the places which those crews went in as showing the man was there and what he was assigned to. They had to tie up with that head miner or service foreman's time abstract which had been checked by the mine foreman and which he had turned in the time for that crew.

"Q. That is the foremen under ground?

"A. Yes, sir. The individual foreman of each crew, each production crew, or head timberman or head trackman.

"Q. **That timberman or trackman would get his time abstract up early in the day?**

"A. **Yes, sir.**

"Q. **He didn't wait until the end of the shift to make his time abstract?**

"A: No, he carried it out with him and kept it out with him.

"Q. And when you were keeping these time abstracts, the rule was to show 8 hours? They got credit for 8 hours?

"A. Unless a man had gone out from injury or sickness during a shift it showed 8 hours.

"Q. If a man was there 7½ hours his time abstract showed 8 hours?

"A. Unless he was sent away."

At page 789, Vol. 2, Mr. Ball testified:

"Q. According to the practice and custom, did or did not the men or any of them leave their working places before the shooting started?

"A. Yes, sir. As a rule, the section helpers, the drag operator, the men helping on the drills left much earlier than the head miner and the drill runner, who stay to load and place the drill holes.

"Q. About how long before 3:15 would you say they left?

"A. Oh, I would say anywhere around 2:45 to 3 o'clock.

"Q. And when they left where did they go?

"A. They took their time and walked up to the man loading station ready to take the first skip that was going out at the end of the turn."

At page 793, he testified:

"Q. Would those hours work include any part of the traveling time, or did they include only the time he worked at his working place?

"A. Only the time he worked at his working place. It was always shown as 8 hours.

"The COURT: Shown at what?

"The WITNESS: Shown at 8 hours.

"The COURT: Shown at 8 hours?

"Mr. Burr: Yes, sir.

"Q. Would that always be shown at 8 hours irrespective of whether the man left his working place 30 minutes before the 8 hours?

"A. Yes, sir."

As indicative of the lack of accuracy of the contention that the men were paid on a face-to-face basis, it is interesting to compare the 10-hour per day schedule with the so-called 8 hours per day. Mr. Ball testified:

> "A. Oh, it had been in effect ever since we started hauling men in and out of the mines. Of course, at one time they were on a 10-hour basis and that would make the time at which you pulled the men out a little later than on the 8-hour basis. —(R. 790.)"

On both the 10-hour day and the 8-hour day the men went into the mine at the same time. (R. 1155, 1198).

TONNAGE OR CONTRACT OR TASK BASIS HAS PREVAILED

Up until 1914 the mines of the Tennessee Company ran on the contract system paying so much a ton. (R. 986-988).

When the contract system was abolished in 1914, the "day pay" system was installed. Rates were established for the drill men, drill helpers and for the muckers. The men would go in and work on a ten hour limit with an assigned task of so many tons. (R. 990, 1250, 1279). Under the task system a man could leave the mine at any time he wanted to after he had accomplished his task. (R. 1251). Some of the men loaded by 10:30 or 11 o'clock and walked out. (R. 1279).

In 1936 the Company put into effect a so-called incentive plan. The men rebelled at the introduction of this plan. A strike resulted. The men lost the strike and went back to work. The incentive plan went into effect.

The incentive plan was, in effect, nothing more than a stretch-out. The number of men on a mining crew was cut down from 9 to 7.

It is difficult to describe the incentive plan. The man who figured it out for the Company was one Joseph Halfpenny, who styled himself a man of Kent, and gave rather curious testimony, beginning at page 1787 and running through page 1824 of Volume 3 of the Record.

At page 1790 we find:

> "A. All right. I was asked to approve a straight tonnage rate. I looked into it and found on a fair day's work that tonnage rate would be 22½ cents a ton. **That means if a man or crew mined ten tons they would get paid for ten tons, and if they mined a hundred and fifty tons they would get paid for 150 tons.**
>
> **From an industrial engineering standpoint, that was not sound,** so I recommended, and it was adopted, that an incentive plan be substituted for the tonnage basis, and instead of paying at the fair day's production of 150 tons per crew 22½ cents per ton, the incentive plan paid at 134—I should have said 168 net tons. It was put in on a gross ton basis. I will think back in net tons now. Instead of paying 22½ cents per net ton, we paid 28 cents per ton for 134 net tons, which was at 80 per cent of the standard."
>
> * * * * * *
>
> "Q. How did you find out that was the standard.
>
> "A. **That was developed from the studies made which showed about one-half of the eight**

hours work at the face was productive time. As a a matter of fact, the exact figure, I think, was about 4.4 hours. The rest of the time, 3.6 hours, was taken up with delays, with unnecessary things that were done, with overlapping and so forth. There was a nine-man crew. The head miner was boss and didn't work and bossed the crew.

"Q. That was under the old system?

"A. Yes. There were two drill helpers when one was more than sufficient, so automatically the crew necessary was indicated to be seven men.

"At the rate of production by the nine-man crew per man per hour, translated into the 7-man crew, together with the additional unproductive time which was made available for production, the standard began at 168 net tons,—just a simple arithmetical calculation.

"When the incentive plan—I said we paid 28 cents per net ton instead of 22½ cents with the result that with 100 per cent performance of ore production, or 168 tons, the crew got 10 per cent over their occupational rate, which was an evaluated rate for that job for eight hours work on that kind of work.

"When the—from the 100 per cent performance to 120 per cent performance, we paid 25 cents.

"The result was that at 120 per cent performance the curves cross the straight tonnage curve and the percentage curve, and we paid exactly the same in the incentive plan as the tonnage basis of 22½ cents per ton. Up until that time we were paying more on the incentive plan than we would be on a straight tonnage basis, but from then on the company would get their innings, and after that time it ran below 20 cents as you got to 140 per cent and so on efficiency."

However you analyze the incentive plan, one thing becomes clear, viz: the mines could not be on an hour basis if the quantity of production entered into the rate of pay.

CONTRACTUAL RELATIONS

There is no long history of collective bargaining between the Tennessee Company and any independent union. There was no independent union at the Tennessee Company mines until 1933. The Company refused to recognize that union until October 6, 1938.

The minutes of a meeting on October 19, 1933, between the Company and union representatives, show that the Union suggested that the Company recognize the three locals as labor organizations. The Company made this reply:

> "We are aware of the existence of these various groups, in which may be found some of the employees of this Company; in the same spirit, we are aware of the existence of church groups of various denominations, of fraternal orders of different kinds and of other societies formed for a variety of purposes. Every citizen of the country has a right to belong to any of these, or not to belong as he may elect. It is not our particular concern whether he joins any such group or refrains from joining, so long as his work is performed in an efficient and capable manner."

On April 18, 1934, Union representatives again endeavored to obtain recognition from the company. The memorandum in evidence as T. C. I. Exhibit No. 7, page 3599, reveals the attitude of the company. We quote in part as follows:

> "Items 1 and 2 ask that the Union be recognized by the Company. If it is intended that you are advising us of the existence of your Union, or any Union, we answer that we are aware of the existence of many Unions, among them being yours. If by this it is intended that we agree to deal with your Union, or any Union as such, we must answer that we will not do so."

On June 13, 1935 the company reiterated its former statement of policy.

Appellant argues that the union was strong enough to shut down the operations of the company on May 4, 1934. The men did go on strike on May 4, 1934. The strike continued until July 2nd or July 4th. They then operated for three or four days and shut down due to lack of orders for materials. At the time of the strike the company had a stock pile of approximately 700,000 tons. (R. 872).

The strike was not settled by any contract between the company and the union. The company did not even condescend to address a letter to the union. Their method of dealing with this new union was to address a letter to the Secretary of Labor. This letter is shown at page 3604 of Volume 5 of the Record. In addition to the name of the addressee, another significant part of the letter is the opening paragraph, which reads:

> "This is to confirm the understanding reached today at the conference between representatives of

the employees of our ore mines and the management."

When the period covered by the letter of understanding to the Secretary of Labor expired in 1935, there was just a continuation of the previous letter. (Record page 881). The union presented a form of contract but the company would not enter into a contract with them. In 1936 the company informed the employees that they were going to put into effect the so-called incentive plan. The men were so strongly opposed to this new plan that they went on strike, but their strike was broken. When it was broken, the company did not enter into a contract with the men.

Whereas in 1934 the company would only condescend to address the Secretary of Labor, in 1936 they used the device of letting the Governor of Alabama issue a statement to the press giving that understanding. By it, the incentive plan was to be given a trial of four months.

It is also significant that the written contract of October 6, 1938 was in part brought about by formal charges preferred against the company before the National Labor Relations Board.

The tactics of the company had succeeded in practically destroying the efforts of the men to maintain the union up until the Fair Labor Standards Act was passed.

"A. It continued to decrease.

"Q. About how many members, prior to this strike in 1936, did you normally have in attendance at a meeting of your local; that was before the 1936 strike?

* * * * * *

"A. At times we would have one hundred and sometimes it would be up around three hundred or four hundred.

"Q. Now, then, in the year 1936, after the strike was broken, what did the attendance, the average attendance, after the strike was broken amount to?

"A. Well, right after the strike we would sometimes have one hundred members, and then on as we continued on why it dropped down to as low as twenty-five members.

"Q. Was that in '36 it did that?

"A. Well, it goes on into '37.

"Q. In '37. What was it during '37, was the average attendance at the union meetings of your local?

"A. Well, the average attendance would be around ten.

"Q. Around ten. And now, then, after the Fair Labor Standards Act went into effect in 1938 did the membership attendance at your local start increasing, or did it continue as it was in '37?

"A. After the settlement of the undesirables our membership started increasing in '38. (R. 2412, 2413).

STATEMENT OF THE CASE AS TO THE SLOSS COMPANY

The methods of operation in all ore mines of the different companies are fundamentally the same.

Some differences, however, are to be noted between the Sloss operations and the Tennessee Company operations. For example, the Sloss Company did not use brass checks with which the men checked in at the beginning of the shift. A Sloss Company man checked in at the mouth of the mine by reporting to a supervisor, "I am here" or words to that effect. (R. 1798).

The Sloss Company did not use ore cars for mantrips. They had specially constructed cars and up to May 1, 1941 hauled six cars of ten men per car on each mantrip. After May 1st they hauled eight cars. The hauling of the men had to wait upon the hauling of the ore at the end of the shift. (R. 2950, 2951).

The Company kept a man at the top to supervise the loading of the men onto the mantrips and there was a man at the hoodlum or man loading station for the same purpose. (R. 2864). This man determined whether or not they had a full load. (R. 2883). The Company had full supervision over the mantrips. (R. 4550).

The men were not required to get on any particular mantrip but, "if a man didn't catch the last trip they didn't run a special trip. The foreman would tell him to go home and come back the next day and he would miss a shift." (R. 2930).

The underground employees at Sloss took with them into the mine from time to time the following articles: drill needles or some small repair part for a drill (R. 1309); oil (R. 1314 and 1424); wedges (R. 1315 and 1426); bits for drills (R. 1439); picks, shovels, hammers, shovel handles, pick handles and hammer handles (R. 2804 and 2805); Stillson wrenches which they bought outside (R. 2806); dynamite (R. 2808); dynamite caps (R. 2810); steel (R. 2811); drill, air hose, water hose, shovels, picks and hammers (R. 2844); bits and fuses, dynamite caps, and things of the kind they had to work with during the day (R. 2960).

The lighting system at one of the Sloss mines was with carbide lamps and at the other mine was with electric battery lamps. The batteries weighed from six to eight pounds. The company made a charge for the use of the batteries. Each man who went down into the mine had to carry his own lamp.

There was no lunch period at the Sloss Company mines. (R. 2868, 2869).

The Sloss mines were not run on a time basis. There was no method of keeping time. (R. 2826, 1513, 1378). At no time prior to May 1, 1941 did a Sloss employee report at the end of a shift that he had finished that shift.

HOURS UNDERGROUND

Up to 1934 the men were working at least ten hours a day, and in 1934 came down to nine hours. (R. 2902). On the ten hour system the men entered the mine the same time they did on the other system and on the so-called eight hour system they shot at 3:10 in the afternoon; whereas on the so-called ten hour system, they shot at 4 o'clock. (R. 2903). The men went in at 6 o'clock and got out at from 3:30 to 4 o'clock (R. 2916-17). This system continued until they went on the portal-to-portal basis. (R. 2917, 2962).

METHODS OF PAYMENT

The Sloss Company never paid its mine workers on a time basis before May 1, 1941. The contract system was in effect for a time and then the tonnage system. (R. 1380-1381, 1517).

COLLECTIVE BARGAINING!

The first contract ever signed by the Sloss Company with the union as such was in 1939. (R. 3804). During all the prior years of its operations the Sloss Company refused to deal with the union as an organization. The union proposed contracts in 1934 (R. 3751), again in 1935 (R. 3755), again in 1936 (R. 3763). No action was taken on these proposals.

On July 21, 1936 the company did condescend to address a communication, not to the union, but to the employees of Sloss Red Ore mines. In 1937 the company still refused to recognize the union as such but did sign an agreement with employee representatives. (R. 3782-3785). The same thing happened in September 1938 (R. 3796). In that year the union submitted a proposed contract which the company would not sign. (R. 3796-3803).

On the expiration of the contract which was entered into in 1939, which first recognized the union, the union submitted a contract which contained the specific provision that working time should mean 8 hours including the time spent in entering and leaving the mine.

The attitude of the company toward the union is clearly revealed in the settlement of the strike in 1934. When that strike was settled as a result of the efforts of the representative of the Secretary of Labor, the company would not even address a communication to the union. It followed the same method used by all the other companies and addressed a letter of understanding to Mr. Richardson or the Secretary of Labor. (R. 3861). In 1935 the letter of understanding was continued in effect for one year.

It is absurd to argue in the light of this record, that there was any long history of collective bargaining between the union and the company. It is to be noted that no contract was ever signed with an independent union by either the Tennessee Company or the Sloss Company until after the enactment of the Fair Labor Standards Act.

STATEMENT OF FACTS AS TO THE REPUBLIC COMPANY

At the Raimund mine of the Republic Company the men begin going underground at 5:30 in the morning and come out as late as 4:30 in the afternoon. At the number 2 mine the distance from the mouth of the mine to the face of the seam is 12,675 feet. The distance is so great that the company uses auxiliary conveyances to help the men coming out of the mine. The men ride about 2300 feet on this auxiliary mantrip. However, the men sometimes have had to wait as high as 35 or 40 minutes before the mine cars had finished their run and could be used to haul them. Their walking distance underground is approximately two miles.

The ore bed at the Republic Mine seems to roll and pitch more than it does in the mines of the other companies. At one place the men had to walk the grade was so steep that they had to pull themselves up by cable. Later the company put 107 steps there with a rise of about 8 inches to the step, and at least 100 men on each shift had to climb those steps. There is another place in the mine where the men had to climb 32 steps.

On their way in men picked up oil, various small tools; "he might pick up a wrench or wedge; he picks up his detachable bits at the steel shop as he goes in, (1862) shovels, and picks and rock hammers, (3032) drills, wedges, hangers and drill bits" (3033).

The employees of Republic use electric lights, battery lights. The Company rents them two types of lamps, one at six cents a day and one at eight cents a day. The lamp and battery weigh about seven pounds. The men wear a belt with a strap on it, and a hook on the back of the battery that the strap goes through, and they buckle them around them (3024).

The manskip at Republic is different from the manskip at any other mine. The slope of the mine is so steep that means must be afforded to keep the men from being crushed in the skip. The skip is 12 feet long, 4½ feet wide and 4½ feet deep, inside dimensions. Bars made out of pipe run across the skip to form four separate compartments. These bars are necessary to keep the men from being crushed by other men as the cars go down steep slopes which vary from 25 to 50 degrees. The pressure was so great that a Mr. Eady got a couple of his ribs broken. (R. 3029). The slope is so steep that the floor of the skip has lattice work on it so that the floor becomes a ladder onto which the men can hold when going down places 50 to 52½ degrees. (R. 1921-1923).

On May 1, 1941 when portal-to-portal went into effect, the company started using a skip with a top on it so that the men would not have their heads crushed.

In this case, as in the Tennessee Company case, the danger of riding in the skips was forcibly brought home to the court by a man getting injured in the skip while the trial was in progress. (R. 1917).

The Company supervises the loading of the skips and counts the men in and out. No distinction is made between service men and production men as to this control. (R. 3081, 3088, 3030, 3091).

The Republic Company paid its drill crews strictly on a tonnage basis. (R. 3040, 3072-3073).

CONTRACTUAL RELATIONS

The Republic Company had never made a contract with the International Union of Mine, Mill & Smelter Workers up to the trial in the court below. (R. 1899).

No bargaining has ever been effective with the Republic Company. While it would not deal with the independent union, it fostered a company union, as did the Tennessee Company. The Smelter's Union filed charges against the Republic Company before the National Labor Relations Board "Charging Failure to Bargain Collectively, and Acts of Discrimination in Reference to Discharges or Refusal to Re-employ Certain Employees and the Domination of an Alleged Company Union." (R. 4593).

When the Smelter's Union was organized in 1933 and addressed a letter to the Republic Company, that company did not deign to answer the letter. When the strike was composed in 1934 it followed the same haughty scheme as the other companies and addressed a letter of understanding to the Secretary of Labor.

SUMMARY OF THE ARGUMENT

1. Section 7 of the Fair Labor Standards Act of 1938 provides that no employer shall employ any of his employees, who is engaged in commerce or in the production of goods for commerce, for a work week longer than the stated number of hours, unless such employee receives compensation for his employment in excess of the stated hours at a rate not less than one and one-half times the regular rate at which he is employed. Employ is defined, "To include to suffer or permit to work."

The statutory requirement is clear, simple and absolute. If the employee works more than the stated hours he must be paid for the excess time at rate and one half. No opening is left whereby the employer, through artifice, stratagem, clever devices or power over his employees may avoid the required payment.

2. The underground employees of the petitioners were at work from the time they were required to report and did report for work at the portal of the mine until they returned to the portal of the mine at the end of the shift, less the regular lunch period when they were relieved of all duties. This working time comprised the work-week. At the time the employees reported at the portal they had surrendered their will to the will of the master. They were then and there subject to his direction, supervision and control. They were expending energy in his behalf to accomplish his purposes in mining ore. They were not engaged in recreation or pleasure. The things that they were doing were absolutely necessary to the production of ore. Those things required effort and alertness. They subjected the workmen to fatigue, unpleasant conditions and serious dangers.

3. The underground employees have not been paid for the hours they worked in excess of the statutory limits. They have not been paid on a face to face basis. A tonnage system, a task system or a stretch-out (incentive plan) has determined their pay.

4. There has been no long history of bona fide collective bargaining in the iron ore mines of the petitioners. Republic had never made any contract whatsoever up to the time of the trial. The Tennessee Company and Sloss made no contract with the Smelter's

Union until after the enactment of the Fair Labor Standards Act.

Contracts, whether made before or after the passage of the Fair Labor Standards Act, cannot take the transactions "from the reach of dominant constitutional power".

The record in this case gives a graphic picture of futile efforts by weak unions to bargain collectively with powerful employers. Those efforts were treated with high disdain. The unions were crippled, almost destroyed. The leaders became "undesirables." It took an exercise of dominant constitutional power to get recognition of the independent union by two of the petitioners prior to the trial below. It took a judicial interpretation of that exercise to get union recognition by the three petitioners.

5. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.

If express agreements voluntarily made, are ineffective to deprive an employee of the benefits of the Fair Labor Standards Act then *a fortiori* a custom against which the employee rebels cannot deprive him of those benefits.

6. The intention of Congress is declared in Section 2 of the Fair Labor Standards Act. The declaration reads:

> "The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum

standard of living necessary for health, efficiency, and general wellbeing of workers."

Section b then provides:

> "It is hereby declared to be the policy of sections 201-219 of this title, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power."

The method used by Congress in the Act was the establishment of minimum wages and maximum hours. It is just as important to pay a man for all the time he works as it is to pay him minimum wages. No condition can be more detrimental to labor than for the laborers to do work and get no pay for that work.

7. Whether or not a man is at work is a question of fact. When a question of fact is decided by a trial court without a jury, that decision has the effect of a jury verdict. The Acts of Congress, the Federal Rules of Civil Procedure and the uniform course of judicial history establish this principle.

ARGUMENT

This case concerns underground employees. It does not concern surface workers. The underground employees are not coal miners. They mine iron ore. We did not try out in the Courts below the claims and counter claims of the United Mine Workers of America and the coal operators. We do not see how we can try the issues between coal miners and coal operators on a record protraying the work, the environment and the detailed conditions in the iron mining industry. The judicial process applies to specific cases between designated parties. The trial judge hears the evidence offered by those parties and makes his findings thereon. The controversy thus delimited is the one which goes up for review by the appellate court under our American system of jurisprudence.

The question in this case is extremely simple. Were the underground ore mining employees of the appellant at work more than the maximum number of hours specified in the Fair Labor Standards Act? If they worked in excess of the hours specified in the act they have not been paid as required by the act. Nobody claims that the employees have been paid for all of the time and energies they expended between checking in and checking out as employees of the appellant.

The case, therefore, hinges on a matter of simple fact.

EMPLOYEES WERE AT WORK FROM PORTAL TO PORTAL

The Fair Labor Standards Act does not give a definition of work. We respectfully submit that no definition of work by the Congress was necessary. The word has had a long history in the language. The average man understands what the word means. Few people would have any difficulty in deciding whether they were at work or not at work at a particular time.

It should be borne in mind that Congress, in enacting the Fair Labor Standards Act, was legislating for the entire United States and for all industries engaged in interstate commerce or in the production of goods for interstate commerce. It would have been impossible, in our judgment, to enact a law giving specific definitions for each separate industry in the multitudinous industries of our national economy. No simpler word could have been found than the word "work". When a thing has been reduced to its elements, the process of analysis is exhausted.

Webster gives the primary meaning of the verb in the following language:

> "To exert one's self physically or mentally for a purpose, esp., in common speech, to exert one's self thus in doing something undertaken chiefly for gain, for improvement in one's material, intellectual, or physical condition, or under compulsion of any kind, as distinguished from something undertaken primarily for pleasure, sport or immediate gratification, or as merely incidental to other activities (as a disagreeable walk involved in going to see a friend, or the packing of a trunk for a pleasure trip); as, he works harder at his play than at his work; he has devoted his time to polo, mountain climbing, and hunting, and he has never really worked in his life."

The Supreme Court of Louisiana in *State* v. *Rose,* 125 La. 462 (51 Sou. Rep. 496), uses this language:

> "The word "work" has a much more comprehensive meaning than the term "labor", and has been thus defined:

"To exert one's self for a purpose, to put forth effort for the attainment of an object; to be engaged in the performance of a task, duty or the like." See Webster's Int. Dict. verbo.

"The term as thus defined covers all forms of physical or mental exertions, or both combined, for the attainment of some object other than recreation or amusement."

Other definitions of work are to be found in *Reese* v. *Sanitary District of Chicago*, 272 Ill. App. 315; *Kary* v. *North Dakota Compensation Bureau*, 67 N. D. 334; *Republic Tool and Manufacturing Co.* vs. *Lenarz*, 17 Ohio App. 500, 501, 502.

The essential facts in this case are not in dispute. The defendants checked in around 6 o'clock in the morning. The timetaker hung up their checks. He was stationed at the tally house. While the men were checking in and before they entered the skip, they received orders and instructions from their superiors. At all times from the check in until the check out, they were under the supervision of their superiors in the employment of the Tennessee company. They were under the rules of the company and subject to the discipline of the company. The representatives of the company counted them into the skips on the way down, and counted them out of the hoodlums into the skips on their way out.

Immediately upon leaving the bath house at the beginning of a shift, the men busied themselves about their occupations. Immediately they began to render service to the company. The Fair Labor Standards Act of 1938 does not require that the men be engaged in productive work. It applies to work, whether that work is productive, administrative, preliminary, maintenance or salvage.

For illustration, let us assume that the Tennessee company decided to install an electric lighting system throughout the length and depth of its mines. No man would question the fact that men who were engaged in stringing the wire, putting in the light connections and inserting the electric light bulbs, were engaged in work. In the instant case, the Tennessee company does not use electric lighting throughout the length and depth of its mines. Yet a lighting system is absolutely necessary. No man can work in the bowels of the earth unless he has a light. From the time the men check in at the tally house and get the one pound can of carbide, they are engaged in furnishing a lighting system for their employer. Instead of stringing wire which will carry a current manufactured elsewhere, they carry along with them the chemical ingredients which will produce a light that accompanies them wherever they go. To be sure, it is not arduous labor to wear a lamp on one's head and carry a one pound can on one's belt, however, work does not have to be arduous in order to be compensable. Some forms of work are pleasant.

Would any reasonable man contend that the maximum hours of labor prescribed in the Act would only apply to arduous work. If so, how arduous? Who would determine whether work was arduous or not? Chopping wood is a pleasant exercise to an expert axeman, and yet it is back breaking labor to the average man.

The defendants carried various tools, materials and supplies from the mouth of the mine, or the man unloading station, to the face of the ore. We have already listed the articles they carried. Each and every tool and piece of equipment was carried for the sole purpose of furthering the business of the Tennessee company. No single piece of equipment was carried for the individual pleasure of the bearer. Every piece of equipment and all supplies were necessary to the mining of iron ore. It is true the men carried more down into the mine than they brought out of the mine. They couldn't bring out those things that were consumed. They brought out bars, hangers, oil cans and jackhammer steel.

The ride in the skips covered only a part of their journey from the portal to the face. The skips went down to the man unloading station at the foot of the slope. The construction of the skips, the condition thereof, the overcrowding of the men, the crouching and cramped positions the men were compelled to assume, embracing one another's bodies, bracing themselves to avoid being crushed, holding their heads bowed in order to avoid the rollers and low places in the roof, robbed the ride in the skip of every element of pleasure, unless one considers danger as an element of pleasure.

Then, when the men got off at the man unloading station, those who were carrying steel had to guard themselves against electrocution, all had to guard themselves against the slippery places, the muck covered places and the passing cars in the mine. All were subjected to the ever-present danger of falling slate or rock. Some of them walked a distance of 4,000 feet (R. 1077); 4,900 feet, 6050 feet, (R. 1663); 3,000 feet (R. 2403); about a mile (R. 2696); or others "around twenty minutes peart walk" (R. 2747). This journey was in humid and malodorous air. None but a fool would call it a pleasure promenade.

The witness, Halfpenny, testified that he evaluated the pay scale in the incentive plan by taking into account certain factors. Witness this paragraph at page 1793 of the Record:

> "Then there is a question of the surroundings, the hazards of the job, the conditions of the job, whether it is wet or dry, or dusty or hot or cold, or whatever it may be, and then there is the physical effort required, and then on top of that, there is an element known as fatigue, which is a combination of mental effort, physical effort and the amount of work which is done."

Every single element which this company witness considered in figuring the compensation of the men, is found in the journey from the portal to the face and back again. Yet the company would excuse itself from complying with an Act of Congress because it had disregarded the very element on which they calculated the pay they would give the men.

WORK INCLUDES TRAVEL TIME

Travel time has been held to be work time by the District Court in the case of Sunshine Mining Co. vs. Carver, 41 F. Supp. 60. At page 66 we find this language:

> "First, should the time spent in travel from the portal of the mine and descending to the usual place of work and returning to the portal be included in "hours worked"? The answer under the evidence should be in the affirmative for the place designated at the portal of the mine on its premises is the place where the workmen are to appear at a specified time.

The workman offers himself there at a specified time and is under the control and direction of plaintiff who agrees to designate the place of work and the manner provided by it and who created the situation necessary in operating its mine."

The Supreme Court of Montana construed the Montana eight hour law as calling for a "portal to portal" basis of payment. See *Butte Miners' Union No. 1* v. *Anaconda Copper Min. Co.,* 112 Mont. 418, (118 P. (2nd) 148).

It has also been held that travel time was a part of the work time in the case of *Hackworth* v. *Caddo River Lbr. Co.,* 4 Wage Hour Rept. 458 (W. D. Ark. 1941). In the case of *Sirmon v. Cron & Gracey Drilling Coorporation,* 44 F. Supp. 29, the District Court held that the employee was entitled to pay for travel time "where there are special circumstances creating a situation beyond his control, and which is for the convenience or interest of his employer."

Preliminary activities came before the Court in the case of *Davies* v. *City of Seattle,* 67 Wash. 532, 534; 121 Pac. 987. Teamsters spent about an hour a day in going to and returning from their job. They greased their wagons, hitched up their teams and collected tools when that was necessary. The Supreme Court of Washington held that such activities were included within the prohibition of the law. The Court says:

> *"there could not be two opinions as to whether the respondents were working more than eight hours a day. If the excess time put in by respondents was not work, then the inquiry is, what is work and where is the dividing line? (Italics supplied)."*

In Williams v. Atlantic Coast Line R. Co. No. 26 E. D. N. C., decided February 17, 1940, Judge Meekins held that maintenance-of-way employees were entitled to pay for the time spent in travelling from the place where they reported for work to the place on the right-of-way to be repaired.

Section 2 of the Federal Hours of Service Act (see 2939, 34 Stat. 1415, 45 U.S.C. Section 61) provides in part:

> "it shall be unlawful for any common carrier * * * to require or permit any employee * * * to be or remain on duty for a longer period than sixteen consecutive hours * * * *Provided,* That no operator, train dispatcher or other employee * * * shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four hour period * * *"

The Act was construed in *Missouri, K & T. Ry. Co.* vs. *United States,* 231 U.S. 112, 119. The question was whether the employees had been on continuous duty. Mr. Justice Holmes, writing for the Court, said:

> "One of the delays was while the engine was sent off for water and repairs. In the meantime the men were waiting, doing nothing. It is argued that they were not on duty during this period and if it be deducted, they were not kept more than sixteen hours. *But they were under orders, liable to be called upon at any moment, and not at liberty to go away. They were none the less on duty when inactive. Their duty was to stand and wait.* (*Italics supplied.*)"

Men were held to be on duty while rendering preliminary services in the case of *U. S.* v, *Denver & R. G. R. R. Co.,* 197 Fed. 629. The opinion contains this language:

> "Labor does not cease to be such because not paid for, nor does duty cease to exist because performed without compensation in connection with duty for which there was compensation."

See also, United States v. Illinois Cent. R. R. Co., 180 Fed. 630 (N. D. Iowa); *San Pedro, L. A. & S. L. R. R. Co.* v. *United States,* 213 Fed. 326, 329 (C. C. A. 8).

In the case of *United States* v. *Chicago, M. & P. S. Ry. Co.,* 195 Fed. 783 (W. D. Wash.), an hours of service case, the Court held at page 785:

> "An employee is on duty when he is at his post in obedience to rules or requirements of his superior, and ready and willing to work whether actually at work or waiting for orders or for the removal of hindrances from any cause."

Other cases holding that men are on duty when they become subject to the orders of the employer are as follows: *United States* v. *St. Louis S. W. Ry. Co. of Texas,* 189 Fed. 954 (W. D. Tex.), affirmed 199 Fed. 990 (C. C. A. 5); *Minneapolis & St. L. R. R. Co.* v. *United States,* 245 Fed. 60, 64 (C.C.A. 8), certiorari denied 245 U. S. 666; *Chicago, R. I. & P. Ry. Co.* v. *United States,* 253 Fed. 555 (C.C.A. 8); *United States* v. *Pitcairn,* 23 F. Supp. 242 (E. D. Mo.)

The argument of petitioners is based upon the assumption that work must be productive work or effective work.

What is productive work? Is maintenance productive work? If it isn't then none of the service employees, although they had been paid by the Tennessee Company for years, were ever at work for the Tennessee company. Where does production begin? Does it begin when the drill begins to bite into the ore, or when the dynamite charge is packed in the drill hole, or does it begin only when the explosive force of the dynamite expels the ore from its bed? Isn't it as plain as day that every step and every movement from the time the men leave the tally house until the time they return, is directed toward the production of ore?

WHAT IS EFFECTIVE WORK?

Effective to what purpose? Every step and every movement, every ounce of energy expended by these defendants from the time they left the tally house until they returned, had an effective on the production of ore. Even their return trip was effective because it enabled the human bodies to subsist and return again. If they had remained in the mine they would have perished and new men would have had to take their places. Their outward journey was, therefore, effective in keeping down a labor turnover. It was effective in the same sense that the care and preservation of equipment is effective work. It is just as important to preserve the man as it is the machine.

The decisions under the Fair Labor Standards Act have not required that employees be engaged in productive activities. See *Fleming* v. *North Georgia Mfg. Co.,* 33 F. Supp. 1005 (N.D. Ga.); *Reck v. Zarnocay,* 33 N. Y. S. (2nd) 582 (Sup. Ct. N. Y., N. Y. Co. 1941); *Travis* v. *Ray,* 41 F. Supp. 6; *Walling* v. *Sun Pub. Co.,* 47 F. Supp. 180, 191; *Walling* v. *Dunbar Transfer and Storage, Inc.,* No. 464, decided on January 22, 1943 by the Western District of Tennessee.

Section 3J of the Fair Labor Standards Act contains this language:

> "an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State."

Counsel for the Tennessee Company seem to fear that an affirmance of the opinion of the Court below will disrupt American business. Two considerations show that this fear is not justified. First, all the petitioners have been operating on a portal to portal basis since May 1, 1941. Second, this case deals with underground employees. Travel time underground and travel time on the surface are two very different things. The mining laws of many states reveal a general consciousness of the dangers to underground mine workers. The difference between such workers and surface workers is recognized in the opinion in *Holden* v. *Hardy,* 169 U.S. 366, 396.

We, therefore, are unable to foresee any catastrophe. It is our opinion that the District Court was correct in holding that the work time began when the men checked in at the tally house. The Circuit Court of Appeals eliminated the period from the check-in until the arrival at the portal. Evidently, the Circuit Court of Appeals had in mind the fundamental difference between underground travel and surface travel. We did not complain of this ruling of the Circuit Court of Appeals because the time involved was inconsequential. However, we believe that the work begins when the employee checks in, surrenders his own will and becomes subject to the direction, supervision and control of the employer. Such a rule would not disrupt American business. The time involved is of no great moment. If there are exceptional cases in surface work where men check in and walk great distances, those cases could easily be remedied by letting the men check in at a point closer to their machines. In any event, a surface worker cannot successfully maintain a claim that travel on the surface requires the arduous effort or subjects the traveller to the many dangers incident to travel underground.

NO FACE TO FACE METHOD OF PAYMENT

The true facts with reference to the basis of compensation have been accurately set forth in the findings of fact of the District Judge. Paragraphs 8 to 12 of those findings on pages 558 and 559 of the Record give such a clear picture that they need little elaboration. At the Tennessee Company a man's time sheet would show eight hours if he stayed at the face only six hours. No accurate record of time at the working face was kept. His time was taken and he was given credit for an eight hour shift before the time had passed. The time taker would make up his time abstract early in the day. An illustration of the small part time played in the general scheme is found in the fact that there was only a fifty minute difference between the shooting time on a ten hour day and on an eight hour day. Yet the men went into the mine at the same time.

Finally, let us consider the incentive plan. This peculiar plan was predicated upon this statement:

> "If a man or crew mined 10 tons they would get paid for 10 tons, and if they mined 150 tons they would get paid for 150 tons. From an industrial engineering standpoint, that was not sound."

That statement is one of the most peculiar statements I ever heard in my life. How could it be unsound for a man to get paid for what he did? It is clear that the incentive plan was designed to prevent a diligent man from getting full pay for what he produced. The company, under this plan, set each man a task and gave him a guaranteed wage. If he produced more than that task he got additional pay, but the more he produced the less his rate of pay became. In other words, all the men were on a tonnage basis under the incentive plan, but they could not get the full benefit of their additional tonnage under this plan. The incentive plan was in effect at all times from October 24, 1938 to May 1, 1941.

We respectfully submit, that the evidence not only abundantly supports the findings of the District Judge, but compels such findings.

COLLECTIVE BARGAINING

It is difficult for us to understand how the petitioners can base any claim upon a theory of collective bargaining over any long period of time. They have fought the unions since the men first attempted to organize an independent union. We cannot describe the attitude of the Tennessee Company any better than they did for themselves in answer to the suggestion that the company recognize the union. We refer the Court to the quotation at page 3591 of the Record. In 1934 the company stated, "If by this it is intended that we agree to deal with your union, or any union as such, we must answer that we will not do so." (R.3599).

How can any reasonable man claim that he was engaged in collective bargaining with employees when he wouldn't even address a letter to the employees. Their scheme of addressing communications to the Secretary of Labor shows how far the petitioners were willing to go before they would recognize the existence of the unions. Union representatives were so odious in the sight of the petitioners that they called them representatives of employees.

Each time the men tried to accomplish something by a strike they were defeated. The strike ~~in 1934 has a pe~~culiar element about it. It began on May 4th and ended about July 4th. The company operated for 3 or 4 days then shut down for lack of orders. Evidently the strike was exactly in line with the desires of the company. It had a stock pile of approximately 700,000 tons at the time. (R. 872).

During 1936 one of the locals had about 10 working members and in 1937 about 5. (R. 2553). The leaders of the unions were designated as undesirables.

If there had been any genuine collective bargaining, why was it that no contract was ever signed with the union prior to the enactment of the Fair Labor Standards Act?

NO CONTRACT CAN DEFEAT THE WILL OF CONGRESS

Mr. Chief Justice Hughes expressed the basic rule in the case of *Norman* v. *B. & O. R. Co.* 294 U. S. 240 at 307:

> "Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them. See *Hudson Water Co.* v. *McCarter,* 209 U. S. 349, 357."

In the recent case of *Overnight Motor Transportation Co., Inc.* v. *Missel,* 316 U. S. 572, Mr. Justice Reed, speaking for the Court, used this language:

> "If overtime pay may have this effect upon commerce, private contracts made before or after the passage of legislation regulating overtime cannot take the overtime transactions 'from the reach of dominant constitutional power.' "

Petitioners' complain of the overtime compensation provision of the law as if it were a great injustice to them. Such complaints were made in the Missel case. This Court answered the complaint in these words:

> "Perplexing as petitioner's problem may have been, the difficulty does not warrant shifting the burden to the employee. The wages were specified for him by the statute, and he was no more at fault than the employer."

The Circuit Court of Appeals for the 8th Circuit in the case of *Johnson* v. *Dierks Lumber & Coal Co.,* 130 Fed. 2nd 115, uses this powerful language:

> "We do not think the act means that an employer may claim all of an employee's time and compensate

> him for only a part of it. An agreement to pay for only a part of the hours which an employee is required to serve is invalid. The purposes of Congress in enacting the statute cannot be thus frustrated. See Missouri, K. & T. Ry. Co. v. United States, 231 U. S. 112, 119, 34 S. Ct, 26, 58 L. Ed. 144; Chicago, R. I. & P. Ry. Co. v. United States, 8 Cir., 253 F. 555; Travis v. Ray, D. C. Ky., 41 F. Supp. 6, 8; Northern Pacific Ry. Co. v. United States, 9 Cir., 220 F. 108, 110; United States v. Southern Pac. Co., 9 Cir., 245 F. 722, 725."

The public policy declared by the Act is not to be thwarted by any private agreement. No employer can take the benefit of contracts, the effect of which would be to infringe the rights guaranteed by the Fair Labor Standards Act. This principle has been clearly enunciated by this Court in a case arising under the National Labor Relations Act. See *National Licorice Co.* v. *N.L.R.B.*, 309 U.S. 350, 364-367.

Counsel suggested that travel time should be within the permissable area for collective bargaining. Congress never intended that private parties could make arrangements whereby the maximum hours provision of the Act could be avoided. The language of Congress is too clear to require any aids to interpretation. If the employee works more than 40 hours he must be paid at the statutory rate.

If a man is at work, no agreement to call that work something else will prevent it from being work. The essential nature of his activities determine whether he is at work. The name is not important. If the parties, by private agreement, can say that activities which are really work are not work, what will the limit be? If they can agree that travel time is not work, can't they agree that the first two hours of activity at the face are warming-up exercises or practice and not work? Once the test is placed in the power of the parties, the will of Congress is nullified. The effort of the Congress to carry out the purpose described in the preamble of the Act will become lost in a maze of private agreements. Everywhere in the United States employers will be using pressure to make agreements defining work as something else. Surely Congress never intended that what it said could be brushed aside and the rule be whatever the individual contracting parties said.

CONSTRUCTION OF THE ACT

It has been uniformly held that the Fair Labor Standards Act should be liberally construed. See *Lorenzetti* v. *American Trust Co.,* 45 F. Supp. 128, 132; *Fleming* v. *American Trust Co.*, 42 F. Supp. 511; *Bowie* v. *Gonzalez,* 117 F. 2nd 11.

Where the language of a statute is clear and certain and there is no ambiguity, there is no occasion for the use of extrinsic aids to its construction. See *Caminetti* v. *United States,* 242 U.S. 470, 480; *MacKenzie* v. *Hare,* 239 U. S. 299, 308.

The province of construction by means of custom or other extrinsic circumstances, thus "lies wholly within the domain of ambiguity." *Hamilton* v. *Rathbone,* 175 U.S. 414, 421, and where the statute is free of ambiguity, it cannot be construed to permit a practice even where it has grown up in good faith long before the statute was enacted. *Louisville & Nashville Railroad Co.*, v. *U. S.*, 282 U.S. 740, 759.

TRIAL BY JUDGE WITHOUT A JURY

The findings of a trial judge have the same weight as the verdict of a jury. Mr. Justice Field has stated that where a case is tried by the Court without a jury, its findings upon questions of fact are conclusive. See *Stanley* v. *Supervisors of Albany,* 121 U.S. 535 at 547. It has also been held that alleged errors in the findings of fact are not subject to revision, "if there was any evidence upon which such findings could be made." See *Hathaway* v. *Cambridge National Bank,* 134 U.S. 494, 498; *Dooley* v. *Pease,* 180 U. S. 126, 131; *Brooks* v. *Willcuts,* 78 Fed. 2nd. 270; *Gideon-Anderson L. Co.* vs. *St. Louis Southwestern Ry. Co.,* 88 F. 2nd 232; *Union Bleachery* v. *United States,* 79 F. 2nd 549 at 550.

Rule 52 of the Rules of Civil Procedure provides in part:

> "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

Section 773 of Title 28, Judicial Code, U.S.C.A. expressly provides that the findings of the Court upon the facts shall have the same effect as the verdict of a jury.

THE COAL SITUATION

Counsel for the Tennessee Company have argued the case of the coal operators to such an extent that we feel compelled to say a word on that subject.

The War Labor Board has recognized that travel time is work time. The Ickes-Lewis Agreement of November 3, 1943 recognizes travel time as work time. About 70 per cent of the coal tonnage of the United States signed an agreement with the United Mine Workers of America on December 17, 1943 recognizing that travel time is work time. We are informed that the captive mines, which include the petitioners, are signatories to that agreement. That agreement provides for a $40 payment for all miners employed from April 1, 1943 to June 20, 1943 and a pro rata payment of that amount for those who were not employed that full period. The agreement settles all portal to portal problems of the signatories up to and including March 31, 1945. All suits on portal to portal are to be dismissed.

Since iron ore miners have been paid portal to portal from May 1, 1941 and since coal miners, by the agreement of December 17, 1943, will get such payment from April 1, 1943, it now appears, at long last, that miners in enlightened and crusading America will get hereafter what miners in England and benighted Europe have been getting for so many years. See dissenting opinion of A. F. of L. members of War Labor Board in the Illinois case. (Sept. 7-43)

CONCLUSION

We respectfully submit that a simple factual situation is governed by clear and simple words. A trial judge has heard the evidence and rendered a correct decision. Despite the enormous pressures incident to that decision, the Circuit Court of Appeals has affirmed the District Court. Today those pressures are being lifted by private agreement. Whether or not those agreements remove the pressure, the intent of Congress so clearly expressed should be respected. Men who work more than 40 hours in any work week should be paid for the excess at one and one-half times their regular rate of pay. The decision of the Court below should be affirmed.

Crampton Harris

CRAMPTON HARRIS

J. Q. Smith

J. Q. SMITH

The undersigned, of counsel for respondents affiliated with the C.I.O., hereby certifies that a printed copy of this brief has this day been served upon Mr. Borden Burr, of counsel for the Tennessee Coal, Iron & Railroad Co., another copy upon Mr. Borden Burr, of counsel for Republic Steel Corporation, and a copy has been served upon Mr. E. L. All, of counsel for Sloss, Sheffield Steel & Iron Company, and a copy upon Miss Bessie Margolin, Assistant Solicitor, U. S. Department of Labor, and a copy upon the Solicitor General of the United States, Washington, D. C.

This the 29 day of December, 1943.

Crampton Harris

CRAMPTON HARRIS

APPENDIX

Fair Labor Standards Act, c. 676, 52 Stat. 1060 (29 U. S. C., sec. 201 *et seq.*):

Section 3 (*g*):

"Employ" includes to suffer or permit to work.

Section 3 (*j*):

"Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State.

Section 7 (*a*):

No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

Sec. 773. Same; by court. Issues of fact in civil cases in any district court may be tried and determined by the court, without the intervention of a jury, whenever the parties, or their attorneys of record, file with the clerk a stipulation in writing waiving a jury. The finding of the court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury. (R.S. Sec. 649), 28 U.S.C.A. Sec. 773.

NATIONAL WAR LABOR BOARD

In the Matter of:

THE ILLINOIS COAL OPERATORS
ASSOCIATION

and

THE INT'L UNION, UNITED MINE
WORKERS OF AMERICA

and

DISTRICT NO. 12, UNITED MINE
WORKERS OF AMERICA

Case No. 11-237
September 7, 1943

DISSENTING OPINION OF AFL MEMBERS

Portal to Portal Pay

The heart of this whole problem is clear. A mine worker is at work from the time he reports for work, at the beginning of the shift, and comes under the control, direction or supervision of his employer until the end of the shift, when he leaves the control, direction or supervision of his employer. He is at work at all points of his journey from the portal to the face and back again. He is undergoing inconveniences and suffering great hazards. He is at work. He is not paid for that work. He has never been paid for that work.

Ore miners also undergo the same inconveniences and dangers. (They do not face the gas explosions such as killed 21 persons in Alabama on August 28, 1943.) But ore miners get paid. Some of them have been getting pay since May 1, 1941. Many have been getting pay for a number of years because of legislative enactments. All of the iron ore miners have been getting pay for travel time since December 1942. How is it possible to have two different standards for one and the same thing? Since the ore miners are being paid on a portal-to-portal basis, why not pay the coal miners from portal-to-portal? Why should the majority of the War Labor Board discriminate against the coal miners?

Payment for travel time for miners is a right which exists quite separate and apart from the recent decision in the Tennessee Coal, Iron and Railroad Company case. This decision merely confirms that right; it has focused the attention of the nation upon that right. Neither is payment for travel time dependent upon the Fair Labor Standards Act which deals with "additional" or "extra" or "overtime" rates of pay.

The spokesman for the majority has called the Illinois Wage Agreement a "hidden wage increase" that is "not very well hidden". We can see no wage increase in paying men for work for which they have never been paid at all. Increase necessarily means the recipient has been receiving some pay for the work in question. The mine workers have received no pay at all. How can it be an increase?

Any fair-minded person can easily be convinced that payment of "travel time" is a just request of the coal miners, if he understands what "travel time" really means to the worker. The travel time of a coal miner is arduous and dangerous. He must crouch down while riding in mine cars and stoop over while walking in order to escape injuries from low roofs. He runs the risk of electrocution from unprotected electric cables and wires. The tracks and passages along which he walks are in many places cluttered with rock and coal; in other places, they are wet and slippery or entirely covered with water. He carries a six pound lamp, his lunch and his drinking water for the day and picks up his sticks of powder and sometimes some of his tools as he goes from the portal to the face. Thus burdened, he walks in a stooped and uncomfortable position for distances varying from a thousand feet to five miles. The air in many of the mines grows more humid and more malodorous the farther he goes under the earth. Why should the majority adopt a ruling that prevents any human being from being compensated for undergoing such inconveniences and dangers? Are we to put the coal miners of America in a class apart and deny them that which we give to others?

On August 25, 1943, the War Labor Board issued a directive requiring pay for travel time in the matter of Atlantic Basin Irons Works, Inc., and Industrial Union of Marine and Shipbuilding Workers of America, Local No. 39, CIO, Case No. 25-29D-10. Would any sensible man argue that the travel time of a shipbuilder even remotely approximated in inconvenience, fatigue and danger the travel time of a coal miner?

It should be noted that payment for travel time of miners in the future is also a right separate and apart from any liability facing the operators in not having paid for travel time previously rendered even though the operators and mine workers attempted to deal jointly with both of these problems. Failure on the part of the majority members of the Board to recognize a claim for part services rendered in the form of travel time does not absolve the Board of the responsibility of dealing fairly and equitably with both mine workers and operators regarding compensation to be had for future travel time service to be rendered.

In ruling that the agreement cannot be approved on account of insufficient data to indicate just how travel time was or may be calculated the Board has taken an unjust and unwarrantable attitude. It is freely admitted by all concerned that accuracy in computing travel time is most difficult of procurement and that an approximation is the best possible method of settlement.

Because of the arduous and dangerous requirements of travel and of service of miners while underground, prior consideration has been given to this situation by governments generally. The sort of legislation enacted has taken two forms—one limiting the time any miner would be permitted underground, the other requiring payment in wages for time consumed while descending, ascending or traveling underground to the face of the mine.

Direct information on the extent to which payment of wages is based on a portal-to-portal basis is not readily available. We are informed, however, that prior to the current war,, New Zealand wages were based on an eight-hour day, bank-to-bank (i.e., portal-to-portal); in Belgium and in the Dombrova and Cracow areas of Poland, the hours were strictly on an individual portal-to-portal basis, and in France, Czechoslovakia and India, the average time consumed in descending and ascending were included in the hours underground.

We are also advised that in Germany the underground hours included one period of ascent or descent on an individual basis and that in the Netherlands, the Upper Silesian region of Poland and Japan (ascent), the hours included an allowance for the average time of ascent and descent. Neither ascent nor descent was included in the case of Great Britain before the war. Since the war, this has been changed. The miners of Great Britain are now paid on the bank-to-bank (portal-to-portal) basis.

These trends and developments point to the way of humane and considerate treatment of miners while underground.

This Board said that the settlement of the portal-to-portal issue was a matter of negotiation. We refer to the following language of May 25, 1943:

> "Thus, this controversy over portal to portal pay presents a mixed question of law and fact which, in the absence of a specific court determination binding on these parties, can and should be settled by them in collective bargaining.
>
> "It should be recognized by the parties that any agreement reached by them in collective bargaining on this matter must be genuinely and reasonably related to the portal to portal issue, any

such settlement shall be submitted to the War Labor Board with supporting data sufficient to enable the Board to determine whether or not it constitutes a genuine settlement of alleged claims arising under the Fair Labor Standards Act, and not an indirect wage increase in violation of the wage stabilization policies.

"The Board understands that there is considerable variation in portal to portal travel time among the different coal areas in the country. Although the Appalachian area only is before us, it is the practice of outlying areas to a large extent to follow the Appalachian agreement. If the parties in their negotiations choose to negotiate on the basis of area adjustments, then the Board would be able to approve wage adjustments based on travel time in any area on a basis shown to be justified by the facts of that particular area."

The parties met and worked out a compromise. The Illinois Coal Operator Association used one set of figures and gave weight to certain factors. The United Mine Workers of America used different figures and considered different factors. They reached a compromise of a genuine, existing, increasing liability. By a compromise, the miners agreed to take less than many of them will, no doubt, prove in the courts.

Do the words "genuinely and reasonably related to the portal-to-portal issue" give any test at all? Are they not designed to support decisions by a mere matter of attitude—attitude of the members of the War Labor Board? There are no accurate statistics on travel time. There are no recent governmental surveys. No matter what settlement the United Mine Workers of

America may make, the Board can condemn it, if they wish, by the flat assertion that it is not genuine. Would it not be more fair to all concerned, since the majority of this Board has found that this agreement is not genuinely and reasonably related to the portal-to-portal issue, if the majority of the War Labor Board would indicate what are the standards of measurement upon which the operators and miners might proceed and which would satisfy the War Labor Board.

The decision of the Board is entirely negative. It recognizes that the miners have a legal claim to portal-to-portal. It then suggests that they reach an award in the dark. The duty of the Board is to shed light, not darkness.

As we see it, the mine workers have a genuine claim to portal-to-portal pay up to April 1, 1943. We do not see how it is possible to make argument against their claim of portal-to-portal pay since April 1, 1943. The supplemental Wage Agreement of July 20, 1943 is a genuine settlement of a real controversy. It deserves approval. Rejection of the agreement makes confusion worse confounded.

s/George Meany s/Matthew Woll

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CHARLES ELMORE CROPLE
CLERK

No. 409

In the Supreme Court of the United States

OCTOBER TERM, 1943

TENNESSEE COAL, IRON & RAILROAD COMPANY,
PETITIONER

v.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, INTERVENER

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OPINIONS BELOW

The opinion of the District Court (R. 494–506) is reported in 40 F. Supp. 4. The opinion of the Circuit Court of Appeals (R. 4938–4942) is reported in 135 F. (2d) 320; its opinion denying the petition for rehearing (R. 4997–5010) is reported in 137 F. (2d) 176.

JURISDICTION

The petition for writ of certiorari was filed October 4, 1943, and granted November 15, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether time spent by metal miners in traveling underground in mines to and from the "working face" constitutes employment or work for which compensation must be paid under the Fair Labor Standards Act.

STATUTE INVOLVED

The pertinent provisions of the Fair Labor Standards Act (Act of June 25, 1938, c. 676, 52 Stat. 1060 (29 U. S. C., sec. 201)) are as follows:

> Sec. 3 (g). "Employ" includes to suffer or permit to work.
>
> Sec. 3 (j). "Produced" means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in

any process or occupation necessary to the production thereof, in any State.

Sec. 7 (a). No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

STATEMENT

Petitioners have confined their "statement of the case" to matters which might support their claim of an alleged traditional practice in their mines to compute working time on a "face to face" basis.[4] Not only are the statements incomplete on this aspect of the case, but, more importantly, they make only passing superficial reference to the most pertinent and significant evidence in the record—evidence showing what the employees do and the conditions to which they are subjected during the time in question. Accordingly this additional statement of facts is deemed necessary.

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[4] The phrases "face to face" and "portal to portal" are commonly used as shorthand terms of reference in describing the basis of payment of miners. The "face to face" basis includes only time spent at the place where the miner actually drills and loads—the so-called "working face." The "portal to portal" basis includes time spent in traveling between the portal or entrance to the mine and the working "face", as well as the time spent in actual productive work at the "face."

This action was instituted under the Federal Declaratory Judgments Act (c. 512, 48 Stat. 955, sec. 274D, 28 U. S. C., sec. 400) by petitioners, three metal mining companies (The Tennessee Coal, Iron & R. Co., a wholly owned subsidiary of the United States Steel Corp. (R. 928); the Sloss-Sheffield Steel & Iron Co., and Republic Steel Corporation) operating a total of 12[2] red ore mines in Jefferson County, Alabama (R. 556). Petitioners sought a declaratory judgment as to their liability under Section 7 of the Fair Labor Standards Act for time spent by the miners descending and traveling underground to and from the working "face." The several labor unions and union officials representing petitioners' employees were named as defendants and the administrator of the Wage and Hour Division was invited to intervene. Upon petition of the Administrator, the District Court permitted the intervention (R. 304–305).

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[2] The Tennessee Company operates eight (these mines are in 3 divisions: Muscoda, including two mines, Nos. 6 and 4; Ishkooda, including two, Nos. 11 and 13; Wenonah, including four, Nos. 7, 8, 9, and 10) (R. 26, 28); Republic operates two (Raimund and Spaulding) (R. 179), and The Sloss Company, two (Sloss Red Ore and Ruffner (R. 117, 118).

A. NATURE AND CONDITIONS OF THE UNDERGROUND TRAVEL IN PETITIONERS' MINES

Although there are slight variations in the operating methods of the 12 mines involved here, the conditions with respect to the travel time are substantially similar. For many years, at all the mines except the two operated by the Sloss Company,[3] the miners have been required to check in and hang up individual brass checks, furnished by the companies, on a tally or check-in board (R. 787, 1201, 1673, 1710–1711, 2389, 2432, 2509, 2515, 2658, 2733, 2741, 2745, 2880, 3022, 3087). The check-in board at the tally house graphically informs the mine foremen, the assistant mine foremen, head miners, or foremen of the particular service crews, if and when all the members of the respective crews are "on the job" and ready for work (R. 561, 787, 963, 3043–3044). At this point the appropriate representative of the company will make provision for vacancies in the working crew (R. 561, 787, 2432, 2509, 2734, 2739, 3031, 3043–3044, 3099), and will instruct the crew or its head miner to change the regular working place should that be necessary and give additional operating instructions (R.

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[3] At the Sloss mines the employee formerly went to the tally house and "would tell the boss man 'I am here'" (R. 2797).

561, 2740, 2741, 2746, 2728–2731, 2880, 2917, 2958–2959, 3032, 3097, 3114). Numerous witnesses testified that the head miners are told by the mine foremen at the tally house or in its immediate vicinity how to proceed with their day's work (R. 2515, 2728–2730, 2740, 2746), how to overcome certain problems confronting them in their mining operations (R. 2515–2516, 2740–2741), where to obtain needed tools, equipment, timber, and supplies (R. 2402, 2730, 2743, 2752, 2959), and are given additional information not only related to their jobs but absolutely indispensable to their successful performance. As a foreman of one of the Tennessee Company's mines said, "I figure after I checked in, I am subject to orders and the men are subject to my orders" (R. 3110, 3099). A head miner at another of the Tennessee Company mines stated that the tally house "is where I get my orders, if there was any changes to be made"—changes in "the way we might work" as well as changes in working places (R. 2515).[4] At the tally house, the men not only check in, but pick up, every day or two, the carbide (R. 779, 1084, 1156, 1228, 1264, 1717) or the battery lamps (R. 3023–3024)[5] to furnish the necessary light for their underground work. These supplies (carbide or lamps) are invariably carried down by each miner during his descent from the surface. In some of the mines, many of the "production" men frequently pick up on the surface near the portal various other tools and supplies required for the performance of their work underground, and carry these tools and supplies on their underground journey to the "working face" (R. 1438–1440, 1693, 2882, 2894–2895, 2963, 3117, 3155).[6]

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[4] The giving of instructions on the surface and the carrying of tools from the surface were not "infrequent, casual and sporadic," as claimed by petitioners (Tennessee Company br. 36–37). Although such instructions may not have been given every day, the witnesses testified that they were given "lots of times" (R. 2740) and "very often if we had a bad top, a dangerous top" (R. 2516).

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[5] The men purchased the carbide "at cost" from the companies (R. 780); the battery lamps, weighing 6 to 8 lbs. (R. 2956), used in the Republic Company mine are rented to the miner each day (R. 3024).

[6] Although admittedly most of the heavy equipment was sent down into the mines by the service crews, the evidence indisputably shows that production men regularly and frequently carried tools from the surface down into the mine. At all of the mines, of course, the carbide or battery lamps were regularly carried down by every underground miner. In addition, other supplies such as hangers, wedges, drill bits, C hooks, and jackhammer steel were frequently carried down into many of the mines. At the Tennessee Company mines in the Muscoda Division, which are the biggest mines on the mountain (R. 1723), employing 1,000 underground men (R. 1669), the production men regularly (since 1938) carried hangers, wedges, jackhammer steel, and C hooks from the tool house on the surface down into the mines (R. 1693–1698, 2743, 3117, 3121). At the Sloss mine No. 2, men regularly picked up hangers, wedges and tools ~~bolts~~ from the tool box on the surface and carried them down into the mine (R. 2895, 2963). At the Sloss Company's Ruffner mine, the miner regularly carries his own "detachable bits" down with him, picking them up at the supply house or the lamp house on the surface (R. 1438–1439).

The record amply supports the District Court's finding (R. 502–503) that "the transportation was had under the strict control and supervision of the plaintiffs [petitioners]," that petitioners "prescribed the schedule of the trips, the speed of the trips, the loading of the men into the trips, and the rules of conduct during the trips, and in most cases required the men to ride the trip rather than walk." The miners are required to be checked in and at the portal of the mine ready to catch one of the regular skips[7] or man trips[8] into the mine (R. 782, 785, 1305, 3087–3088). From three to six skip trips, depending upon the size of the mine (R. 786), are made according to schedules prescribed by the management (R. 1927, 2593, 2694, 2736). In the Tennessee Company's mines, the first skip leaves the entrance a few minutes after six a. m., and the other trips follow at intervals of 8 or 9 minutes (R. 785–786).[9] A whistle blows at six o'clock, notifying the men that the first skip will be leaving in a few minutes (R. 1264, 2659, 2734, 3353, 4599). Some of the men, particularly the drill men (R. 2375–2376), are required to go into the mine on the first man trip. In fact, the rules of the Tennessee Company expressly require drillers to leave on the first trip (*The Ore Miner,* January 1939, deft. ex. 13, p. 7, R. 4579). Mule men and others were also instructed by their foremen or superintendents to go down on particular trips (R. 2508, 2542, 2707–2708, 2749). While the other men were not explicitly assigned to a particular trip, of necessity "they scheduled themselves" to meet the company's requirement "that there be enough men there to fill a skip when we lowered it" (R. 786). By reporting late at the mine, a miner might be "disciplined, even to discharge" from the service of the company (deft. ex. 29, R. 4599).

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[7] The skip in the Tennessee mines consisted of an ordinary ore box car with four wheels on it which ran on a five foot gauge track (R. 784). It "goes down the slope fastened to a hoist rope and the other end being fastened to a hoisting engine" (R. 785). See pictures, Intervener's exhs. 3, 4, 5, 6, R. 4509–4512, 2972). When the men are riding in the cars it is known as a "man skip trip" (R. 971). A similar ore skip is used for hauling the men in the Republic Company's mines (R. 1838). See picture, Intervener's ex. no. 31, R. 4537, 3004.

[8] The Sloss Company mines have a special man trip consisting of six cars, in each of which ten men can sit (R. 1305). See picture, Intervener's ex. no. 25 (R. 4531, 2996–2997).

In addition to fixing the schedule of the trips, the companies maintained regular supervision over the running and conduct of the various man trips at both the loading platform on the surface and the man loading station underground (R.

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[9] In the Sloss Company mines, the first trip leaves at 6:10 or 6:15 a. m., and the other trips follow at intervals of ten minutes (R. 1305–1306). The first trip in the Republic Company's Raimund mine leaves at 5:30 a. m. and the last at 6:30 a. m. (R. 1852).

2390–91, 2814, 2864, 2661, 2692, 3034, 3158–3159, 3194–3195). The skips were not started until the mine foreman or the assistant mine foreman gave the signal to the skip tender (R. 1771, 2593, 2694, 2736, 2864). At the Sloss and Republic mines, the chainer would give the signal for the trip to be loaded or hoisted (R. 2801; deft. ex. 23, p. 25, R. 4553). "Each man had to take his turn" in loading into the skip, "they are not allowed to run in front of one another" (R. 2512–2513). As Mr. Carter (superintendent of the Tennessee Company's Muscoda Division) stated to a Union Committee in February 1936, "Any man that is caught pushing will be disciplined as men are liable to get hurt" (minutes of February 18, 1936, deft. ex. 25, R. 4556). A mine official counts the number of men entering the skip (R. 2390, 3030, 3034, 3071–3072, 3088, 3097–3098), and orders additional men to go into partially filled skips (R. 2391), or prevents men from entering skips which they deem to be fully loaded (R. 2594, 3034). The rules of the Sloss Company prescribe the precise speed of the "hoisting engine," and the number of men who shall ride at any one time (Sloss-Sheffield, *Book of Rules,* deft. ex. 20, p. 31, R. 4550). The Republic Company's rules also prescribe the number of men that may ride in a skip (Republic, *Rules for the Prevention of Accidents,* 1935, deft. ex. 23, p. 3, R. 4553.) The management also controls the position the men must face while riding in and out of the mine (R. 1412, 2726, 2759, 3026–3028), and their smoking of cigarettes (*The Ore Miner,* May 1939, deft. ex. 18, p. 12, R. 4574). The evidence also fully supports the court's finding that the men were required to ride the trip rather than walk (R. 2650, 2501, 2528).

Whether these measures were for the purpose of safety or not, they fully warranted the District Court's finding that "Clearly, during the trips up and down the men were under the complete supervision of the plaintiffs" (R. 503).[10]

A graphic picture was presented by the numerous witnesses of the 6,000-foot ride (R. 786, 2402–2403) from the loading platform at the portal to the man-unloading station, either in ore skips or in man cars. Petitioners load 30 to 40 men in ore skips (R. 784, 1229, 1708, 1771–1772, 3026), in which the men must descend with bodies contorted and heads drawn down below the level of the skip top to avoid being crushed by the overhanging mine ceiling (R. 1708, 1709, 1833, 2395, 2490, 2641,

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[10] Petitioners state that the supervision exercised over the men during the trip related only to safety. It is difficult to see what other matters would be subject to supervision during the trip. Inasmuch as the employer supervised what the men were doing, it is of no consequence that the control exercised at that time did not relate to anything else.

2693, 2726, 2759, 2788–2795, 3026–3029).[11] The findings of the District Court accurately summarized the above evidence as follows:

> The cars have been nearly always crowded to the extreme. The positions which the men have been required to assume during the transportation varies from a crouch with their bodies overlying one another to a rigid propping of legs and arms against the sides of the car and the fellow passengers. These positions were assumed partially because of the press of human bodies in the cars and partially because of the necessity of keeping head and body in a deflected position in order to avoid injury from collision with low points in the roofs of the mine slopes or with projections from the roofs (R. 502).

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[11] "There is not a slope on Red Mountain where the roof clears the top of the skip more than a few inches for most of the length of the slope" (*The Ore Miner*, December 1938, deft. ex. 5, R. 4455).

A head miner described the skip trip at one of the Tennessee Company's mines as follows: "They didn't have a place to sit and they had to scrouge in there the best way they could get in * * * They humped and squatted down" throughout the entire course of the skip trip until "just before they reached the mouth coming out there was approximately seven or eight hundred feet, probably, they could raise up and get straight" (R. 2395). For similar description of skips at other mines of the Tennessee Company, see R. 1708, 1709, 2693, 2758, 2759. For a comparable description of the man trip at Republic's Raimund Mine, see R. 3026, 3028.

The many descriptions in the record[12] of injuries during the course of transportation bear witness to the fact that the descent into petitioners' mines is attended not only by the greatest discomfort and inconvenience, but also by considerable peril.

From the time they jump into the skips and descend the three to twelve thousand feet underground (R. 1262, 1308, 1565, 1663, 1838–1840; T. C. I. ex. 1, 2, and 3, R. 3587–3589; Sloss ex. 10, R. 3790; Sloss ex. 11, R. 3791; Republic ex. 1, R. 3974; Republic ex. 16, R. 4022)—in one mine 640 feet below the level of the sea (R. 3005)—the employees are in an environment entirely different from that which they have left on the surface. Immediately they became subject, as one of petitioners' witnesses stated, to the ever present dangers of falling slate (R. 1565). As summarized by the District Court, "The trips were, of course, in the comparative darkness and enclosure of an artificially lighted mine. The air was humid and malodorous, the ventilation relatively poor and the heat increasing with the descent into the mine" (R. 502, 563. See evidence R. 970, 1396, 1777–1778).

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[12] *The Ore Miner*, December 1938, deft. ex. 5, R. 4454–4456; *ibid.*, February 1940, deft. ex. 6, R. 4461; broken or injured ribs (R. 1709, 3029); sprained ankles (R. 972, 1709); mashed arms, fingers, feet, and hands (R. 1709, 2490); bumped and "bloody" heads (R. 972–973, 2642–2643, 2789–2792, 3120, 4454–4456); fractured pubic bone (*The Ore Miner*, December 1938, deft. ex. 5, R. 4454), and fatal skip accidents (R. 1709, 1475).

Additional burdens, discomforts and perils attend the men after they are unloaded from the skips, when they continue their journey by foot (R. 504, 563). Vivid evidence was presented at the trial through the witnesses and photographs, of the journeys of the miners from the man-unloading station through the hundreds and in most cases thousands of feet to the heading. An issue of the Tennessee Company's publication "The Ore Miner" describes with illustrations the "unseen dangers" against which miners must be "constantly alert" (R. 4575–4579). The record amply portrays not only the stretches of relatively level ground in some of the mines, but also the man-ways and passageways which run up and down hill (R. 1197, 2404, 2697, 2813, 2961–2962) on grades of 5 to 40 degrees (R. 1119, 1382–1383, 2979, 2986, 2991), the rises in the ore to heights of 300 feet (R. 1383), paths filled with water (R. 2962, 3002, 3010, 3014), and strewn with muck (R. 3015, 3125–3126), "bumps" in the man-ways (R. 2696), holes from removed tracks (R. 2920), and dotted by water and air pipe lines, telephone wires (R. 2404), high voltage electric cables and trolley wires extending within reach of the men standing or carrying tools (R. 1920–1921, 1925, 2663, 2919–2920, 3013, 3039–3040; *The Ore Miner,* July 1939, deft. ex. 16, p. 8, R. 4575–4577). As many witnesses testified, most of the miners are required at one point or another in their trip from the man-unloading station to their working places to duck through tunnels in the rock and bow to overhanging portions of the roof (R. 2697, 2932). In the Raimund mine of the Republic Company, the distance to be travelled by some of the miners after leaving the skip was considerably over two miles (R. 1918, 3035), and included the climbing of a steep hill in which recently 107 steps had been put (R. 1919, 3035). Before the steps were constructed the men had to climb the hill pulling themselves up with the assistance of a cable (R. 3062). This hill had to be climbed by about a hundred men on each shift (R. 1919).[13] As the miners near the working headings, the atmosphere is naturally increasingly heavy with ore dust and powder smoke. Where it has been necessary to do timbering in the passageway, there is frequently the pungent odor of creosoted timbers (R. 969, and due to the lack of facilities for sanitation, the mine air is befouled with the odors of human sewage from the man-unloading station to the slopes (R. 2408, 2821–2822).

This evidence abundantly supports the following findings of the District Court: "During these walks, the physical conditions encountered by the men were even more difficult than during the part of the descent spent in riding. The atmosphere becomes warmer and more humid, the ventilation even less effective and the air fetid. The roof is low in places, requiring the walkers to stoop. The footing is irregular, sometimes rough, sometimes wet and slippery, overhead wires (often not insulated or guarded) and pipes must be carefully avoided. The passageways are up and down grades of varying steepness. In short, a very substantial amount of physical and mental energy is required during this walking" (R. 504).[14] Witness after witness likewise explained the regular practice of carrying tools and materials long distances from the tool house, the powder house, and oil drums, near the unloading station to their "working faces." One man out of each crew regularly picked up powder at the powder house en route to the working face (R. 1311–1312, 1421, 1424, 1440). The drill men regularly picked up oil in gallon cans en route to the "face" (R. 1273, 1314, 1424, 1490–1491, 2517, 2708, 2882–2883). In the mines where hangers, short steel, and C hooks were not picked up on the surface, it was customary to pick them up at the underground tool house near the man-loading station (R. 1212, 1271, 1309, 1315–1316, 2400, 2519, 2725, 2746, 2882). "The conditions are clearly conditions peculiar to the occupation of the men in the class represented by the defendants, conditions replete with hazards, conditions requiring physical exertion and mental alertness, and conditions unpleasant and burdensome to those encountering them" (R. 502).[15]

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[13] See pictures, intervener's exhs. 38, 39 (R. 4544–4545, 3011–3012). For similar steps in another part of the haulage way of the same mine, see picture, intervener's exh. No. 43, R. 4549, 3015.

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[14] Petitioners' attempt to minimize the hazards of the underground travel as existing "only when the workers became careless of their own safety" (Tennessee br. p. 35) is somewhat shaken by the testimony of one of their own witnesses who was injured in one of the ore mines of the Woodward Iron Company while making a safety inspection (R. 1564).

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[15] Petitioners' contention that conditions are substantially different in the different mines seems to reduce itself to a claim that at one of the 12 mines (Spaulding, operated by the Republic Company) the evidence did not show the same physical conditions, discomforts and hazards as were proved with regard to all of the other mines (see Tennessee Company br. pp. 35–36; Republic Company br. p. 38). This particular mine was explicitly excluded from the case by the original petition of the Republic Company (R. 179) and was not inserted into the case until late in the trial when counsel filed, and the District Court allowed, an amendment to the Republic Company's petition to include allegations with reference to this mine (R. 491–493). The amendment was filed on July 31, 1941, the day before the closing arguments were made. Out of the more than 5,000 pages of evidence, less than 10 pages relate to the Spaulding mine. That evidence, introduced over the objection of counsel for respondents, shows that the mine was operated only intermittently during the last 20 years (R. 1827), that the process used in the mine was still in the experimental stage and no merchantable ore had yet been produced there (R. 1828), and that the ore lies closer to the surface so that the men can walk to their working places without use of a skip to descend (R. 1910). The evidence with respect to this mine was taken on July 16, 1941, that is prior to the date of amendment injecting it into the case. It is plain that the evidence as to that mine has no significant bearing on the case. It certainly does not sustain petitioners' contention that the findings of fact by the District Court were contrary to the evidence in "substantial and determinative matters" (Tennessee Company br. p. 34–35).

B. EVIDENCE ON PETITIONERS' PRACTICES WITH RESPECT TO TRAVEL TIME[16]

Contrary to petitioners' assertion (pet. p. 45, Tennessee Company br. 43, Sloss br. 12), the evidence was not undisputed that there was in their mines a "traditional custom" (Republic br. 16) or "immemorial custom and agreements arrived at by the process of collective bargaining" (Tennessee br. 43) to exclude travel time in the computation of work time. Except for the unsupported statements of some of petitioners' witnesses, the evidence on this subject unmistakably substantiates the District Court's finding that there was "no such custom" and no such "free and uncoerced agreement" (R. 496, 497, 498). This finding is amply supported by substantial evidence, including the testimony of most of petitioners' own witnesses.

The record shows that during the greater part of the iron ore mining history in petitioners' mines, the miners in the production crews have been paid on a tonnage basis, without reference to time or hours of work. A so-called "contract basis" of pay was in effect in the mines of all three petitioners during substantial periods of their history. Under this system the "contractor" was credited with all the tonnage produced by members of his crew at a certain rate per ton. Each member of the crew in turn had a specified tonnage rate (R. 986–989, 1380, 1845). Although different tonnage rates were provided for different types of mine work, the amount of the miners' compensation was determined by the amount of ore which the crew loaded (R. 986, 988, 1380). When only one ton of ore was loaded the crew received comepnsation at their tonnage rates for only the one ton, and as production increased, compensation correspondingly increased (R. 2824–2826). The amount of time actually consumed by a crew in producing ore was immaterial (R. 986, 1379, 1513–1514, 2826, 3074, 3076). This system was in effect in the Tennessee Company's mines until 1914 (R. 844, 986). The Sloss Company mines used this system until September 1940 (R. 2824–2826, 1518). Although this Company in 1934 purported to go off the "contract basis" (R. 1380–1381), there seems to have been no difference in the "tonnage" basis thereafter adopted save that the "contractors" became known as "head miners" (R. 1380–1381, 1513, 2826). The Republic mines were still being paid on the "tonnage or contract basis" at the time of the trial (R. 1844–1845, 3072–3074).

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[16] The question of the relevance of such evidence to the issue whether the travel time in fact constituted employment or work is discussed in the Argument, *infra*, pp. 58-61.

Subsequent to 1914, the Tennessee Company put into effect some modifications of the contract system known as the "task" or "day pay" system

(R. 990).[17] The only apparent distinction between the "contract" system and the "task" or "day pay" system was that under the latter system a certain minimum tonnage or "task" is established by the company (R. 990, 1250, 1379–1380, 1517–1518), which is intended to serve as a quota or measure of the average day's work. The method of payment, however, remains on a tonnage basis and so long as a miner completes his task it is immaterial whether he remains at the face either half a day or a full day (R. 793, 1024, 1251, 1279). His earnings bear direct relations, not to his time, but to his production (R. 990, 1024, 1279). The tonnage rates under the "task" or "day pay" basis were supposedly adjusted to a ten-hour (later, in 1933, an eight-hour) day of productive work (R. 848, 868, 991, 1155). This meant that the tonnage rates were established on the basis of a rough estimate of the amount of ore which a good mine crew could produce in an average day of ten hours under average conditions during the time the contract system had been in vogue (R. 990–991, 1379). The frequent reference by petitioners' witnesses to the ten-hour or eight-hour day during the use of the

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[17] The Sloss Company apparently adopted a similar "task" system in 1934 (R. 1379–1380, 1517–1518). Petitioners' witness, Harper, testified that "There is not much difference" between the tonnage basis and the task basis in the Sloss mines (R. 1379–1380); and the witness, Russell, remarked that "It would be rather complicated to explain" the difference (R. 1517).

"task" basis relates to this arbitrary conversion of tonnage rates into a daily rate. The so-called "incentive plan" which was adopted by the Tennessee Company in 1936 (R. 849, 1018–1022) was merely another modification of the "contract" system. It was practically the "task" system except that it provided extra compensation for ore loaded over the base or minimum tonnage (R. 848–849, 1790–1793).

During the period of the so-called ten-hour day in the Tennessee Company's mines, the miners' compensation purportedly began at 6:30 and ended at 4:30 (R. 1279). Although the men frequently entered the mines shortly after 6 o'clock, Mr. Scott, mine foreman at Wenonah No. 9, explained that during this period the men were not expected to be at their "working places" but were simply required to be "checked in" by 6:30 (R. 1279). Again, at the end of the shift, although pay did not "end" until 4:30, "shooting time" was regularly at 4:20 (R. 1198) at which time, if not before, all members of the production crews had left the face (R. 1198). Indeed, the evidence shows that as soon as they completed the "task" (i. e. loaded the minimum tonnage) the members of the loading crews would leave their "working places" (R. 1250–1251, 1279). Under the so-called ten-hour day, "Some loaded them [the number of cars set as the "task"] by 10:30 or 11:00 o'clock, and walked out. Some of them would be 2 or 3 o'clock. Some of them loaded all day" (R. 1279). Under the eight-hour day, whether the miners spent six or nine "productive hours," they were credited with eight hours, and were paid, without regard to the time consumed, simply in relation to the amount of tonnage produced (R. 1024, 2826).

This rough approximation of "time worked" was continued by the Tennessee Company until May 1, 1941,[18] with the exception that in 1933 the "base" number of hours was purportedly reduced from ten to eight (R. 991). Yet the men who formerly reported to the tally house around 6 o'clock continued to report at approximately the same time (R. 1155, 1198), while the "shooting time" when the men left the face was moved up, not two hours, but only an hour or an hour and ten minutes—from 4:10 or 4:20 to 3:10 (R. 1167, 1198). The artificiality of the so-called "eight-hour day" at the "working face" is emphasized by the fact that although the time of the miners "ended" at 3:15 (R. 791), Mr. Ball of the Tennessee Company testified that the first skip load of men "on an average for the eight mines" always left the underground man-loading station before 3:15 (R. 790). In fact, the evidence shows that the miners frequently left their "working places" well before 3:15 and were at the hoodlum[19] or on their journey through the man-ways before their time had officially "ended" (R. 789). Nevertheless, whether the crew was at the working face six, seven and one-half hours, or eight and one-quarter hours, the head miners would credit their men with an eight-hour day (R. 793, 1024).[20] Thus the District Court correctly concluded that regardless of the terminology of the methods of pay and "regardless of the phraseology of the contracts, the pay was on a shift basis, rather than an hourly basis, and since some of the men did not spend a full eight hours at their particular stations, it cannot be categorically stated that they received no compensation for at least part of the time spent by them in traveling to and from their usual stations" (R. 497).

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[18] Petitioners adopted the "portal to portal" basis of pay after May 1, 1941 (R. 276, 2369).

Petitioners' methods of paying the service crews likewise demonstrate the artificiality of their claim of an "immemorial custom" to exclude all travel time from the computation of working hours. The service crews, which do the timbering, the laying of tracks and pipes, the building of chutes, etc., "operate all over the mine" (R. 767). They could not, therefore, be paid on the so-called "face to face" basis, and since they produced no tonnage, they could not be paid on a tonnage basis. Prior to 1914 they were on a so-called "turn" or "shift" basis of ten hours (R. 987). In those days up to 1914, the mines were very shallow (R. 986) and the service men were paid as they entered the mine, that is, their time would start at the check-in or tally house at the mine portal (R. 987). During this period there was no custom dealing with pay for travel time, because no such time, or substantially none, was involved. Subsequently, as the mine workings reached a greater distance underground, the tool house near the place where the men left the skip was assigned as the "working place" of the service crew (R. 798, 932), although actually they might not start to lay track, or to timber, or to perform other services until they had walked considerable distance to a particular "face" where the service was needed (R. 981–983, 1274, 3096–3097). If a service man was switched to a drill crew underground, as has happened "very, very frequently" (R. 983), the time consumed in walking from the tool house to the "face" was regarded as part of his "shift" or working time (R. 983–985). Under the eight-hour day the service men, like the production men, were credited with eight hours regardless of the time actually spent by them at their assigned "working places." A service foreman in one of the Tennessee Company mines testified "We didn't pay any attention to time, after we got there [at the tool house]" (R. 3111). Although their shift supposedly did not start until 6:45 a. m., the service crews sometimes started out on a service job at 6:15 a. m. (R. 3114–3115). Although "paid" until 3:15, the service men regularly left the tool house, which supposedly was considered their "working place" (R. 798), at any time from approximately 2:30 (R. 1199). Thus from petitioners' own testimony it is apparent that the "eight-hour day," like its predecessor ten-hour day, was simply a bookkeeping operation or method of calculation in no way reflecting the actual working time of the employees involved. Insofar as the service men are concerned, it is clear that most of the time spent walking underground was regarded as time worked; the only question as to them is as to the relatively short time traveling on the skip from the surface to the tool house.

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[19] The underground man-loading station was frequently referred to as the "hoodlum" (R. 981, 1247, 2696, 3088).

[20] The testimony of Mr. Ball of the Tennessee Company is illuminating (R. 1024):

"Q. Now, I don't understand that quite, Mr. Ball. You say it always shows eight hours. Would that mean if he stayed there six hours it would still show eight hours, or if he stayed there 9 it would still show eight hours?

"A. Yes. They didn't keep any accurate time at the working face, and as the rates of pay and the day's work was computed on an eight-hour basis, he put down eight hours."

The evidence relating to petitioners' negotiations and agreements with employees likewise negates the existence of any established custom with respect to travel time. The impression petitioners seek to create of a long history of collective bargaining on the subject is not borne out by the evidence. On the contrary, collective bargaining has been a practice of most recent origin in petitioners' mines and appears to have been only reluctantly indulged even under the pressure of statutory mandate.

A superficial reading of the portions of petitioners' briefs relating to the history of negotiations and agreements with the International Union of Mine, Mill and Smelter Workers, may give the impression of genuine collective bargaining for a substantial period of time prior to the enactment of the Act. However, an analysis of the facts will reveal that most of the so-called "negotiations and agreements" consisted of the rejected proposals and requests of the Union, with the rejections usually accompanied by explicit statements that petitioners would not deal with the Union, and in many instances by reprisals and discrimination against employees who were members of the Union. The fact is that prior to the enactment of the Fair Labor Standards Act not one of the petitioners had entered into a contract with the Union. The Tennessee Company entered into its first contract with the Union on October 6, 1938 (R. 901-902, 105), about three months after the enactment of the Act; the Sloss Company entered into its first Union contract on September 9, 1939 (R. 3804, 3810), more than a year after the enactment of the Act; and the Republic Company up to the date of the trial had never made a contract with the Union (R. 1899).

Although the Tennessee Company would on occasion meet and talk with Union representatives, it refused consistently to recognize the Union as a collective bargaining representative, up to the eve of the enactment of the National Labor Relations Act (R. 3591, 3599, 3626). On October 1933, when a committee of the Smelters' Union called on the president of the company to present some requests regarding some of the employees, the company left no doubt of its position, advising the Union representatives that "we are aware of the existence of these various groups [unions], in which may be found some of the employees of this company; in the same spirit we are aware of the existence of church groups of various denominations, of fraternal orders of different kinds, and of other societies formed for a variety of purposes" (R. 3591), but that other procedures had been provided for the presentation of complaints and suggestions from employees (R. 3593). In April 1934, when Union representatives again endeavored to obtain recognition of the Union, they were met with the following rebuff: "If it is intended that you are advising us of the existence of your Union or any Union, we answer that we are aware of the existence of many Unions, among them being yours. If by this it is intended that we agree to deal with your Union, or any Union, as such, we must answer that we will not do so" (R. 3599).

Meanwhile the company had been engaging in various practices to break the Union organization through fostering a company dominated Union (R. 993–995). During the strike in the spring of 1934, company officials conferred with union representatives, but no settlement was reached (R. 871). The strike was settled not by a contract with the Union, but by "letter of understanding" addressed by the company to a representative of the Department of Labor (R. 875, T. C. I. ex. No. 8, R. 3604). Subsequently the company continued its policy of refusing to bargain collectively with an independent union, and fostering a company union (R. 993–995, 3693–3703).[21] On June 24, 1935, less than a month prior to the enactment of the National Labor Relations Act, the company reiterated its unwillingness to enter into a contract with the independent union (R. 3625–3626). After the 1936 strike,[22] over 150 employees who were members of the International Union of Mine, Mill and Smelter Workers, were discharged as "undesirables" (R. 2409–2416, 2479, 2667–2668), with the result that the average attendance at Union meetings dropped from 300 to 400, to about 25 (R. 2413, 2667). In May 1937, when the company was refusing to sign a contract with the independent union, it signed a contract with the company dominated union (T. C. I. ex. No. 18, R. 3720). Not until a year and a half later, after a complaint had been filed with the National Labor Relations Board charging that approximately 172 members of the Smelters' Union had been improperly and discriminatorily discharged (R. 2295), did this company sign its first contract with the independent union. The contract was signed as part of the settlement of the charges filed with the National Labor Relations Board (R. 2295); in other provisions of the settlement the company agreed to reinstate 138 of the complainants and to pay approximately $102,650 in settlement of claims for reimbursement (*ibid*).

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[21] Petitioners assert that the Union was strong enough in 1934 to close the mines, implying that it had great bargaining power (Tennessee Co. br. p. 38). The extent of the Union's bargaining power is more accurately indicated by two significant facts (1) the mines reopened after the "letter of understanding" only to be closed down again by petitioners within a few days (R. 1008) because that was "during an acute time of the depression" when a "great many furnaces were down" (R. 1065), and (2) petitioners had a stockpile of over 700,000 tons of ore at that time (R. 872).

[22] During the 1936 strike the Tennessee Company officials conferred with the Union representatives, but the

The Union fared no better with the Republic Company. According to charges filed by the Union in December 1933 with the National Labor Board (under the National Industrial Recovery

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tenor of the conference is reflected in the repeated statements of Mr. Ball, that "that is not true" (R. 3658), it "will not be changed" (R. 3659), or "the only answer to this is no" (R. 3672, 3673, 3674, 3676, 3685, 3686).

Act), the company, a few months after the organization of the Smelters' Union, proceeded to promote a company union and "to antagonize, intimidate, discharge, and otherwise punish and oppress the Union members" (R. 4581, 4582). The 1934 strike was resolved by a letter of understanding (R. 1879, Republic ex. No. 5, R. 3983), addressed to the Department of Labor representative, comparable to the letter sent by the Tennessee Company. This company also continued to foster a company union, even after the enactment of the National Labor Relations Act (R. 906–907), and according to charges filed by the Smelters' Union in 1939 (R. 1895, Republic ex. No. 11, R. 4004), discharged and discriminated against employees who were members of the independent union. These charges were settled by a stipulation in which the company consented to an order for the reinstatement of employees and reimbursement of claimed back pay in the amount of $3,150.00 (Republic ex. No. 13, R. 4009). As noted above, the Republic Company, up to the date of trial, had never made a contract with the Smelters' Union.

The Sloss Company in 1936 (R. 3774, 3777) negotiated and signed contracts with employees who represented the Smelters' Union, but insisted upon treating with them as employees' representatives (R. 2945, 3774, 3777, 3796), and not as representatives of the Union. The first agreement signed with the Union, as such, was the one referred to above on September 9, 1939.

Upon this record it is plain that there was no true collective bargaining between petitioners and their employees prior to the enactment of the Fair Labor Standards Act. Petitioners' suggestion that the "face to face" basis of payment was established by a long history of collective bargaining agreements prior to the passage of the Act is not correct. From the earliest date that an independent union spoke on behalf of the petitioners' employees (in 1933 when the Smelters' Union was organized),[23] it protested the injustice of requiring the men to travel underground on their own time and made repeated efforts to secure recognition of travel time as working time (R. 3240–3241, 3975–3976, deft. Ex. No. 9, R. 4581 at 4586,

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[23] In a list of proposals submitted to the Republic Company in September 1933, shortly after the Smelters' Union was organized, it was proposed that "(6) the men enter the mine on their own time and come out of the mine on the company time" (Republic ex. No. 2, R. 3975–3976). In December 1933, in the complaint filed by the Smelters' Union with the Labor Board (under N. R. A.), it was requested "that the men be not required to enter and leave their place of work on their own time" (deft. ex. No. 9, R. 4581 at 4586). The latter request, in the same language, was made again in March 1934 (R. 3978 at 3980). Similar written requests were made of the Tennessee Company in October 1933 (R. 3591–3592), and in April 1934 (R. 3594–3595). A similar written request was made of the Sloss Company in April 1934 (R. 1620, 3751–3752); previously oral requests of the same nature had been made of the Sloss Company (R. 2830–2835; 2937–2938).

2719). Petitioners' statement that this demand "was not seriously made" (Tennessee br. p. 6) can only mean that the employees could have had no hope that the operators would give it reasonable consideration. It was one of the requests in the Union's proposed contract the rejection of which resulted in the 1934 strike (R. 2939, 3751); and was renewed in practically every attempt to negotiate a contract (R. 1878–1879, 2711–2718, 3238–3241, 3975–3976, 4581 at 4586).

The suggestion that the Union volunteered the "usual working place" provision by including it in some of its written demands and proposed contracts (see Sloss br. p. 6) overlooks the evidence showing that such written proposals were made only after previous proposals for a "portal to portal" basis or for one way travel on company time, had been rejected (R. 2830–35, 2718–19, 3238–39, and references in footnote 23, *supra*). At the time the Fair Labor Standards Act was enacted all of the requests regarding travel time like all the proposals to bargain with the Union, had been uniformly refused. It is clear on this record that the "face to face" method of computing the workday had been arrived at, not by collective bargaining, but by unilateral employer decision. Moreover, although the contracts signed by the Tennessee and Sloss Companies with the Unions provided that the "eight-hour day means eight hours' work at the usual working places"

(R. 107); this provision, as pointed out above, was carried out on a rough shift basis, rather than on an hourly basis (see pp. 22–23, *supra*).

C. THE ADMINISTRATOR'S INTERPRETATIONS

After the enactment of the Act, the Administrator in July 1939 issued Interpretative Bulletin No. 13 (R. 412), outlining what he considered the basic principles to be applied in determining "hours worked." The Bulletin was prepared for general use and, as was usual with his printed bulletins, was in general terms. While it contained several paragraphs (pars. 4, 5, 6, 9–15) on the question of travel time, waiting time, and the like, it said nothing on the particular question of underground travel in mines. In 1940, in response to numerous requests that he express his opinion as to the application of these general principles to situations typical of underground metal mining, he initiated an investigation of the situation in such mines (R. 80). On the basis of the written report of his representative who conducted the investigation (R. 76–102), the Administrator on March 23, 1941, announced that he was approving the report and adopting for enforcement purposes of the Act in the underground metal mining industry the "modified portal to portal" principles contained in the report (R. 78). Briefly, the conclusion was that the workday starts when the miner reports for duty as required at or near the collar or portal of the mine and ends when he reaches the portal at the end of the shift, including the aggregate of the time spent on the surface in obtaining supplies and in checking in and out, but excluding any fixed lunch period of one-half hour or more.[24]

The report also explained the circumstances in the bituminous coal mining industry which had lead the Administrator to adopt a different enforcement policy for that industry (R. 94–96). It was pointed out that the coal policy had been adopted for practical enforcement purposes primarily because the practices in that particular industry were supported "by a long history of bona fide collective bargaining agreements" (R. 94) and "collective bargaining not for particular mines or localities, but on a nationwide basis" so that the practices adopted in that industry were "virtually universal" (R. 96).[25] There was thus no practical problem in the bituminous coal industry of varying local practices or customs. The report pointed out, as the record in the instant case confirms, that the situation in metal mining was not at all comparable with respect either to collective bargaining or to uniformity of practices or customs (R. 96), and concluded that the Administrator's policy with respect to coal, assuming it to be correct, was inapplicable to metal mining because "the conditions on which the bituminous coal opinion was based are not to be found in metal mining" (R. 96).

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[24] The principles are summarized at the end of the report (R. 102).

[25] See also plaintiff's exhibit 6 for identification (R. 4729–4730). Other practical considerations which the Administrator stated had influenced his bituminous coal enforcement policy were: the Union representatives as well as the operators at that time were urging him to refrain from seeking to disturb a practice incorporated in their collective bargaining agreements over a long period of years; they asserted that the provisions of those agreements, negotiated over a long period of time and pursuant to bona fide collective bargaining, were so integrated and interdependent that complete renegotiation of the Union contract would be necessitated by a different standard for

The District Court excluded as irrelevant the Administrator's action and other evidence with respect to bituminous coal mining (R. 2047, 2102). We deem it appropriate however to summarize recent developments in the coal situation since petitioners in their briefs have given a partial account of them. Changes in the facts in that industry in recent months have made the Administrator's original coal enforcement ruling no longer applicable. When the bituminous coal collective bargaining contracts were about to expire

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measuring time (pl. ex. for identification no. 25, R. 4710–4716, printed in the Tennessee Company's brief at p. 67). Moreover, the bituminous coal mines were then operating on a seven-hour day, 35-hour week, at the "face" (*id.* 4713), so that there was several hours' tolerance before the overtime provisions of the Act could come into operation; if travel time amounted to no more than one hour per day, the overtime provisions would not have become operative at all, even if the "portal to portal" standard were applied.

on March 31, 1943, the miners demanded wage payment on a "portal-to-portal" basis, because of the decisions of the courts below in this case. Since the expiration of those contracts there has been no agreement arrived at by "collective bargaining in the complete sense" (R. 4712) to compute compensation on a "face-to-face" basis. It was in large part, upon the "long history of *bona fide* collective agreements" to this effect that the Administrator relied in his July 27, 1940, release which announced his enforcement policy in bituminous coal mines (R. 4716–4717). To the contrary, there has been subsequently wide disagreement, which has been resolved by contracts, signed by operators producing two-thirds of the nation's coal supply,[26] on the basis that wage payments are to be computed from portal to portal.[27] The difficulty in reaching an agreement and in obtaining the approval of the War Labor

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[26] Press Release C. M. A. 38, December 18, 1943, Department of Interior, Coal Mines Administration (copy filed with the Clerk). The Secretary of the Interior stated that operators producing approximately 390,000,000 tons of soft coal annually had signed a contract with the United Mine Workers on December 17, 1943. In 1942 the national production of soft coal was approximately 580,000,000 tons: Bituminous Coal and Lignite, Chap. (preprint) from Minerals Year Book 1942, U. S. Dept. of Interior, Bureau of Mines, pp. 1, 5.

[27] The basis for the agreement referred to in note 26, *supra*, was reached on December 11, 1943. The contract was signed by the operators and the miners' union on December 17, 1943, and submitted to the War Labor Board for approval. Press release C. M. A. 38, *op. cit.* note 26. Paragraph 2 of the

Board over the last several months has been due to doubts as to whether proposed contract provisions contained genuine compensation for travel time and whether the proposed wage rates were permissible within the administration's wage stabilization policy.[28] Thus, the present practice

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agreement provides: "For all inside employees, work time shall begin at the portal and end at the portal * * *." A press release of the Secretary of the Interior dated December 11, 1943, has a copy of the agreement attached (copy filed with the Clerk).

[28] The several principal orders and opinions of the National War Labor Board since April 1943 dealing with the bituminous coal labor controversy and the various proposed wage contracts are:

In the Matter of *Operators' Negotiating Committee Appalachian Joint Conference and The Southern Appalachian Joint Wage Conference and The United Mine Workers of America*, Case No. 111-1284:

Order, April 24, 1943 (OWI Release No. B-609).

Interim Directive Order, May 14, 1943 (OWI Release No. B-653).

Comments and Directive Order, May 25, 1943 (OWI Release No. B-669).

Directive Order June 18, 1943 (OWI Release No. B-736).

In the Matter of *Illinois Coal Operators Association and United Mine Workers of America, et al.*, Case No. 13-279:

Order and Opinion, August 24, 1943 (OWI Release B-938).

Decision, October 26, 1943 (OWI Release No. B-1067).

In the Matter of *Memorandum of Agreement Between The Secretary of The Interior and The United Mine Workers of America*:

Resolution of the National War Labor Board, November 5, 1943 (OWI Release B-1096).

Letter from William H. Davis, Chairman of the Nain most of the bituminous coal industry, and the provisions incorporated in the new *"bona fide"* collective bargaining agreements,"[29] compensate miners for travel time underground.[30]

Whatever may be said of the Administrator's previous enforcement policy with respect to travel

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tional War Labor Board to the Secretary of the Interior, November 20, 1943 (OWI Release No. B-1127).

Copies of these documents have been filed with the Clerk.

[29] These agreements await the approval of the War Labor Board and action by the Office of Price Administration before becoming effective. The miners are now working under the terms and conditions of the Memorandum of Agreement Between the Secretary of the Interior and the United Mine Workers of America of November 3, 1943, which provides for compensation on a "portal to portal" basis. The agreement was approved by the War Labor Board on November 5, 1943, and November 20, 1943, pursuant to Section 5 of the War Labor Disputes Act (Act of June 25, 1943, c. 144, Pub. No. 89, 78th Cong., 1st sess.). See Office of War Information Releases B-1096 and B-1127; *op. cit.* note 28 *supra*.

[30] In indicating its policy as to the designation of an estimated average of travel time for all the mines during the period of Government operation, the Board said: "We are willing to do this even though the present travel time may somewhat exceed this amount because we are convinced that when travel time is paid for, the economic inducement imposed on the operators will lead them to reduce the travel time, and because the mine workers have, in their submission of the proposed Illinois Agreement, expressed their willingness to have the operators reduce the travel time as much as they can if adequate facilities are provided in connection with any newly opened portals." [*In re Illinois Coal Operators Assn.*, October 26, 1943, Case No. 13-279]. See also letter from the Chairman of the War Labor Board to Secretary Ickes, November 5, 1943, approving the agreement made, *op. cit.* note 28, *supra*.

time in coal mines, the plain fact is that his consistent ruling with respect to metal mines has been that in them travel time is work time.

D. DECISIONS OF THE COURTS BELOW

The District Court ruled (1) that the time in controversy (including time spent at the surface obtaining and returning lamps and tools and checking in and out) constitutes work time (R. 565), since the activities and the travel are under the control of the employers "in the interest of efficient operation of their mining business," and since "such time is a necessary and incidental part of the actual production of ore" (R. 503), (2) that there was no custom in petitioners' mines excluding such time from the workweek (R. 496, 557–560), that during a great part of their history petitioners had paid their miners on a tonnage basis and at other times on a task basis "without regard to hours worked at any point" (R. 496), that even under the eight hour day provision, the miners had been paid on a shift or tonnage basis "rather than an hourly basis" (R. 497), and that petitioners' methods of payment of wages "were not arrived at by unhampered consent of the workers" or "with their free uncoerced agreement" (R. 498), but "were dictated almost entirely by the employers" (*ibid.*), and (3) that in any event an occupational custom or usage, or an agreement between the parties, cannot operate to avoid the requirements of the Act (R. 499). With respect to the alleged custom, the court observed (R. 499) that "it would be a mockery of the beneficent purposes of the Act if the provisions prohibiting employment for over a specified number of hours for each workweek, except at an increased rate of compensation, were held to incorporate a custom to pay employees only for a part of the time worked by them."

The Circuit Court of Appeals (R. 4938–4942) affirmed, but modified that part of the District Court's decision which held that the time spent by employees checking in and out, and procuring and returning tools, lamps, and carbide at the surface of the mine was also working time (R. 4942).[31]

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[31] The Government believes that the Court of Appeals was in error in ruling that this time was not part of the working time. Since the amount of time thus consumed in this case is not large, it was not deemed of sufficient importance to warrant a cross petition for certiorari. The District Court made the following finding, supported by the evidence reviewed, *supra*, pp. 5–7, with respect to this time: "No serious conflict of evidence is apparent as to the liability of the plaintiffs for payment to their underground ore mining employees for the aggregate of time spent on the surface in obtaining and returning lamps, carbide and tools and in checking in and out. * * * Certainly the infrequency of activities or the speed with which they can be performed will not change their essential nature as work, and it seems an inescapable conclusion that the activities mentioned are obviously work. They are performed on the premises of the employer, in the furtherance of the employer's business, with no benefit to the employee

SUMMARY OF ARGUMENT

I

Petitioners' underground miners, during the travel time in question here, are "employed" and are engaged in a "process or occupation" necessary to the production of ore within the plain language of Sections 3 (g), 3 (j) and 7 (a) of the Act. The evidence showing how the travel time is spent, what the miners have to do, the discipline and control to which they are subject, and the discomforts and hazards of the trip, can leave no doubt that the miners are not only "employed" and engaged in a "process or occupation necessary to * * * production" during their underground travel, but that they are also engaged in hard work, within the ordinary understanding of those terms. Nothing in the statute or in reason suggests that compensation should be paid only for "productive" work in the sense in which petitioners use the term. The underground travel is as necessary to production and the operation of the mines and as much subject to the employer's control and supervision as is the actual drilling for ore at the face. In addition it has all of the

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(except to aid him in the performance of work for the employer), under conditions created and controlled by the employer, and they involve responsibility to the employer and physical exertion, even though not burdensome, on the part of the employee. No characteristic of work is lacking. This time must be included in the workweek of the employees represented by the defendants" (R. 500–501).

characteristics of hard dangerous work. If an employee can be "none the less on duty when inactive" (cf. *Missouri, K. & T. Ry. Co.* v. *United States,* 231 U. S. 112, 119), *a fortiori* the miners are on duty or employed during their underground travel, pursuant to the occupation for which they are employed.

The logic of the "portal to portal" principle is sustained by the decisions interpreting the Fair Labor Standards Act as well as by the decisions interpreting analogous statutes. Its reasonableness and practicability are attested by the fact that it has been applied for many years in two of the great mining States in this country as well as in a number of foreign countries.

II

Petitioners' reliance upon "traditional practices" and "collective bargaining" agreements is founded upon the fallacious assumption that the absence from the Act of a specific provision on underground travel in mines evidences a congressional intent to perpetuate established customs and agreements. No such significance can be attached to the absence of particularity in a statute of such general application, designed to provide the standard for a wide variety of industries. The intent of Congress, though necessarily expressed in general terms is clear, as shown in Point I, that compensation should be required for all employment. This requirement cannot be avoided by any custom or agreement. In any event, if custom and agreement are entitled to weight in determining what is employment or working time, the pertinent practices would be those in petitioners own mines in Alabama, and not the customs, practices and collective bargaining history in other industries. This case does not involve the bituminous coal mines. The trial court did not, and as a practical matter, could not have inquired into and determined the conditions and customs in the coal mines.

In petitioners' mines there has been no established custom or long history of agreement to pay only and solely for time actually spent at the "face." The evidence amply supports the District Court's finding to this effect. Various methods of payment have been in use in petitioners' mines, primarily the tonnage and task bases, without regard to hours worked at particular points. Nor had the "face to face" practice been established in petitioners' mines by bona fide collective bargaining agreements. On the contrary, not until after the passage of the Act was there collective bargaining in petitioners' mines; the methods of payment have been dictated almost entirely by the employers, frequently over the futile protests of the employees' representatives. Not one of petitioners had entered into a contract with an independent union prior to the enactment of the Fair Labor Standards Act. Under such circumstances to speak of the "face to face" practice as an "immemorial custom" in petitioners' mines (Tennessee br. p. 49) and a practice arrived at through a long history of collective bargaining agreements between petitioners and their employees "represented by strong national unions" (*id.* pp. 18, 49) is both artificial and wholly incorrect. The customs and collective bargaining agreements in mines other than petitioners', and particularly in the bituminous coal mines, do not constitute proof of the practices in petitioners' mines or of the collective bargaining agreements between petitioners and their employees.

The Administrator's enforcement policy with respect to the bituminous coal mining industry, announced in a press release, is not relevant. Whether right or wrong, it was based upon considerations not present in metal mining. Moreover, the release in question was only an informal declaration made by the Administrator for enforcement purposes with respect to a particular practical problem. It did not purport to be a legal interpretation. Assuming that this declaration is inconsistent with the Administrator's metal mining ruling, the latter is applicable here and is the correct legal interpretation pertinent to this case. If the declaration of his coal enforcement policy be regarded as a legal interpretation, we think it was wrong to the extent that it may be inconsistent with the decisions of the courts below.

ARGUMENT

I

THE MINERS ARE EMPLOYED OR AT WORK, WITHIN THE MEANING OF THE FAIR LABOR STANDARDS ACT, DURING THE TIME SPENT TRAVELING UNDERGROUND

The District Court found that the travel time was "under the strict control" and "the complete supervision" of the petitioners (R. 502–503), that "it exacted mental and physical exertion" (R. 504, 566) and was "pursued solely as a necessary incident to the prosecution of the employer's business" (R. 500, 4941). These findings are supported by virtually undisputed evidence and suffice to bring the travel time squarely within the terms of the statute. The statute provides that no one, who is engaged in commerce or in the production of goods for commerce, shall be employed for a workweek longer than the prescribed hours unless the employee receives compensation for excess hours at a rate not less than one and one-half times the regular rate (Section 7 (a)). Under the statutory definition the word "employ" "includes to suffer or permit to work" (Section 3 (g)), and "production" includes "any process or occupation necessary to * * * production" (Section 3 (j)). The Circuit Court of Appeals pointed out (R. 5002), "The [statutory] language is plain;

it requires no outside aid in its interpretation; it contains simple words that are in common use; and, under fundamental rules of construction, such words must be given their usual and ordinary meaning."

Accordingly, in determining what constitutes employment or work within the meaning of the Act, the significant inquiry is not whether the employee is engaged in so-called "productive" labor but rather whether the employee is subject to the employer's direction and control and is engaged in services contributing or necessary to the performance of the job for which he was hired. That the employer obtains more profit from the precise occupation of drilling or loading ore is of course irrelevant. There is nothing in the statute, or in the legislative history, suggesting that compensation should be paid only for the most "productive" work. The statute broadly requires that the employee be compensated for his *employment* in the production of goods for commerce and that includes "any process or occupation necessary" to such production (Sections 7 (a), 3 (g), 3 (j)) [Italics supplied].

The evidence in the record describing the underground descent and ascent in petitioners' mines establishes with forceful eloquence that this "travel" not only possesses all of the elements of employment but also all of the characteristics of hard work. Assuming, as petitioners claim, that the miners' pay, prior to the Act, did not "start" until the electric current went on in the mines, or at some other arbitrary moment, or that the "time ended" after the "shooting" at the end of the shift, this did not reduce the exertion, the burden and the peril of the time spent from the portal to the face, nor relax to any degree the employees' subjection to the employers' control, nor make the travel any the less a "process or occupation necessary" to the production of ore. The so-called "productive" work, obviously only a part of the work of mining, could not begin until the miners reached the headings or stopes, which are accessible only by the skips or man-trips on the main slopes, and the man-ways or haulage-ways over which the men must work their way. Nor could the actual drilling be carried on unless the miners carry down their carbide and lamps, and see to it that they have an adequate supply of oil for their drills, and other tools, and materials at the working faces. These activities are no less essential to production than are timbering, ventilating, track laying, and the other jobs of the service crews, or quarrying the roof and other "unproductive" labor performed by the miners themselves.

With a few minor exceptions, the courts have consistently interpreted the Fair Labor Standards Act as including within its scope time spent in "unproductive" activities which are a part of the employee's job or duties. The duties of night watchmen, for example, have been held to constitute production for commerce within the coverage of the Act, although they involve no "productive" activities and are usually performed during hours when the plants are closed, and no production in the strict sense is in progress. *Walton* v. *Southern Package Corp.,* No. 159, present Term, decided January 3, 1944. *Johnson* v. *Phillips-Buttorff Mfg. Co.,* 178 Tenn. 559, 160 S. W. (2d) 893 (1942), certiorari denied, 317 U. S. 648; *Walling* v. *Sondock,* 43 F. Supp. 339 (S. D. Tex.), reversed, 132 F. (2d) 77 (C. C. A. 5), certiorari denied, 318 U. S. 772; *Milam* v. *Texas Spring & Wheel Co.,* 157 S. W. (2d) 653 (Tex. Civ. App. 1941); *Lefevers* v. *General Export Iron and Metal Co.,* 36 F. Supp. 838 (S. D. Tex.). See also *Kirschbaum Co.* v. *Walling,* 316 U. S. 517.[32]

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[32] For numerous other cases holding the requirements of the Act applicable to night watchmen who were presumably on duty when no production was going on see *Mid-Continent Pipe Line Co.* v. *Hargrave,* 129 F. (2d) 655 (C. C. A. 10) (watchman for pipe lines and oil refinery, presumably both night and day); *Shepler* v. *Crucible Fuel Co.,* 6 Wage Hour Rept. 185 (W. D. Pa. 1943), affirmed on other grounds, 6 Wage Hour Rept. 936 (C. C. A. 3, 1943); *Niehaus* v. *Joseph Greenspon's Son Pipe Corp.,* 164 S. W. (2d) 180 (Mo. App. 1942); *Wood* v. *Central Sand & Gravel Co.,* 33 F. Supp. 40 (W. D. Tenn.); *Reliance Storage & Inspection Co.* v. *Hubbard,* 50 F. Supp. 1012 (W. D. Va.); *Dollar* v. *Caddo Lumber Co.,* 43 F. Supp. 822 (W. D. Ark.); *Reeves* v. *Howard County Refining Co.,* 33 F.

Other non-productive activties, such as waiting for work, or standing by on call, or getting machines and engines ready for production, which are necessary or incident to the employment, also have consistently been recognized as constituting work time within the meaning of the Act. *Fleming* v. *North Georgia Mfg. Co.*, 33 F. Supp. 1005 (N. D. Ga.);[33] *Reck* v. *Zarnocay*, 33 N. Y. S. (2d) 582 (Sup. Ct. N. Y. Co. 1941); *Walling* v. *Sun Publishing Co.*, 47 F. Supp. 180, 191 (W. D. Tenn.); *Travis* v. *Ray*, 41 F. Supp. 6 (W. D. Ky.); *Walling* v. *Blue Mt. Logging Co.*, No. 380, W. D. Wash., decided October 13, 1942; See also *Davies* v. *City of Seattle*, 67 Wash. 532, 121 P. 987 (1912).

Under the same principles, underground travel has consistently been recognized as working time within the meaning of the Act in the few cases in which the question has arisen. In addition to the decisions of the courts below, the District Court

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Supp. 90 (N. D. Tex.); *Cushway* v. *Stork Engineering Co.*, 51 F. Supp. 568 (E. D. Mich.); *Acme Lumber Co.* v. *Shaw*, 243 Ala. 421, 10 So. (2d) 285 (1942).

[33] In this case Judge Underwood, rejecting the contention of defendant that employees were not at work during much of the time they were on the company's premises because there were substantial periods when they were idle, waiting for work, stated (p. 1006): "* * * their claims that employees, though remaining in the factory long hours, were really not employed a great part of the time and were free to utilize such time as they saw fit, are puerile and too transparent to deceive anyone."

of Idaho, in the case of *Sunshine Mining Co.* v. *Carver*, 41 F. Supp. 60, held that underground travel in gold, silver, copper, lead, and other metal mines, constituted working time compensable under the Act. See also *Butte Miners' Union No. 1* v. *Anaconda Copper Min. Co.*, 112 Mont. 418, 118 P. (2d) 148 (1941), construing the Montana Eight Hour Law to include the "portal-to-portal" principle.[34]

The logic of these decisions is sustained by decisions interpreting analogous statutes. Particularly pertinent are the decisions under the Federal

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[34] *Ex Parte Martin*, 157 Calif. 59, 106 P. 235 (1909), a 35-year-old decision of the Supreme Court of California, upon which petitioners rely (Tennessee Company br. pp. 15–16), is the single decision holding that underground travel is not part of the workday. The California court placed principal reliance upon the case of *United States* v. *Post*, 148 U. S. 124, which it apparently misinterpreted. To the extent that the *Post* decision is pertinent, it seems to be contrary to the result reached by the California court.

As to petitioners' assertion that "research has not disclosed any construction contrary to the Supreme Court of California with the exception of *Butte Miners' Union*" decision, *supra*, (Tennessee br. p. 16) it should be observed that no decisions have been found which follow the California court's construction. It does not follow from the fact that other States have enacted substantially similar statutes that they have "presumably adopted the construction of the Supreme Court of California" (Tennessee Company br. p. 16). As a matter of fact, the only other pertinent judicial construction of such a statute which we have found (and petitioners cite no other), is the *Butte Miners' Union* decision, which adopted a construction contrary to that expressed by the California court in *Ex Parte Martin*.

Hours of Service Act,[35] limiting the consecutive hours of service of railroad employees. In *Missouri, K. & T. Ry. Co.* v. *United States*, 231 U. S. 112, this Court held that time spent "waiting, doing nothing" while the engine was sent off for water and repairs, should be included in determining whether the employees had been on continuous duty in violation of the provisions of the Hours of Service Act. Mr. Justice Holmes, speaking for the Court, pointed out that the employees "were under orders, liable to be called upon at any moment, and not at liberty to go away." He held that they were "none the less on duty when inactive. Their duty was to stand and wait" (231 U. S., at 119).[36] This same reasoning was applied by the Supreme Court of Washington in construing a State maximum hour statute in a case where the employer's contentions were remarkably similar to the contentions of petitioners here. *Davies* v. *City of Seattle,* 67 Wash. 532, 121 Pac. 987 (1912). The statute involved in the *Davies* case provided that—

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[35] C. 2939, 34 Stat. 1415, 45 U. S. C., sec. 61. Section 2 provides in part: "It shall be unlawful for any common carrier * * * to require or permit any employee * * * to be or remain on duty for a longer period than sixteen consecutive hours * * * *Provided*, That no operator, train dispatcher, or other employee * * * shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period * * *."

The term "on duty" is essentially the same as "employment" or "work." The term "work" has been defined to include "employment," "task," "duty." See Webster's International Dictionary (2nd Ed.) p. 2950; *State* v. *Rose*, 125 La. 462, 466, 51 So. 496, 497 (1910); *Chicago & A. R. R. Co.* v. *Bragonier*, 119 Ill. 51, 63, 7 N. E. 688, 693 (1886).

[36] To the same effect see *United States* v. *Southern Pac. Co.*, 245 Fed. 722 (C. C. A. 9); *Minneapolis & St. L. R. R. Co.* v. *United States*, 245 Fed. 60 (C. C. A. 8), certiorari denied, 245 U. S. 666; *San Pedro, L. A. & S. L. R. R. Co.*

> all work "by contract or day labor done" for it [the State], or any political subdivision created by its laws, shall be performed in work days of not more than eight hours each * * *.

The employees involved were teamsters performing day labor for the city street department. They were required each morning to go to the barns owned by the city, grease their wagons when

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v. *United States,* 213 Fed. 326, 329 (C. C. A. 8); *United States* v. *Denver & R. G. R. R. Co.*, 197 Fed. 629 (N. Mex.) *United States* v. *Illinois Cent. R. R. Co.*, 180 Fed. 630 (N. D. Iowa), and *United States* v. *Chicago, M. & P. S. Ry. Co.*, 195 Fed. 783 (W. D. Wash.).

See also *Bountiful Brick Co.* v. *Giles,* 276 U. S. 154, 158, where this Court stated that "as a general rule, employment may be said to begin when the employee reaches the entrance to the employer's premises where the work is to be done * * *." It is recognized that employment under the workmen's compensation laws extends beyond employment for which wages are due. However, the above-quoted statement appears to have been an enunciation of the rule of general application, rather than of the broader rule applied in workmen's compensation cases. The particular injury involved occurred before the employee reached the entrance to the employer's premises.

necessary, hitch up their teams, collect their tools and, as the court said—

> be at the place of work, or, as the witnesses put it, "on the job," at eight o'clock a. m. * * * [67 Wash. at 533].

After working eight hours "on the job," the teamsters were required to return the teams to the barns and unhitch and unharness them. The time spent in going to and returning from "the job" ordinarily consumed one hour a day. The city there contended that the time so spent was simply "choring" or "preparation" for the day's work, and was not to be included within the activity prohibited by the law. But the Supreme Court of Washington, branding defendant's contention "a palpable evasion of the law," concluded (p. 535):

> If the excess time put in by respondents was not work, then the inquiry is, what is work and where is the dividing line?

Petitioners require their miners to report at the tally house precisely as the city of Seattle required the teamsters to report to its barns. The preliminary handling and hitching of the teams and wagons is further paralleled by the arrangement and transportation of tools and equipment. The teamsters were under orders of the city precisely as the miners are under the orders of the petitioners. In both situations, the time spent in getting from the place of reporting to the place where the employee is of greatest benefit to the employer is not for the convenience or amusement of the employee; it is "choring" dedicated unqualifiedly to the interests of the employer.[37]

The unreasonableness of petitioners' claim that only "productive" work should be compensable time, is nowhere better demonstrated than in the testimony of their efficiency engineer witness, Mr. Joseph Halfpenny, who devised and installed in petitioners' mines the incentive plan under which the more tonnage a man or crew mined, the lower became the tonnage rate of pay (R. 1789–1790). According to Mr. Halfpenny, studies made prior to the installation of his incentive plan showed that actually only "about one-half of the eight hours' work at the face was productive time * * * the rest of the time, 3.6 hours, was taken up with delays, with unnecessary things that were done, with overlapping, and so forth" (R. 1791). Carried to its logical extreme, the time consumed by the men in reaching over for tools, or in mopping the sweat from their brows, would not be compensable time.

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[37] Petitioners (Tennessee br. p. 17) claim to find support for their position in some opinions of the Attorney General, and some "rulings" of the Comptroller General, regarding the application of statutes relating to the hours of work of certain Government employees or employees on public works. The reference to opinions of the Attorney General relates to two interdepartmental opinions, written 37 and 35 years ago, respectively, regarding the eight-hour law for public works (R. 4646, 4654). These are not concerned with mining or anything similar. In both cases it is clear that the disputed time was time which the employees could use for their own purposes and during which they were performing no services or duties incident to their work. The rulings of the Comptroller General relied on are concerned with the time spent by a railway postal clerk in traveling "from his *home*" to the place where he performs his duties (pltf. ex. 18, R. 4658), with Government employees on travel status (pltf. ex. 19, R. 4661), and with Government employees transported by special ferry to their place of work (pltf. ex. 45, R. 4669–4695). There was no "ruling" as to the third of these matters; indeed, the "interpretation" upon which petitioners have relied was actually reversed by the Comptroller General's office (R. 4691–4692). The facts as to none of them resembled those at bar.

The reasonableness and practicability of the "portal to portal" principle are attested by the fact that it has been applied in two of the great mining States, as well as in a number of foreign countries. Arizona, since 1912, and Utah, since 1937, have provided by statute that the eight-hour per day limitation upon work in underground mines encompasses all time spent underground; Nevada provides that the eight-hour limitation shall apply to travel one way.[38] Among the foreign countries (according to the reports of the International Labor Office), which prior to the current war applied in their coal mines a method of computing working time equivalent to the "portal to portal" basis, were: Austria, Belgium, British Columbia, Czechoslovakia, France, the Dombrava and Cracow areas of Poland. *The World Coal Mining Industry* (International Labor Office Studies and Reports, series B, no. 31, 1938, vol. II, pp. 254–258; *Reduction of Hours of Work* (International Labor Conference, Report no. 4), vol. V: Coal Mines (1935), pp. 31–32. In the Netherlands, the Upper Silesian Region of Poland, Alberta, Canada, Spain and some parts of France, according to these same reports, the computation of underground hours included one period of ascent or descent. In Great Britain, where wages are paid on a shift or collective basis, the shift begins when the last worker of the group enters the cage to descend, and ends when the first worker leaves the cage on returning to the surface. A shift of workmen includes the

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[38] Ariz. Laws 1912, c. 28, secs. 2 and 3, p. 59, Ariz. Code Ann. (1939), vol. 4, sec. 56–115; Utah Laws (1937), c. 59, amending Rev. Stat. (1933), sec. 49–3–2; Nevada Comp. Laws (1929) sec. 10237. Wyoming provides however that its eight-hour law for miners "shall be construed to mean eight hours of actual labor and shall not include the time consumed in going to and returning from work." Wyoming Rev. Stat. (1931), 63–107. The Alaska statute is similar. Alaska Comp. Laws, Sec. 2132. As the Fair Labor Standards Act is not limited to one industry but is designed to provide the

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standard for every kind of work, the absence of an explicit provision as to working time in underground mines does not have the significance which petitioners seek to attach to it (see Tennessee Company br., pp. 15, 58). It is no more reasonable to infer that Congress would have expressly adopted the "portal to portal" basis had it intended to include underground travel as working time than it is to presume that Congress would have expressly adopted the "face to face" basis had it intended to exclude travel time. Compare the Wyoming and Alaska statutes, *supra.*

number of workmen whose hours for beginning and terminating work in the mine are approximately the same. (Coal Mines Regulation Act 1908, 8 Edw. 7, ch. 57). Within these limits, travel time is included in working time. We have been advised that the time thus included is the equivalent of one-half of the total travel time. That the "portal to portal" basis of payment is the more humane and progressive practice has been recognized by the International Labor Conference in the adoption of the Hours of Work (Coal Mines) Convention of 1935.[39]

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[39] International Labour Code (1939), pp. 81, 83. Article 3 of the Convention provided: "Hours of work in underground hard coal mines means the time spent in the mine, calculated as follows—(a) time spent in an underground mine means the period between the time when the worker enters the cage in order to descend and the time when he leaves the cage after reascending; (b) in mines where access is by an adit the time spent in the mine means the period between the time when the worker passes through the entrance of the adit and the time of his return to the surface" (*id.* at 83). This Convention was ratified by Cuba and Mexico but was not to go into force until six months after the registration of ratification by at least two of the following countries: Belgium, Czechoslovakia, France, Germany, Great Britain, Netherlands, and Poland. No additional ratifications had been registered up to the time of the outbreak of the war (*id.* p. 81, footnote 1).

II

THE STATUTORY REQUIREMENT CANNOT BE SET ASIDE BY CUSTOM OR AGREEMENT. IN ANY EVENT, THERE HAS BEEN NO ESTABLISHED "FACE TO FACE" CUSTOM IN PETITIONERS' MINES, NOR HAS ANY SUCH PRACTICE BEEN ESTABLISHED BY BONA FIDE COLLECTIVE BARGAINING AGREEMENT

Petitioners cannot dispute the fact that the underground travel in their mines is a difficult, disagreeable, and perilous part of the miner's job essential to the owners' business of producing ore. Their briefs do not seriously attempt to attack the finding of the District Court that the travel time "bears in a substantial degree every indicia of worktime: supervision by the employer, physical and mental exertion, activity necessary to be performed for the employers' benefit, and conditions peculiar to the occupation of mining" (R. 503). Petitioners have sought to obscure these essential facts by drawing attention to a mass of evidence supposedly establishing a "traditional practice," supported by a history of collective bargaining agreement, not to pay for this time. They have not restricted themselves to the practices and collective bargaining agreements in their own Alabama operations, but have undertaken to prove the practices in their own mines by adducing in vast detail evidence of the customs and collective bargaining agreements in other mines and other industries, particularly in the bituminous coal mines.

They seek to justify such procedure on the ground that, since the statute contains no specific provision regarding underground travel in mines, it is ambiguous, and therefore it must be assumed that Congress intended to perpetuate the existing customs or to leave the matter to be determined by agreements between the mine operators and their employees.[40] But no such significance can be attached to the absence of particularity in a statute of such general application, designed to provide the irreducible minimum standard for a variety of industries. In any event, if customs or agreements were to be given weight, the practices of greatest weight would be those in petitioners' own mines in Alabama and not customs, practices, and conditions in the bituminous coal or other industries elsewhere.

A. THE REQUIREMENT OF THE STATUTE THAT COMPENSATION BE PAID FOR ALL EMPLOYMENT CANNOT BE AVOIDED BY CUSTOM OR AGREEMENT

Petitioners' argument for introducing the mass of evidence on custom, is, as previously stated, that the absence of an express provision in the statute with respect to underground travel creates an ambiguity and requires resort to extraneous evidence as to the intent of Congress. The basic fallacy of this reasoning lies in the significance which petitioners attach to the absence of specific treatment in the statute of underground travel. We think that the Circuit Court of Appeals conclusively answered petitioners' contention by pointing out with respect to the statutory provisions in question that (R. 5002):

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[40] Where Congress intended to permit the Act's basic overtime requirements to be modified through collective bargaining agreements, it specifically so provided. See Section 7 (b).

> The legislative intent is clear but it is expressed in general terms and does not extend to particular instances. The myriads of circumstances in which it would be necessary to determine working time in individual cases or classes of cases could not be covered with particularity by statute.

It need not be denied that the determination of when a man is at work or employed may be difficult in some factual situations near the borderline. But the record in this case shows that this is no borderline case; that the miners are actually at work and subject to the control and supervision of petitioners during the underground travel. Under the circumstances, it would indeed be "a mockery of the beneficent purpose of the Act" (see decision of the District Court, R. 499), to construe the overtime requirement to incorporate a custom or agreement not to pay the miners for such working time. An agreement to accept less than the statute requires or a custom at variance with a statutory right is

void. *United States* v. *Morley Construction Co.*, 98 F. (2d), 781, 788 (C. C. A. 2), certiorari denied *sub nom. Maryland Casualty Co.* v. *United States*, 305 U. S. 651; *Waterman S. S. Corp.* v. *National Labor Relations Board*, 119 F. (2d) 760, 762 (C. C. A. 5); *Fleming* v. *Warshawsky & Co.*, 123 F. (2d) 622 (C. C. A. 7); *Johnson* v. *Dierks Lumber & Coal Co.*, 130 F. (2d) 115 (C. C. A. 8). In the words of the Eighth Circuit in the last cited case, "We do not think the act means that an employer may claim all of an employee's time and compensate him for only a part of it" (p. 120). A practice or custom pursuant to which employees were paid only for shoveling ore, for example, but not for shoveling rock or dirt, obviously would not prevent the latter from being work within the meaning of the Act.

Petitioners make a particular point of the Administrator's press release (issued in July 1940 by former Administrator Philip B. Fleming) relating to his enforcement policy in the bituminous coal mining industry, in which he stated that he would "accord great weight to any reasonable standards for determining working time which represent the prevailing customs and practices in the particular industry and are supported by a long history of bona fide collective bargaining agreements" (Plaintiff's Exhibit for Identification No. 4-B, R. 4716-4717). As appears from the record, the factors upon which the

Administrator based his coal-mining enforcement policy were not present in petitioners' mines (see Statement, pp. 33–34, *supra*). Moreover, the release in question shows on its face that it was only an informal declaration made by the Administrator for enforcement purposes with respect to a particular practical problem. If, however, the declaration of the Administrator's coal enforcement policy should be regarded as a legal interpretation, we think it was wrong to the extent that it may be inconsistent with the decisions of the courts below.

Petitioners have adverted to the fact that the coal policy has never been retracted or changed by the Administrator (Tennessee brief, p. 18). In view of this statement, it should be said on behalf of the present Administrator that his inaction is attributable, not to continued approval under present circumstances of the previously announced coal policy, but to his reluctance to do or say anything which might be construed as an attempt to influence the present litigation. Moreover, the Administrator's informal action with respect to bituminous coal mining can be of little assistance to the court in determining the issue here. Were his coal policy irreconcilable with his metal mining ruling, the latter is the action applicable to this case. He has participated in this case and advocated the correctness of the position taken by the court below.

B. THERE HAS BEEN NO ESTABLISHED "FACE TO FACE" CUSTOM IN PETITIONERS' MINES, NOR HAS ANY SUCH PRACTICE BEEN ESTABLISHED BY BONA FIDE COLLECTIVE BARGAINING

It is not without reason that petitioners have placed far greater emphasis on the practices and collective bargaining history in the bituminous coal industry than they have upon practices and conditions in their own mines.[41] Emerging from the mass of evidence is the clear fact that there has been no custom in petitioners' mines to pay for or to compute working time on a "face to face" basis,[42] and no collective bargaining history supporting any such custom. Petitioners' statements that the "undisputed evidence shows the existence" of such a practice and that this practice was established not only by "immemorial custom" but also by collective bargaining agreements between petitioners and their employees allegedly "represented by strong national unions" (Tennessee br. p. 18) cannot be supported. This is evident from the review of the evidence in the Statement (*supra*, pp. 18–32).

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[41] Most of the events, practices, and contracts relied on by petitioners relate to coal mining (see Tennessee Company br. pp. 18–25). In the metal mining industry there has been diversity of practice as to the past method of payment (R. 86–89). The report to the Administrator states (R. 88–89):

> "From the foregoing summary it is apparent that there is no nation-wide practice concerning hours worked in underground metal mines. In a few localities, the practice is fairly uniform, but generally it varies greatly even within the boundaries of a single state. Furthermore, existing methods of payment have been arrived at in part by unilateral employer action. * * * The great majority of metal miners nowadays work in mines where they are paid for part or all of their underground travel time."

Even apart from the practice in petitioners' mines, this would lead to the conclusion that the question could not be determined by "custom," inasmuch as Congress undoubtedly did not intend that in an industry with diverse practices, each employer could establish his own definition of hours worked.

[42] We do not mean by this that petitioners' employees have previously been paid for travel time, but that they have not been paid on the basis of hours worked, at the face or elsewhere, at all.

Alabama mining operations in the last 40 or 50 years have undergone many and radical changes (R. 985–1029). In the '70's, at the beginning of commercial operations on Red Mountain, the ore was stripped by hand from outcrop workings, with pick and shovel, and hauled in wheelbarrows (R. 1025, 1121). Then, when stripping and open pit mining became uneconomical, slopes were driven beneath the surface, and mining operations changed to the stope system as slopes were driven underground. At first the mines were only a few hundred feet deep and the miners could quickly and easily walk from the surface into their "working places" (R. 986, 1028), but as the headings advanced it was necessary to install skips and to transport both men and ore (R. 1028). Extractive methods at the same time altered to keep pace with scientific development. Through the use of ever increasing mechanization, the productivity of the miners increased (R. 1030). The hours of labor gradually were reduced and wage rates varied through the years, adjusting themselves to changes in economic conditions (R. 1030).

In this industry, characterized by development and change, petitioners find a single timeless factor. The ~~method~~ by which the miners' hours of work and rates of pay were computed, they assert, is today precisely the same as it was in the days of the mule and the fist mucker. One thing which is clear from the evidence adduced at the trial is that up until the time the Fair Labor Standards Act was passed in 1938 (if not thereafter), not one of the petitioner companies was ever concerned with the accurate measurement of the amount of time spent by its underground employees at what petitioners term "working places." Whether paid on a so-called "contract basis," a "tonnage basis," ~~a~~ "task basis," or the so-called "ten-hour day" and "eight-hour day" basis, both the productive miners and the service crews have been compensated without regard to the number of hours which they actually devoted to their employers either at the "working face" or from the time they arrived at the portal until the time they left the mines.

Under the "contract system" the amount of time actually consumed by a crew in producing ore was entirely immaterial (*supra,* p. 20). Whether the miners spent six or nine "productive" hours, they were paid without regard to the time consumed but simply in relation to the amount of tonnage produced (*supra*, pp. 21–22). The only distinction which petitioners' witnesses were able to point out between the "contract system" and the "task" or "pay day" system was that under the latter a certain minimum tonnage or task was established by the company which was intended to serve as a quota or measure of the average day's work (*supra*, p. 20). The method of payment, however, remained strictly on a tonnage basis and so long as a miner completed his task it was immaterial whether he remained at the face either half a day or a full day. His earnings bore direct relation, not to his time, but to his production (*supra*, pp. 21–22). The so-called "ten-hour day" or "eight-hour day" system likewise had no real relation to the time spent by the miners at their "working places" (see Statement, *supra*, pp. 20–23, 24–25). Accordingly, to speak of computing wages or time worked on either a "face to face" or "portal to portal" basis is both artificial and incorrect.

Petitioners' contention that the "face to face" custom has been established by collective bargaining agreements between petitioners and their employees is also without foundation. In the light of the facts summarized in the Statement, *supra*, pp. 25–32, petitioners may not speak of their "History of collective bargaining." The record shows that prior to the enactment of the Fair

Labor Standards Act petitioners had not recognized any labor organization as the representative of their employees.[44] To speak of petitioners' methods of paying wages, their incentive plans, and their contracts with company-dominated unions as a collective bargaining history (Republic br., p. 8) is to wander into the realm of the unreal. The record reveals the repeated attempts by the employees to secure pay for their underground travel and the uniformly customary refusal by petitioners. The history of labor relations in petitioners' mines, prior to the enactment of the Wagner Act and the Fair Labor Standards Act guaranteeing them certain basic rights, was such that "there is grim irony in speaking of the freedom of contract" or of voluntary acceptance of the alleged "face to face" plan by employees who, "because of their economic necessities," had been forced to labor for petitioners regardless of the kind of working conditions or the wages which they received. *Morehead* v. *Tipaldo*, 298 U. S. 587, 632; *Holden* v. *Hardy*, 169 U. S. 366, 397. The District Court found that "the evidence clearly established that the method of payments of wages were dictated almost entirely by the employers," that the "employees worked on the best terms they could obtain and the fact that they could not obtain terms that would compensate them for time spent in traveling underground to and from their working stations does not indicate that they did not consider that time as working time" (R. 498). The court further found that "Prior to the enactment of the Fair Labor Standards Act of 1938, iron ore miners repeatedly made efforts to obtain full, or at least a partial, compensation for so-called travel time" (*ibid.*). The contracts on which the petitioners here rely were essentially the result of a situation where "the proprietors lay down the rules and the laborers are practically constrained to obey them" (169 U. S., at 397).

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[44] The fact that two of petitioners entered into contracts with the unions after the passage of the Act (see pp. 26, 32, *supra*) is hardly sufficient to establish a custom existing when the Act was passed. Furthermore, as we have shown (*supra*, pp. 22–23, 32), the definition in the 1938 and 1939 agreements of working time as time "at the usual working place" (R. 107) did not mean that the men were actually paid on the basis of time spent at the face.

As the District Court pointed out, the fact that the miners were unsuccessful in their efforts to secure payment for travel time "does not determine that they were erroneous in their contention that such time was work time, nor does it determine that Congress, in using the phraseology of Section 7 of the Act, adopted the prevailing method of payment. * * * It would be no more reasonable to assume that Congress * * * adopted the employer's formula than to assume that Congress intended to remedy the practice so far as it may have denied compensation for actual work" (*ibid.*)

CONCLUSION

The ruling of the courts below that the time spent by the miners in underground travel constitutes employment and working time, within the scope of Section 7 of the Act, is correct and should be affirmed.

Respectfully submitted.

✓ CHARLES FAHY,
Solicitor General.
ROBERT L. STERN,
✓ *Special Assistant to the Attorney General.*
DOUGLAS B. MAGGS,
✓ *Solicitor,*
IRVING J. LEVY,
✓ *Associate Solicitor,*
✓ BESSIE MARGOLIN,
Assistant Solicitor,
United States Department of Labor.

JANUARY 1944.

U. S. GOVERNMENT PRINTING OFFICE: 1944

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Office - Supreme Court, U. S.
FILED
MAY 29 1944
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1943.

No. 409.

Tennessee Coal, Iron and Railroad Company, et al.,
Petitioners,

v.

Muscoda Local No. 123, Affiliated with International Union of Mine, Mill and Smelter Workers, et al.,
Respondents.

MOTION OF TENNESSEE COAL, IRON & RAILROAD COMPANY FOR LEAVE TO FILE PETITION FOR REHEARING OUT OF TIME.

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Pittsburgh, Pa.

Borden Burr,
Birmingham, Alabama.

Attorneys for Petitioner, Tennessee Coal, Iron & Railroad Company.

Press of Byron S. Adams, Washington, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 409.

TENNESSEE COAL, IRON AND RAILROAD COMPANY, ET AL.,
Petitioners,

v.

MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, ET AL.,
Respondents.

MOTION OF TENNESSEE COAL, IRON & RAILROAD COMPANY FOR LEAVE TO FILE PETITION FOR REHEARING OUT OF TIME.

Your petitioner, Tennessee Coal, Iron & Railroad Company, respectfully presents, this its motion, for leave to file the annexed petition for rehearing in this case out of time. In support of its motion petitioner presents the following:

On March 27, 1944, this Court rendered its decision in this case holding that travel time in underground iron ore mines should be included in the "work-day" or "work-week" for which compensation should be paid under the

Fair Labor Standards Act of June 25, 1938, Chap. 678, Sec. 152, Stat. 1060.

The time provided in Rule 33 of the rules of this Court for filing a petition for rehearing expired on April 21, 1944.

On or about May 6, 1944, there was filed in this Court and docketed as Case No. 969, October Term, 1943, a Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit to review the decision of the United States District Court for the Western District of Virginia (53 Fed. Supp. 935) in the case entitled *Jewell Ridge Coal Corporation* v. *Local No. 6167, United Mine Workers of America, et al.* That case held that travel time in underground coal mines should *not* be included in the "work-day" or "work-week" for which compensation should be paid under the Fair Labor Standards Act. Counsel for petitioner have only recently been advised of the filing of said writ of certiorari. In view of the importance of the question this Court should re-examine its decision in the present case.

Counsel for petitioner have likewise only recently learned that there is a general misunderstanding throughout the country as to the extent of the Court's decision in the present case, and that many claims for compensation are being made for travel time on the surface under a great variety of circumstances, which in the interest of justice and in the public interest warrants a re-examination of the present case by this Court. This is particularly true in view of the direct review of the Jewell Ridge Coal decision, Case No. 969.

This motion and the attached petition for rehearing have been prepared with due diligence since counsel for petitioner learned of the filing of the Petition for Writ of Certiorari in Case No. 969 above referred to.

WHEREFORE, your petitioner respectfully moves the Court for leave to file the annexed petition for rehearing out of time.

TENNESSEE COAL, IRON & RAILROAD COMPANY,

By NATHAN L. MILLER,
71 Broadway,
New York, New York.

ROGER M. BLOUGH,
436 Seventh Ave.,
Pittsburgh, Pa.

BORDEN BURR,
Birmingham, Alabama.

Attorneys for Petitioner.

CERTIFICATE.

I, Roger M. Blough, one of the attorneys for petitioner, do hereby certify that the facts stated in the foregoing Motion are true to the best of my knowledge.

....

Dated: May 26, 1944.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 409.

TENNESSEE COAL, IRON AND RAILROAD COMPANY, ET AL.,
Petitioners,

v.

MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, ET AL.,
Respondents.

PETITION OF TENNESSEE COAL, IRON & RAILROAD COMPANY FOR REHEARING.

Your petitioner, Tennessee Coal, Iron & Railroad Company, presents this its petition for a rehearing in the above entitled case and respectfully alleges:

1. The majority of the Court erroneously assumed that the question for decision was whether a particular exertion, mental or physical, constituted work or employment within the meaning of the statute and was therefore a question of fact, whereas the term of the statute to be construed was "work-week".

2. The majority of the Court overlooked or misapprehended the significance of the fact of common knowledge that the customs and practices of different industries at the time of the passage of the Act varied widely as to what should be included in the "work-day" or "work-week" for which compensation should be paid and that some state legislatures have provided that all travel time in underground mines should be included, but some have provided that only the time at the actual working places should be included and that one at least has provided for the inclusion of travel time one way.

3. The majority of the Court overlooked or disregarded the fact that the term "work-week" as used in the Act of Congress in respect of underground mining had been construed for twenty years by all concerned, the United Mine Workers, the Lessees, and the public officials charged wtih the duty of enforcement as not including travel time and that no question had ever been raised by anybody over such construction.

4. The majority of the Court erroneously held that the question for decision was one of fact to be decided in each case as the individual judge or trier of fact should determine.

5. The majority of the Court overlooked or disregarded the fact that the District Court did not find whether it had ever been the custom, practice or agreement of the petitioner to compensate its employees in its underground iron ore mines for travel time and the evidence is that by invariable practice, custom or agreement such employees were never compensated for travel time prior to the passage of the Act.

6. The majority of the Court overlooked or disregarded the fact that as was stated by the Solicitor General in the oral argument of the present case, the portal-to-portal method had not been prevailing in any iron ore or bitumi-

nous coal mine anywhere in the United States except in the two states where statutes required it.

7. The majority of the Court erroneously held that the findings of the District Court were relevant to the question of the intention of Congress in the enactment of the statute.

8. The majority of the Court overlooked or disregarded the fact that the real question for decision was whether in prescribing a forty-hour "work-week" for all industry without defining the term "work-week" the Congress intended to invalidate agreements fairly arrived at by the process of collective bargaining or in established customs and standards of particular industries.

9. The majority of the Court erroneously held that contract and custom were immaterial.

10. The majority of the Court overlooked or disregarded the effect of the Court's decisions in *William* v. *Jacksonville Terminal Co.*, 315 U. S. 386, and *Walling* v. *Belo Corporation*, 316 U. S. 624.

WHEREFORE, petitioner respectfully prays that this Court enter an order granting this petition for rehearing.

Respectfully submtited,

TENNESSEE COAL, IRON & RAILROAD COMPANY,

By NATHAN L. MILLER,
71 Broadway,
New York, New York.

ROGER M. BLOUGH,
436 Seventh Ave.,
Pittsburgh, Pa.

BORDEN BURR,
Birmingham, Alabama.

Attorneys for Petitioner.

CERTIFICATE OF COUNSEL.

I, Roger M. Blough, one of the attorneys for petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

....

Dated: May 26, 1944.

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 409.

TENNESSEE COAL, IRON AND RAILROAD COMPANY, ET AL.,
Petitioners,

v.

MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, ET AL.,
Respondents.

MOTION OF SLOSS, SHEFFIELD STEEL & IRON COMPANY FOR LEAVE TO FILE OUT OF TIME AND PETITION FOR REHEARING.

E. L. ALL,
Birmingham, Alabama.

S. M. BRONAUGH,
Birmingham, Alabama,
Attorneys for Petitioner, Sloss, Sheffield Steel & Iron Company.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 409.

TENNESSEE COAL, IRON AND RAILROAD COMPANY, ET AL.,
Petitioners,

v.

MUSCODA LOCAL No. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, ET AL.,
Respondents.

MOTION OF SLOSS, SHEFFIELD STEEL & IRON COMPANY FOR LEAVE TO FILE OUT OF TIME FOR REHEARING.

Now comes Sloss, Sheffield Steel & Iron Company, petitioner herein, and moves this Court for an order permitting it to file out of time a petition for rehearing in this case, a copy of which petition for rehearing is attached hereto and by reference made a part hereof, and in support of its motion represents that:

This Court, on March 27, 1944, rendered its decision in this case holding that travel time in underground iron ore mines should be included in the "work-day" or "work-week" for which compensation should be paid under the Fair Labor Standards Act of June 25, 1938, Chap. 678, Sec. 152, Stat. 1060.

The time provided in Rule 33 of the rules of this Court for filing a petition for rehearing expired on April 21, 1944.

Counsel for petitioner have only recently learned that on or about May 6, 1944, there was filed in this Court and docketed as Case No. 969, October Term, 1943, a Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit to review directly the decision of the United States District Court for the Western District of Virginia (53 Fed. Supp. 935) in the case entitled *Jewell Ridge Coal Corporation* v. *Local No. 6167, United Mine Workers of America, et al.*, holding that travel time in underground coal mines should not be included in the "work-day" or "work-week" for which compensation should be paid under the Fair Labor Standards Act. In view of the importance of the question involved to the entire underground mining industry of the nation, this Court should re-examine its decision in the present case in the light of the arguments and facts which it will then have before it both in the present case involving underground iron ore mines, and in the above named case involving underground coal mines.

Counsel for petitioner have likewise only recently learned that there is a general misunderstanding throughout the country as to the extent of the Court's decision in the present case, and that many claims for compensation are being made for travel time on the surface under a great variety of circumstances, which in the interest of justice and in the public interest warrants a re-examination of the present case by this Court.

This motion and the attached petition for rehearing have been prepared with due diligence since counsel for petitioner learned of the filing of the Petition for Writ of Certiorari in Case No. 969 above referred to.

Wherefore, petitioner prays that this Court enter an order permitting the filing instanter of the attached petition for rehearing.

Sloss, Sheffield Steel & Iron Company,

By E. L. All,
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Birmingham, Alabama.

S. M. Bronaugh,
2100 Comer Building,
Birmingham, Alabama,
Attorneys for Petitioner, Sloss, Sheffield Steel & Iron Company.

CERTIFICATE.

I, E. L. All, one of the attorneys for petitioner, do hereby certify that the facts stated in the foregoing Motion are true to the best of my knowledge.

....

Dated: May 26, 1944.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 409.

TENNESSEE COAL, IRON AND RAILROAD COMPANY, ET AL.,
Petitioners,

v.

MUSCODA LOCAL No. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, ET AL.,
Respondents.

PETITION OF SLOSS, SHEFFIELD STEEL & IRON COMPANY FOR REHEARING.

Comes now the above named petitioner, Sloss, Sheffield Steel & Iron Company, and presents this its petition for a rehearing in the above entitled case and, in support thereof, respectfully alleges that:

1. The majority of the Court erroneously assumed that the question for decision was whether a particular exertion, mental or physical, constituted work or employment within the meaning of the statute and was therefore a question of fact, whereas the term of the statute to be construed was "work-week".

2. The majority of the Court overlooked or misapprehended the significance of the fact of common knowledge that the customs, practices, and contracts in different industries at the time of the passage of the Act varied widely as to what was included in the "work-day" or "work-week" for which compensation should be paid, and that some state legislatures had provided that all travel time in underground mines should be included, some that only the time at the actual working places should be included, and, at least one had provided for the inclusion of travel time one way. These statutes which included travel time, in whole or in part, were explicit to that effect, evidencing a conception of necessity for such definition.

3. The majority of the Court overlooked or disregarded the fact that the term "work-week" as used in the Act of Congress in respect of underground mining had been construed for twenty years by all concerned, the United Mine Workers, the Lessees, and the public officials charged with the duty of enforcement as not including travel time and that no question had ever been raised by anybody over such construction.

4. The majority of the Court erroneously held that the question for decision was one of fact to be decided in each case as the individual judge or trier of fact should determine.

5. The majority of the Court overlooked or disregarded the fact that the District Court did not find whether it had ever been the custom, practice or agreement of the petitioner to compensate its employees in its underground iron ore mines for travel time, and the undisputed evidence is that by invariable practice, custom or agreement such employees were never compensated for travel time prior to the passage of the Act.

6. The majority of the Court overlooked or disregarded the fact that as was stated by the Solicitor General in the

oral argument of the present case, the portal-to-portal method had not been prevailing in any iron ore or bituminous coal mine anywhere in the United States except in the two states where statutes required it.

7. The majority of the Court erroneously held that the findings of fact of the District Court were relevant to the question of the intention of Congress in the enactment of the statute.

8. The findings of fact (collective) of the District Court with respect to the conditions of, and circumstances incident to, travel of the employees from the portal of the mines to the working places underground, are not material to the processes of arriving at the Congressional intent.

9. The majority of the Court overlooked or disregarded the fact that the real question for decision was whether in prescribing a forty-hour "work-week" for all industry without defining the term "work-week" the Congress intended to invalidate agreements fairly arrived at by the process of collective bargaining or in established customs and standards of particular industries.

10. The majority of the Court erroneously held that contract and custom were immaterial.

11. The majority of the Court overlooked or disregarded the effect of the Court's decisions in *William* v. *Jacksonville Terminal Co.,* 315 U. S. 386, and *Walling* v. *Belo Corporation,* 316 U. S. 624.

12. The majority of the Court overlooked or disregarded the history of the interpretation of terms of the same or similar import which have been employed in statute and administrative regulations and construed by administrative officials charged with the duty of administration and enforcement, and by the parties to whom such terms were applied.

13. The questions of law, and of the facts and circumstances insofar as they are material to the interpretation of the term "work-week," undefined in the Fair Labor Standards Act, are so essentially the same in this case and in the case entitled *Jewell Ridge Coal Corporation* v. *Local No. 6167, United Mine Workers of America, et al.*, now pending in this Court upon petition for writ of certiorari to the United States Circuit Court of Appeals for Fourth Circuit to review directly the decision of the United States District Court for the Western District of Virginia (53 Fed. Supp. 935) as to require that the two causes be considered together by this Court.

14. The majority of the Court overlooked or disregarded the fact that the Solicitor General in oral argument of this case conceded that the last two contracts entered into between the Tennessee Company and the Union on behalf of the Respondents, and the last contract entered into between the Sloss Company and the Union on behalf of the Respondents, were not coerced, and the further fact that all of the former contracts or agreements (contended to have been coerced) contained the same provision with respect to work time, and that these agreements merely carry forward the traditional custom and practice which had uniformly existed in the iron ore mining industry for more than fifty years.

15. The record does not show a concurrence of the lower Courts (District Court and Circuit Court of Appeals) with respect to pertinent facts. The majority opinion of the Circuit Court of Appeals took the position, not of concurrence, but that it should not disturb the District Court's findings of fact "unless clearly erroneous".

16. As between the two interpretations of the term "work-week", undefined in the Fair Labor Standards Act, contended for by the parties, the findings of fact of the District Court are not significant.

17. The statute relating to "Hours of Service" providing for periods of continuous rest for employees of railroad companies, and the interpretation of that statute by the courts, are not apposite upon the question of what constitutes compensable work within the meaning of the Fair Labor Standards Act.

Wherefore, petitioner respectfully prays that this Court enter an order granting this petition for rehearing.

Respectfully submitted,

Sloss, Sheffield Steel & Iron Company,
By E. L. All,
2100 Comer Building,
Birmingham, Alabama.

S. M. Bronaugh,
2100 Comer Building,
Birmingham, Alabama.

CERTIFICATE OF COUNSEL.

I, E. L. All, one of the attorneys for petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

....

Dated: May 26, 1944.

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 409

TENNESSEE COAL, IRON AND RAILROAD COMPANY, ET AL.,
Petitioners,

v.

MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, ET AL.,
Respondents.

MOTION OF REPUBLIC STEEL CORPORATION FOR LEAVE TO FILE OUT OF TIME AND PETITION FOR REHEARING.

T. F. PATTON,
Cleveland, Ohio.

BORDEN BURR,
Birmingham, Alabama,
Attorneys for Petitioner,
Republic Steel Corporation.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

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TENNESSEE COAL, IRON AND RAILROAD COMPANY, ET AL.,
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v.

MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL
UNION OF MINE, MILL AND SMELTER WORKERS, ET AL.,
Respondents.

MOTION OF REPUBLIC STEEL CORPORATION FOR LEAVE TO FILE OUT OF TIME FOR REHEARING.

Now comes Republic Steel Corporation, petitioner herein, and moves this Court for an order permitting it to file out of time a petition for rehearing in this case, a copy of which petition for rehearing is attached hereto and by reference made a part hereof, and in support of its motion represents that:

This Court, on March 27, 1944, rendered its decision in this case holding that travel time in underground iron ore mines should be included in the "work-day" or "workweek" for which compensation should be paid under the Fair Labor Standards Act of June 25, 1938, Chap. 678, Sec. 152, Stat. 1060.

The time provided in Rule 33 of the rules of this Court for filing a petition for rehearing expired on April 21, 1944.

Counsel for petitioner have only recently learned that on or about May 6, 1944, there was filed in this Court and docketed as Case No. 969, October Term, 1943, a Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit to review directly the decision of the United States District Court for the Western District of Virginia (53 Fed. Supp. 935) in the case entitled *Jewell Ridge Coal Corporation* v. *Local No. 6167 United Mine Workers of America, et al.*, holding that travel time in underground coal mines should not be included in the "work-day" or "work-week" for which compensation should be paid under the Fair Labor Standards Act. In view of the importance of the question involved to the entire underground mining industry of the nation, this Court should re-examine its decision in the present case in the light of the arguments and facts which it will then have before it both in the present case involving underground iron ore mines, and in the above named case involving underground coal mines.

Counsel for petitioner have likewise only recently learned that there is a general misunderstanding throughout the country as to the extent of the Court's decision in the present case, and that many claims for compensation are being made for travel time on the surface under a great variety of circumstances, which in the interest of justice and in the public interest warrants a re-examination of the present case by this Court.

This motion and the attached petition for rehearing have been prepared with due diligence since counsel for petitioner learned of the filing of the Petition for Writ of Certiorari in Case No. 969 above referred to.

WHEREFORE, petitioner prays that this Court enter an order permitting the filing instanter of the attached petition for rehearing.

REPUBLIC STEEL CORPORATION,
By T. F. PATTON,
1530 Republic Building,
Cleveland, Ohio.

BORDEN BURR,
1038 Brown Marx Building,
Birmingham, Alabama,
Attorneys for Petitioner,
Republic Steel Corporation.

CERTIFICATE.

I, T. F. Patton, one of the attorneys for petitioner, do hereby certify that the facts stated in the foregoing Motion are true to the best of my knowledge.

....

Dated: May 26, 1944.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 409

TENNESSEE COAL, IRON AND RAILROAD COMPANY, ET AL.,
Petitioners,

v.

MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL
UNION OF MINE, MILL AND SMELTER WORKERS, ET AL.,
Respondents.

PETITION OF REPUBLIC STEEL CORPORATION FOR REHEARING.

Comes now the above named petitioner, Republic Steel Corporation, and presents this its petition for a rehearing in the above entitled case and, in support thereof, respectfully alleges that:

1. The majority of the Court erroneously held that the question for decision was whether the activities of the underground employees constituted work within the meaning of the Statute and should be considered as a question of fact, while the question for decision was the construction of the phrase "work week" as used in the Statute.

2. The majority of the Court erroneously, in construing the intention of the Congress in the enactment of Section 7

of the Act, disregarded the fact that the phrase "work week" had been for time immemorial construed by employers and employees, by all those charged with the duty of the enforcement or administration of acts of similar import in respect of underground ore mining and underground coal mining as not including travel time.

3. The majority of the Court erroneously held that the question to be decided was one of fact to be decided in each individual case in accordance with the determination of the individual trial agency.

4. The majority of the Court erroneously failed to construe the Act enacted by the Congress as a statute to be "administered by a national agency and intended to solve a national problem on a national scale."

5. The majority of the Court erroneously held that the District Court "in making its findings properly directed its attention solely to the evidence concerning petitioners' iron ore mines and disregarded the customs and contracts in the coal mining industry."

6. The majority of the Court disregarded the undisputed fact (as referred in footnote 6 of the Opinion) that in the Spaulding Mine of petitioner the particular exertions of the employees and the discomforts and perils of underground mining upon which the affirmance of the lower court's judgment was based, did not occur or exist in the Spaulding Mine where "the ore is close to the surface and miners can walk all the way to the working faces", and erroneously failed to modify the opinion of the lower Court so as to exclude from the judgment of the lower court the employees of petitioner in its Spaulding Mine.

7. The majority of the Court erroneously held that the District Court was "unable to find from the evidence that any such 'immemorial' custom or collective bargaining agreements (that travel time should be excluded from "work time") existed."

8. The majority of the Court erroneously failed to find and hold that under the undisputed evidence in the case it had been the immemorial custom in petitioners' iron ore mines and in all other iron ore mines elsewhere in the United States, to exclude travel time from work time.

9. The majority of the Court erroneously held that the findings of the District Court (R. 557, 559, 560) were tantamount to a finding that there had never existed an immemorial custom, embodied in express or implied contracts, that travel time should be excluded from work time.

10. The majority of the Court erroneously assumed that there had been a concurrence of the two lower courts on the fact that the immemorial custom embodied in contracts of excluding travel time from work time had not existed. The undisputed record shows that the District Court refused to find that travel time had never been included in work time although the undisputed evidence supported this requested finding and the majority opinion of the Circuit Court of Appeals took the position not of concurrence but that it should not disturb the District Court's findings of fact "unless clearly erroneous."

11. The majority of the Court disregarded the fact that it was admitted by the Solicitor General in the oral argument of this case that the "portal-to-portal" method had not prevailed in the underground ore and bituminous coal mines anywhere in the United States except in the two States where statutes required.

12. The majority of the Court erroneously held that the findings of the District Court in reference to the individual conditions in petitioners' iron ore mines (admitted to be entirely different in the Raymond Mine as contrasted with the Spaulding Mine) were relevant to the question of the construction of the intention of the Congres in the use of the phrase "work week" which was the sole inquiry submitted to the Court by the pleadings and stipulation of counsel for judicial declaration.

13. The majority of the Court erroneously failed to render a decision ascertaining the intention of the Congress in the use of the term "work week".

Wherefore, petitioner respectfully prays that this Court enter an order granting this petition for rehearing.

Respectfully submitted,

Republic Steel Corporation,

By T. F. Patton,
1530 Republic Building,
Cleveland, Ohio.

Borden Burr,
1038 Brown Marx Building,
Birmingham, Alabama.

CERTIFICATE OF COUNSEL.

I, T. F. Patton, one of the attorneys for petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

....

Dated: May 26, 1944.

pp. 11, 15, 10

SUPREME COURT OF THE UNITED STATES.

No. 409.—October Term, 1943.

Tennessee Coal, Iron & Railroad Company, Petitioner,
vs.
Muscoda Local No. 123, etc., et al.

Sloss-Sheffield Steel & Iron Company, Petitioner,
vs.
Sloss Red Ore Local No. 109, etc., et al.

Republic Steel Corporation, Petitioner,
vs.
Raimund Local No. 121, etc., et al.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[March 27, 1944.]

Mr. Justice Murphy delivered the opinion of the Court.

We are confronted here with the problem of determining in part what constitutes work or employment in underground iron ore mines within the meaning of the Fair Labor Standards Act, 52 Stat. 1060, 29 U. S. C. § 201. This question, which is one of first impression, arises out of conflicting claims based upon the actual activities pursued and upon prior custom and contract in the iron ore mines. Such an issue can be resolved only by discarding formalities and adopting a realistic attitude; recognizing that we are dealing with human beings and with a statute that is intended to secure to them the fruits of their toil and exertion.

Three iron ore mining companies, petitioners herein, filed declaratory judgment actions[1] to determine whether time spent by iron ore miners in traveling underground in mines to and from the "working face"[2] constitutes work or employment for which compensation must be paid under the Act. The respondent labor unions and their officials, representing petitioners' employees, were named as defendants and the Administrator of the Wage and Hour Division of the Department of Labor was allowed to intervene. The actual controversy relates only to the hours of employment during the period intervening between the effective date of the Act, October 24, 1938, and the dates when the respective actions were initiated in April, 1941.[3] It is conceded that if underground travel constitutes employment, the miners worked more than the statutory maximum workweek and are entitled to be paid one and one-half times the regular rate for the excess hours. But if the travel time is excluded from the workweek, thus limiting it to the time spent at the working face, no overtime payments are due.

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[1] These actions were instituted under the Federal Declaratory Judgments Act, 48 Stat. 955, § 274D, 28 U. S. C. § 400. They were consolidated for trial purposes and the District Court entered a single judgment.

[2] The "working face" is the place in the mine where the miners actually drill and load ore. The "face to face" basis of compensation, advocated by petitioners, includes only the time spent at the working face. The "portal

After extended hearings, the District Court found that the travel time "bears in a substantial degree every indicia of worktime: supervision by the employer, physical and mental exertion, activity necessary to be performed for the employers' benefit, and conditions peculiar to the occupation of mining." The court accordingly ruled that the travel time, as well as the time spent at the surface obtaining and returning tools, lamps and carbide and checking in and out, was included within the workweek. 40 F. Supp. 4. The Circuit Court of Appeals affirmed as to the travel time, holding that the District Court's findings on that matter were supported by substantial evidence. The judgment was modified by the Circuit Court, however, by excluding from the workweek the time spent in the activities at the surface. 135 F. 2d 320; rehearing denied, 137 F. 2d 176. The importance of the problem as to the travel time led us to grant certiorari.[4]

Specifically we are called upon to decide whether the District Court and the Circuit Court of Appeals properly found that iron ore miners were at work within the meaning of the Act while engaged in underground travel which they were obliged to perform

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to portal" basis, proposed by respondents, includes time spent in traveling between the portal or entrance to the mine and the working face and back again, as well as the time spent at the working face.

[3] Since May 5, 1941, petitioners have paid their miners for travel time pursuant to contract in compliance with the opinion of the Administrator of the Wage and Hour Division that underground travel in iron ore mines is work within the meaning of the Act.

[4] No review has been sought of the exclusion from the workweek of the activities at the surface. We therefore do not discuss that issue in this case. Alexander v. Cosden Pipe Line Co., 290 U. S. 484, 487, and cases cited.

on the property of and under the direction of petitioners as a necessary concomitant of their employment. The record shows that petitioners own and operate twelve underground iron ore mines in Jefferson County, Alabama,[5] and that the general pattern of facts underlying the findings of the courts below is essentially the same in each of these mines.[6]

The miners begin their day by arriving on the company property at a scheduled hour[7] and going to the bath house, where they change into working clothes.[8] They then walk to the tally house near the mine entrance or portal; there they check in and hang up individual brass checks, furnished by petitioners, on a tally or check-in board. This enables the foreman and other officials to tell at a glance those individuals who have reported for work and those production and service crews that are incomplete and in need of substitutes. Vacancies are filled and the head miners and crews receive any necessary instructions. In addition, each miner either rents a battery lamp for the day or buys a can of carbide each day or two for underground illumination purposes. And at some of the mines, many miners stop at a tool box or tool house on the surface to pick up other small supplies and tools necessary for their work. These activities consume but a few minutes.

The miners thereupon are required to report at the loading platform at the mine portal and await their turn to ride down the inclined shafts of the mines. Originally the miners could reach the working faces entirely by foot, but as the shafts increased in length petitioners provided transportation down the main shafts. The miners accordingly ride part of the way to the working faces in ore skips[9] or regular man trips,[10] which operate on narrow gauge tracks by means of cables or hoisting ropes. The operation of the skips and man trips is under the strict control and supervision of the petitioners at all times and they refuse to permit the miners to walk rather than ride. Regular schedules are fixed; loading and unloading are supervised; the speed of the trips is regulated; and the conduct of the miners during the rides is prescribed.

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[5] The Tennessee Coal, Iron & Railroad Company has eight mines; Sloss-Sheffield Steel & Iron Company, two mines; and Republic Steel Corporation, two mines.

[6] As the District Court pointed out, the conditions set forth by the record are not intended to be used to censure petitioners' manner of maintenance of their mines, "for these conditions may well be normal conditions in iron ore mines and practically inevitable." Moreover, the record indicates that the Spaulding mine of the Republic Company has been operated only intermittently and experimentally during the last 20 years and many of the conditions in the other mines are not present. The ore is close to the surface and miners can walk all the way to the working faces.

[7] One of the Tennessee Company's superintendents stated that "Whenever a man comes to the mine late, dragging along and encourages others to be late, he is setting a bad example. I want this understood thoroughly—men must be on time; we don't care whether they work here or not, but if they want to work here they will have to be on time or else they will be disciplined, even to discharge."

[8] The use of the bath house, or change house, is optional. Some miners change their clothes at home and make no use of the bath houses furnished by petitioners.

About three to six trips are made, depending on the size of the mine and the number of miners. Ten men sit on each man trip car, while from 30 to 40 are crowded into an ore skip. They are forced to jump several feet into the skip from the loading platform, which not infrequently causes injuries to ankles, feet and hands. The skips are usually overcrowded and the men stand tightly pressed together. The heads of most of them are a foot or more above the top of the skips. But since the skips usually clear the low mine ceilings by only a few inches, the miners are compelled to bend over. They thus ride in a close "spoon-fashion," with bodies contorted and heads drawn below the level of the skip top. Broken ribs, injured arms and legs, and bloody heads often result; even fatalities are not unknown.

The length of the rides in the dark, moist, malodorous shafts varies in the different mines from 3,000 feet to 12,000 feet. The miners then climb out of the skips and man trips at the underground man-loading platforms or "hoodlums" and continue their journeys on foot for distances up to two miles. These subterranean walks are filled with discomforts and hidden perils. The surroundings are dark and dank. The air is increasingly warm and humid, the ventilation poor. Odors of human sewage, resulting from a complete absence of sanitary facilities, permeate the atmosphere. Rotting mine timbers add to the befouling of the air. Many of the passages are level, but others take the form of tunnels and steep grades. Water, muck and stray pieces of ore often make the footing uncertain. Low ceilings must be ducked and moving ore skips must be avoided. Overhead, a maze of water and air pipe lines, telephone wires, and exposed high voltage electric cables and wires present ever-dangerous obstacles, especially to those transporting tools. At all times the miners are subject to the hazards of falling rocks.

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[9] An ore skip is an ordinary four-wheeled ore box car made of steel. It is normally used for transporting ore and its floor is often covered with muck from such haulings. When men are riding in the car it is known as a "man skip trip." It is used for such purposes in the mines of the Tennessee Company and the Republic Company.

[10] A regular man trip is a specially constructed series of cars. Each car is about eight feet long and resembles a stairway. Five men sit on either side of the car facing outwards, back to back with five men on the other side. The man trip used in the Sloss Company mines consists of six such cars.

Moreover, most of the working equipment, except drills and heavy supplies, is kept near the "hoodlums." This equipment is carried each day by foot by the crews through these perilous paths from the "hoodlums" to the working faces. Included are such items as fifty-pound sacks of dynamite, dynamite caps, fuses, gallon cans of oil and servicemen's supplies. Actual drilling and loading of the ore begin on arrival at the working faces, interrupted only by a thirty minute lunch period spent at or near the faces. The service and maintenance men, of course, work wherever they are needed.

At the end of the day's duties at the working faces, the miners lay down their drills, pick up their other equipment and retrace their steps back to the "hoodlums." They wait there until an ore skip or man trip is available to transport them back to the portal. After arriving on the surface, they return their small tools and lamps, pick up their brass checks at the tally house, and proceed to bathe and change their clothes at the bath house. Finally they leave petitioners' property and return to their homes.

In determining whether this underground travel constitutes compensable work or employment within the meaning of the Fair Labor Standards Act, we are not guided by any precise statutory definition of work or employment. Section 7(a) merely provides that no one, who is engaged in commerce or in the production of goods for commerce, shall be employed for a workweek longer than the prescribed hours unless compensation is paid for the excess hours at a rate not less than one and one-half times the regular rate. Section 3(g) defines the word "employ" to include "to suffer or permit to work," while Section 3(j) states that "production" includes "any process or occupation necessary to . . . production."

But these provisions, like the other portions of the Fair Labor Standards Act, are remedial and humanitarian in purpose. We are not here dealing with mere chattels or articles of trade but with the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others. Those are the rights that Congress has specially legislated to protect. Such a statute must not be interpreted or applied in a narrow, grudging manner. Accordingly we view Sections 7(a), 3(g) and 3(j) of the Act as necessarily indicative of a Congressional intention to guarantee either regular or overtime compensation for all actual work or employment. To hold that an employer may validly compensate his employees for only a fraction of the time consumed in actual labor would be inconsistent with the very purpose and structure of those sections of the Act. It is vital, of course, to determine first the extent of the actual workweek. Only after this is done can the minimum wage and maximum hour requirements of the Act be effectively applied. And, in the absence of a contrary legislative expression, we cannot assume that Congress here was referring to work or employment other than as those words are commonly used—as meaning physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business.[11]

Viewing the facts of this case as found by both courts below in the light of the foregoing considerations, we are unwilling to conclude that the underground travel in petitioners' iron ore mines cannot be construed as work or employment within the meaning of the Act. The exacting and dangerous conditions in the mine shafts stand as mute, unanswerable proof that the journey from and to the portal involves continuous physical and mental exertion as well as hazards to life and limb. And this compulsory travel occurs entirely on petitioners' property and is at all times under their strict control and supervision.

Such travel, furthermore, is not primarily undertaken for the convenience of the miners and bears no relation whatever to their needs or to the distance between their homes and the mines.[12] Rather the travel time is spent for the benefit of petitioners and their iron ore mining operations. The extraction of ore from these mines by its very nature necessitates dangerous travel in petitioners' underground shafts in order to reach the working faces, where production actually occurs. Such hazardous travel is thus essential to petitioners' production. It matters not that such travel is, in a strict sense, a non-productive benefit. Nothing in the statute or in reason demands that every moment of an employee's time devoted to the service of his employer shall be directly productive. Section 3(j) of the Act expressly provides that it is sufficient if an employee is engaged in a process or occupation necessary to production. Hence employees engaged in such necessary but not directly productive activities as watching and guarding a building,[13] waiting for work,[14] and standing by on call[15] have been held to be engaged in work necessary to production and entitled to the benefits of the Act. Iron ore miners travelling underground are no less engaged in a "process or occupation" necessary to actual production. They do more than "stand and wait," *Missouri, K. & T. Ry. Co.* v. *United States*, 231 U. S. 112, 119. Cf. *Bountiful Brick Co.* v. *Giles*, 276 U. S. 154, 158. Theirs is a fossorial activity bearing all the indicia of hard labor.

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[11] Webster's New International Dictionary (2d ed., unabridged) defines work as follows: "1. To exert oneself physically or mentally for a purpose, esp., in common speech, to exert oneself thus in doing something undertaken chiefly for gain, for improvement in one's material, intellectual, or physical condition, or under compulsion of any kind, as distinguished from something undertaken primarily for pleasure, sport, or immediate gratification, or as merely incidental to other activities (as a disagreeable walk involved in going to see a friend, or the packing of a trunk for a pleasure trip) . . ." The word "employ" is defined as follows: "2. To make use of the services of; to give employment to; to entrust with some duty or behest."

The conclusion that underground travel in iron ore mines is work has also been reached by the Administrator of the Wage and Hour Division. On March 17, 1941, he approved an informal report of his representative based upon an investigation of the "hours worked" in underground metal mines in the United States. The report concluded, in part, that "The workday in underground metal mining starts when the miner reports for duty as required at or near the collar [portal] of the mine and ends when he reaches the collar at the end of the shift." See also *Sunshine Mining Co.* v. *Carver*, 41 F. Supp. 60. In addition, statutes of several important metal mining states provide that the eight-hour per day limitation upon work includes travel underground.[16]

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[12] Cf. Dollar *v.* Caddo River Lumber Co., 43 F. Supp. 822; Sirmon *v.* Cron & Gracey Drilling Corp., 44 F. Supp. 29; Bulot *v.* Freeport Sulpher Co., 45 F. Supp. 380; Walling *v.* Peavy-Wilson Lumber Co., 49 F. Supp. 846.

[13] Walton *v.* Southern Package Corp., 320 U. S. 540; Kirschbaum Co. *v.* Walling, 316 U. S. 517.

[14] Fleming *v.* North Georgia Mfg. Co., 33 F. Supp. 1005; Travis *v.* Ray, 41 F. Supp. 6.

[15] Walling *v.* Allied Messenger Service, Inc., 47 F. Supp. 773.

Petitioners, however, rely mainly upon the alleged "immemorial custom and agreements arrived at by the practice of collective bargaining" which are said to establish "the 'face to face' method as the standard and measure for computing working time in the iron ore industry." They further claim that since the Fair Labor Standards Act contains no specific provision regarding underground travel in mines, Congress must be presumed to have intended to perpetuate existing customs or to leave the matter to be worked out through the process of collective bargaining.

The short answer is that the District Court was unable to find from the evidence that any such "immemorial" custom or collective bargaining agreements existed. That court, in making its findings, properly directed its attention solely to the evidence concerning petitioners' iron ore mines and disregarded the customs and contracts in the coal mining industry. There was ample evidence that prior to the crucial date of the enactment of the statute, the provisions in petitioners' contracts with their employees relating to a forty hour work week "at the usual working place" bore no relation to the amount of time actually worked or the compensation received. Instead, working time and payment appear to have been related to the amount of iron ore mined each day. Hence such contract provisions defining the workweek are of little if any value in determining the workweek and compensation under a statute which requires that they be directly related to the actual work performed.

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[16] Arizona and Utah statutes specifically include all the travel time within the eight-hour limitation. Ariz. Code Ann. (1939), vol. 4, sec. 56-115; Utah Code Ann. (1943), sec. 49-3-2. The Supreme Court of Montana has construed Mont. Constit., art. 18, sec. 4, and Mont. Rev. Code (1935), sec. 3071, which provide for eight hours of work per day in underground mines, to include all travel time, Butte Miners' Union No. 1 *v.* Anaconda Copper Mining Co., 112 Mont. 418, 118 P. 2d 148. Nevada Comp. Laws (1929), sec. 10237, provides that the limitation shall apply to travel one way. But Wyoming Rev. Stat. (1931), sec. 63-107, specifically excludes underground travel from the limitation; a like result has been reached by interpretation of California Stats. 1909, ch. 181, p. 279, in Matter of Application of Martin, 157 Cal. 59, 106 P. 238. Alabama and Tennessee fix no limitation on hours, while maximum hour statutes of other metal mining states are inconclusive insofar as the inclusion of travel time is concerned. See also Section 5(2) of the English Metalliferous Mines Regulation Act (1872), 35 & 36 Vict., c. 77, which provides that "The period of each employment shall be deemed to begin at the time of leaving the surface, and to end at the time of returning to the surface."

Likewise there was substantial, if not conclusive, evidence that prior to 1938 petitioners recognized no independent labor unions and engaged in no bona fide collective bargaining with an eye toward reaching agreements on the workweek. Contracts with company-dominated unions and discriminatory actions toward the independent unions are poor substitutes for "contracts fairly arrived at through the process of collective bargaining." The wage payments and work on a tonnage basis, as well as the contract provisions as to the workweek, were all dictated by petitioners. The futile efforts by the miners to secure at least partial compensation for their travel time and their dissatisfaction with existing arrangements, moreover, negative the conclusion that there was any real custom as to the workweek and compensation therefor. A valid custom cannot be based on so turbulent and discordant a history; it requires something more than unilateral and arbitrary imposition of working conditions.[17] We thus cannot say that the District Court's findings as to custom and contract are so clearly erroneous as to compel us to disregard them.

But in any event it is immaterial that there may have been a prior custom or contract not to consider certain work within the compass of the workweek or not to compensate employees for certain portions of their work. The Fair Labor Standards Act was not designed to codify or perpetuate those customs and contracts which allow an employer to claim all of an employee's time while compensating him for only a part of it. Congress intended, instead, to achieve a uniform national policy of guaranteeing compensation for all work or employment engaged in by employees covered by the Act.[18] Any custom or contract falling short of that basic policy, like an agreement to pay less than the minimum wage requirements, cannot be utilized to deprive employees of their statutory rights. Cf. *Overnight Motor Transportation Co.* v. *Missel,* 316 U. S. 572; *Holden* v. *Hardy,* 169 U. S. 366. See also *Louisville & N. R. Co.* v.

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[17] Blackstone has said that one of the requisites of a valid custom is that "it must have been peaceable, and acquiesced in; not subject to contention and dispute. For as customs owe their original to common consent, their being immemorially disputed, either at law or otherwise, is a proof that such consent was wanting." 1 Commentaries 77. See also Pollock, First Book of Jurisprudence, 283 (6th ed.).

[18] Congress was not unaware of the effect that collective bargaining contracts might have on overtime pay. It expressly decided to give effect to two kinds of collective agreements, as specified in Section 7(b)(1) and (2) of the Act. Cf. Section 8(c). It thus did not intend that other collective agreements should relieve employers from paying for overtime in excess of an actual workweek of 40 hours, regardless of the provisions of such contracts.

Mottley, 219 U. S. 467; *J. I. Case Company* v. *National Labor Relations Board*, No. 67, decided February 28, 1944; *Order of Railroad Telegraphers* v. *Railway Express Agency, Inc.*, No. 343, decided February 28, 1944.

This does not foreclose, of course, reasonable provisions of contract or custom governing the computation of work hours where precisely accurate computation is difficult or impossible. Nor are we concerned here with the effect that custom and contract may have in borderline cases where the other facts give rise to serious doubts as to whether certain activity or non-activity constitutes work or employment. It is sufficient in this case that the facts relating to underground travel in iron ore mines leave no uncertainty as to ~~their~~ its character as work. The Act thus requires that appropriate compensation be paid for such work. Any other conclusion would deprive the iron ore miners of the just remuneration guaranteed them by the Act for contributing their time, liberty and strength primarily for the benefit of others.

The judgment of the court below is accordingly

Affirmed.

Mr. Justice Frankfurter, concurring.

The legal question on the record before us lies within a narrow compass. Section 7 of the Fair Labor Standards Act commands the payment of compensation at a rate of not less than one and one-half times the regular rate for every employee under the Statute who is engaged "for a workweek" longer than forty-four or forty-two hours during the first or the second year, respectively, after the effective date of the Section and forty hours thereafter. 52 Stat. 1060, 1063, 29 U. S. C. § 207. Congress did not explicitly define "workweek" and there is nothing in the available materials pertinent to construction that warrants a finding that "workweek", as applied to the workers in the iron ore industry, had so settled a meaning at the time of the enactment of the Fair Labor Standards Act as to be deemed incorporated by reference. As a result, "workweek" in this Statute, as applied to workers in this industry and on this record, has no technical meaning, that is, a meaning so well known to those in this particular industry as to be applied by courts in enforcing the Statute when invoked by men in the industry. For purposes of this case, in any event, when Congress used the word "workweek", it used it colloquially—the term carries merely the meaning of common understanding.

An administrative agency for preliminary adjudication of issues arising under the Wages and Hours Law, like that established by the National Labor Relations Act, was not provided by Congress. And so, the application of this colloquial concept "workweek" to the multifarious situations in American industry was left by Congress for ascertainment by judicial proceedings. These facts are to be found either by a jury or, as in this case, by a judge sitting without a jury. And so here it was the judge's duty to determine what time and energy on the part of the employees involved in this suit constituted a "workweek" of these employees of the petitioners. After a trial which lasted for about three weeks, during which testimony covering 2,643 pages was heard and volumiious exhibits were introduced, the District Court made its findings of fact. A judgment for the employees based on these findings was affirmed by the Circuit Court of Appeals. 40 F. Supp. 4; 135 F. 2d 320.

We have then a judgment of two courts based on findings with ample evidence to warrant such findings. Affirmance by this Court is therefore demanded.

Mr. Justice Jackson, concurring.

This case in my view probably does not present any question of law or, if so, it is one with a very obvious answer. When Congress in the Fair Labor Standards Act referred to "a work week longer than forty hours," it considered, I assume, that what was a work week in fact should be a work week in law. Therefore, the determination of any particular case does not govern any other, for each establishment and industry stands on its own conditions.

A seasoned and wise rule of this Court makes concurrent findings of two courts below final here in the absence of very exceptional showing of error. *Goodyear Tire & Rubber Co., Inc.* v. ~~*General Dry Batteries, Inc.*~~, No. 262, October Term 1943, decided February 28, 1944; *District of Columbia* v. *Pace*, No. 117, October Term 1943, decided January 10, 1944; *Baker* v. *Schofield*, 243

Ray-O-Vac Co.,

U. S. 114, 118; *Williams Manufacturing Co.* v. *United Shoe Machinery Corp.*, 316 U. S. 364, 367.

In these cases ore mining companies sought declaratory judgments that miners' travel time in the shafts getting to and from actual mining operations, and some other time, is not to be counted in the work week as defined for overtime purposes in the Fair Labor Standards Act. They alleged that the custom of their mines excluded it, but the trial court considered all the evidence and said, "The evidence has disclosed no such custom." The companies also contended that the activity during travel is not in the nature of work. After hearing a mass of conflicting testimony the trial court said of these activities, "They are performed on the premises of the employer, in the furtherance of the employer's business, with no benefits to the employee (except to aid him in the performance of work for the employer), under conditions created and controlled by the employer, and they involve responsibility to the employer and physical exertion, even though not burdensome, on the part of the employee. No characteristic of work is lacking." These were found to be the facts by the two courts below and, whatever we might decide if we were a trial court hearing the evidence in the first instance, we cannot with our limited review hold them wrong on this record.

If these facts are accepted, the ruling that such travel time is part of the work week seems manifest. I would affirm on these controlling facts.

Mr. Justice Roberts.

The question for decision in this case should be approached not on the basis of any broad humanitarian prepossessions we may all entertain, not with a desire to construe legislation so as to accomplish what we deem worthy objects, but in the traditional and, if we are to have a government of laws, the essential attitude of ascertaining what Congress has enacted rather than what we wish it had enacted.

Much of what is said in the opinion, in my view, disregards this fundamental function of the judicial process and relies on considerations which have no place in the solution of the issue presented.

What did Congress mean when it said, in Sec. 7(a) of the Fair Labor Standards Act, that "No employer shall . . . . employ any of his employees . . . *for a workweek* longer than forty hours . . . unless such employee receives compensation" for overtime at a specified rate? No other issue is presented.

The materials for decision are those to which resort always has been had in ascertaining the meaning of a statute. They are the mischief to be remedied, the purpose of Congress in the light of the mischief, and the means adopted to promote that purpose. These are not obscure in this instance.

The committee reports upon the bill which became the Fair Labor Standards Act[1] make it clear that the sole purpose was to increase employment, to require a fair day's pay for a fair day's work by raising the wages of the most poorly paid workers and reducing the hours of those most overworked, and thus correct inequalities in the cost of producing goods and prevent unfair competition in commerce. The reports disclose no other purpose. The Congressional findings and declaration of policy embodied in Sec. 2(a)[2] exhibit no intent to deal with any matter other than substandard conditions in industry stemming from wage and hour practices. The Act will be searched in vain for a mandate respecting any subject other than minimum wages and maximum hours of work. This court has construed it as dealing only with these subjects.[3]

In this setting, therefore, we are to determine what Congress meant by the term "workweek" when it prescribed the maximum number of hours of labor an employer might require to be rendered within any week at the standard wage. The Act does not define "workweek", for the evident reason that Congress believed it had a conventional meaning which all would understand and to which all could conform their practices. The term combines two words in common use. A week is any period of seven days. In accepted usage a man's work means that which he does for his employer as the consideration of the wage he receives. The term is often used in a more general sense as when one is asked what he is doing and replies "I am working for Jones". Of course he does not mean that Jones is paying him for each hour of every week of his life. Men are not commonly paid for the time they sleep, the time they eat, or the time they take to go to, and return from, their employer's premises. Thus, although the phrase "work" may refer to the calling pursued, or the identity of the employer, it is plainly not so used in this statute. Its collocation with the word "week" and with the injunction as to minimum pay, maximum hours, and overtime for extra work, in any week shows that what Congress meant by work was what I have above described,—the actual service rendered to the employer for which he pays wages in conformity to custom or agreement.

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[1] H. R. 1452, 75th Cong., 1st Sess., H. R. 2182, 75th Cong., 3d Sess., S. R. 884, 75th Cong., 1st Sess.

[2] 52 Stat. 1060.

[3] United States *v.* Darby, 312 U. S. 100, 115, 117, 122, 125.

It is common knowledge that what constitutes work for which payment is to be made varies with customs and practices in different industries or businesses. Where the employe is required to report at his employer's place of business and go thence to the place where his employer's activities are pursued, it has been the custom in some cases to pay for the time spent in going from the employer's place of business to the place of work. In many industries some or all of the employes are required to report and to remain at a given place awaiting a call for emergency or other casual service and, according to understanding, they are paid for the hours during which they wait as well as those in which they actually put forth physical or mental effort. There can be little doubt that Congress expected the provisions of the Act to be fitted into the prevailing practices and understandings as to what constituted work in various industries.

The Act does not provide that the Administrator or the courts are to define a workweek in the case of each employer on such basis as they deem right, regardless of the custom of the industry or of existing agreements between employers and employees. Nor does the Act vest authority in Administrator or court to disregard and supersede existing understandings and practices as to what constitutes work or the workweek. There is nothing in the words of the statute or its history to suggest that Congress intended, without mentioning it, to confer on the Administrator or the courts so vast a power over the industry of the nation.

The question in this case then is: What was the workweek of iron miners when the Act was adopted? If the answer is plain, then, I submit, that existing workweek must control in the administration of the statute unless and until employer and employes, by consensual arrangement, alter the current practice.

The record presents no dispute as to the facts. Some are matters of public notoriety susceptible of judicial notice; others are contained in offers of evidence which the District Court excluded as irrelevant; others are exposed in the proofs.

Conditions of labor in iron mines and in coal mines are similar. In both, as the workings become deeper, the men have farther to go to reach the places at which they labor. The time thus consumed by individual workmen varies in the same mine, and in different mines. The conditions in the channels of approach to the places of work are somewhat better in iron mines than in coal mines. The custom in coal mines is, therefore, persuasive, since some of the petitioners maintain coal and iron mines in close proximity, and since the practice in the two has been the same for many years.

In the public arbitration proceedings at Birmingham, Alabama, in 1903, the testimony showed that a miner's day was reckoned "from the time [he] gets to the face of the coal until he leaves the face of the coal," and that the eight hour day was so measured. That arbitration resulted in a wage agreement on the "face to face" basis; that is, on a wage fixed according to the time the miners worked at the face of the coal.

In 1917 a public board of arbitration, whose award was approved by the United States Fuel Administrator, found:

> "An eight hour day means eight hours work at the usual working places of all classes of employees. This shall be exclusive of the time required in reaching such working places in the [redacted] morning and departing from the same at night."

In 1920 the report and award of the Bituminous Coal Commission, which was made the basis of agreement between operators and union miners, employed the language just quoted.

In 1933 the Code of Fair Competition for the Bituminous Coal Industry, promulgated by the President under the National Industrial Recovery Act, provided:

> "Seven hours of labor shall constitute a day's work and this means seven hours work at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid on the day or tonnage or other piece work basis."

In 1933 the Appalachian Agreement, approved by the President, provided:

"Eight hours of labor shall constitute a day's work. The eight hour day means eight hours' work in the mines at the usual working places for all classes of labor exclusive of the lunch period."

Prior to 1938, the petitioner Tennessee Coal, Iron & Railroad Company paid its miners either on a piece work basis or upon a shift basis, as did the petitioners Sloss-Sheffield, and Republic Steel. But the common understanding of men and management was that, at first, ten hours and, later, eight hours constituted a working day. This is shown by the proofs and there is no evidence to the contrary.

On numerous occasions the men working in these mines claimed, through their unions, that they ought to be paid for travel time consumed in the mines in going to or from the face where they worked. Their demands for pay for travel time are eloquent proof that they understood the basis on which their pay was reckoned and that it did not include travel time as working time. No agreement to pay for travel time was made and no practice to pay for it was adopted.

In 1934 Tennessee made an agreement with the Union representing its employes, which was renewed in 1935, and again in 1936. It is undisputed that all of these agreements excluded payment for travel time. On October 6, 1938, before the Fair Labor Standards Act was in effect, a collective bargaining agreement was made between the International Union, affiliated with the CIO, and the Tennessee Company. In this agreement it was provided:

> "Section 4—Hours of Work. Eight (8) hours shall constitute a day's work and forty (40) hours shall constitute a week's work. Time and one-half shall be paid for all overtime in excess of eight (8) hours in any one day or for all overtime in excess of forty (40) hours in any one week.
>
> "The eight (8) hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

This agreement remained in effect until May 5, 1941, when the provisions in question were abrogated pursuant to an opinion promulgated by the Wage and Hour Administrator as hereinafter described.

The circumstances are not materially different with respect to Sloss-Sheffield. That company has bargained with a union representing its miners since 1934. Several times the union made a demand for payment of travel time but this was not granted. A formal agreement containing the same definitions of workweek, and hours of work, as in the case of Tennessee, was executed in 1939 and renewed in 1940. The company continued to pay on the face to face basis until 1941.

Republic Steel has had no formal written agreement with its employes, but it has bargained with their union. As early as 1933 the union suggested that an arrangement be made whereby the men enter the mine on their own time and come out on company time, but the matter was not pressed. It came up again in 1934. After a strike, negotiations resulted in a return of the men to work on the face to face plan of payment. In 1935 the union proposed that the employes should enter on their own time and come out on company time, but in negotiations the matter was dropped. In 1936 the union wrote the company respecting an agreement and, in its proposal, said: "The eight hour day means eight hours in or about the mines at the usual working places for all classes of work." In 1939 the union proposed an agreement containing a like provision. In that year the union preferred charges before the National Labor Relations Board but these did not involve the face to face basis of wage computation. The complaint was settled by stipulation. The company continued to pay for a day's work on the face to face basis until May 1, 1941.

The Fair Labor Standards Act became effective October 24, 1938. At that time coal and iron miners were being paid on the basis of their time spent at their working places in the mine. The miners fully understood this basis.

On July 9, 1940, the director of the legal department of the United Mine Workers of America, in a letter to the Administrator of the Act, requested that he accept the definition of working time contained in the Appalachian agreement, which the letter said embodied "the custom and traditions of the bituminous mining industry." That definition was the same as that quoted from the Tennessee agreement, *supra*. The letter further said, respecting the face to face method:

> "This method of measuring the working time at the place of work has been the standard provision in the basic wage agreements for almost fifty years and is the result of collective bargaining in its complete sense."

and further said:

> "As mines grow older, the working places move farther and farther away from the portal or opening of the mine, and as such conditions develop, it becomes necessary for provision to be made for transportation of the men over long distances to their working places."

and added that adjustment of wage rates to any new measurement

> "would create so much confusion in the bituminous industry as to result in complete chaos, and would probably result in a complete stoppage of work at practically all of the coal mines in the United States."

On the footing of that letter the Administrator issued a release stating that the face to face basis in the bituminous industry would not be unreasonable.

On March 23, 1941, the Administrator announced a modified portal to portal wage hour opinion in which he defined the work day in underground metal mining as starting when the miner reports at the collar of the mine, ends when he returns to the collar, and includes the time spent on the surface in obtaining and returning lamps, carbide, and tools and in checking in and out. Realizing that this was a complete change of opinion, the Administrator announced that he would not seek to compel payment of restitution from mine owners operating on a face to face basis but that he could not interfere with the right of employes or their representatives to sue for past overtime and penalties under § 16(b) of the Act. Thereupon the unions representing miners demanded payment of overtime for all travel time since the effective date of the Act, and invoked the penalties specified therein.

In order to avoid possible penalties, the petitioners complied with the Administrator's ruling and brought the present suit for a declaratory judgment to the effect that working time of underground employes comprised the hours of work in the usual working places in the mine and did not include the time consumed in travel thereto and therefrom.

At the trial much evidence was taken as to the practice existing in iron mines long prior to, and at the date of the adoption of, the Fair Labor Standards Act. This was given by miners, foremen, and employers, and represented not any single locality but the industry over the country. In fact, some of the testimony consisted of depositions taken by the respondents, but offered by the petitioners. It was all to the effect that the working time of iron miners had always been calculated and paid for according to the time worked in the mine at the place assigned for the work and that travel time had never been included in the time for which payment was made.

The district judge entered twenty-nine findings of fact. The first four are formal. The fifth is to the effect that, in the history of mining in the Birmingham District, plaintiffs' employes have been paid without regard to the number of hours spent at the face of the ore or at any specified place or station in the mines, and adds: "This compensation has never been based upon any precise number of hours spent daily at the face of the seam or at any specified place or station in the mines." The finding would seem difficult to explain in view of the history heretofore outlined. The explanation is found in the fact that, although the men were paid for an eight hour day of work at the face, if blasts were about to be set off at the close of the day the men were sent away from the face some time before the blasting but were, nevertheless, paid as if they had remained at the face for the full eight hours. But this can be no reason for disregarding the practices and agreements of the parties.

Findings 6 to 12, inclusive, refer to various methods of payment practiced in the past and to the character of the work of miners and other underground workers. They evidently are intended to show that, while an eight hour day was in force, the wage was not calculated at an hourly rate. Of course, they do not contradict the fact that forty hours constituted the workweek nor the fact that it was understood that no wages were paid for time spent in travel in the mines.

Finding 13 is to the effect that the unions which made agreements with various petitioners had never been certified by the National Labor Relations Board as appropriate units for collective bargaining. The bearing of this finding is difficult to understand in view of the fact that the employers dealt with the unions representing their men and two operated under formal collective bargaining agreements with nationally affiliated unions.

Finding 14 briefly mentions that the men had several times demanded pay for travel time.

Findings 15 to 27, inclusive, describe the conditions under which the men arrive at the mine, check in, obtain their tools, and walk, or are carried, to their work underground and how they return. They recite that the men have to obey company regulations while they are on the company property and in going to and returning from work. Many of these regulations are for the men's safety. These findings also show that, after arriving on company property, the men receive certain directions with respect to the work they are to do. The obvious bearing of these findings is that the court thought travel ought to be considered work, within the intendment of the Act, whatever the custom, practice, or agreement of the parties. It would be no less a judicial fiat, though somewhat more extreme, to hold that as the men's living quarters are uncomfortable and unhealthy and they must live in the neighborhood of the mines, the time spent in their homes must be paid for as work.

The two concluding findings are of facts which add nothing. They are to the effect that, if all the travel time is counted in the workweek, the men have worked more than forty hours per week and the petitioners have not paid them for more than forty hours.

The opinion and concurring opinion in this court rely heavily on these findings, especially as they were accepted by the Circuit Court of Appeals. But it will be observed that the findings are noteworthy for the feature that they deal, except in the instance mentioned, which has already been explained, with facts which are immaterial to the issues in the case. I do not see how aid to decision can be derived by refusing to disturb findings which do not meet the issue made by the pleadings. It is significant that the District Court avoided any finding as to whether the employers had ever paid travel time or as to the understanding of the parties that the employers were not paying for such travel time. And it is even more significant that the court made no finding whatever about the formal collective bargaining agreements entered into by the respondents with the petitioners in which both parties clearly signified their understanding of what was work in iron mines. And the court could not, under the proofs in this case, have found that these collective bargaining agreements were contrary to the accepted practice in iron and coal mines throughout the country prior to 1941. The petitioners objected that the findings omitted any reference to the fact that the companies had never paid for travel time, to the fact that the day's work for which wages were paid did not include travel time to or from the place where they mined the ore, or to the negotiations and agreements as to working time, and sought a new trial. The objections and motions were overruled.

Reliance is placed on the trial court's finding that the evidence discloses no custom to exclude travel time from the workweek. But that very reliance exposes the fallacy of the lower court's and this court's position. Unless the statute gave the courts authority to make contracts for the parties, which the statute did not make, a court could not support such a contract by finding that there was no custom with respect to travel time. It would be necessary for it to find that there was a custom to pay for such time, which the District Court failed to do, for the obvious reason that there was no evidence of such custom.

To say that we should pitch decision on acceptance of the findings of the trial court, when that court neglected to find facts which were highly relevant and material, is to disregard the real and the only issue in the case.

As I have already pointed out, the Fair Labor Standards Act was not intended by Congress to turn into work that which was not work, or not so understood to be, at the time of its passage. It was not intended to permit courts to designate as work some activity of an employee, which neither employer nor employee had ever regarded as work, merely because the court thought that such activity imposed such hardship on him or involved conditions so deleterious to his health or welfare that he ought to be compensated for them.

It is common knowledge that the issue of portal to portal pay was first nationally raised in connection with the mining industry after the nation was at war and in connection with disastrous coal strikes. And, indeed, the inspiration for the demand for portal to portal pay was furnished by the decision of the court below in this case. That decision was rendered on March 16, 1943. Three days later the National Policy Committee of the United Mine Workers changed its demanded definition of hours of labor so that existing demands, which, until then, had been on the traditional face to face basis of payment, should "conform with the basic legal requirements of the industry and the maximum hours of work time provisions be amended to establish 'portal to portal' for starting and quitting time for all underground workers." In presenting this demand it said: "The Mine Workers desire to take advantage of the law which, under the

Alabama decision, grants them the right to be paid for the time they are in the mines." Thus it is plain that the decision under review was understood, as it must be, as a declaration of law by a court as to what is a work week under the Act and not a finding of fact based on the custom of the industry and the agreement of the parties. In August class actions were filed by the United Mine Workers in various district courts to obtain overtime compensation for portal to portal pay.

One further fact should be noted. The District Court found that not only the travel time from and to the mouth of the mine should be counted as working time, but that the time men spent on the surface in collecting tools, etc. should also be included. The Circuit Court of Appeals, although professing to accept the fact findings of the District Court, reversed its judgment with respect to time spent on the surface, saying no more than that the District Court was wrong in including that time. This is further proof that the decision of the case by both courts below turns on the view of a court as to what ought to be considered work and what not, irrespective of the understanding of the parties. Suppose that the parties had agreed that travel time was working time and to be included and paid for in the workweek? Would the courts be at liberty to find the contrary and deprive respondents of the benefit of the agreement. I think not.

I cannot better characterize the result in this case than by quoting from what Judge Sibley said in his dissenting opinion below.[4]

> "If it would be better to include travel time in work time, it ought to be done by a new bargain in which rates of pay are also reviewed. If the change is to be by a special statute (some western States have such statutes), it will operate justly in futuro, and not by unexpected penalty, as here.
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> "There is nothing in the Act to outlaw agreements that travel time in getting to or from the agreed place of work is not work time. This is true though the employer may organize a means of transportation and make rules for its use. The agreements here that work time includes only time at the face of the ore bed are not illegal. Digging out the ore is what the miners agree to do, and for that they are paid. Getting their tools together and riding or walking to the agreed place of work is not, by force of any law, work done for the mine owner. No one, I suppose, would say that if a group of miners who had spent an hour riding to work decided

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[4] 135 F. 2d 324, 325.

of their own will not to dig any ore and spent another hour riding back, they had done any work for which they should be paid by force of the Act.

* * * * * * *

"It is now proposed to assess against these appellants as back pay for overtime an estimated quarter of a million dollars, to be doubled by way of penalty, to compensate the miners for their time in going to and from their place of work, in the face of their agreements that this time was not in their work time. They are to get three times as much per hour for riding and walking to and from the work they were hired to do, as they get for doing the work itself. The injustice of it to me is shocking."

I would reverse the judgment.

The Chief Justice joins in this opinion.